

**CONSTITUTION**

**CONSTANTIA KLOOF VILLAGE**

**OWNERS ASSOCIATION**

## CONSTITUTION

### CONSTANTIA KLOOF VILLAGE OWNERS ASSOCIATION

A statutory body established in terms of the Land-Use Planning By-Law for George  
Municipality of 2015

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## **1. PREAMBLE**

It is recorded that the Constantia Kloof Village Owners Association is constituted as a statutory body in terms of the Land-Use Planning By-Law for George Municipality of 2015, consisting of the following properties:

1.1. Erf 1038, Wilderness

## **2. INTERPRETATION**

In this Constitution:

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

2.1.1 "Association" means the Constantia Kloof Village Owners Association;

2.1.2 "Auditors" means the auditors of the Association;

2.1.3 "Business Day" means weekdays other than Saturdays, Sundays and public holidays;

2.1.4 "By-Law" means the Land-Use Planning By-Law for George Municipality of 2015;

2.1.5 "Chairperson" means the Chairperson of the Trustee Committee;

2.1.6 "City" means the George Municipality;

2.1.7 "Common Areas" means the Private Streets, including accompanying stormwater, and Private Open Spaces, once registered in the name of the Association, together with any other area(s) and/or facilities which the Developer or the Trustee Committee may designate as Common Areas from time to time;

2.1.8 "Constitution" means this Constitution and all rules and regulations of the Association in force from time to time, and shall include all annexures;

2.1.9 "Contractor's Agreement" means the agreement to be entered into between the Association and any contractor appointed to construct an improvement on an Erf, in the standard form issued by the Association from time to time;

- 2.1.10 “Erf” or “Erven” means any erf or erven in the Estate;
  - 2.1.11 “Estate” means the Constantia Kloof Village development to be established on the Land comprising the following erven all to be subdivided from Erf 1038, Wilderness;
  - 2.1.12 “Member(s)” means member(s) of the Association who will be Registered Owners;
  - 2.1.13 “month” means a calendar month;
  - 2.1.14 “Registered Owner” means the Registered Owner of any of the Erven as per 2.1.11
  - 2.1.15 “Residential Erven” means the Residential Erven as per 2.1.11;
  - 2.1.16 “Services” means such facilities, utilities, services and amenities as may be provided on the Estate including (but not limited to) electricity, roads, storm water, water, sewerage and waste removal, of which the Association will become the owner;
  - 2.1.17 “Special Resolution” means a resolution passed at a special general meeting;
  - 2.1.18 “Trustee” means a member of the Trustee Committee;
  - 2.1.19 “Trustee Committee” or “Trustees” means the Board of Trustees of the Association from time to time;
  - 2.1.20 “in writing” means written, printed or lithographed or partly one and partly another, and other modes of representing or producing in words in a visible form;
  - 2.1.21 “year” means a calendar year;
  - 2.1.22 “Written Vote” means a vote at a General Meeting of the Association that is in writing also described as a Ballot Paper or Poll.
- 2.2 Unless the context otherwise requires, any words importing the singular number shall include the plural number, and vice versa. Words importing any one gender only shall include the other genders.

### **3. CREATION OF ASSOCIATION**

The Association will come into existence simultaneously with the first registration of transfer of an Erf from the Developer to a Registered Owner, as contemplated in Section 29(5) of the By-Law.

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

4.1 The Association will:

4.1.1 have legal personality and be capable of suing and being sued in its own name; and

4.1.2 operate for the benefit of the Members and/or Registered Owners.

4.2 No Member shall have any right, title or interest in or to the funds or assets of the Association in his personal capacity, all of which shall vest in the Association.

### **5. MAIN OBJECTIVES**

The main objectives of the Association are:

5.1 the control and maintenance over:

5.1.1 all internal services, common landscaping and irrigation amenities;

5.1.2 the further distribution of all relevant individual metering inclusive of electricity and/or water after bulk metering;

5.2 the promotion, advancement and protection of the communal and group interest of the Members generally;

5.3 to implement and maintain security measures and systems for controlled access to the Estate;

5.4 to monitor, implement and enforce compliance with the architectural guidelines of the Estate, including but not limited to ensure that colours of a neutral tone are used on the units on the erven;

5.5 to monitor and enforce compliance by the Registered Owners and the Association with the relevant subdivision conditions imposed by the City in respect of the Estate and the management plans listed therein;

- 5.6 to bear the running cost of all street lighting within the Estate, as well as any consumption charges relating to the Common Areas;
- 5.7 to enter into service agreements with the City or any other authority or supplier of services in regard to the supply of services to the Estate, including *inter alia* refuse removal and security services;
- 5.8 to accept the cession of any rights and delegation of any duties to the Association under any other agreements(s) entered into by the Developer for the benefit of the Association;
- 5.9 to acquire and hold servitudes in the Association's favour for access to the Estate and also for the supply of services, including communication, surveillance and water to the Estate;
- 5.10 to formulate, enforce, modify, amend, add and delete the Estate conduct rules and regulations;
- 5.11 to enforce the provisions of the Constitution;
- 5.12 to accredit architects and builders to be utilised by Registered Owners in respect of any design and construction work to be conducted on Erven, in accordance with such criteria as the Association may stipulate from time to time;
- 5.13 to accredit estate agents appointed by Registered Owners and their members in respect of the resale of their Erven, in accordance with such criteria as the Association may stipulate from time to time;

## **6. FINANCIAL YEAR END**

The financial year-end of the Association is the end of February of each year or such other date as the Trustees may decide from time to time.

## **7. MEMBERSHIP OF THE ASSOCIATION**

- 7.1 Membership of the Association shall be compulsory for every Registered Owner.
- 7.2 Such membership shall commence simultaneously with the transfer of the Erf into the name of the Registered Owner.

7.3 The following condition shall be binding on each Registered Owner and their successors-in-title and shall be included in the title deed of each Erf:

“The Owner of each subdivided erf shall upon registration of such erf, unit or right in its name ipso facto become a member of the Association and remain so while owning the property or right.”

7.4 Where a Registered Owner is more than one person, all the Registered Owners of that Erf shall be deemed jointly and severally to be a Member and shall nominate 1 (one) person to represent them and vote at meetings of the Association;

7.5 When a Member ceases to be the Registered Owner, he shall ipso facto cease to be a Member of the Association;

7.6 A Registered Owner may not resign as a Member of the Association;

7.7 The Trustee Committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee;

7.8 The rights and obligations of a Member shall not be transferable and every Member shall:

7.8.1 to the best of his ability further the objectives and interests of the Association referred to in clause 5 above;

7.8.2 observe all by-laws and regulations made by the Association and/or the Trustee Committee, from time to time;

## **8. ALIENATION**

8.1 In all other instances where a Registered Owner wishes to alienate or transfer his Erf, or in the event that the said Erf is owned by a company or close corporation or trust, should the shareholder(s) or member(s) or trustee(s) or beneficiaries, wish to alienate all their shares or membership interest or other interest in such entity he shall not be entitled to do so unless:

8.1.1 the transferee agrees in writing to accept and abide by the Constitution and becomes a Member of the Association;

8.1.2 the registration of transfer or cession (as the case may be) of that Erf into the name of the transferee shall ipso facto constitute the transferee as a Member of the Association;



8.1.3 he obtains a clearance certificate from the Association which shall be given provided that:

8.1.3.1 the transferee agrees in writing to accept and abide by the Constitution of the Association, including all rules made by the Trustees and/or the Developer in terms of this Constitution;

8.1.3.2 All amounts owing by the Registered Owner to the Association have been paid or satisfactorily secured, in the discretion of the Association;

8.1.3.3 All obligations of the Registered Owner in terms of the Constitution have been complied with in full;

8.1.3.4 He pays to the Association the fees pertaining to such certificate as determined by the Association from time to time.

## **9. SOLID WASTE COLLECTION**

Registered Owners shall allow the collection of Solid Waste at such times as stipulated from time to time by the Association and shall ensure that they comply at all times with all City laws, rules, regulations and guidelines pertaining to waste collection.

## **10. GENERAL SERVICES CONDITIONS IN FAVOUR OF THE ASSOCIATION**

10.1 Registered Owners shall without compensation be obliged to allow gas mains, electricity, telephone, Fibre optic and television cables and/or wires, and main and/or other water pipes and foul sewers and storm water pipes, ditches, and channels of any other Erf concerned and shall furthermore without compensation be obliged to allow surface installations such as street lights, mini substations, meter kiosks and service pillars to be installed on their Erf if considered necessary by the Association in such manner and position as may from time to time be reasonably required. This shall include the right of access to the Erf at any reasonable time for the purpose of constructing, altering, removing or inspection of any works connected with the above.

10.2 Registered Owners shall be obliged without compensation to receive such material or permit such excavations on the Erf as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the Erf, unless the Registered Owner elects to build retaining walls to the satisfaction of and within a period to be determined by the Association.

- 10.3 Registered Owners shall be obliged without compensation to maintain every part of any retaining wall, roof, pipe, gutter, wiring or other structure.
- 10.4 Registered Owners shall be obliged without compensation to permit access to such Erven for the purpose of maintaining, cleaning, renovating, repairing, renewing, altering and adding to any wall, roof, pipe, gutter, wiring or other structure, and shall not do anything which will prevent or hinder any such access or work from being done.
- 10.5 Registered Owners shall be obliged not to make any alterations or additions to or demolish any part of the buildings erected on the subdivision, including boundary walls and fences, or change the exterior colour scheme or materials of such buildings without the written consent of the Association, nor shall they permit the exterior of the building to deteriorate and become untidy or dirty.
- 10.6 Any Members / Registered Owners having overland storm water escape routes situated on their property shall be obliged to keep these areas free of all obstruction.
- 10.7 All officials, employees and contractors employed by the Association, the City, any public service company and the Developer shall, at all times, have access to the Erven and the Common Areas for purposes of inspecting and/or maintaining all Services supplying and/or traversing any part thereof.

The association shall see to it that the officials and contractors of the Municipality shall at all times have access to any portion of the development that may otherwise not be generally accessible to the general public due to security measures, including guarded entrances, electronic gates or booms. For the avoidance of doubt it is agreed that this requirement relates to the City's emergency services, entry for normal maintenance and replacement, meter reading and inspection and refuse removal. If access to the development is denied to the City or a contractor appointed by the City, the developer and the association will jointly and severally be liable for the full cost of the municipal infrastructure repairs and any damages the City may suffer as a result thereof and will be billed for any water losses from the system.

#### 10.8 **Maintenance of service**

- 10.8.1 The City shall as from date of takeover of any of the services in terms of this agreement be responsible for the maintenance and operation of such service: Provided that the developer shall for a period of 12 (twelve) months from the date of takeover of any of the services be responsible to rectify all defects

and thereafter to rectify all latent defects for a period of 10 (ten) years in respect of civil services and 3 (three) years in respect of electrical services in accordance with the general conditions of contract for construction works ("GCC"), which provisions shall for all purposes be deemed to be incorporated into and form part of this agreement.

- 10.8.2 The association shall be responsible for maintaining all services transferred to it pursuant to the provisions of this agreement.
- 10.8.3 Accidental or malicious damage by any contractor employed on the development, or related to the construction work on the development, and loss or damage attributable to theft of material or equipment or any portion of the service until all erven have been transferred, shall be excluded from the City's responsibility.
- 10.8.4 Should any person, including the developer, the Association, an owner of an erf in the development or a contractor appointed by any of the aforesaid persons, dispose of any items into the municipal sewer or stormwater network, the developer and the Association will jointly and severally be liable for any losses or damages the City may suffer as a result thereof and the costs the City may incur to remedy the effect of the action in question.
- 10.8.5 The developer and the Association hereby jointly and severally indemnify the City against all costs and expenses the City may incur as a result of any failure by the developer or the associations to comply with its obligations in terms of and arising from this clause 10.

## **11. LEVIES**

- 11.1 The Trustee Committee shall from time to time, impose levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or which the Trustee Committee reasonably anticipates the Association will incur in respect of, but not limited to:
  - 11.1.1 maintenance, repair, improvement, and keeping in order and conditions of the Common Areas, including specially landscaping, all internal services, including but not limited to access road, stormwater, street lighting and any services that belong to the owner's association and the security system to be installed on the Common Areas; and/or
  - 11.1.2 payment of all rates, insurance and other charges payable by the Association in respect of the Common Areas, if any, and/or for the services rendered to it;

- 11.1.3 payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, the Common Areas and the Association's affairs (including its obligations arising in terms of this Constitution); and
  - 11.1.4 payment of any external security services rendered to the Estate;
  - 11.1.5 any reserves which the Trustee Committee may deem necessary.
- 11.2 In calculating levies, the Trustee Committee shall take into account income and other revenues, if any, earned by the Association.
- 11.3 The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall determine a levy payable by the Members equal to or as near as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 11.4 The annual levy to cover the operational and capital budget of the Estate, shall be divided equally between the Members.
- 11.5 The Trustee Committee may, from time to time, impose special levies upon Members in respect of all such expenses as are mentioned in clause 11.1 (which are not included in any estimate made in terms of clause 11.3), and such levies may be made in the sum or by such instalments and at such time or times as the Trustees Committee shall deem fit.
- 11.6 Any amount due by a Member by way of a levy shall be a debt due by such Member to the Association. The obligation of a Member to pay a levy shall cease upon such Member ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon such Member ceasing to be a Member. A Member's successor-in-title to an Erf shall be liable as from the date upon which he or she becomes a Member pursuant to the transfer or cession thereof, to pay the levy attributable thereto.
- 11.7 A Member shall make payment of the monthly levies by virtue of a debit order drawn on the Member's banker, should the Trustees so demand after a Member has defaulted in timeous payments of his

monthly levies on more than 2 (two) occasions in any financial year of the Association.

11.8 Except as provided in clause 11.9 below, for the duration of the Development Period, the Developer shall have no obligation to pay or to contribute to any levies or special levies.

11.9 During the Development Period, the Developer shall pay the shortfall between the income derived from the levies paid by the Members in terms of clause 11 and the actual expenditure of the Association in each financial year.

11.10 The Trustee Committee shall at all times ensure that the maintenance and control of the Common Areas and the expenditure incurred in respect thereof is carried out in a manner which is fair and equitable to all the Members of the Association.

11.11 No Member shall be entitled to any of the privileges of membership, including voting at any meeting, unless and until he / she has paid all levies and any other sum (if any) which shall be due and payable to the Association by such Member.

11.12 Where:

11.12.1 2 (two) or more Erven have been consolidated, levies shall be payable in respect of each such Erf as they existed prior to consolidation as if such consolidation had not occurred; and

11.12.2 an Erf has been subdivided into 2 (two) or more portions, levies shall be payable in respect of each new erf which comes into existence as a result of such subdivision.

## **12 CONTRACTS AND REGULATIONS**

12.1 Subject to any restrictions imposed or directions given at a general meeting of the Association and subject to the conditions imposed by the City in approving the rezoning and subdivision of the Land, the Trustee Committee may from time to time:

12.1.1 Make regulations governing inter alia the:

12.1.1.1 management of the Estate;

12.1.1.2 conduct of Members generally;

12.1.1.3 entering into agreement(s) with the City;

- 12.1.1.4 entering into agreement(s) with the City and other parties for the provision of Services on the Estate;
- 12.1.1.5 imposition of fines and/or penalties, which it considers appropriate in its sole discretion against Members who are in default of any of their obligations in terms of this Constitution and/or any applicable rules of the Association, including the terms of payment of such fines and/or penalties;

12.2 Each Member shall be obliged to comply with:

- 12.2.1 the provisions of this Constitution;
- 12.2.2 any regulations or rules made in terms of clause 12.1.1;

### **13 BREACH**

13.1. Should any Member:

- 13.1.1. fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation made in terms of this Constitution and remain in default for more than 7 (seven) days after being notified in writing to do so by the Trustee Committee; or
- 13.1.2. commit any other breach of the provisions of this Constitution or any regulation made in terms of this Constitution and fail to commence remedying that breach within a period of seven (7) days after the receipt of written notice to that effect by the Trustee Committee and complete the remedying of such breach within a reasonable time;

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

- 13.1.3. to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made in terms of this Constitution, as the case may be; or

- 13.1.4. in the case of clause 13.1.2, to remedy such breach and immediately recover the total costs incurred by the Trustees or the Association in so doing from such Member.
- 13.2. Should the Trustee Committee institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation then, without prejudice to any other rights which the Trustee Committee or the Association or any other Member may have in law, the Trustee Committee shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Association, including attorney/client charges reckoned on the non-litigious tariff recommended by the Law Society of the Cape of Good Hope (or its successors), tracing fees and collection commission.
- 13.3. Without prejudice to all or any of the rights granted to the Trustee Committee under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest on the amount due calculated at the maximum rate of interest permissible by law, from the due date of payment until the actual date of payment of such amount (both dates inclusive).
- 13.4. In the event of any breach of this Constitution or any Regulation or Rule by the Members or any Member's household or his lessees, guests, visitors, invitees, employees, contractors and/or agents, such breach shall be deemed to have been committed by the Member himself, who shall be jointly and severally liable with such wrongdoer to and in favour of the Association. However, without prejudice to the foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.

#### **14. CESSATION OF MEMBERSHIP**

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

#### **15. TRUSTEE COMMITTEE**

- 15.1. The affairs of the Association shall be managed and controlled by a Trustee Committee consisting of not fewer than 3 (three) Members.

- 15.2. The developer shall always have 1 (one) trustee representing him until at least 80% of all units have been sold and transferred to individual owners.

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

- 16.1. Each Trustee shall continue to hold office until the next Annual General Meeting following his appointment or election, at which meeting each Trustee shall be deemed to have resigned from office as such, and shall be eligible for re-election to the Trustee Committee at such meeting. A Trustee shall be deemed to have vacated his office as such upon:

- 16.1.1. his estate being sequestrated, whether provisionally or finally, or his surrendering of his estate;
- 16.1.2. his making of any arrangement or compromise with his creditors;
- 16.1.3. his conviction for any offence involving dishonesty;
- 16.1.4. his becoming of unsound mind or being found lunatic;
- 16.1.5. if he absents himself from 3 (three) consecutive meetings of the Trustees without leave of absence;
- 16.1.6. his resignation from such office in writing delivered to the estate manager / Managing Agent or chairman;
- 16.1.7. his death;
- 16.1.8. his being removed from office by a Special Resolution of the Members;
- 16.1.9. his alienating his Erf in the event that he was a Member;

provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee has been recorded in the Minute Book of the Trustee Committee.

- 16.2. Upon any vacancy occurring on the Trustee Committee prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee.



- 16.3. If the number of Trustee Committee Members falls below the number necessary as per paragraph 15 above, the remaining Trustees may constitute a quorum, but only for purposes of convening a General Meeting of Members or to co-opt new Trustees.
- 16.4. Any resolution of the Trustees shall be carried by a simple majority of all votes cast, each Trustee present having one vote. In the event of an equality of votes, the Chairman of the meeting shall have a casting as well as a deliberative vote.

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

- 17.1. Subject to the express provisions of this Constitution, the Trustee Committee shall manage and control the business and affairs of the Association and shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not in terms of this Constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such regulation as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 17.2. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 17.3. The Trustee Committee may, should it so decide, investigate any alleged breach by any Member or Trustee of this Constitution, in such reasonable manner as it shall decide from time to time.
- 17.4. The Trustee Committee may make regulations, not inconsistent with this Constitution, or any regulations prescribed by the Association in general meeting:
  - 17.4.1. as to disputes generally;
  - 17.4.2. for the furtherance and promotion of any of the objectives of the Association;
  - 17.4.3. for the better management of the affairs of the Association;
  - 17.4.4. for the advancement of the interest of Members;
  - 17.4.5. for the conduct of Trustee Committee meetings and general meetings;

17.4.6. to assist in administering and governing the Association's activities generally;

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

17.5. The Trustees shall have the right to appoint committees consisting of such number of their members and such outsiders, including a manager as they deem fit and to delegate to such committees such of their function, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Trustees may from time to time deem necessary.

17.6. The Trustees shall further have the power to make Estate and/or Conduct Rules in regard to *inter alia*:

17.6.1. the use of services;

17.6.2. the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interest of the members and/or the residents of the Estate;

17.6.3. the maintenance of the buildings, out buildings, structures, improvements of any nature and landscaping of Erven on the Estate;

17.6.4. refuse disposal;

17.6.5. littering;

17.6.6. security;

17.6.7. the accreditation of service providers or contractors in respect of work to be conducted on behalf of Members or the Association on the Estate;

17.6.8. The Association may in general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the Trustees from time to time;

17.6.9. The Association shall generally have the power and shall perform the functions as so to implement and evoke the objectives of the Association referred to in clause 5.

17.6.10. Administer the provisions and make amendments or approve minor deviations from the architectural guidelines of the Estate.

17.6.11. To make rules relating to the leasing of dwellings situated in the Estate inclusive of long-term and short-term accommodation including Air BnB type arrangements.

## **18. PROCEEDINGS OF THE TRUSTEE COMMITTEE**

- 18.1. The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit, subject to any provisions of this Constitution.
- 18.2. Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall, in writing, have waived the above requirements in respect of a particular quarter, then no meeting of the Trustee Committee needs to be held for that quarter.
- 18.3. Minutes shall be taken at every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing, without undue delay, after the meeting has closed and shall then be certified correct by the Chairperson of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance, mutatis mutandis, with the provisions of the law relating to the keeping of minutes of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by the Trustees, the Auditors and the Members.
- 18.4. All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until carried or rescinded, but no resolution or purported resolution of the Trustee Committee shall be any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 18.5. A resolution signed by all the Trustees shall be as valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.
- 18.6. Resolutions put to the vote at meetings of the Trustee Committee shall be carried by a simple majority;
- 18.7. In the case of an equality of votes, the Chairperson of the Trustee Committee shall have a casting vote;
- 18.8. Voting at any Trustee meeting shall take place by a show of hands unless otherwise decided by the majority of the Trustees present at a meeting.

18.9. A quorum for a Trustee Committee Meeting will be 3 (three) Trustees.

## **19. GENERAL MEETINGS OF THE ASSOCIATION**

19.1. The Developer shall call the first general meeting of the Association within 60 days of the first transfer.

19.2. At the first general meeting of the Association, the Members / Registered Owners shall be obliged to elect the Trustees of the Association.

19.3. The Association shall hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, as soon as possible after the end of each financial year, it being the intention that each Annual General Meeting shall take place not later than 4 (four) months after each financial year. Notwithstanding the foregoing, the first Annual General Meeting of the Association is only required to take place by no later than 12 (twelve) months from the date of the first general meeting as contemplated in clause 19.1 above. The Association shall specify the meeting as such in the notices, in terms of clause 20.1 below, calling it.

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

19.5. All General meetings, other than Annual General Meetings, shall be called Special General meetings.

19.6. The Trustee Committee, may, whenever they think fit, convene a Special General meeting.

19.7. Where the Members who hold at least 25% (twenty five percent) of the total voting rights resolve to call a Special General Meeting, the Trustee Committee shall be obliged to call such meeting.

## **20. NOTICE OF MEETINGS**

20.1. An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by not less than 21 (twenty one) days' notice in writing, and a special general meeting, other than one called for the passing of a Special Resolution, shall be called by not less than 14 (fourteen) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is dispatched, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and in the case of a

Special Resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons in terms of this Constitution entitled to receive such notices from the Association.

20.2. A general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it so agreed:

20.2.1. in the case of a meeting called as the Annual General Meeting, by Members holding not less than 75% (seventy five percent) of all voting rights; and

20.2.2. in the case of a special general meeting, by the Developer (for the duration of the Development Period), and by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 50% (fifty percent) of the total number of voting rights of all Members.

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

## **21. VENUE OF MEETINGS**

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

## **22. QUORUM**

22.1. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent at least 20% (twenty percent) of the total voting rights of all Members of the Association entitled to vote, for the time being, save that not less than 3 (three) Members must be personally or by representation present, and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.

- 22.2. If within 30 (thirty) minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned for another 15 (fifteen) minutes, and if at such adjourned meeting a quorum is not present, the Members present shall be a quorum.

### **23. PROXIES**

- 23.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The Proxy shall be entitled to vote at a general meeting on behalf of that Member. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than 1(one) person, any 1 (one) of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the chairperson of the board of directors of the company or by its secretary, and where an association of persons, by the secretary thereof.
- 23.2. The said proxy shall be deposited to the Estate Manager / Managing Agent at least 24 (twenty-four) hours prior to the time appointed for the commencement of the meeting.
- 23.3. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months calculated from the date of its execution.

### **24. VOTING**

- 24.1. At every General Meeting, every Member / Registered Owner in person or by proxy or by a representative and entitled to vote shall have :
- 24.1.1. One vote.
- 24.2. Save as expressly provided for these presents, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect or of arising out of his membership, and who is not under suspension, shall be entitled to be present or vote on any question, either personally or by proxy, at any general meeting.
- 24.3. At any general meeting, a resolution put to the vote of the meeting shall be decided on written vote.

- 24.4. Voting on the election of a Chairperson of a general meeting (if necessary), or on any question of adjournment, shall be decided on written vote by a majority of the Members present in person or by a proxy, subject however to the Developer's rights in terms of the Constitution.
- 24.5. Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 24.6. Unless any Member present, in person or by a proxy, at a general meeting, shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

## **25. OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, property managers, architects, engineers, any other professional person or firm and/or other employee(s) whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide.

## **26. ACCOUNTS**

- 26.1. The Association in general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 26.2. At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the

case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in clause 23.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

## **27. AUDIT**

Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by the Auditors.

## **28. SERVICE OF NOTICES**

- 28.1. A notice shall be in writing and shall be given or served by the Association upon any Member, either personally in writing, properly addressed to the Member at the address of the Erf owned by such Member or by facsimile or email to the facsimile or email address last provided to the Association by the Member in terms of clause 27.2 below.
- 28.2. No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record a physical address within the Republic of South Africa, as well as a facsimile and/or email address, which shall be deemed to be his address for the purpose of the service of notices.
- 28.3. Any notice sent by telefax or email to a Member's chosen telefax number or email address, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 28.4. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice, shall not invalidate the proceedings of that meeting.
- 28.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member shall be an adequate written notice or communication to him notwithstanding that it was not sent to or delivered at his chosen *domicilium citandi et executandi*.



## 29. INDEMNITY

- 29.1. All Trustees shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee, in his capacity as Chairperson, Vice-Chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person(s) by the Court.
- 29.2. Every Trustee, servant, agent and employee of the Association shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee, his duties as Chairperson or Vice-Chairperson. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 29.3. A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or any of the other Trustee, whether in their capacities as Trustee or as Chairperson or Vice-Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office(s) or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.
- 29.4. No Member shall have any claim of any nature whatsoever against the Association for any loss, damage or injury which such Member may directly or indirectly suffer (even if such loss, damage or injury is caused through the negligence of the Association, the Trustees, or any of the Association's employees or appointees) by reason of any latent or patent defects on the development (including the Common Areas), or fire on the development, or theft from the development, or by reason of any building, improvement or other structure within the development being in a defective condition or state of disrepair or any particular repair not being effected by the Association timeously or at

all, by any person whatsoever, for any purpose whatsoever, or arising from any other cause whatsoever, and each Member is advised to take the necessary steps to insure his or her interest.

- 29.5. The City is exempt from liability for any damage which may be caused by its certification of a constitution of an owners association or an amendment thereof or by the loss of a constitution lodged with the City in accordance with the provisions of section 29 of the By-Law.

### **30. ARBITRATION**

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

30.1.1. any matters arising out of this Constitution; or

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

30.1.3. the interpretation of this Constitution;

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

- 30.2. Notwithstanding clause 29.1, a party declaring a dispute in respect of payment of levies, is not obliged to refer the dispute to arbitration and may institute court proceedings.

- 30.3. Arbitration shall be held in George informally and otherwise in terms of the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time), it being intended that, if possible, it shall be held and concluded within 21 (twenty one) Business Days after it has been demanded.

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

30.4.1. primarily an accounting matter – an independent accountant;

30.4.2. primarily an legal matter – a practising counsel or attorney of not less than 10 (ten) years' standing;

30.4.3. any other matter – an independent and suitably qualified person appointed by the Auditors;

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

- 30.5. If agreement cannot be reached on whether the question in dispute falls under sub-clause 29.4, or upon a particular arbitrator in terms of sub-clause 29.4, within 3 (three) Business Days after the arbitration has been demanded, then:
- 30.5.1. the President for the time being of the Law Society of the Cape of Good Hope, or its successors in title, shall nominate the arbitrator in terms of clause 29.5.1 within 7(seven) Business Days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) Business Days referred to in clause 29.3 above.
- 30.6. The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 30.7. The decision of the arbitrator shall be final and binding and may be made an Order of the Cape of Good Hope Provincial Division of the High Court of South Africa (or its successors) upon the application of any party to the arbitration.
- 30.8. Notwithstanding anything to the contrary contained in clause 29.1 to 29.7 inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions.
- 30.9. The above remedies subsist without prejudice to the right of any party to institute an action or launch an application in a Court of competent jurisdiction or to institute proceedings in terms of the Community Scheme Ombud Service act 9 of 2011.
- 30.10. The above remedies subsist without prejudice to the right of any party to refer any matter in dispute to the members for their decision.

### **31. AMENDMENTS TO THE CONSTITUTION**

- 31.1. Any amendments to this Constitution relating to any matters referred to in the By-Law shall only come into effect once the City has given its written approval thereof.
- 31.2. No provision of this Constitution shall be added to, amended, substituted or repealed without the prior written consent of the Developer for the duration of the Development Period.

- 31.3. Subject to the provisions of clauses 30.1 and 30.2 above, after the termination of the Development Period, any such addition, amendment, substitution or repeals shall require the approval of at least 75% (seventy five percent) of the total number of votes of the Members of the Association entitled to attend and vote thereat given at a special general meeting specifically called for such purpose, and the notice of such meeting shall, in addition to complying with the other requirements of this constitution, set out in specific terms the proposed addition, amendment, substitution or matter to be appealed.
- 31.4. Any reference herein to this Constitution shall mean and include a reference to this Constitution as may from time to time be amended in accordance with the provisions of this clause 30.
- 31.5. The Constitution and any amendment thereof must be lodged with the City and the latest copy duly lodged with the City, and which the City has certified in terms of section 28(3) of the By-Law is presumed to contain the operative provisions of the Constitution.

## **32. OWNER'S ASSOCIATION WHICH FAILS TO MEET AN OBLIGATION OR CEASES TO FUNCTION**

- 32.1. If the Association fails to meet any obligations in this Constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.
- 32.2. The City may recover any expenditure in respect of the action contemplated above from the Association or its Members, who are jointly liable.
- 32.3. 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.
- 32.4. If the Association ceases to function effectively or to carry out its obligations, the City may give the Association a binding instructions to:
  - 32.4.1. hold a meeting and to reconstitute itself; or
  - 32.4.2. 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.

- 32.5. In determining whether to act in terms of the above, the City must have regard to:-
  - 32.5.1. the purpose of the Association;
  - 32.5.2. who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
  - 32.5.3. the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
  - 32.5.4. the impact of the dissolution of the Association on its Members and the community;
  - 32.5.5. any written representations from the Association and its members.
- 32.6. If the Association is dissolved, the members must jointly pay the costs of:-
  - 32.6.1. the transfer to the City of the Association's property which contains the internal engineering services and private open spaces;
  - 32.6.2. the upgrading of the internal engineering services to the standards of the City.
- 32.7. In the event that the Association has ceased to function and an owner wishes to transfer a land unit in that event, the owner must obtain the consent of at least 50% (fifty percent) of the members of the Association, which consent shall be deemed to be the consent of the Association.