



C O N S T I T U T I O N

FERNKLOOF ESTATE
MASTER PROPERTY OWNERS ASSOCIATION
("the Master POA" or "MPOA")

a body corporate established
in terms of section 29 of the Land Use
Planning Ordinance (No 15 of 1985)

1. ESTABLISHMENT IN TERMS OF STATUTE

The Fernkloof Estate Property Owners Association is constituted as a body corporate 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 Overstrand Municipality when approving in terms of sections 25(1) and 42 of the said ordinance the subdivision of the consolidated property known as the Hermanus Golf Estate and shall come into existence simultaneously with the registration in the deeds office of the first of the erven in the development.

2. INTERPRETATION

In this constitution:

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

2.1.1 "Association" means the Fernkloof Estate Property Owners Association commonly referred to as the Fernkloof Estate Master Property Owners Association ("the Master POA" or "MPOA");

2.1.2 "auditors" mean the auditors of the Association;

2.1.3 "business day" means a weekday other than Saturdays, Sundays and public holidays;

2.1.4 "chairperson" means the chairperson of the trustee committee;

2.1.5 "common areas" mean the following:

2.1.5.1 the wetlands on the golf course as depicted on the plans annexed hereto marked "Wetland 1" and "Wetland 2" respectively (unless the ownership thereof and/or the obligation for maintenance thereof is passed to the golf club); and

2.1.5.2 the control room/s for the control of the electrification of the external perimeter walls and fences (if applicable);

2.1.5.3 any other area/s and/or facilities which the trustee committee may designate as common areas from time to time;

and includes all common areas designated as such in any further phase/s of the development;

- 2.1.6 "Council" means the Overstrand Municipality or its successor/s in title;
- 2.1.7 "design guidelines" means the design guidelines to control all aspects of design and landscaping of any development on the land, as amended from time to time in terms of this constitution;
- 2.1.8 "developer" means the Overstrand Municipality which may be represented by the appointed development facilitator, Rabcav Joint Venture, a joint venture between Cavcor (Proprietary) Limited (Registration No 1994/0067641/07) and Rabie Property Projects (Proprietary) Limited (Registration No 1990/001920/07), and includes its successor/s in title or assign/s as developer of the land;
- 2.1.9 "development" means the development established on the land.
- 2.1.10 "development period" means the period from the incorporation of the Association until all the erven in the development have been sold and transferred.
- 2.1.11 "estate manager" means a person appointed to manage and administer the affairs of the Fernkloof Estate Master POA, the office of which is situated at the entrance gate of the Lakewood Village precinct;
- 2.1.12 "erven" mean the erven in the development, and "erf" means any one of them;
- 2.1.13 "golf club" means the Hermanus Golf Club and includes its successor/s in title;
- 2.1.14 "in writing" means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 2.1.15 "land" means any land within Fernkloof Estate.
- 2.1.16 "LUPO" means the Land Use Planning Ordinance (Ord 15 of 1985);
- 2.1.17 "member" means a member of the Association.
- 2.1.18 "member trustee" means a trustee appointed by the members;

- 2.1.19 "month" means a calendar month;
- 2.1.20 "occupation right" means a right of occupation in respect of any dwelling in the development which is registered in the deeds office as a registered life right in terms of a retirement scheme or registered leasehold right;
- 2.1.21 "office" means the registered office of the Association;
- 2.1.22 "precinct developments" mean the developments established or to be established on the precincts 1 to 8/9 on the land, and "precinct development" means any one of them;
- 2.1.23 "prime rate" means a rate of interest per annum which is equal to the published minimum lending rate of interest per annum charged by ABSA Bank, compounded monthly in arrears on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time. (In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose certificate shall be final and binding on the parties);
- 2.1.24 "property owner" means any of the following persons:
 - 2.1.24.1 any member of a property owners association constituted in terms of LUPO in respect of a precinct development on the land; and
 - 2.1.24.2 any member of a body corporate constituted in terms of the Sectional Titles Act (Act 95 of 1986) in respect of a sectional title scheme on a portion of the land; and
 - 2.1.24.3 any member of a property owners association constituted in respect of any adjacent or bordering properties as contemplated in clause 38 below;
 - 2.1.24.4 the registered owner of precinct 3 and the registered owner of precinct 4;
- 2.1.25 "golf lodge" means a dwelling unit constructed on precinct 3 and / or precinct 4;
- 2.1.26 "rules" mean the rules imposed by the trustee committee from time to time relating to the management of the development;

- 2.1.27 "sectional title unit" means a dwelling unit in a sectional title scheme in the development, but excludes a unit designated for other purposes, e.g. a garage or storeroom;
- 2.1.28 "single residential erf" means an erf in the development on which only one dwelling house is lawfully permitted;
- 2.1.29 "special resolution" means a resolution passed at a special general meeting in accordance with the provisions of clause 29 below;
- 2.1.30 "trustee committee" means the board of trustees of the Association;
- 2.1.31 "trustee" means a member of the trustee committee;
- 2.1.32 "vice-chairperson" means the vice-chairperson of the trustee committee;
- 2.1.33 "year" means a calendar year;
- 2.2 unless the context otherwise requires, any words importing the singular shall include the plural, and vice versa and words importing any one gender only shall include the other two genders;
- 2.3 the headings to the respective clauses are for reference purposes only and shall not be taken into account in the interpretation of these clauses;
- 2.4 where consent or approval of the Association is required for any act by a member, such consent or approval shall be in writing and duly authorised by the trustee committee, and shall be given prior to the member taking action;
- 2.5 reference to "this constitution" means this constitution and all rules and regulations of the Association from time to time enforced.

3. PURPOSE DESCRIBING MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of the common interests of the members of the Association from time to time and the maintenance and control of the common areas.

4. MAIN OBJECT

The main object of the Association is:

- 4.1 the control and maintenance over:

- 4.1.1 the external perimeter walls and fences but specifically excluding the entrances, gate houses, walls and fences on the perimeter of each precinct. Except for the office of the Estate Manager for which the MPOA will bear the pro rata costs of the maintenance of the entrance building of Lakewood Village.
- 4.1.2 the external electrification system of the perimeter walls and fences including the control room/s for the control thereof (if applicable); and
- 4.1.3 the wetlands on the golf course referred to in clause 2.1.5.1 above, provided that any amount to be spent on the maintenance of the wetlands shall be determined in conjunction with the Council and the Botanical Society on an annual basis (unless this is carried out by the golf club);
- 4.1.4 all other common areas designated as such by the trustee committee from time to time;
- 4.2 the control over the compliance and enforcement of the design guidelines and the provisions of the relevant contractor's agreements;
- 4.3 the promotion, advancement and protection of the common interests of the members generally;
- 4.4 to enter into services agreements with the local authority or any other authority or supplier of services in regard to the supply of services in respect of the common areas.

5. FINANCIAL YEAR END

The financial year end of the Association is 30 June of each year or such other date as the trustee committee may decide from time to time.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership of the Association shall be compulsory for the following persons:
 - 6.1.1 each property owners association constituted in terms of LUPO in respect of a precinct development on the land;
 - 6.1.2 each body corporate constituted in terms of the Sectional Titles Act (Act 95 of 1986) in respect of a sectional title scheme on a portion of the land;

6.1.3 the registered owner of precinct 3 and the registered owner of precinct 4.

6.2 The Hermanus Golf Club shall be entitled to nominate 1 representative to attend all meetings of members of the Association in an information sharing and advisory capacity provided, however, that such representative shall not be entitled to any voting rights at such meeting.

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

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

6.4.1 to the best of such member's ability further the objects and interests of the Association; and

6.4.2 observe all rules and regulations made by the Association or the trustee committee;

provided that nothing contained in this constitution shall prevent a member from ceding such member's rights in terms of this constitution as security to the mortgagee of the single residential erf, sectional title unit or occupation right of such member, as the case may be.

7. TERMINATION OF MEMBERSHIP

7.1 When the affairs of any member are terminated and such member is wound up, such member shall *ipso facto* cease to be a member of the Association with effect from the date upon which such member is finally wound up.

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

8. ALIENATION

It is recorded that owners of properties within the precinct developments are currently also required to obtain consent from the Fernkloof Estate Master POA to the sale, transfer and/or

alienation of such member's property (or any part thereof) and that such owners shall be required to comply with the requirements of their relevant precinct POA requirements before such consent will be issued by the Fernkloof Estate Master POA.

9. LEVIES PAYABLE BY THE MEMBERS

9.1 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 to which the trustee committee reasonably anticipates the Association will be put to by way of:

9.1.1 maintenance, repair, improvement and keeping in order the condition of the common areas including, specifically landscaping, all township services, sewage reticulation within the Estate boundaries, the security systems and maintenance of infrastructure; and/or

9.1.2 payment of all rates and other charges payable by the Association in respect of the common areas, if any, and/or for services rendered to it, and/or

9.1.3 payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the common areas and the Association's affairs.

In calculating levies, the trustee committee shall take into account, income, if any, earned by the Association.

9.2 The trustee committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficit (if any) as shall result from the preceding year, and shall impose a levy upon the members equal as nearly 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 made payable by equal monthly installments due in advance on the first day of each and every succeeding month of such year.

9.3 The annual levy attributable to each property owner shall be calculated by dividing the total estimated amount determined in clause 9.2 above by the total number of property owners in the development, except that where clause 2.1.24.4 applies, the number of property owners in precincts 3 and 4 shall be deemed to be the number of golf lodges in each of the precincts constructed or still to be constructed.

- 9.4 The annual levy payable by each POA or Body Corporate shall be determined by multiplying the annual levy attributable to each property owner by the total number of single residential erven or sectional title units in the relevant precinct development.
- 9.5 The annual levy payable by the owner / s of precinct 3 and precinct 4 (in the event that clause 2.1.24.4 applies) shall be determined by multiplying the annual levy attributable to each property owner by the total number of lodges constructed or still to be constructed in each precinct.
- 9.6 The trustee committee may from time to time impose special levies upon the members in respect of all such expenses as are mentioned in clause 9.1 (which are not included in any estimate made in terms of clause 9.2), and such levies may be made in the sum or by such installments and at such time or times as the trustee committee shall think fit.
- 9.7 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.
- 9.8 A member shall make payment of the monthly levies by virtue of a debit order drawn on the member's banker.
- 9.9 Upon any member ("the selling member") selling his or her erf or occupational right (as the case may be), the selling member shall pay to the Association or Precinct POA depending on what is applicable, a levy equal to 0,25% of the purchase price (exclusive of VAT, if any) at which the selling member sold his or her erf or occupational right (as the case may be), or such other portion of the purchase price as may be resolved by the members from time to time by special resolution.
- 9.10 The levy payable by the selling member in terms of clause 9.9 shall become due and payable upon registration of transfer or cession (as the case may be) of the selling member's erf or occupational right into the name of the transferee concerned.
- 9.11 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.

- 9.12 No member shall be entitled to any of the privileges of membership including voting at any meeting unless and until such member shall have paid every subscription and other sum (if any) which shall be due and payable to the Association by such member.

10. **DEALING WITH THE COMMON AREAS**

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

- 10.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 10.2 mortgaged; or
- 10.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, (save those enjoyed by the members in terms hereof and any servitudes in favor of the Council as required in terms of any condition of subdivision);
- without the specific prior written consent of the Council and the sanction of a special resolution of the Association (and no member shall be entitled to unreasonably vote against any such special resolution which may be proposed); or
- 10.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a special resolution of the Association, save for any construction relating to the electrical substations or transformers, the construction of the private roads, the landscaping of the private open spaces and all such structures as may be required for purposes of security and communication equipment and/or security and communication personnel.

11. **RESPONSIBILITY FOR THE COMMON AREAS**

The Association acknowledges that the Council shall not be responsible for, and the Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and property control of the common areas, all services therein and any structure or thing erected on or contained therein.

12. **DESIGN GUIDELINES**

- 12.1 All buildings and other structures within the development (or any part thereof) shall comply with the provisions of the design guidelines, except for the golf lodges in Precinct 3 and Precinct 4.
- 12.2 No resident shall be entitled to:

12.2.1 erect any new building and/or structures of any nature whatsoever on any erf in the development;

12.2.2 make any changes or alterations to existing buildings and/or structures on any erf in the development including changes to the external color scheme;

without the prior written approval of the trustee committee having regard to the design guidelines, and without execution of the contractors' agreement by all parties thereof.

12.3 The approval of the trustee committee as contemplated in clause 12.2 shall only be given:

12.3.1 after detailed plans of the proposed work have been submitted to the trustee committee, the architectural review committee or any other competent person (as nominated by the trustee committee from time to time) which person may be an architect or architects registered within the South African Council of Architects or the Institute of South African Architects; and

12.3.2 the trustee committee or their nominee/s are satisfied that the proposed work is in accordance with the design guidelines for the purposes of which the trustee committee, the architectural review committee and/or any other nominee/s shall be the sole arbiter and their decision shall be final and binding on the property owner concerned; and

12.3.3 the property owner concerned has made payment of any costs which may be incurred in obtaining this approval, including the costs of the trustee committee or its nominee/s; and

12.3.4 the property owner concerned has paid to the trustee committee a deposit in such amount as the trustee committee may from time to time determine in their sole discretion, as security for any damage to any of the common areas, which amount shall be held in trust by the trustee committee, subject to the provisions of clause 13 below;

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

12.4 Subject to the restrictions imposed or directions given at a general meeting of the Association, the trustee committee may

from time to time amend, amplify, substitute or add to the provisions of the design guidelines. Any such amendment, amplification, substitution or addition shall be subject to a resolution passed by the trustees holding not less than 75% of the total voting rights of the trustees.

- 12.5 In the event of any of the provisions of the design guidelines being amended, amplified, substituted or added to, and such amendment, amplification, substitution or addition, in the opinion of the trustee committee, materially affects any further development within the development (or any part thereof), the trustee committee shall give written notice of such amendment, amplification, substitution or addition to all members. Upon receipt of such written notification, the members, except for the developer, shall by written notice inform their respective members of such amendment, amplification, substitution or addition.

13. DEPOSIT FOR DAMAGES

- 13.1 Each property owner shall, when submitting to the trustee committee of the relevant precinct developments, for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements in the development, pay to such trustee committee a deposit in an amount to be determined from time to time by the trustee committee which amount shall be retained by such trustee committee in trust until completion by the property owner and/or its contractors of such work, the interest on which deposit shall accrue to the association.
- 13.2 Upon completion of all such building and other activities, the trustee committee shall if they are satisfied that no damage has been effected by the property owner or any of its contractors to the common areas and/or landscaped areas within the development and that the work has been constructed in accordance with duly approved plans, shall subject to clause 13.3, release the building deposit to the property owner, excluding any interest thereon which will accrue to the Association less any fines or penalties payable in terms of the contractors agreement.
- 13.3 In the event of any landscaped area and/or the common areas having damage due to such work, the property owner shall within 15 days of having been requested to do so in writing by the trustee committee, rectify the damage to the satisfaction of the relevant precinct's trustees, failing which, such trustees shall be entitled to appoint an independent contractor or contractors to repair the damage and the amount paid to the trustees as a

building deposit shall be utilised to pay all costs of such repair. If the amount paid to such trustees as a building deposit is not sufficient to cover the cost of such repairs, such trustees shall be entitled to recover the shortfall from the property owner.

13.4 Each property owners association and sectional title body corporate being a member of this Association in terms of clauses 6.1.1 or 6.1.2 (as the case may be) shall procure that their respective members comply with the provisions of clauses 12 and 13 and hereby indemnify the Association in respect of any loss or damage which the Association may suffer as a result of any such of their respective members not so complying.

13.5 The trustee committee shall be entitled to:

13.5.1 perform such acts as are necessary to accomplish the purposes expressed or implied herein, which acts shall include, inter alia, the examination and endorsement of the relevant building plans as are necessary for any construction, renovation and/or alterations within the scheme;

13.5.2 appoint such advisors as are necessary to scrutinize the relevant plans referred to herein;

13.5.3 impose a scrutiny fee on members for the services as mentioned herein.

14. MANAGING AGENT AND ESTATE MANAGER

The trustee committee shall appoint:

14.1 a managing agent from time to time to control, manage and administer the affairs of the association, the affairs of the Fairbanks precinct if the trustee committee of that precinct so desires and to exercise such powers and duties as may be entrusted to the managing agent, including the power to collect levies; and

14.2 an estate manager to control, manage and administer all building works including the conclusion of contractors agreements with the relevant contractors.

15. RULES AND CONTRACTS

15.1 Subject to any restrictions imposed or directions given at a general meeting of the Association and subject to the conditions imposed by the Council in approving the rezoning and subdivision of the land and the subdivision of the portions of the land

comprising the precinct developments, the trustee committee may (but shall not be obliged to) from time to time:

15.1.1 make rules but governing, *inter alia*:

15.1.1.1 the management of the development including (but not limited to) the contractors agreements;

15.1.1.2 the use, occupation and enjoyment of the common areas;

15.1.1.3 the external appearance of and the maintenance of the common areas and the buildings or other improvements erected thereon;

15.1.1.4 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on the common areas;

15.1.2 enter into agreement(s) with the local authorities governing the matters set out in clause 15.1.1 and any other incidental matters.

15.2 Each member undertakes to the Association that such member will comply with, and procure compliance by its members with:

15.2.1 the provisions of this constitution;

15.2.2 the design guidelines referred to in clause 12 above;

15.2.3 any rules made in terms of clause 15.1.1 above;

15.2.4 any agreement(s) referred to in clause 15.1.2 insofar as those agreements may directly or indirectly impose obligations on such member and/or the members of any member referred to in clause 6.1 above;

15.2.5 rules made from time to time by the Hermanus Golf Club or its successor/s to protect the interests of the members of the Club and to provide a harmonious lifestyle of high quality to the residents of the development, including (but not limited to) rules relating to the following:

15.2.5.1 the admission of homeowners in the development as members of the Club;

15.2.5.2 the usage of the golf course and access thereto;

15.2.5.3 the use of golf carts and other vehicles;

- 15.2.5.4 guests or invitees of the property owners shall abide by all the rules and regulations of the Hermanus Golf Club and the property owners have a duty to acquaint themselves with these rules and regulations;
 - 15.2.5.5 the environment including restrictions in regard to noxious or alien vegetation;
 - 15.2.5.6 animals and pets, including the access of animals or pets on the golf course;
 - 15.2.5.7 the prevention of noise or any other form of nuisance, including music and other sounds from properties.
- 15.3 No business shall be conducted on or from any erf without prior written consent from the trustee committee.
- 15.4 In the event of any breach of any of the provisions, guidelines, rules and/or agreements referred to in clauses 15.2.1 to 15.2.5 (both inclusive) by:
- 15.4.1 any precinct member; and/or
 - 15.4.2 any member of a member referred to in clauses 6.1 above; and/or
 - 15.4.3 any person of the household, or guest or lessee of such member's member;
- such breach shall be deemed to have been committed by the member itself, but without prejudice to the foregoing, the trustee committee may take or cause to be taken such steps against the person actually committing the breach, as the trustee committee may in its sole discretion deem fit.
- 15.5 All officials, employees and contractors employed by the Association, local authority, any public service company, shall, at all times, have reasonable access to the erven and common areas for purposes of inspecting and/or maintaining all services supplying and/or traversing any part thereof.

16. **BREACH**

- 16.1 Should any member:
- 16.1.1 fail to pay on due date any amount due by that member in terms of this constitution or any regulation and/or rule

made thereunder and remain in default for more than 7 days after being notified in writing to do so by the trustee committee; or

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

then and in either such event, the trustee committee shall be entitled (but not obliged) 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:

16.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of that member's obligations in terms of this constitution or any regulation made thereunder, as the case may be; or

16.1.4 in the case of clause 16.1.2 above, to remedy such breach and immediately recover the total cost incurred by the trustee committee or the Association in so doing from such member.

16.2 In the event of any member disputing the fact that such member has committed a breach of any of the regulations and/or rules and/or guidelines made under this constitution, a committee of 3 trustees appointed by the chairperson for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the chairperson may direct.

16.3 Notwithstanding anything to the contrary contained in this constitution, the trustee committee may in the name of the Association enforce any provisions of the constitution (including any rules and/or guidelines made hereunder) by civil application or action in a court of competent jurisdiction (including by arbitration in terms of clause 35 below) and for this purpose may appoint attorneys and counsel, as the trustee committee may deem fit.

16.4 Without prejudice to all or any of the rights the trustee committees or the Association granted under this constitution, should any member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at the

prime rate plus 4% calculated from the due date for payment until the actual date of payment of such amount.

- 16.5 Should the trustee committee institute any legal proceedings against any member pursuant to a breach by that member of this constitution or any regulation made thereunder, then without prejudice to any other rights which the 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 trustee committee or the Association, including attorney/client charges, tracing fees and collection commission.

17. **TRUSTEE COMMITTEE**

Each member shall be entitled to appoint 1 trustee to the trustee committee.

18. **REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

- 18.1 Each trustee shall continue to hold office until the annual general meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, and shall be eligible for re-appointment to the trustee committee by the member concerned in terms of clause 17 above.
- 18.2 A trustee shall be deemed to have vacated his or her office as such upon:
- 18.2.1 being an unrehabilitated insolvent;
 - 18.2.2 his or her making any arrangement or compromise with his or her creditors;
 - 18.2.3 his or her conviction for any serious, civil or criminal offence. The trustee committee shall be the sole judge as to what is considered a serious offence;
 - 18.2.4 his or her becoming of unsound mind;
 - 18.2.5 his or her resigning from such office in writing delivered to the secretary;
 - 18.2.6 his or her death;
 - 18.2.7 his or her being removed from office by a special resolution of the members;
 - 18.2.8 has disposed of his or her property in the development;

provided that anything done in the capacity of a trustee in good faith, by a person who ceases to be a trustee, shall be valid until the fact that he or she is no longer a trustee has been recorded in the minute book of the trustee committee.

- 18.3 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 the member who appointed such trustee in terms of clause 17 above.

19. OFFICE OF THE TRUSTEE COMMITTEE

- 19.1 The trustees shall appoint from amongst themselves, a chairperson and vice-chairperson.
- 19.2 As soon as reasonably possible after the holding of the annual general meeting, the trustee committee shall meet and shall elect from its own number the chairperson and vice-chairperson, who shall hold their respective offices until the annual general meeting held next after their said appointment, provided that the office of the chairperson or vice-chairperson shall *ipso facto* be vacated by the trustee holding such office upon his or her ceasing to be a trustee for any reason. No one trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the trustee committee shall meet to appoint one of their number as a replacement in such office.
- 19.3 Save as otherwise provided in this constitution, the chairperson shall preside at all meetings of the trustee committee, and all general meetings of members, and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the trustee committee or of members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 19.4 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 trustee committee.
- 19.5 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as trustees and/or chairperson, vice-chairperson, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

20. **FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

- 20.1 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 by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the trustee committee which would have been valid if such regulation had not been made.
- 20.2 The trustee committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 20.3 The trustee committee may, should it so decide, investigate any suspected or alleged breach by any member or trustee of this constitution, in such reasonable manner as it shall decide from time to time.
- 20.4 The trustee committee may make regulations and rules, not inconsistent with this constitution, or any regulations or rules prescribed in the Association in general meeting:
- 20.4.1 as to disputes generally;
 - 20.4.2 for the furtherance and promotion of any of the objects of the Association;
 - 20.4.3 for the better management of the affairs of the Association;
 - 20.4.4 for the advancement of the interests of members;
 - 20.4.5 for the conduct of trustee committee meetings and general meetings; and
 - 20.4.6 to assist it in administering and governing its activities generally;
- and shall be entitled to cancel, vary or modify any of the same from time to time.

21. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 21.1 The trustee committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this constitution.
- 21.2 Meetings of the trustee committee shall be held at least once every 12 months, provided that if all the trustees shall in writing have waived the above requirement in respect of a particular 12 months, then no meeting of the trustee committee need be held for that period.
- 21.3 The quorum necessary for the holding of any meeting of the trustee committee shall be 3 trustees.
- 21.4 Each trustee shall be entitled to the following number of votes:
- a member trustee, to a number of votes equal to the number of members of such member which appointed such member trustee;
- 21.5 The chairperson shall preside as such at all meetings of the trustee committee, provided that should at any meeting of the trustee committee the chairperson not be present within 5 minutes after the time appointed for the holding thereof, then the vice-chairperson shall act as chairperson at such meeting, provided further that should the vice-chairperson also not be present within 5 minutes of the time appointed for the holding of such meeting, those present of the trustees shall vote to appoint a chairperson for the meeting, who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.
- 21.6 Minutes shall be taken at every trustee committee meeting, although not necessarily verbatim. These minutes shall be reduced to writing without undue delay after the meeting 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 meetings of directors of companies. The trustee committee minute book shall be open for inspection at all reasonable times by a trustee, the auditors, and the members.
- 21.7 All competent resolutions recorded in the minutes of any trustee committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the trustee committee shall be of any force or effect, or shall be binding upon the members or any of the trustees unless

such resolution is competent within the powers of the trustee committee.

21.8 Save as otherwise provided in this constitution, the proceedings at any trustee committee meeting shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide.

21.9 A resolution signed by all the trustees shall be valid in all respects as if it had been duly passed at a meeting of the trustee committee duly convened.

22. GENERAL MEETINGS OF THE ASSOCIATION

22.1 The Association shall within 3 calendar months after each financial year of the Association, hold a general meeting as its annual general meeting, in addition to any other general meetings, during such financial year, and shall specify the meeting as such in the notices in terms of clause 23.1 below.

22.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the trustee committee shall decide from time to time.

22.3 All general meetings other than annual general meetings shall be called special general meetings.

22.4 The trustee committee may, whenever they think fit, convene a special general meeting.

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

23. NOTICE OF MEETINGS OF THE ASSOCIATION

23.1 An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than 21 days' notice in writing at the least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by not less than 14 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 as are under this constitution entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this constitution, be deemed to have been duly called if it is so agreed:

23.1.1 in the case of a meeting called as the annual general meeting, by the members holding not less than 75% of the total voting rights of all members; and

23.1.2 in the case of a special general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 50% of the total voting rights of all members.

23.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this constitution, 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.

24. QUORUM FOR GENERAL MEETINGS

24.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the members entitled to vote in person or by proxy, as together for the time being, represent 50% of the total votes of all members of the Association entitled to vote, for the time being save that not less than 3 members must be personally present.

24.2 If within 30 minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, shall stand adjourned for another 30 minutes, and if at such adjourned meeting a quorum is not present, the members present shall be a quorum.

25. AGENDA AT GENERAL MEETINGS

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

25.1 the consideration of the chairperson's report;

25.2 the composition of the trustee committee;

- 25.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 25.4 the consideration of the annual financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
- 25.5 the consideration of the report of the auditors;
- 25.6 the consideration of the total levy (as referred to in clause 8) for the calendar year during which such annual general meeting takes place; and
- 25.7 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting.

26. PROCEDURE AT GENERAL MEETINGS

- 26.1 The chairperson shall preside as such at all general meetings, provided that should he or she not be present within 5 minutes after the time appointed for the holding thereof, then the vice-chairperson shall act as chairperson at such meeting, provided further that should the vice-chairperson also not be present within 5 minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall vote to appoint a chairperson for the meeting, who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.
- 26.2 The chairperson may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.
- 26.3 Whenever a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 26.4 Except as otherwise provided for in this constitution, all general meetings shall be conducted in accordance with generally accepted practice.

27. PROXIES FOR GENERAL MEETINGS

- 27.1 A member may be represented at a general meeting by a proxy, who need not be a member of the Association. The instrument appointing a proxy shall be in writing signed by the member concerned or such member's duly authorised agent in writing, but need not be in any particular form, provided that where a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairperson of the board of directors of the company or by its secretary, and where an Association of persons, by the secretary thereof.
- 27.2 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a copy certified by a commissioner of oaths thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution.
- 27.3 No member may represent more than three other members by proxy.
- 27.4 Should a member be absent from the recorded domicilium address which the trustee committee may have for such member, for a continuous period in excess of 6 months, a proxy must be appointed by such member prior to such member's absence in accordance with clauses 27.1 and 27.2 above, failing which a member shall not be entitled to vote, at any special general meeting, called during such member's absence.

28. VOTING AT GENERAL MEETINGS

- 28.1 At every general meeting, every member in person or by proxy and entitled to vote shall have the following votes:
- 28.1.1 where the member is a property owners' association referred to in clause 6.1.1 above, the number of votes equal to the number of single residential erven in such member's precinct development;
- 28.1.2 where the member is a body corporate or the registered owner referred to in clause 6.1.3 above, the number of votes in respect of such member shall be 6 in respect of Precinct 3 and 9 in respect of Precinct 4;

- 28.1.3 where the member is a property owners association referred to in clause 37, the number of votes equal to the number of erven incorporated into such property owners association;
- 28.2 Save as expressly provided for in this constitution, no person other than a member duly registered, and who shall have paid every levy and other amount (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 28.3 At any general meeting any resolution put to the vote of the meeting shall be decided on a show of hands unless the chairperson determines that the relevant decision be taken on a poll or unless a poll is demanded by any member.
- 28.4 In computing the majority on the poll, regard shall be had to the number of votes cast for and against the resolution.
- 28.5 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the chairperson of the general meeting shall be entitled to a casting vote in addition to his or her deliberative vote.
- 28.6 Unless any member present in person or by proxy at a general meeting shall 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 of validity of the procedure at such meeting, such declaration 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 favor 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. The chairperson of the meeting shall be obliged to announce the result of any voting either at the meeting or as soon as reasonably possible thereof.

29. SPECIAL RESOLUTION

- 29.1 A resolution by the Association shall be a special resolution if at a general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which members holding in aggregate not less than one-fifth of the total votes of all the members entitled to vote thereat, are present in person or by proxy, the resolution has been passed by not less than 75% of the total votes to which the members present in person or by proxy are entitled.
- 29.2 If less than 20% of the total votes of all the members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned for 30 minutes.
- 29.3 After the expiry of the said 30 minute period, the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than 75% of the total votes of all the members present or represented at such meeting shall be deemed to be a special resolution even if less than 20% of the total votes are represented after the expiry of the said 30 minute period.

30. LIMITS OF AUTHORITY FOR EXPENSES OTHER THAN NORMAL OPERATING EXPENSES

- 30.1 The Chairperson, together with any other trustee of the trustee committee shall have the authority to approve the payment for any extra ordinary expense of the Association up to the value of 5% of the total levy income for the year in question.
- 30.2 The trustee committee shall have the authority to approve the payment for an extra ordinary expense of the Association up to the value of 15% of the total levy income for the year in question.
- 30.3 Any extra ordinary expense exceeding 15% of the total levy income for the year in question must be authorised by a meeting of the members.

31. ACCOUNTS

- 31.1 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.

- 31.2 At each annual general meeting the trustee committee shall lay before the Association proper financial statements for the immediately preceding financial year of the Association. Such financial statements shall be accompanied by reports of the trustee committee and the auditors if appointed, and there shall be attached to the notice sent to members convening each annual general meeting, as set forth in clause 23.1 above, copies of such financial statements and reports and of any other documents required by law to accompany the same.
- 31.3 Should the trustee committee or the majority of the members so require, the accounts of the Association shall be examined and the correctness of the financial statements ascertained by the auditors at least once a year.

32. SERVICE OF NOTICES

- 32.1 A notice shall be in writing and shall be given or served by the Association upon any member, either personally or by electronic mail or by post in a prepaid registered letter, properly addressed to the member at the address of the erf owned by such member. It is the responsibility of the member to ensure that his/her electronic mail address in the Association's database is correct and up to date, as this would be the preferred way to give and serve any notice.
- 32.2 No member shall be entitled to have a notice served on him or her at any address not within the Republic of South Africa, but any member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 32.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 32.4 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

33. INDEMNITY

- 33.1 All trustee members shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a trustee member, in his capacity as chairperson or vice-chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.
- 33.2 Every trustee member, every servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the trustee committee out of the funds of the Association to pay) all costs, losses and expenses (including traveling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a trustee member, 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.
- 33.3 A trustee member shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustee members, whether in their capacities as trustee members or as 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.
- 33.4 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 trustee committee, or any of the Associations 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, or 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.

34. DISPUTE RESOLUTION

34.1 Any dispute, question or difference arising at any time between members or between a member or members and the trustee committee out of or in regard to:

34.1.1 any matters arising out of this constitution; or

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

34.1.3 the interpretation of this constitution,

shall be referred to mediation and if that does not resolve the dispute, to arbitration.

34.2 A dispute is declared by any party giving notice of the dispute to all the other parties who are interested in the matter in question. The notice should set out the nature of the dispute and of the relief claimed. Any party who wishes to oppose the relief claimed must then give notice of its opposition and the nature of its defence to the relief claimed within 2 (two) calendar weeks of receipt of the notice.

34.3 Once a dispute has been declared as above, the matter must be referred for mediation. If the identity of a mediator cannot be agreed by the parties the mediator may be appointed by The Association of Independent Mediators on the application of either party.

34.4 If the parties cannot agree on the appointment of a mediator, such appointment shall be done by the South African Association of Mediators.

34.5 The costs of the mediation shall be borne by the parties thereto in equal shares.

- 34.6 If the dispute is not settled at mediation in accordance with this clause within a period of 21 (twenty one) working days or such longer period as may be mutually agreed after the appointment of a mediator, either party shall be entitled to refer the dispute to arbitration in terms of clause 35 below, or for resolution in terms of the provisions of the Community Schemes Ombud Service Act, 9 of 2011.

35. **ARBITRATION**

- 35.1 If mediation is unsuccessful, the matter may be submitted to and decided by arbitration.
- 35.2 Arbitration shall be held in Hermanus informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty one) business days after it has been demanded.
- 35.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 35.3.1 primarily an accounting matter – an independent accounting professional;
 - 35.3.2 primarily a legal matter - a practicing counsel or attorney of not less than 10 (ten) years standing;
 - 35.3.3 any other matter - an independent and suitably qualified professional person;
- as may be agreed upon between the parties to the dispute.
- 35.4 If agreement cannot be reached on whether the question in dispute falls under clauses 35.3.1, 35.3.2 or 35.3.3 or upon a particular arbitrator in terms of clause 35.3.3 above, within 3 (three) business days after the arbitration has been demanded, then:
- 35.4.1 the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 35.3.1, 35.3.2 or 35.3.3 above; or
 - 35.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 35.3.1 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 35.2 above.

- 35.5 The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 35.6 The decision of the arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa or its successor/s upon the application of any party to the arbitration.
- 35.7 Notwithstanding anything to the contrary contained in clauses 35.1 to 35.7 (both inclusive), the trustee committee shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

36. AMENDMENTS TO CONSTITUTION

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

37. EFFECTIVE DATE

This constitution shall come into force when the first erf or sectional title unit within the development (or any part thereof) is registered in the deeds office.

38. INCORPORATION OF ADJACENT OR BORDERING PROPERTIES

- 38.1 The Association has the right at any time and from time to time to extend the membership of the Association by requiring the Association to incorporate as a member any property owners association or associations constituted in respect of the owners of any property or properties adjacent to and/or bordering upon the development from time to time.
- 38.2 Should any such property owners association be incorporated as a member of the Association, it shall become a member of the Association in respect of such property or properties from such

date as the Association may determine, and on the same terms and conditions as are applicable to each property owners association constituted in terms of LUPO in respect of a precinct development on the land.

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