



FIRWOODS

RIVER ESTATE

Constitution of the Firwoods River Estate Home Owners' Association

A statutory owners' association established in terms of Section 29 of the Drakenstein By-law on
Municipal Land Use Planning, 2018

TABLE OF CONTENTS

1.	ESTABLISHMENT	3
2.	DEFINITIONS AND INTERPRETATION	3
3.	THE STATUS OF THE ASSOCIATION	8
4.	OBJECTIVES OF THE ASSOCIATION	10
5.	FUNCTIONS AND POWERS OF THE ASSOCIATION	11
6.	SERVICE ADDRESS OF THE ASSOCIATION	13
7.	MEMBERSHIP OF THE ASSOCIATION	13
8.	GENERAL RIGHTS AND OBLIGATIONS OF MEMBERS	14
9.	OBLIGATION TO BUILD AND PENALTY LEVIES	15
10.	DESIGN GUIDELINES AND THE BUILDERS CODE OF CONDUCT	16
11.	CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS	17
12.	ESTATE RULES	18
13.	BUDGET AND LEVIES	19
14.	THE BOARD	22
15.	FIDUCIARY RELATIONSHIP	23
16.	CHAIRPERSON	24
17.	REMOVAL AND ROTATION OF TRUSTEES	25
18.	PROCEEDINGS OF THE TRUSTEES	26
19.	FUNCTIONS, POWERS, AND DUTIES OF THE TRUSTEES	27
20.	MANAGING AGENT	28
21.	GENERAL MEETING OF THE ASSOCIATION	28
22.	PROCEDURE AT GENERAL MEETINGS	29
23.	NOTICES OF GENERAL MEETINGS	29
24.	REPRESENTATION AND PROXIES AT GENERAL MEETINGS	30
25.	QUORUM	31
26.	ADJOURNMENT BY CHAIRPERSON	31
27.	VOTING AT GENERAL MEETINGS	32
28.	MINUTES OF GENERAL MEETINGS	33
29.	RESTRICTION AGAINST TRANSFER	33
30.	COMMON PROPERTY	33
31.	RESPONSIBILITY FOR THE PROVISION OF SERVICES	34
32.	BOOKS OF ACCOUNT AND FINANCIAL STATEMENTS	35
33.	DEPOSIT AND INVESTMENT OF FUNDS	35
34.	SERVICE ADDRESSES OF MEMBERS AND OCCUPANTS	36
35.	DELIVERY OF NOTICES	36
36.	INDEMNITY	37
37.	BREACH OF THIS CONSTITUTION OR ANNEXURES	37
38.	DETERMINATION OF DISPUTES	39
39.	IMPOSITION OF PENALTIES	42
40.	CONDITIONS IMPOSED BY THE MUNICIPALITY	43
41.	AGREEMENTS CONCLUDED ON BEHALF OF THE ASSOCIATION	43
42.	DEFAMATION PRIVILEGE	44
43.	EXCLUSION OF LIABILITY	44
44.	AMENDMENT OF THE CONSTITUTION AND ANNEXURES	44
45.	ASSOCIATION CEASES TO FUNCTION	45
46.	WINDING UP OF ASSOCIATION	46
47.	AGRICULTURAL ERF	46
48.	ESTATE FACILITIES	47
49.	DEVELOPER'S RIGHTS, POWERS, DUTIES AND EXEMPTIONS	47

1. ESTABLISHMENT

- 1.1. The Association is constituted as an owners' association in terms of Section 29 of the MPBL in accordance with the conditions imposed by the Municipality, when approving the subdivision of the Land and the Development Rights pertaining to the Land in terms of Section 60 of the MPBL.
- 1.2. The Association shall be established upon the registration of transfer of ownership of the first Erf arising from the subdivision to a person other than the Developer. This Constitution of the Association as approved by the Municipality shall take effect upon the registration of transfer of the first Erf arising from the subdivision to a person other than the Developer.
- 1.3. The Association shall be established for the benefit of all the Members in the Development. The Association shall administer and control all aspects relating to the Development and shall protect the communal interests of all Members who shall be bound by this Constitution.
- 1.4. The provisions of the Companies Act, No. 71 of 2008, shall not apply in relation to the Association.

2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Constitution the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them:
 - 2.1.1. **Agricultural Erf** means Erf 44188 Paarl as indicated on the General Plan which must remain agricultural in nature;
 - 2.1.2. **Alienate** means to divest of ownership of any Erf or share therein or bare dominium or part thereof and includes alienation by means of sale, exchange, donation, deed, intestate or testate succession, cession, assignment, court order, insolvency, or liquidation, and further includes the granting of a registrable right of occupation, habitation or usufruct in respect of an Erf and **Alienation** shall have a corresponding meaning and the disposal or transfer by a shareholder of his shares, or portion thereof, in a company owning an Erf, or by a member of his member's interest, or portion thereof in a close corporation owning an Erf, or by a beneficiary of his interest or portion thereof in a trust owning an Erf, shall be deemed to be an **Alienation** of an Erf and **Deemed Alienation** shall have a corresponding meaning;
 - 2.1.3. **Annual General Meeting** means the Annual General Meeting of the Association held in terms of the provisions of this Constitution;
 - 2.1.4. **Annexure** means the annexures to this Constitution, being the Diagrams to be contained in Annexure A, the Design Guidelines to be contained in Annexure B, the Builders Code of Conduct to be contained in Annexure C, the Estate Rules to be contained in Annexure D and as may be amended from time to time;
 - 2.1.5. **Association** means the **Firwoods River Estate Home Owners' Association**, constituted in terms hereof;
 - 2.1.6. **Auditors** means the Auditors or Independent Reviewer or Accountant of the Association appointed by the Developer during the Development Period and thereafter by the Board, from time to time;
 - 2.1.7. **Board** means the Trustees of the Association assembled as a board as more fully provided for in this Constitution and Trustees shall have a corresponding meaning;
 - 2.1.8. **Budget** means the estimate of income and expenditure of the Association in respect of a Financial Year;

- 2.1.9. **Builders Code of Conduct** means the rules prepared by the Developer to control and regulate construction and building operations within the Estate, to be contained in Annexure C to this Constitution and as may be amended from time to time;
- 2.1.10. **Business Day** means a weekday other than a Saturday, Sunday or a Public Holiday officially recognised in the Republic of South Africa;
- 2.1.11. **Chairperson** means the Chairperson of the Board and the Association, from time to time;
- 2.1.12. **Clear Days** means in a computation of days, the exclusion of the first and last day of the period to be calculated;
- 2.1.13. **Common Property** means collectively, all Private Roads, Private Open Spaces and any servitude areas, roads, buildings, infrastructure, and facilities which are or will be located on the Land and owned, controlled, and managed by the Association, from time to time, for the benefit of, inter alia, the Association and its Members;
- 2.1.14. **Constitution** means the constitution of the Association as set out in this document, including the Annexures thereto, as may be amended from time to time;
- 2.1.15. **CSOS** means the Community Schemes Ombud Service established in terms of the CSOS Act;
- 2.1.16. **CSOS Act** means the Community Scheme Ombud Act, No. 9 of 2011 and any regulations made in terms thereof, and as may be amended;
- 2.1.17. **Design Guidelines** mean the architectural and design guidelines relating to the design and construction requirements in respect of buildings and improvements and landscaping guidelines prepared for and applicable to the Estate, to be contained in Annexure B of this Constitution as may be amended from time to time;
- 2.1.18. **Developer** means Bello Campo (Pty) Ltd, Registration Number 2012/212246/07, and its successors in title or assigns;
- 2.1.19. **Developer Trustee** means a Trustee appointed by the Developer during the Development Period;
- 2.1.20. **Development** means the residential development to be established on the Land and on portions thereof, including where applicable the Neighbouring Land, as indicated in the Diagrams, to be known as Firwoods River Estate and **Estate** shall have a corresponding meaning;
- 2.1.21. **Development Controls** means the Development Controls prescribed by the Developer and the Municipality, including the zoning rights pertaining to the Land and the conditions of approval relating to the zoning rights and the subdivision of the Land as may have been issued by any relevant authority;
- 2.1.22. **Development Period** means the period from the date of establishment of the Association until all the Erven have been transferred from the Developer and/or improved by the Developer, or until the Developer notifies the Association in writing that the Development Period has ceased, whichever event occurs first;
- 2.1.23. **Development Rights** means all the development rights granted to the Developer by all relevant authorities to enable the Developer to develop Firwoods River Estate in phases, including the Development Controls;

- 2.1.24. **Diagrams** means all diagrams and general plans approved by the Surveyor General, in respect of the Land to be contained in Annexure A to the Constitution;
- 2.1.25. **Dwelling** means a dwelling house on an Erf suitable for occupation and use for residential purposes by natural persons;
- 2.1.26. **EMP** means the Environmental Management Plan approved by all relevant authorities;
- 2.1.27. **Erven** means the individual erven created by the subdivision of the Land as indicated on the Diagrams, including the Agricultural Erf, the Manor House, and, if incorporated into the Development, the erf that comprised the Neighbouring Land, but excluding the Common Property and Erf means any one of the Erven;
- 2.1.28. **Estate Facilities** means a gymnasium and/or such other recreational facilities which may be provided by the Developer in its sole discretion in the Estate;
- 2.1.29. **Financial Year** means the financial year of the Association which shall run from the first day of the month following the first registration of transfer of an Erf to an Owner until the last day of the month of February and thereafter from the first day in March in each year until the last day of February in the subsequent year;
- 2.1.30. **General Meeting** means a General Meeting of the Association, which include an Annual General Meeting or Special General Meeting and General Meetings means a collective reference to the Annual General Meeting and all Special General Meetings;
- 2.1.31. **Estate Rules** means the rules governing the conduct of Members, Owners, Occupants, and Invitees in the Development to be contained in Annexure D to this Constitution and as may be amended from time to time;
- 2.1.32. **H&S Legislation** means all applicable Health and Safety Legislation and Regulations of the Republic of South Africa, including without limitation the Occupational Health and Safety Act, 1993, as amended;
- 2.1.33. **Invitee** means a family member, visitor, guest, employee, worker, contractor, client, customer, service provider or other invitee of a Member or Occupant;
- 2.1.34. **Land** means the land approved for development by the Municipality, being Erf 8892 Paarl, in the Drakenstein Municipality, Division Paarl, Western Cape Province, upon which Firwoods River Estate will be developed in phases by the Developer in terms of and subject to the Development Rights;
- 2.1.35. **Levies** means Ordinary Levies, Special Levies, Stabilisation Levies and where applicable Penalty Levies payable by the Members to the Association in terms of clause 13 and where applicable clause 9 of this Constitution;
- 2.1.36. **Managing Agent** means any person or entity appointed by the Developer, during the Development Period, and thereafter by the Board of the Association, as an independent contractor to undertake any or all the management functions of the Association or to provide management services, subject to the terms and provisions of this Constitution;
- 2.1.37. **Manor House** means Erf 44196 Paarl, which in the discretion of the Developer may comprise of a Clubhouse;
- 2.1.38. **Member** means a member of the Association as provided for in clause 7 of this Constitution;

- 2.1.39. **MPBL** means the Drakenstein By-law on Municipal Land Use Planning, 2018, as may be amended;
- 2.1.40. **Municipality** means the municipality having jurisdiction over the Development, being the Drakenstein Municipality or its successors in title;
- 2.1.41. **Neighbouring Land** means Erf 9271 Paarl, in the Drakenstein Municipality, Division Paarl, Western Cape Province, in extent 6 384 (six thousand three hundred and eighty-four) square metres;
- 2.1.42. **Occupant** means any person/s occupying a Dwelling or building or part thereof including the tenant and any other occupants of a property within the Development;
- 2.1.43. **Ordinary Levies** means the Ordinary Levies imposed by the Association on the Members in terms of clause 13 of this Constitution.
- 2.1.44. **Ordinary Resolution** means a resolution passed at an Annual General Meeting or Special General Meeting, where a quorum is present, by an ordinary majority of the votes cast (more than 50% (fifty percent)) of the votes of the Members of the Association present in that meeting, personally or by means of a proxy, and entitled to vote at such a meeting in terms of the provisions of this Constitution. An Ordinary Resolution may also be agreed to in writing by or on behalf of the Members holding an ordinary majority of the votes of all the Members of the Association;
- 2.1.45. **Owner** means the registered owner of an Erf in the Development;
- 2.1.46. **Penalty Levies** means Penalty Levies payable by Members to the Association in terms of clause 9 of this Constitution;
- 2.1.47. **Person** means a natural person or a juristic person;
- 2.1.48. **Prime Rate** means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three Hundred and Sixty-Five) day year irrespective of whether or not the year is a leap year, from time to time published by ABSA Bank Limited as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;
- 2.1.49. **Private Open Spaces** means Erf 44197 Paarl, Erven 44235 to 44241 Paarl, Erven 44287 to 44299 Paarl and any other Private Open Spaces, indicated as such on the Diagrams that will be registered in the name of the Association in the Deeds Registry;
- 2.1.50. **Private Roads** means Erf 44198 Paarl, Erf 4424 Paarl, Erf 44300 Paarl and any other Private Roads, indicated as such on the relevant Diagrams that will be registered in the name of the Association in the Deeds Registry, and any servitude right of way registered in favour of the Association;
- 2.1.51. **Purchaser** means any person or entity that enters into an agreement of sale or deed of sale with the Developer in respect of an Erf during the Development Period;
- 2.1.52. **Service Address** means the *domicilium citandi et executandi* for the service of legal notices which address must be a physical address situated in the Republic of South Africa;
- 2.1.53. **Services** means the private combined systems of services, including but not limited to the water network, sewer network, storm water network, road network components, irrigation and such other engineering services, infrastructure, and utilities to be provided in respect of the Development, including but not limited to waste disposal;

- 2.1.54. **Special General Meeting** means a Special General Meeting of the Association as provided for and in terms of the provisions of this Constitution;
- 2.1.55. **Special Levies** means any Special Levies imposed by the Association on Members in terms of clause 13 of this Constitution;
- 2.1.56. **Special Resolution** means a resolution passed at an Annual General Meeting or Special General Meeting of which not less than 14 (fourteen) Clear Days' notice has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it, and passed, by at least 75% (seventy five percent) of the votes cast on the matter, with a quorum of at least 50% (fifty percent) of the votes of the Members present at the meeting in person or by proxy. A Special Resolution may also be agreed to in writing by or on behalf of Members holding at least 75% (seventy five percent) of the total number of Members of the Association;
- 2.1.57. **Stabilisation Levies** means Stabilisation Levies payable by Members to the Association in terms of clause 13 of this Constitution upon an Alienation or Deemed Alienation;
- 2.1.58. **Sub-developer** means Cavara Property Group (Pty) Ltd, Registration Number 2020/731003/07 and Quotro Property Developers (Pty) Ltd, Registration Number 2004/022996/07, and any other bulk purchasers and developers of identified portions of the Development as notified in writing to the Association by the Developer;
- 2.1.59. **Western Cape Headline Consumer Price Index** means, in relation to a calendar year, the consumer price index, being a measure of inflation, specifically for the Western Cape Province in South Africa, reflecting the changes in the overall price level of a basket of consumer goods and services typically purchased by households within that region within the specific calendar year;
- 2.2. Unless the context clearly indicates a contrary intention, words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and reference to natural persons includes juristic persons and vice versa.
- 2.3. The clause headings in this Constitution have been included for convenience only and shall not be considered in its interpretation.
- 2.4. Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.5. If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members, then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 2.6. Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part of, bear the meaning assigned to such words and expressions in such sub-clause.
- 2.7. If any term is defined within the context of any clause in this Constitution, the term so defined shall bear the meaning ascribed to it for all purposes in terms of this Constitution, notwithstanding that that term has not been defined in this interpretation provision, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause.

- 2.8. No provision of this Constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.
- 2.9. When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.10. References to any act/statute or any regulation issued thereunder shall be references to that act/statute or regulation as modified, amended, or substituted from time to time, or to any legislation or regulation which replaces it. Reference to an act/statute shall include the regulations made in terms of the act/statute.
- 2.11. This Constitution shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the Association and every Member consent to the jurisdiction of any competent court of the Republic of South Africa, for the purposes of any proceedings instituted in connection with this Constitution.
- 2.12. If any provision of this Constitution is in conflict or inconsistent with any legislation, the invalidity of such provision shall not affect the validity of the remainder of the provisions of this Constitution. If any provision of this Constitution is unenforceable for any reason whatsoever, then such provision shall be deemed to be separate and severable, without in any way affecting the validity of the remaining provisions.
- 2.13. The annexures to this Constitution are deemed to be incorporated in and form part of this Constitution. The terms defined in this Constitution shall bear the same meanings in any annexures, if applicable.
- 2.14. References to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney.
- 2.15. References to Members entitled to vote, present at a meeting or acting in person shall include juristic persons represented by duly authorised representative/s, including juristic persons represented by proxy.
- 2.16. The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.
- 2.17. Any reference to "writing" includes electronic communication as defined in the Electronic Communications and Transactions Act, 2002 and "written" shall have a corresponding meaning.
- 2.18. Where any consent or approval is required to be furnished by the Association to a Member, such consent or approval shall be in writing and signed by a Trustee or the Managing Agent; not be unreasonably withheld; and be given prior to the Member taking the relevant action requiring the consent.
- 2.19. The onus of proof regarding the receipt of any notice given or payment made by a Member, shall be on the giver of the notice or the maker of the payment.

3. THE STATUS OF THE ASSOCIATION

- 3.1. The Association shall have as its members all the owners of Erven arising from the subdivision and their successors in title, who shall be jointly liable for expenditure incurred in connection with the Association.

- 3.2. The Association shall, subject to the provisions of this Constitution, be responsible for the control, administration, and management of the Development for the benefit of all the Members.
- 3.3. The Association is a legal persona and as such –
- 3.3.1. its assets, liabilities, rights, and obligations shall vest in the Association independently of its Members;
 - 3.3.2. the Association shall have perpetual succession;
 - 3.3.3. all legal proceedings shall be brought by or against the Association, in the name of the Association, and the Board may authorise any person/s to act on behalf of the Association and to sign all such documents and take all such steps as may be necessary in connection with any such legal proceedings; and
 - 3.3.4. its Members shall not, by reason of their membership, be liable for the liabilities and obligation of the Association.
- 3.4. The Association is established as a non-profit making institution for the objectives set out in this Constitution. The Association shall not be for profit, but for the collective benefit and interest of its Members. The Association has the right to acquire, hold, lease, and alienate property, both movable and immovable.
- 3.5. No part of the income of the Association may be paid or refunded to any Member, except to settle any debt to such Member that the Association may have. No Member in his personal capacity shall have any right, title, or interest to or in the funds or assets of the Association which shall vest in the Association and be controlled by the Board on behalf of the Members according to the objectives of the Association.
- 3.6. The sole object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Property and the collection of Levies for which such Members are liable.
- 3.7. The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 3.8. On dissolution the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act, No. 58 of 1962.
- 3.9. Funds available for investment may only be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.
- 3.10. The Association is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act, No. 58 of 1962 or any other Act administered by the Commissioner for the South African Revenue Services.
- 3.11. The Association shall submit annual returns of income together with financial statements to the South African Revenue Services or similar relevant government departments as required.
- 3.12. Any amendments of this Constitution must be submitted to the Commissioner for the South African Revenue Services.

4. OBJECTIVES OF THE ASSOCIATION

The objectives of the Association are as follows:

- 4.1. to formally represent the collective mutual interests of the Association and Members as set out in this Constitution in accordance with the conditions of approval;
- 4.2. the control over and maintenance of buildings, services or amenities arising from the subdivision;
- 4.3. to own, control, improve and maintain and to insure where necessary the buildings, structures, installations, and equipment relating to the Common Property;
- 4.4. to control, administer and manage the Common Property, Services, and facilities and amenities in respect of the Development and the buildings on land under the Association's control for the benefit of all the Members;
- 4.5. to take ownership of the Common Property and other Services arising out of the subdivision of the Land, including Private Open Space and Private Roads and land required for services provided by the Association;
- 4.6. the control over the Design Guidelines of the buildings and Erven in the Development;
- 4.7. to control the design and appearance, including aesthetic appearance of buildings and improvements constructed or to be constructed in the Development and to control landscaping within the Development;
- 4.8. to oversee, regulate and control the harmonious development of the Estate and to ensure and promote the general high standard of the Estate;
- 4.9. to control the nature and position of buildings, structures, installations, and equipment relating to the Erven and Schemes and to ensure compliance with the Design Guidelines, the Builders Code of Conduct, and the Estate Rules and any other control measures in respect of the Estate required by law or document;
- 4.10. the implementation and enforcement by the Association of the provisions of the EMP, this Constitution, the Design Guidelines, the Builders Code of Conduct, and the Estate Rules;
- 4.11. to acquire and grant servitudes and to register servitudes;
- 4.12. to maintain the Common Property, the Private Open Spaces, Private Roads, and the Services, at the costs of the Association;
- 4.13. to enforce the conditions of approval or management plans in respect of the Development;
- 4.14. the promotion of environmental awareness and responsibility amongst Members;
- 4.15. to control the alienation, transfer, letting and use of Erven within the Development;
- 4.16. to provide for any further development which must form part of the Development;
- 4.17. to regulate the Annual General Meetings of the Members;
- 4.18. to conclude service agreements with the Municipality and other service providers for the benefit of the Members as may be necessary or required;

- 4.19. to enter into and to implement any contract relating to the EMP, the Development Controls and the conditions of establishment;
- 4.20. to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the Development;
- 4.21. to establish a fund for expenses of the Association, including provision for future expenses and contingencies, and to determine and collect Levies for the purpose of the said fund from the Members and to recover charges for Services from Members;
- 4.22. to ensure compliance with the MPBL, the CSOS Act, and any other applicable legislation, by-laws, and regulations;
- 4.23. to take action as deemed necessary by the Board (including but not limited to the imposition of penalties or instituting proceedings in a court of law) in relation to the non-compliance by any Owner, Occupant, or Invitee with any provisions of this Constitution, the Design Guidelines, the Builders Code of Conduct, or the Estate Rules;
- 4.24. to provide for procedures to obtain the consent of the Members of the Association to transfer the Common Property or an Erf in the event that the Association ceases to function;
- 4.25. to promote, advance and protect the interest of Members generally in regard to the Development and to represent the interest of Members;

and generally, to do all such things as may be necessary or requisite to give effect to and implement and enforce the objectives of the Association and to do all such things ancillary or incidental to the objectives, and the Association, through the Board, shall have all the powers that are necessary to accomplish the fulfilment of the foregoing objectives.

5. FUNCTIONS AND POWERS OF THE ASSOCIATION

- 5.1. The Association shall exercise the powers and perform the functions as set out in this Constitution and such ancillary functions as may be necessary in pursuit of its objectives.
- 5.2. The functions of the Association shall include:
 - 5.2.1. to control, manage and administer the Development for the benefit of all Members.
 - 5.2.2. to establish a levy fund of the Association sufficient in the opinion of the Association to meet the expenditure of the Association and to perform the duties of the Association;
 - 5.2.3. to raise and determine Levies payable by the Members as contributions to the levy fund;
 - 5.2.4. to manage the finances of the Association and the payments of the expenditure of the Association;
 - 5.2.5. to manage, repair, maintain, improve and/or to replace the Common Property, the Services, facilities, installations, and other assets of the Association;
 - 5.2.6. to take up insurance for the Association as may be required and to pay the premiums on any policy of insurance effected by it;
 - 5.2.7. to ensure compliance with the legal requirements of the Municipality, including the conditions of establishment and rezoning imposed by any competent authority;

- 5.2.8. to implement and enforce the provisions of this Constitution, the Design Guidelines, the Builders Code of Conduct and the Estate Rules and any law, ordinance or by- law as may be applicable;
- 5.2.9. to add to, amend, repeal, or substitute the provisions of this Constitution, the Design Guidelines, the Builders Code of Conduct, and the Estate Rules, from time to time.
- 5.3. The powers of the Association shall include the power:
 - 5.3.1. to purchase or otherwise acquire, take transfer of, mortgage, sell, alienate, give transfer of, or hire or let immovable property;
 - 5.3.2. to make improvements or alterations to the Common Property or to remove improvements or structures;
 - 5.3.3. to purchase, hire, or otherwise acquire movable property and to insure, sell, let, or otherwise dispose of movable property;
 - 5.3.4. to control, manage, administer, maintain, and improve the Common Property and Services and to establish amenities as may be necessary;
 - 5.3.5. to appoint the Trustees for the Association;
 - 5.3.6. to prevent the transfer or alienation of any Erf unless the levies and other amounts due to the Association in respect of the Erf have been paid or provision has been made to the satisfaction of the Association;
 - 5.3.7. to open, operate and close bank accounts in the name of the Association with registered South African commercial banks and financial institutions;
 - 5.3.8. to invest surplus moneys of the levy fund;
 - 5.3.9. to apply for licenses and other rights enabling the Association to deal with its property in any lawful manner;
 - 5.3.10. to borrow moneys required by it in the performance of its functions or the exercise of its powers if authorised thereto by a Special Resolution of the Members;
 - 5.3.11. to secure the repayment of moneys borrowed by it and the payment of interest thereon in any manner and to agree to the terms of such transactions;
 - 5.3.12. to employ, dismiss and remunerate employees for the Association and to establish and contribute to pension-, provident-, medical aid and other similar funds for the benefit of its employees;
 - 5.3.13. to appoint a Managing Agent and other agents and contractors on behalf of the Association as may be necessary;
 - 5.3.14. to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, town planners or any other professional firm or person as may be necessary;
 - 5.3.15. to appoint a Health and Safety Officer to ensure compliance with the relevant H&S Legislation by the Association;
 - 5.3.16. to enter into agreements for the supply of services, equipment, or property to the Association;

- 5.3.17. to enter into any agreement necessary to achieve the objectives of the Association or to further the interests of the Association;
- 5.3.18. to recover by legal process in court or by application to CSOS any levies or moneys due by Members or former Members to the Association;
- 5.3.19. to institute, conduct, defend, compound, or abandon any legal proceedings on behalf of the Association;
- 5.3.20. to impose penalties on Members, Occupants, and Invitees in respect of contraventions of any provision of this Constitution, the Design Guidelines, the Builders Code of Conduct and/or the Estate Rules;

and generally, to do all things necessary or required to attain the objectives of the Association, and for the implementation and enforcement of the provisions of this Constitution.

6. SERVICE ADDRESS OF THE ASSOCIATION

- 6.1. The Board shall from time to time determine the Service Address of the Association, subject to the following:
 - 6.1.1. such address shall be the office address of the Managing Agent or the address of the Chairperson or of a resident Trustee nominated by the Board;
 - 6.1.2. the Board shall give notice to all Members of any change of such Service Address.
- 6.2. The Board or Managing Agent may give notice to all Members of the e-mail address of the Association for the receipt of notices, applications, and documentation from Members in terms of this Constitution.

7. MEMBERSHIP OF THE ASSOCIATION

- 7.1. The Association shall have as its Members:
 - 7.1.1. the Developer; and
 - 7.1.2. every Owner of an Erf in the Estate.
- 7.2. Membership of the Association shall be automatic and compulsory for the Members. Such membership:
 - 7.2.1. in respect of the Developer, shall commence upon establishment of the Association and shall terminate when the Developer ceases to be the registered owner of an Erf or upon termination of the Development Period, whichever shall first occur;
 - 7.2.2. in respect of the registered owner of an Erf, shall commence simultaneously with registration of transfer of an Erf into the name of the transferee in the Deeds Registry and when a Member ceases to be the registered owner of an Erf, he shall automatically cease to be a Member of the Association.
- 7.3. Where any Erf is owned by more than one person, all the registered owners of that Erf shall jointly and severally be liable in solidum for all their obligations to the Association.
- 7.4. Where any person is the registered owner of more than one Erf, such person shall be regarded as a Member and shall have the rights and obligations of a Member, in respect of each Erf registered in such person's name.

- 7.5. No Member may resign as a Member of the Association.
- 7.6. No Member ceasing to be a Member of the Association for any reason shall have any claim upon or interest in the funds or other assets of the Association.
- 7.7. The provisions of this Constitution shall be binding upon all Members and, insofar as they may be applicable on all Occupants, whatsoever the nature of such occupation.

8. GENERAL RIGHTS AND OBLIGATIONS OF MEMBERS

- 8.1. Every Member and Occupant shall comply with:
 - 8.1.1. the provisions of this Constitution, the Design Guidelines, the Builders Code of Conduct and the Estate Rules, and all other rules or regulations made or promulgated by the Association, the Board, the Developer, during the Development Period;
 - 8.1.2. any agreement concluded by the Association, the Board, the Developer during the Development Period;
 - 8.1.3. any directive given by the Association, the Board, the Managing Agent or by the Developer, during the Development Period;
- 8.2. Save as may be provided for herein, the rights and obligations of a Member are not transferable, and every Member shall:
 - 8.2.1. to the best of his ability further the objectives and interests of the Association;
 - 8.2.2. be jointly liable with the other Members for expenditure incurred in connection with the business and objectives of the Association.
- 8.3. Except for the Developer, no Member shall consolidate any Erfen or subdivide any Erf, without the authorisation of the Board.
- 8.4. Except for the Developer, no Member shall apply for any rezoning, subdivision, departure, consent use, or the amendment of any other condition of approval relating to any Erf to the Municipality without the prior written approval of the Board.
- 8.5. A Member shall not use any Erf, building or Dwelling or allow it to be used for any purpose not permitted in terms of the MPBL and applicable laws and regulations or in terms of this Constitution.
- 8.6. Except in respect of the Agricultural Erf and the Estate Facilities, no business may be conducted on any Erf or from any Dwelling without the written approval of the Board and provided that the Municipality has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations. The foregoing restriction does not apply to the Developer for the duration of the Development Period.
- 8.7. No Member may construct any building, improvement, or structure on an Erf, or remove any building, improvement, or structure from an Erf without the prior written consent of the Board.
- 8.8. A Member must maintain his Erf and the buildings and improvements on his Erf in a state of good repair and in a neat and tidy condition. If in the reasonable opinion of the Board, any buildings, or improvements in respect of an Erf require repairs or the appearance thereof have become unsightly, the Board may require that the Member take steps to repair, repaint, repair, maintain or renovate the buildings and improvements.

- 8.9. A Member must establish and maintain the landscaping in respect of his Erf according to a standard acceptable to the Board and in compliance with the Estate Rules, as may be applicable. If in the reasonable opinion of the Board, the landscaping in respect of any Erf is inadequate, the Board may require that the Member take steps to maintain the Erf to a standard that is acceptable to the Board.
- 8.10. A Member must procure adequate insurance in respect of the buildings in respect of his Erf and must furnish proof of such insurance to the Board if requested to do so. In the event of the total or partial destruction of a building/s, the Member must reinstate the building/s in accordance with building plans to be approved by the Board within a reasonable time.
- 8.11. A Member shall not do or suffer to be done on any Erf or in any building or on any part of the Common Property in the Development anything which, in the opinion of the Board, is noisome, unsightly, injurious, objectionable, or detrimental or a public or private nuisance or a source of damage or disturbance to any other Member or Occupant.
- 8.12. The provisions of this Constitution, the Design Guidelines, the Builders Code of Conduct and the Estate Rules and the duties of an Owner in relation to the use and enjoyment of his Erf and the Common Property, facilities and the services of the Association shall be binding on all the Members and Occupants of Erven in the Development.
- 8.13. A Member must take all reasonable steps to ensure compliance with this Constitution, the Design Guidelines, the Builders Code of Conduct and the Estate Rules by the Occupants of his Erf and by the Invitees to his Erf. A Member shall be liable and accountable for the acts or omissions of all persons occupying or having access to his Erf and to the Development, whether lawfully or unlawfully.
- 8.14. A Member shall permit access by a person authorised in writing by the Board to his Erf if required for any reasonable purpose required by the Association. The Board, the Managing Agent and their employees, agents or contractors shall be entitled and shall have the right, after reasonable notice, to enter any Erf for any reasonable purpose required by the Association.

9. OBLIGATION TO BUILD AND PENALTY LEVIES

- 9.1. A Member (and/or his successors in title or assigns) shall, within a period of 36 (thirty six) months from the date of registration of transfer of the Erf from the Developer to the first Purchaser thereof in the Deeds Registry, commence with the physical construction of a Dwelling and outbuildings on the Erf in accordance with approved building plans and the requirements of the Design Guidelines. A Member shall complete the construction of the Dwelling and outbuildings and all building works in respect of his Erf within a period of 24 (twenty four) months from the date of commencement with construction of the Dwelling and outbuildings on the Erf.
- 9.2. If a Member (and/or his successors in title or assigns) fails to comply with the provisions of clause 9.1 above, by failing to timeously commence with construction or to complete construction within the aforementioned periods, whichever may be applicable, the Association shall be entitled, without prejudice to any other rights which it may have in terms of this Constitution and/or at law, to impose a Penalty Levies payable by the Member to the Association in addition to the Ordinary Levies payable by the Member to the Association. The Penalty Levies shall be calculated in accordance with clause 9.3 and shall be payable by the Member to the Association in monthly instalments, monthly in advance until completion of construction of the Dwelling and outbuildings in respect of his Erf.

- 9.3. The Penalty Levies in addition to Ordinary Levies payable by a Member to the Association in respect of an Erf shall be calculated as follows:

MONTHS SINCE NON-COMPLIANCE TO EITHER OF THE CONDITIONS CONTAINED IN CLAUSE 9:	PENALTY LEVIES PAYABLE PER MONTH TO THE ASSOCIATION:
1-12 months	Ordinary Levies plus Penalty Levies calculated at 100% of the Ordinary Levies
13-24 months	Ordinary Levies plus Penalty Levies calculated at 200% of the Ordinary Levies
25 and more months	Ordinary Levies plus Penalty Levies calculated at 300% of Ordinary Levies

- 9.4. The aforesaid obligations shall apply to the Sub-developers. Sub-developers shall have an obligation to commence and complete construction, within the aforesaid timeframes and shall be liable to pay the Penalty Levies to the Association in the event of non-compliance.
- 9.5. The foregoing obligations shall not apply to the Developer. No Penalty Levies will be payable by the Developer to the Association.
- 9.6. The foregoing obligations shall not apply to the Owner of the Agricultural Erf, the Owner of the Manor House, and to the Owner of the Neighbouring Land, if incorporated into the Development by the Developer in its discretion. No Penalty levies will be payable by the Owners of the Agricultural Erf, the Manor House and the Neighbouring Land to the Association, and the said Owners will have no obligation to build within the aforesaid timeframes.

10. DESIGN GUIDELINES AND THE BUILDERS CODE OF CONDUCT

- 10.1. The Developer shall formulate and issue Design Guidelines in respect of the Development and may for the duration of the Development Period amend the Design Guidelines from time to time. After the Development Period, the Design Guidelines may be added to, amended, substituted, or repealed from time to time by a Board resolution, subject to the directions given or restrictions imposed by the Members at General Meetings.
- 10.2. The Design Guidelines may include provisions governing:
- 10.2.1. the architectural design, standard and guidelines and aesthetic requirements for buildings and improvements on Erven and in respect of the Schemes;
 - 10.2.2. requirements for buildings, improvements, and structures to be constructed on Erven and alterations thereto, including the colours to be used on the exterior;
 - 10.2.3. specifications as to siting and coverage in respect of the buildings;
 - 10.2.4. provisions relating to the maintenance of buildings and Erven; and
 - 10.2.5. generally, the approval process for building activities and landscaping within the Development.
- 10.3. The Developer shall formulate the Builders Code of Conduct in respect of the Development and may for the duration of the Development Period amend the Builders Code of Conduct from time to time. After the Development Period, the Builders Code of Conduct may be added to, amended, substituted, or repealed from time to time by a resolution of the Board, subject to the directions given or restrictions imposed by the Members at General Meetings. Members must ensure that their building contractors comply with the Builders Code of Conduct in respect of all construction activities in the Estate.

10.4. The Board shall have the power to:

- 10.4.1. administer and enforce the Design Guidelines and the Builders Code of Conduct;
- 10.4.2. perform such acts as are necessary to accomplish the purposes expressed or implied in this Constitution, including but not limited to:
 - 10.4.2.1. appointing a design review committee with such powers and duties as may be delegated by the Board;
 - 10.4.2.2. appointing an Architect/s with such powers and duties as may be delegated by the Board;
- 10.4.3. examine and approval building plans for the construction of buildings and improvements;
- 10.4.4. evaluate landscaping proposals; and
- 10.4.5. recover fees, including professional fees and charges and costs from Members to consider applications and buildings plans and to consult with professionals.

11. CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS

- 11.1. No Member may construct any building, improvement or structure on an Erf or remove any building, improvement, or structure from an Erf without the prior written consent of the Board and subject to the approval of the building plans by the Board and the Municipality, if applicable.
- 11.2. All buildings and improvements constructed on an Erf shall be of approved Design and of sound construction and shall comply with the provisions of the Design Guidelines.
- 11.3. To obtain the written approval of the Board in terms of clause 12.1 above a Member shall apply to the Board in writing. The Member must where applicable submit a full set of the proposed buildings plans and such further documentation and information as may be required to the Board or to the Architect.
- 11.4. After approval of the building plans by the Board, the Member must submit the building plans to the Municipality for approval. No Member shall submit any building plans to the Municipality without prior approval of the building plans by the Board.
- 11.5. Having obtained the approval of the Municipality, the Member shall comply with all conditions and standards imposed by the Municipality, the conditions imposed by the Board and the provisions of the Design Guidelines, the Builders Code of Conduct and the Estate Rules when constructing the buildings, improvements, or structures on Erven or when making alterations to existing buildings, improvements, or structures.
- 11.6. No Member may undertake any planting, landscaping, or gardening activities on any Erf, save to the extent permitted in the Design Guidelines and the Estate Rules.
- 11.7. The centre line of any common boundary wall between any of the Erven, will be the common boundary between the relevant Erven and must be split 50/50 between the adjacent Erven. The common boundary wall must be constructed by the Owner who first commences with construction of a Dwelling on his Erf, and he must be reimbursed 50% (fifty percent) of the construction costs, excluding plastering and painting if not done by him on both sides of the common boundary wall, by the Owner who commences afterwards with construction of his Dwelling on his Erf.
- 11.8. Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period.

12. ESTATE RULES

- 12.1. The Developer may formulate and issue the Estate Rules for the Association and may for the duration of the Development Period in its sole discretion amend the Estate Rules from time to time. After the Development Period, the Board may formulate and issue and amend the Estate Rules from time to time, subject to the directions given or restrictions imposed by the Members at General Meetings of the Association and to this Constitution.
- 12.2. The Estate Rules may include provisions in respect of:
- 12.2.1. the installation, operation, and maintenance of irrigation in respect of the Common Property;
 - 12.2.2. the control and conduct of persons using the Common Property or present in the Development;
 - 12.2.3. the use of roads, infrastructure, Services, amenities and facilities in the Common Property and restrictions on the use and enjoyment thereof, including the right to charge a reasonable fee for the use of the amenities and facilities;
 - 12.2.4. the management and control of the Development, including security and access control;
 - 12.2.5. the use and enjoyment of the Common Property (or any parts thereof);
 - 12.2.6. the preservation of the natural environment within the Development;
 - 12.2.7. the pedestrian and vehicular traffic, including parking, within the Development;
 - 12.2.8. the conduct of any Member, Occupant, or Invitee in the Development;
 - 12.2.9. the control and conduct of persons for the prevention of nuisance of any nature to any Member, or Occupant;
 - 12.2.10. the use and enjoyment of their Erven and Dwellings and restrictions on the use and enjoyment thereof;
 - 12.2.11. the storage of flammable and other harmful substances as provided for in the H&S Legislation;
 - 12.2.12. the sale, letting and occupation of Erven and Dwellings and restrictions in respect thereof;
 - 12.2.13. the conduct of any business within the Development;
 - 12.2.14. the conduct of estate agents, service providers and employees, workers, and contractors;
 - 12.2.15. the keeping of pets and to control, restrict and prohibit the keeping of pets and to restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
 - 12.2.16. Design Guidelines in respect of buildings, improvements, and structures within the Development;

- 12.2.17. the nature, content, and design of gardens and landscaped areas within the Development;
- 12.2.18. refuse disposal and prohibition of littering;
- 12.2.19. the enforcement of the provisions of the Estate Rules;
- 12.2.20. the amounts of penalties payable by an Owner, Occupant or Invitee for contravening or failing to comply with any of the provisions of the Estate Rules or this Constitution;

and generally, any other provisions in the furtherance and promotion of any of the objectives of the Association and the advancement of the interests of the Members.

- 12.3. The provisions of the Estate Rules and the duties of an Owner in relation to the use and enjoyment of his Erf, Dwelling and the Common Property shall be binding on all the Owners and Occupants of Erven in the Development.
- 12.4. The Estate Rules shall apply to all tenants and Occupants of Erven. Tenants and other Occupants of Erven shall be obliged to comply with the provisions of the Estate Rules notwithstanding any provision to the contrary contained in, or the absence of provisions, in any lease or any grant of rights of occupancy.
- 12.5. A Member must take all reasonable steps to ensure compliance with the Estate Rules by the Occupants of his Erf and by the Invitees to his Erf. A Member shall be liable and accountable for the acts or omissions of all persons occupying or having access to his Erf and to the Development, whether lawfully or unlawfully.

13. BUDGET AND LEVIES

- 13.1. The Board shall establish and maintain a fund for the purpose of meeting all the expected expenses of the Association for the control, management and administration of the Development, the Association and its affairs as provided for in this Constitution.
- 13.2. The Board shall in consultation with the Managing Agent formulate a Budget and a strategic plan and any amendments thereto for each Financial Year of the Association. The Budget shall be submitted to the Members of the Association for consideration at the Annual General Meeting. The Board must perform a mid-term budget review and may make amendments to the yearly budget if necessitated by relevant circumstances. These amendments need no approval by the Annual General Meeting.
- 13.3. The Board shall, by making a resolution to such effect, determine the Ordinary Levies due by the Members to the Association by apportioning the income required in terms of the Budget to the Members as Ordinary Levies equally per Erf in the Estate, but excluding the Erven owned by the Developer. The Developer shall not be liable to pay Ordinary Levies to the Association. The Sub-developers will be liable to pay Ordinary Levies to the Association.
- 13.4. The Ordinary Levies determined by a resolution of the Board in terms of clause 13.3 shall become effective or due by the Members from the date of passing of the resolution by the Board. The Ordinary Levies shall be paid by the Members to the Association in equal monthly instalments over a period of 12 (twelve) months, monthly in advance, on or before the 1st (first) day of every succeeding month of the Financial Year. Before the end of each Financial Year the Board may determine the Ordinary Levies due by Members to the Association for the interim period until the approval of the Budget for the ensuing Financial Year.

- 13.5. The Board may, from time to time, make Special Levies upon Members in respect of any expenditure not included in the Budget. Special Levies shall become due from the date of passing of the resolution by the Board and shall be apportioned to Members in accordance with clause 13.3 above. Special Levies shall be payable in one payment or in such instalments and at such time or times as the Board may think fit. The Board must notify Members in writing of the Special Levies payable by them and the reasons for imposing such Special Levies. The Developer shall not be liable to pay Special Levies to the Association. The Sub-developers will be liable to pay Special Levies to the Association.
- 13.6. Each Member and Occupant shall be liable to the Developer, the Association, the Municipality, or any duly appointed third-party service provider for the payment of all connection fees and charges levied from time to time in respect of services supplied to his or her Erf.
- 13.6.1. Each Member or Occupant shall pay the applicable electricity connection fee to the Developer, the Association, or an approved electricity service provider, as the case may be.
- 13.6.2. Each Member or Occupant shall be liable for all electricity charges incurred in respect of his or her Erf, calculated in accordance with the metered consumption of electricity supplied to that Erf.
- 13.6.3. The Association, or its duly appointed electricity metering service provider, shall be entitled, subject to prior written notice and compliance with all applicable legislation, to suspend or disconnect the supply of electricity to any Erf in the event of non-payment of electricity charges.
- 13.6.4. Each Member or Occupant shall pay the applicable water connection fee to the Municipality or the relevant authorised water service provider.
- 13.6.5. Each Member or Occupant shall be liable for all water charges incurred in respect of his or her Erf, calculated in accordance with the metered consumption of water supplied to that Erf.
- 13.7. Members and Occupants shall be liable for entrance fees, membership fees and/or other charges payable to the service providers in respect of the use of the Estate Facilities or part thereof, as may be provided from time to time.
- 13.8. Upon taking transfer of an Erf on date of registration in the Deeds Registry, the new Member shall become liable to the Association for the payment of the Levies and service charges due in respect of the Erf.
- 13.9. If a Member fails to pay the Levies and other amounts due to the Association on the due date, the Association may institute an action for the recovery thereof in any competent court or apply to CSOS for an appropriate order. The Association may hand-over any debt due to the Association to the Association's Attorneys for collection if the debt is outstanding for more than 10 (ten) days after written notice by the Board or the Managing Agent.
- 13.10. A Member shall be liable for payment of interest on arrear Levies and other amounts due, calculated at the Prime Rate plus 5% per annum. Interest calculated at the determined rate shall be recoverable from the date on which the amount is due and payable to the date of payment, both days inclusive.

- 13.11. A Member shall be liable for and shall pay all costs, including all legal costs on the scale as between attorney and own client together with collection commission, tracing agent fee, advocate's fees, administrative costs and all other expenses and charges incurred by the Association in obtaining recovery of arrear Levies or other amounts due to the Association, or in enforcing compliance with the provisions of this Constitution, the Design Guidelines, the Builders Code of Conduct and the Estate Rules. Such costs and expenses may be added to the Member's levy account and recovered in the same manner as applies to arrear Levies together with interest calculated at the Prime Rate plus 5% per annum.
- 13.12. Monthly Levy statements will be circulated to the Members of the Association via e-mail. A Member will still be liable to effect monthly payments of the Levies irrespective whether the statement was actually received and/or circulated by the Association to such Member.
- 13.13. All Levies shall be paid monthly in advance by bank debit order on the first day of each and every month to the bank account of the Association or by any other method as determined by the Board or the Managing Agent, from time to time.
- 13.14. Where payment of any debt due by a Member to the Association is made by way of a debit order, and if such debit order is unpaid for any reason whatsoever, the Board shall be entitled, in their sole discretion, to charge an administration charge in respect of each such occurrence in an amount to be determined by the Board from time to time.
- 13.15. Where payment of any debt due by a Member is made by way of cash deposited to the Association's bank account, the Board shall be entitled to recover any bank charges made by the bank relating to the deposit from the Member.
- 13.16. All moneys received from a Member towards a levy account shall be apportioned firstly towards interest, then towards legal fees and administration charges and then towards Levies and other service fees or charges.
- 13.17. No Member may offset any amount allegedly due to him by the Association, or by the Developer against the amount of Levies due to or paid to the Association in terms of this Constitution.
- 13.18. Every Owner of an Erf within the Development shall, subject to the further provisions of this clause, be liable to pay the Association a Stabilisation Levies equal to 1,5% (one comma five percent) of the full open market value of his Erf upon the Alienation of the Erf or upon a Deemed Alienation, but subject to the maximum amount provided for in clause 13.21. For purposes hereof:
- 13.18.1. any form of disposal or transfer of a shareholder's or members' interest in a company or close corporation or beneficial interest in another entity holding ownership of an Erf (whether in part or in full) and any alienation of a registrable right of occupation, habitation or usufruct over an Erf shall be subject to the Stabilisation Levies;
- 13.18.2. "Full Open Market Value" means the price at which the Erf, the share in the Erf, or the shareholder's interest or member's interest or beneficial interest (as the case may be) is sold, alienated, transferred, or otherwise disposed of; provided that where in the opinion of the Board any such transaction is not at arm's-length or amounts to a donation, "full open market value" shall mean the actual market value thereof as determined by the Auditors;
- 13.18.3. the Auditors shall make the determination as contemplated in clause 13.18.2 on due consideration of the then prevailing property market conditions and the prices at which similar Erven were sold during the 12 (twelve) month period prior to the Alienation of the Erf being valued; and

- 13.18.4. the obligation to pay the Stabilisation Levies shall be deemed to have accrued prior to transfer of ownership of an Erf and accordingly transfer shall be without prejudice to the Association's right to recover such Stabilisation Levies, and interest thereon, after transfer of the Erf from the transferor.
- 13.19. The Stabilisation Levies equal referred to in clause 13.18 above is a liability due to the Association by the Owner or transferor of the Erf and must be paid to the Association on or before the date of registration of the transfer of ownership of the Erf in the name of the transferee in the Deeds Registry.
- 13.20. The Stabilisation Levies shall be payable and clauses 13.18 and 13.19 shall be applied *mutatis mutandis* in respect of:
- 13.20.1. registration of transfer of ownership of a share in an Erf in favour of a transferee;
- 13.20.2. a Deemed Alienation upon the disposal or transfer of a shareholder's or members interest in a company or close corporation or beneficial interest in another entity holding ownership of an Erf;
- 13.20.3. registration of a right of occupation, habitation or usufruct over an Erf.
- 13.21. The maximum amount of the Stabilisation Levies payable per transaction shall be R350 000.00 (Three Hundred and Fifty Thousand Rand), and the aforesaid maximum amount will increase annually on the 1st of March every year in accordance with the prevailing Western Cape Headline Consumer Price Index rate, with the first increase being on the 1st of March 2026.
- 13.22. No Stabilisation Levies shall be payable by the Developer to the Association in respect of the first transfer of an Erf by the Developer. No Stabilisation Levies shall be payable by a Sub-developer to the Association in respect of the first transfer of an Erf by such Sub-developer, unless the Sub-developer is expressly liable for the Stabilisation Levies in terms of the deed of sale concluded with the Developer. No Stabilisation Levies shall be payable in respect of the transfer of an Erf, or any share or interest therein, from a deceased estate of a Member to his or her surviving spouse.
- 13.23. The Stabilisation Levies shall only be used in furtherance of the objectives of the Association and to defray expenses for which the Association is liable. The levy stabilisation fund shall be used exclusively to meet the capital expenditure requirements of the Association (including the necessary expenditure in relation to maintenance and upgrades of the Common Property, Estate Facilities, Services and Agricultural Erf), and therefore to contain escalation in the Ordinary Levies payable by Members. The levies stabilisation fund shall not be used for operating expenses of the Association, unless the Members so directs the Board by Special Resolution, adopted at a General Meeting.
- 13.24. The Owners of the Agricultural Land, the Manor House and, if applicable, the Neighbouring Land, shall be liable to pay Levies, Special Levies, and Stabilisation Levies to the Association in accordance with the aforesaid provisions.

14. THE BOARD

- 14.1. The Board of the Association shall comprise of a minimum of 3 (three) Trustees and a maximum of 7 (seven) Trustees elected or appointed by the Members. For the duration of the Development Period, the Developer may appoint 2 (two) of the Trustees (the Developer Trustees). The Developer Trustees shall continue to hold office for the duration of the Development Period, provided that the Developer shall at any time be entitled to remove any Developer Trustee and to appoint a new Developer Trustee. For the duration of the Development Period, the Developer Trustees shall have a right to veto any resolution of the Board.

- 14.2. During the Development Period and at the first Annual General Meeting, the Trustees referred to in clause 14.1 above, shall be elected by the Members, present in person and by proxy, and the Developer shall announce the Developer Trustees. A Developer Trustee shall be the Chairperson during the Development Period and thereafter the Board shall appoint such a Chairperson.
- 14.3. After the Development Period, the Trustees shall be elected by the Members, present in person and by proxy, at the Annual General Meeting.
- 14.4. A Trustee shall by accepting his appointment to office be deemed to have agreed to be bound by all the provisions of this Constitution.
- 14.5. The Developer, during the Development Period, and thereafter the Board, may appoint a Professional Trustee to serve as a Trustee on the Board for a predetermined period of time, as and when the Board is of the opinion that the need for such a Professional Trustee has occurred. The Professional Trustee must be familiar with the operation and management of Firwoods River Estate. The Professional Trustee may attend Board meetings but will only serve in an advisory capacity and will have no voting rights whatsoever. The Developer or the Board, as the case may be, must agree on the fee structure of the Professional Trustee prior to his appointment and is subject to the allowance for professional fees in the Budget of the Association.

15. FIDUCIARY RELATIONSHIP

- 15.1. Each Trustee shall stand in a fiduciary relationship to the Association. A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute with the Association by virtue of any interest he may have therein.
- 15.2. A Trustee is required to:
 - 15.2.1. perform the functions of office in good faith, honesty and in a transparent manner; and
 - 15.2.2. at all times act in the best interest of the Association, and in such a way that the credibility and integrity of the Association and/or the Development is not compromised in any way.
- 15.3. When nominated, a Trustee shall simultaneously with his nomination, declare in writing to the Board any financial interest he or his immediate family or business associates may have in respect of any contract, deliberations, or other transactions with the Association.
- 15.4. Each Trustee must declare to the Board any gifts, which he or his immediate family might be offered, or receive, from any business and or person involved or endeavouring to become involved, in any contract with financial gain with the Association.
- 15.5. A Trustee may not, without the permission of the Board, disclose any privileged or confidential information to any person not authorised or entitled to receive same.
- 15.6. A Trustee may not, except through the Chairperson of the Trustees and/or the Board:
 - 15.6.1. interfere in the management or administration of the Development, unless mandated by the Board; or
 - 15.6.2. give or purport to give any instruction to any employee other than the Managing Agent; or

- 15.6.3. obstruct or attempt to obstruct the Managing Agent or any of the employees of the Association in the implementation of any decision or resolution of the Board; or
- 15.6.4. encourage or participate in any conduct which would cause or contribute to maladministration by the Board.
- 15.7. The Board may at any time and from time to time investigate and make a finding in respect of any alleged breach by a Trustee(s) of a provision of this Constitution, the Design Guidelines, the Builders Code of Conduct, or the Estate Rules or establish a special committee to investigate and make appropriate recommendations to the Board in this respect.
- 15.8. Should the Board find that a Trustee is in breach of a provision of this Constitution, the Design Guidelines, the Builders Code of Conduct, or the Estate Rules or has been found to be negligent in any of the duties assigned to him in his capacity as a Trustee or has reasonable grounds to suspect that a Trustee was or is involved in any form of theft or fraud regarding any funds of the Association, the Board may:
 - 15.8.1. issue a formal warning to the Trustee concerned; or
 - 15.8.2. reprimand the Trustee; or
 - 15.8.3. suspend the Trustee; or
 - 15.8.4. suspend the Trustee pending the outcome of a forensic audit in the instance of any suspected theft or fraud; or
 - 15.8.5. request the Trustee to resign; or
 - 15.8.6. request the Association to remove the Trustee from the Board.
- 15.9. The aforesaid provisions shall not apply to the Developer or the Developer Trustees for the duration of the Development Period.

16. CHAIRPERSON

- 16.1. For the duration of the Development Period, the Chairperson shall be a Developer Trustee. After the Development Period, the Board shall within 14 (fourteen) days of each Annual General Meeting, appoint a Chairperson, who shall hold office until the next Annual General Meeting. The office of Chairperson shall automatically be vacated by a Trustee holding such office upon his ceasing to be a Trustee for any reason, in which event the Board shall immediately appoint a new Chairperson.
- 16.2. Except as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Board and at all General Meetings and, in the event of the Chairperson not being present within 15 (fifteen) minutes of the scheduled meeting time or in the event of his inability or unwillingness to act, any one of the remaining Trustees shall preside in his stead or the Members shall appoint another Chairperson for the purpose of the General Meeting.
- 16.3. Except as otherwise provided in this Constitution, the proceedings at any Board meeting and General Meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 16.4. If any Chairperson vacates his office as Chairperson or no longer continues in office for any reason, the Board shall meet as soon as reasonably possible to appoint one of their number as Chairperson who shall hold office as such for the remainder of the period of office of the first mentioned Chairperson.

16.5. If the Chairperson vacates the chair during the course of a Board meeting or is not present or is, for any other reason, unable to preside at any meeting, the Board present at such meeting shall choose another Chairperson for such meeting.

16.6. If the Chairperson vacates the chair during the course of a General Meeting or is not present or is, for any other reason, unable to preside at any meeting, and no other Trustee is willing to act as Chairperson, the Members present at such General Meeting in person or by proxy shall choose another Chairperson for such meeting.

17. REMOVAL AND ROTATION OF TRUSTEES

17.1. Subject to clause 17.2 each Trustee shall hold office as such from the date of his appointment until the next Annual General Meeting following his appointment, at which Annual General Meeting each Trustee shall be deemed to have retired from office but shall be eligible for re-election as a Trustee by the Members at the Annual General Meeting.

17.2. A Trustee shall be deemed to have vacated his office as such:

17.2.1. should he become disqualified to act as a director of a company in terms of the Companies Act, 2008; or

17.2.2. should he be removed from office by a resolution of the Board or by an Ordinary Resolution of the Members; or

17.2.3. should his estate be sequestrated whether provisionally or finally, or upon his surrendering his estate, or making any arrangement or compromise with his creditors; or

17.2.4. on is conviction of any offence involving dishonesty; or

17.2.5. on the commission by him of any act of insolvency; or

17.2.6. should he become of unsound mind or being found to be a lunatic or mentally handicapped; or

17.2.7. on his resignation from such office in writing; or

17.2.8. on his death; or

17.2.9. if he is in arrears with the Levies or any other amounts due to the Association for 2 (two) months or more; or

17.2.10. upon his failure to comply with his fiduciary duties as Trustee or acting in conflict with the interest of the Association.

17.3. Upon any vacancy occurring in the Board prior to the next Annual General Meeting, the Board shall appoint a person to hold office until the conclusion of the next Annual General Meeting following his appointment. The Developer may at any time appoint a new Developer Trustee for the duration of the Development Period.

17.4. The Board may appoint, for a specified period, a person qualified to serve as a Trustee as a replacement for any Trustee who is absent or otherwise unable to perform the duties of that office.

- 17.5. Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 17.2, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the minutes of a meeting of the Trustees or of the Association or in terms of a resolution.

18. PROCEEDINGS OF THE TRUSTEES

- 18.1. The Board 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.
- 18.2. The Chairperson may at any time convene a Board meeting by giving to the other Trustees and to the Managing Agent not less than 7 (seven) days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 18.3. After the Development Period, a Trustee may, provided he has the support in writing of 1 (one) other Trustee, at any time convene a Board meeting by giving to the other Trustees and the Managing Agent not less than 7 (seven) days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 18.4. It is sufficient if the notice of the meeting is transmitted electronically directly to the Trustees and to the Managing Agent in a manner and form that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 18.5. The quorum necessary for the holding of all Board meetings shall be 2 (two) if there are 3 (three) Trustees in office or 3 (three) if there are 4 (four) or 5 (five) Trustees in office or 4 (four) if there are 6 (six) or 7 (seven) Trustees in office, present personally. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following Business Day and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum, provided that at least 2 (two) Trustees shall be present personally.
- 18.6. Any resolution of the Board shall be carried by a simple majority of all votes cast and each Trustee shall have 1 (one) vote. In the case of an equality of votes for or against a resolution, the Chairperson shall have a second casting vote.
- 18.7. A resolution signed by all the Trustees present for the time being in South Africa shall be valid in all respects as if it had been duly passed at a Board meeting duly convened.
- 18.8. The Board shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 18.9. The Chairperson may make arrangements for attendance of the Board meeting by Skype, Zoom, Microsoft Teams or by any other method, provided that the method of attendance:
- 18.9.1. must be accessible to all Trustees and persons who are entitled to attend the meeting;
 - 18.9.2. enables all persons participating in the meeting to communicate with each other during the meeting; and
 - 18.9.3. enables the Chairperson to confirm, with reasonable certainty, the identity of the participants.

- 18.10. A Trustee who attends a meeting by any method provided in clause 18.9 is deemed to be personally present at the meeting.
- 18.11. The Board must ensure that minutes are taken of every Board meeting, although not necessarily word for word. The minutes must be reduced to writing within 15 (fifteen) days after the Board meeting and the draft minutes must be delivered to the Trustees. The minutes must be approved by the Board and must then be certified as correct by the Chairperson of the meeting. The Board must keep all minutes of Board meetings in perpetuity. On the written application of a Member, the Board must make minutes of their proceedings available for inspection by or on behalf of the Member during reasonable hours on Business Days and/or furnish them with the copies as may be required, against payment of the required charges.
- 18.12. All resolutions recorded in the minutes of any Board 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 Board resolution 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 Trustees.
- 18.13. No agreement concluded on behalf of the Association shall be valid and binding unless it is signed by the Chairperson or by a Trustee or representative of the Managing Agent specifically appointed as authorised signatory in terms of a Board resolution.
- 18.14. Trustees shall be entitled to be repaid all reasonable expenses incurred by them in or about the performance of their duties as Trustees or as Chairperson in good faith.
- 18.15. Unless otherwise determined by an Ordinary Resolution, Trustees shall not be entitled to any other remuneration, fees, or salary in respect of the performance of such duties.

19. FUNCTIONS, POWERS, AND DUTIES OF THE TRUSTEES

- 19.1. Subject to the provisions of this Constitution and subject to any directions given or restrictions which may be imposed by the Members by Ordinary Resolution at a General Meeting, the Board shall perform the functions, powers, and duties of the Association.
- 19.2. Without detracting from the scope of the additional duties specified in this Constitution, the Board shall perform the functions referred to in clause 5.2 of this Constitution.
- 19.3. The Board shall do all things reasonably necessary for the control, management, and administration of the Development in terms of the powers conferred upon the Association by clause 5.3 of this Constitution.
- 19.4. Without in any way limiting the powers granted, the powers of the Board shall include:
- 19.4.1. to issue instructions to Members in accordance with the operational EMP, and to ensure that such plan is at all times complied with;
 - 19.4.2. to issue Design Guidelines to Members;
 - 19.4.3. to delegate to one or more Trustees such of their powers and duties as they deem fit and at any time to revoke such delegation;
 - 19.4.4. to delegate the management of the affairs and the business of the Association, in whole or in part, to the Managing Agent;
 - 19.4.5. to form committees for the performance of designated tasks on behalf of the Trustees;

- 19.4.6. where the Association is owner of the Agricultural Erf, to contract with farmers for the farming and cultivation thereof;

and generally, any such power, reasonably necessary to fulfil the objectives of the Association.

- 19.5. The Board shall do all things reasonably necessary for the enforcement of this Constitution, the Design Guidelines, the Builders Code of Conduct, and the Estate Rules. The Board may, should they so decide, investigate any suspected or alleged breach of this Constitution, the Design Guidelines, the Builders Code of Conduct or the Estate Rules by any Member, Occupant, or Invitee in such reasonable manner as they shall decide from time to time.

20. MANAGING AGENT

- 20.1. The Developer shall be entitled to appoint a Managing Agent for the Association, during the Development Period. After the Development Period and if an existing Managing Agent's appointment is terminated, the Board shall be entitled to appoint a Managing Agent. The Board shall determine the fees or remuneration to be paid by the Association to the Managing Agent and all the other terms and conditions of the appointment of the Managing Agent.
- 20.2. It is contemplated that the affairs of the Association will at all times be entrusted in whole or in part to a professional Managing Agent with appropriate executive powers so as to conform to the requirements of good corporate governance.
- 20.3. Subject to the provisions of this Constitution and the terms of its appointment, the Managing Agent shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Board and may exercise all such powers of the Association and do all acts on behalf of the Association itself.

21. GENERAL MEETING OF THE ASSOCIATION

- 21.1. The Developer must convene the first Annual General Meeting within two years of the establishment of the Association. For the duration of the Development Period, a representative of the Developer or a Developer Trustee shall be entitled to act as the Chairperson of the Association.
- 21.2. The Association shall within 6 (Six) months after the end of its Financial Year hold a General Meeting as its Annual General Meeting. At least one Annual General Meeting must be held per year. The Annual General Meeting shall be held on such date and at such time and place as the Board shall decide from time to time.
- 21.3. All General Meetings other than Annual General Meetings shall be called Special General Meetings. Special General Meetings shall be held on such date and at such time and place as the Board shall decide from time to time. The Board may at any time convene a Special General Meeting. The Board must convene a Special General Meeting upon receipt of a request in writing received from Members holding at least 1/3 (one third) of the votes of the Members. The agenda of a Special General Meeting shall be limited to those matters included in the notice of the Special General Meeting.
- 21.4. The following matters shall be dealt with at every Annual General Meeting:
- 21.4.1. confirm proxies, nominees and other persons representing Members;
- 21.4.2. determine that there is a quorum;
- 21.4.3. elect a person to chair the meeting, if necessary;
- 21.4.4. approve the agenda of the meeting;

- 21.4.5. the approval of the minutes of the previous Annual General Meeting of the Association;
- 21.4.6. deal with matters arising from these minutes and any unfinished business;
- 21.4.7. the consideration of the report by the Board or the Managing Agent;
- 21.4.8. the consideration of the financial statements of the Association for the preceding Financial Year;
- 21.4.9. the consideration and approval, with or without amendment, of the Budget as presented by the Board;
- 21.4.10. to consider and approve insurance for the Association;
- 21.4.11. the election of the Trustees;
- 21.4.12. any other business pertinent to such meeting, including any Ordinary Resolution or Special Resolution proposed for adoption;
- 21.4.13. the consideration of any matters raised at the meeting, including any resolution proposed for adoption by the meeting and the voting upon any such resolution;
- 21.4.14. the giving of directions to or the imposing of restrictions on the Board;
- 21.4.15. dissolve the meeting.

22. PROCEDURE AT GENERAL MEETINGS

- 22.1. The Chairperson shall preside as such at all General Meetings provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then one of the Trustees shall act as Chairperson of the General Meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such General Meeting. If no Trustee is able to act as Chairperson, Members present at such General Meeting shall vote to appoint a Chairperson for the General Meeting.
- 22.2. The Chairperson may, with the consent of any meeting at which a quorum is present (and if so directed by the General Meeting), adjourn the meeting from time to time and from place to place. No notice needs to be given of the adjourned General Meeting save for an announcement at the meeting of the date, time, and venue of the adjourned General Meeting, unless the General Meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as the original General Meeting.
- 22.3. No business shall be transacted at any adjourned General Meeting other than the business that might have been transacted at the meeting from which the adjournment took place.
- 22.4. Save as otherwise provided in this Constitution, the proceedings at any General Meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

23. NOTICES OF GENERAL MEETINGS

- 23.1. An Annual General Meeting or Special General Meeting shall be called by not less than 14 (fourteen) Clear Days' notice in writing. The notice of an Annual General Meeting shall be given to all Members (excluding the Owners of Units) and shall be exclusive of the day on which it is posted or e-mailed and of the day for which it is given, and shall specify the place, the day, and the hour of the meeting.

- 23.2. A General Meeting called by shorter notice than provided for in clause 23.1 shall be deemed to have been duly called if it so agreed by an Ordinary Resolution of the Members having the right to attend and to vote at the General Meeting.
- 23.3. The notice of the General Meeting shall specify the date, time and place of the meeting and the business of the meeting. If a Special Resolution is proposed for adoption, the notice must specify the Special Resolution proposed for adoption.
- 23.4. The notice of a General Meeting may be delivered by hand, prepaid post or may be transmitted by e-mail to the e-mail address of the Member.
- 23.5. The accidental omission to give notice of a General Meeting or of any resolution or to transmit any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings of any General Meeting or any resolution passed at any General Meeting. Furthermore, the non-receipt of notice of a meeting, by any Member entitled to receive such notice, shall not invalidate the proceedings at that General Meeting. It is the responsibility of each Member to ensure that he has received all the documents relevant to the General Meeting to be held.

24. REPRESENTATION AND PROXIES AT GENERAL MEETINGS

- 24.1. At every General Meeting, an Owner of an Erf may be present in person or be represented by a proxy or other authorised representative, who need not be a Member of the Association.
- 24.2. A Member may be represented at a General Meeting:
 - 24.2.1. in the case of an individual Owner or joint Owner of an Erf, by any one of the registered owners; or
 - 24.2.2. in the case of the Member being a Company, by a proxy being a director or shareholder, duly authorised thereto by a resolution of the directors; or
 - 24.2.3. in the case of the Member being a Close Corporation, by a proxy being a member or member trustee, duly authorised thereto by a resolution of the members; or
 - 24.2.4. in the case of the Member being a Trust, by a proxy being a trustee, duly authorised thereto by a resolution of the trustees; or
 - 24.2.5. by a proxy or other representative recognised in law.
- 24.3. The proxy together with the original or a certified copy of a resolution, power of attorney or other authority under which it is signed, must be lodged with the Board or the Managing Agent at least 24 (twenty four) hours before the commencement of the General Meeting or adjourned General Meeting concerned.
- 24.4. Notwithstanding the provisions of clause 24.3, the Chairperson of the meeting may agree to accept a proxy tendered at any time to him before the commencement of the General Meeting or during the General Meeting. All such documents must be available for inspection by any person at the meeting concerned.
- 24.5. The document appointing a proxy will only be valid for the specific General Meeting and for the adjournment thereof.
- 24.6. The document appointing a proxy shall be in such form that is acceptable to the Chairperson of the General Meeting or adjourned General Meeting in respect of which it is tendered and the decision of the Chairperson as to what is or is not acceptable will be binding on all the Members.

- 24.7. A vote given in accordance with the terms of a document appointing a proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Board or the Managing Agent at least 1 (one) hour before the time fixed for the holding of the meeting.
- 24.8. At every General Meeting the Developer may for the duration of the Development Period be represented by a Developer Trustee, who may be present in person or represented by a proxy or other authorised representative at the General Meeting.
- 24.9. The Board may make arrangements for attendance at a General Meeting by Skype, Zoom, Microsoft Teams or by any other method, provided that the method of attendance:
- 24.9.1. must be accessible to all Members and persons who are entitled to attend the meeting;
 - 24.9.2. enables all persons participating in the meeting to communicate with each other during the meeting; and
 - 24.9.3. enables the Chairperson to confirm, with reasonable certainty, the identity of the participants.
- 24.10. A person who attends a meeting by any method provided in clause 24.9 is deemed to be personally present at the meeting.

25. QUORUM

- 25.1. No business shall be transacted at any General Meeting unless a quorum of Members is present in person or by proxy when the General Meeting proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any General Meeting shall be at least 30% (thirty) percent of the votes of the Members, present in person or by proxy.
- 25.2. If, within 15 (fifteen) minutes after the time appointed for the commencement of the General Meeting, a quorum is not present, the General Meeting shall stand adjourned to the same day in the next week, at the same place and time or to such other day, time and place as the Chairperson may determine. If, at such adjourned General Meeting, a quorum is not present, the Members then present in person or by proxy shall constitute a quorum, provided that, where the meeting was called at the request of the Members in terms of clause 21.3, the meeting shall be dissolved.

26. ADJOURNMENT BY CHAIRPERSON

- 26.1. The Chairperson of a General Meeting may adjourn the meeting from time to time and from place to place if the meeting approves of such adjournment by Ordinary Resolution. In the event of such an adjournment:
- 26.1.1. No notice needs to be given of the adjourned meeting save for an announcement at the original meeting of the date, time, and venue of the adjourned meeting, unless the meeting is to be adjourned for 30 (thirty) days or more in which event notice is to be given in the same manner as from the original meeting;
 - 26.1.2. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

27. VOTING AT GENERAL MEETINGS

- 27.1. Subject to the provision of this Constitution, all resolutions at General Meetings shall be passed by Ordinary Resolution. At every General Meeting any Ordinary Resolution shall be carried on a simple majority of all the votes cast thereon. Any Special Resolution proposed for adoption at a General Meeting shall be carried by at least 75% (seventy five percent) of the votes cast on the resolution. An abstention shall not be counted as a vote for or against the resolution in question.
- 27.2. At every General Meeting every Member present in person or by proxy and entitled to vote shall have 1 (one) vote per Erf owned.
- 27.3. At every General Meeting and unless the Chairperson of the meeting otherwise directs or a poll is demanded by Ordinary Resolution, all voting shall be on a show of hands of the Members present in person or by proxy and entitled to vote. A poll shall be taken in such manner as the Chairperson directs and the value of the votes of the Members shall be as specified in clause 27.2.
- 27.4. Notwithstanding the provisions of clause 27.3 aforesaid, voting on any question of adjournment, shall be decided on a show of hands by an Ordinary Resolution.
- 27.5. Any Member who is in arrears with the Levies or any other amounts due to the Association for more than 1 (one) month, shall not be entitled to vote at a General Meeting, either in person or by proxy.
- 27.6. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
- 27.6.1. written notice of the revocation is received by the Association prior to the meeting concerned, or
- 27.6.2. the Chairperson agrees to accept written or oral notice of such revocation at the meeting.
- 27.7. No objection shall be raised to the admissibility of any vote except at the General Meeting or adjourned General Meeting at which the vote objected to, is cast and every vote not disallowed at such General Meeting will be valid for all purposes.
- 27.8. If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute must be determined by the Chairperson, whether or not observers have been appointed to count the votes, and his decision will be final and conclusive.
- 27.9. A declaration made in good faith by the Chairperson of a General Meeting to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed, as the case may be.
- 27.10. An Ordinary Resolution agreed to in writing by or on behalf of Members holding an ordinary majority of the votes of all the Members of the Association shall be as valid as if it had been passed at a duly convened General Meeting. A Special Resolution agreed to in writing by or on behalf of Members holding at least 75% (seventy five percent) of the votes of all the Members of the Association shall be as valid as if it had been passed at a duly convened General Meeting.

28. MINUTES OF GENERAL MEETINGS

- 28.1. The Board must ensure that minutes are taken of every General Meeting of the Association, although not necessarily word for word. The minutes must be reduced to writing within 30 (thirty) days after the General Meeting and the draft minutes must be sent to the Members. The minutes must be approved by the Members at the following General Meeting of the Association and must then be certified as correct by the Chairperson of the meeting. The Board must keep all minutes of General Meetings of the Association in perpetuity.
- 28.2. On the written application of a Member, the Board must make the minutes of General Meetings available for inspection by or on behalf of the applicant during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of the required charges.
- 28.3. All resolutions recorded in the minutes of General Meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of the Association shall be of any force or effect or shall be binding upon the Members or any of the Trustees, unless such resolution is competent within the powers of the Association.

29. RESTRICTION AGAINST TRANSFER

- 29.1. No Member shall Alienate or transfer an Erf unless the Association has granted its prior written consent to such Alienation or transfer. The written consent of the Association shall be issued by the Managing Agent, the Chairperson, or a Trustee, duly authorised acting on behalf of the Association.
- 29.2. The Association may withhold its written consent to the proposed Alienation or transfer of an Erf if:
- 29.2.1. Any Levies or other amounts due in respect of the Erf have not been paid or remains unpaid or inadequate provision has been made in respect of the payment thereof; or
- 29.2.2. Any building additions, alterations or improvements exist in respect the Erf, which have not been properly authorised in terms of this Constitution, the Design Guidelines or by the Municipality; or
- 29.2.3. If the Member is in material or substantial breach of this Constitution, the Design Guidelines, the Builders Code of Conduct, or the Estate Rules to an extent that reasonably justifies the withholding of such consent.
- 29.3. The provisions of this clause shall apply *mutatis mutandis* (with the necessary changes having been made) to any transfer of an undivided share in any Erf.
- 29.4. The Board shall ensure that no Member shall transfer an Erf unless:
- 29.4.1. the proposed transferee, has irrevocably bound itself in writing to become a Member of the Association, automatically against becoming the Owner of an Erf, and to observe this Constitution, the Design Guidelines, the Builders Code of Conduct, and the Estate Rules for the duration of his ownership of the Erf;
- 29.4.2. the Association has given its prior written consent to the transfer.

30. COMMON PROPERTY

- 30.1. The Association will take title to the Common Property, which Common Property will be transferred to the Association, free of counter value. Registration of the transfer of the Common Property will be done by the attorneys appointed by the Developer.

- 30.2. The Association shall be responsible for the control, repair, maintenance and administration of the Common Property and any buildings, improvements, structures, installations, and devices constructed on or contained in the Common Property (including but not limited to streetlights and parking) and for all the movable and immovable assets of the Association.
- 30.3. The Board shall control all services, landscaping, irrigation, and amenities in respect of the Common Property and shall also control access to and use of the Common Property.
- 30.4. The Association shall comply with all the conditions imposed by the Municipality relating to the conditions of establishment of the township comprising the Development and shall be solely responsible for any non-compliance with such conditions.
- 30.5. The Board may, subject to the directions given or restrictions imposed by an Ordinary Resolution of the Members:
- 30.5.1. let parts of the Common Property on terms shorter than ten (10) years;
- 30.5.2. construct improvements or structures on the Common Property or remove improvements or structures;
- 30.5.3. repair, maintain, upgrade, and provide services in respect of the Common Property; and
- 30.5.4. enter into agreements with service providers and/or other persons in respect of the Common Property.
- 30.6. No portion of the Common Property shall be alienated, sold, or let on a long-term lease for a period of 10 (ten) years or longer, or be otherwise disposed of, subdivided, mortgaged, or subjected to any servitudes or other rights to be registered in the Deeds Registry, save as specified in the conditions of approval without the authorisation of the Members by Special Resolution.
- 30.7. The Board may sink a borehole(s) on the Common Property, if so resolved. No Member or Occupier shall be entitled to sink or drill any boreholes on an Erf without the prior written consent of the Board.
- 30.8. The Board shall procure at the costs of the Association general public liability insurance in respect of Common Property. The amount of the general public liability insurance shall be determined by the Board or by the Members at the Annual General Meeting by Ordinary Resolution.
- 30.9. The Board shall procure at the cost of the Association such fidelity insurance as may be required from time to time in terms of the CSOS Act and as may be deemed necessary by the Board and/or as may be directed by the Members by Ordinary Resolution.
- 30.10. The Board may procure, at the cost of the Association such other insurance against such risks as may be determined by the Board or as may be directed by the Members by Ordinary Resolution.
- 31. RESPONSIBILITY FOR THE PROVISION OF SERVICES**
- 31.1. The responsibility for the Services shall pass from the Developer to the Association on the date of the registration of transfer of the Common Property from the Developer to the Association.

- 31.2. Subject to clause 31.3, the Association shall be responsible for the provision of, the repair, maintenance, upkeep, and proper control, operation, and administration of the Services and the bulk services accounts in respect of the Development and shall comply with the approvals and conditions of the Municipality and applicable by-laws and regulations.
- 31.3. The Members shall be responsible for the repair and maintenance of the service infrastructure in respect of their Erven and for the charges due for the provision of such services to them.
- 31.4. Members must install water-saving devices in toilets, bathrooms, and basins of their buildings. Members must comply with water restrictions or water saving measures introduced by the Municipality or by the Board from time to time. Consideration of the following water conservation measures must be given: Rainwater harvesting, grey water recycling and similar technical enhancements such as low flow shower heads, dual flush toilets and water-wise gardens.
- 31.5. The Developer, the Association or a service provider may purchase electricity in bulk from the Municipality and in turn resell electricity to residential consumers within the Development.
- 31.6. The Board shall be responsible for waste management in respect of the Development. Members must comply with waste minimization measures and recycling measures implemented by the Board from time to time.

32. BOOKS OF ACCOUNT AND FINANCIAL STATEMENTS

- 32.1. The Board shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association.
- 32.2. At each Annual General Meeting the Board shall lay before the Association financial statements for the immediately preceding Financial Year of the Association. Such financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Board.
- 32.3. The Board shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transaction, acts or operations to which they relate.
- 32.4. On the written application of a Member, the Board shall make all or any of the financial statements, books of account and records available for inspection by or on behalf of the Member during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of the required charges.
- 32.5. The Auditors shall be appointed by the Board from time to time. Once at least in every year, the accounts of the Association shall be examined, and the correctness of the financial statements shall be ascertained by the Auditors. The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards.

33. DEPOSIT AND INVESTMENT OF FUNDS

- 33.1. The Board shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered South African commercial bank in the name of the Association. Subject to any directions given or restrictions imposed by an Ordinary Resolution of the Members, such moneys shall only be withdrawn from the bank account for the purpose of payment of the expenses of the Association or for investment purposes.
- 33.2. Any funds of the Association not immediately required for disbursements may be invested in a savings account, money market account or similar account with any registered South African commercial bank or with a Financial Institution approved by the Board from time to time.

- 33.3. The Board may authorise a Managing Agent to administer and operate the accounts referred to in clause 33.1 and 33.2 above, subject to such conditions and restrictions as they may impose.
- 33.4. The Association shall use interest on moneys invested for any lawful purpose in the interest of the Association.

34. SERVICE ADDRESSES OF MEMBERS AND OCCUPANTS

- 34.1. The Service Address of the Developer shall for the duration of the Development Period be the following address: 3K Arun Place, Old Sir Lowry's Pass Road, Somerset West, 7130.
- 34.2. The Developer may by written notice to the Association alter its Service Address, provided that such new address may not be a post office box or post restante and provided that such address shall be situated within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notice by the Association.
- 34.3. A Sub-developer may by written notice to the Association alter his Service Address, provided that such new address may not be a post office box or post restante and provided that such address shall be situated within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notice by the Association.
- 34.4. The Service Address for any legal process or delivery of any notice or other document to a Member in terms of this Constitution shall be the street address of the property owned by the Member in the Development.
- 34.5. A Member may by written notice to the Association alter his Service Address, provided that such new address may not be a post office box or post restante and provided that such address shall be situated within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notice by the Association.
- 34.6. The Service Address for any legal process or delivery of any other document to an Occupant shall be the street address of the property occupied or leased by the Occupant in the Development.

35. DELIVERY OF NOTICES

- 35.1. A notice by the Association to a Member or Occupant in terms of this Constitution, the Design Guidelines, the Builders Code of Conduct, or the Estate Rules shall be in writing and shall be delivered either by hand or by prepaid post properly addressed to the Member or Occupant at his Service Address. It shall be competent to transmit the notice to a Member or Occupant by telefax or e-mail where the telefax number or e-mail address of the Member or Occupant is recorded with the Association.
- 35.2. The signature to any notice given by the Association may be written or printed or partly written and partly printed.
- 35.3. Any notice to a Member or Occupant:
- 35.3.1. sent to him by prepaid post in a correctly addressed envelope to his Service Address, shall be deemed to have been received on the 5th day after the date when the notice was posted; or

- 35.3.2. if delivered by hand to the Member or Occupant, or to a responsible person at the service address of the Member or Occupant, shall be deemed to have been received on the day of delivery; or
 - 35.3.3. if successfully transmitted by telefax to the recorded telefax number of the Member or Occupant, shall be deemed to have been received on the 1st day after the date of transmission; or
 - 35.3.4. if sent by e-mail to the recorded e-mail address of the Member or Occupant, shall be deemed to have been received on the 1st day after the date of the e-mail.
- 35.4. Notwithstanding anything to the contrary herein contained, a written notice actually received by a Member or Occupant shall be adequate written notice to such Member or Occupant notwithstanding that it was not delivered in accordance with clause 35.1 above.

36. INDEMNITY

- 36.1. The Developer, the Board, the Managing Agent and each servant, agent or employee of the Association shall be and they are hereby indemnified by the Association against any liabilities bona fide (in good faith) incurred by them in their respective capacities in the proper discharge of any of their duties including, without limitation, the costs of defending any proceedings, civil, criminal or otherwise arising out of the due execution by them of their duties, and including all costs, losses and expenses, including traveling expenses which they or any of them may incur or becomes liable for by reason of any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.
- 36.2. A Trustee or the Developer shall not be liable for the act or omission of the Managing Agent or of any of the other Trustees whether in their capacity as such or as Chairperson or for any loss or expense sustained or incurred by the Association occasioned by any bona fide error of judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties in relation thereto, unless same shall have occurred as a result of mala fides (bad faith), breach of duty or breach of trust.
- 36.3. The Developer is irrevocably indemnified against any loss or any possible damages or claim for damages that the Association, a Member, an Owner, Occupant, Invitee or contractor may suffer on the Common Property, or as a result of any installation of any Service or facility, or any act or conduct by the Developer in the exercising of the Development Rights, whether that such damage was caused by any wilful or negligent act of the Developer.

37. BREACH OF THIS CONSTITUTION OR ANNEXURES

- 37.1. The Board or the Managing Agent may on behalf of and in the name of the Association institute legal proceedings against any Members or Occupants who are in breach of any of the provisions of this Constitution, the Design Guidelines, the Builders Code of Conduct, or the Estate Rules.
- 37.2. If a Member commits a breach of any provision of this Constitution, the Design Guidelines, the Builders Code of Conduct or the Estate Rules by failing to pay on due date any Levies, penalties, or any other amounts payable by such Member to the Association, the Board or the Managing Agent may give notice to such Member requiring him to remedy such breach within a period of 10 (ten) days from the date of the notice. Should the Member fail to timeously remedy the breach, the Board may on behalf of the Association institute legal proceedings against the Member without further notice in any court of competent jurisdiction for the payment of the overdue Levies, penalties and/or other amounts.

- 37.3. Save for clause 37.2 above, if a Member commits any other breach of any provision of this Constitution, the Design Guidelines, the Builders Code of Conduct or the Estate Rules and fails to commence to remedy that breach within a period of 10 (ten) days from the date of the written notice to that effect by the Board or the Managing Agent, and to complete the remedying of such breach within a reasonable time or as may be specified in the notice, then the Board or the Managing Agent shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Association, or the Board or any other Member, may have in terms of this Constitution, or in law, including the right to claim damages, to:
- 37.3.1. enter upon the Erf to take such action as may reasonably be required to remedy the breach and the Member shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand and may be added to the levy account of the Member; and/or
 - 37.3.2. impose a penalty on the Member in terms of clause 39 of this Constitution; and/or
 - 37.3.3. institute legal proceedings in any court of competent jurisdiction for such relief as the Board may consider necessary; and/or
 - 37.3.4. apply in terms of the CSOS Act for an appropriate order as the Board may consider necessary.
- 37.4. In the event that the Board institutes proceedings against a Member in terms of the foregoing provisions, the Board shall be entitled to recover from such Member all costs, including all legal costs on the scale as between attorney and own client together with collection commission, advocate's fees, tracing fees, collection fees, administrative costs and all other expenses and charges incurred by the Association in obtaining recovery of arrear Levies or other amounts due to the Association, or in enforcing compliance with the provisions of this Constitution, the Design Guidelines, the Builders Code of Conduct or the Estate Rules
- 37.5. Should any Member fail to pay any amount due by that Member to the Association on the due date, then such Member shall pay interest on the amount outstanding from time to time at the Prime Rate plus 5% (five percent) per annum.
- 37.6. In the event of any breach of this Constitution, the Design Guidelines, the Builders Code of Conduct or the Estate Rules by an Occupant or Invitee, such breach shall be deemed to have been committed by the Owner but, without prejudice to the foregoing, the Board shall be entitled to take or cause to be taken such steps against the person who committed the breach as they may in their discretion deem fit, with or without proceedings against the Owner.
- 37.7. Nothing in this clause shall be construed as prohibiting or preventing the Board, if considered necessary by them, from applying to court for an interdict or other urgent relief against any Member in breach of this Constitution, the Design Guidelines, the Builders Code of Conduct or the Estate Rules or in the event of a threatened or impending or ongoing breach by such Member of this Constitution, the Design Guidelines, the Builders Code of Conduct or the Estate Rules.
- 37.8. Nothing in this clause shall derogate from or in any way diminish the right of the Board (as they may, in their sole and absolute discretion resolve) to refer a dispute for dispute resolution proceedings in terms of clause 38 of this Constitution.
- 37.9. Aforesaid provisions may, where applicable, also be applied mutatis mutandis (with the necessary changes having been made) to Owners, Occupants, and Invitees.

38. DETERMINATION OF DISPUTES

38.1. Should any deadlock or dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise or a deadlock exist in relation to any matter which requires consensus between a Member or Members and/or between a Member and the Board in the widest sense (hereinafter collectively referred to as a "dispute") in connection with–

38.1.1. the interpretation of;

38.1.2. the effect of;

38.1.3. their respective rights or obligations under;

38.1.4. a breach of (save for non-payment of Levies or any other amount due by a Member in terms of this Constitution),

this Constitution, the Design Guidelines, the Builders Code of Conduct or the Estate Rules such dispute will, unless resolved amongst the persons to the dispute or by an internal dispute resolution mechanism, be referred to and be determined by mediation or arbitration in terms of this clause 38, provided that a person to the dispute has demanded the dispute resolution by written notice to the other persons (to the dispute) and provided further that the person desiring such dispute resolution has first resorted to the internal dispute resolution mechanism in terms of clause 38.2, before either proceeding with mediation and arbitration procedures in terms of the ensuing provisions of clause 38.

38.2. In the event of any dispute arising, the parties to the dispute must in the first instance engage each other in good faith with a view to resolving the dispute within a period 7 (seven) Business Days after the date on which the dispute was referred to them. For the purpose of engaging and as an internal dispute mechanism the parties to the dispute may engage telephonically, and/or in writing and/or schedule a joint meeting and/or refer the dispute to the Board for consideration at a Board meeting, which meeting/s must be recorded in writing.

38.3. Only in the event of the dispute not being resolved by the internal dispute mechanism as contemplated in clause 38.2 may the dispute be referred to a mediator and/or arbitrator as contemplated in the ensuing provisions of clause 38.

38.4. Prior to any dispute as aforesaid being determined by arbitration, immediately upon any person (to the dispute) requesting such arbitration, the dispute will be referred forthwith to a mediator for attempted resolution by such mediator, on the following basis:

38.4.1. the mediation will be conducted by a mediator selected by agreement between the persons (to the dispute) and failing such agreement within 7 (seven) Business Days after a written request by the aggrieved person (to the dispute) to the others for such mediation, nominated on the application of either person by the chairperson for the time being of the Legal Practice Council Western Cape, or its lawful successor;

38.4.2. the persons (to the dispute) will not be entitled to be represented at any hearing before or at any meeting or in any discussion with the mediator except personally if an individual Member, or by a director of the company or member of a close corporation or trustee of a trust, who is the Member, or by a Trustee in the instance of the Association provided that, during the Development Period, such Trustee shall be a Developer Trustee;

38.4.3. the mediator will, as he deems fit, follow formal and/or informal proceedings and receive evidence on submission, orally or in writing, sworn or unsworn, at joint meetings, with the persons (to the dispute) or separately as from any person whom he considers can assist in the formulation of his opinion, provided that:

- 38.4.3.1. each person (to the dispute) will be given reasonable opportunity of presenting evidence and submissions and of responding to evidence and submissions of any other person (to the dispute); and
- 38.4.3.2. each person (to the dispute) will be given full details of any evidence on submission received by the mediator from any other person (to the dispute) or any other person otherwise than at a meeting where all the persons (to the dispute) are present;
- 38.4.3.3. the mediator will have the power to propose to the persons (to the dispute) compromise settlements or agreements for the whole or portion of the dispute;
- 38.4.4. the mediator will as soon as is reasonably practicable give to each of the persons (to the dispute) his written opinion on the dispute, recording the details of any agreement reached between the persons (to the dispute) during the mediation;
- 38.4.5. the mediator's opinion will become binding on the persons (to the dispute) only to the extent correctly recorded as being agreed by the persons in the mediator's written opinion or otherwise as recorded in writing to the persons (to the dispute) subsequent to the receipt of the mediator's opinion;
- 38.5. the disputes on any matter still unresolved after the application of the foregoing provisions will be resolved by arbitration as set out below;
 - 38.5.1. save for reference to any portion of the mediator's opinion which has become binding in terms of clause 38.4.5, no reference will be made by or on behalf of any person (to the dispute) in any proceedings after mediation, to the mediator's opinion, or to the fact that any particular evidence was given, and to any submission statement or admission made in the course of the mediation; and/or
 - 38.5.2. in respect of the nature of the mediator's opinion, each of the persons will pay his own costs arising from this mediation and the persons (to the dispute) will pay in equal shares the fees and disbursements of the mediation based upon a scale of fees as agreed between the mediator and the persons (to the dispute) before the commencement of the mediation, and failing which agreement as determined by a nominee of the chairperson for the time being of the Legal Practice Council Western Cape, or its lawful successor, as being fair and reasonable regard being had to the work done by the mediator.
- 38.6. Any person subject to the provisions of this Constitution may demand that a dispute be determined by arbitration by written notice given to any other person subject to this Constitution.
- 38.7. This clause 38 will not preclude any party (subject to the provisions of this Constitution) from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 38.8. The arbitration will be held –
 - 38.8.1. at a mutually acceptable place or venue in Paarl or in Cape Town;
 - 38.8.2. with only the legal and other representatives of the persons to the dispute present thereat;

- 38.8.3. *mutatis mutandis* in accordance with the provisions of the Superior Courts Act, as amended, the rules promulgated in terms of that Act and the practice of the Western Cape High Court otherwise in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), as amended;
- it being the intention that the arbitration will be held and completed within 21 (twenty-one) Business Days after it was demanded.
- 38.9. The arbitrator, who will be a single arbitrator, will be, if the matter in dispute is principally-
- 38.9.1. a legal matter, a practising advocate or attorney of at least ten (10) years' standing;
- 38.9.2. an accounting matter, a practising chartered accountant and registered auditor of at least ten (10) years' standing;
- 38.9.3. any other matter, any independent person; agreed upon between the persons to the dispute.
- 38.10. Should the persons to the dispute fail to agree whether the dispute is principally a legal, accounting, or other matter within 7 (seven) Business Days after the arbitration was demanded, the matter will be deemed to be a legal matter.
- 38.11. Should the persons to the dispute fail to agree on an arbitrator within 7 (seven) Business Days after the expiry of the period referred to in clause 38.10, the arbitrator will be appointed at the request of any person to the dispute by the provincial director for the time being of the Legal Practice Council Western Cape, or its lawful successor or nominee.
- 38.12. The decision of the arbitrator will be final and binding on the persons to the dispute and may be made an order of the High Court at the instance of any of the persons to the dispute.
- 38.13. The persons to the dispute are deemed to have consented to the jurisdiction of the Western Cape High Court in respect of any proceedings referred to in clause 38.12.
- 38.14. The persons to the dispute must and will keep the arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration, confidential and not disclose it to anyone except for purposes of an order to be made in terms of clause 38.12.
- 38.15. The provisions of this clause 38-
- 38.15.1. constitute an irrevocable consent by the persons to any proceedings in terms of this Constitution and no person (subject to this Constitution) will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- 38.15.2. are severable from the rest of this Constitution and will remain in effect despite the termination of or invalidity for any reason of this Constitution.
- 38.16. The above remedies subsist without prejudice to the right of the Board or any other party to the dispute to institute legal proceedings by an application, action or otherwise in any court having jurisdiction for any matter relating to this Constitution or the Annexures or relating to the Development and Association.
- 38.17. The above remedies subsist without prejudice to the right of any part to apply to CSOS in terms of the CSOS Act for an appropriate order, upon the failure of the internal dispute resolution mechanism referred to in clause 38.2 above.

- 38.18. Aforesaid provisions may, where applicable, also be applied *mutatis mutandis* (with the necessary changes having been made) to Owners or Occupants.

39. IMPOSITION OF PENALTIES

- 39.1. If, in the opinion of the Board, the conduct of a Member, Occupant or Invitee constitutes a nuisance or contravention of a provision of this Constitution, the Design Guidelines, the Builders Code of Conduct or the Estate Rules, the Board may deliver a written notice to the Member, which notice shall:
- 39.1.1. specify the nature of the nuisance or contravention;
 - 39.1.2. require the Member to remedy the contravention within a stated reasonable period; and
 - 39.1.3. warn the Member that failure to remedy the contravention, or the continuation or repetition of the conduct, may result in the imposition of a penalty.
- 39.2. If the Member, Occupant, or Invitee fails to remedy the contravention within the period stated in the notice, or continues with or repeats the contravention, the Board may by written notice impose a penalty on the Member. A written notice must be addressed to the Member, which notice shall:
- 39.2.1. specify the penalty imposed;
 - 39.2.2. provide reasons for the decision; and
 - 39.2.3. inform the Member of the right to dispute the decision by submitting a signed, written, and motivated objection within 10 (ten) days of the date of the notice.
- 39.3. The penalty imposed under clause 39.2 above, shall become due on the date of the written notice and must be paid within 10 (ten) days after the date of the written notice. Should the penalty remain unpaid, it shall be added to the Member's levy statement and shall be recovered from the Member in the same manner as applies to arrear Levies, together with interest at the interest rate applicable to arrear Levies.
- 39.4. The Board shall, from time to time, determine the amounts of penalties applicable to specific contraventions, including first and subsequent contraventions, subject to the directions given or restrictions imposed by the Members on the Board by Ordinary Resolution passed at General Meetings of the Association.
- 39.5. A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, each period of 24 (twenty four) hours or part thereof during which the contravention continues shall constitute a separate contravention for which a penalty may be imposed.
- 39.6. A Member may at any stage of the process as contemplated in this clause submit a signed, written and motivated objection to the Board. If a Member disputes the imposition or amount of a penalty, the Member must within 10 (ten) days after the date of the written notice in terms of clause 39.3 submit such objection to the Board.
- 39.7. Upon receipt of an objection, the Board may:
- 39.7.1. withdraw or reduce the penalty; or
 - 39.7.2. convene a Board meeting to consider the objection and invite the Member to attend the meeting and/or to be represented at such meeting.

39.8. At the Board meeting convened in terms of clause 39.7.2, the Member shall be entitled to:

- 39.8.1. present oral and written submissions;
- 39.8.2. submit evidence, including witnesses' statements, where appropriate;
- 39.8.3. question any evidence relied upon by the Board;
- 39.8.4. have access to documents relied upon by the Board; and
- 39.8.5. present mitigating factors.

39.9. If the Member or the Member's representative fails to attend the Board meeting referred to in clause 39.8, without submitting a reasonable request for postponement, the Board may proceed in the Member's absence and determine the matter.

39.10. After considering the evidence and representations, the Board may resolve to:

- 39.10.1. confirm the penalty; or
- 39.10.2. reduce the penalty; or
- 39.10.3. withdraw the penalty.

39.11. The Board shall notify the Member in writing of its decision.

39.12. Where appropriate, the provisions of this clause shall apply, with the necessary changes, to Occupants and Invitees, provided that the Member responsible for the relevant Erf shall be liable to pay the penalty to the Association.

39.13. During the Development Period, the Developer shall be exempt from the imposition of penalties by the Association.

40. CONDITIONS IMPOSED BY THE MUNICIPALITY

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

40.2. The Developer and every Owner must at all times, during and after the establishment of Firwoods River Estate conform to the Development Controls.

41. AGREEMENTS CONCLUDED ON BEHALF OF THE ASSOCIATION

41.1. The Developer may enter into agreements and appoint any service provider on behalf of the Association for the Development Period, which agreements and/or appointments will be automatically effective and binding on the Association and the Members during and after the Development Period, for the duration of the agreement, but provided that such service provider fulfil all its obligations and all the other terms and conditions of the agreement thus concluded.

- 41.2. It is recorded that the Members will be bound by all contracts concluded by the Developer for the leasing or purchase of all equipment or infrastructural assets, or for the provision of security or access control for the Development, or for the provision of any other service or supplies for the Development which the Developer may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or outgoings on an ongoing basis.

42. DEFAMATION PRIVILEGE

Every Member shall be deemed to have waived as against every other Member, and Trustee, and the Board, or any committee appointed by the Association, all claims and rights of action which such Member, or Trustee might otherwise have had in law arising as a result of any statement, report, complaint, or notice of or concerning such Member, or Trustee, or any reference to such Member, or Trustee, made at any Board meeting, or at a General Meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member, or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member, or Trustee, whether such statement be true or false, unless made in bad faith or in gross negligence.

43. EXCLUSION OF LIABILITY

- 43.1. Any person present on the Common Property or using any facilities or Services of the Association within the Development, does so entirely at his own risk. The right of admission to the Development is reserved in favour of the Developer and/or the Association, as the case may be.
- 43.2. Subject to clause 43.4 a Member or Occupant shall not have any claim against the Association, the Board, the Managing Agent, or any of the employees of the Association of whatsoever nature arising from the use of the Common Property or the facilities or Services of the Association nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise.
- 43.3. Subject to clause 43.4 the Association, the Board, the Managing Agent, and the employees of the Association shall not be liable for any injury to any person (including loss of life) or loss or damage of any property, which a person may suffer or sustain whether directly or indirectly in or about the Common Property, regardless of the cause thereof.
- 43.4. Any claim by a Member or Occupant or any other person present in the Development shall be limited to the amount actually recovered by the Association from the receipt of proceeds of the public liability insurance of the Association, if any. If and to the extent that the Association does not have any such public indemnity liability insurance or the proceeds received are insufficient, no such person shall have any claim against the Association, except in the case of bad faith or gross negligence.

44. AMENDMENT OF THE CONSTITUTION AND ANNEXURES

- 44.1. The provisions of this Constitution may be added to, amended, substituted, or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period. Any such amendments as contemplated herein will only be communicated by the Developer to the Managing Agent and the Developer will therefore not be obliged to communicate these changes to the Members.
- 44.2. The provisions of this Constitution may be added to, amended, substituted, or repealed from time to time by a Special Resolution of the Members of the Association.

- 44.3. The amendment, addition, substitution, or repeal of any clause of this Constitution by the Members shall be effective on the adoption of a Special Resolution. If the amendment affects the Municipality or any provision mentioned in section 29(3) of the MPBL, this Constitution, as approved by the Association, shall be submitted to the Municipality for approval and will only become effective on the date of such approval.
- 44.4. The Diagrams may be amended from time to time by the Developer in its sole discretion for the duration of the Development Period.
- 44.5. The Design Guidelines may be compiled, added to, amended, substituted, or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a Board resolution.
- 44.6. The Builders Code of Conduct may be compiled, added to, amended, substituted, or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a Board resolution.
- 44.7. The Estate Rules may be compiled, added to, amended, substituted, or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a Board resolution.
- 44.8. Any amendment, addition, substitution, or repeal of any clause of this Constitution shall, on becoming effective, be submitted to the Commissioner, Tax Exemption Unit of the South African Revenue Services for the purpose of re-evaluating the status of the Association as tax exempt.

45. ASSOCIATION CEASES TO FUNCTION

- 45.1. If the Association ceases to function or carry out its obligations, any affected person, including a Member of the Association may in terms of section 30(1) of the MPBL apply:
 - 45.1.1. to disestablish the Association subject to the amendment of the conditions of approval to remove the obligation to establish an owners' association, and the amendment of the title conditions pertaining to the Association, to remove any obligation in respect of an Association.
 - 45.1.2. for appropriate action by the Municipality to rectify a failure of the Association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3)(b) of the MPBL; or
 - 45.1.3. to the High Court to appoint an administrator who must exercise the powers of the Association to the exclusion of the Association.
- 45.2. In considering an application in terms of the section 30(1)(a) of the MPBL, the Municipality must have regard to:
 - 45.2.1. the purpose of the Association;
 - 45.2.2. who will take over the control over and maintenance of services for which the Association is responsible; and
 - 45.2.3. the impact of the disestablishment of the Association on the Members of the Association and the community concerned.
- 45.3. The Association must make arrangements for the transfer of the Common Property in the event that the Association ceases to function.

45.4. The Municipality or the affected person may recover from the Members of the Association the amount of any expenditure incurred by the Municipality or that affected person, as the case may be, in respect of any action taken in terms of this clause. The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association.

45.5. In the event that the Association has ceased to function, and an Owner wishes to transfer an Erf in that event, the Owner must obtain the consent of at least 60% (Sixty Percent) of the Members of the Association, which consent is deemed to be the consent of the Association.

46. WINDING UP OF ASSOCIATION

46.1. The Association may be wound up by Special Resolution of the Members in General Meeting or by an order of the High Court.

46.2. In the event of such winding up, it shall be the duty of the Board to comply with the conditions imposed in terms of the Special Resolution or court order of the High Court and with applicable legislation.

47. AGRICULTURAL ERF

47.1. The Owner of the Agricultural Erf shall have the right to farm on the Agricultural Erf (or to contract with a farmer to do so on its behalf) but shall not be obliged to do so. The Agricultural Erf shall be farmed under one legal entity or person, and no shared rights shall be allowed.

47.2. The Owner of the Agricultural Erf must manage the Agricultural Erf in accordance with dedicated Agricultural Management Procedures appended to the Environmental Management Plan. No activities may take place in the Agricultural Erf other than those provided for in terms of the agricultural zoning.

47.3. Any construction pertaining to such agricultural activities shall be confined to those required to facilitate the agricultural activity on the Agricultural Erf. The planning and design of a building on the Agricultural Erf will be subject to the standard approval procedures of the Association and Heritage Western Cape. No building or infrastructure may be constructed in respect of the Agricultural Erf without the approval of the Board, which consent shall not be unreasonably withheld.

47.4. Access to the Agricultural Erf shall be restricted via the registered servitudes and as specifically may be agreed upon between the Association and the Owner of the Agricultural Erf from time to time.

47.5. The Board and employees and/or contractors appointed by the Association and/or the security personnel of the security company contracted from time to time by the Association, shall have access to the Agricultural Erf for any purpose reasonably required in terms of this Constitution, including for the purpose of patrolling the security perimeter and repairing and maintaining the security perimeter from time to time.

47.6. Owners and Occupants of Erven in the Development may periodically be exposed to the effects of standard agricultural activities on the Agricultural Erf, which may result in a temporary inconvenience. The mitigation of such effects is addressed in the Agricultural Management Procedures appended to the Environmental Management Plan.

47.7. Members and Occupants of Erven will be exposed to the nuisance that comes with living near a working farm, such as dust, noise, pesticides, smell and so forth which may emanate from activities on the Agricultural Erf, and from farming vehicles, machinery, plant, equipment, and crops which will be transported through the Development.

- 47.8. A Member must ensure that all the necessary measures should be put in place, within his Dwelling, to ensure that the indoor air quality is not affected by emissions from normal agricultural activities.
- 47.9. The Agricultural Erf shall, in the sole discretion of the Developer from time to time, either remain the property of the Developer or be transferred to a third party buyer or be transferred to the Association.

48. ESTATE FACILITIES

- 48.1. The Developer may in its sole discretion decide on the Estate Facilities to be provided in respect of the Estate. For this purpose, the Developer or the Owner of the Estate Facilities shall in its sole discretion conclude agreements from time to time with service providers of its choice for the aforesaid facilities.
- 48.2. The Developer or the Owner of the Estate Facilities may make rules from time to time as regard to the use, and terms of use of the Estate Facilities by the Members and/or Occupants and shall determine the fees and charges payable by the Association to the Developer or to the Owner of the Estate Facilities in respect thereof from time to time.
- 48.3. The Members of the Association may make use of the Estate Facilities or part thereof, subject to availability, provided they comply with the terms of use of the Estate Facilities or part thereof, and that they pay the required entrance fees, membership fees, costs, or charges due to the service providers from time to time.

49. DEVELOPER'S RIGHTS, POWERS, DUTIES AND EXEMPTIONS

- 49.1. The Developer has a continuing and permanent interest in ensuring that certain provisions are entrenched in the Constitution to ensure the success of the Development. Accordingly, notwithstanding anything to the contrary herein contained, no provision of this Constitution may be deleted, amended, or varied in any way during the Development Period without the prior written consent of the Developer.
- 49.2. The Developer shall, in its sole discretion, apply for and, subject to approval by the Municipality, develop the Estate, initiate development projects, incorporate further land into the Estate, amend the layout and/or zoning and/or size and/or boundaries of erven and/or the extent and position of streets comprising the Estate, and/or, subdivide or consolidate erven and submit applications for approval or consent use to the Municipality.
- 49.3. The Developer shall be entitled in its sole discretion, to apply to the relevant authorities for the amendment of the Conditions of Approval for amended land use rights required to include the Neighbouring Land into the Estate. The aforesaid Neighbouring Land as an erf with an agricultural zoning may in the discretion of the Developer be incorporated as an additional Erf within the Estate, subject to the amendment of the Diagrams. Owners and Occupants of Erven in the Development may periodically be exposed to the effects of standard agricultural activities on the aforesaid Erf, which may result in a temporary inconvenience.
- 49.4. The Developer shall be entitled in its sole discretion to apply for further or amended use rights in respect of the phases of the Development, including but not limited to single residential, group housing, townhouses, hotel use, religious use rights, business/commercial, restaurants, theatre facilities, sport, light industrial and educational use rights.

- 49.5. The Developer may develop and market the Development in phases as the Developer deems fit in its sole discretion. Owners and Occupants may accordingly be exposed to such associated activities which may result in an amount of inconvenience and Members shall not interfere with or obstruct the Developer and where applicable Sub-developers from proceeding with the Development in phases or to lodge an objection with any competent authority in respect of any such phased development.
- 49.6. The Developer may, in its sole discretion, sell and transfer bulk portions or specific phases of the Development or part thereof to other developers or Sub-developers. Sub-developers shall be liable to the Association for the payment of Levies, including Ordinary Levies, Special Levies and Penalty Levies. Each Sub-developer shall be obliged to commence and complete construction within the timeframes stipulated in clause 9 of the Constitution. Sub-developers shall submit building plans to the Association for approval prior to the commencement of construction. Sub-developers shall not be liable for the payment of Stabilisation Levies to the Association, unless such liability is expressly agreed to in the deed of sale concluded between the Developer and the relevant Sub-developer.
- 49.7. The Developer shall not be liable to pay Levies, including Ordinary Levies, Special Levies, Stabilisation Levies and Penalty Levies to the Association. The Developer shall not have the obligation to build within a specific timeframe and shall not be required to submit building plans to the Association for approval.
- 49.8. The Developer shall be entitled to register servitudes in respect of the Land and any portion thereof as may be required to comply with the conditions of approval or for any reasonable purposes.
- 49.9. The Developer shall for the duration of the Development Period enjoy unrestricted rights to gain access and egress from and to the Land and to continue with building operations.
- 49.10. The Developer shall for the duration of the Development Period enjoy unrestricted rights with regard to the marketing of the Development and in particular the right to erect signage within the Development and outside of the Development.
- 49.11. The Developer may during the Development Period execute and to enter into on behalf of the Association all and any agreements as may be required to give effect to the provisions of this Constitution.
- 49.12. The Developer shall for the duration of the Development Period be entitled to appoint a Managing Agent in respect of the Development and is empowered to delegate the management of the affairs and the business of the Association, whether in whole or in part, to such Managing Agent.
- 49.13. The Developer shall be entitled for the duration of the Development Period to register such servitudes as may be required.
- 49.14. The Developer shall for the duration of the Development Period be entitled to appoint an Architect in respect of the Development.
- 49.15. The Developer shall for the duration of the Development Period have the power and right to engage on behalf of the Association the services of accountants, auditors, attorneys, engineers, town planners, or any other professional firm or person or other employees whatsoever, for any reason deemed necessary by the Developer, on such terms as the Developer may decide.
- 49.16. The Developer is authorised to open a banking account with a commercial bank or Financial Institution of the Developer's choice in the name of the Association.

- 49.17. No business of a Property Sales Agent/Agency or Property Letting Agent/Agency, may ever be conducted from any Erf in the Development, save for such Agencies appointed by the Developer during the Development Period, which appointments may be binding on the Association for an indefinite period of time, in the sole and absolute discretion of the Developer. This clause may not be repealed, except with the written consent of the Developer.
- 49.18. The Developer or its nominee shall have the right to conduct an estate agency business in the Development.
- 49.19. The Developer shall for the duration of the Development Period be entitled to formulate a policy and rules for the approval of estate agents for the Association. The Developer may approve estate agents for the Association to attend to marketing/sales and letting of Erven in the Development. The Developer may approve estate agents for the Association to attend to marketing/sales and rentals of Erven in the Development to enable Owners to have assistance from competent and informed estate agents when selling or letting their properties. An estate agent must apply to the Developer for approval and must provide the Developer with his fidelity fund certificate and such further documents as may be required. An Owner must appoint an estate agent approved by the Developer to secure a prospective purchaser for his Erf. An Owner must appoint an estate agent approved by the Developer to secure a prospective tenant for his Erf.
- 49.20. The Developer shall for the duration of the Development Period be entitled to appoint Developer Trustees. For the duration of the Development Period, the Developer Trustees shall have a right to veto any resolution of the Board.
- 49.21. For the duration of the Development Period no General Meeting of the Association shall proceed unless the Developer is represented at the meeting.
- 49.22. For the duration of the Development Period, the Developer shall have a right to veto any Ordinary Resolution or Special Resolution of the Members. For the duration of the Development Period, the Developer shall on a show of hands or on a poll be entitled to the number of votes equal to the number of votes of the Members plus 1 (one) vote.
- 49.23. During the Development Period, the Developer, shall have no liability or obligation to pay or to contribute to any Levies to the Association in respect of the Erven owned by the Developer. For the duration of the Development Period the Developer shall be exempt from paying penalties to the Association.
- 49.24. For the duration of the Development Period the Developer will not be required to submit building plans to the Board for approval in respect of any buildings or improvements constructed by the Developer on any Erf in the Development.
- 49.25. During the Development Period, this Constitution may from time to time be amended by the Developer.
- 49.26. 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.
- 49.27. The Developer may at any time, during the Development Period, in writing, cede delegate and/or assign all or any of its rights or obligations in terms of this Constitution to any transferee of its choice and such transferee shall be entitled to take cession/delegation of all such rights and obligations.
- 49.28. During the Development Period, the Developer may, at any time in writing, abandon in whole or in part, any of its rights which it is entitled to in terms of this Constitution, in which event the abandoned rights of the Developer will cease and vest in the Association, the Board or the Members, as the case may be.

- 49.29. The Members shall be bound by the decision of the Developer in terms of this clause and shall have no claim of whatever nature against the Developer arising therefrom. Insofar as a consent of a Member may be required, the Developer is irrevocably granted a power of attorney to grant any/all consents on behalf of the Members as may be required.
- 49.30. For the duration of the Development Period, the Developer may utilise any one or more of its unsold houses/buildings in the Development as a sales office and/or a show house and/or temporary functional clubhouse.