



Nautilus Village

CONSTITUTION

**NAUTILUS VILLAGE HOME OWNERS'
ASSOCIATION**

NAUTILUS VILLAGE HOME OWNERS ASSOCIATION CONSTITUTION

The following pages outline the official Constitution for Nautilus Village in Gustrouw Road, Gordon's Bay, Western Cape.

We, the trustees, hereby confirm that this document was approved by the Nautilus Village Home Owners' Association members at the Annual General Meeting held on Tuesday 14 May 2019 at 17:30, at JPS Trust, 2nd floor, Trident Park II, 1 Niblick Way, Somerset West.

1. ESTABLISHMENT IN TERMS OF STATUTE

The name of the Association is NAUTILUS VILLAGE HOME OWNERS' ASSOCIATION and is constituted in terms of Sections 61, 62 and 63 of the City of Cape Town Municipal Planning By-Law, 2015 ('the By-Law') in accordance with the conditions imposed by the City of Cape Town when approving the subdivision of ERF 8396, Gordons Bay.

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 **Accounting Officer** means a person who in terms of section 60 of the Close Corporation Act, 1984 (Act 69 of 1984), is qualified to perform the duties of an accounting officer;
- 2.1.2 **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;
- 2.1.3 **Architect** means the Architect appointed by the Association;
- 2.1.4 **Architectural Design Guidelines** means the architectural guidelines, prepared for the Development and includes all/any amendments made thereto from time to time;
- 2.1.5 **Association** means NAUTILUS VILLAGE HOME OWNERS' ASSOCIATION;
- 2.1.6 **Auditor** means the Auditor of the Association;
- 2.1.7 **Building Committee** means the committee appointed in terms of clause 8.6.8 hereof and comprising two Trustees and the Architect;
- 2.1.8 **Business Day** means weekdays other than Saturdays, Sundays and Public Holidays;
- 2.1.9 **Chairman** means the Chairman of the Trustee Committee;
- 2.1.10 **Common Areas** means all parts of the Development excluding privately owned Erven and Units and property registered in the name of the Local Authority;
- 2.1.11 **Conduct Rules** means the conduct rules and includes any and all amendments made thereto from time to time;
- 2.1.12 **Constitution** means this constitution including annexures thereto, as may be amended from time to time;
- 2.1.13 **CSOS** means the Community Schemes Ombud Service established in terms of the Community Schemes Ombud Service Act, No 9 of 2011;
- 2.1.14 **Developer** means CRD Holdings No 2 (Pty) Ltd or its successors in title;
- 2.1.15 **Development** means the Development situated on ERF 8396, Gordons Bay;
- 2.1.16 **Erf or Erven** means any Erf or Erven in the Development which in terms of the subdivision thereof enjoys single residential use rights;

- 2.1.17 **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;
- 2.1.18 **General meeting** means an annual general meeting or a special general meeting;
- 2.1.19 **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;
- 2.1.20 **Levy** means the levy contribution due to the Association by a Member in terms of this Constitution;
- 2.1.21 **Local Authority** means the City of Cape Town or its successors in title from time to time;
- 2.1.22 **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;
- 2.1.23 **Member or Owner** means a registered owner of an Erf in the Development as evidenced by registration in the Cape Town Deeds Registry;
- 2.1.24 **Month** means calendar month;
- 2.1.25 **Occupant** means the owner of an Erf or any other legal occupant in charge thereof such as a tenant;
- 2.1.26 **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 70% (seventy 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 70% (seventy percent) of the Members, in person or by proxy;
- 2.1.27 **Trustee** means a Member of the Trustee Committee;
- 2.1.28 **Trustee Committee** means the Trustees of the Association collectively from time to time and includes alternate and co-opted Trustees;
- 2.1.29 **Trustees** means the Trustee Committee;
- 2.1.30 **Unit** means an Erf together with a dwelling, garden, garage, 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.

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 Trustee Committee.

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 open space and private streets, 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 any improvements or alterations to any Erf or Unit in terms of the Architectural 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, the Conduct Rules and Architectural Design Guidelines;
 - 5.1.9 to enforce certain conditions of subdivision approval or management plans listed in

such conditions of subdivision imposed by the Local Authority;

5.1.10 act in accordance with the collective mutual interests of its Members;

5.1.11 adopt and enforce such Conduct Rules as the Association may find necessary to regulate conduct within the Development and to harmonise the different needs and aspirations of all Members;

and the Association shall have all such powers necessary to enable it to achieve such purposes 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 or she ceases to be the registered Owner of such Erf.

6.4 No Member may resign, or cede or assign his or her 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 or other amounts due in respect of such Erf have been paid or secured to their satisfaction; and

6.6.2 there has been compliance with the provisions of this Constitution, the Conduct Rules and Architectural Design Guidelines; and

6.6.3 that a suitable clause be inserted in the Deed of Sale in terms whereof the Purchaser acknowledges that he or she becomes a Member of the Association upon transfer into his or 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 or her ability further the objects and interests of the Association;

6.7.2 observe all Conduct Rules, Architectural Design Guidelines, restrictions and directions 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.

- 6.8 An Erf may not be alienated without the prior written consent of the Trustee Committee of the NAUTILUS VILLAGE HOME OWNERS' ASSOCIATION of which the within transferee or his or her successors-in-title shall become a Member.
- 6.9 No person may apply to the Registrar of Deeds for registration of, and the Registrar of Deeds may not register, a land unit arising from the subdivision without the consent of the owners' association, which consent may not be unreasonably withheld.
- 6.10 Notwithstanding the aforesaid provisions, nothing shall prevent a Member from ceding his or her rights in terms of this Constitution as security to the mortgagee of that Member's Erf.
- 6.11 No Member ceasing to be a member of the Association for any reason shall (nor shall any such Member's executor, curators, Trustees or liquidators) have any claim upon or interest in the funds or other property of the Association. This clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrear levies or other sums due by him or her to the Association at the time of his or her ceasing to be a 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, the exact number to be determined by the Members at each annual general meeting. A Trustee shall be not be required to be an Owner in order to qualify for office as a Trustee provided that the majority of Trustees are Owners or spouses of Owners.
- 7.2 Nominations of candidates for election of Trustees at any meeting shall be in writing, signed by one (1) Member and accompanied by the written consent of the candidate nominated, so as to be received at the domicilium 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 nominations 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, in arrears with his levy payments, or any other amount due in terms the Constitution, Conduct Rules or Architectural Design Guidelines, or in breach of the provisions of the Constitution, Conduct Rules or Architectural Design Guidelines.
- 7.4 A Trustee shall, by accepting his or her appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution, the Conduct Rules and the Architectural Design Guidelines.
- 7.5 The Trustees shall elect from their own number a Chairman and Vice-Chairman 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 and Vice-Chairman shall *ipso facto* be vacated by the Trustee holding such office upon his or her 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 meet forthwith 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 or her inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him or her 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, Trustees who are Members 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 or her 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 or her estate being sequestrated, whether provisionally or finally, or his or her surrendering his or her estate;
 - 7.10.2 his or her making any arrangement or compromise with his or her creditors;
 - 7.10.3 his or her conviction for any offence involving dishonesty;
 - 7.10.4 he or she absents himself or herself from 3 (three) consecutive meetings of the Trustee Committee without special leave of absence from the Trustees;
 - 7.10.5 his or her removal from office by the Members in general meeting by way of an ordinary majority vote;
 - 7.10.6 his or her becoming of unsound mind or being found lunatic;
 - 7.10.7 receipt of written notice of resignation given to the Trustee Committee by the relevant Trustee;
 - 7.10.8 his or her death;
 - 7.10.9 his or her being in arrears with payment of his or her levies, or any other amount due in terms of the Constitution, Conduct Rules or Architectural Design Guidelines, for a period exceeding 3 (three) consecutive months or if he or she is in breach of the provisions of the Constitution, Conduct Rules or the Architectural Design Guidelines for a period of 3 (three) months after having received written notification as provided for in clause 28 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 or she 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 may 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 Trustee during his or her 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 or she replaces, ceases to be a Trustee, or if the alternate's appointment is revoked, by the Trustee

whom he or she 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. They 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. This shall be subject 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, Occupant or Trustee, of this Constitution, Conduct Rules or Architectural Design Guidelines 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; and
 - 8.5.7 in respect of the conduct of Owners and Occupants.
- 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 subject to the approval of the Members in general meeting, the determination of what constitutes appropriate environmental and behavioural standards for conduct and 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, employees 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 Architect may make recommendations, however the final authority to approve or reject applications shall vest in the Trustee Committee members serving on the Building Committee;
- 8.6.9 the appointment of a Building Committee to scrutinise and evaluate building plans and landscape proposals and to certify that they comply with the provisions of this this Constitution, the Architectural Design Guidelines and Conduct Rules;
- 8.6.10 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 deposits imposed in terms of this Constitution, the Conduct Rules or Architectural Design Guidelines;
- 8.6.11 where the Trustee Committee members of the Building Committee cannot come to an agreement on the Architect's recommendation, the matter shall be referred for a vote to the Trustee Committee.
- 8.6.12 the Trustee Committee may determine whether a particular application/request is permitted and falls within the ambit of the Architectural Guidelines and Conduct Rules, or whether it should be referred to the Members for an ordinary resolution.
- 8.6.11 a Member shall have the right to appeal the Building Committee's decision to the Trustee Committee, who shall consider the matter and make a final decision pertaining thereto.
- 8.2.12 a Member shall furthermore have the right to appeal the decision made by the Trustee Committee made in terms of clause 8.6.11 above by applying to CSOS for relief.
- 8.6.10 performances of such acts as are required to promote the security of persons and property in the Development;
- 8.6.11 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;
- 8.6.12 the imposition of levies on Members in accordance with this Constitution;
- 8.6.13 the keeping of proper administration and accounting records;
- 8.6.14 the appointment of an Auditor or person qualified to act as financial officer to do an annual audit of the Association's financial records;
- 8.6.15 the procurement of adequate fidelity insurance, in accordance with the regulations issued under the Community Schemes Ombud Service Act, No 9 of 2011, so as to insure the Association against the risk of loss of money belonging to the Association, sustained as a result of any act of fraud or dishonesty committed by any insurable

person; and

8.6.16 the taking of steps in all matters of common interest in respect of the Association.

8.7 The Trustee Committee shall, on behalf of the Association, enforce the provisions of this Constitution, the Conduct Rules and Architectural Design Guidelines.

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 or her, 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 the 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. 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, provided that there shall not be less than 2 (two), shall constitute a quorum.

9.4 If the number of Trustee Committee members falls below two (2), the remaining Trustee may constitute a quorum, but only for purposes of convening a general meeting of Members or to co-opt new Trustees.

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. 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 by them, 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. The Trustee Committee shall cause all such minutes of their meetings to be kept in perpetuity. The minutes of Trustees' meetings shall be open for inspection at all reasonable times by a Trustee Committee member, the Auditor or Accounting Officer, a Member or 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 approved in writing by a majority of the Trustees, albeit electronically or otherwise, 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 Association shall establish and maintain a fund for purposes 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, all services, security, the payment of all rates, taxes 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 Conduct Rules and the Architectural Design Guidelines.
- 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. They shall then prepare a budget and determine proposed levies equal as nearly as is reasonably practical to such estimated amount. In calculating the estimates and proposed levies, the Trustee Committee shall take into account, income, if any, earned by the Association. 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.
- 10.3 The Trustee Committee shall submit a proposed budget and levy to the Members at each annual general meeting for approval by the Members by simple majority vote. The levies so determined shall be due and payable upon the adoption of the ordinary resolution and subject to any directives issued at such annual general meeting. 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.
- 10.4 The Trustees may from time to time, when necessary, make special levies upon the Members 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 borne in equal shares by each Member, per Erf registered in his or her name.
- 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 a Member fails to pay his or her levies in full to the Association on the due date, the Association may institute action for the recovery thereof in any competent court, refer the matter to arbitration as provided for in this Constitution, or make an application to CSOS.
- 10.9 Notwithstanding any provision contained herein to the contrary, if any Member 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 A Member 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 Architectural 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, Members shall remain liable for interim levies at the amount 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 25% (twenty five percent) 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 issue the aforesaid notice 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 All general meetings, other than a meeting where a special resolution is tabled for adoption, shall be called by not less than 14 (fourteen) days' notice to all Members. All general meetings where a special resolution is tabled for adoption shall be called by no 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 time of the meeting. In the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business, the reasons and the proposed resolution(s) for it shall be given.
- 12.2 Notwithstanding clause 12.1, a general meeting may be called with such shorter notice than specified if so approved by 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 or she has advised the Trustees in writing of his or her 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 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 one third of the total votes of all Members of the Association entitled to vote, present in person and 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, save that no less than three (3) Members must be personally present. 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 such meeting:
- 14.1.1 the election of a chairman for the meeting (if required)
 - 14.1.2 approval of the minutes of the previous general meeting;
 - 14.1.3 consideration of the financial statements of the Association for the preceding financial year;
 - 14.1.4 the consideration of the insurance cover in respect of public liability and loss of funds belonging to the Association;
 - 14.1.5 the consideration and confirmation of the budget and levies as presented by the Trustee Committee;
 - 14.1.6 the determination of the number of Trustees;
 - 14.1.7 the election of Trustees;
 - 14.1.8 the appointment of an Auditor or Accounting Officer for the Association; and
 - 14.1.9 special business in terms of which due notice has been given.
- 14.2 The agenda for special general meetings shall be determined by the Trustee Committee subject to the provisions of this Constitution and specifically sub-clause 12.1 above in relation to special business.
- 14.3 A Member wishing to table any motion(s) or matter(s) for debate at a general meeting shall

give written notice, including sufficient details and supporting documentation (if any), to the Chairman of the Trustee Committee, or the Managing Agent, of the motion(s) or matter(s) by no later than 21 (twenty one) days prior to the meeting.

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 willing to act as chair, or 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 or her, provided that if an Erf is registered in more than one person's name, then they shall jointly have one vote.
- 16.2 If two or more persons are jointly registered Owners of an Erf, then in voting upon any resolution, the vote of the senior, who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other registered Owners of the Erf, and for this purpose, seniority shall be determined by the dates of birth of the joint Owners as recorded in the Deeds registry, Cape Town. In the event of an Erf being jointly owned by a natural person and a company or trust, then in such event the natural person, who tenders a vote, shall be deemed to rank higher in seniority in respect of such membership.
- 16.3 Save as expressly provided for in this Constitution, no person other than a Member, 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, shall be entitled to vote on any resolution, either personally or by proxy, at any general meeting; provided that, for purposes hereof, a Member shall only be considered to be in arrears if any levy or other sum due to the Association is outstanding for period exceeding one (1) calendar month.
- 16.4 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.
- 16.5 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.
- 16.6 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. The meeting shall then in all respects be deemed to have been properly and validly constituted and conducted. 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.

- 16.7 Should any Member be declared incapable of managing his or her own affairs, 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 or her 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. The instrument appointing a proxy shall be in writing signed by the Member concerned or his or her duly authorised agent in writing, but need not be in any particular form, provided that where a Member is:
- 17.1.1 more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf;
 - 17.1.2 a company, the proxy must be signed by a director of the company or by its secretary; and
 - 17.1.3 an association of persons, the proxy must be signed by the secretary thereof;
 - 17.1.4 a trust, the proxy must be signed by the trustees of such trust or a person duly authorised by them.
- 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 24 (twenty four) 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 any 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 Local Authority.
- 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. BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS

- 19.1 The Architectural 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, 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 Architectural Design Guidelines.
- 19.2 Having regard to the contents of the Architectural Design Guidelines, the Trustee Committee shall be entitled to:
- 19.2.1 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 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 without in any way limiting the generality of the foregoing, to call upon a Member in writing to remove or alter within a specific period, anything erected contrary to the requirements laid down pursuant thereto and failing which, to apply to Court or to CSOS for any appropriate order;
 - 19.2.3 impose building penalties in accordance with the provisions of the Architectural Design Guidelines;
 - 19.2.4 enforce provisions relating to the landscaping and to control construction and building operations in the Development;
 - 19.2.5 perform such acts as are necessary to accomplish the purposes expressed or implied in this Constitution, the Conduct Rules and the Architectural Design Guidelines, which acts shall include, inter alia, the examination and endorsement of building plans and the evaluation of landscaping proposals;
 - 19.2.6 appoint an Architect from time to time with such powers and duties as delegated by Trustee Committee;
 - 19.2.7 appoint such advisors as are necessary to scrutinize the relevant plans referred to herein;
 - 19.2.8 impose a scrutiny fee, determined from time to time by the Trustees, on Members for the services as mentioned herein; and
 - 19.2.9 ensure that all Members maintain their Erven/Units 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. COMMON AREAS

- 20.1 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.
- 20.2 Members shall maintain the road verges adjoining their Erven and keep them in a clean and neat condition notwithstanding the fact that such road verges form parts of the Common Areas.

- 20.3 The Trustee Committee shall establish and maintain suitable landscaping, lawns, gardens and recreational facilities as may be required.
- 20.4 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 and approval by the Local Authority. The provisions of this clause shall be included in the relevant Title Deeds.
- 20.5 Members and Occupants 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.
- 20.6 Any person present on the Common 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 Development 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.
- 20.7 The Association shall take ownership of the Common Areas, private streets and internal engineering services arising out of the subdivision of the Development.

21. CONDUCT RULES

- 21.1 The Members in general meeting may from time to time make, substitute, add to, amend or repeal Conduct Rules, which shall constitute an integral part of this Constitution, to govern:
- 21.1.1 the use, occupation and enjoyment by Members and Occupants of their Units/Erven and the use and enjoyment of the Common Areas;
 - 21.1.2 the conduct of Members and Occupants generally within the Development for the prevention of any nuisance of any nature to any Member or Occupant;
 - 21.1.3 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 Architectural Design Guidelines;
 - 21.1.4 conduct in respect of building activities;
 - 21.1.5 the external appearance of and the maintenance of the Members' Units/Erven;
 - 21.1.6 the security measures applicable to the Development;
 - 21.1.7 the keeping of pets in the Development;
 - 21.1.8 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.

22. BINDING NATURE

- 22.1 The provisions of this Constitution and of the Conduct Rules and Architectural Design

Guidelines shall be binding on the Owner of any Erf/Unit and any tenant or other Occupant of any Erf/Unit, and it shall be the duty of the Owner to ensure compliance with the provisions of the Constitution, Conduct Rules and Architectural Design Guidelines by his lessee or Occupant, including employees, guests, contractors and any member of his or her family, his or her lessee or Occupant.

- 22.2 It is the Owner's responsibility to ensure that any new Owner or Occupant of his or her Erf/Units receives a copy of the latest approved Constitution, Architectural Design Guidelines and Conduct Rules.
- 22.3 No Member shall be entitled to lease his or her Unit/Erf unless it is a specific condition of such lease that the lessee be handed a copy of the Constitution, Architectural Design Guidelines and Conduct Rules of the Association and that such lessee undertakes to abide by the conditions thereof as far as they may affect such lessee.

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.
- 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 right to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, or 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 to fairly 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/Unit 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 a physical address 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 Trustee Committee in writing of his or her 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
- 26.4.2 the Trustees shall give notice to all Members and CSOS of any change of such address.

27. INDEMNITY

- 27.1 All Trustees and the Auditor or Accounting Officer 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 Auditor/Accounting Officer 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. This shall, in the case of a Trustee, include his or her duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

27.3 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditor/Accounting Officer or of any of the other Trustees, whether in their capacities as Trustees or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association. A Trustee shall furthermore not be liable 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. BREACH

28.1 Should any Member commit a breach of this Constitution, the Architectural 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 Architectural Design Guidelines or the Conduct Rules, and remain in default for more than 7 (seven) days after written demand, the Trustee Committee may apply to CSOS for the appropriate relief or institute other legal proceedings on behalf of the Association against such Member for payment of such overdue levies or other amounts.

28.2 Should any Member commit any other breach of this Constitution, the Architectural 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:

28.2.1 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

28.2.2 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

28.2.3 to refer a dispute to CSOS; and/or

28.3.4 to refer a dispute to arbitration as provided for herein; and/or

28.2.5 impose penalties/additional levies in terms of the Architectural Design Guidelines or Conduct Rules.

28.3 Should the Trustee Committee institute any legal proceedings against any Member pursuant to any breach by that Member of this Constitution, the Architectural 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.

28.4 Any breach of the provisions of this Constitution, the Conduct Rules or Architectural Design

Guidelines by a Member, his or her employees, family members, contractors, visitors, guests or Occupants, shall be deemed to have been committed by the Member who shall be liable for such breach and the consequences thereof. Without prejudice to the foregoing, the Trustee Committee may in their sole discretion take steps against the Member concerned and/or against the party actually committing the breach.

29. ARBITRATION

29.1 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:

29.1.1 the interpretation of;

29.1.2 the effect of;

29.1.3 their respective rights or obligations under;

29.1.4 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.

29.2 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.

29.3 The arbitration referred to in clause 29.1 shall:

29.3.1 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

29.3.2 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

29.3.3 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.

29.4 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 South African Legal Practice Council (Western Cape).

29.5 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.

29.6 The arbitrator's decision shall be presented within ten (14) days 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.

29.7 The decision of the arbitrator made at such arbitration proceedings:

29.7.1 shall be final and binding on each of the parties; and

29.7.2 shall be carried into effect immediately; and

29.7.3 may be made an order of the High Court.

29.8 Notwithstanding anything to the contrary contained in this clause, the Trustee Committee shall be entitled to apply to CSOS for relief or 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.

30. AMENDMENTS TO CONSTITUTION, CONDUCT RULES AND ARCHITECTURAL DESIGN GUIDELINES

30.1 This Constitution shall not be altered or amended in any way save by way of a special resolution passed at general meeting.

30.2 In addition to the requirements set out in clause 30.1 above, no amendment or alteration to the Constitution shall be binding and effective which:

30.2.1 concerns a matter as provided for in section 62(1)(a) of the By-Law; or

30.2.2 has the effect of dissolving the Association;

without the prior certification in writing by the Local Authority.

30.3 The first Constitution of the Association and any subsequent amendment thereof in terms of clause 30.2 above must be lodged with the Local Authority which shall certify it in terms of section 62(2) and/or 62(4) of the By-Law.

30.4 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.

30.5 The Architectural Design Guidelines and Conduct Rules shall not be altered or amended in any way save by way of an ordinary resolution, passed at a general meeting, or in writing. The requirements for an amendment in writing (round robin) shall be as follows:

30.5.1 At least one third of the total votes of all Members of the Association entitled to vote must be submitted to the Trustee Committee or Managing Agent;

30.5.2 If the provision of clause 30.5.1 have been met, approval shall constitute consent of at least a majority of the votes cast;

30.5.3 Members shall be required to cast their vote by a specific date whereafter no further votes may be cast or considered.

30.5.3 If the proposed amendments are rejected, or if not enough votes are submitted in accordance with clause 30.5.1, the proposal or proposals may be referred to the Members in general meeting.

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

31.1 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.

- 31.2 The Local Authority may recover any expenditure in respect of the action contemplated in clause 31.1 above from the Association or its Members, who are jointly liable.
- 31.3 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.
- 31.4 If the Association ceases to function effectively or to carry out its obligations, the Local Authority may give the Association a binding instruction to:
- 31.4.1 convene a general meeting of the Members and to reconstitute itself; or
- 31.4.2 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.
- 31.5 In determining whether to act in terms of the above, the Local Authority must have regard to:
- 31.5.1 the purpose of Association;
- 31.5.2 who will take over the obligations which the Association is responsible for (if any);
- 31.5.3 the costs of upgrading the internal infrastructure if the Local Authority is to take over the infrastructure (if applicable);
- 31.5.4 the impact of the dissolution of the Association on its Members and the community;
- 31.5.5 any written representations from the Association and its Members.
- 31.6 If the Association is dissolved, the Members shall jointly pay the costs of:
- 31.6.1 the transfer to the Local Authority of the Association's property (if any);
- 31.6.2 the upgrading of the internal engineering services to the standard of the Local Authority (if applicable).
- 31.7 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.

32. WINDING UP

- 32.1 The Association may be wound up by resolution of the Members in general meeting provided that:
- 32.1.2 75% (seventy-five per centum) of all Members in the development vote in favour thereof; and
- 32.1.3 the Local Authority consents thereto in writing.
- 32.2 In the event of such winding up, it shall be the duty of the Trustees Committee, or a Trustee appointed by it, to convert the assets of the Association into cash, pay all liabilities of the Association and thereafter distribute the nett residue (if any) to all the Members in proportion to the number of Erven registered in the name of each Member.

33. SUBDIVIDING AND CONSOLIDATING OF ERVEN

- 33.1 No Erf shall be subdivided or consolidated without the sanction of a special resolution of the Members of the Association at a general meeting. Such sanction shall furthermore be subject to any conditions imposed by the Association.

34. TAX EXEMPTION

- 34.1 In order to qualify for exemption in respect of the levy income in terms of Section 10(1)(e)(iii) of the Income Tax Act, the following provisions shall apply:
- 34.1.1 the Association is not permitted to distribute its funds to any person other than to a similar Association of persons;
 - 34.1.2 on dissolution, the remaining assets of the Association, must be distributed to a similar Association of persons, which is also exempt from Income Tax in terms of section 10(1)(e)(iii) of the Income Tax Act;
 - 34.1.3 any amendments to this Constitution shall be submitted to the Commissioner of the South African Revenue Service;
 - 34.1.4 funds available for investment shall only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001, as amended from time to time and includes any substituted legislation;
 - 34.1.5 the Association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty of or Levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner;
 - 34.1.6 annual returns of income together with financial statements shall be submitted to the South African Revenue Services.

35. RESTRICTIONS ON LETTING

- 35.1 No Erf, dwelling or any portion thereof, may be leased for periods shorter than 3 (three) months. No form of short term/holiday letting, Airbnb or suchlike, or time sharing is permitted.

36. IMPOSITION OF PENALTIES

- 36.1 Notwithstanding any provision to the contrary contained in this Constitution, if the conduct of a Member, tenant or occupier or the family members, guests, visitors, employees or contractors of the Member, tenant or occupier constitute/s a nuisance in the opinion of the Trustee Committee, or a contravention of the provisions of this Constitution, the Conduct Rules or the Architectural Design Guidelines, or any directive or condition imposed in terms of the aforesaid, the Trustee Committee may:
- 36.1.1 by written notice, delivered by hand or sent by e-mail or registered post, inform the Member of the nuisance or contravention and warn the owner that if he, or his tenant, or occupier fails to remedy the contravention and/or if he or his tenant or

occupier persist/s in such conduct or contravention, a penalty will be imposed on the Member; or

- 36.1.2 by written notice, delivered by hand or sent by e-mail or registered post, and without warning, impose a penalty on the Member, which written notice shall state the reasons for the imposition of the penalty.
- 36.2 The penalty imposed under sub-clause 35.2 above shall be effective (due and payable) on the date of the written notice, and must be paid within 30 (thirty) days of the date of the written notice, failing which the penalty may be added to the Member's levy account and shall be recovered from the Member in the same manner as applies to arrear levies, together with interest at the rate applicable to arrear levies.
- 36.3 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Member shall be deemed to be guilty of a separate contravention for every 7 (seven) days during which such contravention continues and shall be liable for a penalty in respect of each such separate contravention.
- 36.4 In considering the amounts of the penalties to be 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. Any amendment of the amounts reflected in the hereunder Penalties Schedule by the Members shall be valid as of date of notification to Members after the general meeting.
- 36.5 A Member may within 30 (thirty) days of the date of the written notice referred to in sub-clause 35.2, submit a written objection, with motivation, against the penalty imposed, to the Trustees.
- 36.6 Upon receipt of the objection, the Trustee Committee may:
- 36.6.1 withdraw or reduce the penalty; or
- 36.6.2 confirm the penalty; or
- 36.6.3 schedule a Trustees' meeting (hearing) for the purpose of considering the objection and invite the Member to attend.
- 36.7 At the Trustees' meeting (hearing) referred to in sub-clause 35.6.3 above, the Member shall have the right to be present and to be assisted or represented by another Member and to:
- 36.7.1 give evidence;
- 36.7.2 be heard;
- 36.7.3 call witnesses;
- 36.7.4 cross-examine any person called as a witness in support of the charge and to have access to documents produced in evidence; and
- 36.7.5 submit mitigating factors.

36.8 If the Member fails to attend the hearing referred to in sub-clause 35.6.3, the Trustee Committee may continue with the proceedings in the absence of the Member. Upon the conclusion of the hearing, the Trustees shall deliberate the evidence and if so resolved, they may:

36.8.1 uphold the penalty; or

36.8.2 withdraw or reduce the penalty.

NAUTILUS VILLAGE HOME OWNERS' ASSOCIATION

PENALTIES SCHEDULE

As referred to in clause 36.4 of the Constitution

| Transgression | Number of days failing to rectify a continuous offence (if applicable) | 1 st Penalty | 2 nd Penalty | 3 rd and Subsequent Penalties |
|--|--|-------------------------|-------------------------|--|
| Breach of a provision of the Constitution, Conduct Rules, Architectural Design Guidelines or any regulation or condition imposed in terms thereof. | 7 Days | R 750 | R 1 000 | R 2 000 |

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