

# **Welgevonden Home Owners Association**

## **Constitution**

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## **1. Status**

1. (1) Welgevonden Home Owners Association (“the Association”) shall:

- (a) have legal personality, perpetual succession, and be capable of suing and/or being sued, in its own name;
- (b) comprise of all members of Welgevonden Home Owners Association (“the Association”), and
- (c) not operate for profit but for the benefit of its members.

(2) No member in their personal capacity shall have any right, title or interest to, or in the funds, or assets of the Association, which shall vest in and be controlled by the Trustee Committee.

## **2. Objects**

2. (1) The Association shall have the following objects:

- (a) to enforce and administer this Constitution and supporting governance documentation;
- (b) to regulate, control, manage, administer and maintain all common area, improvements and services, including boundary wall and fence on the perimeter of the Association and gardens;
- (c) to regulate, control, manage and administer all security aspects of the common area, as well as the roads and access control, which is owned by the Local Authority;
- (d) to promote, advance and protect the Association including its interests, as well as those of its members;
- (e) to control the design and maintenance of buildings and maintenance, and
- (f) shall have the power to do all such acts as are necessary to accomplish the fulfilment of the foregoing objects, including, but not restricted to, powers specifically contained in this Constitution.

## **3. Powers**

3. (1) The Trustee Committee, on behalf of the Association, shall have all the powers to do such acts and perform such functions as are necessary to enable it to achieve the objects, provided that the Trustee Committee:

- (a) shall at all times exercise its powers in the interests of the members, and subject to any member directive and/or restriction, as resolved from time to time;
- (b) shall ensure that adequate fidelity insurance is in place as required by the Regulations to the Community Schemes Ombud Service Act 9 of 2011 (“the CSOSA”);

(c) may establish such committee/s and/or sub-committee/s for the purposes of attending to any matter that the Trustee Committee may resolve;

(d) may enter into agreements with third parties on behalf of the Association for any of its purposes;

(e) may employ staff on behalf of the Association;

(f) may appoint and/or employ the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, town planners or any other professional firm or person, for any reason deemed necessary by the Trustee Committee, on such terms as the Trustee Committee shall decide, including the payment thereof, subject to budget approval by the members;

(g) may delegate their powers where applicable to the managing agent duly appointed, which managing agent shall control, manage and administer the Association, and exercise such powers and duties, as may be entrusted to it;

(h) shall approve, in their discretion, the level of services, and the cost thereof, that the Association requires in respect of maintenance, cleaning, gardening and similar;

(i) shall take steps in all matters of common interest in respect of the Association, and without detracting from the generality thereof, including electricity supply, landscaping, borehole pumps and street lights;

(j) shall have the power to acquire security infrastructure, such as electric fencing, security cameras, access control systems and similar, subject to budget approval by the members;

(k) shall have the power, subject to special resolution of the members, to sell, let or otherwise alienate any part of the common area;

(l) may make regulations, guidelines and/or conduct rules not inconsistent with this Constitution, subject to any directive given or restriction imposed by the members at a general meeting:

(i) for the conduct of all members;

(ii) for the aesthetics of the Association;

(iii) for the conduct of the Trustee Committee at their meetings, in accordance with the relevant provisions of the CSOSA, and meetings of the Association, in accordance with the provisions of common law in regard to conducting of meetings;

(iv) as to the resolution of disputes generally;

(v) for the furtherance and promotion of any of the objects of the Association;

(vi) for the better management of the affairs of the Association, and

(vii) for the advancement of the interest of all members.

(m) may investigate any suspected or alleged breach, by any member of the Association or the Trustee Committee, of this Constitution, in such reasonable manner as they shall decide from time to time;

(n) may institute or defend actions in the name of the Association, and

(o) shall have the right to vary, cancel or modify any of their decisions and/or resolutions from time to time.

#### **4. Definitions and interpretation**

4. (1) In this Constitution, the following words and expressions shall have the meanings hereby assigned to them:

(a) "**alienate**" means the alienation of an erf, whether by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolute condition and "**alienation**" shall have a corresponding meaning;

(b) "**auditors**" means the auditors of the Association from time to time, being responsible for the preparation of the financial statements;

(c) "**common area**" means all common area within the Association;

(d) "**Community Schemes Ombud Service Act**" means the Community Schemes Ombud Service Act 9 of 2011 ("the CSOSA"), as amended from time to time, and any Regulations made and in force thereunder;

(e) "**Constitution**" means the Constitution of the Association;

(f) "**Trustee Committee**" means the Trustee Committee, for the time being, of the Association appointed in terms of the Constitution;

(g) "**levy**" means the contribution by members so determined by the Trustee Committee for the recovery of the expenses and the reserves of the Association, recovered on a monthly basis in advance, and "**levies**" shall have a corresponding meaning;

(h) “**member**” means every registered owner of an erf, and every registered purchaser from time to time of an erf. If a member consists of more than 1 (one) person such persons shall be jointly and severally liable in solidum for all obligations in terms of this Constitution, and “**members**” shall have a corresponding meaning.

(i) “**ombud**” means a person contemplated in the Community Schemes Ombud Service Act;

(j) “**owner**” means the person/s in whose name the erf is registered at a deeds registry, or in whom ownership is vested by statute, including the trustee in an insolvent estate, the liquidator of a company or close corporation which is an owner, the executor of an owner who is deceased, or the representative of an owner who is a minor, or of unsound mind, recognised by law, and “**owned**” and “**ownership**” shall have a corresponding meaning; INCLUDING JURISTIC PERSON

(k) “**Home Owners Association and/or Association**” means Welgevonden Home Owners Association;

(l) “**resolution**” means a resolution passed at an annual general meeting or any other general meeting of the Association by an ordinary majority of the total votes represented at such meeting by members present in person or by proxy, and

(m) “**special resolution**” means a resolution passed at an annual general meeting or any other general meeting of the Association by 75% (seventy-five percent) of the total votes represented at such meeting by members present in person or by proxy.

(2) In the interpretation of this Constitution, unless the context otherwise indicates:

(a) the headings to these provisions are for reference purposes;

(b) where numbers are expressed in words and in numerals, the words shall prevail should there be any conflict;

(c) words and expressions used herein shall have the meaning assigned to it in the Constitution;

(d) words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing natural persons shall include legal persons and vice versa;

(e) when any number of days is prescribed in this Constitution, and the exact reckoning of these days are not prescribed, then the number of days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or a proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or proclaimed public holiday;

(f) reference to natural persons includes legal persons and the converse shall apply, and

(g) any annexure and/or supporting governance document to this Constitution is deemed to be incorporated in and form part of this Constitution.

## **5. Membership**

5. (1) The members of the Association shall be an owner of an erf, upon registration of transfer of the erf into their name, provided that where an owner comprises more than 1 (one) person, such persons shall be deemed jointly to be 1 (one) member, and shall be jointly and severally liable to comply with their obligations as a member, provided further that such person/s cease to be a member when they are no longer the registered owner/s of an erf;

(2) A member is not permitted to transfer, assign or resign their membership.

## **6. Members obligations**

6. (1) Every member is obliged to comply with:

(a) the provisions of this Constitution;

(b) conduct rules, regulations, architectural guidelines and design manual, and

(c) any agreement concluded on behalf of the Association insofar as such agreement may directly or indirectly impose obligations on a member in its capacity as a member.

(2) The rights and obligations of a member shall not be transferable, and every member shall, to the best of their ability, further the objects and interests of the Association.

(3) The members shall be jointly liable for expenditure incurred in connection with the Association, and payment of the levies determined and due to the Association.

(4) A member shall not sell, alienate or give transfer of an erf unless:

(a) the proposed transferee has irrevocably bound themselves to become a member of the Association, and to observe the provisions of this Constitution, and

(b) the following condition shall be inserted into the Title Deeds of each of the erven within the Association, binding each owner and all successors in title:

*Every owner of an erf or any interest therein shall automatically become a member of the Welgevonden Home Owners Association on date of transfer, and shall be subject to the Condition of the Association, and all rules, regulations and guidelines issued in terms thereof until such owner ceases to be an owner.*

*The erf shall not be transferred without the prior written consent of the Association, which consent shall be evidenced by a clearance certificate issued by the Association stating that the owner of the erf has discharged all of its financial obligations to the Association in respect of the period up to and including the date specified in such certificate, and the transfer takes place prior to or on the date specified in such certificate.*

*Further, that the owner of an erf has complied with all of its obligations to the Association in terms of the Constitution of the Association and any rules, regulations and guidelines issued and resolutions passed by the members and the Trustee Committee of the Association in terms of the Constitution of the Association, and the Association consents to the transfer of the erf.*

## **7. Levies**

7. (1) The Association shall establish and maintain a levy fund for the purposes of meeting all expenses of the Association in respect of:
  - (a) the cost of fulfilling any maintenance or repair of the common area, including improvements;
  - (b) payment of all expenses necessary or reasonably incurred in connection with the control, management and administration of the Association;
  - (c) maintenance of the storm water and water supply piping sewers, and the roads, as reasonably required and subject to resolution of the members, in the event of the failure of the Local Authority to maintain same as so required, and
  - (d) in general the attainment of its objects.
- (2) In calculating levies, the Trustee Committee shall take into account all income, if any, earned by the Association.
- (3) The Trustee Committee shall be entitled to require that the Association make contributions to such levy fund, in the form of levies, for the purposes of satisfying its expenses to equal as nearly as is reasonably practical such estimated amount.
- (4) The levy payable by a member shall be recovered by the Association from each member on an equal basis.
- (5) The procedure for raising and collecting levies shall be as follows:
  - (a) the Trustee Committee shall submit the estimated expenditure to the annual general meeting of the Association for consideration, and
  - (b) the meeting shall approve the items of expenditure, with or without amendment.



(6) The Trustee Committee may, from time to time, make special levies upon its members effective from the date of the passing of its resolution in respect of such expenses which have not been included in the levies approved at the annual general meeting, and such levies may be imposed and shall be payable in 1 (one) sum or by such instalments, and at such time or times as the Trustee Committee may determine.

(7) The Association shall not be entitled to undertake, on behalf of its members, any improvement of the common area, of a major capital nature, being works that are not budgeted for, and that will cost more than RXXX (XXX Rand) exclusive of Value Added Tax (VAT), without the sanction of a resolution adopted during a general meeting of members.

(8) All levies are due and payable on a monthly basis, in advance, and shall be paid by the 1st (first) day of each and every month.

(9) The Trustee Committee may determine that a levy is payable annually in advance in respect of the year for which it is calculated, or in such monthly instalments as it may determine.

(10) Until such time as a new levy pertaining to a forthcoming year has been determined, every member of the Association shall continue to pay the existing levy currently in force.

(11) If a member fails to make payment on the due date of levies and/or other amounts payable by such member, including interest, the Association may institute legal proceedings against such member without further notice, and such member will be liable for and shall pay all legal costs on the scale as between attorney and own client, together with collection commission and any other expenses and charges incurred by the Association in recovering such amounts.

(12) The decision of the Trustee Committee in calculating the levies shall be final and binding on all members, subject to any direction given or restriction imposed by the members at a general meeting and/or and Adjudication Order from Community Schemes Ombud Service.

## **8. Accounts**

8. (1) The financial year end of the Association is the last day of June of each year, subject to amendment by the Trustee Committee.

(2) The Trustee Committee shall cause proper books of account and records to be kept, so as to fairly explain the transactions and financial position of the Association including:

(a) a record of the assets and liabilities, and

(b) a record of all sums of money received and expended, and the matters in respect of which such receipt and expenditure incurred.

(3) On the written application of any member, the Trustee Committee shall make all or any of the books of accounts and records available for inspection by such member, on reasonable conditions which may be set by the Trustee Committee.

(4) The records and documents must be kept in such a manner as to be compliant with the Protection of Personal Information Act 4 of 2013 (“the POPIA”).

(5) The Association must appoint an information officer as the responsible party, under the POPIA, to ensure compliance with the POPIA, and to develop and apply a written policy relating to the procedures required to be followed within the Association in regard to the implementation of the POPIA.

(6) The information officer, in their discretion, taking into consideration the provisions of the POPIA, must determine which record/s and/or document/s are confidential, and may not be distributed without the prior written consent of the person/s to which it relates.

(7) Upon receipt of a request for access to the records and documents of the Association for the purpose of inspection and copy/ies, the information officer must ensure that such request is made by a registered member/s or a person duly authorised in writing by the registered member/s or its duly authorised representative.

(8) When receiving a request for access to the records and documents of the Association for the purpose of inspection and copy/ies, the information officer must ensure that such request is in compliance with the POPIA, in that no such request will be permitted if the reason for such request is not provided by the party requesting such access for inspection and copy/ies, and further if the reason/s provided are not deemed reasonable in regard to the administration and management of the Association, or any legitimate purpose under this Constitution.

(9) When a requesting party is in receipt of any record/s and/or document/s of the Association, such person is responsible to ensure compliance with the POPIA in their intended use of the record/s and/or document/s so obtained.

(10) The Association may, for legitimate purposes, utilise and/or process the record/s and/or documents of the Association for the purposes of the administration and management of the Association.

(11) The Trustee Committee shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.

(12) At each annual general meeting, the Trustee Committee shall lay before the Association, financial statements for the immediately preceding financial year of the Association. Such financial statements shall be drawn up in accordance with generally accepted accounting practice, and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustee Committee.

(13) The Trustee Committee shall cause all monies received, to be deposited to the credit of an account/s with a registered commercial bank, in the name of the Association, and such monies shall be withdrawn only for the purpose of payment of the expenses of the Association or investment/s.

(14) Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution, or any other registered deposit receiving institution approved by the Trustee Committee from time to time.

(15) Interest on monies invested shall be used for any lawful purpose in the interest of the Association.

(16) The accounts of the Association shall be examined annually, and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

(17) Should the Association be wound up and/or dissolved, subject to special resolution of the members, the Association shall not be permitted to distribute its funds to any person other than to a similar association of persons.

(18) Should the Association be wound up and/or dissolved for any reason whatsoever, as aforementioned, the remaining assets must be distributed to a similar association of persons with similar objects of the Association, and which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act 58, 1962, as amended, from time to time.

## **9. Trustee Committee**

9. (1) The number of Trustee Committee members shall be determined from time to time by the members of the Association at general meeting, provided that there shall be not less than 3 (three) members, and not more than 7 (seven).

(2) The Trustee Committee members are required to be members of the Association, and only 1 (one) representative of a member, being a juristic person, may be a Trustee Committee member.

(3) All nominations of the position of Trustee Committee member must be given in writing by a member of the Association, supported by the written acceptance of such nomination, and delivered to the Association not less than 48 (forty-eight) hours before the annual general meeting or special general meeting where such election will take place.

(4) A Trustee Committee member shall, by accepting their appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.

(5) Each of the Trustee Committee members shall continue to hold office until the annual general meeting of the Association following their appointment, at which meeting such the Trustee Committee member shall be deemed to have retired from office but will be eligible for re-election at such meeting.

(6) A Trustee Committee member shall be deemed to have vacated his office as such upon:

(a) their estate being sequestrated, whether provisionally or finally or upon their surrendering their estate;

(b) their making any arrangement or composition with their creditors;

(c) their conviction for any offence involving dishonesty;

(d) their becoming of unsound mind;

(e) their resigning from such office in writing;

(f) their being removed from office by a majority resolution of the Trustee Committee members excluding the vote of the person being removed, provided that due notice, containing such intention of removal, has been given, and the remaining Trustee Committee members, by majority resolution, may decide on the replacement of such Trustee Committee member;

(g) their death;

(h) their no longer be a member of the Association, and

(i) their withdrawal of authority as a representative of a member being a juristic person.

(7) Notwithstanding the fact that a Trustee Committee member shall be deemed to have vacated their office, anything done by such person in such capacity, in good faith, shall be valid until the fact that they are no longer a Trustee Committee member has been recorded in the minutes of the Trustee Committee.

(8) Should the office of a Trustee Committee member fall vacant prior to the next annual general meeting, such vacancy must be filled by the majority of the Trustee Committee, and should all Trustee Committee members resign, the estate manager and/or managing agent may call a general meeting of the members for the purpose of filling the vacancies to, at least, the minimum number of Trustee Committee members.

(9) The Trustee Committee will determine, by majority resolution, a chairperson from their number.

(10) Save as otherwise provided in this Constitution, the chairperson shall preside at all meetings of the Trustee Committee and all general meetings of the Association, and shall perform all the duties incidental to the office of chairperson, and such other duties as may be prescribed by the Trustee Committee members.

(11) If the chairperson vacates the chair during the course of a meeting, or is not present, or is, for any other reason, unable to preside at any meeting, the Trustee Committee members present at such meeting shall choose another chairperson from their number for such meeting.

(12) If the chairperson vacates the office of the chairperson, the Trustee Committee members, by majority resolution, shall elect another chairperson, who shall hold office as such for the remainder of the period.

(13) A Trustee Committee member shall be disqualified from voting in respect of any contract, dispute and/or legal proceedings with the Association, by virtue of any interest they may have therein, save with the approval of the remaining Trustee Committee members following full disclosure of such interest.

(14) No contract concluded on behalf of the Association shall be valid and binding, unless it is signed by the chairperson and 1 (one) other Trustee Committee member, duly authorised by resolution of the majority of the Trustee Committee members, whereby the Association is bound.

(15) The Trustee Committee members shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as the Trustee Committee, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

(16) The Trustee Committee members may not make loans on behalf of the Association to members or to themselves or any other person whatsoever.

(17) Each Trustee Committee member must stand in a fiduciary relationship to the Association.

(18) Without derogating from the generality of the expression "fiduciary relationship", means that every Trustee Committee member must in relation to the Association, act honestly and in good faith, and in particular exercise their powers in terms of this Constitution, in the interest and for the benefit of the members of the Association, and no Trustee Committee member owned company may be a service provider to the Association.

(19) Such Trustee Committee members must not act without or exceed those powers, and must avoid any material conflict between their own interests and those of the Association, and in particular, must not receive any personal economic benefit, direct or indirect, from the Association or any other person, and must notify every other Trustee Committee member of the nature and extent of any direct or indirect material interest which they may have in any contract of the Association, as soon as such Trustee Committee member becomes aware of such interest.

(20) A Trustee Committee member who acts in breach of their fiduciary relationship, is liable to the Association for any loss suffered as a result thereof by the Association, or any economic benefit received by the Trustee Committee member by reason thereof.

(21) Except as regards the duty referred to above, any particular conduct of a Trustee Committee member does not constitute a breach of a duty arising from their fiduciary relationship to Association if such conduct was preceded or followed by the written approval of all the members of the Association, where such members were or are cognisant of all the material facts.

(22) A Trustee Committee member who has any direct or indirect personal interest in any matter to be considered by the Trustee Committee members must not be present at or play any part in the consideration or decision of the matter concerned.

(23) Each Committee Member must:

(a) take reasonable steps to inform and educate themselves about the Association, its affairs and activities and the legislation and governance documentation in terms of which the Association operates;

(b) take reasonable steps to obtain sufficient information and advice about all matters to be decided by the Trustee Committee members to enable them to make conscientious and informed decisions;

(c) unless excused by the chairperson on reasonable grounds, to attend all meetings of the Trustee Committee, attend the annual general meeting;

(d) exercise an active and independent opinion with respect to all matters to be decided by the Trustee Committee;

(e) exercise due diligence in relation to any business of, and necessary preparation for any meeting, and

(f) exercise a resolution within their allocated portfolio, subject to the mandate of the majority of the Trustee Committee.

## **10. Trustee Committee meetings**

10. (1) The Trustee Committee may meet, as they determine, for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, provided that any Trustee Committee member has the right to convene a meeting, on 7 (seven) calendar days' written notice to all Trustee Committee members.

(2) A resolution in writing, signed by all the Trustee Committee members, when no Trustee Committee meeting has and/or can be held, shall be valid and binding as if it had been passed at a meeting of the Trustee Committee duly convened and constituted.

(3) The quorum necessary for the holding of any Trustee Committee meeting shall be a majority of the total number of the Trustee Committee members.

(4) Any resolution of the Trustee Committee shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the resolution will fail.

(5) In regard to minutes of the Trustee Committee meetings, the Trustee Committee shall ensure the following:

(a) that minutes are taken of every meeting;

(b) that minutes shall be reduced to writing, without undue delay, after the meeting has closed and shall then be certified correct by the chairperson of the meeting, and circulated to all members, and

(c) that all minutes are kept in minute books, to be retained for perpetuity.

(6) All resolutions recorded in the minutes of any meeting of the Trustee Committee, shall be valid and in full force and effect, as therein recorded, with effect from the passing of such resolution/s, and until varied or rescinded.

(7) No resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the members, or any of the Trustee Committee members, unless such resolution is competent within the powers of the Trustee Committee.

(8) The proceedings of any the Trustee Committee meeting shall be conducted in such reasonable manner and form as the chairperson shall decide, in accordance with the Common Law of Meetings.

## **11. Indemnity**

11. (1) Any person/s on the common area of the Association, or using any of its facilities, do so entirely at their own risk, and no person/s will have any claim against the Association of whatsoever nature arising from such use, nor for anything which may befall any person/s during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise.

(2) The Association will not be liable for any injury, loss or damage of any description that any person/s may sustain, physically or to their property directly or indirectly, in or about the common area or its amenities, nor for any act done or for any neglect on the part of the Association, the Trustee Committee, or any of the Association employees, agents and/or contractors.

## **12. Written consent**

12. (1) Whenever the written consent of the Trustee Committee, including the respective portfolio Trustee Committee member or estate manager is required in terms of this Constitution, application for such consent must be made in writing, and the applicant member must furnish the Trustee Committee, relevant portfolio Trustee Committee member or estate manager with all the details and documents as may be required by the Trustee Committee.

(2) The written consent of the Trustee Committee in terms of this Constitution, or the withdrawal thereof, shall be in such format as decided upon by the Trustee Committee from time to time.

(3) The Trustee Committee may attach reasonable conditions to their consent.

(4) The Trustee Committee may, by written notice, notify the applicant member concerned, if any condition imposed is not complied with, including a warning that the consent will be withdrawn if such conditions are not complied with.

(5) If non-compliance with the conditions persists for a period of 14 (fourteen) days after the Trustee Committee's notice, the Trustee Committee may withdraw their consent, by written notice to the applicant member.

## **13. Domicilium**

13. (1) The Trustee Committee shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:

(a) such address shall be the address of the address of any duly appointed managing agent or estate manager, and

(b) the Trustee Committee shall give notice to all members of any change of such address.

(2) Where the members email address is recorded with the Association, such email address will be used for such notices.

## **14. General meetings of members**

14. (1) The Association shall, within 4 (four) months of the financial year end of the Association hold annual general meetings.

(2) Such annual general meetings shall be held at such time and place, including by remote attendance, as decided by the Trustee Committee from time to time.



(3) A special general meeting must be called if a written request of more than 25% (twenty-five percent) of the members is received by the Trustee Committee, and such requisitioning owners may call such meeting on a 7 (seven) day notice period if the Trustee Committee fails to call such meeting within 14 (fourteen) days of such request, the date of the special general meeting being within 14 (fourteen) calendar days of such notice.

## **15. Notice**

15. (1) An annual general meeting shall be called on no less than 14 (fourteen) days' notice, and a special general meeting on no less than 30 (thirty) days' notice.

(2) The notice shall specify the place, including remote attendance, the day and the hour of the meeting and, in the case of special business, the general nature of that business and the reasons for it.

(3) Notice of the annual general meeting and/or a special general meeting shall be sent by email to all members, unless an alternative has been given, in writing, by a member for such purpose.

(4) The accidental omission to give notice of any resolution, or to present any document required to be given or sent in terms of this Constitution, including the non-receipt of notice of a meeting by any person entitled to receive notice, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

## **16. Proxies**

16. (1) A member may be represented at an annual general meeting and/or special general meeting by a proxy who need not be a member of the Association.

(2) The instrument appointing a proxy shall be in writing, and signed by the member concerned or their duly authorised agent in writing, but need not be in any particular form.

(3) Where more than 1 (one) person is a member, any one of those persons may sign the instrument appointing a proxy on such members' behalf. Where a member is a company, the proxy may be signed by any person authorised by resolution of the board of directors of the company, or by its secretary and, where a close corporation, by any member of such close corporation, and where an association of persons, by the secretary thereof, and where a trust, by a person duly authorised by the trustees of such trust.

(4) The instrument appointing a proxy and the power of attorney, if any, under which it is signed or a notarially certified copy thereof, shall be lodged with the Association prior to the commencement of the meeting or adjourned meeting concerned.

(5) The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.

## **17. Quorum**

17. (1) No business shall be transacted at any annual general meeting and/or special general meeting unless a quorum is present, physically or by remote attendance, when the meeting proceeds to transact business, and when any resolution is to be passed.
- (2) No person, other than a member duly registered, and who shall have paid every levy and other sum, if any, which shall be due and payable to the Association, and who is not under suspension in regard to their privileges of membership, shall be entitled to be present, either personally or represented by proxy, at such meeting.
- (3) The quorum necessary for the holding of any meeting shall be members having 33% (thirty-three percent) of the total voting rights allocated to members entitled to attend and vote thereat.
- (4) If, within 30 (thirty) minutes, a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same place and time and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes of the commencement time set for the meeting, the members present shall constitute a quorum.

## **18. Agenda**

18. (1) The following matters shall be dealt with at every annual general meeting:
- (a) confirmation of the quorum;
  - (b) approval of the minutes of the previous annual or special general meeting;
  - (c) the consideration of the financial statements for the Association for the financial year preceding the date of such meeting;
  - (d) the consideration and approval of the appointment of the auditor for the forthcoming financial year;
  - (e) the consideration and approval of the insurance of the Association;
  - (f) the consideration and approval of the budget, including the proposed levies, with or without amendment;
  - (g) the number and election of the Trustee Committee members;
  - (h) the imposition of any restrictions on, and the giving of directives to, the Trustee Committee, and
  - (i) other special business, if any.

## **19. Procedure**

19. (1) The chairperson shall preside as such at all meetings, provided that if they are not present within 15 (fifteen) minutes after the time appointed for the holding thereof, the majority of the Trustee Committee members present at the meeting may determine the chairperson of the meeting, who shall exercise all the powers and duties of the chairperson in relation to such meeting.

(2) The chairperson may, or be directed to, adjourn a meeting, but no business shall be transacted at any adjourned meeting, other than the business that might have been transacted at the meeting from which the adjournment took place. No notice needs to be given of the adjourned meeting, save for an announcement of the date, time and venue, including remote attendance, of the adjourned meeting.

## **20. Voting**

20. (1) At every annual general meeting or special general meeting, every member present in person or represented by proxy, and entitled to vote shall, including by electronic participation, should such method be available, be allocated a vote per erf owned by such member, provided that where an erf is registered in the name of more than 1 (one) person, a joint vote will be exercised.

(2) The Association will not have a vote.

(3) No person, other than a member duly registered, and who shall have paid every levy and other sum, if any, which shall be due and payable to the Association, in respect of or arising out of their membership, and who is not under suspension in regard to their privileges of membership, shall be entitled to vote, at such meeting.

(4) At any annual general meeting or special general meeting, a resolution put to the vote at the meeting, shall be decided on an ordinary majority of votes represented by members entitled to attend and vote thereon, present in person or represented by proxy.

(5) Unless any member present in person or represented by proxy, before closure of the meeting, objected to any declaration made by the chairperson as to the result of any vote, or in regard to the validity of the procedure at such meeting, such declaration by the chairperson shall be deemed to be a true and correct statement of the outcome of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted.

(6) A resolution put to the vote shall be decided on a show of hands, unless a poll is demanded by a majority of those persons present or represented, or decided upon by the chairperson before the declaration of the result of the show of hands, to be conducted as so determined by the chairperson, and may be withdrawn by the majority of the members present or represented, or by the chairperson.

## **21. Minutes**

21. (1) The Trustee Committee members shall ensure:

(a) that minutes are taken of every annual general meeting and/or special general meeting;

(b) that the minutes shall be reduced to writing, without undue delay, after the meeting has closed and shall then be certified correct by the chairperson of the meeting, and circulated to the members, and

(c) that all minutes are kept in minute books or in a secure electronic format, to be retained for perpetuity.

(2) All resolutions recorded in the minutes, shall be valid and in full force and effect, as therein recorded, with effect from the passing of such resolution/s, and until varied or rescinded.

(3) The proceedings of any annual general meeting and/or special general meeting shall be conducted in such reasonable manner and form as the chairperson shall decide, in accordance with the Common Law of Meetings.

## **22. Defamation privilege**

22. (1) Every member shall be deemed by virtue of their membership, to have waived, as against every other member, and persons engaged to perform the function or duty on behalf of, or for the benefit of the Association, all claims and rights of action which such member may otherwise have had in law, arising as a result of any statement, report, complaint or notice of, or concerning, such member or any reference to such member made at any meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory of such member, or otherwise injurious to the dignity, reputation, business or financial interest of such member, whether such statement be true or false.

## **23. Complaints**

23. (1) All complaints are to be submitted, in writing to the Trustee Committee.

(2) the Trustee Committee must investigate the matter and notify the alleged contravening member and/or occupier in writing of the complaint.

(3) the Trustee Committee shall ensure that action is taken against the person/s, who are allegedly in contravention, including the issuing of a warning and/or penalty.

## **24. Dispute resolution**

24. (1) In the event of any internal dispute arising in regard to the administration and/or management of the Association, excluding any dispute between members, the parties to the dispute must engage each other in good faith, with a view to resolving the dispute within a reasonable timeframe.

(2) In order to notify the relevant parties against whom a complaint is made, of the dispute, and for the purpose of holding an internal dispute resolution meeting, the complainant must lodge a signed and motivated complaint with the Trustee Committee.

(3) In the event of the dispute not being resolved internally, a party to the dispute may make an application for relief to the Community Scheme Ombud Service.

## **25. Contravention of this Constitution and imposition of penalties**

25. (1) If the owner, in the opinion of the Trustee Committee, is in contravention of any provision of this Constitution, it may:

(a) furnish the member with a written notice, which may in the discretion of the Trustee Committee, to be delivered by hand, email or by registered post;

(b) include in the notice, a description of the provision that has allegedly been contravened, and the recipient must be warned that if the conduct or contravention persists, a penalty will be imposed;

(c) if the member persists with such contravention, convene a meeting to discuss the matter;

(d) issue a written notice, by which the alleged offender, is informed of the purpose of the meeting and invited to attend. At the meeting, the member must be given the opportunity to present their case, but except insofar as they will be permitted by the chairperson, they may not participate in the conduct of the meeting;

(e) after the member has been given the opportunity to present their case, agree that a provision of this Constitution has been contravened, and by majority decision, impose on the offender a penalty in the discretion of the Trustee Committee, and

(f) record the outcome of the meeting, and resolve to uphold the penalty, and/or withdraw, increase or reduce the penalty.

## **26. Amendment**

26. (1) Every amendment to this Constitution of whatever nature, including any addition thereto, deletion therefrom or substitution thereof shall require the approval of at least 75% (seventy-five percent) of the total number of votes allocated to members, which majority shall be expressed at a special general meeting called specifically for such purpose, and the notice of such meeting shall, in addition to comply with the requirements for the convening of a meeting, set out in specific terms the proposed amendment.

**Undertaking**

I/we as a member/s do hereby confirm and validate that by signing this page, that I/we have read and understand each clause of this Constitution.

\_\_\_\_\_  
Signature