



CONSTITUTION

OF THE WELGEDACHT HOME OWNERS' ASSOCIATION

STAD KAAPSTAD
2022 Amendments
29 SEP 2022

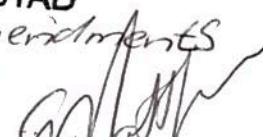


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PART 1

1. INTRODUCTION

1.1 Preliminary

1.1.1 The Welgedacht Home Owners' Association was constituted as a home owners association in terms of section 29 of the Land Use Planning Ordinance, No. 15 of 1985 (as amended) in accordance with the conditions imposed by the CoCT. The Association came into existence upon the transfer of the first Erf arising from the subdivision.

1.1.2 The applicant for approval of the original subdivision called the first meeting of the owner's association within 60 days of the transfer of 60% of the land units arising from such subdivision (or within two years of the transfer of the first land unit) and complied with section 61(9) of the CoCT By-Laws by giving notice to the CoCT, within 60 days of the first meeting, that the meeting has taken place and provided the CoCT with a copy of the minutes of such meeting.

1.1.3 This Constitution replaces the previous Constitution of the Association.

1.1.4 The Association shall be deemed to be an owners' association established in terms of section 61 of the City of Cape Town Municipal Planning By-Law, 2015 and will at all times comply with said By-Law.

1.2 Definitions

In this Constitution, unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them:

1.2.1 **'Alienate'** means to divest of ownership of an Erf, or part thereof, or share therein, by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency, liquidation, prescription, expropriation or otherwise and 'Alienated' and 'Alienation' shall have a corresponding meaning.

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- 1.2.2 **'Annexures'** means the annexures to the Constitution, incorporated into the Constitution, numbered numerically the contents of which may be amended if directed by Members by a Special Resolution, taken at a Meeting of the Association.
- 1.2.3 **'Association'** means the Welgedacht Home Owners' Association.
- 1.2.4 **'Auditor'** means the auditor of the Association appointed from time to time.
- 1.2.5 **'Budget'** means the estimates of income and expenditure of the Association in respect of a financial year.
- 1.2.6 **'Business Day'** means a weekday other than a Saturday, Sunday or a Public Holiday officially recognised in the Republic of South Africa.
- 1.2.7 **'Chairperson'** means the Chairperson of the Association and of the Trustees from time to time.
- 1.2.8 **'City's Planning By-Law'** means the CoCT Municipal Planning By-Law, 2015 as may be amended from time to time.
- 1.2.9 **'CoCT'** means the City of Cape Town Local Authority or such other Local Authority appointed by law to govern the Association jurisdiction or its successor, as such established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000.
- 1.2.10 **'Constitution'** means this Constitution of the Association, including the Annexures thereto and any amendments, substitutions or additions thereto and can only change by Special Resolution of the Association.
- 1.2.11 **'Contractor'** means a person and his staff who are contracted by a Member, Resident or the Association to provide a specified service on the Estate, excluding a delivery Contractor.

- 1.2.12 **‘Electronic Communication’** shall have the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002 as amended from time to time and includes any substituted legislation.
- 1.2.13 **‘Employee’** means a person in the employ of a Member, Resident or the Association.
- 1.2.14 **‘Erf/Erven’** means the Erven in the Estate but excluding the Private Open Space Erven and ‘Erf’ means any one of them.
- 1.2.15 **‘Estate’** means the Welgedacht Estate.
- 1.2.16 **‘Estate Manager’** means an individual or management entity appointed by the Trustees from time to time to manage and carry out the functions, powers and obligations of the Association and Trustees.
- 1.2.17 **‘Financial Institution’** means a registered financial institution as defined in section 1 of the Financial Institutions (Protection of Funds) Act.
- 1.2.18 **‘Financial Institutions (Protection of Funds) Act’** means the Financial Institutions (Protection of Funds) Act, No. 28 of 2001, as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.
- 1.2.19 **‘Guest’** means a person who is visiting the Estate at the invitation of a Member, Resident or the Association.
- 1.2.20 **‘Improvements’** means any buildings or structures constructed or to be constructed on an Erf or the Estate, including any alterations, additions or attachments to any existing buildings and/or structures and changes to external finishes, material and/or the colour scheme: provided that the foregoing shall not give rise to any right or expectation to erect any building or structure that is not in accordance with the Building and Architecture Design Guidelines, the Rules of the Association and/or the plans that have been duly approved in accordance with the requirements of the Constitution and/or CoCT.

- 1.2.21 **'In Writing'** means written, printed or lithographed or partly one and partly the other, and other modes of representing or producing words in visible form, including Electronic Communication.
- 1.2.22 **'Juristic Person'** means a company, close corporation, trust or other legal or juristic person.
- 1.2.23 **'Lessee'** means a Resident who rents a Property within the Estate from a Member.
- 1.2.24 **'Levy/Levies'** means all the contributions payable by the Members to the Association in terms of clauses 2.3.2 and 6.6 of the Constitution, that may consist of: Operating Annual Levies, Replacement and Maintenance Annual Levies, Special Levies and contributions to the Community Schemes Ombud Services ("CSOS"), CSOS Annual Levies.
- 1.2.25 **'Member'** means the registered owner of a Property in the Estate, as more fully described in clause 2.2 herein.
- 1.2.26 **'Meeting'** means an Annual General Meeting, General Meeting, or Special General Meeting of the Association, as more fully described in Part 5 herein and includes Trustee Meetings only in context and if referenced.
- 1.2.27 **'Private Open Space' / 'POS'** means the Erven zoned as private open spaces, registered in the name of the Association and situated within the Estate for the use of Residents including buildings, structures, walkways, play parks and all of the facilities developed thereon, listed in an Annexure marked numerically.
- 1.2.28 **'POS Member'** means the Members (and their successors in title) of the first circle of Erven and those across the street (if any), situated immediately adjacent to a single specific and identified POS, listed in an Annexure marked numerically.
- 1.2.29 **'Property'** means an Erf together with the Improvements thereon.

1.2.30 **'Resident'** means Members, Lessees, their household members, and Employees, who live on the Estate.

1.2.31 **'Reserve Funds'** means the following reserves or funds as reflected in the annual financial statements, consisting of:

(1) **'Capital Expenditure Reserve'** means the reserve established to account for the Association's capital expenditure incurred less the cumulative depreciation charged on such expenditure.

(2) **'Operating Reserve'** means the reserve established with the purpose of managing the Association's day-to-day operating expenditure and where the Operating Annual Levies and any Special Levies (specifically raised in relation to operating expenditure) are allocated.

(3) **'Replacement Reserve'** means the reserve established with the purpose of managing the replacement, maintenance, and repair of the Association's infrastructure assets and where the Replacement and Maintenance Annual Levies and any Special Levies (unless a Special Levy is raised specifically relating to operating expenditure) are allocated.

(4) Any other relevant Reserve that the Trustees may elect to operate from time to time to efficiently manage the financial position of the Association.

1.2.32 **'Resolution'** means a decision passed at a Meeting of the Association by counting the votes in accordance with clause 5.12 hereunder, consisting of the following:

(1) **'Ordinary Resolution'** means a resolution by an ordinary majority of the total votes cast thereon by Members who are entitled to vote at any Meeting and who are present in person or by Electronic Communication or represented by proxy.

(2) **‘Special Resolution’** means a resolution which can only be passed at an Annual – or Special General Meeting, by a majority of not less than 75% of Members of the Association who are entitled to vote at any Meeting and who are present in person or by Electronic Communication or represented by proxy, of which at least 21 clear days’ written notice, specifying the proposed Resolution, has been given or a Resolution agreed to In Writing by the majority of not less than 75% of the Members of the Association who are entitled to vote at a Meeting.

1.2.33 **‘Rules’** means the Rules formulated and updated by the Trustees from time to time in accordance with clause 4 of this Constitution.

1.2.34 **‘Services’** means servitude areas, the main security perimeter wall and fence and security infrastructure, and the other Services located within the POSes or to be rendered in respect of the Association.

1.2.35 **‘Trustees’** means the Board of Trustees of the Association and ‘Trustee’ shall mean one of them.

1.2.36 **‘Trustee Meeting’** means a Meeting by the Trustees from time to time.

1.2.37 **‘Trustee Resolution’** means a resolution taken in accordance with clauses 3.10 and 3.11 hereof, by the Trustees from time to time.

1.2.38 **‘Welgedacht Home Owners’ Association’** means the Association of the Welgedacht Estate, a Juristic Person, established as a security lifestyle estate consisting collectively of all registered Members, the Erven of the Estate, the Improvements and POSes, managed by the Trustees and Estate Manager, on authority of the Members.

1.3 Interpretation

1.3.1 In the interpretation of the Constitution, unless the context otherwise indicates:

- (1) the clause headings are for convenience of reference and shall be disregarded in construing the Constitution;
- (2) words importing the singular number shall include the plural and the converse shall also apply;
- (3) a reference to any one gender shall include the other genders;
- (4) a reference to natural persons shall include Juristic Persons and the converse shall apply;
- (5) words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part of, and in subsequent clauses, bear the meaning assigned to such words and expressions in such sub-clause;
- (6) when any number of days is prescribed in the Constitution, the same shall be reckoned excluding the first day, including the last day which day can only be a Business Day;
- (7) where figures are referred to in words and in numerals and there is any conflict between the two, the words shall prevail; and
- (8) the Annexures to the Constitution shall be deemed to be incorporated in and form part of the Constitution.

1.3.2 If any provision of the Constitution is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of the Constitution.

1.3.3 If any provision in a definition in the Constitution is a substantive provision conferring rights or imposing obligations on any of the Members, then, notwithstanding that it is only in the definition clause of the Constitution, effect shall be given to it as if it were a substantive provision in the body of the Constitution.

- 1.3.4 If any provision in the Rules conflicts with any provision of the Constitution, the relevant provision of the Constitution shall prevail and shall not affect the validity of the remainder of the Rules.

PART 2

2. STATUS AND MEMBERSHIP OF THE ASSOCIATION AND OBLIGATIONS OF MEMBERS TOWARDS THE ASSOCIATION

2.1 Status of the Association

- 2.1.1 The Association is a Juristic Person, has perpetual succession and is capable of suing and being sued and established as a non-profit making institution.

- 2.1.2 The main objective of the Association is to act in accordance with the collective mutual interests of its Members and to protect and advance the interests of the Estate and its Members in terms of ownership, management and development in order to share a harmonious, quality lifestyle by:

- (1) regulating the general conduct of Residents in accordance with the Constitution; and
- (2) implementing and maintaining security measures in general, including systems for controlled access to the Estate.

- 2.1.3 The Association controls the compliance and enforcement of the Building and Architectural Design Guidelines in relation to Erven and all buildings, Services and amenities under its control and the POSes registered in its name; and

- 2.1.4 The Association control, administer and manage the POSes, the private streets and other services and amenities arising from the original subdivision upon establishment and including the buildings on land under

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2.1.5 The Association is obliged to enforce certain condition of subdivision approval or management plans listed in the conditions and where relevant, any further development which must form part of the Association and the relevant procedures for incorporating the development. And

2.1.6 The Association is obliged to implement and enforce the provisions contained in City of Cape Town Municipal Planning By-Law clauses 62(1)(a) (i) –(vii).

2.1.7 The Members of the Association are every registered owner of an Erf within the Estate, who shall be jointly liable for expenditure incurred in connection with the Association.

2.2 Membership of the Association

2.2.1 Membership of the Association shall be automatic and compulsory upon registration and shall cease when a Member ceases to be the registered owner of an Erf.

2.2.2 If any person is the registered owner of more than one Erf, whether they are separately located or have been consolidated, such person shall be regarded as a Member, and shall have the rights and obligations of a Member, in respect of each Erf registered in such person's name, but limited to such erven upon which full levies are charged and paid up..

2.2.3 If any Erf is owned by more than one person, all the registered owners of the Erf shall together be deemed to be one (1) Member and have the rights and obligations of one (1) Member, provided however that all co-owners of one Erf shall be jointly and severally liable for the due performance of any obligations in terms of the Constitution.

2.2.4 In the event of a Juristic Person being the registered owner of an Erf, that Juristic Person shall be the Member and may be represented by an individual duly authorised by the Juristic Person, to act as such.

- 2.2.5 When a Sectional Scheme is registered upon one or more Erven in the Estate, consisting of two or more sectional units, the owner or owners of each sectional title unit shall each separately become a Member of the Association, and when he ceases to be an owner of the sectional title unit, he shall *ipso facto* cease to be a Member of the Association.
- 2.2.6 A registered owner of an Erf may not resign as a Member.

2.3 Obligations of Members towards the Association

- 2.3.1 Every Member shall comply and ensure that every Lessee, Guest, Contractor and Employee in relation to his Erf shall also comply with:
- (1) the provisions of the Constitution and the Rules imposed from time to time and
 - (2) any directive given or Resolution passed by the Association or the Trustees in implementing or enforcing the provisions of the Constitution and shall to the best of his ability further the objectives and interests of the Association.
- 2.3.2 Members shall be jointly liable for reasonable expenditure incurred by the Association and shall be obliged to pay such specified Levies as determined and charged from time to time to cover such expenditure.
- 2.3.3 No Member shall have any right, title or interest in or to the funds or assets of the Association in his personal capacity, all of which shall vest in the Association.
- 2.3.4 A Member shall not be entitled to Alienate his Erf or apply to the Registrar of Deeds for the registration of transfer of his Erf, without the prior written consent of the Trustees having been obtained, which consent may not, subject to the conditions contained in the Rules as amended from time to time, be withheld unreasonably.

- 2.3.5 Members shall not apply to the CoCT for the rezoning, subdivision or use departure and shall not be entitled to use his Property for any purpose other than the permitted use applicable upon establishment of the Estate without the prior written consent of the Trustees and the CoCT, subject to compliance with the conditions imposed by the Trustees and the CoCT.
- 2.3.6 Members shall inform their immediate household, Lessees, Guests, Contractors and Employees of the Obligations under the Constitution and the Association Rules. In the event of any breach of the Constitution or Rules by Members or any of their household, their Lessees, Guests or Employees, such breach shall be deemed to have been committed by the Members who shall be jointly and severally liable with such wrongdoer to and in favour of the Association. However, without prejudice to the foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.

PART 3

3. TRUSTEES

3.1 Nomination and Election of Trustees

- 3.1.1 A Member may nominate a Member in good standing for the office of Trustee.
- 3.1.2 The nomination of a Trustee must be In Writing, accompanied by the written consent of the Member nominated and delivered to the Trustees at the service address on or before a date as determined and stipulated by the Trustees to ensure nominations can be issued in time to all Members for consideration and voting at the relevant Meeting.

- 3.1.3 If an insufficient number of nominations are received, further nominations may be called for at the relevant Meeting with the consent of the Members nominated.
- 3.1.4 The Trustees shall be elected at each Annual General Meeting of the Association by Ordinary Resolution. There shall be at least five (5) and not more than nine (9) Trustees.
- 3.1.5 By accepting the appointment, each Trustee shall be bound by the provisions of the Constitution and shall at all times act honestly, transparent and in good faith, with the best interests of the Association at heart and in such a way that the credibility and integrity of the Association is not compromised in any way.

3.2 Right to co-opt

- 3.2.1 The Trustees shall have the right to co-opt any Member (or a non-Member) with a specific skill set, qualification or knowledge, identified and required by the Trustees, to serve in an advisory capacity on a sub-committee of the Trustees.
- 3.2.2 Such co-opted Member (or non-Member) shall not have voting rights at a Trustee Meeting and may, upon invitation or permission from the Chairperson, attend a Trustee Meeting.

3.3 Rotation of Trustees

- 3.3.1 After the election of a Member as a Trustee, his first term of office will be for a period of two (2) years followed by three further terms of one (1) year each unless:
- (1) the Trustee gives notice to retire;
 - (2) a Trustee does not get re-elected subject to the Member voting result at the Annual General Meeting; or
 - (3) a Trustee is disqualified subject to the provisions of clause 3.4.1.

3.3.2 Following a continuous period of five (5) years serving as a Trustee, a former Trustee will be eligible for re-election after a period of one (1) year in break of service. If successfully re-elected as a Trustee, his term in office will start as in clause 3.3.1.

3.3.3 To ensure continuity of service and experience within the Trustees that might be compromised by the provisions of clauses 3.3.1 - 3.3.2, Trustees shall maintain a rolling register of continuous serving periods and planned retirement dates of each Trustee to manage Trustee continuity and succession planning for the benefit of the Association.

3.4 Disqualification as Trustee and Limitations

3.4.1 A Trustee ceases to hold office if that Trustee:

- (1) is or becomes insolvent and the insolvency results in his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
- (2) is convicted for any offence involving dishonesty or is declared by a court to be of unsound mind or if found mentally handicapped;
- (3) resigns from such office In Writing;
- (4) is disqualified from being a director of a company in terms of the Companies Act;
- (5) has been removed from office by an Ordinary Resolution of a General Meeting;
- (6) is in arrears with any amounts due to the Association for two (2) months or more; or
- (7) received a vote of no confidence by the majority of fellow Trustees.

3.4.2 Notwithstanding the fact that a Trustee shall be deemed to have vacated

Trustee, in his capacity as a Trustee, shall be valid until his removal from office has been recorded in the minutes of a Meeting.

3.5 Trustee Vacancy

3.5.1 Should a Trustee position become vacant, the vacancy in question may be filled, if deemed so required by Trustees, by a Member nominated by the remaining Trustees provided that:

- (1) Trustees may not fill vacancies of more than two (2) Trustees without the authority of an Ordinary Resolution in a Meeting;
- (2) Trustees must first offer the appointment to the “first-out” Member (as voted for by Members but falling outside the maximum nine (9) Trustees) at the previous Annual General Meeting (if any) or if required, the “second-out” or “next out” thereafter etc., before passing a Trustee Resolution to nominate and appoint another Member to fill the vacancy; and
- (3) A Member appointed as a Trustee in terms of clause 3.5.1 shall have all the powers and be subject to all obligations of the Trustees.

3.5.2 If the number of Trustees falls below the minimum requirement of five (5) Trustees, the remaining Trustees may continue to act but only to:

- (1) appoint replacement Trustees; or
- (2) call a General Meeting.

3.6 Chairperson and vice-Chairperson

3.6.1 Within fourteen (14) days after the holding of each Annual General Meeting of the Association, the Trustees shall elect from their own number the Chairperson and vice-Chairperson who shall hold office until the Annual General Meeting held next after their appointment, provided that the office of Chairperson and/or vice-Chairperson shall automatically be vacated by the Trustee holding such office upon his ceasing to be a Trustee

Chairperson or vice-Chairperson, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.

- 3.6.2 The vice-Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson, and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the Trustees.

3.7 Reimbursement or Payment of Trustees

- 3.7.1 The Association must reimburse Trustees for disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers, in good faith.
- 3.7.2 Unless otherwise determined by majority Trustee Resolution, Trustees shall not be entitled to any other remuneration, fees, reward, whether monetary or otherwise or salary in respect of the performance of such duties.
- 3.7.3 No Trustee shall be capable of being employed by the Association in any capacity.

3.8 Conflict of interest and Fiduciary obligation

- 3.8.1 Each Trustee:
- (1) shall stand in a fiduciary relationship to the Association;
 - (2) must disclose any conflict of interest that he may have in relation to his duties and powers, to the Chairperson, at the time of being appointed as a Trustee, at each Trustee Meeting, and as soon as any such conflict arises that has not previously been disclosed to the Chairperson;
 - (3) may not be present at a Trustee Meeting or play any part in the consideration or decision of any matter, unless specifically

such matters first, if there is any direct or indirect personal interest in any matter relating to the Association, to be considered;

- (4) shall be disqualified from voting at a Trustee Meeting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute with the Association by virtue of any interest he may have therein, which would influence, in the view of the remaining Trustees, his impartiality; and
- (5) shall not grant loans on behalf of the Association to Members or to themselves, excluding the right of Trustees to provide a Levy holiday to a Member in financial distress, on the authority of a majority Trustee Resolution, containing terms and conditions of repayment.

3.9 Trustee Meetings

- 3.9.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their Meetings as they deem fit, and to exercise the powers and functions assigned and delegated to them by the Association, in terms of and subject to the provisions of the Constitution and in accordance with Resolutions taken at Meetings and at Trustee Meetings.
- 3.9.2 Trustee Meetings shall be held at least once every three (3) months, or whenever reasonably required.
- 3.9.3 Any Trustee may at any time call a Trustee Meeting by giving all of the other Trustees reasonable written- or electronic notice of the time and place of the Meeting, provided there is a quorum at the Meeting called.
- 3.9.4 The Trustees may make arrangements for attendance at a Trustee Meeting electronically, by telephone or any other method provided that the Electronic Communication employed enables the Trustees participating in that Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Meeting.

3.10 Quorum

- 3.10.1 The quorum necessary for the holding of a Trustee Meeting where a Trustee Resolution must be passed shall be more than fifty percent (50%) of the serving Trustees present personally, by proxy or by Electronic Communication. If no quorum is present within fifteen (15) minutes after the time for commencement of the Trustee Meeting, then the Trustee Meeting shall stand adjourned for a time and place to meet with a quorum present.

3.11 Voting and Trustee Resolution

- 3.11.1 A motion at a Trustee Meeting and any Trustee Resolution (also if taken electronically by round robin):
- (1) does not have to be seconded;
 - (2) must be determined and adopted by an ordinary majority of the serving Trustees and each Trustee shall have one vote; and
 - (3) in the case of an equality of votes for and against a Resolution, the Chairperson shall have a second or casting vote.
- 3.11.2 A Trustee Resolution, signed by all the Trustees in person or electronically by round robin, and a Trustee Resolution, recorded in the minutes of any Trustee Meeting shall be valid from the passing of such Trustee Resolution until varied or rescinded, provided such Trustee Resolution is within the powers of the Trustees.
- 3.11.3 A Trustee may be represented at a Trustee Meeting by a proxy given to a co-Trustee, provided such proxy is In Writing and signed by the Trustee concerned but need not be in any prescribed form. The proxy shall be handed to the Chairperson at any time before the time appointed for the commencement of a Trustee Meeting and shall be valid only for such Meeting or any adjournment thereof, provided all proxies received must stipulate how the Trustee wants to vote on any matter to be voted on and

the number of proxies held by any one Trustee shall be limited in accordance with the provision of clause 5.8.2.

3.12 Minutes

The Trustees shall ensure that minutes are taken of every Trustee Meeting, reflecting the names of all Trustees who attended the Meeting and shall list all Trustee Resolutions passed and taken in accordance with clause 3.11 hereof.

3.13 Functions, Powers and Duties of the Trustees

3.13.1 The Trustees shall have full powers to manage and control the business and affairs of the Association, may exercise all powers and duties of the Association, and may act on behalf of the Association (as may ordinarily be exercised and done by the Association), subject to the provisions of the Constitution and subject to any direction or regulation given, or restriction imposed by Ordinary- or Special Resolution at a Meeting from time to time, provided that no Resolution taken by the Association in a Meeting shall invalidate any prior act of any Trustee which would have been valid, but for such Resolution.

3.13.2 Without in any way limiting the powers and functions granted to the Trustees, the powers and functions of the Trustees shall include:

(1) the investigation of any suspected or alleged breach of the Constitution and Rules thereto by any Member, Resident, Guest, Employee, Contractor or agent in such reasonable manner as they shall determine from time to time;

(2) imposing upon Members or Lessees penalties for contraventions by any Resident, Guest, Employee or Contractor of any provision contained in the Constitution and Rules and to recover, by legal action or otherwise, such penalties from its Members, Lessees or former Members;

- (3) all acts and deeds as might be required necessary, conducive, ancillary or incidental to the attainment or furtherance of the objects, duties and powers of the Association;
- (4) the control, management and administration of the Association and to appoint for and on behalf of the Association such agents and Employees as they deem fit to exercise such management, control and administration;
- (5) entering into agreements with third parties and service providers on behalf of the Association for any purpose of the Association as they deem appropriate;
- (6) delegating to one or more Trustees such of their powers and duties as they deem fit and at any time to revoke such delegation;
- (7) instituting, conduct, defend, compound or abandon any legal proceedings by or against the Association or otherwise concerning the affairs of the Association and agree to time and terms for payment or satisfaction of any debts due or of any claims or demands made by or against the Association;
- (8) governing and maintaining all POSes imposed in terms of the Land Use Planning Ordinance 1985, imposed upon the establishment of the Association and further subject to and in accordance with the Constitution; and
- (9) appointing such sub-committees consisting of such number of current serving Trustees, Members and non-Members as they deem appropriate, and to delegate to the sub-committees such of their functions, powers and duties, with further power to vary or revoke such appointments and delegations as the Trustees may from time to time deem fit including, but not limited to the following sub-committees and provisions, a:

- (a) Building and Architectural Committee which shall consist of at least one (1) duly qualified, independent architect practicing as such for his own account in the Republic of South Africa;
- (b) Arbitration Committee which shall consist of at least three (3) Members, nominated by Members similarly to the provisions in clause 3.1.1 - 3.1.5 provided that if not at least one (1) of the three (3) Members is a qualified practicing- or retired attorney, a person with such qualification shall be co-opted by Trustees; and
- (c) Disciplinary Committee which shall consist of at least three (3) Members and may include current serving Trustees or Arbitration Committee Members.

3.13.3 The Trustees must implement a whistle-blowing policy and procedures for the Association that will enable the submission and treatment of genuine concerns of any unethical or fraudulent nature to the attention of appropriate people within or outside of the Association, whilst providing protection to Employees, Members or Residents that report such concerns from retaliatory actions.

PART 4

4. RULES AND POLICIES.

4.1 Rules and Policies

The Trustees may formulate, issue, amplify, improve, add to, cancel, vary, modify and approve from time to time Rules, procedures and policies as they deem appropriate, taken by majority Trustee Resolution, and must be:

- 4.1.1 consistent with the Constitution and in accordance with directions given or restrictions imposed by a majority vote of a Meeting;

- 4.1.2 reasonable and applicable equally to all Members and Residents;
- 4.1.3 for the furtherance and promotion of any of the objects of the Association;
- 4.1.4 for the better management of the affairs of the Association;
- 4.1.5 for the advancement of the interests of Members.

4.2 The Rules in terms of clause 4.1 shall provide *inter alia* for Rules regarding:

- 4.2.1 all security measures within and entering or exiting the Estate, including the admission of a person to the Estate and eviction of any person not entitled to be present in the Estate;
- 4.2.2 the use and enjoyment of the POSes, properties, Services and amenities of the Estate, and restrictions on the use and enjoyment thereof;
- 4.2.3 the preservation of the natural environment including the eradication of invasive species and listed invasive species;
- 4.2.4 the conduct of Residents generally within the Estate;
- 4.2.5 vehicular access to- and from- the Estate;
- 4.2.6 traffic control and parking within the Estate;
- 4.2.7 the control of domestic animals;
- 4.2.8 appropriate Levies and Rules to determine Levy quantum, payment times and- methods;
- 4.2.9 the letting and selling of a Property and the control of the number of occupiers or Residents permitted on any Erf;
- 4.2.10 the imposition of penalties in accordance with the Penalties Schedule, forming part of the Rules;
- 4.2.11 refuse disposal and –collection areas;
- 4.2.12 the sinking of boreholes and water regulation within the Estate;

- 4.2.13 the general conduct of Members to regulate appropriate standards for residential living and to regulate relations between Members and Residents and between Members, Residents and the Association;
- 4.2.14 Building and Agricultural Design Guidelines regulating appropriate standards for Improvements and landscaping including guidelines for the architectural design of Improvements of any nature, all additions and alterations to existing Improvements erected or to be erected in the Estate, site works, parking areas and in particular to control the design of the exterior of Improvements, colours used on exterior Improvements to ensure an attractive and aesthetically pleasing character to all the Improvements in the Estate and materials;
- 4.2.15 the accreditation of service providers, estate agents or Contractors in respect of any work to be conducted on behalf of Members, Residents and the Association on the Estate, if any;
- 4.2.16 a set of compliant financial accounting processes and an internal financial control system compliant with the Constitution and incorporating current, good corporate governance financial processes and controls to reasonably reduce financial risk;
- 4.2.17 the procedure to be followed by a Disciplinary Committee and the Arbitration Committee respectively; and
- 4.2.18 any other general provision as may be necessary for the harmonious and beneficial use of the Estate.

PART 5

5. MEETINGS AND DECISIONS OF ASSOCIATION

5.1 Annual General Meeting, General Meeting and Special General Meeting of the Association

5.1.1 All Meetings of the Association other than the Annual General Meetings shall be called a General Meeting or Special General Meeting.

5.2 Annual General Meeting

5.2.1 The Association shall each year within six (6) months of each financial year-end of the Association, hold an Annual General Meeting on a date, time and place as the Trustees shall decide from time to time.

5.3 General Meeting

5.3.1 The Trustees may, whenever they deem fit, convene a General Meeting to pass an Ordinary Resolution.

5.4 Special General Meeting

5.4.1 The Trustees may, whenever they deem fit or in accordance with clause 5.6, convene a Special General Meeting to pass a Special Resolution (or an Ordinary Resolution, if any).

5.5 Electronic Communication at Meetings

5.5.1 Member Meetings may be conducted with all or some of the Members in Electronic Communication and may provide for participation in a meeting by Electronic Communication, provided that the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.

5.6 **Notice of Meetings of Association**

- 5.6.1 A **General** Meeting may be called by the Trustees by giving fourteen (14) days' notice In Writing to all Members.
- 5.6.2 An **Annual** General Meeting or **Special** General Meeting shall be called by the Trustees by giving not less than twenty-one (21) days' notice In Writing to all Members.
- 5.6.3 The notice shall specify the place, day, hour and business of the Meeting and may be in the form of a letter or a recognised Electronic Communication medium directly to a Member.
- 5.6.4 A Meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in the Constitution, be deemed to have been duly called if it is agreed to by the Members at the Meeting that are entitled to vote, present in person or represented by proxy or by acceptable Electronic Communication, holding not less than sixty percent (60%) of the votes.
- 5.6.5 The accidental omission to give notice of a Meeting or Resolution, or the accidental omission to present any document required to be given or sent in terms of the Constitution, or the non-receipt of a notice, notification or document by any Member entitled to receive notice, shall not invalidate the proceedings at the Meeting or invalidate a Resolution passed at the Meeting, unless the Members who are directly prejudiced by the omission, reject the validity of the Meeting and consists of more than 10 percent (10%) affected Members.

5.7 **Special- or General Meeting on request of Members**

- 5.7.1 A Special- or General Meeting may also be convened by the Trustees on behalf of Members, upon a written request made by a Member representing not fewer than ten percent (10%) of Members who are in good standing.

5.7.2 Should the Trustees fail to give notice within fourteen (14) days of a request to convene such a Special- or General Meeting, the Members may convene the Meeting themselves.

5.7.3 In respect of any Meeting called in terms of this provision, at least twenty-one (21) days' notice In Writing must be given to Members where a Special Resolution must be passed, and fourteen (14) days' notice must be given In Writing to call a General Meeting to pass an Ordinary Resolution.

5.8 Proxies at Meetings

5.8.1 A Member may be represented at a Meeting by a proxy given to the Chairperson or to another Member and shall include a vote by proxy, if signed by the Member or his agent.

5.8.2 The number of proxies held by any one person other than the Chairperson, at any one meeting shall be limited to two (2).

5.8.3 The instrument appointing a proxy shall be In Writing signed by the Member concerned or his appointed agent, duly authorised In Writing, but need not be in any particular form, provided that:

- (1) 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; and
- (2) where a Member is a Juristic Person, the proxy may be signed by the person duly authorised thereto by such Juristic Person.

5.8.4 The signed proxy shall be tabled at the Meeting at which the person named as the proxy proposes to vote and shall be valid only for the specific Meeting, or for the adjournment thereof and only for its intended purpose.

5.8.5 The proxy shall be deposited at the domicile address of the Association, either by hand or by post, or shall be transmitted by electronic mail to the email address of the Association or shall be handed to the Chairperson at

any time before the time appointed for the commencement of the Meeting notwithstanding the foregoing, the Chairperson of the Meeting may agree to accept a proxy tendered at any time during the Meeting.

5.8.6 The proxy may be revoked at any time by cancellation In Writing, or the making of a subsequent proxy, and delivering a copy of the revocation instrument to the proxy, and to the Association.

5.8.7 The appointment of a proxy is suspended at any time and to the extent that the Member chooses to act directly and in person in the exercise of any rights as a Member.

5.9 Quorum at Meetings

5.9.1 No business shall be transacted at any Meeting unless a quorum is present when the Meeting proceeds to business and when any Resolution is to be passed.

5.9.2 A quorum shall consist of Members that are entitled to vote that are present at the Meeting in person or represented by proxy, or via acceptable Electronic Communication.

5.9.3 The quorum necessary for the holding of any Meeting must consist of a minimum of twenty percent (20%) of the total Members that are entitled to vote.

5.9.4 If, within thirty (30) minutes after the time appointed for the commencement of a Special General Meeting, a quorum is not present, the Meeting, if convened on the requisition of the Members, shall be dissolved.

5.9.5 In all other cases the Meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned Meeting, a quorum is not present, the Members present in person or represented by proxy or via acceptable Electronic Communication, shall constitute a quorum.

5.10 Role of Chairperson

- 5.10.1 The Chairperson shall preside at Meetings and Trustee Meetings provided that should he not be present within fifteen (15) minutes after the time appointed for the holding thereof, then the vice-Chairperson shall thereupon exercise all the powers and duties of the Chairperson in relation to such Meeting or Trustee Meeting.
- 5.10.2 A Member, or the duly authorised representative of a Member, must be allowed to speak at a Meeting or Trustee Meeting, subject to the discretion of the Chairperson as regard to time constraints and the order of the Meeting.
- 5.10.3 Save as otherwise provided in the Constitution, the proceedings at any Meeting and Trustee Meeting shall be conducted in such reasonable manner and form as the Chairperson of the Meeting shall decide. However, the Chairperson must:
- (1) maintain order, regulate the orderly expression of views and guide the Members, Trustees and other participants through the business of the meeting in accordance with the common law of Meetings;
 - (2) ensure that all motions and amendments proposed are within the scope of the notice and powers of the Meeting;
 - (3) act fairly, impartially and courteously to all Members and others entitled to attend the Meeting;
 - (4) ensure that all Members and other persons entitled to speak are able to express their views without unnecessary disturbance or interruption with the proviso that a Member may not vote at a Trustee meeting;
 - (5) that any non-Member shall not be entitled to vote at any Meeting or Trustee Meeting;

- (6) adjourn the Meeting, when it is not able to complete or continue with its business, subject to clause 5.11;
- (7) make decisions on points of procedure;
- (8) settle disputes by giving rulings on points of order; and
- (9) surrender the chair to a temporary chairperson elected by the Members for any period during which the Chairperson wishes to engage in the debate of any item of business or if the Chairperson is conflicted or a matter of interest to the Chairperson is under discussion.

5.10.4 A Chairperson at a Meeting must not:

- (1) from the chair, attempt to influence Trustees or Members' views on any item of business; or
- (2) disclose in advance of a vote how the Chairperson intends to vote on any item of business.

5.11 Adjourned Meeting

5.11.1 The Chairperson may adjourn a Meeting (other than a Special General Meeting) where no quorum is present in accordance with clause 5.9.5.

5.11.2 No notice needs to be given of the adjourned Meeting save for an announcement at the Meeting of the date, time and venue of the adjourned Meeting unless the Meeting is to be adjourned for eight (8) days or more, in which event notice is to be given in the same manner as for the original Meeting.

5.11.3 No business shall be transacted at any adjourned Meeting other than the business that might have been transacted at - or were left uncompleted at the original Meeting from which the adjournment took place.

5.12 Count of Votes at a Meeting

- (1) the votes of Members represented by proxy; and
- (2) the Members present at the Meeting in person on a count of hands; and
- (3) the votes of Members participating via acceptable Electronic Communication, and elected to exercise their right to vote at the Meeting (and not in terms of clause 5.12.1(1)), and that submitted their votes via email during the Meeting in the format prescribed, and if received prior to the communicated cut-off time for receipt of such email; and

provided the combined votes in clause 5.12.1 (1) – 5.12.1(3) are not duplicated in any way and are counted in accordance with the provisions of clause 5.12.2 and clause 5.12.3.

5.12.2 Every Member, entitled to vote at a General Meeting, shall have one (1) vote per Erf registered in his name, provided that where an Erf is registered in more than one person's name, then all such co-owners shall jointly have one (1) vote and the vote shall be exercised by one person only.

5.12.3 No vote may be exercised in respect of an Erf, if the Member is under suspension or in arrears with his Levies or if any other amounts are due to the Association arising out of his membership for more than one (1) month.

5.12.4 Voting on any question of adjournment shall be decided by an Ordinary Resolution on a show of hands.

5.12.5 Unless any Member present, in person or by proxy or by acceptable Electronic Communication, at the Meeting shall before closure of the Meeting have objected to any declaration made by the Chairperson of the Meeting as to the result of any voting at the Meeting, or to the propriety or validity of the procedure at such Meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting and the Meeting shall be deemed to have been validly constituted

and conducted and an entry in the minutes of the Association 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 resolution so recorded if such entry conforms with the declaration made by the Chairperson of the Meeting as to the result of any voting at the Meeting.

5.12.6 Any abstention shall not be counted as a vote for or against the proposed Resolution.

5.12.7 In the case of an equality of votes for and against any Resolution, the Resolution shall be deemed to have been defeated.

5.13 Order of business

5.13.1 The order of business at **Special- and General Meetings** are as follows:

- (1) confirm proxies, nominees and other persons representing Members and issue voting cards;
- (2) determine that there is a quorum;
- (3) elect a person to chair the Meeting, if necessary;
- (4) present to the Meeting proof of notice of the Meeting or waivers of notice;
- (5) approve the agenda;
- (6) approve minutes from the previous General Meeting, if any; and
- (7) deal with unfinished business, if any.

5.13.2 If the Meeting is an **Annual General Meeting** –

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

- (2) 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;
- (3) consider the annual financial statements of the Association for the preceding financial year;
- (4) consider the Auditor's report and appoint an Auditor for the next financial year;
- (5) elect an Arbitration panel; and
- (6) elect the Trustees.

5.13.3 No business shall be dealt with at any General Meeting unless written notice has been given to the Trustees not less than four (4) days before such Meeting by the Member proposing to raise such business of his intention to do so; provided that the Chairperson may on Ordinary Resolution of the Meeting relax this condition.

5.14 Minutes of Meetings

5.14.1 Trustees shall ensure:

- (1) that minutes are taken of every Meeting and Trustee meetings, although not necessarily word for word without undue delay after the meeting has closed and shall, after having been approved at the next General Meeting or Trustee meeting, whichever applicable, be certified and signed as correct by the Chairperson;
- (2) ensure that Minutes of Meetings and Trustee Meetings be kept in electronic format in perpetuity; and
- (3) shall make the minutes of Meetings and Trustee Meetings, upon written application by a Member, available for inspection during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of a reasonable admin

- 5.14.2 All Resolutions recorded in the minutes of any Meetings 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 Association 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 Association.

PART 6

6. FINANCIAL MANAGEMENT

6.1 Financial Year of the Association

- 6.1.1 Unless otherwise decided at a General Meeting or by the Trustees, the financial year of the Association shall run from the first day of April in each year to the last day of March of the following year or as amended at the Annual General Meeting from time to time.

6.2 Financial Obligations of Association and Trustees

- 6.2.1 The Trustees or Association must not:
- (1) arrange loans from Financial Institutions or Members on behalf of the Association without the authority of a Special Resolution;
 - (2) make loans from Association funds without the authority of a Special Resolution; or
 - (3) refund to any Member a contribution lawfully levied and paid (excluding any prepaid levies).
- 6.2.2 The Association may, on the authority of a written Trustee Resolution:
- (1) increase the contributions due by the Members at the end of a financial year to take into account the anticipated increased liabilities of the Association, which increase will remain effective until Members receive notice of the Levies due by them for the next

financial year; provided that the Trustees must give Members reasonable written notice of such increased Levies, with description of changes as are required to provide context;

- (2) invest any moneys not immediately required for expenditure in a fixed-interest bearing account in a Money Market or Bank account as a secure investment with any institution referred to in the definition of "Financial Institution" in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);
- (3) the Association may use interest on moneys invested for any lawful purpose in the interest of the Association as per the approved Budget; and
- (4) delegate to one or more of the Trustees, or an Employee such of their financial powers and duties as they deem fit, and at any time to revoke such delegation; provided that when they delegate any power or duty they must specify In Writing:
 - (a) the power or duty concerned;
 - (b) a maximum amount of the Association's funds that may be spent for a particular purpose; and
 - (c) any conditions that may be applicable.

6.3 Replacement Reserve

6.3.1 The Trustees must prepare a rolling maintenance and replacement plan for the Estate, setting out:

- (1) the major capital items reasonably expected to require maintenance, repair or replacement within the next five to ten years;
- (2) any expected capital expenditure required to maintain the infrastructure and future requirements of the Association to

- (3) expected timing, estimated cost and/or replacement cost and expected useful life when those items or components of those items will need to be maintained, repaired or replaced or acquired; and
- (4) any other information the Trustees consider relevant.

6.3.2 The Trustees may annually raise Replacement and Maintenance Annual Levies in anticipation of any such required expenditure in 6.3.1 to be incurred, the proceeds of which must be paid into the Replacement Reserve, alongside any attributable interest earned on surplus Replacement Reserves.

6.3.3 Expenditure for the replacement, maintenance and repair of the Association's infrastructure (e.g. Services) are to be funded from or charged to the Replacement Reserve, in accordance with a Trustee Resolution for unbudgeted but essential circumstances or the approved Budget for the Replacement Reserve, as per the maintenance and replacement plan, including:

- (1) to repair, maintain or replace any property or infrastructure asset registered in the name of the Association where there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage to persons or property; and
- (2) to repair any property or infrastructure asset for which the Association is responsible where the need for the expenditure, or the timing and extent thereof, could not have been reasonably foreseen in preparing the maintenance and replacement plan.

6.3.4 Any amount required for capital expenditure in relation to the maintenance and replacement plan, is to be charged to the Replacement Reserve with a corresponding funding receipt to be recognised in the Capital Expenditure Reserve.

6.4 Operating Reserve

- 6.4.1 The Operating Annual Levies must be paid into the Operating Reserve, alongside any attributable interest earned on surplus Operating Reserves. Any required operating expenditure that is effectively not a Replacement Reserve related expenditure item and excluding depreciation, are to be funded from or charged to the Operating Reserve.
- 6.4.2 Money may be paid out of the Operating Reserve in accordance with a Trustee Resolution and the approved Budget for the Operating Reserve, and where Trustees resolve that any such payment is essential for the purpose of the sustainability of the Association and its operations.
- 6.4.3 Any amount required for capital expenditure in relation to the Operating Reserve, is to be charged to the Operating Reserve with a corresponding funding receipt to be recognised in the Capital Expenditure Reserve.

6.5 Capital Expenditure Reserve

- 6.5.1 The Capital Expenditure Reserve represents the cumulative total of all the Association's capital expenditure incurred less the cumulative depreciation charged on the capital expenditure.
- 6.5.2 Capital expenditure, relating to the Replacement Reserve and Operating Reserve, are funded through the Capital Expenditure Reserve. Any such funding will be charged to the respective Reserves and a corresponding funding transfer will firstly be recognised in the Capital Expenditure Reserve.
- 6.5.3 Thereafter, all depreciation charged annually on the capital expenditure, will be charged to the Capital Expenditure Reserve. The balance of the Reserve represents the net carrying value of the Capital Expenditure.

6.6 Levies and payment

- 6.6.1 The Trustees may 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 Trustees reasonably anticipate the Association will incur to attain its objects or the pursuit of its business, including the CSOS contributions ('CSOS Annual Levies') legally required by the Association.

- 6.6.2 The Trustees shall prepare an estimate in reasonable detail of the amount which shall be required by the Association to meet the operating expenses during the following financial year ('Operating Annual Levies').
- 6.6.3 Notwithstanding any other stipulations, the Trustees may include in such estimate an amount ('Replacement and Maintenance Annual Levies' or 'Special Levies') to be held in a Reserve Fund to meet anticipated future expenditure related to special projects and/or required replacement of infrastructure assets that will not necessarily be incurred in that financial year.
- 6.6.4 The Trustees shall serve upon every Member the annual Levy attributable to each Member not less than fourteen (14) days prior to the end of each financial year, or as soon thereafter as is reasonably possible.
- 6.6.5 Each notice, whether by letter, email, or any other form of regular Electronic Communication, to each Member shall specify the contribution payable by each Member to such category of Levies.
- 6.6.6 Every such annual Levy shall be payable in equal monthly instalments, due in advance on the first day of each and every month of each financial year.
- 6.6.7 Such annual Levy may be paid annually in advance on the first Business Day of the first month of the financial year. The advance amount shall be calculated by the Trustees on the same basis as the equal monthly instalments payable by Members, but may include a discount, to be determined from time to time, for savings in interest and administration costs.
- 6.6.8 In the event of the Trustees failing to prepare and serve the estimate referred to in clauses 6.6.4. and 6.6.5 timeously, every Member shall until

service of such estimate as aforesaid continue to pay the Levy previously imposed until due notice received.

6.6.9 The Trustees may from time to time impose Special Levies upon the Members in respect of all such expenses as provided for in clauses in 6.6.1 to 6.6.3 and may in imposing such Levies, determine the terms of payment thereof.

6.6.10 The Trustees may determine the rate of interest from time to time chargeable upon arrear Levies, provided that such rate of interest shall not exceed the rate laid down in terms of the National Credit Act, Act No.34/2005, as amended.

6.6.11 **Levies adjustment upon Alienation.**

- (1) A Member ceases to be a Member of the Association once he ceases to be a registered owner of an Erf within the Estate.
- (2) Notwithstanding that a Member ceases to be such, the Association shall have the right to recover arrear Levies, interest, and penalties from him and any amount due by a Member to the Association shall remain a debt due by him.
- (3) No Levies or interest paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be such, and he shall have no claims whatsoever on any other monies held by the Association, subject to clause 6.6.11 (5).
- (4) A Member's successor in title to an Erf shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of that Erf, to pay the Levy and interest thereon attributable to that Erf.
- (5) When a Member alienates his Erf, any prepaid Levies must be adjusted pro rata between that Member and his successor in title by the appointed transferring attorney, in the ordinary course of

- 6.6.12 In calculating the Levy payable by a Member, the Trustees shall assign those costs relating to the Estate equally to the owners of all Erven.
- 6.6.13 In the event of two (2) or more Erven being consolidated the amount of Levies payable in respect of the consolidated Erf shall be equal to the sum of the Levies of the Erven having been consolidated, but for such consolidation.
- 6.6.14 In the event of an Erf being subdivided into two (2) or more portions, each subdivided portion shall be levied separately. The Trustees may in a case where they consider it equitable to do so, assign to a Member any greater or lesser share of the costs in this regard, as may be reasonable in the circumstances.

6.7 Books of Account and Financial Statements

- 6.7.1 The Trustees shall cause proper books of account and records to be kept so as to fairly explain the transactions and financial position of the Association.
- 6.7.2 At each Annual General Meeting, the Trustees shall lay before the meeting financial statements for the immediately preceding financial year of the Association. The financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees. Copies of the abridged financial statements and reports shall be attached to the notice convening each Annual General Meeting.
- 6.7.3 The Trustees shall cause all books of account and records to be retained for a period of seven (7) years after completion of the transactions, acts or operations to which they relate.
- 6.7.4 The complete and signed annual financial statements will be available for inspection at the Estate Office by Members during business hours. Copies, at a reasonable charge, will be issued to Members upon request but is

subject to prior approval by the Trustees and in such instances, Members are required to sign a non-disclosure agreement.

6.8 Financial records, Budgets, reports and audit

6.8.1 The Trustees must keep proper books of accounts that:

- (1) record all its income, expenditure, assets and liabilities;
- (2) disclose all amounts recovered from Members by the Trustees or any managing agent or other service provider acting on its behalf; and
- (3) contain all other information necessary to allow Members to assess the Association's financial situation and their financial situation in regard to the Association.

6.8.2 On the application of any Member, and after signing a non-disclosure agreement, the Trustees must make all or any of the books of account and records available for inspection during business hours at the Estate Office. Copies may be requested, at a reasonable charge, but is subject to prior approval by the Trustees and the non-disclosure agreement as noted above, to ensure the records and financial position of the Association are kept confidential from any non-Member of the Association.

6.9 Deposit and Investment of Funds

6.9.1 The Trustees must ensure that all money received by the Association is deposited to the credit of an interest-bearing bank account or accounts with a registered South African commercial bank in the name of the Association. The Trustees shall have the ability to invest in a fixed interest-bearing account in a Bank or Money Market account held at a registered South African commercial bank or with a Financial Institution approved by the Trustees from time to time.

6.9.2 The Trustees must use interest on moneys invested for any lawful purpose in the interest of the Association.

6.10 Audit

- 6.10.1 At least once in respect of every financial year, the accounts of the Association shall be examined, and the reasonableness of the financial statements be ascertained by the Auditor.
- 6.10.2 The duties of the Auditor shall be regulated in accordance with general practise and applicable professional standards in terms of the Auditing Profession Act, No. 26 of 2005, as amended from time to time.
- 6.10.3 The independent auditing must be completed within four (4) months of financial year-end.

PART 7

7. PHYSICAL MANAGEMENT

7.1 Estate Manager and Association Employees

- 7.1.1 The Trustees may appoint an Estate Manager to manage the affairs of the Estate and may delegate such of their powers, functions and duties to the Estate Manager and other Employees and may delegate the management and administration of the operational- and financial affairs of the Association as they deem fit to exercise such management and administration.
- 7.1.2 Subject to this Constitution and Rules, and the terms of appointment, the Estate Manager and Employees of the Association shall be accountable to manage and control the business and affairs of the Association acting for and under delegation, instruction and guidance of the Trustees.
- 7.1.3 The Trustees shall by Trustee Resolution determine and confirm the employment terms, conditions, and functional responsibilities of the Estate Manager and other Employees of the Association, including the remuneration payable, unless otherwise directed at a Meeting by Ordinary Resolution

- 7.1.4 The Estate manager and Employees of the Association may not be related directly or indirectly to a Member.

7.2 Private Open Spaces

- 7.2.1 The Association is the registered owner of the POSes and the Trustees shall control and manage these.

- 7.2.2 For purposes of clause 7.2, the following definitions shall apply:

- (1) **'Active Recreational Use'** means use/activities that do not meet the criteria for Passive Recreational Use and that require installation of Apparatus.
- (2) **'Apparatus'** means play and exercise equipment and other similar structural modifications to the natural landscape, and which require specialised maintenance.
- (3) **'Hard Landscaping'** means structures to protect and enhance the natural environment.
- (4) **'Improvements of permanent nature'** means buildings.
- (5) **'Passive Recreational Use'** means the spontaneous and/or regular use of a POS by Residents, and any activity that does not require a regard to caution against the impact on the environment, or on other Residents, as a person of reasonable, ordinary prudence would observe.
- (6) **'Proposal'** means the proposed intention of Trustees to install or remove any Apparatus on a POS and/or the intention to change a POS from Passive Recreational Use to Active Recreational Use.

- 7.2.3 The Trustees shall control the access to and use of the POSes and the facilities and Services of the Association.

- 7.2.4 The Trustees may plan and implement organised activities from time to time for and on behalf of Residents on any POS without triggering the

provisions of clause 7.2.7, with reasonable notice to POS Members of the planned organised activity.

7.2.5 The Trustees may, by Trustee Resolution improve, manage and maintain a POS by designing and installing Hard Landscaping and Improvements for Passive Recreational Use.

7.2.6 The Trustees may, if the Members by Special Resolution so decide, erect Improvements of a permanent nature on the POSes within the Estate.

7.2.7 The Trustees may erect Apparatus and/or propose Active Recreational Use subject to the following:

- (1) the Trustees shall first give written notice of a Proposal to the relevant POS Members adjacent to the affected POS; and
- (2) such notice shall:
 - (a) indicate the Proposal by giving not less than twenty-one (21) clear days' notice In Writing; and
 - (b) provide details of the Proposal as to:
 - (i) the costs thereof;
 - (ii) the manner in which it is to be financed and the effect upon levies paid by Members, if any;
 - (iii) the need, desirability and effect thereof; and
 - (iv) an artist's impression or computer-generated design of Proposal.

7.2.8 If a clear majority of POS Members, adjacent to the affected POS, objects

or convene a General Meeting to approve or reject the Proposal by Ordinary Resolution of a Meeting, with or without amendments.

7.2.9 If the majority of POS Members supports the intended Proposal, the Trustees shall advise all Members of the scope of the Proposal, the outcome of the feedback, whether they intend implementing the Proposal, and give all Members an opportunity to express their support or otherwise of the Proposal.

7.2.10 If the outcome of the feedback in terms of clause 7.2.9 indicates that twenty-percent (20%) or more of all Members (which may include POS Members who voted against the Proposal) have indicated In Writing that they are opposed to the Proposal (as accepted by a majority of POS Members), the Trustees may withdraw the Proposal or convene a General Meeting to approve or reject the Proposal by Ordinary Resolution of a Meeting, with or without amendments.

7.2.11 Neither the whole nor any portion of the POSes shall be Alienated, sold, leased or otherwise disposed of, subdivided, mortgaged, or subjected to any restrictive servitudes or other rights to be registered in the Deeds Registry, save as specified in the conditions of establishment, without the sanction of a Special Resolution and subject to the approval of the CoCT.

7.2.12 Residents shall comply with the Rules and the conditions imposed from time to time by the Trustees relating to the use and enjoyment of the POSes and the facilities and Services of the Association.

7.3 Perimeter Wall

7.3.1 Where the boundary of any Member's Erf also constitutes the boundary of the Estate, such Member shall be obliged to permit the Association to erect upon the Member's Erf immediately adjacent to such boundary, a wall or such other fencing or security barrier as the Association may determine. Residents shall not be entitled to interfere in any manner whatsoever with the wall, fence or security barrier, and shall permit the

wall, fence or security barrier and to effect repairs as may be necessary from time to time.

- 7.3.2 The Association controls and maintains the main security perimeter wall in respect of the Estate, but excluding the painting of the portions of the security perimeter wall facing a private Property which shall be the responsibility of the relevant Member.

7.4 Building Plans and Landscaping by Members

- 7.4.1 No Member may commence with the construction of an Improvement in respect of his Erf or of any other item included in the Building and Architectural Design Guidelines without the written approval of the Trustees, and without the approval of the building plans in respect of the Improvements by the Trustees and by CoCT.
- 7.4.2 The Trustees will only approve the proposed building plans if they are satisfied that the proposed Improvements comply with the Building and Architectural Design Guidelines and their decision shall be final unless the Member refers the decision to the Building and Architectural Committee for review.
- 7.4.3 Any disputes relating to the Building and Architectural Design Guidelines and/or proposed Improvements may be referred to the Building and Architectural Committee, which shall be supplemented by a Member with legal qualifications (if necessary) and any aggrieved party may thereafter refer the decision to the Arbitration Committee. The Trustees may submit the building plans to an Architect appointed by them for his scrutiny and advice.
- 7.4.4 In order to obtain the written approval of the Trustees in terms of clause 7.4.1 above, a Member shall:
- (1) apply to the Trustees In Writing and follow the Building and Architectural Application procedure in the Rules, as amended from time to time; and

- (2) pay a reasonable scrutiny fee, any charges payable to the architect or other costs incurred by the Trustees, as determined by the Trustees.

7.4.5 Once the Trustees have approved the building plans, the Member shall submit the building plans to the CoCT for approval and once approved:

- (1) pay the building deposit; and
- (2) comply with all terms, conditions and changes required by the Trustees and the conditions and standards imposed by the CoCT insofar as these may be additional to the requirements of the Building and Architectural Design Guidelines, read with the building plans.

7.4.6 In the event of any disputes or non-approval of plans, the dispute will be referred to the Arbitration Committee. The Arbitration Committee may consult an independent architect agreed to by the relevant parties to the dispute, acting as an expert. The Arbitration Committee is authorised to act as an arbitrating body to resolve the dispute and its decision will be binding on the parties to the dispute.

7.4.7 In the event of any Improvements being erected in contravention of the building plans or the Building and Architectural Design Guidelines, the Trustees shall be entitled to do whatever is necessary to rectify the contravention and shall include the right to obtain a court order to rectify the contravention, in which event the Member shall be liable to pay the costs occasioned by such legal action on a scale of attorney and own client.

7.4.8 Upon completion of construction, the Trustees shall, if satisfied that no damage has been caused by the Member or his Contractors to the Estate, that the Improvements were constructed in accordance with the approved building plans, and the Member is in possession of a valid occupancy certificate issued by the CoCT, release the building deposit to the Member, excluding any interest thereon which will accrue to the Association.

- 7.4.9 In the event of Improvements not complying with the building plans and/or damages having been caused to the POSes, the Trustees shall by written notice inform the Member that the building deposit shall be retained until the Improvements have been rectified and/or the damages have been repaired to their satisfaction and/or that the building deposit will be utilised by the Association to repair the damages.

7.5 Design Criteria

- 7.5.1 Each Member shall maintain the Erf owned by him and all Improvements thereon in accordance with the requirements of and to the satisfaction of the Trustees and CoCT.
- 7.5.2 Each Member shall at all times observe all laws and by-laws, regulations, the provisions of the town planning scheme and any other provisions in force relating to the Erf or the use thereof including the Constitution and the Rules of the Association.
- 7.5.3 Should a Member fail so to do, such failure shall be deemed to be a breach of the Constitution and the Trustees shall be entitled to take such action as they may deem fit and in terms hereof to remedy such breach or to prevent the continuation thereof. In the event of any town planning scheme that determines any relevant conditions which are more onerous than the conditions herein, the town planning scheme conditions shall prevail.

PART 8

8. LIABILITY AND DISCIPLINE

8.1 Indemnity of the Trustees

- 8.1.1 All the Trustees and Members:

- (1) shall be indemnified by the Association against any liabilities incurred or actions taken by them in good faith in their capacities

as such, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for, by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court; and

- (2) shall not be liable for the acts, or omissions of the Auditor, of any of the other Trustees, of the Estate Manager or any other Estate Employee/ Contractor / agents for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto, unless occurring as a result of lack of good faith, breach of duty or breach of trust.

8.2 Exclusion of Liability

- 8.2.1 Any Resident or other person present in the Estate or on the POSes or using any of the amenities or Services of the Association does so entirely at their own risk.
- 8.2.2 No Resident or other person shall have any claim against the Association, the Trustees, or any agents, Employees or Contractors of the Association, of whatsoever nature arising from such use of the Association's amenities. Any claim of a Member or any other person shall be limited to the amount actually recovered by the Association from the receipt of proceeds of any general public indemnity liability insurance, if any. If and to the extent that the Association does not have any such public indemnity liability

8.2.3 The Members undertake in favour of the Association, as soon as practical, to notify all Resident, Lessees and Guests, of the provisions of:

- (1) The Association, the Trustees, or any of the agents, Employees or Contractors of the Association shall not be liable for any loss (including consequential loss), injury, loss of life or damage to person or property of any nature whatsoever which any Member or other person whosoever may sustain:
 - (a) by reason of any defect in or state of disrepair of the POSes or any amenities, facilities, Services or Property of the Association, or any part thereof, or any fittings, fixtures, equipment, or appurtenances of whatsoever nature therein, notwithstanding that such effect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Trustees, or any of the agents, Employees or Contractors of the Association; or
 - (b) directly or indirectly, in or about the Estate (including, without limiting the generality of the foregoing), the POSes and any Property of the Association, whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire water leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other Services to the Estate (irrespective of the cause thereof), or be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Trustees, or any of the Association's agents, Employees or Contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.

8.2.4 Every Resident individually hereby fully and completely indemnifies and holds harmless the Association against all claims of whatsoever nature and howsoever arising which may be brought against the Association by a Resident or any other person present within the Estate at the invitation of or under the control of a Resident, notwithstanding the nature of such claim.

8.2.5 The Association shall not be liable for any costs in any legal proceedings instituted against it in any court or arbitration forum or other tribunal by a Resident. The exclusion herein contained will not apply if the proceedings in question are founded on any conduct of the Association or its representatives or Employees which is alleged by the claimant, and found by the court, arbitrator, or tribunal, as the case may be to be mala fide or wilfully wrongful or based on gross negligence.

8.3 Breach of the Constitution

8.3.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings against a Resident who are in breach of any of the provisions of the Constitution.

8.3.2 If a Resident commits a breach of a provision of the Constitution by failing to adhere to the Rules or pay on due date any Levies, penalties or any other amounts payable by him to the Association and remains in default for more than thirty (30) days, the Trustees may, on behalf of the Association, institute legal proceedings against such Resident in any court of competent jurisdiction for payment of such overdue Levies, penalties or other amounts.

8.3.3 Save for clause 8.3.2 above, if a Resident commits any other breach of any provision of the Constitution and fails to remedy (or commence to remedy) that breach within a period of fourteen (14) days after the receipt of written notice to that effect by the Trustees, and to complete the remedying of such breach within a reasonable time or as may be specified in the notice, then the Trustees shall be entitled on behalf of the

Trustees, or the Association, or any other Member, may have in terms of the Constitution, or in law, including the right to claim damages, to:

- (1) enter upon the Property to take such action as may be reasonably required to remedy the breach, provided such entry is limited, permissible only if the omission to enter will result in any disadvantage to the Estate, or a threat to the interest of the Estate, or is a threat to Members or animals in general. The Resident concerned shall be liable to the Association for all costs reasonably incurred, which costs shall be due and payable upon demand;
- (2) institute legal proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary; and/or
- (3) institute proceedings with a competent Ombud for such relief as the Trustees may consider necessary.

8.3.4 In the event that the Trustees institute proceedings against a Resident in terms of the foregoing provisions, the Trustees shall be entitled to recover from such Resident all legal costs incurred by them, including attorney and own client charges, tracing fees and collection commission.

8.4 Imposition of Penalties

8.4.1 The Trustees will, from time to time, establish a Penalties Schedule, aligned to the Rules, indicating, where applicable, the contraventions for which a financial penalty will be charged and the quantum payable, which will be added to the Member's Levy statement and which will be recovered from the Member in the same manner as applies to arrear Levies, together with interest at the rate applicable to arrear Levies.

8.4.2 The Trustees shall, from time to time, determine the amounts of penalties in respect of the various contraventions and in respect of first and successive contraventions, taking into consideration any directions given or restrictions imposed by the Members at a Meeting.

- 8.4.3 If the conduct of a Resident constitutes a reasonable nuisance in the opinion of the majority of Trustees or a contravention of a provision of the Constitution and/or Rules, the Trustees shall by written notice inform the Resident and Member (if applicable to a Lessee) of the nuisance or contravention and warn the Resident that if the relevant Resident fails to remedy the contravention, or persist in, or repeats such conduct or contravention, a penalty will be imposed on the Member.
- 8.4.4 If the Resident fails to remedy the contravention or persist in or repeats such conduct or contravention, the Trustees may constitute a Disciplinary Committee that will be empowered to impose a reasonable penalty on the Member and must be paid within thirty (30) days of the date of the notice.
- 8.4.5 The penalty imposed in terms of clause 8.4.1 above, shall become due on the date of the penalty notice and must be paid within thirty (30) days of the date of the notice.
- 8.4.6 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Resident shall be deemed to be guilty of a separate contravention for every twenty-four (24) hours or part thereof during which such contravention continues and shall be liable for a penalty in respect of each such separate contravention.
- 8.4.7 A Member may within thirty (30) days of the date of the penalty notice submit an objection with a motivation against the penalty imposed to the Trustees.
- 8.4.8 Upon receipt of the objection, the Trustees may:
- (1) withdraw or reduce the penalty; or
 - (2) schedule a meeting of the Trustees for the purpose of considering the objection and invite the Member (and his Lessee, if applicable) to attend.
- 8.4.9 At the said meeting of the Trustees referred to in clause 8.4.8(2) above,

- (1) present his case;
- (2) present any evidence, including the calling of witnesses to substantiate his case;
- (3) cross-examine any person called as a witness in support of the charge;
- (4) have access to documents produced in evidence; and
- (5) produce mitigating factors.

8.4.10 The failure of the Member charged to attend the meeting of the Trustees referred to in clause 8.4.8(2) shall not render the proceedings at the meeting void. Should the Member or his representative not attend the meeting of the Trustees without providing a reasonable request for postponement, the Trustees may in their sole discretion continue with the meeting of the Trustees and consider the objection in the absence of the Member.

8.4.11 Upon the conclusion of the meeting of the Trustees, the Trustees shall deliberate the evidence, and if so resolved, they may:

- (1) uphold the penalty; or
- (2) withdraw or reduce the penalty.

8.4.12 In the event of a Member disputing the fact that he or his Lessee, Employee, Guest, Contractor or member of his household has transgressed any Estate Rule, or being dissatisfied with a decision, action or conduct of Estate Management, Committee or Trustees, he may submit a written application to the Trustees to have the matter heard by the Arbitration Panel.

8.4.13 A Committee of a minimum of three (3) arbitrators drawn from a panel of Arbitrators, appointed at the Annual General Meeting for the purpose, shall adjudicate upon the issue, at such a time and in such a manner and

according to such procedure (provided natural justice is observed), as they deem fit.

- 8.4.14 The findings and decisions of the arbitrators will be final with the proviso that any party to the arbitration process, if still aggrieved, may thereafter lodge a complaint at the relevant Ombud or take any legal steps available in law, as the aggrieved party wishes to take.

8.5 Arbitration

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

- (1) any matters arising out of this Constitution;
- (2) the rights and duties of any of the parties mentioned in this Constitution; or
- (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.

- 8.5.2 The Arbitration Committee shall adjudicate upon the issue, at such a time and in such a manner as they deem fit (provided normal acceptable legal principles and procedures are followed) and may at their discretion include the right to co-opt for that procedure, if the question in dispute is:

- (1) primarily an accounting matter - an independent registered accountant or auditor;
- (2) primarily a legal matter - a practising counsel or attorney of not less than ten (10) years standing; and
- (3) any other matter - an independent and suitably qualified person appointed by the Arbitration Committee.

- 8.5.3 The Arbitration Committee shall make its award as soon as possible but within seven (7) days after completion of the Arbitration and shall in giving the award, have regard to the principles laid down in terms of this Constitution.
- 8.5.4 The Arbitration Committee may determine that the cost of the arbitration including the cost of the person appointed in terms of clause 8.5.2 if any, 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.
- 8.5.5 The findings and decisions of the Arbitration Committee will be final, with the proviso that any party to the Arbitration process, if still aggrieved, may thereafter lodge a complaint at the relevant Ombud or take any legal steps available in law, as the aggrieved party wishes to take.
- 8.5.6 Notwithstanding anything to the contrary contained in the Constitution, 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 provision in the Constitution.

8.6 Failure of Association to Meet its Obligations

- 8.6.1 If the Association fails to meet an obligation in this Constitution of the City's Planning By-Law (section 61(5)(d) or section 62(1)(a)(ii)) and the CoCT believes that the community is adversely affected by the failure, the CoCT may take appropriate action to rectify the failure. The CoCT may recover any expenditure in respect of the action contemplated above from the Association or the Members, who shall be jointly liable. The amount of any expenditure so recovered shall be considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.

8.6.2 If the Association ceases to function effectively or to carry out its obligations, the CoCT may in terms of the City's Planning By-Law (section 63(4)) give the Association a binding instruction to:

- (1) hold a meeting and to reconstitute itself; or
- (2) dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish the Association and the removal of relevant provisions in the title deeds.

8.6.3 In determining whether to act in terms of clause 8.6.1 or 8.6.2 above, the CoCT must have regard to:

- (1) the purpose of the Association;
- (2) who will take over the maintenance of internal engineering Services and other which the Association is responsible for, if at all;
- (3) the costs of upgrading the internal engineering Services and other infrastructure if the CoCT is to take over the infrastructure;
- (4) the impact of the dissolution of the Association on its Members and the community; and
- (5) any written representations from the Association and its Members.

8.6.4 If the Association is dissolved, the Members must jointly pay the costs of:

- (1) the transfer to the CoCT of the Association's Property, including the POSes and internal engineering Services; and
- (2) the upgrading of the Internal Engineering Services to the standards of the CoCT.

PART 9

9. ADMINISTRATIVE MANAGEMENT

9.1 *Domicilium* of the Association and of Members

9.1.1 The *domicilium citandi et executandi* of the Association, shall be the address of the Estate Office in the Estate; and the Trustees shall give written notice to all Members of any change of such address.

9.1.2 The *domicilium citandi et executandi* of a Member shall be the street address of the Member's Erf.

9.1.3 A Member may by written notice to the Association alter his *domicilium*, provided that such new address may not be a post office box and provided that such address shall be situated within the Republic of South Africa and shall not be effective until fourteen (14) days after receipt of such notice by the Association.

9.2 Delivery and Electronic Transmission of Notices

9.2.1 Any notice by the Association to a Member in terms of the Constitution or otherwise shall be In Writing and shall be delivered to the Member, either by hand or by prepaid post properly addressed to the Member at his *domicilium citandi et executandi*. It shall be competent to transmit the notice to a Member by Electronic Communication where the email address of the Member is recorded with the Association.

9.2.2 Any notice to a Member:

- (1) if delivered by prepaid post in a correctly addressed envelope to his *domicilium citandi et executandi*, shall be deemed to have been received five (5) days after the date when the notice was posted;
- (2) if delivered by hand to the Member, or to a responsible person at the *domicilium citandi et executandi* of the Member, shall be deemed to have been received on the day of delivery; or

- (3) sent by Electronic Communication to the recorded email address of the Member, shall be deemed to have been received on the third (3rd) Business Day after the date of transmission and every Member must ensure the Association is notified of any change in the Electronic Communication address of such Member.

9.2.3 Any notice given In Writing and actually received by a Member shall be regarded as adequate notice to such Member notwithstanding that it was not delivered in accordance with clause 9.2.2.

9.3 **Winding Up of the Association**

9.3.1 The Association may be wound up by an order of the Western Cape High Court or by a Resolution passed at a General Meeting, by ninety-five percent (95%) of the total votes represented at such meeting by the Members present in person, via Electronic Communication or represented by proxy and provided that:

- (1) the aforesaid Resolution shall include arrangements for the transfer of Erven and POSes, in the event that the Association ceases to function; and
- (2) the CoCT consents thereto In Writing.

9.3.2 In the event of such winding up, it shall be the duty of the Trustees to comply with the conditions imposed in terms of the Resolution, by the CoCT and/or the Western Cape High Court, as the case may be.

9.3.3 If the Association is dissolved, the Members must jointly pay the costs of the transfer to the CoCT of the Association's Property, including the POSes.

9.4 **Amendment of the Constitution and Annexures**

9.4.1 The provisions of the Constitution may be added to, amended, substituted, or repealed from time to time by Special Resolution passed at a Meeting called for the specific purpose. The notice of such Meeting or the Annexures to such notice shall specify the proposed addition

amendment, or substitution of a provision of the Constitution, or the provision of the Constitution to be repealed.

- 9.4.2 The Constitution and any amendment thereof must be lodged for acceptance and certification with the CoCT in terms of section 62(2) or 62(4) of the City's Planning By-Law and any amendment concerning a matter in terms of subsection 62(1)(a) becomes effective only when certified by the CoCT .
- 9.4.3 The CoCT is exempt from liability for any damage which may be caused by its certification of the Constitution or an amendment thereof or by the loss of a Constitution of the Association lodged with the CoCT
- 9.4.4 The Association must enforce the provisions of its Constitution
- 9.4.5 If the Association fails to meet any obligations in this Constitution and the CoCT believes that the Members are adversely affected by the failure, the CoCT may take appropriate action to rectify the failure.
- 9.4.6 The COCT may recover any expenditure in respect of the action contemplated above from the Associationa or its Members, who are jointly liable. The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.
- 9.4.7 If the Association ceases to function effectively or to carry out its obligations, the CoCT 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.

STAD KAAPSTAD

29 SEP 2022

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In determining whether to act in terms of the above, the CoCT 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 CoCT is to take over the infrastructure;
- d) the impact of the dissolution of the Association on its Members and the Members;
- e) any written representations from the Association and its Members.

If the Association is dissolved, the Members must jointly pay the costs of:


- a) the transfer to the CoCT 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 CoCT.

In the event that the Association has ceased to function and a Member wishes to transfer a land unit , the Member 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 Association.

STAD KAAPSTAD

29 SEP 2022

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A handwritten signature in black ink, appearing to be 'SM', is written over the date and the City of Cape Town text.