

# **FERNWOOD ESTATE**

## **HOME OWNERS' ASSOCIATION**

### **CERTIFICATE OF APPROVAL**

*THIS IS TO CERTIFY THAT THE CONSTITUTION OF FERNWOOD ESTATE HOME OWNERS' ASSOCIATION WAS THIS DAY APPROVED BY COUNCIL IN TERMS OF SECTION 29(2)(b)(iii) OF THE LAND USE PLANNING ORDINANCE, 1985, (NO 15 OF 1985)*

*SIGNED AND SEALED AT SOMERSET WEST ON THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_.*

\_\_\_\_\_  
*Signed in terms of Section 210 of the Municipal Ordinance 1974 (No 20 of 1974)*

**CONSTITUTION OF THE FERNWOOD ESTATE HOME OWNERS' ASSOCIATION**

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**1. NAME**

*The name of the association is FERNWOOD ESTATE HOME OWNERS' ASSOCIATION, which is an Association established in terms of Section 29 of the Land Use Planning Ordinance 1985.*

**2. DEFINITIONS AND INTERPRETATION**

*In this constitution, unless the context indicates the contrary:*

2.1 *The "Association" shall mean FERNWOOD ESTATE HOME OWNERS' ASSOCIATION.*

2.2 *"Common Area" shall mean erven 16641, 16624, 16625, 16626, 16627, 16628, 16629, 16630, 16631, 16632, 16633, 16634, 16635 and 16636 Somerset West and any further erven in the Township Area designated for the general use and benefit of the members, with any improvements or cultivation thereon, including the private roads, private open space, the security gate and the security fencing perimeter, and amenities within the Township Area.*

2.3 *"Constitution" shall mean this document as may be amended from time to time.*

2.4 *"Erf" shall mean an erf in the Township Area, being one of the erven referred to in clause 2.9, but excluding the Common Area.*

2.5 *"General Design Criteria" shall mean the aesthetic, environmental, architectural and landscaping guidelines for the Township Area as referred to in Clause 8.2.1 hereof.*

2.6 *"Member" shall mean a member as defined in Clause 5 hereof.*

2.7 *"Person" shall include a Company, Close Corporation, Trust, Partnership or other Association of persons entitled by law to hold title to immovable property.*

2.8 *"Rules" shall mean the Rules referred to in Clause 8.2.2 hereof.*

2.9 *"The Township Area" shall mean the subdivision of erf 15746 Somerset West (comprising the erven numbered 16456 to 16641), and the subsequent subdivision of erf 16572 Somerset West (comprising the erven numbered 16903 to 16947) and the subdivision of erf 16529 Somerset West (comprising the erven numbered 16949 to*

16996), and any further subdivisions of the said land, comprising the entire development known as Fernwood Estate.

- 2.10 Words importing the singular shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter gender shall include the masculine and feminine genders.

### **3. INCORPORATION**

The Association shall come into existence simultaneously with the registration of transfer of the first erf in the Township Area from the developer to the first purchaser thereof.

### **4. OBJECTS**

The objects of the Association are to:

- 4.1 promote and enforce standards, not the least of which should be the congenial atmosphere in the Township Area in such a way that members may derive the maximum collective benefit therefrom;
- 4.2 promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Township Area in order to achieve harmonious development thereof;
- 4.3 control and maintain the Common Area and possible certain aspects of individual erven;
- 4.4 maintain and repair all services in the Common Area;
- 4.5 ensure proper security and living standards within the Common and Township Areas **as prescribed by the members at each AGM.**
- 4.6 enforce members' obligations in terms of this Constitution, the General Design Criteria and the Rules;

And the Association shall have the powers to do such acts as are necessary to accomplish these objects.

5. **MEMBERS**

- 5.1 *Membership of the Association shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more erven in the Township Area.*
- 5.2 *Upon registration of ownership of the erf in the name of a purchaser, membership of the Association by such purchaser shall be automatic and obligatory and members shall be obliged to comply with the provisions of this Constitution.*
- 5.3 *No person shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf in the Township Area.*
- 5.4 *Where an erf is registered into the name of more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one members of the Association and shall nominate one person (who may be one of them) to represent them and to vote on their behalf at General Meetings of the Association.*
- 5.5 *Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of one or more erven in the Township Area from the previous member to the new member.*
- 5.6 *A member shall not be entitled to sell his property unless it is a condition of the sale that:*
- 5.6.1 *the Purchaser becomes a Member of the Association and acknowledges that a condition having the following (or similar wording) will be inserted in the Title Deed of the property "the within property may not be sold or transferred without the prior written consent of the FERNWOOD ESTATE HOME OWNERS' ASSOCIATION of which the within transferee shall become a member, which consent shall not be unreasonably withheld.*
- 5.6.2 *the registration of transfer of the Erf into the name of that Purchaser shall ipso facto constitute the transferee as a Member of the Association.*
- 5.6.3 *the Purchaser, by his signature to the Deed of Sale undertakes to abide by the rules of the constitution of the Association.*
- 5.7
- 5.7.1 *Every member shall be entitled to enjoy the Common Area but shall be obliged to pay such levy as determined from time to time by the Association for the maintenance and upkeep of the private road, gate, gardens, cleaning,*

*water and light in the Common Area and payment of expenses necessary or reasonably incurred in managing the Association's affairs.*

*5.7.2 Responsibility for the payment of levies shall commence on the member taking possession of his erf and shall be payable monthly in advance.*

*5.8 No member shall be entitled to lease his Erf unless it is a specific condition of such lease that the Lessee be handed a copy of the Constitution of the Association and that such Lessee undertakes to abide by the conditions thereof as far as they may affect such Lessee.*

*5.9 No member shall be entitled to sell or transfer his Erf without the written consent of the Committee, which consent shall not be unreasonably withheld, provided that:*

*5.9.1 all levies due in respect of the Erf and any other amounts due by the member to the Association have been paid or secured to the satisfaction of the Committee;*

*5.9.2 there has been substantial compliance with the provisions of this Constitution, the Rules and the General Design Criteria.*

## **6. MANAGEMENT**

*6.1 The members of the Committee, shall after proposal and seconding, be elected at each Annual General Meeting of the Association by ballot or show of hands (if the meeting so determines) by the members present in person or represented by proxy or by a representative recognized by law at the general meeting, provided that no member shall be eligible for election unless he has been duly proposed and seconded and provided his levy for the current year has been paid. A Committee member shall be a natural person and shall be an owner **or the spouse or life partner of an owner** or the representative or nominee of ~~an owner that is~~ a company, close corporation, trust or other legal persona **that is an owner**.*

*6.2 The Committee shall consist of a Chairman, and four others each representing a portfolio and three (3) members present shall constitute a quorum. The four portfolios are Security; Maintenance and Building Operations; Gardening and Irrigation; and Finances and Budgets. The Chairman shall be responsible for the day to day management of the Association. All matters at any meeting shall be determined by a majority of those present and voting. In the event of an equality of votes, the Chairman of any meeting shall have a casting as well as a deliberative vote.*

- 6.3 *Committee Members shall cease to hold office –*
- 6.3.1 *at every Annual General Meeting, but shall be eligible for re/election;*
  - 6.3.2 *if by notice to the Committee, he resigns his office;*
  - 6.3.3 *if he absences himself from (three) consecutive meetings of the Committee without leave of absence;*
  - 6.3.4 *if he ceases to be a member of the Association;*
  - 6.3.5 *in the event of his death;*
  - 6.3.6 *upon his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;*
  - 6.3.7 *upon his making any arrangement or compromise with his creditors;*
  - 6.3.8 *upon his conviction for any offence involving dishonesty;*
  - 6.3.9 *upon his becoming of unsound mind or being a found lunatic;*
  - 6.3.10 *upon his being removed from office by a resolution of the majority of the Committee Members or by a resolution of the members in general meeting;*
- provided that anything done in the capacity of a Committee Member in good faith, by a person who ceases to be a Committee Member, shall be valid until the fact that he is no longer a Committee Member has been recorded in the minute book of the Committee.*
- 6.4 *Casual vacancies on the Committee may be filled either by co-option or by the remaining members of the Committee, subject to confirmation at the next Annual General Meeting.*
- 6.5 *Committee members shall receive no remuneration.*
- 6.6 *No Committee member shall be liable to the Association or to any member thereof or to any other person whomsoever for any act or omission by himself, the Association or its servants or agents. All members of the Committee are indemnified against any loss or damage suffered by him in consequence of any purported liability provided such member has upon the basis of information known to him acted in good faith and without gross negligence and/or without dishonesty.*
- 6.7 *Committee meetings shall be held as decided by the Committee and minutes shall be kept of Committee meetings and decisions and of the General Meetings and decisions of the Association.*

6.8 *The Committee shall cause proper books of account and records of the administration and finance of the Association to be kept and to be retained for a period of 6 (six) years.*

6.9 *The Committee shall cause to be prepared, and shall lay before every Annual General Meeting, a financial statement in conformity with generally accepted accounting practice, which shall be audited annually.*

7. **GENERAL MEETINGS OF THE ASSOCIATION**

7.1 Annual General Meetings shall be held on a date fixed by the Committee, in respect of which the Committee shall give at least 21 (twenty one) days notice in writing to each Member, accompanied by an Agenda. A full annual report of the Committee shall be tabled at every Annual General Meeting. Each said meeting shall also deal with the election of Committee members for the forthcoming year, the consideration and approval of the financial statements for the preceding financial year, ~~and~~ the determination of the levy **as well as the standard of proper security to be maintained by the Association within the financial constraints on the budget** for the forthcoming year.

7.1 *Annual General Meetings shall be held on a date fixed by the Committee, in respect of which the Committee shall give at least 21 (twenty one) days notice in writing to each Member, accompanied by an Agenda. A full annual report of the Committee shall be tabled at every Annual General Meeting. Each said meeting shall also deal with the election of Committee members for the forthcoming year, the consideration and approval of the financial statements for the preceding financial year, and the determination of the levy for the forthcoming year.*

7.2 *Special General Meetings may be called by the Committee whenever they consider it desirable and shall be called upon the requisition thereto in writing of 9 (nine) members, in either event on 7 (seven) days written notice by the Secretary specifying the business to be discussed.*

7.3 *At all meetings the chair shall be taken by the Chairman or, in his absence, by the Vice-Chairman. In the absence of both, the Members present shall elect a Chairman.*

7.4 *The Chairman shall not have a casting vote and a quorum at all General meetings shall consist of at least eighteen (18) members owning erven in the Township Area.*

7.5 *Each member present in person or by proxy shall be entitled to 1 (one) vote for each erf owned in the Township Area.*



7.6 *At all meetings votes on any matter shall be by show of hands of those present, the majority vote to count, unless the meeting decides otherwise.*

8. **POWERS**

8.1 *The management and administration of the Association shall vest in the Committee which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself, subject to the provisions of this Constitution, the Rules and the General Design Criteria and any restriction imposed or direction given by the owners at a general meeting of the Association.*

8.2 *Without in any way limiting the generality of the a foregoing, such powers shall include but not be limited to, the following:*

8.2.1 *the determination from time to time of what constitutes appropriate architectural standards, using as a guideline the GENERAL DESIGN CRITERIA appended as Annexure "B" to the initial Deed of Sale of the erven, provided that the provisions of the GENERAL DESIGN CRITERIA may be added to, amended, substituted or repealed from time to time in accordance with clause 11.2 of this Constitution.*

8.2.2 *The determination from time to time of what constitutes environmental and behavioural standards, and in this regard to make appropriate Rules regarding the management of the Township Area (including Conduct Rules governing the right of use and enjoyment of members and occupants of their erven and the common areas and rules relating to the keeping of pets, the parking and driving of vehicles, security, prohibiting nuisance and so forth), which Rules may be added to, amended, substituted or repealed from time to time in accordance with clause 11.2 of this Constitution;*

8.2.3 *The performance of such acts as are necessary to accomplish the objects expressed or implied herein, including the maintenance of the Common Area;*

8.2.4 *The investment or re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;*

8.2.5 *The operation of banking and savings accounts with all powers required by such operations;*

- 8.2.6 *The negotiating and concluding of contracts on behalf of the Association;*
- 8.2.7 *To engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Committee and on such terms as the Committee shall decide;*
- 8.2.8 *The performances of such acts as are required to ensure the security of persons and property in the Common Area;*
- 8.2.9 *The formation of sub-committees and the delegation of such powers to such sub-committees as may be deemed necessary;*
- 8.2.10 *To sue and to defend actions in the name of Association and to appoint legal representatives for this purpose;*
- 8.2.11 *The levying of a charge payable by members as provided in Clause 5.7 hereof and subject to the said clause, the determination from time to time and as frequently as they may, in their sole and absolute discretion, consider necessary or expedient, of the amount of the levy (if any) to be paid to the Association by its members.*
- 8.2.12 *The appointment of a managing agent from time to time to control, manage and administer the Township Area and to exercise such power and duties as may be entrusted to the managing agent, including the power to collect levies.*
- 8.2.13 *To purchase or otherwise acquire, take transfer of, mortgage, sell, give transfer of, or hire or let immovable property;*
- 8.2.14 *To purchase, hire or otherwise acquire movable property for the use of the Association or for the use of the members for their enjoyment or protection, or in connection with the enjoyment or protection of the Common Area;*
- 8.2.15 *To borrow moneys required by it in the performance of its functions or the exercise of its powers and to secure the repayment of moneys borrowed by it and the payment of interest thereon, by negotiable instrument or by the hypothecation and/or cession of unpaid levies, or by mortgaging any property vested in it;*

- 8.2.16 *To do all things reasonably necessary for the enforcement of the Constitution, the General Design Criteria and the Rules and for the control, management and administration of the Common Area.*
- 8.3 *The Committee shall, within fourteen (14) days after each annual general meeting hold a Committee meeting and shall by way of a Committee resolution, determine the levy payable by each member by apportioning the approved total amount required to the members equally in respect of every erf in the Township Area. The levies so determined shall be due and payable upon the adoption of the Committee resolution. The levies shall be paid in equal monthly instalments over a period of 12 months, monthly in advance on the first day of every month. The Committee shall advise each member in writing of the levy payable by him.*
- 8.4 *After the expiry of a financial year and until members become liable for levies in respect of the ensuing financial year, members shall pay levies in the same amounts and instalments as were due and payable by them during the expired financial year.*
- 8.5 *The Committee may from time to time when necessary make special levies upon the members, which shall be apportioned to members equally in respect of every erf in the Township Area. Special levies may be payable in the sum or by such instalments and at such time or times as the Committee shall think fit.*
- 8.6 *The obligation of a member to pay levies to the Association shall cease upon such member ceasing to be a member of the Association, without prejudice to the right of the Association to recover arrear levies. A member's successor in title to the erf shall be liable as from the date upon which such successor becomes a member pursuant to the transfer of the erf to him, to pay the levy attributable to the erf.*
- 8.7 *No member shall be entitled to any of the privileges of membership unless and until such member shall have paid every levy or other amount (if any) due and payable by him to the Association. Specifically no member who has become in arrears with levies or any other payments to be made to the Association, shall be entitled to cast a vote, in his personal capacity or by means of a proxy, at any Annual General Meeting or Special General Meeting of the Association.*
- 8.8 *Members shall be liable for payment of interest on outstanding levies and other amounts due to the Association at a rate determined by the Committee from time to time, calculated from the due date for payment until the actual date of payment of such amount, both dates included.*

9. **AESTHETIC AND ENVIRONMENTAL REQUIREMENTS**

9.1 *The Committee shall have the power to:*

9.1.1 *do such acts and to frame and enforce conditions on members as are necessary to accomplish the purposes expressed or implied herein, which acts shall include inter alia, the approval or refusal of the Architectural Review Committee referred to in the General Design Criteria, of building plans relating to construction of new dwellings, external renovations, alterations and/or additions in accordance with the General Design Criteria in the guidelines attached to the initial Deeds of Sale of the erven and any subsequent amendments thereto;*

9.1.2 *Compel members to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such member;*

9.1.3 *To ensure that all members maintain their properties in a clean and tidy conditions (which shall include each member being responsible for the maintenance and upkeep of the pavement bordering his property) and to implement and control the security, vegetation, parking, signage and advertising within the Township and Common Areas.*

9.2 *Members shall be obliged to submit all building plans for new dwellings, external renovations, alteration of additions to the Architectural Review Committee for approval prior to the submission of such plans to the Local Authority for approval.*

9.3 *No Member shall be entitled to dump material or goods on the common area or on any erf not registered in the name of the member and shall be liable for payment of the cost of rectifying the damage or removal of the material or goods if so dumped.*

9.4 *Every Member shall observe all laws, ordinances, by-laws and regulations or rules imposed by any statutory or other authority and, without detracting from the generality of the foregoing, shall observe and comply with the provisions of the Cape provincial Road Traffic Ordinance No 21/1966 as amended (or any ordinance or Act substituted therefor) as fully and effectually as though the private road were a public road as defined in terms of Section 1 of the Ordinance.*

10. **STATUS OF THE ASSOCIATION**

10.1 *The Association shall be an Association:*

10.1.1 *with legal personality, capable of suing and being sued in its own name;*

10.1.2 *none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the Committee in terms hereof;*

10.1.3 *not for profit, but for the benefit of all its members;*

10.1.4 *with the right to acquire, hold, lease and alienate property, both movable and immovable.*

10.2 *The Association is not permitted to distribute its funds to any person other than to a similar Association of persons.*

10.3 *On dissolution the remaining assets must be distributed to a similar Association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act.*

10.4 *Any amendments to clause 10 of the Constitution must be submitted to the Commissioner for the South African Revenue Service.*

10.5 *Funds available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), and in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).*

11. **AMENDMENTS TO THIS CONSTITUTION, THE RULES AND THE DESIGN CRITERIA**

11.1 *The addition, amendment, substitution or repeal of any provision of this Constitution shall require the consent of at least 70% (seventy percent) of the votes of the members of the Association who are present or represented by proxy or by a representative recognized by law at an annual general meeting or special general meeting of the Association and, where necessary, also the consent of the City of Cape Town as the Local Authority. The notice of such meeting shall, in addition to complying with the requirement for convening the meeting, set out in specific terms*

*the proposed addition, amendment or substitution to the Constitution or the provision of the Constitution which is to be repealed.*

- 11.2 *The addition, amendment, substitution or repeal of any provision of the Rules and/or the General Design Criteria, shall require the consent of at least 70% (seventy percent) of the votes of the members of the Association who are present or represented by proxy or by a representative recognized by law at an annual general meeting or special general meeting of the Association. The notice of such meeting shall, in addition to complying with the requirement for convening the meeting, set out in specific terms the proposed addition, amendment or substitution to the General Design Criteria and/or Rules or the provision of the General Design Criteria and/or Rules which is to be repealed.*

12. **PERSONAL LIABILITY OF MEMBERS**

*No member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of, the Association.*

13. **CONTRIBUTION BY SELLER**

*The seller undertakes to irrevocably instruct the transferring attorneys, Buchanan Boyes Smith Tabata, to pay an amount of R500,00 in favour of each purchaser as credit to the Fernwood Estate Home Owners Association for such purposes as the Home Owners Association may require funding for the establishment and maintaining of the said Association. The said amounts will be paid at the date of the inauguration of the FERNWOOD ESTATE HOME OWNERS' ASSOCIATION.*

14. **COMPLETION DATE FOR HOUSES AND SPECIAL LEVIES**

- 14.1 *All legal owners of erven or their successors in title are obliged to build a dwelling house with completion to be on or before 28 February 2009, on condition, however, that the dwelling shall comply with the requirements of the Home Owners Association and the minimum design criteria.*

- 14.2 *In the event of the owner or his successor in title failing to comply with Clause 14.1 above, the Committee, for and on behalf of the Association, shall in its sole discretion have the irrevocable right to impose an additional levy, equal to the amounts as stated in Clause 14.3 hereunder, in addition to the normal levy payable by such owner to the Association in terms of this Constitution. The additional levy shall be due and payable by the owner and his successor in title monthly in advance on or before the first day of each and every succeeding month until he complies with Clause 14.1 above and his house is duly completed.*

14.3 *The additional levy payable by an owner with reference to Clause 14.2 above shall be calculated as follows:*

14.3.1 *One and a half (1.5) times the normal monthly levy shall be paid monthly from 1 March 2009 until the 31<sup>st</sup> of August 2009.*

14.3.2 *Two (2.0) times the normal levy shall be paid monthly from 1 September 2009 until 28 February 2010.*

14.3.3 *Three (3.0) times the normal levy shall be paid monthly from 1 March 2010 until 31<sup>st</sup> August 2010.*

14.3.4 *Four (4.0) times the normal levy shall be paid monthly from 1 September 2010 until completion of the house.*

14.4 *For the purpose of Clause 14, "completion" shall mean when the Architectural Review Committee certifies the house to be suitable for occupation.*

14.5 *During the building operations for a period of 6 months, as provided for in the General Design Criteria, the penalty levy will be suspended.*

15. **PROXIES FOR GENERAL MEETINGS**

15.1 *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.*

15.2 *The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent in writing but need not be in any particular form provided that where a member is more than one person any one of those persons may sign the instrument appointing a proxy on such member's behalf. Where a member is a company, the proxy may be signed by any person authorised by resolution of the board of directors of the company or by its secretary and, where a close corporation, by any member of such close corporation and, where an association of persons, by the secretary thereof and, where a trust, by a person duly authorised by the trustees of such trust.*

15.3 *The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy thereof shall be lodged with the Association at any time before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.*

16. **BINDING NATURE OF THIS CONSTITUTION, THE RULES AND THE GENERAL DESIGN CRITERIA**

*The provisions of this Constitution, the Rules and the General Design Criteria, and the duties of an owner in relation to the use and occupation of his erf and the use of the common areas shall be binding on all owners, lessees and occupants of erven, and it shall be the duty of the owner to ensure compliance with the provisions of the Constitution, the Rules and the General Design Criteria by his lessee or other occupants of his erf, including the family members, guests, visitors, employees or contractors of the owner, the lessee or occupant. In the event of any breach of this Constitution, the Rules or the General Design Criteria by the owner or by his lessee or the occupant of his erf or the family members, guests, visitors, employees or contractors of the owner, lessee or occupant, such breach shall be deemed to have been committed by the owner himself. Without prejudice to the foregoing, the Committee shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the owner.*

17. **DOMICILIUM CITANDI ET EXECUTANDI**

17.1 *The Committee shall from time to time determine the domicilium citandi et executandi of the Association, subject to the following:*

17.1.1 *such address shall be the address of the chairman or of a resident Committee Member nominated by the Committee or the address of any duly appointed managing agent;*

17.1.2 *the Committee shall give notice to all members of any change of such address.*

17.2 *The domicilium citandi et executandi of each member shall be the street address of the member's erf in the development. A member may by notice in writing to the Committee at its domicilium, change his domicilium citandi et executandi, provided that his new address shall be situate within the Republic of South Africa and shall not be a post office box or poste restante and provided that the new address shall not be effective until fourteen (14) days after receipt of such notification by the Committee.*

18. **NOTICES**

18.1 *A notice in terms of this Constitution, the Rules or the General Design Criteria shall be in writing and shall be given or served by the Association upon a member, either personally or by post in a prepaid registered letter properly addressed to the member at his domicilium citandi et executandi.*



- 18.2 *Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter, containing the notice, was properly addressed and posted.*
- 18.3 *The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.*
- 18.4 *Notwithstanding the provisions of clause 18.1, it shall be competent to give any notice to a member by e-mail or telefax where the telefax number or e-mail address of the member is recorded with the Committee. Notice shall be deemed to have been properly served on the date of disposal thereof to the elected e-mail address or telefax number of the member.*
- 18.5 *Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a member shall be adequate written notice or communication to such member notwithstanding that it was not sent to or delivered at his domicilium citandi et executandi.*
- 18.6 *A notice in terms of this Constitution, the Rule and the General Design Criteria shall be in writing and shall be given or served by the Association upon the lessee or occupant of an erf, either personally or by post in a prepaid registered letter properly addressed to the lessee or occupant at the address of his erf. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter, containing the notice, was properly addressed and posted.*

**19. BREACH OF THIS CONSTITUTION**

- 19.1 *If any member fails to comply with any of the provisions of this Constitution and the General Design Criteria with regard to the construction of buildings and improvements and any alterations to existing buildings, the Committee may on behalf of and in the name of the Association (but within a period of 6 months after becoming aware of such breach) serve notice on any such member calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:*

19.1.1 *enter upon the erf to take such action as may be reasonably required to remedy the breach and the member concerned shall be liable to the*

*Association for all costs incurred, which costs shall be due and payable upon demand, and/or*

*19.1.2 call upon such member in writing to remove or alter within a specified period the building, improvement or alteration erected contrary to the provisions of the Constitution and General Design Criteria and, failing which, the matter shall be referred to a general meeting of the Association convened to afford members the opportunity to give directions to the Committee and to afford the defaulting member with the opportunity to be heard. The resolution of the Association at such general meeting shall be binding upon such defaulting member and shall be implemented by the Committee, and/or*

*19.1.3 institute proceedings in any court of competent jurisdiction for such relief as the Committee may consider necessary and such member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.*

*19.2 If any member fails to make payment on due date of levies or other amounts payable by such member, the Committee may give notice to such member requiring him to remedy such breach within such period as the Committee may determine and should he fail to timeously remedy his breach, the Committee may, on behalf of the Association, 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 obtaining recovery of the arrear levies or other amounts due and owing by such member to the Association.*

## **20. ARBITRATION**

*20.1 Any dispute, question or difference arising at any time between members or between a member and the Committee out of or in regard to:*

*20.1.1 the interpretation of;*

*20.1.2 the effect of;*

*20.1.3 their respective rights or duties under;*

*20.1.4 a breach of (save for the non-payment of levies or any other amount due by a member in terms of this Constitution);*

20.1.5 *any matters arising out of;*

*this Constitution, the Rules or the General Design Criteria, such dispute shall be decided by arbitration in the manner set out in this clause.*

20.2 *In respect of any claim arising from non-payment of levies or any other amount due by a member in terms of this Constitution, the Association and the Committee shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.*

20.3 *The arbitration referred to in clause 20.1 shall:*

20.3.1 *be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence;*

20.3.2 *commence as soon as reasonably possible after it is demanded and with a view to it being completed within thirty (30) days after it is demanded; and*

20.3.3 *be held under the provisions of the Arbitration Act (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.*

20.4 *The arbitrator shall be a practising advocate or attorney of not less than five (5) years standing appointed by agreement between the parties to the arbitration within seven (7) days of being called upon to make such appointment and failing such agreement within the seven (7) day period, appointed by the President of the Cape Law Society as the case may be.*

20.5 *The arbitrator shall in giving his award have regard to the principles contained in this Constitution, the Rules and the General Design Criteria and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances.*

20.6 *The arbitrator's decision shall be presented within ten (10) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by*

*one or the other of the disputing parties or by the Association as he in his sole discretion may deem fit.*

20.7 *Each of the parties to the arbitration irrevocably agrees that the decision of the arbitrator made at such arbitration proceedings:*

*20.7.1 shall be final and binding on each of them;*

*20.7.2 shall be carried into effect immediately; and*

*20.7.3 may be made an order of any Court to whose jurisdiction the parties are subject.*

20.8 *Notwithstanding anything to the contrary contained in this clause 20, the Committee shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, the Rules and the General Design Criteria.*

21. **FINANCIAL YEAR END**

*The financial year end of the Association shall be the last day of February of each year, or such other date as may be determined by the Committee from time to time or by the Members in General Meeting*

22. **DEALING WITH THE COMMON AREA**

22.1 *Neither the whole nor any portion of the Common Area shall be:*

*22.1.1 sold, alienated or otherwise disposed of or subdivided or transferred; or*

*22.1.2 mortgaged or encumbered in any manner whatsoever; or*

*22.1.3 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities.*

*without the consent of at least 70% (seventy percent) of the votes of the members of the Association who are present or represented by proxy or by a representative recognized by law at an Annual General Meeting or Special General Meeting of the Association and without the consent of the Local Authority, where necessary.*

22.2 *The Association shall take title to those areas of the Common Area, which are registerable.*

22.3 *The Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, and improvement and property control of the Common Area.*

22.4 *Any further Home Owners Associations that are established in the Township Area shall be subordinate to this Association. The Private Areas (being the designated private open spaces and private roads) of such Home Owners Associations shall be regarded as forming part of the Common Area of the Association, irrespective of whether the Home Owners Associations have title to such Private Areas or not. If any provision of this Constitution is in conflict with the Constitution of any other Home Owners Associations established in the Township Area, the relevant provision of this Constitution shall prevail*

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