

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Development Management: Northern District
Spatial Planning and Environment Directorate

Annaleze van der Westhuizen
Administrative Officer 2

T: +27 21 444 1047
E: Annaleze.vanderwesthuizen@capetown.gov.za
Case ID: 70381180

8 March 2019

Labuschaigne Management Services
10 Rust & Vrede Business Square
Oxford Street
DURBANVILLE
7550

Dear Sir / Madam

**APPROVAL OF GREENVILLE SECURITY & GOLF ESTATE HOME OWNERS' ASSOCIATION: ERF 15440,
DURBANVILLE**

Your application in the above regard refers.

You are hereby informed that the constitution is herewith approved in terms of Section 98(b) of the City of Cape Town Municipal Planning By-Law 2015 insofar it addresses the requirements of the said By-Law.

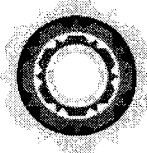
Reasons for the recommended decision may be summarised as follows:

- The Owners' Association Constitution complies with City's requirements in terms of the conditions of approval and the City of Cape Town Municipal Planning By-Law, 2015.
- Legal Services confirmed that they are satisfied with the Owners' Association Constitution.

It is the responsibility of the Association to provide all current and future owners with copies of the approved constitution as attached hereto.

Yours faithfully

For **DIRECTOR: DEVELOPMENT MANAGEMENT**



MEMORANDUM

TO:

DATE: 28 June 2019

RE: GREENVILLE HOA

1. Legal Services confirms that the MOI/Constitution complies with the City's requirements in terms of the conditions of approval and the City of Cape Town Municipal Planning By-Law, 2015 (2015 By-Law).
2. The MOI/Constitution has been vetted in line with section 62(4) of 2015 By-Law.
3. Furthermore the certification is based on the information made available to Legal Services at the time the above mentioned agreement was considered.
4. Legal Services considers this matter finalised and the file will now be closed.

Kind Regards

Derrick Sibusiso Dlamini
Legal Advisor: Corporate Advisory Services
Legal Services

CONSTITUTION

GREENVILLE SECURITY & GOLF ESTATE HOME OWNERS' ASSOCIATION

1. ESTABLISHMENT IN TERMS OF STATUTE

The name of the Association is GREENVILLE SECURITY & GOLF ESTATE HOME OWNERS' ASSOCIATION and is constituted in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985.

2. INTERPRETATION

- 2.1 In these presents the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
- 2.1.1 **Alienate** means the alienation of any Unit or any portion thereof in terms of a Deed of Sale, exchange, donation, testament or intestate inheritance, session, delegation, Court Order, Insolvency or Liquidation, irrespective of whether such alienation is subject to a suspensive condition;
 - 2.1.2 **Architect** means the Architect appointed by the Association;
 - 2.1.3 **Association** means GREENVILLE SECURITY & GOLF ESTATE HOME OWNERS ASSOCIATION;
 - 2.1.4 **Auditors** mean the Auditors of the Association;
 - 2.1.5 **Business Day** means weekdays other than Saturdays, Sundays and Public Holidays;
 - 2.1.6 **Chairman** means the Chairman of the Trustee Committee;
 - 2.1.7 **Common Areas or Public Open Spaces** means all parts of the Development excluding privately owned Erven and Units;
 - 2.1.8 **Conduct Rules** means the Code of Conduct attached as annexure A hereto and made part hereof, and includes any and all amendments made thereto from time to time;
 - 2.1.9 **Constitution** means this Constitution including annexures thereto, as may be amended from time to time;
 - 2.1.10 **Developer** means Atterbury Property Cape (PTY) Ltd (Registration number: 1998/014055/07) or their nominees or successors in title;
 - 2.1.11 **Development** means the Development situated on a consolidation of Erven 12515, 12516 and 12517;
 - 2.1.12 **General Design Guidelines** means the architectural guidelines attached as

ad

annexure B, prepared for the Development and includes all/any amendments made thereto from time to time;

- 2.1.13 **Erf or Erven** means any Erf or Erven in the Development which in terms of the subdivision thereof enjoys single residential use rights;
- 2.1.14 **Financial Year** means the period commencing on the 1st of March in a particular year and terminating on the last day of February of the following year;
- 2.1.15 **In writing** means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 2.1.16 **Levy** means the levy contribution due to the Association by a Member in terms of this Constitution;
- 2.1.17 **Local Authority** means the City of Cape Town (Tygerberg Administration) or its successors in title from time to time;
- 2.1.18 **Managing Agent** means any person or entity appointed by the Association as an independent contractor, or as an employee, to undertake any of the administrative functions of the Association;
- 2.1.19 **Member** means a registered owner of an Erf in the Development as evidenced by registration in the Cape Town Deeds Registry;
- 2.1.20 **Month** means calendar month;
- 2.1.21 **Office** means the registered office of the Association;
- 2.1.22 **Owner** means the registered owner of an Erf in the Development;
- 2.1.23 **Estate** means the Development;
- 2.1.24 **Special Resolution** means a resolution passed at a general meeting of which not less than 21 (twenty one) days' notice has been given specifying the Special Resolution, and passed, on a show of hands or on a poll, by not less than 66% (sixty six percent) of the total votes represented at such meeting (normal quorum requirements apply as provided for herein), by Members present in person or by proxy, or a resolution agreed to in writing by at least 66% (sixty six percent) of the Members, in person or by proxy;
- 2.1.25 **Trustee** means a Member of the Trustee Committee;
- 2.1.26 **Trustee Committee** means the Trustees of the Association collectively from time to time and includes alternate and co-opted Trustees;
- 2.1.27 **Trustees** means the Trustee Committee;
- 2.1.28 **Unit** means an Erf together with a dwelling, garden, driveway and all improvements of a permanent nature situated on such Erf.
- 2.2 The clause headings are for convenience and shall be disregarded in construing this Constitution.
- 2.3 Unless the context clearly indicates contrary intention:
 - 2.3.1 the singular shall include the plural and vice versa; and
 - 2.3.2 a reference to any one gender shall include the other genders; and
 - 2.3.3 a reference to natural persons shall include legal persons and vice versa.

- 2.4 Annexures to this Constitution shall be deemed to be incorporated in, and form part of, this Constitution.

3. INCORPORATION AND FIRST MEETING

- 3.1 The Association came into existence simultaneously with the registration of transfer of the first Erf in the Development.
- 3.2 The Developer shall call the first meeting of the 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, whichever is the earlier.
- 3.3 The Association shall within 60 days of the first general meeting notify the Local Authority that the meeting has taken place and provide it with a copy of the minutes of such meeting.
- 3.4 The Members shall at the first general meeting of the Association elect Trustees.

4. STATUS

- 4.1 The Association shall
- 4.1.1 have legal personality separate from its Members and be capable of suing or being sued in its own name; and
 - 4.1.2 not operate for profit but for the benefit of the Members.
- 4.2 No Member in his personal capacity shall have any right, title or interests to or in the funds or assets of the Association, which shall vest in and be controlled by the Trustees.

5. OBJECTS

- 5.1 The objects of the Association are to:
- 5.1.1 promote and enforce standards, not the least of which should be the congenial atmosphere in the Development, in such a way that Members may derive the maximum collective benefit therefrom;
 - 5.1.2 promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Development in order to achieve harmonious development thereof and to enhance the values of Units and Erven;
 - 5.1.3 control, administer and manage the Common Areas, private road, road reserve areas and other services and amenities arising from the subdivision and buildings on land under the Association's control, for the benefit of all Members;
 - 5.1.4 provide services such as security to the Development;
 - 5.1.5 control and approval of any improvements or alterations to any Erf or Unit in terms of the General Design Guidelines;
 - 5.1.6 establish a fund for expenses of the Association, including provision for future expenses and contingencies;
 - 5.1.7 collect from the Members by way of levies for the purposes of the said fund;
 - 5.1.8 control the transfer of Erven in the Development and ensure compliance with this Constitution;
 - 5.1.9 promote advancement and protection of the communal interests of the Members

generally;

5.1.10 to enforce certain conditions of subdivision approval or management plans listed in such conditions of subdivision imposed by the Local Authority;

and the Association shall have all such powers necessary to enable it to achieve such purpose and objects.

6. MEMBERSHIP

6.1 Membership of the Association shall be limited to every person reflected in the records of the Cape Town Deeds Registry as the registered owner of an Erf in the Development. Membership of the Association shall be automatic and compulsory for every registered owner of an Erf. Such membership shall commence simultaneously with the registration of transfer of the Erf into the name of the transferee.

6.2 Where an Owner comprises more than one person, such persons shall be deemed jointly to be one Member of the Association and shall be responsible jointly and severally for the obligations of such membership.

6.3 An owner of an Erf shall be a Member of the Association until he ceases to be the registered owner of such Erf.

6.4 No Member may resign, or cede or assign his membership to another.

6.5 Where any person is the registered owner of more than one Erf such person shall be regarded as a Member and shall have the rights and obligations of a Member in respect of each Erf registered in such person's name.

6.6 A Member shall not be entitled to alienate or transfer an Erf without the written consent of the Trustee Committee, which consent shall not be unreasonably withheld, provided: -

6.6.1 that all levies due in respect of such Erf have been paid or secured to their satisfaction; and

6.6.2 there has been substantial compliance with the provisions of this Constitution; and

6.6.3 that a suitable clause be inserted in the Deed of Sale in terms whereof the Purchaser acknowledges that he/she becomes a Member of the Association upon transfer into his/her name.

6.7 The rights and obligations of a Member shall not be transferable and every Member shall:

6.7.1 to the best of his ability further the objects and interests of the Association;

6.7.2 observe all Conduct Rules, Restrictions, Directions and Guidelines made by the Association or the Trustee Committee;

6.7.3 be jointly liable with all the Members for all expenditure incurred in connection with the Association; and

6.7.4 comply with any agreement entered into by the Association insofar as such agreement makes provision for direct or indirect rights and obligations applicable to such Member.

7. TRUSTEE COMMITTEE

7.1 The affairs of the Association shall be managed and controlled by a Trustee Committee, consisting of at least 3 (three) but not more than 7 (seven) Trustees, provided that a Trustee shall be an owner or his or her spouse, or a nominee of an owner who is a juristic

person.

- 7.2 Nominations of candidates for election of Trustees at any meeting shall be in writing, signed by two (2) Members and accompanied by the written consent of the candidate nominated, so as to be received at the domicile of the Association not later than 48 (forty eight) hours before the meeting, provided that the Trustees are also capable of being elected by way of nominations, with the consent of the nominee, given at the meeting itself should insufficient nomination be received to comply with clause 7.1.
- 7.3 No owner may be appointed as a Trustee if he or she is, at the time of his or her proposed election,
- 7.3.1 in arrears with his or her levy payments for a period exceeding 7 (seven) days as envisaged in paragraph 29.1 hereof or;
- 7.3.2 in breach of the provisions of the Constitution, Conduct Rules or General Design Guidelines where such owner has been formally notified of the breach and has failed to remedy the breach or refer the alleged breach for formal adjudication within 30 (thirty days) of date of notification, or where such breach has resulted in a court order, judgment or award against such owner that remains unsatisfied at the time of his or her proposed election.
- 7.4 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution, the Conduct Rules and the General Design Guidelines..
- 7.5 The Trustees shall elect from their own number a Chairman, Vice-Chairman and Treasurer, who, together with the other Trustees, shall hold their respective offices until the annual general meeting held next after their said appointment, provided that the office of the Chairman, Vice-Chairman or Treasurer shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. 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.
- 7.6 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by the Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 7.7 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.
- 7.8 The Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 7.9 Save as set forth in clause 7.10 below, each Trustee shall continue to hold office until the annual general meeting next following his said appointment, at which meeting each Trustee shall be deemed to have retired from office as such, but will be eligible for re-election to the Trustee Committee at such meeting.
- 7.10 A Trustee shall be deemed to have vacated his office as such upon:
- 7.10.1 his estate being sequestered, whether provisionally or finally, or his surrendering his estate;
- 7.10.2 his making any arrangement or compromise with his creditors;



- 7.10.3 his conviction for any office involving dishonesty;
- 7.10.4 he absents himself from 3 (three) consecutive meetings of the Trustee Committee without special leave of absence from the Trustees;
- 7.10.5 his becoming of unsound mind or being found lunatic;
- 7.10.6 receipt of written notice of resignation given to the Trustee Committee by the relevant Trustee;
- 7.10.7 his death;
- 7.10.8 his ceasing to be a Member, nominee or spouse of a Member of the Association;
- 7.10.9 his being in arrears with payment of his levies for a period exceeding 3 (three) consecutive months or if he is in breach of the provisions of the Constitution, Conduct Rules or the General Design Guidelines for a period of 3 (three) months after having received written notification as provided for in clause 29 hereof.

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 Trustee Committee.

- 7.11 Upon any vacancy occurring on the Trustee Committee prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee.
- 7.12 Any Trustee may, subject to approval by the Trustee Committee, which may not be unreasonably withheld, appoint another person to act as an Alternate during his absence or inability to act as a Trustee. An Alternate Trustee shall have the powers and be subject to the duties of a Trustee and shall cease to hold office if the Trustee whom he replaces, ceases to be a Trustee, or if the Alternate's appointment is revoked, by the Trustee whom he replaced, or the Trustee Committee.

8. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 8.1 Subject to the express provisions of this Constitution, the Trustee Committee 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 this Constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this Constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such Directions given or Restrictions imposed by the Association in general meeting from time to time, provided that no Direction given or Restriction imposed by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 8.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 8.3 Subject to clause 7.1 the Trustee Committee shall have the right to co-opt onto the Trustee Committee 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.
- 8.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member, occupier or Trustee, of this Constitution, and in such reasonable manner as it shall decide from time to time.
- 8.5 The Trustee Committee may make regulations not inconsistent with this Constitution or any rules or regulations prescribed by the Association in general meeting:

- 8.5.1 as to disputes generally;
- 8.5.2 for the furtherance and promotion of any of the objects of the Association;
- 8.5.3 for the better management of the affairs of the Association;
- 8.5.4 for the advancement of the interests of Members;
- 8.5.5 for the conduct of Trustee Committee meetings and general meetings;
- 8.5.6 to assist it in administering and governing its activities generally;
- 8.5.7 in respect of the conduct of owners and occupiers.

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

- 8.6 Without in any way limiting the powers granted, the duties and powers of the Trustee Committee shall further include:

- 8.6.1 the determination of what constitutes appropriate environmental and behavioural standards for conduct, living, maintenance, repairs, additions to and improvements in respect of Erven and/or Units and with reference to the objects referred to in clause 5;
- 8.6.2 the performance of such acts as are necessary to accomplish the objects expressed or implied herein;
- 8.6.3 the investment and re-investment of money of the Association not immediately required, in such manner as they may determine from time to time;
- 8.6.4 the operation of banking and savings accounts with all powers required by such operations;
- 8.6.5 the making of, entering into, carrying out and implementation of contracts or agreements with third parties for and on behalf of the Association;
- 8.6.6 the employment on behalf of the Association of agents, servants or any other persons and the payment of such persons;
- 8.6.7 the appointment of a qualified practising Architect to assist the Trustee Committee in exercising its powers in terms of this Constitution;
- 8.6.8 the assessment of and imposition of a scrutiny fee payable in order to implement clause 19.2.6 as well as the determination, from time to time, of the amounts payable for any penalties or deposits imposed in terms of this Constitution, the Design Guidelines or the Conduct Rules;
- 8.6.9 performances of such acts as are required to ensure the security of persons and property in the Development;
- 8.6.10 the institution and defence of actions or other legal procedures in the name of the Association and the appointment of legal representatives for such purpose;
- 8.6.11 the imposition of levies on Members in accordance with this Constitution;
- 8.6.12 the keeping of proper administration and accounting records;
- 8.6.13 the appointment of an auditor or person qualified to act as financial officer to do an annual audit of the Association's financial records; and
- 8.6.14 the taking of steps in all matters of common interest in respect of the Association.

9. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 9.1 The Trustee Committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 9.2 Any Trustee may at any time convene a meeting of the Trustee Committee by giving to the other Trustees no less than seven (7) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting, provided that in case of urgency shorter notice may be given within reason and according to circumstances.
- 9.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 50% (fifty per centum) of the total number of Trustee Committee Members in office, present personally. If no quorum is present within 10 (ten) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 10 (ten) minutes after the time appointed for the meeting, the Trustee Committee Members then present shall be a quorum.
- 9.4 If the number of Trustee Committee members falls below the number necessary to form a quorum, the remaining Trustees may constitute a quorum, but only for the purpose of convening a General Meeting of Members.
- 9.5 Any resolution of the Trustees shall be carried by a simple majority of all votes cast, each Trustee present having one vote. In the event of an equality of votes, the Chairman of the meeting shall have a casting as well as a deliberative vote.
- 9.6 The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within 10 (ten) 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 10 (ten) 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.
- 9.7 A Trustee, or such other person appointed, shall take minutes of every Trustee Committee meeting, 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. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Members and representatives of the Local Authority.
- 9.8 All competent resolutions recorded in the Trustee Committee Minute Book 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.
- 9.9 Save as otherwise provided in this Constitution, the proceedings at any Trustees' meeting shall be conducted in such reasonable manner and form, as the Chairman of the meeting shall decide.
- 9.10 A resolution signed by all the Trustees for the time being present in the Republic shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

10. THE BUDGET AND LEVIES

- 10.1 The Trustee Committee shall from time to time, make 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 the maintenance, management, repair, improvement and keeping in order of the common areas, including specifically landscaping, all services (including garden services to common areas and the Erven), security, the payment of all rates and other charges payable by the Association in respect of the common areas, 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 Association's affairs and the costs incurred in enforcing the provisions of the Constitution, the General Design Guidelines and the Conduct Rules. In calculating the levies, the Trustee Committee shall take into account, income, if any, earned by the Association.
- 10.2 The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Members equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee shall include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 10.3 The Trustee Committee shall submit the proposed budget and levy to the Members at each Annual General Meeting for approval by the Members by ordinary resolution. The levies so determined shall be due and payable upon the adoption of the ordinary resolution.
- 10.4 The Trustees may from time to time, when necessary, make special levies upon the owners in respect of all expenses which have not been included in the Budget and such levies may be made payable in one instalment, or in such instalments as the Trustees may determine in their own discretion. Such levies become due and payable on the date of the relevant Trustees' resolution.
- 10.5 The total levy payable by the Members shall be born in equal shares by each Member.
- 10.6 Upon taking transfer of an Erf, the new owner becomes liable for payment of levies in respect of the unpaid portion of levies (including special levies) for that financial year. In respect of the month during which transfer takes place, a pro rata apportionment is to be made.
- 10.7 Where any Erf is owned by more than one person, all the registered owners of that Erf shall be jointly and severally liable for the due performance of any obligation to the Association.
- 10.8 If an owner fails to pay its levies in full to the Association on due date, the Association may institute action for the recovery thereof in any competent court or refer the matter to arbitration as provided for in this Constitution.
- 10.9 Notwithstanding any provision contained herein to the contrary, if any owner is in arrears with any levy or special levy payment, for a period exceeding thirty (30) days, the balance of all amounts due up to the end of the financial year shall immediately become due and payable and the Trustees may institute action for the recovery of the full outstanding amount or amounts.
- 10.10 An owner shall be liable for all legal costs, including attorney and own client costs, collection commission, expenses, and other charges, administrative or otherwise, incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due to it, or in enforcing compliance with this Constitution, the Conduct Rules or Design Guidelines.
- 10.11 The Trustees shall be entitled to charge interest on arrear amounts at a rate, which the Trustees may from time to time determine.

- 10.12 After the end of any financial year, owners shall remain liable for interim levies at the rate applicable before the end of such financial year, as if new levies have been determined. The Trustees may resolve to increase or decrease such interim levies according to their discretion, in anticipation of any expected increase or decrease in the budgeted expenses for the new financial year.

11. GENERAL MEETINGS OF THE ASSOCIATION

- 11.1 The Association shall within 4 (four) months of the end of the financial year hold an Annual General Meeting.
- 11.2 All general meetings other than Annual General Meetings shall be called Special General Meetings.
- 11.3 Subject to clause 11.4 all general meetings shall be held at such time and place as the Trustee Committee shall decide from time to time.
- 11.4 The Trustee Committee may, whenever they deem it fit, convene a special general meeting, and shall convene a meeting upon the requisition in writing of at least 10 (ten) of the Members of the Association, entitled to vote. The requisition shall state the purpose of the meeting and shall be signed by the requisitioning Members. The Trustee Committee shall within 14 (fourteen) days of receipt of the requisition from the Members, issue a notice convening a special general meeting. If the Trustee Committee fails to call a special general meeting within 14 (fourteen) days of receipt of the requisition, the Members concerned shall be entitled themselves to call the meeting.

12. NOTICE OF MEETINGS

- 12.1 A general meeting shall be called by not less than 21 (twenty one) days' notice to all Members. 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 this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Trustees, to such persons as are, under this Constitution, entitled to receive such notices from the Association.
- 12.2 Notwithstanding clause 12.1 a general meeting may be called with such shorter notice than specified if so approved a majority of Members present at such meeting.
- 12.3 Notice of general meetings shall be given by posting thereof to each Member at his/her domicilium citandi et executandi: Provided that it shall be competent to give any notice to a Member by telefax or e-mail, where he has advised the Trustees in writing of his telefax number or e-mail address.
- 12.4 The accidental omission to give notice of a general meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings, or any resolution passed, at any meeting.

13. QUORUM

- 13.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be 10 (ten) Members present in person or by proxy.
- 13.2 If within half an hour from the time appointed for the holding of the meeting, a quorum is not

present, the meeting, if convened on the request of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, or if that day is a public holiday, the next business day, at the same time and place. If a quorum is not present at the adjourned meeting within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum. No business shall be transacted at an adjourned meeting other than the business scheduled for the meeting from which the adjournment took place.

14. AGENDA AT MEETINGS

14.1 In addition to any other matters required by this Constitution to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

14.1.1 consideration of the Chairman's report;

14.1.2 the election of Trustees;

14.1.3 consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolution;

14.1.4 consideration of the financial statements of the Association for the preceding financial year;

14.1.5 the appointment of an auditor or accounting officer for the Association; and

14.1.6 the consideration and confirmation of the Budget and Levies as presented by the Trustee Committee.

15. PROCEDURE AT GENERAL MEETINGS

15.1 The Chairman of the Trustee Committee shall preside as such at all general meetings, provided that should he or she not be present within ten (10) minutes after the time appointed for the holding thereof, then the Members present at such meeting and 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.

15.2 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.

16. VOTING AT GENERAL MEETINGS

16.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf owned by him, provided that if an Erf is registered in more than one person's name, then they shall jointly have one vote.

16.2 Save as expressly provided for in this Constitution, no person other than a Member, and who shall not be in arrears with any levy and other sum (if any) due and payable to the Association, in respect of or arising out of his membership, for a period exceeding 7 (seven) days as envisaged in paragraph 29.1 hereof, shall be entitled to be present or to vote on any resolution, either personally or by proxy, at any general meeting.

16.3 At any general meeting a resolution put to the vote of the meeting shall 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 any person entitled to vote at such meeting.

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- 16.4 An ordinary resolution or the amendment of an ordinary resolution shall be carried on a simple majority of all votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question.
- 16.5 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, whether by show of hands or by poll, or to the propriety of the 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 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.
- 16.6 Should any Member be declared incapable of managing his own affairs, or a prodigal or insolvent, or in the case of a Company, placed under Judicial Management, or into liquidation such Member shall be represented by his Curator Bonis, Trustee, Judicial Manager or Liquidator as the case may be, who shall be entitled to vote on his behalf, either personally or by proxy.

17. PROXIES

- 17.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association, provided that any person entitled to vote, personally or by proxy, may not act as a proxy for more than 3 (three) Members. 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 the Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the proxy may be signed by a director of the company or by its secretary, and where the Member is an association of persons, the proxy may be signed by the secretary thereof, and where a Member is a trust, the proxy may be signed by a person duly authorised by the Trustees of such trust.
- 17.2 The instrument appointing a proxy or the power of attorney or other authority (if any) under which it is signed, or a certified copy thereof, shall be deposited at the domicilium citandi et executandi of the Association not later than 48 (forty eight) hours before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to partake. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.
- 17.3 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 Trustee Committee at least one hour before the time fixed for the holding of the meeting.

18. MINUTES OF GENERAL MEETINGS

- 18.1 The Trustee Committee shall ensure that minutes are taken of every general meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing, without undue delay after the meeting has closed. The Members shall at the following general meeting approve the minutes and thereafter the minutes shall be certified as correct by the Chairperson of the meeting. The Trustee Committee shall cause all such minutes of general meetings to be kept in perpetuity. The minutes of general meetings shall be open for inspection at all reasonable times by a Trustee Committee Member, the auditor or accounting officer, a Member or the Municipality.
- 18.2 All resolutions recorded in the minutes of any general 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 Trustee Committee members, unless such resolution is competent within the powers of the Association.

19. GENERAL DESIGN GUIDELINES

- 19.1 The General Design Guidelines to control the building activity and architectural design of all buildings and/or structures in the Development, including any alterations or additions to existing buildings and/or structures and the landscaping in the Development, as contained in Annexure B hereto, constitute an integral part of this Constitution. All dwellings, buildings and/or other structures constructed in the Development, including any alterations or additions to existing buildings and/or structures and landscaping shall comply with the provisions of the General Design Guidelines.
- 19.2 Having regard to the contents of the General Design Guidelines, the Trustee Committee shall be entitled to:
- 19.2.1 prescribe and enforce the architectural style, the material to be used in respect of all buildings and structures to be constructed, including any alterations or additions to existing buildings or structures and in particular to control the exterior design of such buildings and the materials used, so as to ensure that the appearance thereof is aesthetically pleasing.
 - 19.2.2 prescribe provisions relating to the landscaping and to control construction and building operations in the Development;
 - 19.2.3 perform such acts as are necessary to accomplish the purposes expressed or implied in this Constitution, the conduct Rules and the General Design Guidelines, which acts shall include, inter alia, the examination and endorsement of building plans and the evaluation of landscaping proposals;
 - 19.2.4 appoint an Architect from time to time with such powers and duties as delegated by Trustee Committee;
 - 19.2.5 appoint such advisors as are necessary to scrutinize the relevant plans referred to herein;
 - 19.2.6 impose a scrutiny fee, determined from time to time by the Trustees, on Members for the services as mentioned herein;
 - 19.2.7 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; and
 - 19.2.8 ensure that all Members maintain their properties in a clean and tidy condition and proper state of repair and to implement and control security, vegetation, parking, signage and advertising within the Development.

20. COMPLETION DATE FOR HOUSES AND PENALTY LEVIES

- 20.1 All owners of Erven or their successors in title are obliged to build a dwelling house with completion to be on or before 12 (twelve) months of the date of taking transfer, on condition, however, that the dwelling shall comply with the requirements of the Home Owners Association and the minimum design criteria.
- 20.2 In the event of the owner or his successor in title failing to comply with Clause 20.1 above, the Trustee Committee, for and on behalf of the Association, shall in its sole discretion have the irrevocable right to impose penalty levy equal to 4 (four) times the normal monthly levy, in addition to the normal levy payable by such owner to the Association in terms of this Constitution. The penalty levy shall be due and payable by the owner and his successor in title monthly in advance on or before the first day of each and every succeeding month until

he complies with Clause 20.1 above and his house is duly completed.

- 20.3 For the purpose of this Clause, "completion" shall mean when the Trustee Committee certifies the house to be suitable for occupation.
- 20.4 Any penalty imposed in terms hereof may be added to the owner's levy account and claimed and recovered by the Association as part of the monthly levy payable by the owner.

21. COMMON AREAS

- 21.1 The Trustee Committee shall properly maintain the Common Areas, and all facilities and services and assets of the Association in a state of good and serviceable repair.
- 21.2 The Trustee Committee shall establish and maintain suitable landscaping, lawns, gardens and recreational facilities as may be required.
- 21.3 Neither the whole nor any portion of the Common Areas shall be sold, let, alienated or otherwise disposed of, subdivided or transferred, mortgaged, subjected to any rights, whether registered in a deeds registry or not, or use, occupation or servitude, save as specified in the conditions of establishment and such rights as are enjoyed by the Members in terms hereof, without the sanction of special resolution of the Association.
- 21.4 Members and occupiers shall comply with the Conduct Rules and the reasonable conditions imposed from time to time by the Trustee Committee relating to the use of the Common Areas and facilities and amenities of the Association.
- 21.5 Any person present on the Communal Areas or using any of the services, land, facilities or amenities of the Association does so entirely at his own risk. No person shall have any claim against the Association of whatsoever nature arising from such use, nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise. The Association shall not be liable for any injury, loss or damage of any description that any person may sustain, physically or to his property directly or indirectly, in or about the Area nor for any act done or for any neglect on the part of the Association or any of the Association's employees, agents or contractors.
- 21.6 The Association shall take ownership of the Common Areas, private streets and internal engineering services arising out of the subdivision of the Development.
- 21.7 It is herewith recorded that there is no further development which must form part of the Association;

22. CONDUCT RULES

- 22.1 The Members in general meeting may from time to time make, substitute, add to, amend or repeal Conduct Rules to govern:
 - 22.1.1 the use, occupation and enjoyment by Members and occupiers of their properties and the use and enjoyment of the Common Areas;
 - 22.1.2 the conduct of Members and occupiers generally within the Development for the prevention of any nuisance of any nature to any Member or occupier;
 - 22.1.3 the construction of buildings or structures on Erven and any alterations or additions to the existing buildings or structures, which Rules may also be incorporated into the General Design Guidelines;
 - 22.1.4 the external appearance of and the maintenance of the Members' Units or properties;
 - 22.1.5 the security measures applicable to the Development;

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22.1.6 the keeping of pets in the Development;

22.1.7 any other matters in furtherance and promotion of the objects of the Association or any rule which is reasonable and would be to the benefit of the Association and its Members.

23. MANAGING AGENT AND OTHER PROFESSIONAL OFFICERS

- 23.1 The Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Trustees, or the Members in general meeting by ordinary majority vote, notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.
- 23.2 The Trustees shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Trustees and/or the Association as a result of such cancellation.
- 23.3 Save as specifically provided otherwise in this Constitution, the Trustee Committee 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 professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to any of the provisions of this Constitution.

24. ACCOUNTS

- 24.1 The Trustee Committee shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association.
- 24.2 At each Annual General Meeting the Trustee Committee shall lay before the Association, financial statements for the immediately preceding financial year of the Association. The financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as deemed necessary by the Trustee Committee. Copies of the financial statements and reports shall be attached to the notice sent to the Members convening each annual general meeting.
- 24.3 The accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours, subject to such reasonable conditions that may be imposed by the Trustee Committee from time to time.
- 24.4 The Trustee Committee shall cause all books of account and records to be retained for a period of 5 (five) years after completion of the transactions, acts or operations to which they relate.

25. AUDITOR OR ACCOUNTING OFFICER

- 25.1 At every annual general meeting, the Association shall appoint either a qualified auditor or an accounting officer, who shall be a Member of a professional body, to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- 25.2 The financial statements of the Association shall be examined and the correctness thereof ascertained by the auditor or accounting officer at least once a financial year and the

auditor or accounting officer must sign the financial statements. The duties of the auditor or accounting officer shall otherwise be regulated in accordance with general practise and applicable standards.

26. DOMICILIUM AND NOTICES

- 26.1 The domicilium citandi et executandi of each Member at which all documents and all notices may be delivered, shall be the address of the Member's Erf in the Development, provided that such Member shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be situate in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its domicilium.
- 26.2 It shall be competent to give any notice to Members by telefax or e-mail where he or she has advised the Trustees in writing of his telefax number or e-mail address.
- 26.3 A notice shall be deemed to have been properly served on the date, 5 (five) days after posting to the Member's domicilium address, or if faxed, e-mailed or delivered, on the day of faxing, e-mailing or delivery thereof to the Member's elected telefax number, e-mail address or domicilium address respectively.
- 26.4 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
 - 26.4.1 such address shall be the address of the Chairman or of a Trustee nominated by the Trustees or the address of any duly appointed Managing Agent; and
 - 21.5.2 the Trustees shall give notice to all Members of any change of such address.

27. INDEMNITY

- 27.1 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 whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 27.2 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 Trustee Committee 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 of his/their respective duties, including in the case of a Trustee, his duties as Chairman, Vice-Chairman or Treasurer. 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.
- 27.3 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 Trustees or as Chairman, Vice-Chairman or Treasurer, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortious 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, gross negligence,

breach of duty, or breach of trust.

28. PRIVILEGE IN RESPECT OF DEFAMATION

- 28.1 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 Trustee Committee, the Chairman or Vice-Chairman, every other Trustee, the auditors and everybody else engaged to perform any function or duty on behalf of or for the benefit of the Association, or the Trustee Committee, 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 Trustee Committee meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false.

29. BREACH

- 29.1 Should any Member commit a breach of this Constitution, the General Design Guidelines or the Conduct Rules by failing to pay on due date the levies or other amounts payable by such Member in terms of this Constitution, the General Design Guidelines or the Conduct Rules, and remain in default for more than 7 (seven) days after written demand, the Trustee Committee may institute legal proceedings on behalf of the Association against such Member for payment of such overdue levies or other amounts.
- 29.2 Should any Member commit any other breach of this Constitution, the General Design Guidelines, or the Conduct Rules and fail to commence to remedy that breach within a reasonable period after the receipt of written notice to that effect or complete the remedying of such breach within a reasonable time, then the Trustee Committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustee Committee of the Association or any other Member may have in law, including the right to claim damages:
- 29.2.1 to institute proceedings on behalf of the Association against such Member in any court of competent jurisdiction for such relief as the Trustee Committee may consider necessary, and/or
 - 29.2.2 to remedy such breach and immediately recover the total cost incurred by the Trustee Committee or the Association in so doing from such Member, and/or
 - 29.2.3 to refer a dispute to arbitration as provided for herein; and/or
 - 29.2.4 impose penalties in terms of this Constitution.
- 29.3 Should the Trustee Committee institute any legal proceedings against any Member pursuant to any breach by that Member of this Constitution, the General Design Guidelines, or the Conduct Rules, including the failure to pay levies or any other amounts due to the Association, then without prejudice to any rights which the Trustee Committee or the Association or any other Member may have in law, the Trustee Committee shall be entitled to recover from such Member all costs including all legal costs as between attorney and own client, tracing fees, collection commission, Advocate's fees, and all other costs and expenses, administrative or otherwise, incurred by the Association in instituting such legal action against a Member.

30. ARBITRATION

- 30.1 Should any dispute, question or difference arise between Members or between a Member/s and the Association or the Trustees, out of or in regard to:
- 30.1.1 the interpretation of;
 - 30.1.2 the effect of;
 - 30.1.3 their respective rights or obligations under;
 - 30.1.4 a breach of this Constitution or any of its ancillary documents;
- such dispute may be decided by arbitration in the manner set out in this clause.
- 30.2 In respect of any claim arising from non-payment of levies or any other amount due by a Member or owner to the Association in terms of this Constitution, the Association and Trustees shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.
- 30.3 The dispute shall be declared in writing within 30 (thirty) days of it having arisen and Arbitration shall:
- 30.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and
 - 30.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within a reasonable time after it is demanded;
 - 30.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 30.4 The arbitrator shall be a practising senior counsel or attorney of not less than five (5) years standing appointed by agreement between the parties to the arbitration within seven (7) days of being called upon to make such appointment and failing such agreement within the seven (7) day period, appointed by the President of the Cape Law Society.
- 30.5 The arbitrator shall in giving his award have regard to the principles contained in this Constitution and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision.
- 30.6 The arbitrator's decision shall be presented within a reasonable time after the completion of the arbitration hearing in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other or both of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 30.7 The decision of the arbitrator made at such arbitration proceedings:
- 30.7.1 shall be final and binding on each of the parties; and
 - 30.7.2 shall be carried into effect immediately; and
 - 30.7.3 may be made an order of the High Court.
- 30.8 Notwithstanding anything to the contrary contained in this clause, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or



interdicting breaches of any of the provisions of this Constitution, including the annexures, or for any order of an urgent nature.

31 AMENDMENTS TO CONSTITUTION

- 31.1 The Constitution, the General Design Guidelines and Conduct Rules shall not be altered or amended in any way save by way of a special resolution passed at general meeting.
- 31.2 Any amendment or alteration to the Constitution made in terms of clause 31.1 above shall furthermore be subject to approval by the local authority.
- 31.3 The first Constitution of the Association and any subsequent amendment thereof in terms of clauses 31.1 and 31.2 above must be lodged with the Local Authority which shall certify it in terms of section 62(2) and/or 62(4) of the City of Cape Town Municipal Planning By-Law, 2015.
- 31.4 It is hereby recorded that the Local Authority is exempt from liability for any damage which may be caused by its certification of this Constitution, or any amendment thereof, or by the loss of this Constitution or amendment thereof.
- 31.5 The provisions of this clause shall not apply to the amendment, in any manner or form, of the Penalties Schedule referred to in clause 32.8.

32. IMPOSITION OF PENALTIES

- 32.1 Save as otherwise provided for in this Constitution or its annexures, if a Member or an occupier of an Erf or Unit, or his or her employee, contractor, visitor or guest, disobeys or disregards (contravenes) a provision of this Constitution, Conduct Rules, General Design Guidelines or any condition or regulation imposed in terms thereof, the Trustee Committee or any such other person authorised by them, may furnish the Member and occupier (if applicable) with a written notice in terms of which a provisional warning or penalty is imposed. The notice may be delivered by hand, registered post, facsimile or e-mail and shall specify the date of the contravention and sufficient details pertaining thereto.
- 32.2 The Member and/or occupier (if applicable) may, within 30 (thirty) days of sending or delivery of the notice, request that he or she be afforded an opportunity to address the Trustee Committee. Within 30 (thirty) days of receipt of such request by the Member or occupier the Trustee Committee shall arrange a meeting whereat the Member and/or occupier must be given the opportunity to:-
 - 32.2.1 present his or her own case;
 - 32.2.2 present any evidence, including the calling of witnesses, to substantiate his or her case;
 - 32.2.3 cross-examine any witnesses called on behalf of the body corporate; and
 - 32.2.4 view any relevant documents.
- 32.3 The Trustee Committee may:
 - 32.3.1 appoint an independent chairman, who need not be a Trustee or a Member of the Association, to chair the meeting referred to in clause 32.2 and make a recommendation to the Trustee Committee; and/or
 - 32.3.2 Appoint a sub-committee to fulfil the functions and powers of the Trustee Committee as provided for herein, provided that such sub-committee shall consist of at least 2 (two) Trustees of which one must be the Chairman or Vice-Chairman.
- 32.4 Notwithstanding clause 32.2 the Member and/or occupier may, within 30 (thirty) days of

sending or delivery of the notice referred to in clause 32.1, dispute the imposition of the warning or penalty by submitting written representations to the Trustee Committee which must contain sufficient details for them to consider the matter.

- 32.5 After the Trustees' meeting referred to in clause 32.2 or submission of representations referred to in clause 32.4, the Trustees may, by a majority vote:

32.5.1 withdraw the warning or penalty; or

32.5.2 confirm the warning or penalty; or

32.5.3 reduce the amount of the penalty.

Any decision of the Trustees made in this regard shall be communicated to the Member and occupier (if applicable) in writing.

- 32.6 Should the Member or occupier not attend the Trustees' meeting referred to in clause 32.2 without providing a reasonable request for postponement, the Trustees may, in their sole discretion, continue with the meeting and impose a warning or penalty in the Member and/or occupier's absence.
- 32.7 Should the Member and/or occupier fail to request an opportunity to address the Trustee Committee, or submit adequate written representations, within 30 days of date of delivery or the sending of the notice referred to in clause 32.1, it shall be regarded as acknowledgement of guilt and the warning or penalty shall be final and binding upon the Member. In exceptional circumstances the Trustee Committee may, upon receipt of an application by the owner, waive non-compliance with the periods prescribed in clauses 32.2 and 32.4.
- 32.8 In considering the procedure pertaining to any sanction imposed in terms of this clause the Trustee Committee shall refer to the Penalties Schedule as amended from time to time by the Members in general meeting by way of an ordinary majority vote. The Penalties Schedule shall be used as a guideline only provided that the Trustees may not impose a higher penalty as indicated in the schedule. A subsequent penalty may be imposed for the same offence or for an offence similar in nature if committed within a period of 12 (twelve) months of the previous offence.
- 32.9 Any penalty imposed in terms of this rule may if it is not paid within 14 (fourteen) days after the offender and Member (if the offender is not a Member) has been notified of the imposition of the penalty, be added to the levy which a Member is obliged to pay in terms of this Constitution and claimed by the Trustees as part of the monthly instalments payable by the Member.
- 32.10 The imposition of a penalty upon any Member does not affect the right of the Association to obtain an appropriate court order or arbitration award and the Trustees may elect, on behalf of the Association, to impose any one or more options.
- 32.11 Except in cases where a special resolution is required in terms of this Constitution, should three or more penalties be imposed upon a Member or occupier during the course of any financial year, the owner shall be regarded to be in persistent breach and not be entitled to exercise his or her vote at the next annual general meeting or any special general meeting held prior to that.
- 32.12 For purposes of determining the imposition of a penalty or subsequent penalty, a warning or penalty imposed shall be valid for a period of 12 (twelve) months as of the date of the notification by the Trustees in terms of clause 32.1.
- 32.13 Any contravention involving a Trustee, or member of a sub-committee appointed in terms hereof, or his or her occupier, shall preclude such Trustee or member (if applicable) from voting or partaking in any proceedings in terms hereof.
- 32.14 In the event that Member or occupier fails or refuses to rectify any continuous contravention

within the period specified in the Penalties Schedule, a penalty (if a warning was initially imposed), subsequent penalty (if a penalty was initially imposed) or a further subsequent penalty may be imposed upon him or her. A continuous contravention for purposes hereof shall mean one transgressing act which is continuous and not immediately rectified by the offender.

33. WINDING UP

33.1 The Association may be wound up by a Resolution of the Members in General Meeting provided that:

13.1.1 Ninety percent (90%) of all Members agree thereto in writing; and

13.1.2 the Local Authority consents thereto.

13.2 In the event of such winding up, it shall be the duty of then Trustee Committee, or a Receiver to be appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to all the Members in accordance with the number of Erven registered in the name of each Member. If, within a period of twelve (12) months from such distribution, the Trustee Committee or the Receiver is unable to find, locate or trace any Member, such Member's share shall then be paid to the Guardians' Fund or such other fund as may be required by Law.

34. SPECIAL CONDITIONS

34.1 No further subdivision of any group housing Erven shall be permitted.

34.2 No second dwelling shall be allowed on any of the group housing Erven.

34.3 The following conditions shall apply to the services servitude:

34.3.1 The local authority shall have the right to lay, relay, construct, erect, maintain, repair, renew, inspect, replace or remove such cables, lines, wires, miniature substations, distribution kiosks and allied equipment or appurtenances relating thereto in the road reserve/servitude area as it may in its sole discretion deem necessary for the purpose of the supply of electricity generally.

34.3.2 The local authority, which terms shall include its employees, servants, contractors or its agents generally, shall at all times have the right of free and unobstructed access to and egress from and the right to be upon the property at any time in the exercise of its aforementioned rights, and for these purposes shall be entitled to bring onto the property such vehicles, machinery or equipment generally as it may consider necessary, and to store excavated materials on the property on a temporary basis should the local authority deem this to be necessary in exercising the rights conferred upon it in terms hereof.

34.3.3 In the event of excavation of the existing, or installation of new services at any stage by the local authority in the road reserve/servitude area, the local authority will not be held liable for any damage or repair of any wall and/or ground surface to its original state.

34.3.4 The local authority undertakes to take reasonable measures to protect the owner's buildings, fencing and all other improvements to the property, and, as far as reasonably possible, to carry out its operations in such a way as to minimise any interference with the owner's normal use of the property, and, wherever reasonably possible, to notify the owner in advance of any contemplated works or repairs to be undertaken.

34.3.5 No buildings, walls or structures of any description shall be within or over the road reserve/servitude area without the prior written consent of the local authority, which

consent it shall be entitled to withhold in its sole discretion. No plants with big or invasive root systems shall be planted in the road reserve/servitude area or on the property in such a way as to make possible the invasion of the servitude area by the root systems, without the consent in writing of the local authority's electrical engineer or such other official as may from time to time be designated to fulfil his functions.

- 34.3.6 No excavation or filling shall be carried out within the road reserve/servitude area without the prior consent of the local authority, and the local authority shall be entitled to withhold such consent in its own discretion.
- 34.3.7 No stakes, pegs, pins or similar objects shall be driven into the road reserve/servitude area.
- 34.3.8 No plant or material shall be stored in the road reserve/servitude area without the consent in writing of the local authority, nor shall the owner do or permit to be done anything on the property or in the servitude area which may destroy, damage or undermine the cables or equipment which the local authority may in terms hereof lay or install in the servitude area or bring onto the property. Should the local authority incur any costs as a result of the non-compliance by the owner with the provisions of this paragraph, the local authority shall be entitled to recover such costs from the owner.
- 34.3.9 Nothing herein contained shall have the effect of derogating from any rights or from the protection to which the local authority or the owner may be entitled from time to time by virtue of statute or at common law relative to the electrical installation in the servitude area. Without derogating from the generality of the foregoing, the provisions hereof shall not be construed so as to derogate from such rights or protection as may be afforded to the local authority as supplier of electricity (or "undertaker") or of the owner in terms of the Occupational Health and Safety Act, NO 85 of 1993, the Electricity Act, Act No 41 of 1987, the Municipal Ordinance No 20 of 1974, or any regulations, bylaws or other subsidiary legislation promulgated thereunder.
- 34.3.10 Any damage caused to any service within the road reserve/servitude area by the owner, his invitees, employees, servants or contractors, and any damage caused to the said services as a result of the failure of the owner to comply fully with these conditions, shall be made good by the local authority at the cost of the Association.
- 34.3.11 The local authority will retain the right to intervene in and undertake the functions and activities of the Association or to appoint an agent or person to undertake such business as is necessary to ensure all the above for a 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 severally.

35. ASSOCIATION FAILING TO MEET AN OBLIGATION OR CEASING TO FUNCTION

- 35.1 If the Association fails to meet any obligations as provided for in this Constitution and the Local Authority believes that the community is adversely affected by such failure, the Local Authority may take appropriate action to rectify such failure.
- 35.2 The Local Authority may recover any expenditure in respect of the action contemplated in clause 35.1 above from the Association or its Members, who are jointly liable.
- 35.3 The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.
- 35.4 If the Association ceases to function effectively or to carry out its obligations, the Local Authority may give the Association a binding instruction to:

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- 35.4.1 convene a general meeting of the Members and to reconstitute itself; or
 - 35.4.2 dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of the relevant provisions in the title deed.
- 35.5 In determining whether to act in terms of the above, the Local Authority must have regard to:
- 35.5.1 the purpose of Association;
 - 35.5.2 who will take over the obligations which the Association is responsible for (if any);
 - 35.5.3 the costs of upgrading the internal infrastructure if the Local Authority is to take over the infrastructure (if applicable);
 - 35.5.4 the impact of the dissolution of the Association on its Members and the community;
 - 35.5.5 any written representations from the Association and its Members.
- 35.6 If the Association is dissolved, the Members shall jointly pay the costs of:
- 35.6.1 the transfer to the Local Authority of the Association's property (if any);
 - 35.6.2 the upgrading of the internal engineering services to the standard of the Local Authority (if applicable).
- 35.7 In the event that the Association ceases to function and a Member wishes to transfer an Erf, such Member must first obtain the consent of at least 60% (sixty percent) of the Members of the Association, which consent shall be deemed to be the consent of the Association.

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GREENVILLE SECURITY & GOLF ESTATE HOME OWNERS' ASSOCIATION

PENALTIES SCHEDULE

As referred to in clause 32.8 of the Constitution

Transgression	Number of days failing to rectify a continuous offence (if applicable)	1 st Offence	2 nd Offence	3 rd Offence	4 th and Subsequent Offences
Breach of a provision of the Constitution, Conduct Rules, General Design Guidelines or any regulation or condition imposed in terms thereof.	30	Written Warning	R 250	R 500	R 750

Notes to schedule:

- (1) This schedule shall be used as a guideline only.
- (2) The Trustees may, at any time and in their sole discretion, apply to a court for an appropriate order or refer a matter to arbitration.
- (3) For purposes of issuing subsequent penalties for the same or similar offence, a warning or penalty shall be valid for a period of one year after date of notification by the Trustees in terms of clause 32.1 of the Constitution.
- (4) The Trustees may issue warnings, impose penalties or subsequent penalties (for the same or similar offence):
 - (a) per offence, and/or
 - (b) after expiry of the number of days specified in column 3 during which period the Member or occupier failed to rectify the transgression (continuous offence).
- (5) For purposes hereof a *continuous offence* relates to one contravention which an owner or occupier fails to rectify within the period specified in this schedule.