



CONSTITUTION of SEAWARD MASTER HOME OWNER'S ASSOCIATION

MARCH 2025

PLEASE NOTE

THIS DOCUMENT SHOULD BE READ IN CONJUNCTION WITH:

**SEMHOA RULES, THE DEVELOPMENT AND
ARCHITECTURAL CODE, REGULATIONS, PROTOCOLS,
MANUALS, POLICIES AND PROCEDURES**

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1 DEFINITIONS

- 1.1 In this document, the following words and phrases shall, unless the context otherwise requires, have the meanings hereinafter assigned to them: -
- 1.1.1 "association" means the Seaward Estates Master Home Owners Association (SEMHOA);
- 1.1.2 "accounting officers" means the accounting officers of the association from time to time;
- 1.1.3 "chairman" means the chairman of the board of trustees from time to time;
- 1.1.4 "common areas" means the following areas owned by the association or over which the association has control:
- 1.1.4.1 the roads and verges within the estate (but excluding the driveways on any members erf and driveways or roads within any sectional title or mini-sub development within the estate);
 - 1.1.4.2 the gate houses as defined (excluding gatehouses within any sectional title scheme or mini-sub development within the estate);
 - 1.1.4.3 common garden areas, parks, and greenbelt areas (excluding such areas within any sectional title scheme or mini-sub development within the estate);
 - 1.1.4.4 wetland areas and water features;
 - 1.1.4.5 open spaces;
 - 1.1.4.6 communal facilities;
- but excluding any such areas within any sectional title scheme or mini-sub development within the estate;
- 1.1.5 "design review panel" means the committee provided for in clause 28 hereof;
- 1.1.6 "electronic communication" has the meaning set out in Section 1 of the Electronic Communications Act No 25 of 2002";
- 1.1.7 "Environmental Management Plan" means the comprehensive environmental management framework, plan and related documents covering all the phases identified within the estate approved by the Department of Environmental Affairs and adopted and applied by the Association;
- 1.1.8 "erf" means an erf in the estate or a sectional title unit in the Estate. In respect of any erven upon which two or more dwelling units may be built each of such erven shall be regarded as consisting of a number of separate erven equivalent to the number of dwelling units permitted to be built thereon in terms of the town planning scheme applicable to the estate, and "erven" shall have a corresponding meaning;
- 1.1.9 "estate" means the township commonly known as "Seaward Estate" and shown on General Plan SG No. 2356/99 consisting of erven 1751 to 1823 Ballitoville and, on their proclamation, subsequent phases on the Rem of erf 1478 Ballito Extension 5;
- 1.1.10 a "fee" shall include but not be limited to:
- 1.1.10.1 any annual levy or special levy, as contemplated in clause 6;
 - 1.1.10.2 basic and consumption charges for sewerage and water as prescribed by the municipal tariffs;
 - 1.1.10.3 any financial penalties as contemplated in clause 7.2;
 - 1.1.10.4 interest on unpaid fees as prescribed in clause 6.10;

- 1.1.10.5 legal and collection fees;
- 1.1.10.6 any fee for any service rendered at the specific request of an owner or emergency work carried out to prevent damage, loss, or injury by the association or for and on behalf of any of its member;
- 1.1.10.7 any CSOS levy payable by the association.;
- 1.1.11 "gate houses" means the security gates and buildings at the entrances to the estate;
- 1.1.12 "good standing" means any member who is not in arrears by more than 30 (thirty) days on any amount that is due and payable to the association, at which point said member will receive a warning that they are in arrears and that relevant action may be taken, or in contravention of any of the provisions of this Constitution or any rules and regulations or other governance documentation of the association, or be engaging in any conduct that is injurious to the reputation of the association;
- 1.1.13 "in writing" means, unless the context indicates the contrary, written, printed, or lithographed or partly one and partly another and other modes of representing or producing words in a visible form, including documents issued or received by such form of electronic communication (as defined) as may be approved by the Trustees from time to time;
- 1.1.14 "managing agent" means any person or body appointed by the association as an independent contractor to undertake any of the functions of the association;
- 1.1.15 "member" means every registered owner of an erf, and every registered purchaser from time to time of an erf. If a member consists of more than 1 (one) person such persons shall be jointly and severally liable in solidum for all obligations in terms of this constitution, and "members" shall have a corresponding meaning;
- 1.1.16 "owner" means the registered owner of an erf or an undivided share in an erf;
- 1.1.17 "rules and regulations" mean the rules as defined and all other procedures, protocols and management or other plans made and/or applied by the association from time to time;
- 1.1.18 "Site Development Guidelines" means the architectural development code entitled "Seaward Estates - Development and Architectural Code" which are updated from time to time
- 1.1.19 "trustees" means the board of trustees of the association from time to time;
- 1.1.20 "vice chairman" means the vice chairman of the board of trustees of the association from time to time;
- 1.1.21 "estate management" shall mean the person/s appointed to control the day-to-day management and administration of the association;
- 1.1.22 "CIPC" means the Companies and Intellectual Property Commission, whose mandate is derived from the Companies Act 71 of 2008;
- 1.1.23 "CSOS" means the Community Schemes Ombud Service established under the auspices of the Community Schemes Ombud Services Act 9 of 2011;
- 1.1.24 "Operational Management Plan" means the suite of documents that sets the systems and processes in terms of which the day-to-day management and administration of the association shall take place;
- 1.1.25 "POPIA" shall mean the Protection of Personal Information Act 4 of 2013, and
- 1.1.26 "representative member" shall mean the person elected to represent the units in a sectional title development on the estate or where an erf is owned by a company, a close corporation or a trust, the person who is nominated from time to time by resolution of the company, close corporation or trust to represent it for all purposes in terms of this Constitution as is more fully provided for in clause 5.5;.

- 1.2 Unless the context otherwise requires, any words importing the singular number shall also include the plural number and vice versa and words importing any one gender shall include the other gender and words importing natural persons shall include juristic persons, corporate entities, and bodies corporate.
- 1.3 Wherever a number of days is prescribed in this Constitution the number of days must be calculated by excluding the first day and including the last day and by including Saturdays, Sundays, and public holidays unless the last day falls on a Saturday, Sunday, or public holiday, in which case the last day shall be the next ensuing day which is not a Saturday, Sunday or public holiday.

2 LEGAL STATUS AND LIMITED LIABILITY

- 2.1 The association is a common law corporate body and as such: -
 - 2.1.1 its assets, liabilities, rights, and obligations vest in it independently of its members;
 - 2.1.2 it will have perpetual succession;
 - 2.1.3 it may sue and be sued in its own name.
- 2.2 The members will not by reason of their membership be liable for the liabilities and obligations of the association and no member shall by reason of membership be entitled to share in or receive any portion of the funds or income or property of the association or transfer of any of its assets unless as decided in the process of dissolution of the association.
- 2.3 The association may not conduct any business for profit or gain and must apply all of its assets and income, however derived, to advance its stated objects as set out in this Constitution.

3 OBJECTS AND PURPOSE

The general purpose and object of the association is to promote, advance and protect the collective interests of its members and facilitate harmonious relationships amongst the members whilst at the same time ensuring that the members comply with all the obligations imposed upon them in terms of this Constitution and such other obligations as they may be bound to perform and, without derogating from the generality of the above, more specifically:

- 3.1 to take transfer of those portions of the acquired or purchased property or common areas that are to be owned by the association for the benefit of its members;
- 3.2 to maintain and administer the property described above and other common areas within the estate that the association is responsible for, and to make and enforce rules and regulations governing the use thereof by the association, the members and any other person admitted to the estate; to provide a secure environment for the members of the association by way of gated controlled access to the estate by way of the manned gate houses, electric perimeter fencing and the appointed security staff;
- 3.3 to maintain and enforce the aesthetic standards of the estate by controlling buildings and improvements on the erven in accordance with the Seaward Estate Development and Architectural Code, the Environmental Maintenance Management Plan and any amendments thereto approved by the Association from time to time;
- 3.4 To regulate : -
 - 3.4.1 the gated security access and perimeter electrified fencing;
 - 3.4.2 the common areas in the estate;
 - 3.4.3 the street lighting in the estate;
 - 3.4.4 placing of movable objects outside buildings and common property
- 3.5 to maintain good conduct standards of members and occupiers of erven in the estate for the general benefit of all members in accordance with the rules of the

- association from time to time as well as any codes adopted or applied by the Association from time to time;
- 3.6 to insure and properly maintain all assets under its control, except in the instance that these assets are uninsurable, as proven by the association's insurance provider in which case these assets are to be self-insured;
 - 3.7 to take under its control, on the terms and conditions of this constitution, on their proclamation, the development of subsequent phases on the Rem of erf 1478 Ballito Extension 5;
 - 3.8 to regulate, maintain and/or develop the open spaces and other common areas within the estate for the benefit of the members, and to develop and maintain facilities thereon for the benefit of the members;
 - 3.9 to raise and collect levies as provided for herein as well as other fees and charges to fund the carrying out of its objects;
 - 3.10 to impose penalties upon members not complying with the Constitution and any rules and regulations;
 - 3.11 to acquire further property both within and outside of the estate;
 - 3.12 to promote the development and maintenance of all erven in the estate to ensure that all such properties are developed, managed, and maintained in such a way as to derive benefit therefrom for all members of the association;
 - 3.13 to promote, advance and protect the lawful interests of members generally and to co-operate with the local authority, provincial government, and all other appropriate authorities for the benefit of the association and its members;
 - 3.14 to represent the interests of members and to endeavour to provide a united voice by which such interests may be expressed or protected;
 - 3.15 to, in the interests of all members of the association, manage, protect, and enhance the natural environment, vegetation and fauna on the estate and the biodiversity within the estate;
 - 3.16 to regulate the keeping of animals within the estate;
 - 3.17 to regulate the conduct of any person when within the boundaries of the estate and to promote harmonious relations on the estate between the association and members and as between members inter se; and
 - 3.18 generally, to do all such acts as are necessary to accomplish the fulfilment of the foregoing objects including, but not restricted, to powers specifically contained in this Constitution.

4 POWERS

The association has plenary powers, to enable it to achieve its objects, except only for the powers expressly or impliedly excluded by this Constitution or by the association's legal status as a common law corporate body.

5 MEMBERSHIP

- 5.1 Membership of the association shall be limited to any person who is in terms of the Deeds Registry's Act reflected in the records of the Deeds Office concerned as the owner of an erf.
- 5.2 Where any erf is owned by more than one person, all the registered owners of that erf shall together be deemed to be one member of the association and have the rights and obligations of one member of the association provided however, that all co-owners of any erf shall be jointly and severally liable for the due performance of any obligation of a member to the association.
- 5.3 Where an owner is a juristic person such as a company, close corporation or trust, the shareholders, directors, members and/or trustees, as the case may be, of such juristic person shall be personally liable, jointly, and severally with such owner for the due performance by such owner of all of its obligations in terms of this constitution.
- 5.4 When a member becomes the registered owner of an erf, he shall *ipso facto*

- become a member of the association and when he ceases to be the owner of an erf, he shall *ipso facto* cease to be a member of the association.
- 5.5 In the event of an erf being owned by more than one person or by a partnership of two or more persons or where an erf is owned by a juristic person, they shall be obliged to formally nominate one of them as the representative member for such purposes as the trustees may from time to time determine as well as the exercise of voting rights in terms of this constitution. Such nomination shall be made in writing to the association within 7 (seven) days of becoming a member. In the event of co-owners or a juristic person failing to make the aforesaid nomination then the association shall be entitled to presume, until notified otherwise in writing that the owner or partner listed first on the title deed to the erf in question is the party nominated by the co-owners or partnership for all such purposes of this Constitution and that similarly the director, member or trustee first listed on the most recent CIPC records or Letters of Authority, as the case may, is the party nominated for all such purposes of this constitution and to that end any owner which is a juristic person shall be required to furnish the association with its certificate and memorandum of incorporation, register of directors and shareholders register in the case of a company together with the names, identity numbers and contact details of its shareholders and directors, the founding statement or amended founding statement in the case of a close corporation together with the names, identity numbers and contact details of its members and the trust deed and letters of authority in the case of a trust, together with the identity numbers and contact details of its trustees, upon acquiring ownership and to notify the association of any amendments or changes to any of the aforesaid records, documents and details within 14 days of such amendments or changes taking effect. Members who are natural persons shall also be obliged to furnish the association with their address and contact details and to advise the association of any changes to any of the aforesaid information within days of such changes taking effect.
- 5.6 No member shall let or otherwise part with occupation of his erf whether temporarily or otherwise unless he has agreed with a proposed occupier of such erf as a *stipulatio alteri* in favour of the association that such occupier shall be bound by all the terms and conditions of this Constitution.
- 5.7 A registered owner of any erf may not resign as a member of the association.
- 5.8 All of the rights and obligations of a member shall not be transferable, and every member shall: -
- 5.8.1 furnish the association with such duly signed POPIA consent as may be prescribed from time to time and further to the best of his ability the objects and interests of the association and ensure that the members of their households, their employees, guests, and lessees also so comply and furnish such POPIA consent;
- 5.8.2 observe all rules and regulations made, applied, or enforced by the association or the trustees;
- 5.8.3 not prejudice the objects and interests of the association, provided that nothing contained in this Constitution shall prevent a member from ceding his rights in terms of this Constitution as security to the mortgagee of that member's erf.
- 5.9 The fact that a member of the association is also a member of a body corporate of a sectional title scheme or any mini sub-development within the estate shall in no way affect such member's liability to the association for levies or any other obligations to the association.
- 5.10 Membership of the association shall cease:
- 5.10.1 upon a member ceasing to be a registered owner of an erf;
- 5.10.2 upon the issue of a final order of sequestration or liquidation of the member concerned; or

- 5.10.3 upon the death of a member, or upon the member being declared insane or incapable of managing his affairs.
- 5.11 In the event of a member ceasing to be a member in terms of clauses 5.10.2 and 5.10.3 the above, the member's executors, curators, trustees, or liquidators shall, for all purposes, be recognised and be bound as the member under this Constitution.
- 5.12 Whilst a member is the registered owner of an erf in the estate, the member may not resign or otherwise terminate membership of the association.
- 5.13 A member does not have any claim to the funds or other property of the association when he or she ceases to be a member of the association nor shall any member's executors, curators, trustees, or liquidators have such a claim.
- 5.14 The association may claim from any member or his estate any arrear levies, special levies, VAT, interest, legal fees, or any other fees and charges that has become due and payable by him to the association, by virtue of their membership to the association, at the time of his ceasing to be a member.
- 5.15 Annual levies, special levies, VAT, interest, legal fees and any other contribution that has become due and payable by a member to the association shall not be repayable by the association to the member upon his ceasing to be a member.
- 5.16 Procedure for members proposing resolutions: Any 15 (fifteen) members, in good standing, of the association:
- 5.16.1 may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights; and
- 5.16.2 when proposing a resolution, may require that the resolution be submitted to members for consideration-
- 5.16.2.1 at a meeting demanded in terms of clause 14.4;
- 5.16.2.2 at the next members meeting provided notice has not already been given. If notice for a general meeting has already been issued then any resolution duly proposed shall be considered at the general meeting following the one for which notice had already been issued; or
- 5.16.2.3 by vote in terms of clause 20.10.
- 5.17 Any resolution validly proposed by members and which seeks to effectively reverse any prior resolution of the trustees or of the members or to effectively reverse any approved capital or other expenditure by the association shall need to be approved by way of special resolution, save where such decisions or expenditure has not already been implemented in which case an ordinary resolution will suffice.

6 LEVIES AND OTHER AMOUNTS PAYABLE BY MEMBERS

- 6.1 The trustees may from time to time impose levies upon and recover fees and charges from the members for the purpose of meeting all the expenses which the association has incurred, or to which the trustees reasonably anticipate the association will be put in the attainment of its objects and pursuit of its business.
- 6.2 Any levy and/or contribution shall be borne by each member in direct proportion to the number of erven owned by each member.
- 6.3 Per the definition of an erf, as set out above, with reference to a unit within a sectional title, the levy raised over the erf will be equal to the development potential of the units that may be erected on the erf as determined by the Town Planning Ordinance enacted by the Local Authority.
- 6.4 The trustees shall not less than 30 days prior to the end of each financial year, or so soon thereafter as is reasonably possible, prepare and serve upon every

- member at the address chosen by such member an estimate in reasonable detail of the amount which shall be required by the association to meet the expenses during the following financial year and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The trustees may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 6.5 Each notice to each member shall specify the contribution payable by that member to such expenses and reserve fund hereinafter referred to as "the annual levy".
- 6.6 The levy (save for special levies) shall be an annual levy which shall be due at the commencement of every financial year. Where a member is deemed to be in "good standing" as defined the annual levy may be paid in equal monthly instalments, due in advance on the first day of each and every month of each financial year but subject to the provisions of clause and 6.6.1 below:
- 6.6.1 The trustees shall have the right to accelerate the payment of levies by any member whose levies remain unpaid after the due date thereof and as such to claim payment of the remaining annual levy due for the balance of the association's financial year in which the legal handover occurs without prejudice to any other rights and remedies available to the association in the event of a member falling into arrears.
- 6.7 In the event of the trustees for any reason whatsoever failing to prepare and serve the estimate referred to above timeously, every member shall until service of such estimate as aforesaid continue to pay the levy previously imposed and shall, after such service pay such levy as may be specified in the notice in respect of the new ~~levy~~.
- 6.8 The trustees may from time to time impose special levies upon members in respect of all such expenses which were not included in the trustees' original estimates, .
- 6.9 The trustees shall be empowered in addition to such other rights as the association may have in law to charge interest on arrear levies and other fees and charges raised by the association at a rate not exceeding the prime rate charged by the association's bankers plus 2.5 % per annum.
- 6.9.1 Where arrear levies and or other fees and charges raised by the association, are outstanding in excess of the number of days specified in the credit control policy as approved by the trustees from time to time, the debt may be handed over for legal collection, where this occurs the debtor shall be indebted to the association for:
- 6.9.1.1 The amount due and payable to the association at the time of handover;
- 6.9.1.2 Any legal or collection costs attracted by such debt; and
- 6.9.1.3 At the discretion of the trustees, levies and basic service charges based on the tariffs as at the time of legal handover, for the balance of the association's financial year in which legal handover occurs.
- 6.10 Any fees or charges due by a member shall also be a debt due by him to the association.
- 6.11 Notwithstanding that a member ceases to be such, the association shall have the right to recover arrear levies and other fees and charges and interest from him. No amounts paid by a member shall under any circumstances be refundable by the association to such person upon such person ceasing to be a member. Further, a member on ceasing to be such shall have no claims whatsoever on any other monies held by the association. A member's successor in title to an erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of such erf, to pay the levy and other fees and charges and interest due thereon attributable to that erf.
- 6.12 The trustees may establish a Levy Stabilisation Fund for the purpose of generating funds for capital improvements to the estate. The Levy Stabilisation Fund may not be used for operating expenses.

- 6.13 The operation and regulation of the Levy Stabilisation Fund shall be overseen by the trustees, or by the managing agent or, should the trustees so choose, by a Levy Stabilisation Fund Committee comprising 6 members appointed by the trustees. The funds deposited into this account are to be held in one of the top four banking institutions.
- 6.14 A Levy Stabilisation Fund contribution as determined by the trustees shall be payable by the new owner/transferee to the association. In the case of a deemed alienation in respect of a member who is an artificial person (see clause 31.5 below) a further contribution to the Levy Stabilisation Fund shall, upon alienation, become due by the artificial person, notwithstanding that the artificial person remains the registered owner of the erf. The object in this regard shall be to ensure that where a material change in the beneficial ownership or controlling interest of the artificial person occurs (for example, by the members of a close corporation selling their interest to one or more persons) the artificial person shall become liable for a further contribution to the Levy Stabilisation Fund on the same basis that would have applied of the artificial person had become a "new owner" of the erf. Notwithstanding the above, a change in ownership or material change in the beneficial ownership or controlling interest of an artificial person shall not attract a Levy Stabilisation Fund contribution should such change in ownership or material change in the beneficial ownership or controlling interest of an artificial person arise as a result of testate or intestate succession, divorce or dissolution of a marriage or any other transaction which the board of trustees on good cause shown agrees on written application to exempt from payment of the Levy Stabilisation Fund contribution.
- 6.15 Contributions to the Levy Stabilisation Fund shall be paid on the date of registration of transfer and in respect of "deemed alienations" on the date on which the material change in the "beneficial ownership" or in the "controlling interest" becomes legally effective.

7 RULES

- 7.1 Subject to any restriction imposed or direction given at a general meeting of the association, the trustees have the power from time to time make rules from time to time as well as the power to substitute, add to, amend or repeal same for the management, control, administration, use and enjoyment of the estate, for the purposes of giving proper effect to this Constitution and for any other purpose including such rules as may be reasonable or necessary to achieve compliance with any government laws or regulations applicable from time to time. To the extent that any rule made in terms of this Constitution conflicts with any rule of any Body Corporate or governing body of any sectional title or mini-sub development within the township, the rules made in terms of this Constitution shall prevail.
- 7.2 Any rules, or changes to the rules, made by the trustees in respect of the above clause remains valid and binding from the time they are made by trustees until the time that they are approved by members, by way of an ordinary resolution, at the next general meeting of the estate.
- 7.3 For the enforcement of any of the rules and regulations, the trustees or their nominated representative may: -
- 7.3.1 give notice of the member concerned requiring him to remedy any breach of the rules within a reasonable time;
 - 7.3.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty and debit the costs of doing so to the member concerned which amount shall be deemed to be a debt owing by the member concerned to the association;
 - 7.3.3 impose a system of penalties. The amounts and nature of such penalties shall be determined by the trustees from time to time,; and/or

- 7.3.4 such other action including proceedings in court or before CSOS as they may deem fit and defend any action taken or proceedings brought by any member or any other person.
- 7.4 In the event of any breach of the rules and regulations by the members of any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the trustees may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit and provided there is a legal basis to do so or they may take steps against the member on behalf of the contravening person..
- 7.5 In the event of any member disputing the fact that he has committed a breach of any of the rules or regulations, a committee of at least three (3) trustees and three (3) Members appointed by the Trustees for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the Chairman may direct.
- 7.6 Any penalty imposed upon any member shall be deemed to be a debt due by the member to the association and shall be recoverable by ordinary civil process.
- 7.7 Notwithstanding anything to the contrary herein contained, the trustees may in the name of the association enforce the provisions of any rules and regulations by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 7.8 The association must publish any proposed rules and regulations to be made by the trustees in terms of this clause by way of notice to all members within a reasonable time and any rule proposed by the trustees will take effect on the date specified in the notice.
- 7.9 Any rule that takes effect, as made by the trustees in terms of clause 7.7 above, will remain binding until replaced, substituted or removed by members in general meeting by special resolution.
- 7.10 The rules of the HOA and of any sectional title scheme in the estate must be made available and posted on a permanent resident forum.

8 TRUSTEES

- 8.1 There shall be a board of trustees of the association which shall consist of not less than 5 nor more than 7 members. The actual number of trustees to be elected each year shall be recommended by the Chairman of the association but determined by the members at the Annual General Meeting of the association.
- 8.2 Only members may be trustees of the association. In the event of a juristic person member, i.e. company, close corporation, trust, etc., a representative of this member is entitled to stand and serve in the position of trustee.
- 8.3 Each of the trustees shall continue to hold office for a period of 2 (two) consecutive years, until the second annual general meeting of the association following their appointment, at which meeting such trustee/s shall be deemed to have retired from office but will be eligible for re-election at such meeting.
- 8.4 Nominations for the position of trustee/s must be given in writing by a member in good standing of the association, supported by the written acceptance of such nomination, and delivered to the estate manager within the timeframe stipulated in the notice calling for nominations so that notice may be timeously issued for the general meeting at which voting on the election of trustee/s is to take place. Nominations must be submitted on the prescribed form, if any, and returned to the estate manager in accordance with the instructions communicated to members. Each completed nomination form must be accompanied by a professional summary of the nominee demonstrating the nominee's relevant skills and experience.
- 8.5 A nominee will not be put up for election at the annual general meeting if the nominee is ineligible or disqualified from being a director of a company in terms of the Companies Act No 71 of 2008, or, if the nominee is a member, the nominee is

- not in good standing with the association, or if the nominee previously served as a trustee and was removed, or if the trustee has resigned more than twice from service as trustee before the expiry of the full term of his or her appointment.
- 8.6 Once the association has received all nominations and confirmed the list of eligible and qualified nominees, the association must notify all nominees of their nomination and include the names and professional summaries, if applicable, of all nominees in the annual general meeting notice to be sent to the members. In addition, the proxy instrument that is circulated with the notice will make provision for the nominees to be elected at the annual general meeting.
- 8.7 Should not enough trustee nominations be received prior to the annual general meeting, the chairman, and only the chairman, is permitted to open the floor for more trustee nominations at the annual general meeting.
- 8.8 At the annual general meeting, the members will vote on each nominee separately, in the order in which their nominations were received by estate management. Voting will be available in the methods described in the notice of the meeting and may include electronic voting. The votes will be tallied at the meeting and those nominees receiving the highest number of votes will be regarded as duly elected, up to the maximum number of vacancies available. If two or more successful nominees receive equal votes, they will all be included in the elected board up to the maximum number of vacancies available; provided that if any need to be excluded because of the maximum then the order of voting will be determinative. For the avoidance of doubt, a nominee does not need to receive a particular minimum number of votes in favour to be elected; rather his or her support is measured against the support given for other nominees.
- 8.9 Subject to the above, voting will be on a poll as determined in accordance with the provisions of this Constitution.

9 VACANCIES AND REMOVAL OF TRUSTEES

- 9.1 Should the office of a trustee fall vacant prior to the next annual general meeting, such vacancy must be filled by the majority of the trustees and such appointed co-opted trustee shall hold office until the next annual general meeting and should all trustees resign, the estate management and/or the managing agent may call a general meeting of the members for the purpose of filling the vacancies to, at least, the minimum number of trustees required in terms of this Constitution.
- 9.2 The trustees may appoint another person who is a member, to act as an alternate trustee during the absence or inability of another to act a trustee, excluding any person who cannot be nominated for same.
- 9.3 A trustee shall be deemed to have vacated his office with immediate effect upon: -
- 9.3.1 his written resignation to the association;
 - 9.3.2 his estate being sequestered;
 - 9.3.3 his conviction of any offence involving dishonesty;
 - 9.3.4 him becoming mentally incapacitated;
 - 9.3.5 his death;
 - 9.3.6 him being absent for 3 (three) consecutive regular meetings of the trustees without obtaining prior leave of absence;
 - 9.3.7 him being removed from office by a majority resolution of the trustees excluding the vote of the person being removed, provided that due notice, containing such intention of removal, has been given, and the remaining trustees, by majority resolution, may decide on the replacement of such trustee;
 - 9.3.8 him being removed by an ordinary resolution of the members taken at a general meeting, provided that due notice, containing such intention of removal, has been given, and the members present at such general meeting.;
 - 9.3.9 in the event of him being a member of the association, he is being disentitled to exercise a vote in terms of clause 20.2 below in that he is no longer in good standing.

- 9.4 Notwithstanding the fact that a trustee shall be deemed to have vacated their office as provided above, anything done by such trustee, in the capacity of a trustee in good faith, shall be valid until the fact that they are no longer a trustee has been recorded in the Minute Book of the trustee. If, as a result of retirement, resignation or otherwise, the total number of trustees falls below the prescribed number, the board shall act promptly to bring the number of trustees up to the number as specified in clause 8.1 above.

10 CHAIRMAN AND VICE CHAIRMAN

- 10.1 The trustees shall within 14 days after each annual general meeting appoint from their elected number a chairman and vice chairman, who shall hold their respective offices for a term of two years each, provided that the office of chairman or vice chairman shall *ipso facto* be vacated by a trustee holding such office upon his ceasing to be a trustee for any reason. No one trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time, the board of trustees shall immediately appoint one of their number as replacement in such office.
- 10.2 Except as otherwise provided, the chairman shall preside at all meetings of the trustees and at all general meetings of members and, in the event of his not being present within 5 minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the vice chairman shall act in his stead, or failing the vice chairman, a chairman appointed by the meeting.

11 TRUSTEE'S and COMMITTEE MEMBER EXPENSES

Trustees and committee members shall be entitled to recover all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as trustees / committee members. Save as aforesaid, trustees and committee members shall not be entitled to any remuneration for the performance of their duties in terms hereof.

12 POWERS OF TRUSTEES

- 12.1 Subject to the express provisions of these presents, the trustees shall manage and control the business and affairs of the association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of a managing agent and an estate manager, may exercise all such powers of the association and do all such acts on behalf of the association as may be exercised and done by the association and as are not by this Constitution required to be exercised or done by the association in general meeting.
- 12.2 Save as specifically provided in this Constitution, the trustees shall at all times have the right to engage on behalf of the association advisors, and the services of accountants, accounting officers, attorneys, advocates, architects, engineers, a managing agent and any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the trustees and on such terms as the trustees shall decide.
- 12.3 The trustees shall further have power to make and enforce compliance with the effect rules as contemplated in clause 7.
- 12.4 The trustees shall adopt an Operational Management Plan which shall be applied by them and by the estate management and which after its adoption may not be amended unless approved by the Trustees.
- 12.5 The trustees shall be entitled to appoint committees other than the design review panel (for such purposes as they deem fit) which committees shall consist of such numbers of members and such outsiders, including the managing agent and/or the estate manager, as they may deem fit on the recommendation of the estate

manager and Trustees. The committees shall not have any decision-making power but shall simply act in an advisory capacity to the association and shall provide the estate manager with their recommendations on a given matter and the estate manager shall in turn report such recommendations to the trustees. The estate manager in conjunction with the Trustees shall determine how the committees shall be constituted and how they shall function in accordance with the Operational Management Plan.

- 12.6 In addition to any other provision of this Constitution requiring a special resolution none of the following actions may be taken or done or allowed to be taken or done and the association and its members must procure that none of the following actions are taken or done with respect to the association and whether by the trustees or the members with a special resolution passed at a members meeting:
- 12.6.1 the change in the basis of accounting or accounting policies used during the immediately preceding financial year;
 - 12.6.2 any change in the financial year of the Association;
 - 12.6.3 the adoption by the association of any tax schemes not in the ordinary course of business of the Association;
 - 12.6.4 the approval of any investment outside the ordinary course of business of the Association;
 - 12.6.5 the acquisition or disposal of immovable property by the Association;
 - 12.6.6 the mortgage or hypothecation of any of the assets of the Association;
 - 12.6.7 save in emergency circumstances the incurring of any unbudgeted capital expenditure by the association exceeding R300 000.00 in aggregate in any financial year.

13 PROCEEDINGS OF TRUSTEES

- 13.1 The trustees may on 7 days written notice given by any one trustee to the other trustees, meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 13.2 The quorum necessary for the holding of any meetings of the trustees shall be a majority present personally. Save as expressly provided to the contrary herein, any resolution of the trustees shall be carried on a simple majority of all votes cast. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated but may be re-tabled for approval at a later date.
- 13.3 The trustees shall cause minutes to be kept of every trustees' meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman. All minutes of trustees' meetings shall, after certification, be placed in a trustee's minute book. to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies.
- 13.4 Save as provided in these presents, the proceedings of any trustees' meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.
- 13.5 A resolution (including one signed electronically, whether by email, WhatsApp, or similar electronic correspondence) by a majority of the trustees shall be valid in all respects as if it had been duly passed at a meeting of the trustees.
- 13.6 The trustees may conduct a trustee meeting entirely by electronic communication or may provide for participation in a meeting by electronic communication.

14 GENERAL MEETINGS OF THE ASSOCIATION

- 14.1 The association shall within 6 months after the end of each financial year hold a general meeting as its annual general meeting in addition to any other general meetings during that year and shall specify the meeting as such in the notices in terms of the below clause.

- 14.2 Such annual general meeting shall be held at such time and place as the trustees shall decide from time to time.
- 14.3 All general meetings other than annual general meetings shall be called extraordinary general meetings.
- 14.4 The trustees may, whenever they deem fit, convene an extraordinary general meeting, and shall be obliged to convene an extraordinary general meeting if members holding in aggregate not less than 5% percent of the voting rights in the association serve a written demand on the association requesting the trustees to do so.

15 NOTICES OF MEETINGS

- 15.1 An annual general meeting and a meeting called for the passing of a special resolution, shall be called by at least 21 clear days' notice in writing, and an extraordinary general meeting, other than one called for the passing of a special resolution, shall be called for by 14 clear days' notice in writing at the least. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and hour of the meeting.
- 15.2 The agenda for an Annual General Meeting and a meeting called for the passing of a special resolution shall be served in writing, 21 clear days prior to the meeting.
- 15.3 In the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the trustees to such persons as are entitled to receive such notices from the association.
- 15.4 A general meeting of the association shall notwithstanding that it is called by shorter notice than that specified in these presents be deemed to have been duly called if it is so agreed: -
 - 15.4.1 in the case of a meeting called as the annual general meeting by all the members entitled to attend and vote thereat; and
 - 15.4.2 in the case of an extraordinary general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95% of the total voting rights of all members.
- 15.5 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at any meeting.
- 15.6 Any notice of a member's meeting at which it will be possible for members to participate by way of electronic communication shall inform members of the ability to participate in this way and shall provide the necessary information to enable members or their proxies to access the available medium or means of electronic communication for the purpose of participating in debate and voting, provided that such access shall be at the expense of the member or proxy concerned.

16 QUORUM

- 16.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 16.2 The quorum for general meetings where only ordinary resolutions are being proposed shall be such of the members entitled to vote as together for the time being represent the votes of 10% in number of all members entitled to vote for the time being.
- 16.3 The quorum for general meetings where a special resolution is being proposed shall

- be such of the members entitled to vote as together for the time being represent the votes of 15% in number of all members entitled to vote for the time being.
- 16.4 Subject to the below, if within 30 minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time or at such other place as the chairman of the meeting shall appoint. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.
- 16.5 The chairman of a meeting that cannot begin because a quorum is not present may extend the 30-minute limit for a reasonable period on the grounds that –
- 16.5.1 exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of members to be present at the meeting; or
- 16.5.2 one or more particular members, having been delayed, have communicated an intention to attend the meeting, and those members together with those already present would satisfy the quorum requirements.

17 AGENDA AT MEETINGS

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

- 17.1 the consideration of the chairman's report;
- 17.2 the election of trustees;
- 17.3 the consideration of any other matters related at the meeting, including any resolutions proposed for adoption by such meeting and of which due notice has been given by the trustees, and the voting upon any such resolutions;
- 17.4 the consideration of the annual financial statements of the association for the preceding financial year; the consideration of the report of the accounting officers, the fixing of remuneration for the accounting officers and the appointment of the accounting officers for the ensuing year;

18 CONDUCT AND PROCEDURE AT GENERAL MEETINGS

- 18.1 The chairman may, with the consent of any general meeting at which a quorum is present and shall if so, directed by the meeting, adjourn a meeting from time to time and place to place. No business shall be transacted at any adjourned meeting other than business which could have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment or of the business to be transacted at an adjourned meeting.
- 18.2 Any member's meeting may be conducted entirely by electronic communication, or one or more members, or proxies of members may with the approval of the trustees participate by electronic communication in all or part of any member's meeting that is being held in person, so long as the electronic communication being used ordinarily enables all persons participating in the meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

19 PROXIES

- 19.1 A member may be represented at a general meeting by a proxy, or proxies in the event of the member owning more than one erf, who need not be members of the

association. The instrument appointing a proxy shall be in writing signed by the member concerned or his agent, duly authorised in writing, but need not be in any particular form provided that, where a member is more than one person, a majority of those persons shall sign the instrument appointing the proxy on such member's behalf.

- 19.2 The instrument appointing a proxy and the power of attorney or any other authority under which it is signed shall be delivered to the estate office at least 48 hours before the commencement of the meeting at which the proxy is intended to be used. No instrument appointing a proxy shall be valid after the expiration of the meeting for which it was provided.
- 19.3 A vote given in accordance with the terms of 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 had been received by the trustees at any time before a vote is taken in respect of which the proxy exercises such vote.

20 REPRESENTATION AT GENERAL MEETINGS AND VOTING BY MEMBERS

- 20.1 At every general meeting: -
- 20.1.1 every member, in person or by proxy, is entitled to vote and shall be entitled to 1 (one) vote each per erf registered in his name. The value of the vote shall be in proportion to the number of erven owned by the member;
- 20.1.2 if an erf is registered in the name of more than one person, then the voting rights in respect of such co-owned erf shall be exercised jointly by such persons who together shall hold only 1 vote in respect of each co-owned erf.
- 20.2 Save as expressly provided for in these presents, no person other than a member duly registered who is in good standing shall be entitled to be present or to vote on any question, either personally or by proxy at any general meeting.
- 20.3 At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands, or any other recognised voting tool via an online platform, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman and, unless a poll is so demanded. The demand for a poll may be withdrawn.
- 20.4 If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Independent scrutineers shall be elected to determine the result of the poll. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- 20.5 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting or the transaction of any business other than the question upon which the poll has been demanded.
- 20.6 Every resolution and every amended resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 20.7 Unless any member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or otherwise, or to the propriety or validity of the procedure at such meeting, such declaration by the chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and

- validly constituted and conducted. An entry in the minutes to the effect that a motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.
- 20.8 For an ordinary resolution to be adopted at a member's meeting of this association, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution at the meeting.
- 20.9 For a special resolution to be adopted at a member's meeting of this association, it must be supported by at least 75% of the voting rights exercised on the resolution at a member's meeting.
- 20.10 Round robin resolutions of members and members acting other than at a meeting: An ordinary resolution in writing signed by the holders of more than 50% (Fifty Percent) of the voting rights which may be exercised on the resolution and a special resolution in writing signed by the holders of at least 75% (Seventy Five Percent) of the voting rights which may be exercised on the resolution, within 20 (twenty) business days after the resolution was submitted to them, has the same effect as if it had been approved by voting at a meeting of members. The written resolution may be signed in counterparts. Any business required to be conducted at the association's annual general meeting may not be conducted in this manner. For the purposes of this clause "in writing signed" includes a resolution voted on electronically.

21 ACCOUNTS

- 21.1 The annual financial statements of the association shall be open to inspection by members at all reasonable times during business hours.
- 21.2 Once in each financial year the accounts of the association shall be examined, and the correctness thereof ascertained by the appointed accounting officers. The accounting officers shall perform such duties as stipulated in the relevant employment contract and in accordance with the relevant accounting laws and practices.
- 21.3 The records and documents must be kept in such a manner as to be compliant with the Protection of Personal Information Act 4 of 2013 ("the POPIA").
- 21.4 The association must appoint an information officer as the responsible party, under the POPIA, to ensure compliance with the POPIA, and to develop and apply a written policy relating to the procedures required to be followed within the Association in regard to the implementation of the POPIA.
- 21.5 The information officer, in their discretion, taking into consideration the provisions of the POPIA, must determine which record/s and/or document/s are confidential, and may not be distributed without the prior written consent of the person/s to which it relates.
- 21.6 Upon receipt of a request for access to the records and documents of the association for the purpose of inspection and copy/ies, the information officer must ensure that such request is made by a registered member/s or a person duly authorised in writing by the registered member/s or its duly authorised representative.
- 21.7 When receiving a request for access to the records and documents of the Association for the purpose of inspection and copy/ies, the information officer must ensure that such request is in compliance with PAIA read with POPIA, in that no such request will be permitted if the reason for such request is not provided by the party requesting such access for inspection and copy/ies, and further if the reason/s provided are not deemed reasonable in regard to the administration and management of the association, or any legitimate purpose under this Constitution.
- 21.8 When a requesting party is in receipt of any record/s and/or document/s of the association, such person is responsible to ensure compliance with the POPIA in their intended use of the record/s and/or document/s so obtained.
- 21.9 The association may, for legitimate purposes, utilise and/or process the record/s

and/or documents of the association for the purposes of the administration and management of the association.

- 21.10 The trustees shall cause all books of account and records to be retained for a period of 6 years after completion of the transactions, acts or operations to which they relate.

22 SERVICE OF NOTICES

- 22.1 All members must notify the association in writing of an address for the services of all legal process, notices, and other documents. This address will operate as each member's domicilia citandi et executandi. When notifying the association of an address, each member must provide the following information:
- 22.1.1 Postal address;
 - 22.1.2 Physical address;
 - 22.1.3 Email address;
 - 22.1.4 Telephone landline number or cell phone number.
- 22.2 A notice may be served by the association upon any member, either personally, by electronic mail or by sending it through the post in a prepaid registered letter, addressed to such member at such address as he may have notified the association in writing, save that such address shall be within the boundaries of the Republic of South Africa, or if such member has failed to notify the association in writing of any such address at the address of any erf owned by him, provided that copies of all notices sent to members may also be sent to the mortgagee [if any] of that member's erf.
- 22.3 A notice will be presumed, unless the contrary is proved, to have been given:
- 22.3.1 if hand delivered during business hours on a business day, on the day of delivery, or
 - 22.3.2 if sent by electronic mail, on the day of sending.
- 22.4 Any notice served by the association on the representative member where an erf is owned by more than one person shall be deemed to be service upon all of the co-owners.

23 INDEMNITY

Every trustee, servant, agent and employee of the association and any managing agent, his employees, nominees or invitees, shall be indemnified by the association against all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into or any act or deed done by such person or persons in the discharge of their respective duties, including but not limited to, in the case of a trustee, his duties as chairman or vice chairman. Without prejudice to the generality of the foregoing, the association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties. However, there will be no indemnity where trustees do not act *bona fide* or if they act grossly negligently or fraudulently.

24 AMENDMENTS OF THIS CONSTITUTION

- 24.1 This Constitution may be amended by a special resolution passed at a members' meeting called for that purpose.
- 24.2 On the basis of a resolution passed in terms of the above, the association may, if the resolution so provides, be converted to a non-profit company, the memorandum of incorporation of which shall, be aligned, insofar as is reasonably and lawfully possible, with this Constitution.
- 24.3 The trustees shall nevertheless have the power to alter this Constitution to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar, or similar defects. A notice of such alteration must be published by –
- delivering a copy of the notice of alteration to each member by ordinary mail; or

- delivering a copy of the notice of alteration to each member by email (provided that a member shall be deemed to have received a copy of the rules if sent to his or her last known email address).

25 MERGER

- 25.1 The association may merge with any other body with similar objects, by special resolution of a members' meeting.
- 25.2 In this event, the association's net assets after discharge of its liabilities, together with its rights and obligations under this Constitution and under the conditions of title of erven in the estate will vest in the merged entity.

26 DISSOLUTION

- 26.1 The association may be dissolved by resolution passed by a special resolution passed at a members' meeting called for that purpose.
- 26.2 No resolution for the winding-up or dissolution of the association shall be taken unless the association has made adequate provision for the rights of members to obtain access to their erven.
- 26.3 If the association is wound up, deregistered, or dissolved, the assets of the association remaining after the satisfaction of all its liabilities shall be given or transferred to shall be given or transferred to the existing members at the time, to be determined by the members of the association at or before the time of its dissolution or, failing such determination, by the court.

27 DEVELOPMENTS WITHIN THE ESTATE

Should any owner wish to develop an erf as a sectional title or mini-sub development such owner shall submit to the association for approval all of the proposed house and other rules to be made applicable to the sectional title or mini-sub development and such house and other rules shall not be adopted for such development until the association's approval has been given in writing. All such house and other rules shall not be irreconcilable with any of the rules and regulations of the association. In the event of any conflict between any of the house and other rules of any sectional title or mini-sub development the rules and regulations of the association shall prevail and take precedence.

28 DESIGN REVIEW COMMITTEE

- 28.1 The design review Committee shall be appointed by the trustees.
- 28.2 The design review Committee shall, amongst others, act as an aesthetics committee with a view to ensuring any development within the estate is in accordance with the development controls, the Architectural and Development Code and an architectural theme which will enhance the attraction of the estate as a whole, it being specifically recorded however, that the design review panel shall not be responsible for dealing with any structural issues in respect of any dwelling or other buildings constructed on land nor shall it be required to enforce the provisions of the land use management scheme of the Municipality.
- 28.3 The trustees shall ensure that the design review panel carries out all the functions and duties entrusted to it so as to give proper effect to the provisions of the Architectural and Development Code. Notwithstanding anything to the contrary, the design review panel shall be subject to the direction of the trustees from time to time. All decisions of this committee shall require the prior approval of the trustees prior to the implementation thereof.
- 28.4 The design review panel shall meet a minimum of 4 times during the association's financial year.
- 28.5 Neither the processes followed by the design review panel nor the Architectural and

Development Code may be amended without the prior approval of the trustees and by way of special resolution of members.

29 DISCLAIMER

- 29.1 The association shall not be liable for any injury or death to any person, damage to or loss of any property, movable or immovable, to whomsoever it may belong, occurring or suffered upon the estate regardless of the cause thereof nor shall the association be responsible for any theft of property occurring within the estate. Members shall not, under any circumstances, have any claim or right of action whatsoever against the association for injury, death, damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.
- 29.2 The association, its trustees, employees, and agents shall not be liable to any member or any of the member's lessees, or their respective employees, agents, invitees or customers or any member of the public dealing with the member or any lessee for any injury or death or loss or damage of any description which the member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the estate, regardless of the cause thereof.
- 29.3 The exclusions of liability in this clause will not apply in respect of any loss suffered by a person which is directly attributable to the gross negligence of the association or any person acting for or controlled by the association if the Consumer Protection Act 68 of 2008 applies for the benefit of that person.

30 LEGAL REMEDIES

- 30.1 The rights given to the association in terms of this Constitution are in addition to, and without prejudice to, any of the rights which the association may have to proceed against a member, either to recover any arrear levies or other monies or to claim specific performance, damages, or any other recourse in law.
- 30.2 A member shall be liable for, and shall pay, all legal costs, including costs on an attorney and own client scale (alternatively the highest permissible scale of legal fees) in full whether or not legal action is actually instituted, and collection commission, expenses and all other charges incurred by the association in obtaining the recovery of arrear levies or any other arrear amounts due and owing by a member to the association or in obtaining compliance with the estate rules or any provision of this Constitution.
- 30.3 If a member disputes the legal costs incurred by the association, then the parties agree that the association may refer the bill of legal costs prepared by the attorney for taxation, alternatively, where taxation is not possible, to the Legal Practice Council for consideration and determination, and the decision on taxation, alternatively, of the Legal Practice Council, shall be final.

31 COMPLAINTS

- 31.1 All complaints are to be submitted, in writing and with reasonable and/or substantiated proof, if possible, to the estate manager.
- 31.2 Only after 2 written complaints have been received in respect of an incident and/or matter, will the estate manager inform the trustees who will then investigate the matter and if found by the trustees to have merit then notify the alleged contravening member and/or occupier in writing of the complaint.
- 31.3 Where the trustees in their discretion form the view that a complaint has merit the trustees shall ensure that action is taken against the person/s, who are allegedly in contravention, including the issuing of a warning and/or penalty.

32 DISPUTE RESOLUTION

- 32.1 In the event of any internal dispute arising in regard to the administration and/or management of the association, excluding any dispute between members, the parties to the dispute must engage each other in good faith, with a view to resolving the dispute within a reasonable timeframe.
- 32.2 For the purpose of holding an internal dispute resolution meeting, the complainant must lodge a signed and motivated complaint with the estate manager, who will then forward same to the trustees.
- 32.3 In the event of the dispute not being resolved internally, a party to the dispute may make an application for relief to the Community Scheme Ombud Service or utilise the services of an arbitrator.

33 CONTRAVENTION OF THIS CONSTITUTION AND IMPOSITION OF PENALTIES

- 33.1 If the owner, in the opinion of the trustees, is in contravention of any provision of this Constitution, or any other provision within any governance document of the association, it may:
 - 33.1.1 furnish the member with a written notice, which may in the discretion of the trustees, be delivered by hand or email;
 - 33.1.2 include in the notice, a description of the provision that has allegedly been contravened, and the recipient must be warned that if the conduct or contravention persists, a penalty will be imposed;
 - 33.1.3 if the member persists with such contravention, convene a meeting to discuss the matter;
 - 33.1.4 issue a written notice, by which the alleged offender, is informed of the purpose of the meeting and invited to attend. At the meeting, the member must be given the opportunity to present their case, but except insofar as they will be permitted by the chairperson, they may not participate in the conduct of the meeting;
 - 33.1.5 after the member has been given the opportunity to present their case, agree that a provision of this Constitution has been contravened, and by majority decision, impose on the offender a penalty in the discretion of the trustees, provided that a single penalty imposed does not exceed or equal the monthly levy contribution that the member is paying, and
 - 33.1.6 record the outcome of the meeting, and resolve to uphold the penalty, and/or withdraw, increase or reduce the penalty.

34 SALE, TRANSFER AND ALIENATION OF ERVEN

- 34.1 A member shall not sell or otherwise agree to transfer or alienate an erf in the estate (or an undivided share in an erf) unless it is a condition of the sale, transfer, or alienation that:
 - 34.1.1 the proposed transferee is obliged, to the satisfaction of the association, as a contract for the benefit of the association, to become a member of the association upon registration of transfer of the erf to him or her; and
 - 34.1.2 registration of transfer of that erf into the name of the proposed transferee will constitute the proposed transferee as a member of the association.
- 34.2 No member shall transfer or alienate an erf of which he is the registered owner unless the association has certified in writing that –
 - 34.2.1 All levy contributions and other amounts owing by the member to the association have been paid prior to the transfer or alienation that prior provision has been made to the satisfaction of the trustees for payment at

registration and the member is not otherwise in breach of any of the provisions of this Constitution or of the rules or guidelines;

34.2.2 Any contribution to the Levy Stabilisation Fund has been paid or that prior provision has been made to the satisfaction of the trustees for payment upon transfer or alienation;

34.2.3 The proposed transferee has made application and agreed in writing, to the satisfaction of the association, to become a member of the association and to be bound by the Constitution and the rules and regulations of the association; and

34.2.4 The proposed transferee has notified the association in writing of his or her address and contact details as required herein and furnished a POPIA consent as further required.

34.3 A condition of title has been registered against each erf in the estate to give effect to the above clause.

34.4 The association shall be entitled to charge a reasonable administrative fee for its effort and cost in providing a certificate in terms of this clause.

34.5 For the purposes of this Constitution “alienate” means to alienate any erf or part thereof, and in no way detracting from the generality of the aforesaid, includes any transfer by way of sale, donation, intestacy, will, cession, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary. In the case of an artificial person, such as a company, close corporation or trust, the material change in the “beneficial ownership” or the “controlling interest” thereof, shall be deemed to constitute an alienation for the purposes of this Constitution (“a deemed alienation”) and, in the event of there being any dispute as to whether there has been a material change in “beneficial ownership” or in the “controlling interest”, such matter shall be referred to the association’s accounting officers whose decision shall be final and binding.

35 MEMBERS RIGHT TO INFORMATION

Members shall have a right of access to the following information and documents: the association's Constitution; any amendments to the Constitution; the association's rules; the names of the trustees and all members of the association from time to time; reports to annual general meetings; the annual financial statements and notices and minutes of annual general meetings and other member's meetings.

36 USE OF COMMON AREAS

Subject to the reasonable rights of members being respected at all times, and to the provisions of this Constitution and the rules and guidelines:

36.1 Members may use the common areas; and

36.2 Members using the common areas will be held responsible for damages to the common areas.

36.3 The trustees may from time to time and whenever they deem it necessary, limit, restrict, or suspend such use in relation to any part of the common property.

37 INCOME TAX EXEMPTION

In order to maintain the associations exempt status, the following conditions must be complied with:

An association of persons has been formed solely for purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such member are liable;

and

Is not permitted to distribute any of its funds to any person other than a similar association of persons.

Provided that such body, company or association is or was not knowingly a part 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 become payable by any person under the Income Tax Act or any other law administered by the Commissioner.

Dissolution of the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax of section 10(1)(e)(i)(cc) of the Act.

Any amendments to this Constitution must be submitted to the Commissioner for the South African Revenue Service.

To maintain an exempt status, the following conditions must be complied with:

- 37.1 Submit an Annual Income Tax Return (IT12EI) by the due date as announced annually by SARS.
- 37.2 The exemption approval is subject to review on an annual basis by the TEU upon receipt of the annual income tax return.
- 37.3 SARS must be informed in writing within 21 days of any change in registered particulars (e.g. Representative change of name, address, trustee details, office bearers, etc.).