

CONSTITUTION

OF

WELGEGUND DOMAINE PRIVÉ HOME OWNERS' ASSOCIATION

*Established in terms of section 29 of Stellenbosch Municipality: Land Use Planning
By-law under the Spatial Planning and Land Use Management Act, No. 16 of 2013*



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I. PRELIMINARY

1. Definitions

In this Constitution, unless the context indicates to the contrary, the following words shall have the following meanings -

- 1.1 **"Architectural Design Guidelines"** means the architectural design, development and environmental guidelines in respect of the Development, as amended from time to time, annexed hereto marked Annexure **"A"**;
- 1.2 **"Association or Home Owners' Association"** means the Welgegund Domaine Privé Home Owners' Association;
- 1.3 **"auditors"** means the auditors appointed by the Developer during the Development Period or by the Trustees at any time subsequent to the Development Period;
- 1.4 **"business day"** means weekdays other than Saturdays, Sundays and public holidays;
- 1.5 **"Chairperson"** means the chairperson for the time being of the board of Trustees;
- 1.6 **"Code of Conduct"** means the code of conduct for the Association as contemplated in clause 42, as amended from time to time, annexed hereto marked Annexure **"B"** inter alia containing the applicable building manual;
- 1.7 **"Common Property"** means any land owned by the Association within or outside the Development, including any structure erected or constructed thereon, which will include, but not be limited to, Private Open Spaces, roads and landscaping;
- 1.8 **"Constitution"** means the constitution of the Association (together with all annexures thereto) approved by the relevant local authority in terms of section 29 of the Stellenbosch Municipality: Land Use Planning By-law under the Spatial Planning and Land Use Management Act, No. 16 of 2013, and any amendments thereto effected in terms of this Constitution;
- 1.9 **"Developer"** means West Ridge Properties Proprietary Limited, Registration Number 2007/008695/07, a private company duly registered in terms of the company laws of South Africa, and includes its successors in title or assigns;
- 1.10 **"Development"** means the residential development on Portion 1 of the Farm Welgegund Number 372, In the Municipality and Division of Stellenbosch, Province Western Cape, in extent 2,4986 (two comma four eight six) hectares which portion are to be subdivided and to be known as Welgegund Domaine Privé;

- 1.11 "**Development Period**" means the period commencing on the date of registration of the first erf in the Development until the last erf has been transferred from the Developer, alternatively the date on which the Developer in its sole discretion notifies the Association in writing that it terminates the Development Period;
- 1.12 "**erf**" means 1 (one) of the erven;
- 1.13 "**erven**" means every erf in the Development collectively;
- 1.14 "**levy**" means any contribution collected on behalf of the Association from the Members to defray any incurred or anticipated expenditures;
- 1.15 "**local authority**" means the local authority having jurisdiction over the Development which, at date of approval of the Development, is the Municipality of Stellenbosch;
- 1.16 "**Member**" means every registered owner and if a member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations in terms of this Constitution;
- 1.17 "**month**" means a calendar month;
- 1.18 "**Private Open Spaces**" means the erven indicated as such on the general plan;
- 1.19 "**property**" means an erf, generically referred to in respect of an owner;
- 1.20 "**registered owner**" means a registered owner of an erf as registered in the office of the Registrar of Deeds in Cape Town;
- 1.21 "**resolution**" means a resolution passed at an annual general meeting or any other general meeting of the Association by an ordinary majority of the total votes represented at such meeting by Members present in person or by proxy;
- 1.22 "**special resolution**" means a resolution passed at an annual general meeting or a special general meeting whereat Members present in person or by proxy represent 50% (fifty percent) of the total votes and passed by a majority of 75% (seventy five percent) of the total votes represented by Members present in person or by proxy;
- 1.23 "**Trustees**" means the Trustees of the Association from time to time and includes alternate and co-opted Trustees;
- 1.24 "**year**" means a calendar year.

2. Interpretation

In this Constitution -

- 2.1 the clause headings are for convenience only and shall be disregarded in the interpretation of this Constitution.
- 2.2 unless the context clearly indicates the contrary intention -
 - 2.2.1 the singular shall include the plural and vice versa;
 - 2.2.2 a reference to any gender shall include the other genders;
 - 2.2.3 a reference to natural persons shall include juristic persons and vice versa.
- 2.3 words and expressions defined in any clause shall have the defined meaning in that and subsequent clauses, unless provided to the contrary.
- 2.4 when any number of days is prescribed in this Constitution, it shall be calculated exclusive of the first and inclusive of the last day, unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day that is not a Saturday, Sunday or public holiday.
- 2.5 where figures are referred to in numerals and words, the words shall prevail in the event of a conflict between the two.
- 2.6 if any provision of this Constitution is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of the Constitution.
- 2.7 if any provision in any definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members, then, in such an event, effect shall be given to it as if it were a substantive provision in the body of the Constitution.
- 2.8 the annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.

2 HOME OWNERS' ASSOCIATION

3. Establishment of the Association

The Association will be established in accordance with section 29 of the Stellenbosch Municipality: Land Use Planning By-law under the Spatial Planning and Land Use Management Act, No. 16 of 2013, with the registration of the first transfer of an erf in the Development to a third party other than the Association or the Developer.

4. Legal Persona of the Association

Pursuant to its Constitution the Association -

- 4.2.1 shall be a legal entity and exist independently of its Members;
- 4.2.2 shall enjoy perpetual succession;
- 4.2.3 may own property independent from the Members;
- 4.2.4 shall be capable of being sued or to sue with reference to any agreement entered into by the Association, any damage caused to any property of the Association or any matter arising from this Constitution;
- 4.2.5 not operate for profit but for the benefit of the Members;
- 4.2.6 no Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees.

5. Objects and responsibilities of the Association

- 5.1 Notwithstanding the fact that Members hold title to their erven individually the Association, through its Trustees, shall have all the powers that are necessary to accomplish the fulfillment of all objectives of the Association, including, but not limited to the powers specifically contained in the Constitution.
- 5.2 The Association shall have the following objectives -
 - 5.2.1 to act as a Home Owners' Association established in terms of section 29 of the Stellenbosch Municipality: Land Use Planning By-law under the Spatial Planning and Land Use Management Act, No. 16 of 2013, for the Development and in particular to procure that the matters referred to in section 29(3) of Stellenbosch Municipality: Land Use Planning By-law be adhered to and complied with;
 - 5.2.2 to take transfer of, manage, maintain and insure, where necessary, and control the use of, including, but not limited to, the Common Property, borehole, attenuation pond, civil services infrastructure, roads, landscaping and Private Open Spaces;
 - 5.2.3 to enter into agreements of servitude in its favour for the benefit of its Members;
 - 5.2.4 to manage, oversee and control all security aspects of the Development;
 - 5.2.5 to enter into agreement for the provisions of services, inter alia including the provision of water, electricity and sewerage services to the Association and where required to supply such services to the various Members of the Association;

- 5.2.6 to administer and enforce the Code of Conduct and Architectural Design Guidelines;
 - 5.2.7 to control the registration of transfer of erven in the Development and ensure compliance with all conditions imposed by the local authority when approving the rezoning and/or subdivision of the property comprising the Development;
 - 5.2.8 to maintain all roads falling within the boundaries of the Development, and the Association shall have the power to do all such acts as are necessary to accomplish the fulfillment of the foregoing objects including, but not restricted, to powers specifically contained in this Constitution;
 - 5.2.9 to ensure the general high standard of the Development;
 - 5.2.10 generally promote, advance and protect the Development and the interests of the Association;
 - 5.2.11 determine and maintain standards of conduct for communal living in the Development;
 - 5.2.12 to manage, control, upkeep, upgrade, maintain and install (where required) all services, infrastructure, landscaping, servitudes and the Private Open Spaces serving the Development;
 - 5.2.13 to manage, control, execute and administer all financial and administrative functions of the Association required for the proper operation and functioning of the Association;
 - 5.2.14 to take transfer of the Private Open Spaces;
 - 5.2.15 to make rules and regulations to accomplish the aforesaid objectives after the Development Period during which it will be in the sole discretion of the Developer to make any such rules and regulations as aforesaid.
- 5.3 Without limiting the generality of 5.2.1 to 5.2.15 above, the Association shall have the following powers and functions -
- 5.3.1 The responsibility to maintain, repair, improve and keep in good order and condition the Common Property and Private Open Spaces and the responsibility for the payment of all rates and taxes, all services, charges and other taxes and/or levies charged and payable to the Council or any authority in respect of the Common Property, Private Open Spaces or Development and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, and the Association's affairs.

- 5.3.2 The right to impose levies upon the Members of the Association for the purpose of meeting all the expenses which the Association has incurred or to which the Trustees reasonably anticipate the Association will incur in the attainment of the objects of the Association or the pursuit of its business.
- 5.3.3 To ensure that all provisions of this Constitution, the Code of Conduct and Architectural Design Guidelines are complied with by all Members/parties bound thereby.
- 5.3.4 To promote, advance and protect the Development, the environment and the interest of the Association and all Members.
- 5.4 The responsibility for the management and control of the Common Property shall be transferred from the Developer to the Association upon transfer of the first erf in the Development. The Association indemnifies the Developer (or its successors in title) against any responsibility and/or liability imposed on the Developer (or its successors in title) by virtue of any official approval or condition or other responsibility referred to above.

3 MEMBERS OF THE ASSOCIATION

6. Membership of the Association

- 6.1 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 consist 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.
- 6.2 Membership of the Association shall be compulsory for every registered owner of an erf in the Development.
- 6.3 Membership shall commence together with registration of transfer of an erf into the name of the transferee.
- 6.4 When a Member ceases to be the registered owner of an erf, he shall *ipso facto* cease to be a Member of the Association, save for the Developer who shall remain a Member of the Association during the Development Period.
- 6.5 The registered owner of an erf shall not be entitled to resign as a Member of the Association.
- 6.6 Membership shall be personal to the natural persons or entities in question and may not be assigned or transferred by them to any other natural person or entity.

7. Rights and obligations of the Members

- 7.1 The rights and obligations of a Member are not transferable and every Member shall to the best of his ability further the objects and interest of the Association.
- 7.2 The Members shall be jointly liable for expenditure incurred in connection with the Association. If a Member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations of a Member in terms of this Constitution.
- 7.3 No Member shall let or otherwise part with the occupation of his erf, whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by this Constitution. The Member shall, nonetheless, remain bound by this Constitution and is required to ensure compliance therewith by such occupier.
- 7.4 Each registered owner shall -
- 7.4.1 maintain his erf in accordance with the rules and regulations of the Trustees;
 - 7.4.2 maintain in a neat and tidy condition and in a state of good repair all improvements on his erf;
 - 7.4.3 establish and maintain a garden according to the standard acceptable to the Trustees, as well as maintaining the road verge bordering his erf;
 - 7.4.4 be responsible for the maintenance of the boundary walling to his erf, inclusive of regular painting thereof;
 - 7.4.5 not park any commercial type vehicle, boat, caravan, trailer, or any vehicle not in good working order, on any roadway in the Development and such vehicle, boat, caravan, trailer shall be parked on the erf so as not to be visible from the street forming a boundary of such erf;
 - 7.4.6 not do or suffer to be done on or in any erf 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 Member, tenant or occupier of property in the Development;
 - 7.4.7 not erect or permit the erection of any advertising boards on his erf without the written approval of the Developer for as long as the Developer is a Member and, thereafter, of the Trustees;
 - 7.4.8 adequately insure the improvements on his erf and, if requested by the Trustees, furnish proof of such insurance to them and, in the event of total/partial destruction, he shall, within a reasonable time period, make good such damage or deconstruction in accordance with the

- original approved plans or in the event of total reconstruction in accordance with the Trustees' approval;
- 7.4.9 comply with all security procedures implemented from time to time;
- 7.4.10 generally ensure that gardening and landscaping of his erf is undertaken so as to be compatible with the gardening and landscaping of adjoining erven;
- 7.4.11 ensure that his dog is kept on a leash in all open areas within the Development and is controlled to ensure that other animals or people are not interfered with and, in particular, that no nuisance is caused by such dog to other registered owners and that the dog does not cause fouling of sidewalks within the Development or on Private Open Spaces within the Development;
- 7.4.12 adhere strictly to the terms of servitudes granting access to erven;
- 7.4.13 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of the Development and that planting on his erf does not interfere with pedestrian traffic or obscure the vision of motorists;
- 7.4.14 tolerate access to irrigation pipelines by owners of these lines;
- 7.4.15 not erect any structure over the sewerage system, services, infrastructure or Private Open Spaces;
- 7.4.16 comply with the provisions of this Constitution and all rules and regulations imposed by the Developer or the Association or the Trustees;
- 7.4.17 comply with the provisions contained in the Code of Conduct and Architectural Design Guidelines;
- 7.4.18 comply with any agreement concluded by the Association insofar such agreement may, directly or indirectly, impose obligations on a Member.
- 7.9 Each registered owner shall be obliged to obtain approval of the local authority in respect of any buildings and/or structures and/or improvements 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.
- 7.10 Buildings may only be erected in accordance with and complying with the Code of Conduct and Architectural Design Guidelines and only after prior approval by the Trustees of the Association and the local authority.

8. Consent to transfer of an erf and Sales Levy

Consent to transfer

- 8.1 A Member shall not be entitled to transfer his erf without the written consent by the Trustees of the Association, which consent shall be given -
- 8.1.1 if the proposed transferee has undertaken in writing to abide by this Constitution, the Code of Conduct, Architectural Design Guidelines and all other rules or regulations passed by the Developer, Association or the Trustees;
- 8.1.2 if the Member has no outstanding obligations towards the Association in terms of this Constitution and the Association has issued a clearance certificate that all amounts payable to the Association by such Member has been paid and that the Member is not in breach of any of his obligations in terms of the provisions of this Constitution; and
- 8.1.3 if the proposed transferee acknowledges that upon the registration of transfer of the erf into his name, he shall *ipso facto* become a Member of the Association.
- 8.2 The Trustees may charge a reasonable fee for issuing their consent to transfer as contemplated in clause 8.1.
- 8.3 For the avoidance of doubt it is recorded that the provisions of this clause do not apply to the Developer, that there will be no restriction whatsoever on the ability of the Developer to pass transfer of any erf and that accordingly the Developer does not need a clearance certificate from the Association before it will be entitled to transfer any erf to any person or entity.

Sales Levy

- 8.4 The Member shall be liable to pay the Association a special levy (“**the Sales Levy**”) in respect of any transaction for which either transfer duty is payable in terms of the Transfer Duty Act, No. 40 of 1949 (as amended from time to time) or value-added tax in terms of the Value-Added Tax Act, No. 89 of 1991 (or any statutory modification or re-enactment thereof) (as the case may be). The Sales Levy shall be equal to 1% (one percent) of the amount on which such transfer duty or value-added tax is payable (as the case may be).
- 8.5 The Sale Levy as contemplated in clause 8.4 shall –
- 8.5.1 be imposed upon the Members for purposes of accumulating a capital reserve fund for the Association which will primarily be used to meet the capital expenditure requirements (including but not limited to necessary

expenditure in relation to the maintenance of capital infrastructure); and

8.5.2 be payable to the Association before registration of transfer.

8.6 The obligation to pay the Sales Levy, having accrued prior to transfer, shall be without prejudice to the Association's right to recover the Sales Levy (and interest thereon) after transfer. The Member acknowledges that the Association will be entitled to withhold its consent to the transfer of the Property if payment of the Sales Levy has not been paid or guaranteed to its satisfaction.

8.7 Notwithstanding the aforesaid it is recorded that no Sales Levy shall be payable by the Developer. In the event however that the Developer transfer property to another entity controlled by it or its shareholders, the Sales Levy shall be payable in respect of any subsequent alienation by the foresaid entity to a third party.

9. Restrictions to use erf

A Member shall -

9.1 not be entitled to use his erf, or any buildings and/or structures thereon, or permit the use thereof in such manner as in the discretion of the Trustees will detract from the general harmony and character of communal living in the Development;

9.2 at all times adhere to the zoning scheme regulations pertaining to his erf;

9.3 not apply to the local authority or any other relevant authority for any consent or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect of the zoning scheme regulations pertaining to his erf without the prior written consent of the Association;

9.4 not apply for the subdivision or consolidation of his erf without the prior written consent by the Developer during the Development Period or thereafter after the prior written consent of the Association;

9.5 not use his erf for any other purpose than that of a residential property.

10. Access to an erf

10.1 A Member who owns an erf on which there is any civil services infrastructure, or via which erf access to such infrastructure must necessarily be obtained, shall permit any person duly authorised thereto by the Trustees or a relevant authority concerned, reasonable access to such erf for purposes of maintenance, installation, upgrading and replacement thereof.

- 10.2 No person or any Member of the Association shall prevent in any way or hinder the Developer from gaining access to and egress from the Development, marketing and selling erven in the Development during the Development Period.

11. Undertaking by Member to comply

- 11.1 Every Member undertakes in favour of the Association to comply with -
- 11.1.1 the provisions of this Constitution, the Code of Conduct, the Architectural Design Guidelines and all other rules or regulations passed by the Developer during the Development Period and thereafter by the Association or the Trustees;
 - 11.1.2 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member;
 - 11.1.3 any directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution;
 - 11.1.4 the provisions of the Environmental Management Plan issued by the Developer and/or Trustees.
- 11.2 Each Member undertakes in favour of the Association to ensure compliance with the provisions of this Constitution, the Code of Conduct, the Architectural Design Guidelines and the rules and regulations by -
- 11.2.1 any of his family members who resides in his dwelling and his visitors, guests, employees, agents, service providers or contractors; and
 - 11.2.2 any person who has the right to reside, or be present, in his dwelling, whether for consideration or not, and the family member of such person who resides or is present in that dwelling, and such person's visitors, guests, employees, agents, service providers or contractors.
- 11.3 The Member concerned shall be strictly liable for any damage caused, or penalty imposed in respect of a breach committed, by a person contemplated in clause 11.2.
- 11.4 No short-term lease for a period of less than 3 (three) months may be concluded in respect of a property without the written consent of the Trustees. The Trustees may attach reasonable conditions to their aforesaid consent.
- 11.5 For the purpose of the conclusion of a short-term lease in respect of a property, the owner and his agent must comply with the following provisions –
- 11.5.1 The owner of his agent must provide the Association with proof of public liability insurance cover in the sum of not less than R5 000 000,00 (Five Million Rand);

- 11.5.2 The owner or his agent must ensure that the contract between the owner and the tenant/guest stipulates that the tenant/guest shall be obliged to comply with the provisions of the Constitution and all rules and regulations applicable to the Development. The tenant/guest must sign a confirmation that he received a copy of the Constitution, rules and regulations and the confirmation or acknowledgement of receipt must be given to the Trustees.
- 11.5.3 No advertising in respect of letting will be permitted on the Common Property or Private Open Spaces and any pointer boards may be removed by the Trustees. Agents may not leave business cards or advertising material at the security gate or distribute advertising material under doors or leave material on the Common Property and Private Open Spaces.
- 11.5.4 The owner or his agent must provide security or Trustees with the name of the owner's local representative and responsible person who may be called in the event of an incident or otherwise. In the event of an incident involving a tenant/guest, the responsible person must have authority to remove the tenant/guest from the Development should the Trustees or managing agent or their nominee so insist.
- 11.5.5 The Trustees or managing agent or their nominee is authorised to demand immediate removal of a tenant/guest who does not conform to the provisions of the Constitution, rules and regulations specifically in respect of a disturbance, noise or nuisance or in the event of the misuse of the Common Property or Private Open Spaces. The Trustees or managing agent or their nominee will in the first instance request that the tenants/guests conduct themselves appropriately. Should the tenants/guest persist in disturbing other owners and occupiers of property in the Development or in misusing the Common Property or Private Open Spaces or in damaging any part of the Common Property and Private Open Spaces or any other property in the Development, the Trustees of the managing agents or their nominee shall have the authority to take appropriate steps to have the offending tenants/guest removed.
- 11.5.6 Should an agent or owner breach any of the provisions of the Constitution, rules and/or regulations, the agent or owner shall be given written notification by the Trustees as to which provision(s) of the Constitution, rule(s) and/or regulation(s) he has breached, whereafter the agent or owner will be given 7 (seven) days to rectify such breach. Should the agent or owner remain in default after the expiry of the said notice period, then the Trustees reserve the right to withdraw their approval in respect of the short term letting of the property.

12. Breach

- 12.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause 12.
- 12.2 If any Member fails in the observance of any of the provisions of this Constitution, the Code of Conduct or Architectural Design Guidelines, with regard to improvements and/or fails to comply with any rules or regulations made in terms hereof, the Trustees may on behalf of and in the name of the Association serve notice on such Member calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance -
- 12.2.1 enter upon the property to take such action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand;
- and/or
- 12.2.2 call upon such Member in writing to remove or alter within a specified period any portion of the improvements or any addition erected contrary to the provisions of this Constitution, Code of Conduct and Architectural Design Guidelines, failing which, the matter shall be referred to a special meeting of the Association convened to afford Members the opportunity to give directions to the Trustees. The resolution of the Association at such meeting shall be binding upon such defaulting Member and shall be implemented by the Trustees;
- and/or
- 12.2.3 institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.
- 12.3 If any Member fails to make payment on due date of levies or other amounts payable by such Member, the Trustees may give notice to such Member requiring him to remedy such breach within such period as the Trustees may determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member without further notice.
- 12.4 Nothing in the foregoing shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any Member arising from any cause action whatsoever or for any other relief.

13. Interest payable for failure to pay

Without prejudice to any other rights or remedies which the Trustees or the Association may have in law, should a Member be in default of any amount due, then such Member shall pay interest on such due amount at the publicly quoted prime rate of interest charged by the Association's bankers from time to time plus 3% (three percent), calculated from the due date until the actual date of payment of such amount.

14. Cessation of Membership

No 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.

4 TRUSTEES OF THE ASSOCIATION

15. Composition and election of Trustees

15.1 There shall be a Board of Trustees of the Association which shall consist of not less than 3 (three) and not more than 6 (six) persons, the exact number to be determined from time to time at the Annual General Meeting of the Association.

15.2 A Trustee shall be an individual but need not himself be a Member provided that the majority of Trustees shall be Members. Notwithstanding the aforesaid and so as to provide for the scenario where the registered owner is an entity/juristic person other than a natural person, the duly appointed representative of such entity/juristic person may be appointed as a Member Trustee notwithstanding the fact that he/she doesn't qualify as a Member.

15.3 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.

15.4 For as long as the Developer is a Member it shall be entitled to nominate and appoint one of the Trustees.

15.5 Once the Developer ceases to be a Member of the Association, the Trustees shall comprise of not less than 1 (one) registered owner who is a permanent resident of the Development.

15.6 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 as may be approved by the board of Trustees.

15.7 Trustees shall not be entitled to any remuneration, salary or fees in respect of the performance of their duties under this Constitution.

16. Removal and rotation of Trustees

16.1 Save as set out in this clause below, each Trustee, except for the Developer Trustee who shall not be required to rotate on an annual basis, shall continue to hold office from the date of his appointment to 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 board of Trustees at such meeting.

16.2 A Trustee shall be deemed to have vacated his office as such upon -

16.2.1 his becoming disqualified to act as a director in terms of the provisions of the Companies Act;

16.2.2 his estate being sequestrated, whether provisionally or finally, or his surrendering estate;

16.2.3 the commission by him of any act of insolvency;

16.2.4 his conviction for any offence involving dishonesty or any other serious criminal offence;

16.2.5 his becoming of unsound mind or being found lunatic;

16.2.6 his resignation from such office in writing;

16.2.7 his death; or

16.2.8 him 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 Association.

16.3 Upon any vacancy occurring in the Trustees 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 Trustees.

16.4 The Developer may remove and replace any Developer Trustee at any time upon written notice to the remaining Trustees.

17. Appointment of Trustees

All the initial Trustees shall be appointed by the Developer and until so appointed the Developer shall be the sole Trustee.

18. Office of Trustees

- 18.1 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.
- 18.2 At the First Annual General Meeting the Trustees shall appoint from amongst themselves a 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 facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No 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.
- 18.3 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 assigned to him by the Chairman or the Trustees.

19. Functions, powers and duties of Trustees

- 19.1 Subject to the express provision of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any managing agent, 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 the Constitution required to be exercised or done by the Association in general meeting subject however to such regulations as may have been made by the Association in general meeting provided that 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. The Developer shall however be entitled to, in its sole discretion, appoint and dismiss any managing agent during the Development Period.
- 19.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 19.3 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.

- 19.4 The Trustees shall have the right to co-opt any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees provided that such co-opted Trustee shall only serve until the next annual general meeting.
- 19.5 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution in such reasonable manner as they shall decide from time to time.
- 19.6 The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting -
- 19.6.1 as to the resolution of disputes generally;
- 19.6.2 for the furtherance and promotion of any of the objects of the Association;
- 19.6.3 for the better management of the affairs of the Association;
- 19.6.4 for the advancement of the interest of Members;
- 19.6.5 for the conduct of Trustees at meetings of Trustees and meetings of the Association;
- 19.6.6 to levy and collect contributions from Members in accordance with clause 31;
- 19.6.7 to levy and recover from Members moneys which are necessary to defray the necessary expenses of the local authority in the event of the local authority imposing any levies and imposts against the Association;
- 19.6.8 to assist it in administering and governing its activities generally.
- 19.7 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include -
- 19.7.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and improvements of all erven in the development in strict accordance with the provisions, which shall be additional to the powers of the Developer for as long as the Developer is a Member. The Trustees shall be entitled to require any Member, who shall be obliged, to repaint or renovate his improvements if in the reasonable opinion of the Trustees such improvements require essential repairs or have become dilapidated;
- 19.7.2 entering into of agreements with third parties on behalf of the Association for any purposes of the Association;

- 19.7.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;
- 19.7.4 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable;
- 19.7.5 the institution or defense of actions in the name of the Association and to appoint legal representatives for such purpose.

20. Proceedings of Trustees

- 20.1 The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 20.2 The quorum necessary for the holding of all meetings of the Trustees shall be 2 (two) Trustees where there are 3 (three) Trustees and 4 (four) Trustees where there are more than 5 (five) Trustees. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for 7 (seven) days, or if that is not a business day, then to the next business day thereafter, and those Trustees present at the adjourned meeting shall constitute a quorum.
- 20.3 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.
- 20.4 The Trustees shall cause minutes to be kept of every Trustees meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the Chairman. All minutes of Trustees' meetings shall, after certification, be placed in a trustee's minute book to be kept in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies. The Trustees' minute book shall be open for inspection at all reasonable times by any Trustee, the auditors, the Members and the estate manager.
- 20.5 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.

- 20.6 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustees.
- 20.7 Meetings of the Trustees shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived this requirement in respect of a particular quarter, then no meeting of the Trustees need be held for that quarter.
- 20.8 A Trustee may at any time convene a meeting of the Trustees by giving reasonable notice to the other Trustees, which notice must specify the reason for convening the meeting.

5 MEETINGS OF MEMBERS OF THE ASSOCIATION

21. Annual general meetings

- 21.1 The Association shall, within 12 (twelve) months of the date of commencement of the Association, hold a general meeting as its first annual general meeting. Thereafter, within 4 (four) months of the financial year end of the Association it shall hold second and subsequent annual general meetings.
- 21.2 Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.
- 21.3 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 Members, or in default, may be convened by the requisitionists themselves, provided that notice thereof be given in terms of clause 22.

22. Notice of meetings

- 22.1 An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than 21 (twenty-one) business days' notice in writing and any other general meeting shall be called by not less than 14 (fourteen) business days' notice in writing. The notice shall be exclusive of the day on which it is served, or deemed to be served, and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such person as are, under this Constitution entitled to receive such notices from the Association: provided that a meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed -

- 22.1.1 in the case of a meeting called as the annual 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 50% (fifty percent) of the total voting rights of all Members;
- 22.1.2 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 50% (fifty percent) of a total voting rights of all Members.
- 22.2 The accidental omission to give notice of any resolution or meeting, or to present any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings at or any resolution passed at any meeting.
- 22.3 A notice of a meeting shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the street address of the erf owned by him or by e-mail in the event where the Member has notified the Association of his e-mail address.
- 22.4 No Member shall be entitled to have a notice of a meeting served on him at any address not within the Republic of South Africa, but any Member may request the Association by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 22.5 Any notice of a meeting sent by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 22.6 Any notice of a meeting sent by e-mail shall be deemed to have been served at the time of transmission when the letter containing same was sent by e-mail, and in proving the giving of notice by e-mail, shall be sufficient to prove that the letter containing the notice was properly addressed and transmitted.
- 22.7 The non-receipt of notice of meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 22.8 General meetings of the Association shall take place at such place/s as shall be determined by the Trustees from time to time.

23. Proxies

- 23.1 A Member may be represented at a general meeting by a proxy, who must be a Member of the Association, save for the Developer whose proxy need not necessarily be a Member.

- 23.2 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 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 any person authorised by resolution of the board of directors of the company or by its secretary and, where a close corporation, by any member of such close corporation and, where an Association of persons, by the secretary thereof, and where a trust, by a person duly authorised by the Trustees of such trust.
- 23.3 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 lodged with the Association at least 24 (twenty four) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.
- 23.4 Notwithstanding the foregoing, the Chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

24. Quorum

- 24.1 No business shall be transacted at any annual general meeting or general meeting unless a quorum is present when the meeting proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any meeting shall be 50% (fifty percent) of the total Members entitled to attend and vote thereat.
- 24.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present shall constitute a quorum.

25. Agenda at meetings

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

- 25.1 the consideration of the Chairman's report;
- 25.2 the election of Member Trustees;
- 25.3 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;

- 25.4 the consideration of the budget as presented by the Trustees and confirmation of levies as currently levied by the Trustees;
- 25.5 the consideration of the report of the auditors;
- 25.6 any other business pertinent to such meeting, including any resolutions proposed for adoption by such meeting and the voting upon any such resolutions.

26. Procedure at meetings

- 26.1 The Chairman shall preside as such at all meetings provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Trustees present at such meetings 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.
- 26.2 The Chairman may, with the consent of any 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 not business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. No notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

27. Minutes of meetings of the Association

- 27.1 The Trustees shall -
 - 27.1.1 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 has closed and shall then be certified correct by the Chairman of the meeting;
 - 27.1.2 cause such minutes to be kept of all such meetings of the Association in a minute book of meetings of the Association kept for the purpose.
- 27.2 The Trustees shall keep all minute books of meetings of the Association in perpetuity.
- 27.3 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.
- 27.4 All resolutions recorded in the minutes of any meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the

passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Association shall be of any force or effect, or shall be binding upon the Member or any of the Trustees, unless such resolution is competent within the powers of the Association.

- 27.5 Save as otherwise provided in this Constitution, 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.

28. Voting

- 28.1 At every annual general meeting or general meeting every Member, in person or by proxy and entitled to vote shall have one vote for each erf registered in his name, provided that if an erf is registered in more than one person's name, then they shall jointly have one vote for that erf.
- 28.2 When 2 (two) or more persons are joint registered owners of an erf, the vote to which they are entitled may be exercised only by a person (who need not be one of them) jointly appointed by them as their proxy, provided that any one of them may demand a poll.
- 28.3 Save as expressly provided for in this Constitution, 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 and to vote on any question either personally or by proxy.
- 28.4 At any meeting of Members a resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Member. If a poll is duly demanded it shall be taken in such manner as the Chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 28.5 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.
- 28.6 Voting on the election of a Chairman of 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 thereat, present in person or by proxy.
- 28.7 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.
- 28.8 Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a Trustee or auditor) may be passed

without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the Members entitled to vote.

- 28.9 Unless any Member present in person or by proxy at a 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 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 resolution so recorded if such entry confirms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.
- 29. Special general meeting**
- 29.1 Any meeting of the Members other than an annual general meeting contemplated in clause 21 shall be called a special general meeting.
- 29.2 The Trustees may, whenever it thinks fit, convene a special general meeting.
- 29.3 A special general meeting shall be convened by the Trustees at the written request of at least 16 (sixteen) Members.
- 30. Notice and agenda of special general meeting**
- 30.1 A special general meeting shall be convened by not fewer than 14 (fourteen) days' notice in writing.
- 30.2 The notice shall specify the place, the day and the time of the meeting appointed by the Trustees and shall be accompanied by an agenda together with a memorandum prepared by the Trustees or the Member concerned, as the case may be, which provides a motivated description of each item to be dealt with at the meeting and the resolution desired.
- 30.3 Only items properly on the agenda of a special general meeting may be raised at the meeting.

VI. FINANCIAL AFFAIRS OF THE ASSOCIATION

31. Levies

- 31.1 The Trustees shall -
- 31.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the Association for the control, management, administration and maintenance of the Development, including, but not

limited to, services, infrastructure, pathways, roads and Private Open Spaces, and for charges for the supply of any services required by the Association and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association;

- 31.1.2 estimate the amount which will be required by the Association to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate amount to be held in reserve to meet anticipated future expenditure not of an annual nature;
- 31.1.3 require Members whenever necessary to make contributions to such fund for the purposes of satisfying the expenses referred to in 31.1.1 and 31.1.2 equal as nearly as is reasonably practical to such estimated amount.
- 31.2 The Trustees may, from time to time, make and collect special levies from Members effective from the date of passing of the applicable resolution in respect of such expenses referred to in clause 31.1 (which are not included in any estimate made in terms of clause 31.1.2) and such special levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit.
- 31.3 Any amount due by a Member by way of a levy shall be a debt due by him to the Association payable within such time as determined by the Trustees. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member. No levies paid by a Member shall 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 such erf to pay the levies attributable to that erf. No Member shall be entitled to transfer his erf until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association.
- 31.4 In calculating the levies, the Trustees shall take into account income, if any earned by the Association and the allocation of voting rights to Members, as recorded herein.
- 31.5 The decision of the Trustees in calculating the levies shall be final and binding on all Members.
- 31.6 No Member shall be entitled to any of the privileges of Membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 31.7 All levies are due and payable by Members on the first day of the month immediately following the month in which such liability arose and, thereafter, on the first day of each and every following month.

32. Books of account and records

- 32.1 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 -
- 32.1.1 a record of the assets and liabilities of the Association;
 - 32.1.2 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;
 - 32.1.3 a register of Members showing in each case their addresses;
 - 32.1.4 individual ledger accounts in respect of each owner.
- 32.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Trustees think fit and shall always be open to inspection by the Trustees.
- 32.3 The Trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by Members not being Trustees, and no Member (not being a Trustee) shall have any right of inspecting any accounting records or documents of the Association except as conferred by the Companies Act or authorised by the Trustees.
- 32.4 The Trustees shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.
- 32.5 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 Members of the accounts and books of the Association, or any of them, and subsequent 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.
- 32.6 A copy of the annual financial statements which are to be laid before the Association in annual general meeting shall, not less than 21 (twenty one) days before the date of the meeting, be sent to every Member of the Association: provided that this article shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

33. Financial year end

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

34. Audit

- 34.1 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.
- 34.2 The duties of the auditors shall be regulated in accordance with general practice and applicable professional standards.

35. Deposit and investment of funds

- 35.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank or building society in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- 35.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the Trustees from time to time.
- 35.3 The Association shall use interest on moneys invested for any lawful purpose in the interest of the Association.

VII. GENERAL PROVISIONS

36. Defamation privilege

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, every other Trustee, and everybody else engaged to perform the function or duty on behalf of 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 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.

37. Amendment

- 37.1 No provision of this Constitution, including the Code of Conduct and Architectural Design Guidelines, shall be amended or repealed without the prior consent in writing of the Developer until the end of the Development Period and the local authority.

- 37.2 Subject to the provisions of clause 37.1, this Constitution, including the Code of Conduct and Architectural Design Guidelines, may only be amended or repealed by a resolution taken at a general meeting and passed by 75% (seventy five percent) of the Members' votes cast at the meeting in respect of the resolution.
- 37.3 No amendment or repeal of a provision of this Constitution may contravene any legislation.
- 37.4 The Trustees, or any Member with the written support of at least 16 (sixteen) Members, may propose an amendment or repeal of a provision of this Constitution by placing a motivated written proposal to that effect on the agenda of a general meeting.
- 37.5 The Trustees must, within 21 (twenty-one) days of its adoption, in writing inform all the Members, the Commissioner for the South African Revenue Service and the local authority of an amendment or repeal of a provision of this Constitution.
- 37.6 The reference to "amended" as contemplated in clauses 37.1 to 37.5 will include addition and substitution of a provision of this Constitution.

38. Arbitration

- 38.1 Should any dispute, question or difference arise between Members or between a Member and Trustees out of or in regard to -
- 38.1.1 the interpretation of;
 - 38.1.2 the effect of;
 - 38.1.3 their respective rights or obligations under;
 - 38.1.4 a breach of this Constitution (save for non-payment of levies or any other amount due by a Member in terms of this Constitution), such dispute shall be decided by arbitration in the manner set out in this clause 38.
- 38.2 In respect of any claim arising from non-payment of levies or any other amount due by a Member to the Association in terms of this Constitution, the Association and the Trustees shall continue to enjoy common law right and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.
- 38.3 The arbitration referred to in clause 38.1 above shall:-
- 38.3.1 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;
- 38.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and
- 38.3.3 be held in Stellenbosch, at such place as the Trustees may decide informally and otherwise in terms of 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.
- 38.4 The arbitrator shall be a practising attorney of not less than 10 (ten) years appointed between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within such 7 (seven) day period, on request by either one of the parties, appointed by the President of the The Cape Bar or its successors in title.
- 38.5 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. The arbitrator shall make his award within 10 (ten) 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.
- 38.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings -
- 38.6.1 shall be final and binding on each of them; and
- 38.6.2 shall be carried into effect immediately; and
- 38.6.3 may be made an order of any Court that has jurisdiction over the parties or the property.
- 38.7 Notwithstanding anything to the contrary contained in this clause 38, 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.

39. Domicilium citandi et executandi

- 39.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following -
- 39.1.1 such address shall be the address of the Chairman or other resident Trustee nominated by the Trustees or the address of any duly appointed managing agent;
- 39.1.2 the Trustees shall give notice to all Members of any change of such address.
- 39.2 The *domicilium citandi et executandi* of each Member shall be the street address of the erf registered in his name.
- 39.3 It shall be competent to give notice by telefax or e-mail where the Member's telefax number and e-mail address is recorded with the Trustees.
- 39.4 A Member may by notice in writing to the Trustees alter his *domicilium* provided such new address may not be a post office box or *poste restante* and provided such address is within the Republic of South Africa and that change shall only be effective on receipt of written notice thereof by the Association of its *domicilium*.
- 39.5 Notwithstanding the above, any notice actually received by the party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice had not been given in accordance with the provisions of this clause.

40. Indemnity of Trustees

- 40.1 Every Trustee, servant, agent, contractor and employee of the Association shall be indemnified by the Association against all costs, losses and 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 respective duties, including his duties as chairman or vice-chairman. Without prejudice to the generality of the aforesaid, 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.
- 40.2 Any costs, losses, expenses or claims in respect of which indemnity is given shall be paid out of the funds of the Association.

41. Dissolution of the Association

41.1 The Association may be dissolved by a resolution of Members at a general meeting, provided that –

41.1.1 a majority of $\frac{3}{4}$ (three quarters) of the Members present in person or by proxy and voting vote in favour thereof; and

41.1.2 the local authority consents thereto.

41.2 On dissolution of the Association, its remaining assets shall be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(i)(cc) of the Income Tax Act 58 of 1962, provided that if the Association is not succeeded by such an association, the remaining assets shall be paid to such fund as may be required by law.

VIII. BUILDING WORK IN THE DEVELOPMENT AND ARCHITECTURAL DESIGN GUIDELINES

42.1 Approval of building work by Trustees

42.1.1 No construction or erection of new buildings or structures nor any additions, alterations or renovations to existing buildings or structures may commence without the prior written approval of the Trustees of the Association.

42.1.2 All building and other structures erected on any erf shall comply with the provisions of the Code of Conduct and Architectural Design Guidelines.

42.2 Deposit for damage

42.2.1 Each Member shall, before commencement of any building work contemplated in clause 42.1, pay to the Trustees a building deposit in an amount to be determined from time to time by the Trustees which amount shall be retained by the Trustees in trust until completion by the Member and/or its contractors of such work. Any interest accrued on the aforesaid deposit will accrue to the Member.

42.2.2 Upon completion of all such building work and other activities, the Trustees shall if they are satisfied that no damage has been effected by the Member or any of its contractors to the common property and/or landscaped areas and/or civil services infrastructure within the Development and that the work has been constructed in accordance with duly approved plans, release the building deposit to the Member, including any interest thereon as contemplated in clause 42.2.1.

42.2.3 In the event of any common property and/or landscaped area and/or civil services infrastructure having damage due to such work, the Member shall within 14 (fourteen) days of having been requested to do so in writing by the Trustees, rectify the damage to the satisfaction of the Trustees, failing which the

Trustees shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the Trustees as a building deposit shall be utilised to defray the expenses of the independent contractor. If, however, the building deposit is not sufficient to cover the cost of such repairs, the Trustees shall be entitled to recover the shortfall from the Member.

42.3 Amendment of Code of Conduct and Architectural Design Guidelines

42.3.1 The Trustees may in liaison and with the consent of the local authority amend, amplify, clarify or add to, or amend, substitute or repeal the provisions of the Code of Conduct and Architectural Design Guidelines after the Development Period

42.3.2 The Trustees shall at least 14 (fourteen) days before its implementation inform all Members of any amendment, amplification, clarification or addition to, substitution or repeal, of a provision of the Code of Conduct.

42.3.3 Any Member may with the written support of at least 75% (seventy five percent) of the Members submit a motivated proposal for an amendment, amplification, clarification or addition to, substitution or repeal of, a provision of the Code of Conduct.

42.3.4 If the Trustees are of the view that the proposal should not be effected, it shall inform the Member accordingly in writing, whereupon the Member may require the Trustees to place the proposal on the agenda of a general meeting.

42.4 Completion of building work

42.4.1 Any Member who has not commenced building work on his erf within 24 (twenty-four) months and completed a building on and obtained a Municipal Occupancy Certificate in respect of such building within 36 (thirty-six) months after the registration of transfer of an erf into his name shall pay the Association a penalty levy equal to the monthly levy payable in respect of the Member's erf per month or part thereof until such time as the building work has been duly completed.

42.4.2 The aforesaid penalty levy shall be paid in addition to the levy payable by the Member in terms of clause 31 and in the event of a dispute arising as to whether a building is completed for purposes of the provisions of clause 42.4.1, the Trustees shall determine such dispute and their decision shall be final and binding.

42.5 Architectural Design Guidelines

42.5.1 The Architectural Design Guidelines constitutes an integral part of this Constitution and for as long as the Developer is a Member of the Association the Architectural Design Guidelines may be amended, substituted, added to or repealed by the Developer and thereafter by the Association.

42.5.2 No construction or improvements on an erf may commence prior to the approval of such construction or improvements by the local authority or the Association and upon obtaining of the aforesaid approvals the Member shall comply with all conditions and standards imposed by the local authority in addition to those requirements contained in the Architectural Design Guidelines.

42.5.3 No construction or improvements may be undertaken by a contractor not approved by the Developer during the Development Period and thereafter by the Association.

IX. COMMON PROPERTY OF THE ASSOCIATION

43. Management and control of the Common Property and Private Open Spaces

The Trustees, as they deem fit, shall –

43.1 attend to the maintenance, upgrading, installation and replacement of the civil services infrastructure of the Development;

43.2 manage and maintain the Common Property, Private Open Spaces, including the landscaping thereof common facilities and recreational areas, within or outside the Development.

44. Alienation and letting of Common Property

Members may direct the Trustees by special resolution to alienate or let the Common Property or any part thereof whereupon the Trustees shall have the power to deal with the directive, subject to the relevant legislation governing the rezoning and subdivision of land, and to sign and execute any deed or document required for that purpose.

X. REGULATIONS, CODE OF CONDUCT AND ARCHITECTURAL DESIGN GUIDELINES OF THE ASSOCIATION

45. Making and implementing regulations governing conduct

45.1 The Developer may during the Development Period and thereafter the Trustees may make and implement such regulations as it deems necessary including, but not limited to, regulations governing –

45.1.1 the promotion of harmonious communal living in the Development;

45.1.2 traffic in the Development, including, but not limited to, the parking and speed enforcement of vehicles;

45.1.3 the conduct of persons who perform work in the Development;

45.1.4 the conducting of business in the Development;

- 45.1.5 the maintenance of properties of Members;
- 45.1.6 the keeping of pets in the Development;
- 45.1.7 the maintenance of civil services infrastructure in the Development;
- 45.1.8 the maintenance, use and enjoyment of the Common Property and Private Open Spaces;
- 45.1.9 security in the Development, including access thereto;
- 45.1.10 the processing of complaints by Members generally.

45.2 Any Member may with the written support of at least 16 (sixteen) Members submit a motivated proposal for an addition to, or amendment, substitution or repeal of, a provision of the regulations to the Trustees.

45.3 If the Trustees are of the view that the proposal should not be effected, it shall inform the Member accordingly in writing, whereupon the Member may require the Trustees to place the proposal on the agenda of a general meeting.

45.4 No provision of the aforesaid regulations may be in conflict or irreconcilable with any provision of this Constitution, provided that in the event of any such conflict or irreconcilability the provision of this Constitution shall prevail.

45.5 The Trustees shall at least 14 (fourteen) days before its implementation, in writing inform all Members of any addition to, or amendment, substitution or repeal of, a provision of the aforesaid regulations.

46. Determination of penalties

46.1 The Trustees may from time to time determine the penalties to be imposed for the breach of a provision of this Constitution, a regulation as contemplated in clause 45, the Code of Conduct or Architectural Design Guidelines, including the amount of an initial and subsequent fine.

46.2 The Trustees shall at least 14 (fourteen) days before its implementation, in writing inform all Members of any penalty determined under this clause 46.

46.3 A penalty imposed for a breach of a provision of this Constitution, a regulation as contemplated in clause 45, the Code of Conduct or Architectural Design Guidelines may, if it is not paid within 7 (seven) days after the Member has been notified of the imposition thereof, be added to the monthly levy payable by that Member and claimed as if it were part of such levy.

47. Binding nature of Constitution, rules, regulations, Code of Conduct and Architectural Design Guidelines

The provisions of this Constitution, the regulations as contemplated in clause 45, the Code of Conduct and the Architectural Design Guidelines shall be binding on all Members and also on all other persons who reside in, or for whatever purpose, enter the Development.

MEMBERS' APPROVAL

This Constitution was approved at a special general meeting held on _____.

Chairman
Trustee
Welgegund Domaine Privé Home Owners' Association

MUNICIPAL APPROVAL

The Constitution of Welgegund Domaine Privé Home Owners' Association dated _____ was approved in terms of section 29 of the Stellenbosch Municipality: Land Use Planning By-law under the Spatial Planning and Land Use Management Act, No. 16 of 2013.

Municipality of Stellenbosch

Annexure "A"

ARCHITECTURAL DESIGN GUIDELINES TO BE ATTACHED

Annexure "B"

CODE OF CONDUCT TO BE ATTACHED