

Semillon

Owners Association Constitution

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**SEMILLON
OWNERS ASSOCIATION CONSTITUTION**

An Owners Association shall be established in accordance with the provisions of Section 61 of the City of Cape Town Municipal Planning By-Law, 2015 (“the By-Law”) and which shall accordingly be deemed to be established in terms of the By-Law. The name of the Association is **Semillon Owners Association**.

1. PRELIMINARY

1.1 The rules contained herein will not be added to, amended or repealed without approval of the local authority.

2. INTERPRETATION

The following words will, unless the context requires, have the meanings hereinafter assigned to them:

“**accounting officer**” – a person who in terms of section 60 (2) of the Close Corporation Act, 1984 (Act No, 69 of 1984), is qualified to perform the duties of an accounting officer;

“**auditor**” – an auditor qualified to act as such under the Public Accountants and Auditors Act, 1951 (Act No. 51 of 1951)’

“**Association**” - Semillon Owners Association;

“**chairman**” – the Chairman of the Trustee Committee;

“**development**” - the unit Erven (20526, 20527, 20528, 20529, 20530, 20531) and the Private Street (20532)

“**developer**” – Durplan CC

“**local authority**” – the City of Cape Town or any other local authority established or to be established to succeed in whole or in part such authority in exercising control over the local area of which the Development forms part;

“**Section 61 of the City of Cape Town Municipal Planning By-Law, 2015 (“the By-Law”)**” – Section 61 of the City of Cape Town Municipal Planning By-Law, 2105 (“the By-Law”), as amended from time to time, as well as any regulations in force there under;

“**member**” – every registered owner of an erf, if a member consists of more than one person such persons will be jointly and severally liable in solidus for all obligations of a member in terms of this constitution;

“**month**” – calendar month;

“**office**” – the registered office for the Association, being 5 Dauphine Close, Everglen, 7550

“**original erf / erven**” – Erf 20532, Durbanville, or any part thereof;

“**private area**” – Private road (Erf 20532) in this development, inclusive of all services thereon or there under;

“**registered owner**” – the registered owner of a Unit Erf;

“trustee” – a Member of the Trustee Committee;

“unit erven” – the residential erven resulting from the subdivision of the original erf 1183, consisting from house number 1-6;

“ year” – calendar year;

- 2.2 Unless the context otherwise requires, any words importing the singular number only will include plural number, and vice versa, and words importing any one gender will include the other gender.
- 2.3 Words and expressions to which a meaning has been assigned in the Section 61 of the City of Cape Town Municipal Planning By-Law, 2015 (“the By-Law”) will bear the meanings so assigned to them.

3. PURPOSE

MAIN OBJECTIVES

In accordance with the provisions of Section 61 of the City of Cape Town Municipal Planning By-Law, 2015 (“the By-Law”), the main objectives of the Association are:

- 3.1 the care, maintenance, upkeep and control of the Private Area, control over the design and maintenance of buildings and other improvements or services both erected or installed on Unit Erven and on the Private Area and the promotion, advancement and protection of the communal and group interests of the Members generally;
- 3.2 to promote and enforce standards, not the least of which should be the pleasant atmosphere on the group site, in such a way that members may derive the maximum collective benefit thereof;
- 3.3 to act in accordance with the collective mutual interests of its members;
- 3.4 the obligation to enforce certain conditions of subdivision approval or management plans listed in the conditions;
- 3.5 promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the group site in order to achieve the harmonious development thereof;
- 3.6 acquire the necessary financed from members to attain its set objectives;
- 3.7 without limiting the generality of the foregoing:
- 3.7.1 the maintenance and repairs to the Private Area, as well as all the private road reserves and services, will be the sole responsibility of the Association;
- 3.7.2 all maintenance, servicing and repairs to the internal civil and electrical engineering services, which include tarred roads, water reticulation, storm water, sewerage, electricity and street lights, as well as the connection of the above services to the existing municipal services network, will be the responsibility of the Association;

- 3.7.3 the Constitution provides for the control, administration and management of private open space, private street/s and other services and amenities arising from the subdivision and buildings on land under the association's control for the benefit of all members;
- 3.7.4 the association's ownership will include private open space, private streets and internal engineering services arising out of the subdivision concerned;
- 3.7.5 the association will be obligated to enforce certain conditions of subdivision approval or management plans listed in the conditions;

4. MEMBERSHIP

- 4.1 Membership of the Association will be compulsory for every registered owner of a Unit Erf and the purchaser of a Unit Erf will become a Member on registration of transfer of the Unit Erf purchased in his name as determined by the Deeds Office.
- 4.2 Membership of the Association will be limited to the registered owners of the Unit Erven provided that where any such owner is more than one person, all the registered owners of that erf will be deemed jointly and severally to be one Member of the Association.
- 4.3 When a Member ceases to be the registered owner of a Unit Erf, he will ipso facto cease to be a member of the Association.
- 4.4 No person may apply to the Registrar of Deeds for registration of, and the Registrar of Deeds may not register, a land unit arising from the subdivision without the consent of the owners' association, which consent may not be unreasonably withheld.
- 4.5 A Member will not be entitled to sell or transfer a Unit Erf without the prior written consent of the Association which consent may only be withheld for the reasons described in 4.7.1 – 4.7.2 below.
 - 4.6.1 To comply with paragraph 4.5 any Member, except the Developer, who wishes to sell his Unit erf to a purchaser ("transferee") must in writing apply in a form as prescribed from time to time by the Association for consent by the Association to the sale of his Unit Erf. The aforesaid application must inter alia contain a full description of the identity and nature of the Purchaser and in the event that the Purchaser is a legal Sale of his Unit Erf.
 - 4.6.2 The aforesaid application must inter alia contain a full description of the identity and nature of the Purchaser and in the event that the Purchaser is a legal person or Trust any other particulars that the Association may require in respect of the members of the Purchaser.
- 4.7 The Association will grant its consent referred to in paragraph 4.5 if;
 - 4.7.1 the transferee has in writing applied to become a Member of the Association, has in writing agreed to abide by the terms of this Constitution and has in writing agreed that transfer of a Unit Erf into his name will ipso facto constitute him as a Member of the Association; and
 - 4.7.2 the Member who wishes to pass transfer has paid to the Association all amounts due or that which may become due and owing to the Association by him prior to the expected transfer date.

- 4.8 Should the Association provide its consent registration of transfer will ipso facto constitute the transferee as a Member of the Association.
- 4.9 Notwithstanding anything to the contrary in these presents any person who becomes Registered Owner of a Unit Erf without paragraph 4.6.1 to 4.6.2 having been complied with will from date of registration of transfer of the Unit Erf in his name be accepted by the Association as a Member.
- 4.10 The registered Owner of a Unit Erf may not resign as a Member of the Association.

5. DOMICILIUM CITANDI ET EXECUTANDI

- 5.1 The trustees will from time to time determine the address constituting the *domicilium citandi ex executandi* of the Association.

6. TRUSTEES OF THE ASSOCIATION

- 6.1 The number of trustees will be determined from time to time by the members of the Association in general meeting, provided that there will be no less than two trustees.
- 6.2 With effect from the date of the establishment of the Association, all owners will be trustees who will hold office until the first general meeting of the members of the Association as contemplated in rule 11.1, whereupon they will retire but will be eligible for re-election.
- 6.3 The chairman of the trustees referred to in rule 6.2 will be the developer concerned or his nominee, who will hold office until the general meeting referred to in the said rule, when he will retire as a trustee and as chairman but will be eligible for re-election in terms of rule 8.6.

ELECTION OF TRUSTEES

- 6.4 Save for the provisions of rule 6.2 the trustees will be elected at the first annual general meeting and, thereafter, at each subsequent annual general meeting and will hold office until the next succeeding annual general meeting, but they will be eligible for re-election if so nominated.

NOMINATIONS

- 6.5 Nominations by owners for the election of trustees at any annual general meeting will be given in writing, accompanied by the written consent of the person nominated, so as to be received at the domicilium of the Association not later than 48 hours before the meeting; provided that trustees are also capable of being elected by way of nomination with the consent of the nominee given at the meeting itself should insufficient written nominations be received to comply with rule 6.1.

VACANCY IN NUMBER OF TRUSTEES

- 6.6 The trustees may fill any vacancy in their number. Any trustees so appointed will hold office until the next annual general meeting when he will retire and be eligible for re-election as though he had been elected at the previous annual general meeting.

VALIDITY OF ACTS OF TRUSTEES

- 6.7 Any act performed by the trustees will, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any trustee, be as valid as if such trustee had been duly appointed or had duly continued in office.

INDEMNITY

- 6.8.1 (a) Subject to the provisions of sub-rule (b), every trustee, agent or other officer or servant of the Association will be indemnified by the Association against all costs, losses, expenses and claims which he may incur or become liable to by reason of any act done by him in the discharge of his duties, unless such costs, losses, expenses or claims are caused by the *mala fide* or grossly negligent act or omission of such person.
- (b) It will be the duty of the trustees to pay such indemnity out of the funds of the Association.
- 6.8.2 The indemnity referred to in sub-rule (a) will not apply in favour of any managing agent appointed in terms of rule 9.2.

7. DISQUALIFICATION OF TRUSTEES

REMOVAL FROM OFFICE

- 7.1 A trustee will cease to hold office as such –
- 7.1.1 if by notice in writing to the Association, he resigns his office;
 - 7.1.2 if he is or becomes of unsound mind;
 - 7.1.3 if he surrenders his estate as insolvent, or if his estate is sequestrated;
 - 7.1.4 if he is convicted of an offence which involves dishonesty;
 - 7.1.5 if by resolution of as a general meeting of the Association, he is removed from his office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
 - 7.1.6 if he is or becomes disqualified in terms of the Companies Act, act 71 of 2008, from being appointed or acting as a director of a company.

REPLACEMENT

- 7.2 The Association may at a general meeting appoint another trustee in the place of any trustee who has ceased to hold office in terms of rule 7.1, for the unexpired part of the term of office of the trustee so replaced.

8. MEETING OF TRUSTEES

When to be held and notice

- 8.1 Subject to the provisions of rule 8.2 below, the trustees may give notice convening meetings, meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. It will not be necessary to give notice of a meeting of trustees to any trustee for the time being absent from the Republic, but notice of any such meeting will be given to his alternate, if he has appointed one, where such an alternate is in the Republic
- 8.2 A trustee may at any time convene a meeting of the trustees by giving to the other trustees, not less than seven days' written notice of a meeting proposed by him, which notice will specify the reason for such a meeting. Provided that in cases of urgency, such shorter notice as is reasonable in the circumstances, may be given.

QUORUM

- 8.3 At a meeting of the trustees, 50 percent (50%) of the number of trustees but not less than two, will form a quorum.
- 8.4 If the number of trustees falls below the number necessary to form a quorum, the remaining trustee or trustees may continue to act, but only for the purpose of the appointing or co-opting additional trustees to make up a quorum or for the purpose of convening a general meeting of owners.
- 8.5 If at any meeting of Trustees, a quorum is not present within thirty minutes of the appointed time of the meeting, the meeting will stand adjourned to the next business day at the same time, and the trustees then present, who will not be less than two, will form a quorum.

CHAIRMAN

- 8.6 At the commencement of the first meeting of the trustees after an annual general meeting, at which trustees have been elected, the trustees will elect a chairman from among their number, who will hold office as such until the end of the next annual general meeting of the members of the Association and who will have a casting as well as a deliberative vote, save where there are only two trustees.
- 8.7 The trustees at a trustees meeting or the Association at a special meeting, in respect of either of which notice of the intended removal from office of the chairperson has been given, may remove the chairperson from his or her office.
- 8.8 If any chairman elected in terms of rule 8.6 vacates his office as chairman or no longer continues in office by virtue of the provisions in rule 8.7, the trustees will elect another chairman who will hold office as such for the remainder of the period of office of the first-mentioned chairman, and who will have the same rights of voting.
- 8.9 If any chairman vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the trustees present at such meeting will choose another chairman for such meeting who will have the same rights of voting as the chairman.

VOTING

- 8.10 All matters at any meeting of the trustees will be determined by a majority of the votes of the trustees present and voting.
- 8.11 A trustee will be disqualified from voting in respect of any contract, or any litigation or proposed litigation, with the Association, by virtue of any interest he may have therein.
- 8.12 As a resolution in writing signed by all the trustees for the time being present in the Republic and being not less than are sufficient to form a quorum, will be as valid and effective as if it had been passed at as a meeting of the trustees duly convened and held.

9. THE FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

GENERAL

- 9.1 The duties and powers of the Association will, subject to the provisions of Section 61 of the City of Cape Town Municipal Planning By-Law, 2015 ("the By-Law") and these rules and subject to any restriction imposed or direction given at a general meeting of the owners of sections, be performed or exercised by the trustees of the Association holding office in terms of these rules.

POWERS

- 9.2 Subject to any restriction imposed or direction given at a general meeting of the Association, the powers of the trustees will include the following;
- 9.2.1 To appoint for and on behalf of the Association such agents and employees as they deem fit
In connection with-
- (i) the control, management and maintenance of any building, private area and amenities arising from the subdivision of the original erf, and
 - (ii) the exercise and performance of any or all the powers and duties of the Association;
- 9.2.2 to delegate to one or more of the trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation.

CONTRACTS AND REGULATIONS

- 9.3 The Trustees Committee may from time to time:
- 9.3.1 make regulations governing inter alia the Members' rights of use, occupation and enjoyment of the Private Area;
- 9.3.2 Each Member undertakes to the Association that they will comply with:
- the provisions of this Constitution;
 - any regulations made in terms of rule 9.3.1
- 9.4 The trustees may not make loans on behalf of the Association to owners of units or to themselves.

SIGNING OF INSTRUMENTS

9.5 No document signed on behalf of the Association will be valid and binding unless it is signed by a trustee and the managing agent or by two trustees.

10. DUTIES OF THE TRUSTEES

Statutory and General Duties

10.1 Without detracting from the scope of the additional duties specified in 10.3 to 10.23 inclusive, and subject to the provisions of such rules, the trustees will perform the functions entrusted to the Association in terms of Section 61 of the City of Cape Town Municipal Planning By-Law, 2015 ("the By-Law")15 of 1985, and in this constitution and described under the clause heading "Main Objectives".

10.2 The trustees will do all things reasonably necessary for the enforcement of the rules in force.

INSURANCE

10.3 At the first meeting of the trustees or so soon thereafter as is possible, and annually thereafter, the trustees will take steps to insure any buildings, and improvements to the private area, to the full replacement value thereof against –

- (i) fire, lightning and explosion;
- (ii) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connections with any political organization;
- (iii) storm, tempest and flood;
- (iv) earthquake;
- (v) aircraft and other aerial devices or articles dropped therefrom;
- (vi) bursting or overflowing of water tank, apparatus or pipes;
- (vii) impact with any of the said buildings or improvements by any road vehicle, horse or cattle;
- (viii) house breaking or any attempt thereat;
- (ix) loss of occupation or loss of rent in respect of any of the above risks;
- (x) such other perils or dangers as the trustees or any owner may deem appropriate.

10.4 At the first meeting of the trustees or as soon thereafter as is possible, the trustees will take all reasonable steps to insure the owners and the trustees and keep them insured against liability in respect of:

- (i) death, bodily injury or illness; and
- (ii) off of, or damage to property, occurring in connection with the private area for a sum of liability as determined with the First General Meeting, which sum may be increased from time to time as directed by the owners in general meeting.

LEVIES

- 10.5 The Trustee Committee will, from time to time, charge levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the Private Area, access roads over adjoining land, conduits, pipelines and other areas and structures on adjoining land which is also used by the Association and/or for the payment of all rates and other charges payable by the Association in respect of the Private Area and/or, if applicable, for the payment of electricity consumed by street lighting and other lighting on the Private Area and/or for the services rendered to it and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Private Area and the Association's affairs. In calculating levies, the Trustees Committee will take into account income, if any, earned by the Association. All of the members of the Association shall be jointly liable for the expenditure incurred in connection with the Association.
- 10.6 At every annual general meeting the Association will approve, with or without amendment, the estimate of income and expenditure, referred to in rule 10.5, and will determine the amount estimated to be required to be levied upon the owners during the ensuing financial year.
- 10.7 Within fourteen days after annual general meeting the trustees will advise each owner in writing of the amount payable by him or her in respect of the estimate referred to in rule 10.4.2 whereupon such amount will become payable in installments, as determined by the trustees.
- 10.8 The trustees may from time to time, when necessary, make special levies upon the owners or call upon them to make special contributions in respect of all such expenses as are mentioned in rule 10.5 above and such levies and contributions may be made payable in one sum or by such installments and at such time or times as the trustees will think fit.
- 10.9 An owner will be liable for and pay all legal costs, including costs as between attorneys an client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such owners to the Association or in enforcing compliance with these rules, the conduct rules or obligations of the Association as defined in Section 61 of the City of Cape Town Municipal Planning By-Law, 2015 ("the By-Law"), as amended from time to time.
- 10.10 The trustees will keep a complete record of all rules in force from time to time .
- 10.11 The trustees will supply a copy of all rules in force, and may require them to pay a reasonable charge therefore, on the application of-
- a) an owner of an erf;
 - b) an occupant of an erf;
 - c) the prospective purchaser of an erf;
 - d) the holder of any registered mortgage bond;
 - e) the managing agent, and
 - f) the auditor or the accounting officer.

MINUTES

10.12 The trustees will –

10.12.1 keep minutes of their proceedings;

10.12.2 cause minutes to be kept of all meetings of the Association in a minute book of the Association kept for the purpose;

10.12.3 include in the minute book of the Association a record of every unanimous resolution, special resolution and any other resolution of the Association.

10.13 The trustees will keep all minute books in perpetuity.

10.14 On the written application of any owner of registered mortgagee of a unit, the trustees will make all minutes of their proceedings and the minutes of the Association available for inspection by such owner and mortgagee.

BOOKS OF ACCOUNT AND RECORDS

10.15 The trustees will cause proper books of accounts and records to be kept so as fairly to explain the transactions and financial position of the Association, including –

10.15.1 A record of the assets and liabilities of the Association,

10.15.2 A record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur,

10.15.3 A register of owners of erven and of all other persons having real rights in such units (insofar as written notice will have been given to the trustee by such owners or other persons) showing in each case their addresses, and

10.15.4 Individual ledger accounts in respect of each owner.

10.16 On the application of any owner or of the managing agent, the trustees will make all or any of the books of accounts and records available for inspection by such owner or managing agent.

10.17 The trustees will cause all books of account and records to be retained for a period of six-years after completion of the transactions.

ANNUAL FINANCIAL ESTIMATE, FINANCIAL STATEMENT AND REPORT

- 10.18 Before every annual general meeting, the trustees will cause to be prepared an itemised estimate of the anticipated income and expenses of the Association during the ensuing financial year, which estimate will be laid before the annual general meeting for consideration in terms of rule 12.2 hereof.
- 10.19 The estimate of expenses referred to in rule 10.18 will include a reasonable provision for contingencies.
- 10.20 The trustees will cause to be prepared, a financial statement in conformity with generally accepted accounting practice, which statement will fairly present the state of affairs of the Association and its finances and transactions as at the end of the financial year concerned.
- 10.21 The trustees will cause copies of the schedules, estimate and audited statement referred to in rule 10.18 and 10.20 to be delivered to each owner, and to any mortgagee which has advised the Association of its interest, at least fourteen days before the date of the annual general meeting at which they are to be considered.
- 10.22 As reflected in the records of the Association, delivery under the last preceding sub-rule will be deemed to have been effected if the documents referred to are sent by prepaid post addressed to the owner at his domicilium referred to in rule 5, or his e-mail address on record, and to any mortgagee as aforesaid at the address of such mortgages.

DEPOSIT AND INVESTMENT OF FUNDS

- 10.23 The trustees will cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank or building society in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys will only be withdrawn for the purpose of payment of the expenses of the Association or investment.

11. GENERAL MEETINGS (MEETING OF OWNERS)

- 11.1 The first meeting of the owners will be held within sixty days of the establishment of the Association, at least seven days' notice of which will be given in writing, and which notice will be accompanied by a copy of the agenda of such meeting and details of the items referred to in rule 11.2.
- 11.2 The agenda for the meeting convened under 11.1, will comprise at least the following:
 - 11.2.1 the consideration, confirmation or variation of the insurances effected by the developer or the Association;
 - 11.2.2 the consideration, confirmation or variation of an itemised estimate of the anticipated income and expenses of the Association for the ensuing financial year;

11.2.3 the consideration and approval, with or without amendment, of the financial statements relating to the management, control and administration of the building from date of establishment of the Association to the date of notice of the meeting referred to in rule 11.1;

11.2.4 the taking of cession of such contracts relating to the management, control and administration of the building as may have been entered into by the developer for the continual management, control and administration of the building and the private open areas and/or private streets and in respect of which the developer will be obliged to submit such contracts to the meeting;

11.2.5 the appointment of an accounting officer;

11.2.6 the election of trustees, and

11.2.7 determination of the domicilium citandi et executandi of the Association.

11.3 An annual general meeting will be held within four months after the end of each financial year

11.4 Unless otherwise decided at a general meeting or by the trustees, the financial year of the Association will run from the first day of July of each year to the last day of June of the following year.

11.5 The trustees may whenever they think fit and will upon a request in writing made by a minimum of 25 per cent of the owners convene a special general meeting. If the trustees fail to call a meeting so requested within fourteen days of the request, the owners will be entitled themselves to call the meeting.

NOTICE OF GENERAL MEETINGS

11.6 Unless otherwise provided for in the Act, at least fourteen days' notice of every general meeting specifying the place as determined by special resolution of members of the Association, the date and the hour of the meeting and, in the case of special business, the general nature of such business, will be given.

11.6.1 to all owners, and

11.6.2 to all holders of registered mortgage bonds over units who have advised the Association of their interests.

11.7 The holders of registered mortgage bonds will have the right to attend the meeting herein referred to and to speak at such meetings but will not be entitled to vote thereat.

11.8 The notice referred to in rule 11.6 will be deemed to have sufficiently given and delivered in accordance with rule 10.21.

11.9 The notice to in rule 11.6 will be accompanied by the documents referred to in rule 10.21, except in the case of a meeting contemplated in rule 10.18 or a special general meeting.

11.10 Inadvertent omission to give the notice referred to in rule 11.6 to any person entitled to such notice or the non-receipt of such notice by such person will, save in the case of the person contemplated in rule 11.6(b), not invalidate any proceedings at any such meeting.

- 11.12 A general meeting of the Association may be called on shorter notice than that specified in rule 11.6, provided it is so agreed by all persons entitled to attend.
- 11.13 A special general meeting for the purpose of passing a unanimous or special resolution may be convened for a date 30 day or less after notice has been given to all the members of the Association if, in the opinion of the trustees, it is necessary due to the specific nature of a matter to convene the meeting with such shorter period of notice.

12. PROCEEDINGS AT GENERAL MEETINGS

Ordinary and special Business

- 12.1 All business at any general meeting other than business referred to in clause 12.2 hereunder, will be special business.

Annual General Meeting

- 12.2 The following business will be transacted at an annual general meeting:

12.2.1 The consideration of the financial estimate statement and report referred to in clauses 10.18 to 10.20, and;

12.2.2 the approval with or without amendment of-

(i) replacement values in respect of rule 10.3;

(ii) the estimate of income and expenditure referred to in rule 10.18

12.2.3 the appointment of an auditor or an accounting officer;

12.2.4 the determination of an auditor or an accounting officer;

12.2.5 any special business of which due notice has been given in terms of rule 11.6

12.2.6 determination of the domicilium citandi et executandi of the Association.

QUORUM

- 12.3.1 No business will be transacted at any general meeting unless a quorum of persons is present in person or by proxy at the time when the meeting proceeds to business.

12.3.2 A quorum at a general meeting will be –

- a) the number of owners holding at least 50 per cent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote, in developments where there are ten or less;

- b) the number of owners holding at least 35 per cent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote in the case of developments with less than 50 but more than 10 erven, and
- c) the number of owners holding at least 20 per cent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote in the case of developments with 50 or more erven.

12.4 If within half-an-hour from the time appointed for a general meeting a quorum is not present, the meeting will stand adjourned to the time appointed for the meeting, the quorum is not present within half-an-hour of the time appointed for the meeting, the owners present in person or by proxy and entitled to vote, will form a quorum.

CHAIRMAN

12.5 The chairman of the trustees will preside as chairman at every general meeting of the Association, unless otherwise resolved by members of the Association at such meeting.

12.6 If, at any meeting, the chairman of the trustees is not present within fifteen minutes after the time appointed for the holding of the meeting, or if he is unwilling or unable to act as chairman, the members present will elect one of their number to be chairman.

13. VOTING AT GENERAL MEETINGS

POLL

13.1 At any general meeting a resolution put to the vote of the meeting will be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by person entitled to vote at such meeting.

13.2 Unless a poll be so demanded, a declaration by the chairman that a resolution has on the show of hands been carried, will be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

13.3 A demand for a poll may be withdrawn.

13.4 A poll, if demanded, will be taken in such manner as the chairman thinks fit, and the result of the poll will be deemed to be the resolution of the meeting at which such poll was demanded.

VOTES

13.5 On a show of hands the owner or owners of an erf, or if the owner is a juristic person, its proxy, will have one vote. Provided that the chairman will be entitled, in his discretion, to change the manner of voting to one by poll and not by show of hands.

NO VOTE IN CERTAIN CIRCUMSTANCES

13.6 An owner will not be entitled to vote at any general meeting if –

13.6.1 any contributions payable by him in respect of his erf have not been duly paid, or

13.6.2 he persisted in breach of any of the conduct rules of the Association notwithstanding written warning by the trustees to refrain from breaching such rule: Provided that any mortgagee will be entitled to vote as such owner's proxy at any general meeting, even though paragraph (a) or the foregoing provisions of this paragraph may apply to such owner.

JOINT VOTERS

13.7 When two or more persons are entitled to exercise one vote jointly, that vote will be exercised only by a person (who may not be one of them) jointly appointed by them as their proxy.

13.8 Notwithstanding sub-rule(1), where two or more persons are entitled to exercise one vote jointly, any one of them
may demand a poll.

PROXIES

13.9 Votes at a general meeting may be cast either personally or by proxy, whether on a poll or on a show of hands.

13.10 A proxy will be appointed in writing under the hand of the appointee, or his agent duly appointed in writing, and will be handed to the Chairman prior to the commencement of the meeting; Provided that the foregoing provisions will not apply in the case of any proxy created and contained in any registered mortgage bond, if such mortgage bond is produced at the meeting.

14 DUTIES OF OWNERS

STATUTORY AND GENERAL

14.1 An owner;

14.1.1 will not use his erf or permit it to be used, in such manner or for such purpose as will be injurious to the reputation of the development;

14.1.2 will not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any license, relating to or affecting the occupation of the erf, or the carrying on of business on the property, or so contravene or permit the contravention of the conditions of title applicable to his erf or any other erf;

14.1.3 will not make alterations which are likely to impair the use and enjoyment of other erven or the private area;

14.1.4 will not do anything to his erf which is likely to prejudice the harmonious appearance of the building;

14.1.5 will not use any private area or portion thereof for any purpose other than intended in terms of its zoning and by resolution of the Association;

14.1.6 will not construct or place any structure or building improvement on his erf without the prior written consent of the trustees and the local authority;

ARCHITECTURE

14.2 The Association will have the power to:

14.2.1 frame and enforce conditions on members in order to harmonise the architectural style and design criteria of, and the materials to be used in, all buildings erected or to be erected on the group site

14.2.2 do such acts as are necessary to accomplish the purposes expressed or implied herein, which acts will include, inter alia, the examination and approval or refusal of building plans, whether such be for new constructions, renovations, alterations or additions. When approval has been obtained from the Owner's Association for the new constructions, renovations, alterations or additions, the plan will be submitted, by the owner, to the City of Cape Town for approval or refusal;

14.2.3 compel members to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such member in writing to remove or alter within a specified period, anything erected contrary to the requirements laid down pursuant thereto and failing which, to apply to Court for any appropriate order, and

14.2.4 appoint professional advisors, e.g. an architect, to scrutinise all plans to ensure that the necessary architectural controls have been met.

BUILDING PLANS

14.3 Members will be obliged to submit all building plans for new constructions, renovations, alterations or additions, to the Association for examination and approval prior to the submission of such plans to the Council for approval. The Association will make known its decision to the applicant within one (1) week of the plans being submitted to it.

DESIGN MANUAL

14.4 All buildings or improvements constructed on any Unit Erf must comply with the provisions of the Design Manual as annexed hereto (if applicable).

ANTENNA

14.5 No television or radio antenna will be erected on the group site or attached to the buildings thereon, without the prior written consent of the association, except for such communal masts as may be permitted by the local authority.

REFUSE

14.6 No member will be entitled to dump material or goods on any erf not registered in his/her name and will be liable for payment of the cost of rectifying the damage or removal of the material or goods. Refuse will be placed in the appointed place on removal days.

FENCE

14.7 No member will be entitled to demolish, paint or change or in any way decorate or add to any part or portion of any fence that the Developer may construct on the perimeter of the Development.

14.8 The Trustee Committee will be the only persons entitled to perform any of the actions referred to in 14.7 above to or in respect of such fence.

COLOUR SCHEME

14.9 No alteration or addition or change to the colour scheme may be made to any building or structure on the unit even without the consent of all the members of the Home Owners' Association.

BINDING NATURE

14.10 The provision of these rules and of the conduct rules, and the duties of the owner in relation to the use and occupation of sections and private open areas and/or private street/s will be binding on the owner of any erf and any lessee or other occupant of any such property and it will be the duty of the owner to ensure compliance with the rules by his lessee or occupant, including employees, guests and any member of his family, his lessee or his occupant.

OWNER'S FAILURE TO MAINTAIN

14.11 If an owner fails to repair or maintain his erf in a state of good repair and any such failure persists for a period of thirty days after the giving of written notice to repair or maintain given by the trustees of the managing agent on their behalf, the Association will be entitled to remedy the owner's failure and to recover the reasonable cost of doing so from such owner.

14.12 Where two or more attached dwelling units are to be held under separate title, or a unit is erected on the erf boundary, the person who at any time is the owner of each land unit directly involved in the subdivision will: maintain such part of any retaining wall, roof, pipe, gutter, wiring or other structure or thing as is common to such land unit and any other land unit; maintain every part of such wall, roof, pipe, gutter, wiring other structure thing which is on or traverses such land unit; permit access to such land unit for the purpose of maintaining, cleaning, renovating, repairing, renewing, altering and adding to any wall, roof, pipe, wiring or other structure or thing, and will not do anything which will prevent or hinder any such access or work from being done, and not make any alteration or additions to or demolish any part of the building erected on such land unit, including boundary walls and fences or change the exterior colour scheme or material of such buildings without the written consent of the Home Owners' Association, or permit the exterior of the building to deteriorate and become untidy or dirty.

ARBITRATION OR DISPUTE

- 14.13 Any dispute between the Association and an owner or between owners will be determined in terms of these rules.
- 14.14 If such dispute arises, the aggrieved party will notify the other interested party or parties in writing and copies of such notification will be served on the trustees. Should the dispute or complaint not be resolved within 14 days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.
- 14.15 Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who will be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
- 14.16 Arbitration will be held informally or otherwise as the arbitrator may determine. The arbitrator will have the right to demand that the party demanding arbitration furnish the arbitrator with security for payment of the costs of arbitration in such amount and form as the arbitrator may determine, failing which the arbitration will not be proceeded with. Where possible the arbitration will be concluded within 21 days after the matter has been referred to for arbitration in terms of sub-rule (2) or security for costs has been furnished.
- 14.17 The arbitrator will make his or her award within 7 days from the date of the completion of the arbitration and will in making his or her award, have regard the principles laid down in terms of these rules. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he or she may determine and as he or she in his or her discretion, may deem appropriate having regard to the outcome of the arbitration.
- 14.18 The decision of the arbitrator will be final and binding and may be made an order of the High Court upon application of any party to be affected by the arbitration.

15. STATUS OF THE ASSOCIATION

The Association shall be a Body Corporate:

- 15.1 with legal personality, capable of suing and being sued in its own name;
- 15.2 none of whose members in their personal capacity will have any right, title or in the funds or assets of the association, which will vest in and be controlled by the Committee in terms hereof, and
- 15.3 not for profit but for benefit of the owners and occupants of properties in the development.

16. GENERAL

16.1 An owners' association –

- (a) comes into existence upon the transfer of the first unit arising from the subdivision or part thereof;
- (b) is a juristic person, has perpetual succession and is capable of suing and of being sued;
- (c) has as its members all the owners of land units in the association's area who are jointly liable for the expenditure incurred in connection with the association; and
- (d) must recover expenditure incurred in connection with the association from its members.

16.2 The applicant for approval of subdivision must call the first meeting of the owners' association within 60 days of the transfer of 60% of the land units arising from the subdivision or within two years of the transfer of the first land unit.

16.3 Members of an owners' association must at the first meeting of the association elect the trustees of the association.

16.4 The applicant for approval of subdivision must within 60 days of the first meeting notify the City that the meeting has taken place and provide the City with a copy of the minutes of the meeting.

16.5 The local authority will retain the right to intervene in and undertake the functions and activities of the body corporate or to appoint an agent or person to undertake such business as is necessary to ensure all the above for any period of time and that members of the Association will be responsible for the financial implications of such actions and that all relevant costs will be borne by all the members jointly and/or separately.

16.6 The constitution of an owners' association may be amended in accordance with the provisions of the constitution provided that an amendment becomes effective only when certified by the City.

16.7 The constitution of an owners' association and any amendment thereof must be lodged with the City and the latest copy certified by the City.

16.8 The City is exempt from liability for any damage which may be caused by its certification of a constitution of an owners' association or an amendment thereof or by the loss of a constitution lodged with the City.

16.9 The owners' association must enforce the provisions of its constitution.

17. ARRANGEMENTS FOR TRANSFER OF A LAND UNIT IN THE EVENT THAT THE ASSOCIATION CEASES TO FUNCTION OR FAILS TO MEET AN OBLIGATION

17.1 If the Owners' Association fails to meet any obligations in this Constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.

The City may recover any expenditure in respect of the action contemplated above from the Owners' Association or its members, who are jointly liable.

The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Owners' Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.

If the Owners' Association ceases to function effectively or to carry out its obligations, the City may give the Association a binding instruction to:

- a) hold a meeting and to reconstitute itself; or
- b) dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed.

In determining whether to act in terms of the above, the City must have regard to:

- a) the purpose of the Association;
- b) who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
- c) the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
- d) the impact of the dissolution of the Association on its members and the community;
- e) any written representations from the Association and its members.

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

- a) the transfer to the City of the Association's property which contains the internal engineering services and private open spaces;
- b) the upgrading of the internal engineering services to the standards of the City.

In the event that the OA has ceased to function, and an owner wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% (Sixty Percent) of the members of the Association, which consent is deemed to be the consent of the OA".

18. AMENDMENTS TO THE CONSTITUTION

18.1 The constitution of an owners’ association may be amended in accordance with the provisions of the constitution provided that an amendment concerning a matter/s in points

- (a) 3.1;
- (b) 3.7.1 – 3.7.5;
- (c) 4.4 & 4.5;
- (d) 10.3;
- (e) 14 & 14.3;

becomes effective only when certified by the City.

18.2 The City must certify that the constitution of an owners’ association complies with points mentioned in 18.1 (a) – (e) and the latest copy is duly lodged with the City; and is presumed to contain the operative provisions of the Constitution.

19. EXEMPTION FROM LIABILITY

The City is exempt from liability for any damage which may be caused by its certification of a constitution of an owners’ association or an amendment thereof or by the loss of a constitution lodged with the City.

CHAIRMAN

DATE

LOCAL AUTHORITY

DATE