



**CONSTITUTION
OF THE
BRANDWACHT AAN RIVIER HOME OWNERS' ASSOCIATION**

**Established in terms of
Section 29 of the Land Use Planning Ordinance No 15 of 1985**

Version 3 – November 2013

Version 4 – June 2016

Version 5 – August 2021

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BRANDWACHT AAN RIVIER ESTATE DISCLAIMER

PERSONS ENTERING THE ESTATE ACCEPT THE RULES AND LEGAL TERMS EXCLUDING BHOA LIABILITY

Any person entering the Estate does so at his or her own risk.

The Brandwacht aan Rivier Home Owners' Association shall not be liable for any injury, damage or loss suffered by such person arising from any cause whatsoever while on the Estate.



WARNING: DANGEROUS ELECTRIFIED FENCE

The Estate is enclosed by electrified perimeter security fencing, which is dangerous and could cause death if touched.



PLEASE RESPECT THE SPEED LIMIT

CONSTITUTION

I. PRELIMINARY

1. Interpretation

- 1.1. In this Constitution the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

"Association" means the Brandwacht on River Home Owners' Association contemplated in clause 4, and commonly referred to as the Brandwacht aan Rivier Home Owners' Association;¹

"Building Manual" means the *Building Manual with Schedule of Finishes for Brandwacht on River Residential Estate* contemplated in clause 80;²

"civil services infrastructure" means any pipes, wires, cables, ducts and related equipment and installations serving the Estate, such as, but not limited to, the perimeter security fencing enclosing the Estate and the electricity, sewerage, water reticulation and storm water systems belonging to, or controlled by, the Association;

"common property" means any land owned by the Association within or outside the Estate, including the environs along the river bank, and any structure, sidewalk, road and pathway erected or constructed thereon;

"Constitution" means this Constitution;

"erven" means all erven in the Estate, excluding those erven registered in the name of the Association;

"Estate" means the residential development on a portion (in extent approximately 13 (thirteen) hectares) of the remainder of the Farm Brandwacht number 1049, Stellenbosch, and commonly known as the Brandwacht aan Rivier Landgoed / Estate;

"levy" means any contribution which may on behalf of the Association be collected from the members to defray the incurred or anticipated expenditure of the Association;³

"member" means a member of the Association under the provisions of clause 7;⁴

"Municipality" means the Municipality of Stellenbosch;

"penalty" means any penalty, including a fine, from time to time determined under clause 81;⁵

"Regulations" means all rules governing conduct from time to time made by the Trustee Committee under clause 79, and the term "Estate Rules", whenever used in this Constitution, shall have the same meaning;⁶

[Definition amended at AGM on 2 Aug 2021]

"Trustee Committee" means the board of trustees of the Association contemplated in clause 16;⁷

1 Clause 4: Establishment in terms of Land Use Planning Ordinance, 1985

2 Clause 79: Amendment of Building Manual

3 See Chapter VI: Financial Affairs of Association

4 Clause 7: Membership of Association

5 Clause 81: Determination of Penalties

6 Clause 79: Making and Implementing Regulations Governing Conduct

7 Clause 16: Composition of Committee

“in writing” means written, printed, lithographed or transmitted in electronic format or partly one and partly another.

- 1.2. Unless the context otherwise requires, any words importing the singular number only shall include the plural number and *vice versa* and words importing any one gender only shall include the other two genders.
- 1.3. Where numbers are expressed in numerals and in words, the words shall prevail if there is any conflict between the two.

2. Reckoning of Number of Days

When any particular number of days is prescribed for the doing of any act, or for any other purpose, same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day falls on a Sunday or on any public holiday, in which case the number of days shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.

3. Headings

The headings to the respective clauses are provided for convenience of reference only and shall not be taken into account in the interpretation of the provisions of this Constitution.

II. HOME OWNERS' ASSOCIATION

4. Establishment in terms of Land Use Planning Ordinance, 1985

The Brandwacht on River Home Owners' Association is established in compliance with section 29 of the *Land Use Planning Ordinance, 1985 (No 15 of 1985)*, in accordance with the conditions imposed by the Municipality of Stellenbosch when granting in terms of sections 25(1) and 42 of the said Ordinance the application for the subdivision of a portion of the Remainder of the Farm Brandwacht number 1049, Stellenbosch, situate in the Municipality of Stellenbosch.

5. Legal Personality of Association

The Association –

- 5.1. exists as an entity with rights and obligations independent from its members' rights and obligations;
- 5.2. may own property independent from its members;
- 5.3. has perpetual succession;
- 5.4. does not operate for the acquisition of profit for itself or its members, but for the benefit of its members; and
- 5.5. is a *universitas* with separate legal personality.
- 5.6. The Association shall not distribute its funds to any person other than to a similar association of persons.

6. Object, Powers and Functions of Association

- 6.1. The sole object of the Association is, by the exercise of the powers and the performance of the functions entrusted to it under this Constitution, to promote,

advance and protect the collective interests common to all its members so that the members may derive the maximum collective benefit from their membership.

- 6.2. To achieve this object, the Association shall –
 - 6.2.1. determine and maintain standards for community-living and conduct in the Estate;
 - 6.2.2. take reasonable steps with regard to safety and security in the Estate;
 - 6.2.3. preserve the design theme of the Estate;
 - 6.2.4. take transfer of, manage, maintain and insure, where necessary, and control the use of, the common property and civil services infrastructure; and
 - 6.2.5. do all other things reasonably necessary for the control, management and administration of the business and affairs of the Association, including the collection of contributions from members to defray expenses in connection with the achievement of its object.
- 6.3. The Association may make such Regulations as may be necessary to achieve its object.⁸

III. MEMBERS OF ASSOCIATION

7. Membership of Association

- 7.1. Upon registration in the Deeds Registry Office in Cape Town of ownership of an erf in the Estate, the owner of such erf shall automatically become a member of the Association.
- 7.2. Membership of the Association is limited to the registered owners of the erven, provided that where any such owner is more than one person, all the registered owners of that erf shall jointly and severally be one member.
- 7.3. When a person ceases to be the registered owner of an erf, he shall *ipso facto* cease to be a member.
- 7.4. The registered owner of an erf may not resign as a member.

8. Rights and Obligations of Members

- 8.1. Every member shall to the best of his ability further the object and interests of the Association.
- 8.2. No member in his personal capacity shall have any right, title or interest in or to the assets of the Association, which shall vest in the Association.
- 8.3. No member shall be entitled to any of the rights of membership, including the right to vote, if he remains –
 - 8.3.1. indebted to the Association in respect of levies, penalties or other amounts which may in terms of this Constitution, the Regulations or the Building Manual be collected or claimed from him, and provision has not been made to the satisfaction of the Trustee Committee for the payment thereof; and / or
 - 8.3.2. in breach of any of the provisions of this Constitution, the Regulations or the Building Manual after written notice requiring him to remedy such breach, and provision has

⁸ See Clause 79: Making and Implementing of Regulations Governing Conduct

not been made to the satisfaction of the Trustee Committee for the remedying thereof.

- 8.4. A member who has an interest in any contract or agreement or proposed contract or agreement, or any litigation or proposed litigation, with the Association shall by virtue of such interest be disqualified from voting in respect thereof.
- 8.5. The rights and obligations of a member shall not be transferable, except to his executor, liquidator, trustee or curator.

9. Restrictions on Use of Erf

A member shall not be entitled to use his erf or any buildings and / or structures thereon, or permit the use thereof, in such manner or for such purposes as in the discretion of the Trustee Committee shall be injurious to the ambience of, and not conducive to harmonious community-living in, the Estate.

10. Consent to Transfer of Erf

- 10.1. A member shall not be entitled to transfer his erf without the written consent of the Trustee Committee, which consent shall be given –
 - 10.1.1. if the transferee of such erf has undertaken in writing to abide by this Constitution, the Regulations and the Building Manual; and
 - 10.1.2. if there are no outstanding obligations of the member towards the Association as contemplated in clause 8.3.
- 10.2. The Trustee Committee may charge a reasonable fee for issuing the certificate signifying consent to the transfer.

11. Access to Erf

A member who owns an erf which borders upon, or on which there is, any civil services infrastructure shall permit any person duly authorised thereto by the Trustee Committee or by the other authority concerned, as the case may be, reasonable access to such erf for purposes of maintenance, upgrading, installation and replacement thereof.

12. Undertaking by Member to Comply

- 12.1. Each member undertakes in favour of the Association to comply with –
 - 12.1.1. the provisions of this Constitution;
 - 12.1.2. any Regulations made in terms of clause 79;
 - 12.1.3. the Building Manual; and
 - 12.1.4. any agreements referred to in clause 18⁹ insofar as those agreements may directly or indirectly impose obligations on him.
- 12.2. Each member undertakes in favour of the Association to ensure compliance with this Constitution, the Regulations and the Building Manual by –
 - 12.2.1. any of his family members who resides in his dwelling, and his visitor, guest, employee, agent, service provider or contractor; and

9 Clause 18: Agreements with Local Authorities and Service Providers

- 12.2.2. any person who has the right to reside, or be present, in his dwelling in terms of an arrangement granting rights of occupancy, whether for consideration or not, and the family member of such person who resides in that dwelling, and such person's visitor, guest, employee, agent, service provider or contractor.
- 12.3. The member concerned shall be strictly liable for any damage caused, or penalty imposed in respect of a breach committed, by a person contemplated in clause 12.2.

13. Liability for Costs incurred in connection with Breach

- 13.1. Should a member –
- 13.1.1. fail to pay on due date any amount due by that member in terms of this Constitution, any Regulation or the Building Manual and remain in default for more than 7 (seven) days after being instructed in writing to pay by the Trustee Committee; or
- 13.1.2. commit any other breach of a provision of this Constitution, any Regulation or the Building Manual and fail to commence remedying that breach within 7 (seven) days after being instructed in writing to do so by the Trustee Committee or fail to complete the remedying of such breach within a reasonable time,
- then and in any such event, the Trustee Committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Committee or the Association or any other member may have in law (including the right to claim damages and to impose penalties), to institute legal proceedings on behalf of the Association against such member for payment of such amount or for performance of his outstanding obligations in terms of this Constitution, any Regulation or the Building Manual, as the case may be, or in the case of a breach of clause 13.1.2, to remedy such breach and immediately recover the total cost incurred by the Committee or the Association in so doing from such member.
- 13.2. Should the Trustee Committee institute any legal proceedings against a member pursuant to a breach by that member of this Constitution, any Regulation or the Building Manual, then without prejudice to any other rights or remedies which the Committee or the Association or any other member may have in law, the Committee shall be entitled to recover from such member all legal costs incurred by the Committee or the Association, including attorney and client charges, tracing fees and collection commission.
- 13.3. Any amount claimed from a member under this Constitution shall be deemed to be a levy contemplated in this Constitution, and may, if it is not paid within 7 (seven) days after the member has been requested in writing to pay same, be added to the member's monthly levy statement and shall bear interest as a levy debt.¹⁰

14. Interest Payable for Failure to Pay

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

¹⁰ See Clause 65: Monthly Levies

15. Claim after Cessation of Membership

- 15.1. No person nor his executors, curators, trustees or liquidators shall have any claim upon, or interest in, the assets of the Association after cessation of his membership.
- 15.2. This clause shall not be interpreted as prejudicing the rights which the Trustee Committee or the Association or any other member may have in law to claim from such member or his estate payment of any amounts which may in terms of this Constitution, the Regulations or the Building Manual be collected or claimed from him, or performance of any obligations due by him at the time of cessation of his membership.

IV. TRUSTEE COMMITTEE OF ASSOCIATION**A. POWERS AND FUNCTIONS OF TRUSTEE COMMITTEE****16. Management and Control of Business and Affairs of Association**

- 16.1. Subject to the provisions of this Constitution and any restriction imposed or direction given by the members in general meeting, the Trustee Committee shall manage and control the business and affairs of the Association, and shall have the authority to exercise all the powers and perform all the functions of the Association which are not under this Constitution required to be exercised or performed by the members in general meeting.
- 16.2. The powers and functions of the Trustee Committee shall include, but not be limited to the following: To –
- 16.2.1. manage and maintain the civil services infrastructure;
 - 16.2.2. manage and maintain the common property within or outside the Estate;
 - 16.2.3. regulate the conduct of any person who enters, or resides or performs any service in, the Estate;
 - 16.2.4. develop and implement the directives governing the design theme for buildings and / or structures within the Estate as defined in the Building Manual;
 - 16.2.5. manage and control the financial affairs of the Association;
 - 16.2.6. institute or defend legal proceedings by or against the Association;
 - 16.2.7. sign all documents and take all steps necessary for the exercise of its powers and the performance of its functions;
 - 16.2.8. exercise all the powers which directors of a private company have in terms of section 69 of the *Companies Act, 2008 (No 71 of 2008)*;
 - 16.2.9. exercise any of its powers and perform any of its functions within or outside the Estate; and
 - 16.2.10. do all other things reasonably necessary for the control, management and administration of the business and affairs of the Association, including to incur expenses in connection therewith.
- 16.3. The Trustee Committee shall be entitled to determine and impose penalties, including fines, for any breach of this Constitution, any Regulation or the Building Manual.

17. Investigation of Breach

The Trustee Committee may investigate any suspected or alleged breach by any member or trustee of this Constitution, any Regulation or the Building Manual, in such reasonable manner as it shall decide from time to time.

18. Agreements with Local Authorities and Service Providers

The Trustee Committee may for and on behalf of the Association enter into agreements with local authorities and service providers for the exercise of its powers and the performance of its functions.

19. Engagement of Consultants, Service Providers, Contractors and Employees

Save as otherwise provided in this Constitution, the Trustee Committee may on behalf of the Association engage the services of consultants, service providers, contractors and employees on such terms as the Committee shall decide to advise and assist it in the exercise of its powers and the performance of its functions under this Constitution, the Regulations and the Building Manual.

20. Report on Business and Affairs of Association

The Trustee Committee shall at each annual general meeting table a report on the business and affairs of the Association during the preceding financial year.

21. Retention and Inspection of Records of Association

- 21.1. The Trustee Committee shall retain a complete record of the Constitution, Regulations, the Building Manual and penalties in force, and of reports prepared under this Constitution, and of all minute books for so long as the Association remains registered.
- 21.2. The Trustee Committee shall retain a complete record of the financial transactions of the Association for such periods as the South African Revenue Service may from time to time determine.
- 21.3. The records and minute books retained by the Trustee Committee shall upon written request be open for inspection by a trustee, a member, the auditors and the Municipality at the time and address appointed by the Committee.

B. CONSTITUTION OF TRUSTEE COMMITTEE**22. Composition and Election of Trustee Committee**

- 22.1. There shall be a board of trustees for the Association called Trustee Committee, which shall consist of not fewer than 3 (three) and not more than 6 (six) trustees.
- 22.2. The members shall at every annual general meeting of the Association elect persons to serve as trustees.¹¹
- 22.3. A person need not be a member of the Association to be eligible to serve as a trustee, provided that –
 - 22.3.1. the majority of trustees shall be members, or spouses of members, of the Association; and

¹¹ See Clause 41: Annual General Meetings, and clause 43. Agenda of Annual General Meeting

- 22.3.2. a person, or any of his employees, engaged in terms of clause 19¹² may not serve as a trustee.

23. Nominations for Election as Trustee

Nominations for election to serve as a trustee must be given in writing substantially in the form determined by the Trustee Committee, accompanied by the written consent of the nominee, so as to be received at the address appointed by the Committee not later than 48 (forty-eight) hours before the time appointed for the annual general meeting concerned, provided that a nomination may, with the consent of the nominee, also be submitted at the meeting.

24. Filling of Vacancy

- 24.1. Upon a vacancy occurring on the Trustee Committee, the vacancy shall forthwith be filled by a person appointed by the remaining trustees.
- 24.2. A person appointed to fill a vacancy shall enjoy all the rights and be subject to all the obligations of the elected trustees.

25. Period of Office of Trustee

Save as set forth in clause 26,¹³ a trustee shall continue to hold office until the conclusion of the annual general meeting next following upon his election or appointment, but shall be eligible for re-election or re-appointment to the Trustee Committee.

26. Ineligibility or Disqualification to Serve as Trustee

A person shall be ineligible or disqualified to be elected or appointed, or to continue to serve, as a trustee if –

- 26.1. his estate is sequestrated, whether provisionally or finally, or he surrenders his estate;
- 26.2. he is convicted by a Court of Law for any offense involving dishonesty;
- 26.3. he is or becomes of unsound mind;
- 26.4. he is removed from office by a resolution of the members at a general meeting with a three-quarter majority of the votes actually cast, provided that the intention to decide upon such removal from office was specified in the notice convening the meeting;
- 26.5. he would be ineligible or disqualified to be elected, appointed or to continue to serve as a director of a company as contemplated in section 69 of the *Companies Act, 2008 (No 71 of 2008)* as amended;
- 26.6. he has for a period exceeding 2 (two) months an outstanding obligation towards the Association as contemplated in clause 8.3; and / or
- 26.7. he absents himself from 3 (three) consecutive meetings of the Trustee Committee without leave of absence granted by the Committee.

27. Resignation as Trustee

A trustee may at any time tender his resignation as a trustee in writing to the Trustee Committee.

¹² Clause 19: Engagement of Consultants, Service Providers, Contractors and Employees

¹³ Clause 26: Ineligibility or Disqualification to Serve on Trustee Committee

28. Validity of Acts and Resolutions

Any resolution taken, power exercised or function performed by the Trustee Committee shall, notwithstanding that it is afterwards discovered that there was some defect in the election, appointment or continuance in office of any person as a trustee, and if the person concerned acted in good faith, be as valid as if such person had been duly elected or appointed or had duly continued in office, under the provisions of this Constitution.

29. Remuneration and Reimbursement of Trustee

- 29.1. A trustee shall not be entitled to any remuneration, fees or salary in respect of the exercise of his powers and the performance of his functions under this Constitution, the Regulations and the Building Manual.
- 29.2. Subject to this Constitution and all applicable Regulations a trustee shall be reimbursed all costs and expenses (including, but not limited to, telephone, internet, travelling and other incidental expenses) which such trustee incurred or may incur or become liable for by reason of any act by him in the exercise of his powers and the performance of his functions under this Constitution, the Regulations and the Building Manual.

C. CHAIRMAN AND VICE-CHAIRMAN OF TRUSTEE COMMITTEE**30. Election**

At the first meeting of the Trustee Committee after every annual general meeting, the trustees shall elect from among their own number a chairman and a vice-chairman, who shall hold their respective offices until the conclusion of the next annual general meeting.¹⁴

31. Vacancy or Absence

- 31.1. The Chairman shall preside at all meetings of the Trustee Committee, provided that should the office of Chairman be vacant, or should at any meeting of the Committee the Chairman not be present within 5 (five) minutes after the time appointed for the meeting, then the Vice-chairman shall preside at such meeting.
- 31.2. Should the office of both the Chairman and Vice-chairman be vacant, or should at any meeting both the Chairman and Vice-chairman not be present within 5 (five) minutes of the time appointed for the meeting, then those present of the trustees shall before proceeding to any other business elect another trustee present to preside at the meeting, who shall thereupon have all the powers and duties of the Chairman in relation to such meeting.

32. Resignation or Ceasing to be Trustee

If the Chairman or Vice-chairman resigns from office or ceases to be a trustee, then the remaining trustees shall elect another trustee from among their own number as Chairman or Vice-chairman, as the case may be, who shall thereupon hold office for the remainder of the term of office of the person in whose stead he is elected.

¹⁴ See Clause 41: Annual General Meetings

33. Vacation of Chair, Inability to Preside or Disqualification

- 33.1. Should the Chairman vacate the chair during the course of a meeting, or be unable to preside at the meeting, or be disqualified from voting under clause 8.4, then the Vice-chairman shall preside at the meeting or for the voting, as the case may be.
- 33.2. Should both the Chairman and Vice-chairman be unable to preside, or be disqualified from voting under clause 8.4, then those present of the remaining trustees shall before proceeding to any other business elect another trustee present to preside at the meeting or for the voting, as the case may be, and who shall thereupon have all the powers and duties of the Chairman in relation to such meeting or such voting, as the case may be.

D. MEETINGS OF TRUSTEE COMMITTEE**34. Convening of Meeting**

- 34.1. The Trustee Committee may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit, subject to the provisions of this Constitution and any applicable Regulations.
- 34.2. Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the trustees shall in writing have waived this requirement in respect of a particular quarter, then no meeting of the Committee need be held for that quarter.
- 34.3. A trustee may at any time convene a meeting of the Trustee Committee by giving reasonable notice to the other trustees, which notice must specify the reason for convening the meeting.

35. Quorum

- 35.1. The quorum necessary for the holding of any meeting of the Trustee Committee shall be 50% (fifty percent) of the number of trustees in office.
- 35.2. If at any Trustee Committee meeting a quorum is not present half an hour of the time appointed for the meeting, such meeting shall stand postponed to the 3rd (third) day thereafter at the same time and place, and the trustees then present, who may not be fewer than 2 (two), shall constitute a quorum, provided that the Chairman may at the request of at least 2 (two) trustees appoint such other time or day for the meeting as he deems appropriate.
- 35.3. If the number of trustees falls below 3 (three), the remaining trustees, who may not be fewer than 2 (two), may continue to act, but only for the purpose of filling a vacancy or convening a general meeting of members.

36. Minutes of Proceedings

- 36.1. Minutes shall be taken of the proceedings at every Trustee Committee meeting, although not necessarily verbatim.
- 36.2. The minutes shall be reduced to writing without undue delay and shall be certified correct by the Chairman.
- 36.3. All minutes shall after certification be placed in a trustee committee minute book.

37. Manner and Form of Proceedings

Save as otherwise provided in this Constitution, the proceedings at any Trustee Committee meeting shall be conducted in a reasonable manner and form as the Chairman of the meeting may decide with due regard to generally accepted practice.

38. Voting

- 38.1. All matters at a Trustee Committee meeting shall be determined by a majority of those trustees who are entitled to vote and are present and voting.
- 38.2. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 38.3. A trustee who has an interest in any contract or agreement or proposed contract or agreement, or any litigation or proposed litigation, with the Association is by virtue of such interest disqualified from voting in respect thereof.

39. Resolution Signed by Trustees

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.

40. Attendance of Meetings by Other Persons

The Trustee Committee may in its sole discretion allow any person to attend its meeting and to address it at such meeting, but such a person may not participate in the proceedings of the Committee.

V. GENERAL MEETINGS OF MEMBERS OF ASSOCIATION**A. CONVENING OF GENERAL MEETINGS****41. Annual General Meetings**

The members of the Association shall annually within 4 (four) months after each financial year end of the Association¹⁵ convene a general meeting of the members as its annual general meeting.

42. Notice of Annual General Meeting

- 42.1. Annual general meetings shall be convened by not fewer than 21 (twenty-one) days' notice in writing.
- 42.2. The notice shall specify the place, the day and the time of the meeting appointed by the Trustee Committee and shall be accompanied by an agenda, as specified in clause 43.

43. Agenda of Annual General Meeting

- 43.1. The following items shall be on the agenda and be dealt with at every annual general meeting:
 - 43.1.1. the election of trustees;¹⁶
 - 43.1.2. the consideration of the financial statements of the Association;¹⁷

¹⁵ See clause 62: Financial Year

¹⁶ See clause 16: Composition of Committee

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- 43.1.3. the consideration of the report of the auditors;¹⁸
 - 43.1.4. the appointment of the auditors of the Association for the next financial year;
 - 43.1.5. the consideration of the report on the business and affairs of the Association;¹⁹
 - 43.1.6. the approval with or without amendment of the schedules of common property and civil services infrastructure replacement values;²⁰
 - 43.1.7. the approval with or without amendment of the annual estimate of anticipated income and expenditure.²¹
 - 43.2. Only items properly on the agenda of an annual general meeting may be raised at the meeting.

44. Supplementary Items for Agenda of Annual General Meeting

- 44.1. The agenda of an annual general meeting may be supplemented by any items which the Trustee Committee or a member who has the written support of at least 20 (twenty) members requires the meeting to deal with.
- 44.2. The Trustee Committee shall as soon as possible, but not later than 7 (seven) days before the date appointed for the annual general meeting, give written notice to all the members of any supplementary agenda items and shall include with such notice a memorandum prepared by it or by the member concerned, as the case may be, which provides a motivated description of each supplementary item to be dealt with at the meeting and the resolution desired.

45. Special General Meeting

- 45.1. Any meeting of the members other than an annual general meeting contemplated in clause 41 shall be called a special general meeting.
- 45.2. The Trustee Committee may, whenever it thinks fit, convene a special general meeting.
- 45.3. The Trustee Committee shall convene a special general meeting at the written request of at least 20 (twenty) members.

46. Notice and Agenda of Special General Meeting

- 46.1. A special general meeting shall be convened by not fewer than 14 (fourteen) days' notice in writing.
- 46.2. The notice shall specify the place, the day and the time of the meeting appointed by the Trustee Committee and shall be accompanied by an agenda together with a memorandum prepared by the Committee or the member concerned, as the case may be, which provides a motivated description of each item to be dealt with at the meeting and the resolution desired.
- 46.3. Only items properly on the agenda of a special general meeting may be raised at the meeting.

17 See clause 69: Books of Account and Records

18 See clause 69: Books of Account and Records

19 See clause 20: Report on Business and Affairs of Association

20 See Clause 74: Replacement Values

21 See Clause 63: Annual Estimate of Anticipated Income and Expenditure

47. Shorter and No Notice of General Meeting

- 47.1. Notwithstanding the provisions of clauses 42.1²² and 46.1,²³ a general meeting convened by shorter notice shall be deemed to have been duly convened if it is so agreed by three-quarters of the members entitled to vote thereat.
- 47.2. The accidental omission to give notice of a meeting or the non-receipt of any notice correctly addressed to a member or other person entitled to receive same shall not invalidate the proceedings of, or any resolution passed at, any general meeting.

48. Quorum

- 48.1. No business shall be transacted at any general meeting unless a quorum is present at the time appointed for the meeting.
- 48.2. The quorum necessary for the holding of a general meeting shall be such of the members present in person or by proxy who together represent one-quarter of the total votes of all members entitled to vote.
- 48.3. If within half an hour from the time appointed for the general meeting a quorum is not present, the meeting, if convened –
- 48.3.1. at the request of members, shall be cancelled;
- 48.3.2. by the trustees, shall stand postponed to the same day in the next week at the same place and time, or at such other place and / or time as the Chairman of the meeting shall appoint.
- 48.4. If at a meeting postponed in terms of clause 48.3.2 a quorum is not present within half an hour from the time appointed for the meeting, the members present in person or by proxy shall constitute a quorum.

B. PROCEEDINGS AT GENERAL MEETINGS**49. Manner and Form of Proceedings**

Except as otherwise set forth in this Constitution general meetings shall be conducted in accordance with generally accepted practice.

50. Chairman

- 50.1. The Chairman of the Trustee Committee shall preside at general meetings.
- 50.2. Should the office of Chairman be vacant, or should the Chairman not be present within 5 (five) minutes after the time appointed for the meeting, then the Vice-chairman shall preside at such meeting.
- 50.3. Should the office of both the Chairman and Vice-chairman be vacant, or should both the Chairman and Vice-chairman not be present within 5 (five) minutes of the time appointed for the meeting, then the members present and entitled to vote, shall before proceeding to any other business elect a Chairman, who shall thereupon have all the powers and duties of the Chairman in relation to such meeting.

²² See Clause 42: Notice of Annual General Meetings

²³ See Clause 46: Notice and Agenda of Special General Meetings

51. Vacation of Chair, Inability to Preside or Disqualification

- 51.1. Should the Chairman vacate the chair during the course of a meeting, or be unable to preside at the meeting, or be disqualified from voting under clause 8.4, then the Vice-chairman shall preside at such meeting or for such voting, as the case may be.
- 51.2. Should both the Chairman and Vice-chairman be unable to preside, or be disqualified from voting under clause 8.4, then the members present and entitled to vote, shall before proceeding to any other business elect a chairman, who shall thereupon have all the powers and duties of the Chairman in relation to such meeting or such voting, as the case may be.

52. Adjournment

- 52.1. The Chairman may, with the consent of a general meeting, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business which could be transacted at the meeting from which the adjournment took place.
- 52.2. Whenever a general meeting is adjourned for 21 (twenty one) days or more, notice of its resumption shall be given in the same manner as of the original meeting.
- 52.3. Subject to the provisions of clause 52.2, the members shall not be entitled to any notice of the adjournment and / or resumption of a general meeting, or of the business to be transacted at a resumed meeting unless the time and / or place appointed at the adjourned meeting for its resumption is for whatever reason changed.

53. Proxies

- 53.1. A member may be represented at a general meeting by a proxy, who need not be a member of the Association, but may not be a person, or any of his employees, engaged under clause 19.²⁴
- 53.2. The instrument appointing a proxy shall be in writing and signed by the member concerned or his duly authorised agent, but need not be in any particular form, provided that where a member is –
 - 53.2.1. more than one person, any one of those persons may sign the proxy on such member's behalf;
 - 53.2.2. a company, the proxy may be signed by the chairman or managing director of the board of directors of the company or by its secretary;
 - 53.2.3. a close corporation, the proxy may be signed by any of its members;
 - 53.2.4. a trust, the proxy must be signed by all of its trustees; and
 - 53.2.5. an association of persons, the proxy must be signed by the chairman or secretary of its managing committee.
- 53.3. The instrument appointing a proxy and the power of attorney or other authority under which it is signed, or a notarially certified copy thereof, shall be deposited at the address appointed by the Trustee Committee or given to the Chairman of the general meeting at any time before the time appointed for the meeting, or resumed meeting, at which the person named in the instrument proposes to vote.

²⁴ Clause 19: Engagement of Consultants, Service Providers, Contractors and Employees

- 53.4. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.
- 53.5. A vote cast in good faith in accordance with the terms of an instrument appointing a proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation of the death or revocation shall have been received by the Trustee Committee at least 1 (one) hour before the time appointed for the meeting.

54. Voting

- 54.1. At every general meeting each member present in person or by proxy and entitled to vote shall have one vote for each erf registered in his name, provided that if an erf is registered in more than one person's name, then they shall jointly have one vote for that erf.
- 54.2. When 2 (two) or more persons are joint registered owners of an erf, the vote to which they are entitled may be exercised only by a person (who need not be one of them) jointly appointed by them as their proxy, provided that any one of them may demand a poll.

55. Second Required

Every motion and every amendment to a motion proposed for adoption at a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

56. Deciding of Questions

- 56.1. A motion put to the vote at a general meeting shall be decided on a show of hands, unless the Chairman, in his discretion, directs that a ballot be taken, or, 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 in respect of such motion, provided that a directive or demand for a ballot may be withdrawn by the person concerned.
- 56.2. Each member present in person and entitled to vote, and each person present as proxy for a member who is entitled to vote, shall, when a question is to be decided on a show of hands, orally announce how he casts each vote to which he is entitled if he is entitled to more than one vote.
- 56.3. Notwithstanding the provisions of clause 56.1, a question on the election of a chairman of a general meeting or on any question of adjournment, shall be decided on a show of hands by the members present in person or by proxy and entitled to vote at such meeting.
- 56.4. 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.
- 56.5. Unless any member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by a show of hands or on a poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted.

- 56.6. An entry in the minutes of a general meeting to the effect that a 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 result of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of the vote at the meeting.

57. Majority Required

At a general meeting all questions shall be decided by simple majority, or by the other majority prescribed in a particular case in this Constitution, of those members who are entitled to vote in respect thereof and are present in person or by proxy and voting.

58. Attendance of Meetings by Other Persons

Members in general meeting may allow any person to attend a general meeting and to address them at such meeting, but such a person may not participate in the proceedings of the meeting.

59. Minutes of Proceedings

- 59.1. Minutes shall be taken of the proceedings of every general meeting, although not necessarily verbatim.
- 59.2. The minutes shall be reduced to writing without undue delay and shall be certified correct by the Chairman.
- 59.3. All minutes shall after certification be placed in a general meeting minute book.

VI. FINANCIAL AFFAIRS OF ASSOCIATION

60. Management and Control of Financial Affairs

The Trustee Committee shall manage and control the financial affairs of the Association, and to this end shall –

- 60.1. establish a fund for purposes of accumulating a capital reserve which shall primarily be used to meet the capital expenditure requirements of the Association, including expenditure in relation to the maintenance, development, upgrading, installation and replacement of the common property and the civil services infrastructure;
- 60.2. open and operate bank accounts for the Association, draw cheques on such accounts or deposit moneys in them, issue bills and guarantees in favour of third parties against such accounts, hand to the bank, bills for collection in favour of the Association;
- 60.3. pay the rates and taxes and other charges by a competent authority, any premiums of insurance, and any other expenses in connection with the exercise of its powers and the performance of its functions under this Constitution, the Regulations and the Building Manual;
- 60.4. issue receipts, discharges or indemnities in respect of any repayment or discharge of obligations;
- 60.5. for and on behalf of the Association make and receive loans, including financing agreements, with a financial institution as defined in section 1 of the *Financial Services Board Act, 1990 (No 97 of 1990)*, with or without security; and

- 60.6. accept donations or bequests for and on behalf of the Association subject to the terms and conditions of this Constitution and subject to the terms and conditions attached to such donations and / or bequests.

61. Deposit and Investment of Moneys

- 61.1. The Trustee Committee shall deposit all moneys received by the Association and not immediately required for the fulfilment of the obligations of the Association to the credit of an account or accounts in the name of the Association, or invest such moneys on such terms and conditions as the Committee may determine.
- 61.2. Moneys not immediately required may only be deposited or invested –
- 61.2.1. with a financial institution as defined in section 1 of the *Financial Services Board Act, 1990 (No 97 of 1990)*;
- 61.2.2. in investment products such as a money market fund,
Provided that –
- 61.2.2.1. the institution, or the underlying assets of the fund, concerned shall have a Moody's rating of at least equal to that of the sovereign credit rating of the Republic of South Africa; and
- 61.2.2.2. the term of any deposit or investment may range from overnight deposits to deposits fixed for a maximum of twelve (12) months.

62. Financial Year End

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

63. Annual Estimate of Anticipated Income and Expenditure

- 63.1. The Trustee Committee shall for every financial year prepare, and shall table at every annual general meeting, an itemised estimate of the anticipated income and expenditure of the Association during the next financial year required by the Association to meet its expenses during that year.
- 63.2. In preparing the estimate the Trustee Committee shall also take into account any –
- 63.2.1. income earned by the Association; and
- 63.2.2. estimated surplus or deficiency from the preceding financial year.
- 63.3. The Trustee Committee may include in the estimate an amount to be paid over to the capital reserve fund contemplated in clause 60.1.

64. Collection of Contributions

- 64.1. The Trustee Committee, on behalf of the Association, shall from time to time collect contributions in the form of monthly levies and special levies from the members for the purpose of meeting the expenses which the Association has incurred, or which the Committee reasonably anticipates the Association will incur for achieving its object.
- 64.2. Any amount due by a member by way of a levy shall be a debt due by him to the Association.
- 64.3. The obligation of a member to pay levies shall cease on the date on which the erf concerned is transferred into the name of his successor in title to the erf, without prejudice to the Association's right to recover arrear levies.

64.4. No levies lawfully paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member.

64.5. A member's successor in title to an erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf into his name, to pay the levies attributable to that erf as from that date.

65. Monthly Levies

65.1. The amount of the monthly levy payable by a member in respect of each erf registered in his name shall be determined annually by dividing the approved estimate of anticipated income and expenditure²⁵ by the number of erven in the Estate.

65.2. Monthly levies shall be payable by the members in advance and shall be due on the first day of each calendar month.

66. Interim Monthly Levies

The Trustee Committee may, in anticipation of the determination of the monthly levy for a financial year as contemplated in clause 65²⁶, determine an interim monthly levy for that financial year based on its estimate of the anticipated income and expenditure of the Association for that financial year, and may collect such interim monthly levy with effect from the first day of that financial year until such time as the monthly levy for that year is determined as contemplated in clause 65.

67. Special Levies

67.1. The Trustee Committee may from time to time collect special levies from the members in respect of expenses which the Association has incurred, or which the Committee reasonably anticipates the Association will incur and which are not included in any estimate contemplated in clause 63, and such special levies may be made payable in the amount and in such instalments and at such time or times as the Committee shall think fit.

67.2. The Trustee Committee shall apportion any special levies between the members in such manner as the Committee may regard as reasonable, regard being had to the direct benefits which the member(s) may derive or may have derived from the expenditure for which the special levies are collected.

68. Sales Levies

68.1. Every –

68.1.1. registered owner of an erf (which shall include, but not be limited to a natural person, trust, company of close corporation), or where the erf is owned by more than one registered owner, all the registered owners of the erf jointly and severally;

68.1.2. shareholder of a company owning an erf;

68.1.3. member of a close corporation owning an erf; or

68.1.4. beneficiary of a trust owning an erf,
who has sold or otherwise alienated –

68.1.4.1. the erf;

²⁵ See clause 43.1.7 and clause 63.

²⁶ Clause 65: Monthly Levies

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- 68.1.4.2. his shareholder's interest;
 - 68.1.4.3. his member's interest; or
 - 68.1.4.4. his beneficial interest in the trust,
 shall pay to the Association a sales levy equal to 1% (one percent) of the value of the erf or shareholder's interest or member's interest or beneficial interest, as the case may be ("the sales levy").
 - 68.2. Notwithstanding the provisions of clause 68.1.1, no sales levy shall be payable in respect of the transfer of a property in the name of a person who can show that the acquisition is exempt from transfer duty as contemplated in section 9(1)(i) or section 9(1)(k) of the *Transfer Duty Act, 1949 [Act 40 of 1949]*, as amended.
 - 68.3. For purposes of clause 68.1 "value" means –
 - 68.3.1. in cases where transfer duty is payable on the transaction, the amount on which the transfer duty is payable;
 - 68.3.2. in cases where the transaction is subject to value added tax, the amount on which such tax is payable; and
 - 68.3.3. in all other cases, the value of the erf or of the interest which has been sold or otherwise alienated.
 - 68.4. Unless otherwise agreed between the party concerned and the Association, the "value" of the erf or the interest for purposes of clause 68.3.3 shall –
 - 68.4.1. in the case of an arm's length transaction, be the amount of the consideration payable in respect of the transaction; or
 - 68.4.2. in any other case, be the market value of the erf or the interest as determined by a professional valuer or a professional associate valuer registered in terms of the *Property Valuers Profession Act, 2000 (No 47 of 2000)*, appointed by the Trustee Committee.
 - 68.5. The sales levy shall –
 - 68.5.1. be paid over to the capital reserve fund contemplated in clause 60.1; and
 - 68.5.2. be payable to the Association against registration of transfer.
 - 68.6. The obligation to pay the sales levy shall accrue prior to transfer and accordingly transfer shall be without prejudice to the Association's right to recover such sales levy (and interest thereon) after transfer.

69. Books of Account and Records

At each annual general meeting the Trustee Committee shall lay before the Association –

- 69.1. a financial statement in conformity with generally accepted accounting practice, which statement must fairly present the state of the business and affairs of the Association and its finances and transactions as at the end of the financial year²⁷ concerned, including a report thereon prepared by an auditor qualified to act as such in terms of the *Public Accountants and Auditors Act, 1991 (No 80 of 1991)*;
- 69.2. a record of the assets and liabilities of the Association;

²⁷ Clause 62: Financial Year End

- 69.3. a record of all amounts received and expended by the Association and the matters in respect of which such receipt and expenditure occurred; and
- 69.4. a register of members and individual ledger accounts in respect of each such member.

70. Audit

The annual financial statement of the Association must be audited by a registered accountant in terms of the *Public Accountants and Auditors Act, 1991 (No 80 of 1991)*.

71. Attendance of Meetings of Creditors

The Trustee Committee may designate one or more trustees to attend meetings of creditors of a member who is a debtor of the Association irrespective of whether the meeting is in connection with insolvency, liquidation or business rescue proceedings, to vote on any matter regarding the business of the meeting and generally to exercise all the rights a creditor would have in similar circumstances.

VII. COMMON PROPERTY OF ASSOCIATION

72. Management and Control

The Trustee Committee shall –

- 72.1. attend to the maintenance, development, upgrading, installation and replacement of the civil services infrastructure serving the Estate;
- 72.2. manage and maintain the common property, including the landscaping thereof, within or outside the Estate; and
- 72.3. provide, manage and maintain such common facilities, including recreational areas, within or outside the Estate as the Committee may deem appropriate.

73. Alienation and Letting of Common Property

- 73.1. Members may direct the Trustee Committee on their behalf to alienate or let common property of the Association or any part thereof, and thereupon the Committee shall, subject to compliance with any law relating to the subdivision of land or to the re-zoning of land, have power to deal with such common property or such part thereof in accordance with such directive, and to execute any deed required for that purpose.
- 73.2. Any direction contemplated in clause 73.1 shall be given only if it is approved by a resolution passed at a general meeting by a 2/3rds (two-thirds) majority of members present in person or by proxy and voting.

74. Replacement Values

The Trustee Committee shall at every annual general meeting table schedules of the estimated replacement values of the common property and the civil services infrastructure, and shall insure same to the extent and against such risks as may be directed by the members at the meeting.

VIII. BUILDING WORK IN ESTATE

75. **Approval of Trustee Committee for Building Work**

A member shall not be entitled to construct a new building and / or structure of any nature whatsoever, nor to make any alterations, modifications or renovations to an existing building and / or structure that will affect its exterior aesthetic appearance, or erect a pergola, fence or boundary or retaining wall, on his erf without the written approval of the Trustee Committee, which approval shall be sought in accordance with the procedure set forth in the Building Manual.

76. **Building Deposit in respect of Building Work**

- 76.1. A member shall, before commencement of any building work contemplated in clause 75, pay to the Trustee Committee a building deposit in such amount as may from time to time be determined by the Committee.
- 76.2. If in the discretion of the Trustee Committee any work other than work contemplated in clause 75 to be carried out or being carried out on an erf may cause damage to any common property or the civil services infrastructure, the Committee may require the member concerned to pay a building deposit determined by the Committee in respect of such work.
- 76.3. A building deposit paid by a member under this clause shall be retained by the Trustee Committee in trust.

77. **Completion of Building Work**

- 77.1. Upon completion of the building work in respect of which a member was required to pay a building deposit in terms of clause 76 the Trustee Committee shall release the deposit to the member if it is satisfied that –
 - 77.1.1. no damage has been effected by the member or any of his contractors to the common property or the civil services infrastructure; and
 - 77.1.2. the building work has been properly carried out in accordance with the duly approved building plans and the provisions of the Building Manual.
- 77.2. In the event of any common property or civil services infrastructure having been damaged due to the building work in respect of which a member was required to pay a deposit, the member shall, within 15 (fifteen) days of having been instructed in writing to do so by the Trustee Committee, have the required remedial work carried out to the satisfaction of the Committee, failing which the Committee shall be entitled to appoint a service provider to carry out the required remedial work.
- 77.3. The building deposit paid to the Trustee Committee shall be utilized to defray the charges of the service provider appointed to carry out the required remedial work, provided that should the damage effected by the member or any of his contractors be such that the deposit is not sufficient to cover the costs of the remedial work, the member concerned shall pay the difference to the Committee within 7 (seven) days after having been instructed in writing to do so.

IX. CONSTITUTION, REGULATIONS AND BUILDING MANUAL OF ASSOCIATION

78. Amendment of Constitution

- 78.1. No provision of this Constitution shall be added to, amended, substituted or repealed without the prior consent in writing of the Municipality.
- 78.2. Subject to the provisions of clause 78.1, this Constitution may only be added to, amended, substituted or repealed by a resolution taken at a general meeting and passed by a majority of three-quarters of the votes cast at the meeting in respect of the resolution.
- 78.3. No addition to, amendment, substitution or repeal of, a provision of this Constitution may be inconsistent with, or in contravention of, any current legislation.
- 78.4. The Trustee Committee, and any member with the written support of at least 20 (twenty) members, may propose an addition to, or amendment, substitution or repeal of, a provision of this Constitution by placing a motivated written proposal to that effect on the agenda of a general meeting.
- 78.5. The Trustee Committee must, within 21 (twenty-one) days of its adoption, in writing inform all the members, the Commissioner for the South African Revenue Service and the Municipality of an addition to, or amendment, substitution or repeal of, a provision of this Constitution.

79. Making and Implementing Regulations Governing Conduct

- 79.1. The Trustee Committee may make and implement such Regulations as it deems necessary including, but not limited to, Regulations governing –
 - 79.1.1. the promotion of safe and harmonious community-living within the Estate;
 - 79.1.2. traffic in the Estate, including the parking of vehicles, erecting traffic signs and introducing traffic calming measures, implementing speed limits, and carrying out speed checks;²⁸
 - 79.1.3. the conduct of persons and service providers who perform work in the Estate;
 - 79.1.4. the conducting of business in the Estate;
 - 79.1.5. the maintenance of members' properties and streetscapes;
 - 79.1.6. the keeping of pets in the Estate;
 - 79.1.7. the maintenance of the civil services infrastructure in the Estate;
 - 79.1.8. the maintenance, use and enjoyment of the common property of the Association;
 - 79.1.9. security in the Estate, including access and egress at the entrances to the Estate;
 - 79.1.10. the processing of appeals and complaints by members generally; and
 - 79.1.11. any other conduct or activity of any person who enters, or resides in, the Estate that in the discretion of the Committee may cause nuisance of any nature within the Estate.
- 79.2. Any member may with the written support of at least 20 (twenty) members submit a motivated proposal for an addition to, or amendment, substitution or repeal of, a provision of the Regulations to the Trustee Committee.

²⁸ See Clause 79: Making and Implementing of Regulations Governing Conduct

- 79.3. If the Trustee Committee is of the view that the proposal should not be effected, it shall inform the member accordingly in writing, whereupon the member may require the Committee to place the proposal on the agenda of a general meeting.
- 79.4. No provision of the Regulations may be in conflict or irreconcilable with any provision of this Constitution, provided that in the event of any such conflict or irreconcilability the provision of this Constitution shall prevail.
- 79.5. The Trustee Committee shall at least 14 (fourteen) days before its implementation, in writing inform all members of any addition to, or amendment, substitution or repeal of, a provision of the Regulations.

80. Amendment of Building Manual

- 80.1. The Trustee Committee may, in liaison with, and with the consent of, the Municipality (if legally required) from time to time amplify, clarify or add to, or amend, substitute or repeal, a provision of the Building Manual.
- 80.2. The Trustee Committee shall at least 14 (fourteen) days before its implementation, in writing inform all members of any amplification, clarification or addition to, amendment, substitution or repeal, of a provision of the Building Manual.
- 80.3. Any member may with the written support of at least 20 (twenty) members submit a motivated proposal for an amplification, clarification or addition to, or amendment, substitution or repeal of, a provision of the Building Manual.
- 80.4. If the Trustee Committee is of the view that the proposal should not be effected, it shall inform the member accordingly in writing, whereupon the member may require the Committee to place the proposal on the agenda of a general meeting.

81. Determination of Penalties

- 81.1. The Trustee Committee may from time to time determine the penalties to be imposed for the breach of a provision of this Constitution, a Regulation or the Building Manual, including the amount of an initial and subsequent fine.
- 81.2. The Trustee Committee shall at least 14 (fourteen) days before its implementation, in writing inform all members of any penalty determined under this clause.
- 81.3. A penalty imposed for a breach of a provision of this Constitution, a Regulation or the Building Manual may, if it is not paid within 7 (seven) days after the member has been notified of the imposition thereof, be added to the monthly levy payable by that member and claimed as if it were part of such levy.

82. Binding Nature of Constitution, Regulations and Building Manual

The provisions of this Constitution, the Regulations and the Building Manual shall be binding on all members and also on all other persons who reside in, or for whatever purpose enter, the Estate.

X. GENERAL PROVISIONS

83. Service of Documents and Notices

- 83.1. For the purpose of serving documents and notices for any purpose arising out of this Constitution, the Regulations or the Building Manual –

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- 83.1.1. a member shall provide the Trustee Committee with a physical address, not being a post office box or *poste restante*, within the Republic of South Africa and with his electronic mail address and / or facsimile number; and
 - 83.1.2. members shall at an annual general meeting appoint a physical address, not being a post office box or *poste restante*, within the Republic of South Africa and an electronic mail address and / or facsimile number.
 - 83.2. An address and / or facsimile number contemplated in clauses 83.1 may be changed by the delivery of notice of a new address and / or number, and thereafter service may be effected at such new address or number.
 - 83.3. Service of all documents and notices on a party may be effected by one of the following manners:
 - 83.3.1. by hand at the physical address for service provided; or
 - 83.3.2. by pre-paid registered post to the postal address provided; or
 - 83.3.3. by electronic mail to the address provided; or
 - 83.3.4. by facsimile to the number provided.
 - 83.4. Any document or notice sent by –
 - 83.4.1. prepaid registered post shall be deemed to have been received 7 (seven) days after transmission, provided that in proving the transmission of a document or notice by registered post, it shall be sufficient to prove that the notice was properly addressed and posted;
 - 83.4.2. electronic mail or facsimile shall be deemed to have been received by the addressee on the date upon which it was transmitted.
 - 83.5. General communication between the parties regarding the business and affairs of the Association shall be transmitted and received as contemplated in clause 83.1 – 4.

84. Signing of Instruments

An instrument purporting to be signed for and on behalf of the Association or the Trustee Committee shall be valid and binding only if the Association or the Trustee Committee, as the case may be, has duly authorised the signatory or signatories to sign on its behalf.

85. Indemnity

- 85.1. A trustee and, if the Trustee Committee so determines in writing in a particular instance, a person engaged under clause 19,²⁹ shall be indemnified by the Association against all costs, losses, expenses and claims which he may incur or become liable to by reason of any act or omission by him in the exercise of his powers and the performance of his functions, unless such costs, losses, expenses or claims result from his *mala fide* or grossly negligent act or omission.
- 85.2. Any costs, losses, expenses or claims in respect of which indemnity is given shall be paid out of the funds of the Association.

²⁹ Clause 19: Engagement of Consultants, Service Providers, Contractors and Employees

86. Dispute Resolution

- 86.1. Should any dispute, disagreement or claim ("dispute") whatsoever arise between a member and the Association concerning the interpretation of this Constitution, the Regulations and / or the Building Manual, or in the event that a member is aggrieved by any condition, instruction or action by the Trustee Committee or its agent in terms of the Estate Rules, the aggrieved party, prior to notifying the other interested party(ies) in writing of a dispute, shall first exhaust the appeal process provided for in Rule 23 of the Estate Rules and once the Rule 23 appeal process has been exhausted, the aggrieved party, if not satisfied with the outcome of the Rule 23 appeal process, shall be entitled to proceed to notify the other interested party(ies) in writing of a dispute and copies of such notification must be served as contemplated in clause 83 of the Constitution.³⁰

[Clause 86.1 amended at AGM on 2 Aug 2021]

- 86.2. Thereafter the parties shall try to resolve the dispute by negotiation, which entails that the one party invites the other party in writing to a meeting where they shall attempt to resolve the dispute within 7 (seven) days from the date of the invitation.
- 86.3. If the dispute is not resolved through such negotiation, the parties shall submit the dispute to mediation under the auspices of the Arbitration Foundation of Southern Africa (Reg No 1996 / 007496 / 08) (the AFSA), upon the terms set by the AFSA Secretariat.
- 86.4. If the dispute is not resolved through mediation, it shall be finally resolved in accordance with the *Expedited AFSA Rules* by an arbitrator appointed by AFSA.
- 86.5. Notwithstanding the foregoing, the parties may, before mediation or after failed mediation, in writing agree under the auspices of AFSA to refer the dispute to a referee.

87. Consent to Jurisdiction

The Association and all members consent to the jurisdiction of the Western Cape High Court for any legal proceedings relating to this Constitution, the Regulations or the Building Manual.

88. Dissolution of Association

- 88.1. The Association may be dissolved by a resolution of members at a general meeting, provided that –
- 88.1.1. a majority of three-quarters of the members present in person or by proxy and voting vote in favour thereof; and
- 88.1.2. the Municipality consents thereto.
- 88.2. On dissolution of the Association, its remaining assets shall be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(i)(cc) of *the Income Tax Act, 1962 (No 58 of 1962)*, provided that if the Association is not succeeded by such an association, the remaining assets shall be paid to such fund as may be required by law.

³⁰ Clause 83: Service of Documents and Notices

MEMBERS' APPROVAL

This Constitution was approved at a special general meeting held on 14 June 2016.

Chairman
Trustee Committee
Brandwacht aan Rivier Home Owners' Association

MUNICIPAL APPROVAL

The Constitution of the Brandwacht aan Rivier Home Owners' Association dated 14 June 2016, was approved in terms of Section 29 of the Land Use Planning Ordinance, 1985 (No 15 of 1985).

Municipality of Stellenbosch

Date: _____