



# BOKKEMANSKLOOF ESTATE

## Home Owners Association

A Statutory Body Corporate established  
In terms of Section 29 of the Land Use  
Planning Ordinance, 15 of 1985

### CONSTITUTION SEPTEMBER 2009

**Revised version issued  
15 April 1997;  
June 2002,  
August 2003  
May 2005;  
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1. **ESTABLISHMENT IN TERMS OF STATUTE**

The Bokkemanskloof Estate Home Owners Association is constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985 (as amended) in accordance with the conditions imposed by the City of Cape Town when approving, in terms of Sections 25(1) and 42 of the said Ordinance, the subdivision of Erf 3438, Hout Bay.

2. **INTERPRETATION**

In this constitution:

- 2.1 the following words shall, unless the context otherwise requires, have the following meanings”
  - 2.1.1 “Association” - the Bokkemanskloof Estate Home Owners Association;
  - 2.1.2 “Auditors” - the auditors of the Association;
  - 2.1.3 “Chairman” - the chairman of the trustee committee;
  - 2.1.4 “Common Areas” - means that portion of Erf 3438, Hout Bay which is not owned by members and which will be known as Erven 6211, 6163, 6168, 6151, 6122, 6199, 6139, 6204, 6123 and 6178 being private open spaces, landscaped areas and private roads;
  - 2.1.5 “this Constitution” or “herein” - this constitution and, where the context allows, regulations and Estate Rules of the Association from time to time in force;

- 2.1.6 "Council" or "Local Authority" - the City of Cape Town or its successor/s;
- 2.1.7 "day" - any day of the week or weekend;
- 2.1.8 "Design Guidelines" - the design guidelines to control all aspects of design and landscaping of the Estate and annexed hereto marked "A", as amended from time to time in terms of this constitution or as required by the Council from time to time;
- 2.1.9 "Erf" or "Erven" - an erf or erven on the Estate;
- 2.1.10 "Estate" - the Bokkemanskloof Estate situated on the subdivision of Erf 3438, Hout Bay.
- 2.1.11 "Estate Rules" - the rules imposed by the Trustees from time to time relating to the management of the Estate;
- 2.1.12 "in writing" or "written" - written or printed and includes electronic communication as contemplated in the Electronic Communications Transactions Act 2002 (Act 25 of 2002), or any amendment thereof;
- 2.1.13 "Member" or "Membership" - a member or membership of the Association;
- 2.1.14 "month" - calendar month;
- 2.1.15 "Office" - the registered office of the Association;

- 2.1.16 “Regulation” or “Regulations” - a regulation or regulations made in terms of clauses 15 and 20.8 below;
  - 2.1.17 “Special Resolution” - a resolution passed at a general meeting in accordance with the provisions of clause 29 below;
  - 2.1.18 “Trustee Committee” - the board of trustees of the Association;
  - 2.1.19 “Trustee” - one of the trustee committee;
  - 2.1.20 “Vice-Chairman” - the vice-chairman of the Trustee Committee;
  - 2.1.21 “year” - calendar year;
- 2.2 unless the context otherwise requires, any words importing the singular shall include the plural, and *vice versa* and words importing any one gender only shall include the other two genders.

### 3. **MAIN BUSINESS**

The main business of the Association is to carry on the promotion, advancement and protection of the interests of the Members of the Association and the maintenance and control of the Common Areas.

4. **MAIN OBJECT**

The main object of the Association is:

4.1 the control over:

4.1.1 all buildings, and structures erected or to be erected on the Estate;

4.1.2 the maintenance of all buildings, roads, services, common landscaping, irrigation, vegetation and amenities on the Common Areas; and

4.1.3 the compliance with the Design Guidelines, Estate Rules and Regulations;

4.1.4 the promotion, advancement and protection of the communal and group interests of the Members generally, including security on the Estate;

4.2 to hold title to the Common Areas;

4.3 to enter into services agreements with any supplier of services in regard to the supply of services, including the local authority, in the Estate, including refuse removal and security services.

5. **FINANCIAL YEAR END**

The financial year-end of the Association is the last day of February of each year or such other date as the Trustees may decide from time to time.

## 6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership shall be compulsory for every registered owner of an Erf and only the registered owner of an Erf may be a Member.
- 6.2 Membership shall commence simultaneously with registration of such Erf into the name of the transferee in the Deeds Office.
- 6.3 Where an Erf is owned by more than one person, all the registered owners of an Erf or occupation right shall be deemed jointly and severally to be one Member and they must nominate one owner to represent them and vote at meetings of the Association.
- 6.4 Where the Member is a company, close corporation or association, an officer of such institution may represent it or vote at meetings of the Association.
- 6.5 When a Member ceases to be the registered owner of an Erf he shall automatically cease to be a member of the Association.
- 6.6 A Member shall not be entitled to:
- 6.6.1 sell or transfer an Erf unless it is a condition of the sale and transfer that:
    - 6.6.1.1 the transferee becomes a Member of the Association;

- 6.6.1.2 the registration of transfer of such Erf into the name of that transferee shall automatically constitute the transferee as a Member of the Association;
- 6.6.1.3 the seller first obtains the written consent of the Association which consent shall be given provided the purchaser of such Erf agrees in writing to abide by the rules of the Constitution and provided further that such Member has paid all levies and any other amounts owing by him to the Association as at the date of transfer of such Erf and that such member has complied with all his obligations in terms of the Constitution.
- 6.6.2 without the prior written approval of the Trustees having regard to the Design Guidelines:
  - 6.6.2.1 erect any new buildings or structures of any nature whatsoever on any Erf on the Estate;
  - 6.6.2.2 make any changes or alterations to existing buildings or structures on any Erf on the Estate, including, but not limited to changes to the external colour scheme.
- 6.7 The approval of the Trustees as contemplated in clause 6.6.2 above shall only be given:
  - 6.7.1 after detailed plans of the proposed work has been submitted to the Trustees, or any competent person nominated by the Trustees (who may be an architect,

registered with the South African Council of Architects or the Institute of South African Architects); and

6.7.2 after the Trustees or their nominee are satisfied that the proposed work is in accordance with the Design Guidelines (subject to permitted deviations in terms of clause 8.3 below) and for the purposes of which the Trustees or their nominee shall be the sole arbiter and their decision shall be final and binding on the Member, subject to the right of such Member to refer their decision to arbitration in terms of clause 34.4.3 below; and

6.7.3 after the Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee; and

6.7.4 after the Member has paid to the trustees a deposit in terms of clause 9 below;

provided that nothing herein shall detract from the final responsibility of the Council to approve or reject building plans.

6.8 A Member shall within 5 days from submitting an application to the relevant authority to consolidate 2 or more Erven into 1 Erf or to subdivide an Erf into 2 or more portions notify the Trustees, who shall notify each Member of such application, provided that, if the application is to:-

6.8.1 consolidate 2 or more Erven into 1 Erf a Member or his successor in title shall remain liable for the payment of levies in respect of each of the Erven which form part of the consolidated Erf; or



- 6.8.2 subdivide an Erf into 2 or more portions a Member or his successor in title shall be liable for the payment of levies in respect of each new Erf which shall come into existence as a result of the subdivision of the Erf.
  
- 6.9 The registered owner of an Erf may not resign as a Member.
  
- 6.10 The Trustee Committee may, by regulation, provide for the issue of a Membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.
  
- 6.11 The rights and obligations of a Member shall not be transferable and every Member shall:
  - 6.11.1 to the best of his ability further the objects and interests of the Association;
  - 6.11.2 observe all Estate Rules and regulations made by the Association and/or the Trustee Committee;
  - 6.11.3 notwithstanding clauses 6.11.1 and 6.11.2 above, be entitled to cede his rights in terms of this Constitution as security to the mortgagee of the Erf or occupation right of such Member, as the case may be.
  
- 6.12 Each Member undertakes to the Association that he will comply with:
  - 6.12.1 the provisions of this Constitution;
  - 6.12.2 any regulations made in terms of clause 15.1.1;

6.12.3 any Estate Rules;

any agreements referred to in clause 15.1.2 insofar as those agreements may directly or indirectly impose obligations on him.

- 6.13 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, but this clause shall not detract from 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.

7. **LEVIES PAYABLE BY THE MEMBERS**

- 7.1 The Trustee Committee shall either in terms of 7.2 or **Error! Reference source not found.**, impose levies upon the Members for the purpose of meeting all the expenses which the Association has incurred or will occur in the future.

- 7.2 Each year the Trustee Committee shall estimate the future amount required by the Association to meet the expenses during each year, together with any estimated shortfall, resulting from the preceding year, and shall make a levy upon the Members based on the estimation, after such estimation has been approved at the Annual General Meeting. 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 which reserve amount shall be maintained at 50 per cent of the total annual levy received, or such higher amount as the Members may approve at the Annual General Meeting.

- 7.3 Every levy shall be payable in equal instalments monthly in advance on the first day of each month of such year.
- 7.4 The Trustee Committee, may from time to time, make special levies upon the Members in respect of all such expenses of the Association which are not included in any estimate made in terms of clause 7.2 above
- 7.5 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his Membership of the Association terminating, without limiting the Association's right to recover arrear levies.
- 7.6 No levies paid by a Member shall under any circumstances be repayable by the Association upon his Membership terminating.
- 7.7 A Member's successor in title to an Erf shall be liable as from the first day of the month following the date upon which he becomes a Member pursuant to the transfer thereof, to pay the levy attributable thereto.
- 7.8 A Member may elect to make payment of the monthly levies by virtue of a debit order drawn on the Member's banker or by way of electronic fund transfer. The Trustee Committee may make provision for Members who pay monthly levies by debit orders or electronic fund transfer to receive a discount on monthly levies.
- 7.9 Any special levies imposed by the Trustees in terms of clause **Error! Reference source not found.** shall be paid on the date and in the manner stipulated by the Trustees.

- 7.10 The Trustee Committee shall at all times ensure that the maintenance and control of the Common Areas and the expenditure incurred in respect thereof is carried out in a manner which is fair and equitable to all the Members of the Association.
- 7.11 No Member shall be entitled to any of the privileges of Membership including voting at any meeting unless and until he has paid every sum which may be due and payable to the Association in respect of his Membership thereof.
- 7.12 The total levy payable by Members shall be borne in equal shares by each Member.

## 8. **DESIGN GUIDELINES**

- 8.1 The Trustees may with the co-operation of and with the consent of the Council amend, amplify, clarify or add to the provisions of the Design Guidelines.
- 8.2 In the event that the provisions of the Design Guidelines being amended or added to in such a manner that it will affect any of the rights of Members, the Trustees shall by written notice inform all Members of the amendment or addition to the Design Guidelines and if more than 15 per cent of the Members object to an amendment, such amendment shall not be effective unless approved at a General Meeting.
- 8.3 All buildings and other structures erected on any Erf shall comply with the provisions of the Design Guidelines, unless variations have been specifically approved.

8.4 Any member who has failed to complete a building or improvements or alterations or additions on his Erf within 12 months after the commencement of the building operations, shall pay the Association a monthly penalty levy equivalent to 4 times the current monthly levy. This levy shall be payable in addition to the monthly levies referred to in clause 7 above.

8.5 In the event of a dispute arising as to whether a building is completed for purposes of the provisions of clause 8.4 above, the Chairman shall determine such dispute and his decision shall be final and binding.

8.6 The Trustees shall be entitled to: -

8.6.1 Perform such acts as are necessary to accomplish the purposes expressed or implied herein, including the examination and endorsement of the relevant building plans as are necessary for any construction, renovation or alterations within the scheme;

8.6.2 Appoint such advisors as are necessary to scrutinise the relevant plans referred to herein;

8.6.3 Impose a scrutiny fee on Members for the services as mentioned herein.

## 9. **DEPOSIT FOR DAMAGE**

9.1 Each Member shall, when submitting to the Trustees for approval the detailed plans for the construction of any building or improvements, or alterations or additions to buildings, pay to the Trustees a 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 or its contractors of such work, the interest on which deposit shall accrue to the Association.

9.2 Upon completion of all such building and incidental activities, the Trustees shall, if they are satisfied that no damage has been effected by the Member or any of his contractors to the Common Areas within the Estate and that the work has been constructed in accordance with duly approved plans, release the building deposit, excluding any interest accrued thereon, to the Member less any fines or penalties payable in terms of this Constitution.

9.3 In the event that the Common Areas have been damaged due to such work, including the failure to remove rubble or rubbish, the Member shall within 15 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, the deposit paid is insufficient to cover the cost of such repairing the damage, the Trustees shall be entitled to recover the shortfall from the Member.

## 10. **DEALING WITH THE COMMON AREAS**

Neither the whole nor any portion of the Common Areas shall be:

10.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or

10.2 mortgaged; or

- 10.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, (save those enjoyed by the Members in terms hereof and any servitudes in favour of the Council as required in terms of any condition of subdivision) without the specific prior written consent of the Council and the sanction of a unanimous Resolution of the Association (and no Member shall be entitled to unreasonably vote against any such Resolution which may be proposed); or
- 10.4 built upon, improved or enhanced in value by the construction of buildings, facilities or amenities, without the sanction of a Special Resolution of the Association, save and except for any construction relating to electrical substations or transformers, the construction of private roads and the landscaping of the Common Areas.

## 11. **RESPONSIBILITY FOR THE COMMON AREAS**

- 11.1 The Association shall hold title to the Common Areas.
- 11.2 The Association acknowledges that the Council shall not be responsible for, and the Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and property control of the Common Areas, all services therein and any structure or thing erected on or contained therein, including any private road and parking thereon.

## 12. VERGES AND PAVEMENTS

12.1 The registered owner of each Erf shall at his cost maintain:

12.1.1 the pavements between his Erf and the road;

12.1.2 the landscaping, grass, plants and flowers on the verge between his Erf and the road and/or any other adjacent Common Area/s;

and shall at all times keep the pavements and the verges in a clean, neat and tidy condition, which shall include but not be limited to the placing or leaving or neglecting of refuse on verges and/or pavements unless on specified days for council collection.

12.2 Should any Member for any period elect not to maintain a verge or pavement the member shall notify the Association, whereafter such verge and pavement shall be maintained by the Association at the cost of the a verge fee, that shall be published quarterly by the Trustee Committee.

12.3 If Members fail to maintain the verges and pavement, the Association shall on 10 days notice take over the maintenance of such verge and pavement, as if notice had been given in terms of 12.2 above and the verge fee shall automatically become due and payable by such Member.

12.4 Changes to verges and/or pavements of a substantial nature must be approved by the Trustee Committee.

12.5 Changes of a substantial nature shall be interpreted to mean any change that will materially depart from the original



vegetation on the verge and/or pavement or deciding to pave/repave verges or pavements.

13. **ESTATE RULES**

13.1 The Trustees may from time to time, make rules relating to the management of the Estate, which shall be binding on the Members.

13.2 The Trustees are empowered to amend, amplify, substitute or repeal any such rule provided that in the event that the provisions of the rule is amended or added to in such a manner that it will affect any of the rights of Members, the Trustees shall by written notice inform all Members of the amendment or addition to the Design Guidelines and if more than 15 per cent of the Members object to an amendment, such amendment shall not be effective unless approved at a General Meeting.

14. **MANAGING AGENT AND ESTATE MANAGER**

14.1 The Trustees may appoint a managing agent from time to time to control, manage and administer the Common Areas and to exercise such powers and duties as may be entrusted to the managing agent, including but not limited to the power to collect levies and to appoint a supervisor.

14.2 The Trustees may also appoint or employ an estate manager, who will be responsible for the maintenance and upkeep of the Estate, including, but not limited to, the enforcement of the Estate Rules.

## 15. **CONTRACTS, REGULATIONS AND ACCESS**

15.1 The Trustee Committee may from time to time:

15.1.1 make regulations governing:

15.1.1.1 the Members' rights of use, occupation and enjoyment of the Common Areas;

15.1.1.2 the external appearance of and the maintenance of the Common Areas and the buildings or other improvements erected thereon;

15.1.1.3 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures in the Estate.

15.1.2 enter into agreement(s) with the local authorities governing the matters set out in clause 15.1.1 and any other incidental matters.

15.2 All officials, employees and contractors employed by the Association, local authority or any public service company shall, at all times, have reasonable access to the Erven and Common Areas for purposes of inspecting or maintaining all services supplying or traversing any part thereof.

16. **BREACH**

16.1 Should any Member:

16.1.1 fail to pay on due date any amount due by that Member in terms of this Constitution to the Association and remain in default for more than 7 days after being notified in writing to do so by the Trustees; or

16.1.2 commit any other breach of any of the provisions of this Constitution and fail to commence remedying that breach within a period of 7 days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time;

the Trustees shall be entitled on behalf of the Association, without limiting any other rights or remedies which the Trustees or the Association or any other Member may have in law, including the right to claim damages:

16.1.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution; or

16.1.4 to suspend all or any Membership privileges;

16.1.5 or in the case of clause 16.1.2, to remedy such breach and immediately recover the cost incurred by the Association from such Member.

16.2 Should the Trustees institute any legal proceedings against any Member in terms of clause 16.1 above, the Trustees shall be

entitled to recover from such Member all legal costs incurred by the Association, including attorney/client charges, tracing fees and collection commission.

16.3 Any amount due by a Member to the Association in terms of this Constitution shall bear interest thereon at the prime overdraft rate charged by the Association's bankers from time to time calculated from the due date for payment until the actual date of payment.

## 17. **TRUSTEE COMMITTEE**

17.1 There shall be a board of Trustees of the Association which shall consist of not less than 4 and not more than 8 Members.

17.2 Every Trustee must be a Member of the Association or an authorised representative envisaged in clauses 6.3 and 6.4 above.

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

18.1 Each Trustee shall continue to hold office until the annual general meeting when he is deemed to retire in terms of clause 18.2 below, at which meeting such Trustee shall be deemed to have retired from office as such, and shall be eligible for re-election to the Trustee committee at such meeting.

18.2 Clause 18.1 above is subject thereto the following:

18.2.1 At each annual general meeting the two longest serving Trustees shall retire from there office;

18.2.2 Until a rotation of Trustees has been established in terms of clause 18.1, the two Trustees who shall retire shall be determined in the descending alphabetical order of their surnames;

18.2.3 If no nominations are received for new Trustees, the retiring trustee shall automatically be re-elected, without it being a requirement to vote on the matter.

18.3 A Trustee shall be deemed to have vacated his office upon his:

18.3.1 estate being sequestered, whether provisionally or finally, or his surrendering his estate;

18.3.2 making any arrangement or compromise with his creditors;

18.3.3 conviction for any offence involving dishonesty;

18.3.4 becoming of unsound mind or being found lunatic;

18.3.5 resigning from such office in writing delivered to the secretary;

18.3.6 death;

18.3.7 being removed from office by a Special Resolution of the Members,

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

18.4 Upon any vacancy occurring on the Trustee Committee prior to the next annual general meeting, the vacancy in question shall be filled until the next annual general meeting by a person nominated by those remaining for the time being of the Trustee Committee, provided that the nominated Trustee shall retire at the next annual general meeting.

19. **OFFICE OF TRUSTEES**

19.1 The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.

19.2 Immediately after of the holding of an annual general meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until as long as they remain Trustees but only until the conclusion of the next annual general meeting held after their said appointment.

19.3 In the event of any vacancy occurring in the offices of the Chairman or Vice-Chairman at any time, the Trustee Committee shall meet to appoint one of the existing Trustees as a replacement in such office.

19.4 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 Trustee Committee or of Members, including but not limited to allowing or refusing to permit invitees to attend or speak at meetings.

19.5 The Vice-Chairman shall assume the powers and duties of the Chairman if he is unavailable and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.

19.6 Trustees shall be entitled to be repaid all reasonable expenses incurred by them respectively in the performance of their duties as Trustees or Chairman or Vice-Chairman, but shall not be entitled to any other remuneration in respect of the performance of such duties.

## 20. **FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

20.1 The Trustee Committee shall manage and control the business and affairs of the Association, with full powers in the management and direction of such business and affairs and may exercise all such powers of the Association and do all such acts on behalf of the Association save where it is required that a power must be exercised by the Association in general meeting.

20.2 The Association in general meeting may from time to time regulate the powers of the Trustee Committee, provided that no regulation may be made by the Association in general meeting retrospectively to invalidate a past decision of the Trustees.

20.3 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions.

20.4 The Trustee Committee may only enter into transactions with or on behalf of the Members.

20.5 No surpluses or gains may be derived from persons other than Members and no surpluses or gains may be distributed to any

person other than Members with whom or on whose behalf the transactions took place.

- 20.6 The Trustee Committee shall have the right to co-opt onto the Trustee Committee and remove such co-opted Trustee, any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 20.7 The Trustee Committee shall also have the power to form sub-committees within the Trust Committee to be made up of co-opted Trustees to manage and/or regulate various aspects or facets of the Trustee Committee's obligations.
- 20.8 The Trustee Committee shall at all times exercise an oversight function over the sub-committees referred to in clause 20.7 above.
- 20.9 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of the Constitution, in such reasonable manner as it shall deem fit.
- 20.10 In addition to clause 15.1 above, the Trustee Committee may make regulations, not inconsistent with this constitution which may be regulations prescribed by the Association in general meeting:
  - 20.10.1 as to disputes generally;
  - 20.10.2 for the furtherance and promotion of any of the objects of the Association;
  - 20.10.3 for the better management of the affairs of the Association;



20.10.4 for the advancement of the interests of Members;

20.10.5 for the conduct of Trustee Committee meetings and general meetings; and

20.10.6 to assist it in administering and governing its activities generally,

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

## 21. **PROCEEDINGS OF THE TRUSTEE COMMITTEE**

21.1 The Trustee Committee 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.

21.2 Meetings of the Trustee Committee shall be held at least once every quarter, provided that all the Trustees may in writing agree that a meeting in any quarter is not necessary.

21.3 The quorum necessary for the holding of any meeting of the Trustee committee shall be 4 Trustees.

21.4 The Chairman or, in his absence the Vice-Chairman, or should they both be absent, a Trustee appointed as chairman for that meeting by the remaining Trustees, shall preside as such at all meetings of the Trustee Committee.

21.5 Resolutions shall be passed upon a majority of the Trustees present at any meeting voting in favour of the resolution and if necessary the Chairman shall have the casting vote.

- 21.6 The Trustees shall appoint one of them or the managing agent, if one is appointed, to take minutes at every Trustee Committee meeting, although minutes need not be verbatim. The minutes shall be reduced to writing and circulated to the Trustees as soon as possible after the meeting and shall then be signed by the Chairman of the meeting after their approval at the next meeting. All approved minutes of Trustee Committee meetings shall be placed in a Trustee Committee minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee minute book shall be available for inspection at all reasonable times by the Auditors and the Members.
- 21.7 All resolutions competent within the powers of the Trustee Committee recorded in the minutes of any Trustee Committee meeting 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.
- 21.8 Save as otherwise provided herein, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 21.9 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 Trustee Committee duly convened, notwithstanding non-compliance with the Regulations for the calling of the meeting.
- 21.10 If the Chairman so determines, meetings of Trustees may be held using electronic communication facilities and such meetings shall be deemed to have been duly convened and attended.

**22. GENERAL MEETINGS OF THE ASSOCIATION**

- 22.1 The Association shall within 3 calendar months after each financial year of the Association, hold a general meeting as its annual general meeting, in addition to any other general meetings and shall specify the meeting as such in the notices, in terms of clause 23.1 below calling it.
- 22.2 All general meetings other than annual general meetings shall be called special general meetings.
- 22.3 The Trustee Committee, may, whenever they think fit or when reasonably requested by Members, convene a special general meeting.
- 22.4 General meetings of the Association shall take place at such time and place as determined by the Trustee Committee.

**23. NOTICE OF MEETINGS OF THE ASSOCIATION**

- 23.1 An annual general meeting and a meeting called for the passing of a Special Resolution shall be called by at the least 21 days' written notice.
- 23.2 Any other special general meeting shall be called by at least 14 days' written notice.
- 23.3 The notice period shall be determined by reckoning the days exclusive of the day on which it is dispatched, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained herein, the general nature of that business, and in the

case of a Special Resolution, the terms and effect of the resolution and the reasons for it shall be given.

23.4 Notices shall be in the form as determined by the Trustees and be given to all Members, subject to clause 23.6 below.

23.5 A general meeting of the Association shall, if it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed:

23.5.1 in the case of a meeting called as the annual general meeting, by all the Members entitled to attend and vote thereat; and

23.5.2 in the case of a special general meeting, by a majority as envisaged in clause 29.1 below.

23.6 The accidental omission to give notice of a meeting or any deficiency in such notice, or the non-receipt of such notice by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting which is otherwise valid.

## 24. **QUORUM FOR GENERAL MEETINGS**

24.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.

24.2 The quorum necessary for the holding of any general meeting shall be 35 Members entitled to vote in person or by proxy.

24.3 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall

stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

## 25. **AGENDA AT GENERAL MEETINGS**

In addition to any other matters required to be dealt with at an 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 the Trustee Committee;
- 25.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 25.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 25.5 the consideration of the report of the Auditors;
- 25.6 the consideration of the total levy (as referred to in clause 7 above) for the calendar year during which such annual general meeting takes place; and
- 25.7 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the annual general meeting.

- 25.8 The consideration and fixing of the remuneration of the managing agent and other like service agents' remuneration for the financial year of the Association preceding the annual general meeting.

26. **PROCEDURE AT GENERAL MEETINGS**

- 26.1 The Chairman shall preside at all general meetings, provided that should he not be present within 5 minutes after the time appointed for the meeting, the Vice-Chairman, shall act as Chairman, provided that should the Vice-Chairman also not be present within 5 minutes of the time appointed for the meeting, then the Members present 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.

- 26.2 If all business is not completed at a properly constituted meeting the Chairman may, with the consent of any general meeting at which a quorum is present or if so directed by the meeting adjourn the meeting from time to time and from place to place, to complete the business which have not been transacted at the original meeting, provided that if a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given in the same manner as for the original meeting.

- 26.3 Unless otherwise stipulated herein, all general meetings shall be conducted in accordance with the generally accepted procedure for the conducting of the meetings.

27. **PROXIES FOR GENERAL MEETINGS**

- 27.1 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.
- 27.2 The instrument appointing a proxy shall be received at the office of the Association at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 6 months from the date of its execution.
- 27.3 The Trustee Committee shall determine whether an instrument of proxy is valid or not and their decision shall be final and binding.
- 27.4 A vote given in accordance with the terms of an instrument of proxy shall be valid unless written notice of the death or revocation of the proxy giver is received by the Trustee Committee at least one hour before the time of the meeting.

28. **VOTING AT GENERAL MEETINGS**

- 28.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for the Erf in respect of which that Member is the registered owner.
- 28.2 No person other than a Member duly registered, who has paid every levy and other amount (if any) which is be due and payable to the Association, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

- 28.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 28.4 When a poll is demanded regard shall be had, in computing the majority on the poll, to the number of votes cast for and against the resolution.
- 28.5 An ordinary resolution or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 28.6 The declaration by the Chairman on the voting in respect of a resolution shall stand unless any Member present in person or by proxy at a general meeting has objected to the declaration as to the result or as to the propriety of validity of the procedure at such meeting and such declaration shall be deemed to be a true and correct statement of the voting, and an entry in the minutes to the effect that any motion has been carried or lost, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman. The Chairman of the meeting shall be obliged to announce the result of any voting either at the meeting or as soon as reasonably possible thereof.



29. **SPECIAL RESOLUTION**

- 29.1 A resolution by the Association shall be a Special Resolution if,
- 29.1.1 at a general meeting of which not less than 21 days' written notice in terms of clause 23.1 has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it and at which not less than  $\frac{1}{4}$  of the Members entitled to vote thereat are present in person or by proxy, and
  - 29.1.2 the resolution has been passed, on a show of hands, by not less than  $\frac{3}{4}$  of the number of Members entitled to vote on a show of hands at the meeting who are present in person or by proxy, or,
  - 29.1.3 where a poll has been demanded, by not less than  $\frac{3}{4}$  of the total votes to which the Members present in person or by proxy who are entitled to vote.
- 29.2 If less than  $\frac{1}{4}$  of the Members entitled to attend the meeting and to vote thereat, are present or represented at a meeting called for the purpose of passing a Special Resolution, the meeting shall stand adjourned to a day not earlier than 7 days and not later than 21 days after the date of the meeting and the provisions of clause 24.3 shall apply in respect of such adjournment.
- 29.3 At the adjourned meeting, the Members who are present, in person or by proxy, and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such members shall be deemed to be a Special Resolution even if

less than  $\frac{1}{4}$  of the members entitled to vote are represented at such adjourned meeting.

30. **OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person(s) or firm 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, provided that any expenditure incurred in respect of the above, shall not exceed 10% of the total annual levy for the year in question unless authorised by a Special Resolution.

31. **ACCOUNTS**

31.1 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 conditions and regulations pertaining to the inspection thereof as the Association in general meeting or the Trustee Committee may from time to time prescribe.

31.2 The Trustee Committee shall keep proper books of accounts and at each annual general meeting they shall present financial statements including an income and expenditure account for the preceding financial year of the Association, a balance sheet as at the last financial year end and extensive reports of the Trustee Committee and the Auditors, an abridged version of

which shall be attached to the notice sent to Members in terms of clause 23.1 above.

- 31.3 Should the Trustees or the majority of the Members so require, the accounts of the Association shall be examined by the Auditors at least once a year.

## 32. **SERVICE OF NOTICES**

- 32.1 A notice shall be in writing and shall be given or served by the Association upon any Member, by hand, post or electronic means, including e-mail. Members must notify the Association in writing if they wish for notices to be sent other than by means of e-mail.
- 32.2 No Member shall be entitled to have a notice served on him by hand or post at any address not within the Republic of South Africa, but any Member may require 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.
- 32.3 Any notice 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.

33. **INDEMNITY**

- 33.1 Each Trustee is indemnified and held harmless against any claim against him or loss, cost or expense he may incur or damage he may suffer arising from the performance of his duties as Trustee in terms of this Constitution.
- 33.2 Should any claim or action be instituted against any Trustee in his personal capacity arising out of the performance of such Trustees duties as a Trustee, the Association, from its funds, shall carry the reasonable costs of defending such claim or action, including but not limited to, any criminal claim.
- 33.3 A Trustee shall not be liable for any act or omission of the Auditors or of any of the other Trustees or for any loss or expense sustained or incurred by the Association through any act or omission of any service provider to the Association, including investment advisors, or through the insufficiency or deficiency of title to any Erf acquired by the Trustee Committee for or on behalf of the Association, or 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 delict of any person with whom any monies, securities or effects are 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 or in relation thereto, unless the same shall happen through wilful neglect or breach of duty or breach of trust.

34. **ARBITRATION**

34.1 Should any dispute, question or difference arise at any time between Member or between Members and Trustees out of or in regard to:

34.1.1 any matters arising out of this Constitution; or

34.1.2 the rights and duties of any of the parties mentioned in this Constitution; or

34.1.3 the interpretation of this Constitution,

any party to the dispute may give to the other party(ies) who are interested in the matter in question notice of the dispute. The notice must identify the subject matter of the dispute and must propose a settlement.

34.2 The parties to the notice must meet as soon as possible after the notice and negotiate in good faith with a view to resolving the dispute by agreement.

34.3 Should the dispute not be resolved within 14 days from date of receipt of the original notice, then the dispute may be referred by either party to arbitration.

34.4 The arbitrator shall be, if the question in dispute is:

34.4.1 primarily an accounting matter - an independent accountant;

34.4.2 primarily a legal matter - a practising advocate or attorney of not less than 10 years standing;

34.4.3 any other matter - an independent and suitably qualified person;

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

34.5 If the parties cannot agree on an arbitrator, if the dispute involves the Trustees, the President of the Cape Law Society (or of any successor of that Society), otherwise the Trustees will appoint an arbitrator.

34.6 The arbitrator has the right to appoint an independent assessor who, in his or her discretion, is duly qualified to render assistance in determining the dispute.

34.7 The terms of reference of the arbitrator will be determined and recorded by the parties. If there is a dispute in this regard, the arbitrator will also determine that dispute.

34.8 The arbitration will be held:

34.8.1 at a place stipulated by the arbitrator, with only the parties and their legal representatives present;

34.8.2 informally, provided that, if the arbitration is primarily of a legal nature, it shall be held in terms of the rules pertaining to pleadings as may be agreed, or failing agreement the rules of the Western Cape High Court shall apply to time periods and form of pleadings

34.9 The final determination including as to who will pay the costs of the arbitration, will be final and binding and may be made an order of any court with jurisdiction at the instance of one of the parties.

34.10 Notwithstanding anything to the contrary contained herein, 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 these provisions.

35. **AMENDMENTS TO CONSTITUTION**

This Constitution, or any part thereof, shall not be repealed or amended, and no new rules (excluding amendments to the design manual, estate rules and regulations) shall be made, save by a special resolution and in respect of all matters involving clause 6 above, with the consent of the Council and the Commissioner for Inland Revenue.