

1 July 2019

# **CONSTITUTION**

in terms of Section 29 of Ordinance 15 of 1985

OF

**PONTAC PARC**

**PROPERTY OWNERS' ASSOCIATION**

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## 1. INTERPRETATION

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

- |      |   |   |
|------|---|---|
| 1.1  | "association or Property Owners' Association" | means the Property Owners' Association of <b>PONTAC PARC</b> ;  |
| 1.2  | "auditors"                                    | means the Auditors of the Association;  |
| 1.3  | "business day"                                | means weekdays other than Saturdays, Sundays and Public Holidays;   |
| 1.4  | "building"                                    | means the building to be built on the erf by the purchaser, which use shall be limited to-<br>(a) commercial; or<br>(b) industrial  |
| 1.5  | "constitution"                                | means this Constitution drawn and accepted in terms of sections 61 and 62 of the City of Cape Town Municipal Planning By-Law, 2005;   |
| 1.6  | "chairman"                                    | means the Chairman of the Trustees;   |
| 1.7  | "developer"                                   | means <b>PAARL PROPERTY DEVELOPMENTS PROPRIETARY LIMITED</b> ;  |
| 1.8  | "development"                                 | means the township resulting from the subdivision of <b>PORTION 10, A PORTION OF THE FARM VAN WYKS RIVIER NO. 787</b> , in the Drakenstein Municipality known as <b>PONTAC PARC</b> ; |
| 1.9  | "erf"   | means one of the erven;   |
| 1.10 | "erven"                                       | means the single industrial erven resulting from the subdivision of <b>PORTION 10, A PORTION OF THE FARM VAN WYKS RIVIER NO. 787</b> , in the Drakenstein Municipality;               |
| 1.11 | "in writing"                                  | means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;  |
| 1.12 | "local authority"                             | means the Drakenstein Municipality or local authority for the time being;   |
| 1.13 | "member"                                      | means the member of the Property Owners' Association;   |
| 1.14 | "month"                                       | means calendar month;   |
| 1.15 | "office"                                      | means the administrative office of the Association;   |
| 1.16 | "private combined                             | means any service that is shared by more than one owner and where all the owners take joint responsibility for the combined private services;   |
| 1.17 | "services"                                    |   |

- 1.18 "registered owner" means the party or parties acquiring ownership and taking transfer of one or more single industrial erven resulting from the subdivision of **PORTION 10, A PORTION OF THE FARM VAN WYKS RIVIER NO. 787**, in the Drakenstein Municipality;
- 1.19 "resolution" means a Resolution other than a Special Resolution passed at an Annual General Meeting or a Special General Meeting by an ordinary majority of the total votes represented at such meeting by Members present in person or by proxy;
- 1.20 "secretary" means the Secretary of the Trustees;
- 1.21 "special resolution" means a Resolution-  
 (a) passed at an Annual General Meeting or a Special General Meeting whereat Members present in person or by proxy represent 50% (fifty per centum) of the total votes; and  
 (b) passed by majority of 75% (seventy five per centum) of the total votes represented by Members present in person or by proxy;
- 1.22 "these presents" means this Constitution, the Conduct Rules and/or Regulations, the by-laws of the Association from time to time in force and/or Design Manual ;
- 1.23 "trustees" means the Trustees of the Association from time to time and includes alternate and co-opted Trustees;
- 1.24 "vice-chairman" means the Vice-Chairman of the Trustees;
- 1.25 "year" means calendar year.

Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other genders.

## **2. MEMBERS OF THE ASSOCIATION**

- 2.1 The Association which is hereby constituted is comprised of a single Member, namely, the Developer.
- 2.2 Every Registered Owner shall upon registration of transfer into his name of an Erf *ipso facto* become a Member subject to the terms contained herein and in particular in 5 to 9 hereof.

## **3. MAIN OBJECT**

The Association shall have as its main object the promotion and advancement of the Development, and the protection of the communal interests of the Members.

## **4. MAIN BUSINESS**

- 4.1 The main business of the Association shall be the general management and administration of the Development.
- 4.2 Such business shall include the maintenance of public and private areas, buildings belonging to the Association, security, services (including water, sewer, roads and storm water) and amenities situated within the Development.

4.3 The Association shall also be responsible for compliance with the conditions imposed by the local and other authorities as per conditions of subdivision or rezoning.

4.4 The Association shall be responsible for the installation of any private water meters and replacement if/when required, including the administration of all the metered connections.

## 5. CONDITIONS OF MEMBERSHIP

5.1 Membership of the Association shall be limited to the Developer (for as long as it is a Registered Owner) and Registered Owners, provided that where any such owner consists of more than one person, all the registered OWNERS of that Erf shall be deemed jointly and severally to be one Member of the Association.

5.2 When a Member ceases to be the Registered Owner of an Erf, he shall *ipso facto* cease to be a Member of the Association.

5.3 Insofar as the following condition is embodied in the Deed of Transfer relating to each erf, as a condition of title-

*"The erf shall not be transferred without the written consent of the Property Owners Association of which the transferee and his successors in title shall be a Member."*

5.4 The "consent" envisaged in the above condition shall not be withheld, provided that-

5.4.1 the Registered Owner of the Erf in question has fulfilled all his financial obligations to the Association in terms of this Constitution; and

5.4.2 the agreement of sale concluded between the Registered Owner and the purchaser of the said Erf contains the following term-

*"The purchaser acknowledges that upon registration of transfer of the property into his name, he automatically becomes a member of the Property Owners' Association subject to this Constitution and that he shall remain a member of such Association for as long as he owns the property. The purchaser further acknowledges that his successors-in-title shall be similarly become and remain members of the said Association. The purchaser further agrees to abide by and fulfil his obligations in terms of this Constitution, at all times."*

5.5 A Registered Owner may not resign as a Member.

5.6 The rights and obligations of a Member shall not be transferable and every Member shall-

(a) to the best of his ability further the objects and interests of the Association;

(b) observe all by-laws, conduct rules and/or regulations and/or architectural guidelines made by 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.

## 6. LEVIES

6.1 The Trustees shall establish and maintain a levy fund, to which end they shall from time to time make levies upon the Registered Owners in such amounts as are in their opinion sufficient for the control, management and administration of the Development, for the payment of any and all local authority charges, and charges for the supply of any services required by the Association for recovering any losses suffered by the Association, and for the discharge of any other obligation of the Association.

- 6.2 The Trustees shall estimate the amount which shall be required by the Association to meet the aforesaid expenses during each operational year or any portion thereof, together with the estimated deficiency, if any, as may have resulted from the preceding operational year or portion thereof, and shall make a levy upon the Registered Owners, equal as nearly as is reasonably practical to such estimated amount. The Trustees may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such expenses to be incurred for the Development. Every such levy shall be payable monthly in advance on the first day of every calendar month.
- 6.3 The Trustees may from time to time make special levies upon the Members in respect of all such expenses as are mentioned in 6.1 (which are not included in any estimate made in terms of 6.2), and such levies may be imposed and be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit.
- 6.4 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Registered Owner, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Registered Owner. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. 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 that Erf, to pay the levy attributable to that Erf.
- 6.5 In calculating levies, the Trustees shall take into account income, if any, earned by the Association, and the allocation of voting rights to Members, as recorded in 26 *below*
- 6.5.1 The levy payable by a Member shall bear the same proportion to the total levy imposed on Members as that Member's voting right bears to the aggregate voting rights of all Members, as set out in 26 *below*.
- 6.5.2 Notwithstanding the provisions above, in respect of the maintenance and/or upkeep or other expenses relating to the private road the Trustees shall be entitled to impose special levies only on those owners using the said road.
- 6.6 Levies shall be payable in the first of day of each month, monthly in advance.
- 6.7 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

## **7. MEMBERS' OBLIGATIONS**

- 7.1 The Trustees may from time to time-
- 7.1.1 make regulations governing, inter alia, the external appearance of and the maintenance of the public area and the buildings or other improvements erected thereon;
- 7.1.2 enter into agreement(s) with third parties on behalf of the Association; inter alia, the local authority, governing the matters set out in 7.1.1 and any other matters incidental thereto.
- 7.2 Each Member undertakes to the Association that he shall comply with-
- 7.2.1 the provisions of this Constitution and the Conduct Rules and Design Manual;
- 7.2.2 any regulations made in terms of 7.1.1;
- 7.2.3 any agreements referred to in 7.1.2 insofar as those agreements may directly or indirectly impose obligations on him.

- 7.3 Each member further undertakes to the association that he shall comply with, inter alia, the following specific regulations to be issued by the trustees-
- 7.3.1 That the Development shall be developed in accordance with a standard approved by the developer, and after the developer has ceased to be a Member, by the Trustees;
- 7.3.2 That the Development shall be maintained in good and tidy condition in compliance with standards set from time to time by the Trustees;
- 7.3.3 That no building operations shall be commenced in the Development and no additions or alterations to approved buildings shall be effected until the Trustees have in writing approved the design and construction plans including material and colour specifications for the erection of any building or structure specifically outside buildings, fences or walls; The Trustees shall employ an architect to advise them as to the acceptability of building plans in terms of Design Manual;
- 7.3.4 That, after completion of the Development, the Trustees shall be the decision makers as to the suitability of the design and/or construction method, material or colours and their decision shall be final;
- 7.3.5 That each Registered Owner shall care for any trees on the Erf registered in his name and he shall not remove or cut down, or cause to be removed or cut down, any trees situated as aforesaid without the prior written consent of the Trustees;
- 7.3.6 That each Registered Owner shall establish and maintain a garden on the Erf registered in his name, according to a standard approved by the Trustees;
- 7.3.7 That each Registered Owner shall maintain in a neat and tidy condition all buildings and/or structures erected on the Erf registered in his name;
- 7.3.8 That each Registered Owner shall adequately insure all building/s and/or structures erected on the Erf registered in his name (and if requested, to furnish proof of such insurance to the Trustees) and in the event of total/partial destruction he shall within a reasonable time period make good such damage or reconstruct in accordance with the original approved plans or in the event of total reconstruction in accordance with the Trustees' approval mutatis mutandis the provisions of 7.3.1 to 7.3.3 inclusive;
- 7.3.9 That no Registered Owner shall be permitted without the prior written approval of the Trustees to-
- 7.3.9.1 alter the previously approved external colour scheme of buildings/structures erected on the Erf registered in his name;
- 7.3.9.2 erect/construct on the Erf registered in his name any solar heating system, outdoor radio aerial, outdoor television aerial or other aerial(s) and/or similar structures;
- 7.3.9.3 permit any commercial type vehicle, boat, caravan, trailer, or any derelict or abandoned vehicle to be parked on or in front of the Erf registered in his name or in the public area which in the opinion of the Trustees is unsightly;
- 7.3.9.4 do or suffer to be done on the Erf registered in his name anything which in the opinion of the Trustees is noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance or a source of damage or disturbance to any owner, tenant or occupier of any other property in the township in which the Erf is situated;

- 7.3.10 Each Registered Owner shall be obliged to obtain the approval of the local authority in respect of any buildings and/or structures to be erected on the Erf registered in his name and he shall further be obliged to comply with all conditions and standards imposed by such local authority;
  - 7.3.11 Buildings may only be erected in accordance with and complying with the Design Manual and only after prior approval by the Trustees of the Association and the Drakenstein Municipality;
  - 7.3.12 The Trustees are entitled to and shall impose rules which will be applicable and enforceable during the construction period of any building in the Development. These rules shall stipulate the conditions applicable to the building contractors of the owners i.e. netting around the building site, hours of work and such other rules as the Trustees may decide to impose.
- 7.4 If any Registered Owner, tenant or occupier of an Erf by act or omission commits a breach of any of these conditions and fails to remedy such breach after the Trustees have given the Registered Owner written notice to make good such breach within a time specified in such notice then-
- 7.4.1 The Trustees and/or the Developer and/or the owner of property in the development in which the Erf in question is situated shall be entitled without further notice to the Registered Owner to institute proceedings against the Registered Owner in any Court of competent jurisdiction to obtain redress against the Registered Owner and without detracting from the generality of the foregoing including obtaining of an interdict against the Registered Owner.
  - 7.4.2 The Trustees (or those employed by the Trustees on behalf of the Association) may enter upon the Erven to take such action as may be required (as determined in the discretion of the Trustees) to remedy the breach and the Registered Owner concerned shall be liable to the Association for all costs so incurred which costs shall be due and payable upon demand. The foregoing action shall, without detracting from the generality of the foregoing, include the obtaining of the services of a garden service company.

## **8. BREACH**

- 8.1 Any Member who fails to make payment to the Association on due date of any subscription, levy or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of these presents, may, if so determined by a resolution passed by not less than 50% of the Trustees present at a meeting of Trustees-
- 8.1.1 be issued a penalty by the Association in an amount not exceeding an amount equal to double the sum outstanding; and/or
  - 8.1.2 be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question, such sum as compensation;
  - 8.1.3 be liable for and pay all legal costs including costs as between attorney and 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 Member to the Association;
- as in each case shall have been determined at such meeting of Trustees.
- 8.2 The Member concerned shall be invited to attend such meeting of Trustees by notice in writing delivered to such Member not less than 7 (seven) days prior to the holding thereof, and such Member shall be given the right to speak thereat, and to be represented legally, but not to be present at the voting or to take part in the proceedings, other than as allowed by the Chairman of such meeting.

- 8.3 The Trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine.
- 8.4 Nothing in the aforesaid shall derogate from or in any way diminish the right of the Association represented by an authorised Trustee to institute proceedings in any Court of competent jurisdiction for recovery of any money due by a Member.

## **9. CESSATION OF MEMBERSHIP**

Any Member ceasing to be a Member of the Association for any reason shall (nor shall any such Member's executor, curator, Trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Member.

## **10. TRUSTEES**

- 10.1 There shall be a board of Trustees of the Association which shall consist of not less than 2 (two) and not more than 5 (five) persons, the exact number to be determined from time to time at the Annual General Meeting of the Association.
- 10.2 A Trustee shall be an individual, but need not himself be a Member of the Association, provided that a majority of Trustees shall be Members. A Trustee, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of these presents.
- 10.3 For as long as the Developer is a Member it shall be entitled to nominate and appoint one of the Trustees.
- 10.4 Once the Developer ceases to be a Member of the Association, the Trustees shall comprise not less than 1 (one) Registered Owner who is a permanent occupant of the Development.

## **11. APPOINTMENT OF TRUSTEES**

All the initial Trustees shall be appointed by the Developer and until so appointed the Developer shall, notwithstanding Clause 10.1, be sole Trustee.

## **12. REMOVAL AND ROTATION OF TRUSTEES**

- 12.1 Save as set forth in 12.2, each Trustee shall continue to hold office until the second Annual General meeting next following his said appointment, at which meeting each Trustee shall be deemed to have retired from office as such, but will be eligible for re-election to the Trustees at such meeting.
- 12.2 A Trustee shall be deemed to have vacated his office as such upon-
- 12.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
  - 12.2.2 his making any arrangement or composition with his creditors;
  - 12.2.3 his conviction for any offence involving dishonesty;
  - 12.2.4 his becoming of unsound mind or being found lunatic;
  - 12.2.5 his resigning from such office in Writing delivered to the Secretary;
  - 12.2.6 his death; or

12.2.7 his being removed from office by a resolution of the Members of the Association, requiring a simple majority, before the termination of his period of office;

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

12.3 Should the office of a Trustee fall vacant prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining Trustees for the time being, and he shall hold office until the next General Meeting when he shall be eligible for re-election.

### **13. OFFICE OF TRUSTEES**

13.1 The first Chairman, and Vice-Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices until the first Annual General Meeting following the date of their appointment, provided that any such office shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.

13.2 At the first Annual General Meeting, the Trustees shall appoint from amongst themselves a Chairman and Vice-Chairman.

13.3 Within 7 (seven) days of the holding of such Annual General Meeting, the Trustees shall meet and shall elect from their own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall *ipso fact* be vacated by the 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 any of the aforesaid offices at any time, the Trustees shall immediately meet to appoint one of their number as a replacement in such office.

13.4 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustees, and all General Meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by Members, and to allow or refuse to permit guests to speak at any such meetings provided, however, that any such guests shall not be entitled to vote at any such meetings.

13.5 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustees.

13.6 Trustees shall be entitled to be reimbursed all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

### **14. FUNCTIONS AND POWERS OF TRUSTEES**

14.1 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 and, save as may be expressly provided in these presents, 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 these presents required to be exercised or done by the Association in General Meeting subject nevertheless to such regulations as may be prescribed by the Association in General Meeting from time to time, provided than no regulation made by the Association in General Meeting shall invalidate any prior act of the Trustees which would have been valid if such regulation had not been made.

- 14.2 The Trustees shall have the right to vary, cancel or modify any of their decisions and Resolutions from time to time.
- 14.3 The Trustees shall have the right to co-opt any person or persons chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 14.4 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as they shall decide from time to time.
- 14.5 The Trustees may make regulations and by-laws, not inconsistent with these presents, or any regulations or by-laws prescribed by the Association in General Meeting-
- 14.5.1 as to disputes generally;
  - 14.5.2 for the furtherance and promotion of any of the objects of the Association;
  - 14.5.3 for the better management of the affairs of the Association;
  - 14.5.4 for the advancement of the interests of Members;
  - 14.5.5 for the conduct of Trustees at meetings of Trustees and meetings of the Association;
  - 14.5.6 to levy and collect contributions from the Members in accordance with 6.1 to 6.6 above;
  - 14.5.7 to assist it in administering and governing its activities generally;
  - 14.5.8 to administrate the water consumption of each individual portion, including any private open space, and have the right to enter any property to take water readings, inspect any water installation, to replace any meter if required due to any defect and due to wear and tear. To calculate and install any water meter lost due to theft, vandalism and/or deliberate damage. Test any water meter if required by the member of an erf and after payment by such a member for the testing. The Trustees will be responsible for adjustments to a water account if the water meter test reveals that the meter over registered above the legal limit of  $\pm 2\%$  (two percent);
  - 14.5.9 Enforce any municipal by law, water restrictions ordered and/or published from time to time by the Drakenstein Municipality;
  - 14.5.10 To allow any municipal employee/inspector to inspect any storm water, sewerage and/or water installation if and when required;

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

## **15. PROCEEDINGS OF MEETINGS OF TRUSTEES**

- 15.1 The Trustees may meet for the despatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of these presents.
- 15.2 Meetings of the Trustees shall be held at least once every six months.
- 15.3 A Trustee may at any time convene a meeting of Trustees by giving to the other Trustees not less than 7 (seven) days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.

- 15.4 Any mortgagee holding a first mortgage bond or bonds over the Erven shall, if he so requires of the Trustees, be entitled to receive reasonable written notice of all meetings of Trustees.
- 15.5 The quorum necessary for the holding of any meeting of Trustees shall be 2 4 (two ~~one~~) Trustees where there are 2 (two) or 3 (three) Trustees (and 3 (three) Trustees where there are more than 4 (four) Trustees.
- 15.6 The Chairman shall preside as such at all meetings of Trustees provided that should at any meeting of Trustees the Chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 15.7 The Trustees shall-
- 15.7.1 ensure that minutes are taken of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting;
- 15.7.2 cause such minutes to be kept of all meetings of the Trustees in a minute book of meeting of Trustees kept for that ~~the~~ purpose;
- 15.8 The Trustees shall keep all minute books of meetings of Trustees in perpetuity.
- 15.9 On the written application of any Member, the Trustees shall make all minutes of their proceedings available for inspection by such Member.
- 15.10 All competent resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of the Trustees shall be of any force or effect, or shall be binding upon the Members or any of the Trustees, unless such resolution is competent within the powers of the Trustees.
- 15.11 Save as otherwise provided in these presents, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 15.12 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of Trustees duly convened.

## **16. OTHER PROFESSIONAL OFFICERS**

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

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

- 17.1 The Association shall before 31 December in each calendar 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 calling it, in terms of 18.1 *below*.
- 17.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.

17.3 All General Meetings other than Annual General Meetings shall be called Special General Meetings.

17.4 The Trustees may, whenever they deem fit, convene a Special General Meeting, and a Special General Meeting shall also be convened on a requisition made by 25% of Members, or in default, may be convened by the requisitionists themselves, provided that notice thereof be given in terms of 18.1*below*

## **18. NOTICE OF MEETINGS**

18.1 An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by 21 (twenty-one) days' notice in writing at the least, and a Special General Meeting, other than one called for the passing of a special resolution, shall be called by 14 (fourteen) 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 the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, 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 under these presents entitled to receive such notices from the Association; provided that a General Meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed-

18.1.1 in the case of an Annual General Meeting, by an ordinary majority of votes represented by Members entitled to attend and vote there at, present in person or by proxy, being a majority together holding not less than 20% (twenty percent) of the total voting rights of all Members;

18.1.2 in the case of a Special General Meeting, by an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy, being a majority together holding not less than 20% (ten percent) of a total voting rights of all Members.

18.2. The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or in terms of the Act, 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.

## **19. SERVICE OF NOTICES OF MEETINGS**

19.1 A notice of a meeting shall be in Writing and shall be given by the Association either personally at the street address of the Erf of a member or by e-mail in the event where the member has notified the Association of his e-mail address.

19.2 Any notice of a meeting sent by email shall be deemed to have been delivered at the time when the email was sent, a "delivery notification" shall be sufficient to proof of proper notification.

19.3 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

## **20. VENUE OF MEETINGS**

General Meetings of the Association shall take place at such place/s as shall be determined by the Trustees from time to time.

## **21. QUORUM**

- 21.1 No business shall be transacted at any General Meeting unless a quorum of at least 20% (twenty percent) of members are present either personally or by way of proxy.
- 21.2 If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it 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, and if at such adjourned meeting a quorum is not present, the Members present shall be a quorum.

## **22. AGENDA AT MEETINGS**

- 22.1 In addition to any other matters required by the Act or these presents, to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting-
- 22.1.1 the consideration of the Chairman's report to the Trustees;
  - 22.1.2 the election of the Trustees;
  - 22.1.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
  - 22.1.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
  - 22.1.5 the consideration of the report of the Auditors;
  - 22.1.6 the consideration of the total levy (as referred to in 6.2) for the calendar year during which such Annual General Meeting takes place; and
  - 22.1.7 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

## **23. PROCEDURE AT GENERAL MEETINGS**

- 23.1 The Chairman shall preside as such at all General Meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 23.2 The Chairman may, with the consent of any General Meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten 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 adjournment meeting.
- 23.3 Except as otherwise set forth in these presents, all General Meetings shall be conducted in accordance with procedures to be stipulated by the Trustees from time to time, which procedures shall be recorded in the notices referred to in 19 inclusive.

## **24. MINUTES OF MEETINGS OF THE ASSOCIATION**

24.1 The Trustees shall-

24.1.1 ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting;

24.1.2 cause such minutes to be kept of all meetings of the Association in a minute book of meetings of the Association kept for the purpose.

24.2 The Trustees shall keep all minute books of meetings of the Association in perpetuity.

24.3 On the written application of any Member, the Trustees shall make all Minutes of the proceedings and/or meetings of the Association available for inspection by such Member.

24.4 All competent resolutions recorded in the minutes of any meeting of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Association shall be of any force or effect, or shall be binding upon the Members or any of the Trustees, unless such resolution is competent within the powers of the Association.

24.5 Save as otherwise provided in these presents, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

## **25. PROXIES**

25.1 A Member may be represented at a General Meeting by a proxy, who need not be a Member of the Association.

25.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of these persons may sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company, the same may be signed by the Chairman of the board of directors of the company or by its secretary, and where an association of persons, by the secretary thereof.

25.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.

25.4 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustees at least one hour before the time fixed for the holding of the meeting.

## **26. VOTING**

26.1 At every General Meeting, every Member in person or by proxy and entitled to vote, shall be allocated voting rights as follows, on a show of hands-

26.1.1 the Registered Owner of a single Erf: 1 (one) vote;

26.1.2 the Developer, for as long as it is a Registered Owner shall be entitled to the number of votes equal to the number of erven still owned by the Developer from time to time;

provided that if a single industrial Erf is registered in more than one person's name, then they shall jointly have 1 (one) vote.

- 26.2 Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting.
- 26.3 At any General Meeting a resolution put to the vote of the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy.
- 26.4 Voting on the election of a Chairman at a General Meeting (if necessary) or on any question of adjournment, shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote, present in person or by proxy.
- 26.5 Every resolution and every amendment of a resolution proposed for adoption by a General Meeting shall be seconded at the meeting, and if not seconded, shall be deemed not to have been proposed.
- 26.6 An ordinary resolution (that is a resolution other than a Special Resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the Chairman of the General Meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 26.7 Unless any Member present in person or by proxy at a General Meeting shall before 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, 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, and an entry in the Minutes of the Association to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

## **27. FINANCIAL YEAR END**

The financial year end of the Association is the end of February of each year.

## **28. ACCOUNTS**

- 28.1 The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association, including-
- 28.1.1 a record of the assets and liabilities of the Association;
  - 28.1.2 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;
  - 28.1.3 a register of Members showing in each case their addresses;
  - 28.1.4 individual ledger accounts in respect of each owner.
- 28.2 On the application of any Member, the Trustees shall make all or any of the books of account and records available for inspection by such Member.

- 28.3 The Trustees shall cause all books of account and records to be retained for a period of six years after completion of the transactions, acts or operations to which they relate.
- 28.4 The Association in General Meeting or the Trustees may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 28.5 At each Annual General Meeting the Trustees shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustees and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in 18.1 *supra*, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

## **29. DEPOSIT AND INVESTMENT OF FUNDS**

- 29.1 The Trustees shall cause all monies 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 monies shall only be withdrawn for the purpose of payment of the expenses of the Association or investment in terms of 29.2.
- 29.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any building society or any other registered deposit receiving institution approved by the Trustees from time to time.
- 29.3 Interest on monies invested shall be used by the Association for any lawful purpose.

## **30. AUDIT**

- 30.1 Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.
- 30.2 The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards in terms of the Auditing Professions Act, 26 of 2005.
- 30.3 All Trustees and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 30.4 Every Trustee, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustees out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done by such person or persons in the discharge of any his/their respective duties, including, in the case of a Trustee, his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties provided that any such act, deed or letter has been done or written in good faith.
- 30.5 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustees, whether in their capacities as Trustee or as Chairman or Vice-Chairman,

or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustees for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or delictual act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

### **31. PRIVILEGE IN RESPECT OF DEFAMATION**

Every Member of the Association and every Trustee shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee, to have waived as against every other Member, the Chairman or Vice-Chairman, every other Trustee, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Trustees, or any sub-committee, all claims and rights of action which such Member or Trustee might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee, or any reference to such Member or Trustee, made at any meeting of Trustees, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false.

### **32. ARBITRATION**

32.1 Any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to-

32.1.1 any matters arising out of these presents; or

32.1.2 the rights and duties of any of the parties mentioned in these presents; or

32.1.3 the interpretation of these presents;

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

32.2 Arbitration shall be held in Paarl, at such place as the Trustees may decide, informally and otherwise in terms of the provisions of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty-one) business days after it has been demanded.

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

32.3.1 primarily an accounting matter - an independent chartered accountant;

32.3.2 primarily a legal matter or any other matter - a practicing attorney of not less than 10 (ten) years standing;

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

32.4 If agreement cannot be reached on whether the question in dispute falls under 32.1.1, 32.1.2 or 32.1.3 upon a particular arbitrator in terms of 32.3, within 3 (three) business days after the arbitration has been demanded, then-

- 32.4.1 the President for the time being of the Law Society of the Cape of Good Hope shall determine whether the question in dispute falls under 32.1.1, 32.1.2 or 32.1.3; or
- 32.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of 32.4 within 7 (seven) business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (twenty-one) business days referred to in 32.2.
- 32.5 The arbitrator shall make his award within 7 (seven) business days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 32.6 The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.
- 32.7 Notwithstanding anything to the contrary contained in 32 to 33.6 inclusive, the Trustees shall be entitled to institute proceedings on behalf of the Association with the Community Schemes Ombud Service or legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

### **33. DOMICILIUM CITANDI ET EXECUTANDI**

- 34.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following-
- 34.1.1 resident Trustee duly appointed at a General Meeting, or the administrative office of the Association;
- 34.1.2 The Trustees shall give notice to all Members of any change of such address.
- 34.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Erf registered in his name; provided that he shall be entitled from time to time to change the said *domicilium* but that any new *domicilium* selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its *domicilium*.

### **34. CONSENT OF LOCAL AUTHORITY**

The provisions of this constitution shall not be added to, amended or repealed without the consent in writing from the Drakenstion Municipality, a copy of which is to be filed with the local authority and the Community Schemes Ombudsman.

### **35. CONDUCT RULES**

The conduct rules attached hereto, marked **Annexure A**, shall apply. The said conduct rules may only be amended by way of the passing of a special resolution passed at a general meeting, after due notice has been given as set out above.

### **36. AMENDMENT OF THE CONSTITUTION OR DESIGN MANUAL**

This Constitution can only be amended by way of the passing of a special resolution duly passed at a general meeting after due notice has been given as set out above. No amendment of the Constitution, Design Manual or Conduct Rules, shall be binding unless the Developer

has granted his prior written consent to such approval and provided the local authority has approved such proposed amendments.

**37. RIGHTS OF THE DEVELOPER**

Notwithstanding anything to the contrary contained elsewhere in this Constitution, the Developer shall be entitled to the number of votes equal to the number of erven still owned by the Developer from time to time.

**38. BUILDING PLANS AND BUILDING CONSTRUCTION RULES**

- 38.1 All plans of any proposed building or structure of any kind must first be lodged for written approval to the Trustees prior to submission to the local authority for approval. The proposed building and/or structure will need to comply with the architectural guidelines of the development. The owner and his builder(s) must at all times comply fully with the construction rules as determined by the trustees from time to time. No member shall be permitted to occupy a building or structure on an Erf without a certificate of occupation issued by the Trustees.
- 38.2 Any Erf not improved by any member by way of a building or structure shall be maintained by the said owner in a neat and tidy manner.