CITY OF CAPE TOWN
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STAD KAAPSTAD

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CASE ID: 70581975

13 June 2022

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Dear Sir / Madam

APPROVAL OF WHEATFIELD ESTATE OWNERS ASSOCIATION: ERF 20753, DURBANVILLE

Your application in the above regard refers.

You are hereby informed that the constitution is herewith approved in terms of Section 98(b) of the City of Cape Town Municipal Planning By-Law 2015 insofar it addresses the requirements of the said By-Law. Reasons for the recommended decision may be summarised as follows:

- The Owners' Association Constitution complies with City's requirements in terms of the conditions of approval and the City of Cape Town Municipal Planning By-Law, 2015.
- A comment from Legal Services was received confirming that they are satisfied with the Owners' Association Constitution.

It is the responsibility of the Association to provide all current and future owners with copies of the approved constitution as attached hereto.

Yours faithfully

(for) **DIRECTOR: DEVELOPMENT MANAGEMENT**

CONSTITUTION

OF

WHEATFIELDS ESTATE

HOME OWNERS' ASSOCIATION

A statutory body established in terms of Section 61
of the City of Cape Town Municipal Planning
By-law of 2015

STAD KAAPSTAD
13 JUN 2022
CITY OF CAPE TOWN

CONTENTS

1. ESTABLISHMENT IN TERMS OF STATUTE 3
2. INTERPRETATION 3
3. PURPOSE DESCRIBING THE MAIN BUSINESS 4
4. MAIN OBJECTIVES OF THE ASSOCIATION 4
5. DOMICILIUM CITANDI ET EXECUTANDI 6
6. FINANCIAL YEAR END 6
7. MEMBERSHIP & MEMBER OBLIGATIONS 6
8. LEVIES 8
9. PIPELINES 9
10. SOLID WASTE COLLECTION 10
11. GENERAL SERVICES CONDITIONS 10
12. DEALING WITH THE COMMON AREAS 11
13. RESPONSIBILITY FOR THE COMMON AREAS 11
14. ESTATE RULES 11
15. THE GROOT PHESANTEKRAAL ESTATE MASTER OWNERS ASSOCIATION 13
16. CONTRACTS, REGULATIONS AND ACCESS 13
17. BUILDING DEPOSIT 14
18. CESSATION OF MEMBERSHIP 14
19. BREACH 14
20. TRUSTEE COMMITTEE AND THE REMOVAL AND ROTATION OF TRUSTEE MEMBER S 15
21. STATUS OF THE DEVELOPER 16
22. OFFICE OF TRUSTEES 16
23. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE 17
24. PROCEEDINGS OF THE TRUSTEE COMMITTEE 18
25. GENERAL MEETINGS OF THE ASSOCIATION 19
26. NOTICE OF MEETINGS 19
27. VENUE OF MEETINGS 20
28. QUORUM FOR GENERAL MEETINGS 20
29. PROCEDURE AT GENERAL MEETINGS 20
30. PROXIES FOR GENERAL MEETINGS 21
31. VOTING 21
32. SPECIAL RESOLUTION 22
33. OTHER PROFESSIONAL OFFICERS 22
34. ACCOUNTS 23
35. DEPOSIT AND INVESTMENT OF FUNDS 23
36. SERVICE OF NOTICES 23
37. INDEMNITY 24
38. AMENDMENTS TO CONSTITUTION 24
39. MANAGING AGENT 25
40. ARBITRATION 25
41. OWNER'S ASSOCIATION WHICH FAILS TO MEET AN OBLIGATION OR CEASES TO FUNCTION ... 26
42. EFFECTIVE DATE 27

STAD KAAPSTAD

1 3 JUN 2022

CITY OF CAPE TOWN

1. ESTABLISHMENT IN TERMS OF STATUTE

1.1 The Wheatfields Estate Home Owners' Association is constituted, as a statutory body, in terms of Section 61 of the City of Cape Town Municipal Planning By-law, 2015.

1.2 The Home Owners Association is a juristic person and has perpetual succession and is capable of suing and being sued.

2. INTERPRETATION

In these presents:

2.1. The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

2.1.1. Accountants / Auditors means the Accountants / Auditors of the Association;
2.1.2. Association means Wheatfields Estate Home Owners' Association;
2.1.3. Business Day means weekdays other than Saturdays, Sunday and Public Holidays;
2.1.4. Chairman means the Chairman of the Trustee Committee;
2.1.5. Common areas mean the private road/s, common areas, refuse rooms and access gate and entrance security within the development;
2.1.6. Completion of the development/scheme means the date of transfer of the last erf in the scheme / development to the relevant purchaser thereof from the Developer or the date of completion of any outstanding works (as certified by the Developer's Architect or Engineers) on any of the properties by the Developer, whichever event occurs last;
2.1.7. Council / Local Authority means The City of Cape Town or its successors in title;
2.1.8. Day/s shall mean all calendar days;
2.1.9. Development means the residential development situated and constructed on Erven 20937, 20837 and 20909 Durbanville, with the approval of the Council, known in its entirety as Wheatfields Estate, and as depicted on General Plans / Site Diagrams;
2.1.10. Developer means Rabie Property Group (Registration Number 2006/012251/07 and Morow Investments 375 CC t/a Trinity Projects (Registration Number 2010/026077/07), together trading as the Trinrab Joint Venture;
2.1.11. Development Period means the period commencing on the date of creation of the Association and terminating on the date that all the Erven in the Estate have been sold and transferred by the Developer or until the Developer notifies the Association in writing that the Development Period has ceased, whichever occurs first;
2.1.12. Design Guidelines means design guidelines to control all aspects of architectural design of all Single Residential Erven, as amended from time to time in terms of this Constitution or as required by the City or the Developer during the Development Period;
2.1.13. Erf/erven means any one the erven in the Wheatfields Estate Development resulting from the subdivision of the Property/ies referred to in clause 2.1.23;
2.1.14. in writing means written, printed, e-mailed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
2.1.15. Landscape Plan means the landscape plan prescribed by the Developer, as amended from time to time in terms of this Constitution or as approved by the City, if so required;
2.1.16. Managing Agents are the agents as may be duly appointed from time to time for the purpose of managing the Erven in the Development;
2.1.17. Maintenance means the upkeep and or repair of the services, property and amenities which shall be the responsibility of the Association entirely and for which the Local Authority shall not be accountable;
2.1.18. Master Association means the Groot Phesantekraal Estate Master Owners Association;
2.1.19. Member means a Member of the Association;

2.1.20. Month means calendar month;
2.1.21. Office means the registered office of the Association;
2.1.22. Ordinary Resolution means a resolution passed at a general meeting of the Association;
2.1.23. Property/ies means Erven 20937, 20837 and 20909 Durbanville, situate in the City of Cape Town, Western Cape;
2.1.24. Registered Owner means an owner of an erf;
2.1.25. Scheme means all works relating to the development in terms of the various agreements between the developer, the relevant authorities and future and/or current members of the Association;
2.1.26. Services means roads, verges, parking bays, water supply, sewerage pipes, electricity cables and all other municipal services within the private area or erven;
2.1.27. Special Resolution means a resolution passed at a special general meeting in accordance with the provisions of clause 32 below;
2.1.28. these presents means this Constitution, rules and regulations and by-laws of the Association from time to time in force;
2.1.29. Trustee Committee means the Board of Trustees of the Association;
2.1.30. Trustee means one of the Trustee Committee;
2.1.31. Vice-Chairmanmeans the Vice-Chairman of the Trustee Committee;
2.1.32. Year means calendar year;

2.2. Unless the context otherwise requires:
- words importing the singular number only shall include the plural number, and vice versa;
- words importing any one gender only shall include the other gender;
- words importing natural persons shall include firms and corporate bodies;

2.3. The Head Notes to the clauses in this Constitution shall not affect the interpretation of any of the provisions to which they relate and are for reference purposes only.

3. PURPOSE DESCRIBING THE MAIN BUSINESS

3.1 The main business of the Association is to carry on the promotion, advancement and protection of the members of the Association from time to time, and the maintenance and control of the common areas.

3.2 The Association is a juristic person which has perpetual succession and is capable of suing and being sued in its own name and capacity.

4. MAIN OBJECTIVES OF THE ASSOCIATION

4.1 The Association shall have as its objects the matters referred to in Section 61, 62 and 63 of the City of Cape Town Municipal Planning By-Law 2015, and without detracting from the generality thereof, to ensure compliance with the conditions of sub-division imposed by the Local Authority when approving the development, enforce the provisions of its constitution and more specifically:

4.1.1 to oversee, maintain and control the development.
4.1.2 to ensure the general high standard of thedevelopment.
4.1.3 generally to promote, advance and protect the development and the collective interests of theAssociation and its Members.
4.1.4 the regulation and control of harmonious development of the development.
4.1.5 the promotion of a high standard of improvement on the development.
4.1.6 to administer and enforce the estate rules from time to time made in terms hereof.

4.1.7 to ensure the maintenance, upkeep and upgrading where required, of services and amenities serving the development, such as, but not limited to, the sewage, water, electricity and storm water systems, refuse collection, security fences, private open spaces and lamp posts.

4.1.8 to take transfer of, and to maintain and insure where necessary, the common property and improvements thereon in the development, and to control the usage thereof and/or the services belonging to the Association or falling under its control.

4.1.9 to enforce compliance by the members with the conditions of the design guidelines as applicable.

4.1.10 to take action, including the imposition of fines or the institution of proceedings in a court of law, as may be deemed fit by the trustees, in relation to the non-compliance by any member of any of the requirements of this constitution; and the Association shall have the power to do all such acts as are necessary to carry out the aforegoing objects including, but not restricted to, the powers specifically contained in this constitution.

4.1.11 to take transfer of the private open space and private road.

4.1.12 to insure the Association against public liability.

4.1.13 if necessary, to enter into services agreements with the Local Authority or any other Authority or Supplier of Services.

4.1.14 to enforce conditions of subdivisional approval or management plans listed in the constitution.

4.1.15 to ensure and enforce compliance by the Association and its members with any environmental conditions and obligations imposed by the Local Authority.

4.1.16 to impose and collect levies as contemplated in clause 8 below;

4.1.17 to control all buildings, and/or structures erected or be erected on the Erven to insure that the material, finish and architecture of same matches the general appearance of the scheme as well as the maintenance thereof in a neat and tidy condition;

4.1.18 to limit and control future extensions on the Erven and Common Areas to insure that the material, finish and architecture thereof matches the general appearance of the scheme;

4.1.19 to monitor and enforce compliance by the Registered Owners and the Association with the relevant subdivision conditions imposed by the Local Authority;

4.1.20 to bear the running cost of all street lighting within the Scheme, as well as any consumption charges relating to the Common Areas;

4.1.21 to enter into services agreements with the local authority or any other authority or supplier of services in regard to the supply of services to the Scheme, including *inter alia* refuse removal and security services;

4.1.22 to accept the cession of any rights and delegation of any duties to the Association under any other agreement(s) entered into by the Developer for the benefit of the Association;

4.1.23 to prescribe measures for the landscaping and development of Erven on the Scheme, and for the architectural design and building of improvements to Erven on the Scheme so as to ensure a harmonious and aesthetic development of the Scheme, and to prescribe measures for the maintenance of such standards of development;

4.1.24 to register, where necessary, various service or other servitudes over the Common Areas in the Scheme in favour of the City and to register servitudes in favour of the Erven in the Scheme over other land owned by the Association as are from time to time required and to register servitudes in favour of the Scheme over certain Erven to protect common services. All overland storm water escape routes are to be maintained and kept free of all obstruction and protected by servitudes where they traverse private property;

4.1.25 to acquire and hold servitudes in the Association's favour for access to the Scheme and also for the supply of services, including communication, surveillance and water to the Scheme;

4.1.26 to formulate, enforce, modify, amend, add and delete the Scheme conduct rules and regulations;

4.1.27 to enforce the provisions of the Constitution;
4.1.28 to appoint personnel and / or agents to manage the affairs of the Association;
4.1.29 to accredit scheme agents appointed by Registered Owners in respect of the resale of their Erven, in accordance with such criteria as the Association may stipulate from time to time;
4.1.30 to accredit service providers or contractors in respect of services to be rendered to Members, including, but not limited to, pool cleaning and garden service contractors.

5. DOMICILIUM CITANDI ET EXECUTANDI

5.1. The Trustees shall from time to time determine the address constituting the domicilium citandi et executandi of the Association , subject to the following:-

5.1.1. Such address shall be the address of the Managing Agents of the Association ;
5.1.2. The Trustees shall give notice to all Members of any change of such address.

5.2. The domicilium citandi et executandi of each Member shall be the street address of the Erf registered in his name; provided that he shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its domicilium.

6. FINANCIAL YEAR END

6.1 The financial year end of the ASSOCIATION is the **end of FEBRUARY** of each year, or such other date as the trustees may decide from time to time.

7. MEMBERSHIP & MEMBER OBLIGATIONS

7.1. Membership of the Wheatfields Estate Home Owners Association and the Master Association shall be compulsory for every Registered Owner of an Erf.

7.2. Such Membership shall commence simultaneously with the transfer of the Erf into the name of the Transferee.

7.3. Membership of the Associations shall be limited to the Registered Owners of the Erven provided that:

7.3.1. a person who is entitled to obtain a certificate of registered title to any such erf shall be deemed to be the registered owner thereof;
7.3.2. where any such owner is more than one person, all the registered owners of that Erf shall be deemed jointly and severally to be one Member of the Association and shall nominate one owner to represent them and vote at meetings of the Association;
7.3.3. Where any person is the Registered Owner of more than one Erf, such person shall be regarded to be a Member and shall have the rights and obligations of a Member in respect of each of the Erven registered in the person's name, it being recorded that the provisions of this clause shall also be applicable to the Developer whilst it is the Registered Owner of an Erf or Erven;
7.3.4. The Developer alone may constitute the Association until 70% (seventy percent) of the Erven in the Development have been sold and transferred.
7.3.5. Corporate bodies or juristic persons which are the registered owners of Erven shall nominate a natural person to represent the owner for all purposes related to this constitution.

7.4. When a Member ceases to be the registered owner of an Erf, he shall ipso facto cease to be a Member of the Association.

7.5. No Member shall be entitled to:

7.5.1. sell or transfer an erf or portion thereof unless:

7.5.1.1. it is a condition of the sale and transfer of such an Erf that the transferee becomes a Member of the Associations and agrees in writing to abide by the rules of the Constitutions of the Associations and all obligations outlined therein, by signing a copy of the Constitutions.

7.5.1.2. it is a condition of the sale and transfer of such an Erf that the registration of transfer of that Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Associations.

7.5.1.3. a Clearance Certificate is issued by the Associations certifying that all outstanding levies and liabilities owing to the Associations and applicable to that Erf have been fully paid.

7.5.2. erect any additional buildings and/or structures of any nature whatsoever (including but not limited to masts, aerials, flagpoles, pergolas, satellite dishes, statues, security cameras) nor to make any alterations, modifications or renovations to such buildings and/or structures ("the proposed work") on his Erf without the written approval of the Trustees, which approval shall only be given

7.5.2.1. after detailed plans of the proposed work has been submitted to the trustees, or any person nominated by the trustees (who may be an architect, registered with the South African Council of Architects or the Institute of South African Architects); and

7.5.2.2. the trustees or their nominee are satisfied that the proposed work is in accordance with the design guidelines for the purposes of which the trustees or their nominee shall be the sole arbiter and their decision shall be final and binding on the member; and

7.5.2.3. the member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature;

7.5.2.4. the member has paid to the trustees a deposit in such amount as the trustees may from time to time determine as a building deposit which amount shall be held by the trustees subject to the provisions of clause 17.3 below; provided the aforegoing shall not be interpreted as detracting from the sole and final responsibility of the Council to approve or reject building plans;

provided that the aforegoing shall not be interpreted as detracting from the sole and final responsibility of the Council to approve or reject building plans and provided further that prior to the completion of the scheme / development (in terms of the approved conditions of approval and plans), the developer and his appointed architect shall have the relevant authority to approve all plans envisaged herein.

7.6. No member, owner or resident may enclose, alter or amend any external boundary fencing in any way whatsoever. All external boundary fences should remain open and unobstructed.

7.7. The provisions of clause 7.5 shall not apply to the Developer, its successor/s in title or assigns as Developer.

7.8. The Registered Owner of an erf may not resign as a member of the associations and shall remain a member and be bound the provisions of the Constitutions for as long as such owner is the registered owner of any erf in the development.

7.9. The Trustee Committee may, by regulation, provide for the issue of a Membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.

7.10. The rights and obligations of a Member shall not be transferable, and every member shall:

7.10.1. to the best of his ability further the object and interest of the Associations ;
7.10.2. observe all by-laws and regulations made by the Associations or the Trustee Committee;
7.10.3. be jointly liable with all the Members for all expenditure incurred in connection with and by the Association, and the Association must recover such expenditure from all its members in equal shares;
7.10.4. ensure that the Development and more particularly the private areas and/or common areas are maintained in good and tidy condition and in compliance with standards set from time to time by the Trustees;
7.10.5. provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of that Member's Erf.

7.11. No member ceasing to be a member of the Associations for any reason shall, (nor shall any such member's executors, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Associations, but this clause shall be without prejudice to the rights of the Associations to claim from such member or his estate any arrears of subscriptions or other sums due from him to the Associations at the time of his so ceasing to be a member.

7.12. In the event that the Association has ceased to function, and an owner wishes to transfer an erf in that event, the owner must obtain the consent of at least 60% (sixty percent) of the members of the Association, which consent is deemed to be the consent of the Association.

8. LEVIES

8.1. The Trustee Committee shall from time to time, impose levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or which the Trustee Committee reasonably anticipates the Association will incur by way of maintenance, repair, improvement and keeping in order and good condition all of the private areas and/or common areas, specifically including landscaping, all township services, sewage treatment, the security systems to be installed on the common areas and /or for payment of all rates and other charges payable by the Association in respect of the common areas, and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the common areas and the Association's affairs. In calculating levies the trustee committee shall consider, income, if any, earned by the Association.

8.2. The Trustees Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall impose a levy upon the Members, equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.

8.3. The Trustee Committee may from time to time, and provided that 30 (thirty) calendar days' notice is given to the Members, impose special levies upon the Members in respect of all such expenses as are mentioned in 8.1 (which are not included in any estimate made in terms of 8.2 and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall deem fit.

8.4. Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. 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 the Erf, and from then on to pay the levies attributable to that Erf.

8.5. No Member will be allowed to transfer his Erf until the Association has issued a clearance certificate certifying that the Member has at the date of transfer fulfilled all his financial obligations to the Association.

8.6. The total levy payable by Members shall be borne in equal shares by each Member.

8.7. No Member shall be entitled to any of the privileges of Membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his Membership thereof.

8.8. The Association shall decide which of the expenses of the Development, not expressly dealt with herein, are to be paid out of the fund of the Association or directly by its Members.

8.9. Members of the Association shall be entitled to elect to pay levies by means of any of the following methods:-

8.9.1. the issue of a debit-order against his banking account;
8.9.2. an advance payment of all levies due for the full year; or

8.10. Any special levies imposed by the trustees in terms of clause 8.3 may be apportioned between the members by the trustees in an apportionment, which the trustees may regard as reasonable, regard being had of the direct benefits, which the member(s) may derive from the proposed expenditure for which the special levies are imposed.

8.11. The Developer, its successor/s in title or assigns as Developer shall not be liable for the payment of levies, but shall be required to make such reasonable additional contribution to the fund as may be necessary to defray the cost of rates and taxes, insurance and maintenance of the part or parts of the Development still under development or yet to be developed by the Developer, and towards common areas within the Development, including a contribution for the provision of electricity and water and other expenses and costs in respect of and attributable to the relevant aforementioned part or parts.

9. PIPELINES

9.1. It is the duty of each Member to ascertain from the Association whether such Member's property is situated above a pipeline.

9.2. If a Member's property is situated above a pipeline, the member will grant to the Association the right at all times to bring upon the Pipeline Area all such workmen, conveyances, tools, machinery and materials as in the opinion of the Association or its authorized representatives may be necessary or desirable for the construction and laying of the said pipes or for the cleansing, repairing, maintaining, renewing or replacing of the same from time to time and to make such excavations on the Pipeline Area of such depth and in such manner as may be necessary or desirable.

9.3. The Association shall be entitled to deposit temporarily on the land adjoining the said Pipeline Area such materials as may be excavated by the Association during the course of the construction, repair, maintenance, removal or replacement of the said pipeline as the Association in its discretion may deem necessary. Should any damage be caused to the property as a direct result of the process of construction, repair, maintenance, removal or replacement of the said works, such damage shall be made good by the Association.

9.4. The Association shall at all times have full and free access by its officials, assistants, workmen, employees, vehicles or agents to the said Pipeline Area for the purpose of carrying out, constructing, laying down, examining, cleaning, clearing, maintaining, repairing and removing or replacing the said pipeline and portions thereof.

9.5. The Member shall not erect or cause or permit to be erected any buildings or other structures on or over the said Pipeline Area, or plant or permit to be planted thereon any large rooted trees, or dump or permit to be dumped any soil or rubbish thereon, or do or permit to be done anything in or on the Pipeline Area or in the immediate vicinity thereof which will or is likely to interfere with or prejudice the rights conferred upon the Association in this Constitution. Any damage which may be caused to the said pipeline constructed by the Association on the said Pipeline Area or to any portion thereof by reason of any breach by the Member of obligations hereunder or under any law shall be made good by the Member at the Member's own expense. If the Member covers the Pipeline Area with paving or concrete, the Association shall not be liable for any damage caused as a result of the upliftment of such paving or concrete.

10. SOLID WASTE COLLECTION

10.1. Members shall allow the collection of Solid Waste at such times as stipulated from time to time by the City of Cape Town and shall ensure that they at all times comply with all municipal laws, rules, regulations and guidelines pertaining to waste collection.

10.2. The City of Cape Town will not be liable for any wear and tear on the Roads, or for any theft or accidental damage to any equipment, roads or any other feature in the development.

10.3. The Trustees of the Association shall be entitled to sign any indemnity letter, on behalf of the Association, in terms of which the Association indemnifies the City of Cape Town against any claims from all damages or losses incurred to roads, road furnishing and curbs as a result of the City of Cape Town collecting refuse within the boundaries of the Estate.

11. GENERAL SERVICES CONDITIONS

11.1. Members shall without compensation be obliged to allow gas mains, electricity, telephone and television cables and/or wires, and main and/or other water pipes and foul sewers and storm water pipes, ditches, and channels of any other erven to be conveyed across their property concerned and shall furthermore without compensation be obliged to allow surface installations such as street lights, mini substations, meter kiosks and service pillars to be installed thereon if considered necessary by the Association in such manner and position as may from time to time be reasonably

required, this shall include the right of access to the property at any reasonable time for the purpose of constructing, altering, removing or inspection of any works connected with the above.

11.2. Members shall be obliged, without compensation to permit access to their property for the purpose of maintaining, cleaning, renovating, repairing, renewing, altering and adding to any wall, roof, pipe, gutter, wiring or other structure or thing, and shall not do anything which will prevent or hinder any such access or work from being done.

11.3. Members shall be obliged, not to make any alterations or additions to or demolish any part of the buildings erected on the subdivision, including boundary walls and fences, or change the exterior colour scheme or materials of such buildings without the written consent of the Association, nor shall they permit the exterior of the building to deteriorate and become untidy or dirty.

11.4. Any Members having overland stormwater escape routes situated on their property shall be obliged to keep these areas free of all obstruction.

12. DEALING WITH THE COMMON AREAS

12.1. Neither the whole nor any portion of the common areas shall be:

12.1.1. sold, let, alienated, otherwise disposed of, subdivided or transferred; or
12.1.2. mortgaged; or
12.1.3. subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, (save those enjoyed by the members in terms hereof and the servitudes in favour of the Council as required by the conditions of subdivision) without the specific prior written consent of the Council and the sanction of a special resolution of the Association (and no member shall be entitled to unreasonably vote against any such special resolution which may be proposed); or
12.1.4. built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a special resolution of the Association.

12.2. The common areas will be obliged to accept overland storm water and will function as overland storm water escape routes as required by the City of Cape Town, provided that the member shall be responsible for discharging any overland stormwater in such a manner that it does not cause any damage or erosion to the common areas.

13. RESPONSIBILITY FOR THE COMMON AREAS

13.1. The Association shall take title to the common areas.
13.2. The Association acknowledges that the Council shall not be responsible for, and the Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and property control of the common areas, all services therein and any structure or thing erected on or contained therein.

14. ESTATE RULES

14.1. Subject to the provisions of this constitution and to any directions given by the Association in general meetings and to any conditions imposed by the Council or the developer or any other statutory body, the trustees may make rules, codes of conduct and may vary or modify the same, in connection with:

14.1.1. the nature, architectural design and position of buildings, structures, installations and equipment relating to any erf ensuring at all times that these rules comply to the conditions of the design guidelines;

14.1.2. the nature, content and design of the gardens relating to any erf including the establishment and maintenance of landscaping in these areas ensuring at all times that these rules are consistent with the Landscape Plan;

14.1.3. the nature of the common areas adjacent to any erf including the establishment and maintenance of landscaping in these areas by the member concerned;

14.1.4. the installation, operation and maintenance of irrigation in the common areas;

14.1.5. the determination or control of security measures;

14.1.6. the control of the building operations and the conduct of builders and contractors;

14.1.7. the control of the number of residents permitted on any one erf;

14.1.8. the control and conduct of persons for the prevention of nuisance of any nature to any resident;

14.1.9. the control and conduct of persons using the common areas;

14.1.10. the keeping of animals including the right to prohibit, limit, restrict and control the keeping of animals;

14.1.11. the use of roads, infrastructure, services amenities and facilities in the common areas;

14.1.12. the furtherance and promotion of any of the objects of the Association and for the better management of the affairs of the Association and for the advancement and protection of the interests of the members and residents;

14.1.13. the use of the property.

provided that prior written approval in respect of such rules and codes of conduct or any amendment thereof be obtained from the Developer for the duration of the development period. Once the development is complete, the trustees will no longer be required to obtain prior written consent and approval from the Developer.

14.2. For the enforcement of any rules or any of the provisions of this constitution generally the trustees or the manager may:

14.2.1. give notice to the member concerned to remedy any breach within such period as they may determine;

14.2.2. take or cause to be taken such action as they deem fit to remedy the breach of which the member concerned may be guilty and debit the cost thereof, which shall be a debt due to the Association, to his levy account, and which shall be payable as part of his levy on the first day of the following month; and

14.2.3. impose a fine on the member concerned which amount shall be a debt due to the Association, shall be debited to his levy account and shall be payable as part of his levy on the first day of the following month.

14.3. Should the trustees or manager institute legal proceedings against any member or resident for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member concerned, calculated as between attorney and client, including tracing fees and collection commission.

14.4. In the event of any breach of the rules or of any of the provisions of this constitution by any person residing on a member's erf or his guests, employees, contractors, or agents, such breach shall be deemed to have been committed by the member himself; but without prejudice to the aforegoing, the trustees or manager may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the member concerned.

14.5. Without prejudice to any of the rights the Trustees or the Association may be granted under this Constitution, should any member fail to pay any amount due by that Member on the 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 calculated from the due date for payment until the actual date of payment of such amount.

15. THE GROOT PHESANTEKRAAL ESTATE MASTER OWNERS ASSOCIATION

15.1. In terms of clause 6 of the Constitution of the Groot Phesantekraal Estate Master Owners Association, the members of the Wheatfields Estate Home Owners Association will automatically be members of the Groot Phesantekraal Estate Master Owners Association and will also be bound by the terms and conditions of the Master Association's Constitution, Rules and other guidelines and regulations issued by the Master Association. Should there be any contradictions and/or anomalies between the Constitution, Rules and other Guidelines of the Wheatfields Estate Home Owners Association, and the Constitution, Rules and other guidelines of the Master Association, the following hierarchy shall apply when determining which conditions will prevail:

15.1.1. Constitution of the Master Association, read together will all its Annexures or any other official documents referred to in the said Constitution;
15.1.2. Constitution of the Wheatfield Estate Home Owners Association;
15.1.3. Conduct Rules of the Wheatfield Estate Home Owners Association;
15.1.4. Design Guidelines of the Wheatfields Estate Home Owners Association;

16. CONTRACTS, REGULATIONS AND ACCESS

16.1. The Trustee Committee may from time to time:

16.1.1. make regulations governing *inter alia:*
16.1.1.1. the members' rights of use, occupation and enjoyment of the common areas;
16.1.1.2. the external appearance of and the maintenance of the common areas, and the buildings or other improvements erected thereon;
16.1.1.3. the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on erven,
16.1.2. enter into agreements with the local authorities governing the matters set out in clause 16.1.1, and any other incidental matters.

16.2. Each member undertakes to the Association that he/she shall comply with:
16.2.1. The provisions of this Constitution;
16.2.2. Any regulations made in terms of clause 16.1.1;
16.2.3. Any agreements referred to in clause 16.1.2 insofar as those agreements may directly or indirectly impose obligations on him/her.

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

17. BUILDING DEPOSIT

17.1. Each member shall, when submitting to the trustees for approval the detailed plans for the Construction of any building and/or improvements, or alterations or additions to existing improvements on its erf, pay to the trustees a building deposit in an amount to be determined from time to time by the trustees which amount shall be retained by the trustees in trust until completion by the member and/or its contractors of such work.

17.2. Upon completion of all building and other activities on the erf, the trustees or Architect as appointed by the Association, shall if they are satisfied that no damage has been effected by the member or any of its contractors to the common area and/or landscaped areas within the development and that the work has been constructed in accordance with duly approved plans, release the building deposit to the member.

17.3. In the event of any landscaped area and/or common area having damage due to such work, the member shall within 15 days of having been requested to do so in writing by the trustees, rectify the damage to the satisfaction of the trustees, failing which the trustees shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the trustees as a building deposit shall be utilized to defray the expenses of the independent contractor. If, however, the damage caused is not sufficient to cover the cost of such repairs, the trustees shall be entitled to recover the shortfall from the member.

17.4. The Developer shall not be required to pay any deposit required in terms of the provisions of this clause prior to the completion of the scheme.

18. CESSATION OF MEMBERSHIP

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other Property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his scheme any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Member.

19. BREACH

19.1. Should any member:

19.1.1. fail to pay on the due date any amount due by that member in terms of this constitution or any regulation made there under and remain in default for more than 7 days after being notified in writing to do so by the trustees; or

19.1.2. commit any breach of any of the provisions of this constitution or any regulation made there under and fail to commence remedying that breach within a period of 7 days after the receipt of written notice to that effect by the trustees and complete the remedying of such breach within a reasonable time; then and in either such event,

the trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the trustees of the Association or any other member may have in law, including the right to claim damages, and/or the right of the trustees to impose fines to such owners as determined from time to time:

19.1.2.1. to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his obligations in terms of this constitution or any regulation made there under, as the case may be; or

19.1.2.2. to suspend all or any services to the erf owned by that member; and/or

19.1.2.3. in the case of clause 19.1.2 , to remedy such breach and immediately recover the total cost incurred by the trustees or the Association in so doing from such member.

19.2. Should the trustees institute any legal proceedings against any member pursuant to a breach by that member of this constitution or any regulation made there under, then without prejudice to any other rights which the trustees or the Association or any other member may have in law, the trustees shall be entitled to recover from such member all legal costs incurred by the trustees or the Association, including attorney/client charges, tracing fees and collection commission.

19.3. Without prejudice to all or any of the rights the trustees or the Association granted under this constitution, should any member fail to pay any amount due by that member on 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 calculated from the due date for payment until the actual date of payment of such amount. The member shall also be liable for an administrative fee levied in respect of late payments, which fee will be determined by the Trustees from time to time.

20. TRUSTEE COMMITTEE AND THE REMOVAL AND ROTATION OF TRUSTEE MEMBER S

20.1. There shall be a Board of the Trustees of Association which shall consist of not less than three (3) and not more than seven (7) Members.

20.2. Save in the case of the Developer, every Trustee must be a Member of the Association or the spouse / partner of a Member, or an authorised representative of the member where the member is not a natural person.

20.3. Save as set forth in clause 22 below, each Trustee shall continue to hold office until the annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, but shall be eligible for re-election to the Trustee Committee at such meeting.

20.4. A Trustee shall be deemed to have vacated his office as such upon:

20.4.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate.

20.4.2. his making any arrangement or compromise with his creditors.

20.4.3. his conviction for any offence involving dishonesty.

20.4.4. his becoming of unsound mind or being found mentally handicapped.

20.4.5. his resigning from such office in writing delivered to the Secretary.

20.4.6. his death.

20.4.7. his being removed from office by a Special Resolution of the Members.

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

20.5. Upon any vacancy occurring on the Trustee Committee prior the next Annual General, the vacancy in question shall be filled by a Member nominated by those remaining for the time being of the Trustee Committee.

21. STATUS OF THE DEVELOPER

Until such time as the completion of the scheme, the following provisions shall apply in addition to the conditions in these presents:

21.1. The developer shall be entitled:

21.1.1. to nominate and appoint the majority of the trustees;

21.1.2. to a number of votes equal to the number of votes of all the other members of the Association plus 1 (one) vote;

21.1.3. to require that the trustee committee enforces the rights granted to it in terms of these presents against any member who in the opinion of the developer is not complying with his obligations as a member, and in particular, within restricting the generality of the aforegoing, has failed to maintain all buildings and other improvements on its erf by giving such member written notice in which his failure to comply with the particular provisions of these presents is detailed and calling upon him to remedy such failure within a prescribed period of not more than 30 days failing which, the developer shall be entitled at the sole cost of that member to carry out all such work as may be required to maintain such building and other improvements on its erf;

21.1.4. to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the development including the common areas, the private road area and/or the exterior walls (if any) of the development, subject to the regulations and by-laws of the Council appertaining to signage from time to time;

21.1.5. to scrutinize, approve and submit all building plans to the relevant authority to obtain the relevant approvals until the completion of the scheme;

21.1.6. to sign consents for the transfer of erven within the scheme on behalf of the Association;

21.1.7. sign all documentation and do all such things and take such action as may be required in the running and operation of the estate, until such time that the first Annual General Meeting has occurred;

21.1.8. to enter into service agreements with any Service Suppliers for the rendering of services of whatsoever nature to the estate, as they deem necessary;

21.1.9. for the duration of the development period, to veto any decision made or function exercised by the Trustees of the Association. This right shall lapse once the Development is completed.

21.2. Neither the trustee committee nor any member of the Association shall prevent or hinder in any way the developer and its subcontractors from:

21.2.1. gaining access to and egress from the development;

21.2.2. continuing any building operations at the development; and/or

21.2.3. marketing and selling any of its unsold erven, including the advertisement of the sale of such erven on the common areas and/or at the development;

21.3. Upon the completion of the scheme, the rights of the developer in terms of the provisions of this clause shall immediately terminate ipso facto and no longer be of any force and effect.

21.4. In the event of a dispute as to whether or not the scheme has been completed as envisaged herein, the decision of the architect appointed by the Developer for the scheme shall be final and binding.

22. OFFICE OF TRUSTEES

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

22.2. The first Chairman, and Vice-Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.

22.3. Within fourteen (14) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the offices of the Chairman or Vice-Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices at a time, the Trustee Committee shall immediately meet to appoint one of their number to replace such office vacated.

22.4. Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or at all meetings of Members, provided however, that any invitees (that is any Member that is not a trustee) shall not be entitled to vote at any meeting of the Trustee Committee.

22.5. The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.

22.6. Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees of salary in respect of the performance of such duties.

23. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

23.1. Subject to the express provisions of these presents, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may exercise all such powers of the Association , and do all such acts on behalf of the Association as may be exercised and done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.

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

23.3. The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by a member or Trustee of these presents, in such reasonable manner as it shall decide from time to time.

23.4. The Trustees shall have the right to appoint committees consisting of such number of their members and such outsiders, including a manager as they deem fit and to delegate to such committees such of their function, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the trustees may from time to time deem necessary.

23.5. The Trustees may appoint an architectural review committee and a landscaping review committee to exercise the powers set out above and elsewhere in this Constitution. Members of such review committees shall not be required to be Members of the Association.

23.6. Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer, all plans for buildings, out-buildings, structures, additions, alterations and landscaping shall be approved by the Trustees or architectural review committee (if so appointed) and/or the landscaping review committee (if appointed and if applicable), or any person designated by them for the purpose.

23.7. The Trustee Committee may make Conduct Rules, Regulations and directives and guidelines, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association at a general meeting relating but not limited to:

23.7.1. disputes generally;
23.7.2. the furtherance and promotion of any of the objects of the Association
23.7.3. the better management of the affairs of the Association.
23.7.4. the advancement of the interests of Members
23.7.5. the conduct of Trustee Committee meetings and general meetings; and
23.7.6. assisting it in administering and governing its activities generally

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

24. PROCEEDINGS OF THE TRUSTEE COMMITTEE

24.1. The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.

24.2. Meetings of the trustee committee shall be held at least once every quarter, provided that if all the trustees in writing have waived the above requirement in respect of a particular quarter, then no meeting of the trustee committee need be held for that quarter.

24.3. The quorum necessary for the holding of any meeting of the Trustee Committee shall be 2 (two) trustees provided that during the development period, the developer or his representative is present.

24.4. The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five (5) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

24.5. A Trustee or nominated person shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relation to the keeping of minutes of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Accountants, the Association Members, the Managing Agent and Local Authority.

24.6. All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but 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 Trustees unless such resolution is competent within the powers of the Trustee Committee.

24.7. Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

24.8. A resolution 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.

25. GENERAL MEETINGS OF THE ASSOCIATION

25.1. The Developer must call the first meeting of the members of the Association within 60 (sixty) days of transfer of 60% (sixty percent) of the erven within the development or within 2 years of the transfer of the first erf from the developer to a purchaser within the development at which time the first trustees of the Association will be elected.

25.2. The Developer shall within 60 (sixty) days of the first meeting referred to in clause 25.1 above notify the Council that the aforesaid meeting has taken place and shall provide Council with a copy of the minutes of the meeting.

25.3. Such Annual General Meeting shall be held at such time and place, subject to the aforegoing provisions, as the Trustee Committee shall decide from time to time.

25.4. All general meetings other than Annual General Meetings shall be called special general meetings, due notice having been given.

25.5. The Trustee Committee, may, whenever they think fit, convene a special general meeting

25.6. In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matter shall be dealt with at every Annual General Meeting:

25.6.1. the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
25.6.2. the consideration of the report of the Auditors;
25.6.3. the consideration of the total levy for the calendar year during which such Annual General Meeting takes place; and
25.6.4. the consideration appointment of the Auditors;
25.6.5. Chairperson's report
25.6.6. Consideration, discussion and adoption of the annual financial statements.
25.6.7. Appointment of Trustees for the coming year
25.6.8. Matters arising out of previous meetings, general matters, and any special items.

26. NOTICE OF MEETINGS

26.1. An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by twenty-one (21) days' notice in writing at the least, and a special general meeting other than one called for the passing of a special resolution, shall be called by fourteen (14) days' notice in writing at the least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents,

the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:

26.1.1. in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and

26.1.2. in the case of a special general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than seventy-five percent (75%) of the total voting rights of all Members.

26.2. The accidental omission to give notice of a meeting or of any resolution to any Member, or to give any other notification, or present any document required to be given or sent in terms of these presents to any such Member, or the non-receipt of any such notice, notification or document by any Member [or other person entitled to receive the same], shall not invalidate the proceedings at, or any resolution passed at any meeting.

27. VENUE OF MEETINGS

27.1. General Meetings of the Association shall take place at such place(s) as shall be determined by the Trustee Committee from time to time.

28. QUORUM FOR GENERAL MEETINGS

28.1. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be of such of the Members entitled to vote, as together for the time being, represent one third of the total votes of all Members of the Association entitled to vote, for the time being save that not less than three (3) members must be personally present.

28.2. If within half an hour (thirty minutes) from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned for fifteen (15) minutes, and if at such adjourned meeting a quorum is not present, the members present shall be a quorum.

29. PROCEDURE AT GENERAL MEETINGS

29.1. The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice- Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present as such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

29.2. The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting the same time on the same day, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.

29.3. Whenever a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting

29.4. Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

30. PROXIES FOR GENERAL MEETINGS

30.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his 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 same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where an Association of persons, by the secretary thereof.

30.2. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, shall be deposited at the office at any time before the time appointed for the commencement of the meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date of its execution.

30.3. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the trustee committee at least one hour before the time fixed for the holding of the meeting.

31. VOTING

31.1. At every general meeting, every Member 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.

31.2. Save as expressly provided for in these presents, 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 his Membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

31.3. At any general meeting a resolution put to the vote of the meeting shall be decided by a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

31.4. Notwithstanding the provisions of 31.2 or 31.3 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote, unless a poll is, before or on the declaration of the result of the show of hands, demanded by the Chairman or any of the Members in terms of clause 31.5 below.

31.5. When a poll is demanded, regard shall be had, in computing the majority of the poll, to the number of votes cast for and against the resolution.

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

31.7. An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

31.8. Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity for 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, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at themeeting.

32. SPECIAL RESOLUTION

32.1. A resolution by the Association shall be a special resolution if at a general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which members holding in aggregate not less than one-fourth of the total votes of all the members entitled tovote thereat, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than three-fourths of the number of members of the Association entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than three-fourths of the total votes to which the members present in person or by proxy are entitled.

32.2. If less than one-fourth of the total votes of all the members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than 14 days and not later than 21 days after the date of the meeting and the provisions of clause 29.3 shall apply in respect of such adjournment.

32.3. At the adjourned meeting, the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such members shall be deemed to be a special resolution even if less than one-fourth of the total votes are represented at such adjourned meeting.

33. OTHER PROFESSIONAL OFFICERS

33.1. Save as specifically provided in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association , the services of Auditors, Accountants, Attorneys, Advocates, Architects, Engineers, any other professional person of firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide. In the event the anticipated expenditure

incurred in respect of the above, is likely to exceed 5 % (five percent) of the total annual levy for the year in question, the trustees shall notify the members by way of written notification advising of the anticipated amount and giving a detailed motivation for the reasons why it is deemed necessary to incur such expenditure.

34. ACCOUNTS

34.1. The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association.

34.2. The Association in general meeting of the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

34.3. At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with the proper balance sheet made up as the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Accountants or Accounting Officer, and there shall be attached to the notice sent to Members convening each Annual General Meeting, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

34.4. Should the trustee or the majority of the members so require, the accounts of the Association shall be examined, and the correctness of the income and expenditure account and balance sheets ascertained by the auditors at least once a year.

35. DEPOSIT AND INVESTMENT OF FUNDS

35.1. The Trustees shall cause all monies received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank or financial Institution in the name of the Association and, subject to any direction given or restriction imposed at a General Meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.

35.2. Any funds not immediately required for disbursements may be invested in a savings or similar account with any of the top five Bank / financial Institution in South Africa approved by the Trustees from time to time.

35.3. Interest on monies invested shall be used by the Association for any lawful purpose.

36. SERVICE OF NOTICES

36.1. A notice shall be in writing and shall be given or served by the Association upon a member, either personally or by post in a pre-paid registered letter, or via email, properly addressed to the member at the address of the erf owned by him or email address provided by such owner to the trustees or Managing Agent.

36.2. No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address other than the address of the erf owned by him within the Republic of South Africa

which shall be deemed to be his address for the purpose of the service of notices.

36.3. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly sent and delivered.

36.4. Any notice by email shall be deemed to have been served at the time when the email containing the same was sent, and in proving the giving of the notice by email, it shall be sufficient to prove that the email containing the notice was properly addressed and posted.

36.5. 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 the meeting.

37. INDEMNITY

37.1. All Trustee Members shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee Member, in his capacity as Chairman, Vice- Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.

37.2. Every Trustee Member, every servant, agent and employee of the Association , and the Auditors or Accounting Officer shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee Member , his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

37.3. A Trustee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or Accounting Officer or of any of the other Trustee Members, whether in their capacities as Trustee Members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency of title to any Property acquired by the Trustee Committee for or on behalf of the Association , or for the insufficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss of damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty of breach of trust.

38. AMENDMENTS TO CONSTITUTION

38.1. This constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a special resolution adopted at an Annual General Meeting or Special General Meeting of the Members.

38.2. Until completion of the development, the Developer may without approval of the Members, amend, substitute and/or repeal any provisions of the Constitution, subject to the provisions of clauses 38.3, 38.4 and 38.6 below.

38.3. The provisions of Clauses 3, 4, 7, 12, 13 and 38 shall not be added to amended or repealed without the prior consent in writing by the City of Cape Town.

38.4. Any amendment to the Constitution dealing with any matter referred to in Section 61(1) of the City of Cape Town Municipal Planning By- law 2015 will become effective only when certified by the City of Cape Town.

38.5. The Constitution of the Association and any amendment thereof must be lodged with the City. The latest copy duly lodged with the City and which the City has certified in terms of Section 62(2) or 62(4) of the By-Law, is presumed to contain the operative conditions of the Association.

38.6. The City is exempt from liability *for* any damage which may be caused by its certification of a Constitution of an Association or an amendment thereof or by the loss of a Constitution lodged with the City.

39. MANAGING AGENT

39.1. The Trustees shall be entitled to appoint a managing agent from time to time to control, manage and administer the common property and to exercise such power and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor.

39.2. The Developer shall be entitled to appoint the managing agent for the first 3 years, calculated from the date of establishment of the Association, in consideration for which the Association shall pay a market related fee to be mutually agreed from time to time and, failing such agreement, to be determined by arbitration in terms of clause 40.

40. ARBITRATION

40.1. In the first instance and provided that it has jurisdiction, all disputes will be referred to the Community Schemes Ombud Service (CSOS) to resolve the dispute. Should the Community Schemes Ombud Service not have the necessary jurisdiction to preside over the dispute, the dispute will be referred to arbitration.

40.2. Any dispute, question or difference arising at any time between a Member or between Members and Trustees out of or in regard to:

40.2.1. any matters arising out of this Constitution; or
40.2.2. the rights and duties of any of the parties mentioned in this Constitution; or
40.2.3. the interpretation of this Constitution

shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question, provided that clause 40.1 hereof is not applicable.

40.3. Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within twenty-one (21) Business Days after it has been demanded.

40.4. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

40.4.1. primarily an accounting matter- an independent auditor;
40.4.2. primarily a legal matter - a practising counsel or attorney of not less than ten (10) years standing;
40.4.3. any other matter – an independent and suitably qualified person appointed by the Auditors as may be agreed upon between the parties to the dispute.

40.5. If agreement cannot be reached on whether the question in dispute falls under clauses 40.2.1, 40.2.2 or 40.2.3 or upon a particular arbitrator, within three (3) Business Days after the arbitration has been demanded, then:
40.5.1. the President for the time being of the Cape Law Society shall determine whether the question in dispute falls under clauses 40.2.1, 40.2.2 or 40.2.3; or
40.5.2. the President for the time being of the Cape Law Society shall nominate the arbitrator in terms of clause 40.4.3 within seven (7) Business Days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 Business Days referred to in clause 40.3.

40.6. The arbitrator shall make his award within seven (7) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of the Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

40.7. The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.

40.8. Notwithstanding anything to the contrary contained in clauses 40.4 to 40.6 inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining orinterdicting breaches of any of these provisions.

41. OWNER'S ASSOCIATION WHICH FAILS TO MEET AN OBLIGATION OR CEASES TO FUNCTION

41.1. Should the Association cease to function or fail to meet any of its obligations as per the Constitution and the Local Authority believe that the community is adversely affected by such non function or failure of the Association, the Local Authority may take appropriate action to rectify such failure or non-function of the Association and the Local Authority shall be entitled to recover any expenditure in respect of the action so taken by the Local Authority from the Association or its members, who are jointly liable.

41.2. The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its members.

41.3. If the Association ceases to function effectively or to carry out its obligations, the Local Authority may give the Association a binding instruction to:

41.3.1. hold a meeting and to reconstitute itself; or·
41.3.2. dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish a home owners' association and the removal of relevant provisions in the title deed.

41.4. In determining whether to act in terms of the above, the Local Authority must have regard to the following:

41.4.1. the purpose of the Association;

41.4.2. who will take over the maintenance of the internal engineering services and other obligations which the Association is responsible for, if at all;

41.4.3. the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;

41.4.4. the impact of the dissolution of the Association on its members and the community;

41.4.5. any written representations from the Association and its members.

41.5. If the Association is dissolved, the members must jointly pay the costs of:

41.5.1. the transfer to the Local Authority of the Association's property which contains the internal engineering services and private open spaces;

41.5.2. the upgrading of the internal engineering services to the standards of the Local Authority.

41.6. In the event that the Homeowners Association ceased to function, and an owner wishes to transfer land in that event, the owner must obtain the consent of at least 60% (Sixty Percent) of the members of the Association, which consent is deemed to be the consent of the Homeowners Association.

42. EFFECTIVE DATE

The provisions hereof shall come into force simultaneously with the first passing of the first transfer of an Erf in the Cape Town Deeds Registry.

STAD KAAPSTAD

13 JUN 2022

CITY OF CAPE TOWN

CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

OFFICE OF THE CITY MANAGER
LEGAL SERVICES

LEGAL ADVISOR: CORPORATE ADVISORY SERVICES
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FILE NAME: WHEATFIELDS ESTATE HOME OWNERS'ASSOCIATION		
CHECKLIST FOR THE CONSTITUTION OF AN OWNER ASSOCIATION (OA)		
A	A OA needs to be established in terms of S 61 of the City of Cape Town Municipal Planning By-Law, 2015	
B	The OA must have a Constitution	

The following provisions have to be stipulated in the Constitution.
(regardless of whether it has already taken place or not)

	Section of the By-Law	Provision	Yes/No	Clause	Remarks
1.		The OA has a Constitution	**Yes**		
2.	61(3)	The owners of land units arising from the subdivision become members of the owners' association upon taking transfer of the land unit and may not resign from the owners' association.	**Yes**	7.2 7.8	
3.	61(4)	No person may apply to the Registrar of Deeds for registration of, and the Registrar of Deeds may not register, a land unit arising from the subdivision without the consent of the owners' association, which consent may not be unreasonably withheld.	**Yes**	12.1.3.	
4.	61(5)(a)	An owners' association comes into existence upon the transfer of the first unit arising from the subdivision or part thereof;	**Yes**	42	
5.	61(5)(b)	An owners' association is a juristic person, has perpetual succession and is capable of suing and of being sued;	**Yes**	1.2	
6.	61(5)(c)	An owners' association has as its members all the owners of land units in the association's area who are jointly liable for the expenditure incurred in connection with the association;	**Yes**	7.10.3.	
7.	61(5)(d)	An owners' association must recover expenditure incurred in connection with the association from its members.	**Yes**	7.10.3.	

8.	61(6)	The applicant for approval of subdivision must call the first meeting of the owners' association within 60 days of the transfer of 60% of the land units arising from the subdivision or within two years of the transfer of the first land unit, whichever is the earlier.	**Yes**	25.1.	
9.	61(8)	Members of an owners' association must at the first meeting of the association elect the trustees of the association.	**Yes**	25.1	
10.	61(9)	The applicant for approval of subdivision must within 60 days of the first meeting notify the City that the meeting has taken place and provide the City with a copy of the minutes of the meeting.	**Yes**	25.2.	
	62	**An HOA's Constitution must provide for:**			
11.	62(1)(a)(i)	The association to act in accordance with the collective mutual interests of its members;	**Yes**	4.1.3	
12.	62(1)(a)(ii)	Constitution to provide for the control, administration and management of private open space, private streets and other services and amenities arising from the subdivision and buildings on land under the association's control for the benefit of all members.	**Yes**	4.1.7 4.1.8 4.1.11 13	
13.	62(1)(a)(iii)	the association's ownership of private open space, private streets and internal engineering services arising out of the subdivision concerned;	**Yes**	4.1.7 4.1.8 4.1.11 13	
14.	62(1)(a)(iv)	the obligation to enforce certain conditions of subdivision approval or management plans listed in the conditions;	**Yes**	4.1.14	
15.	62(1)(a)(vi)	where relevant, any further development which must form part of the association and the procedures for incorporating the development;	**N/A**		This provision, according to the applicant, is not required as there will be no future development and not future phases in the Wheatfields estate, other than the already approved and included phases.

16.	62(1)(a)(vii)	the regulation of at least one yearly meeting of its members;	**Yes**	25.3	
17.	62(1)(a)(viii)	the prohibition of the transfer of a land unit arising from the subdivision unless the consent of the association has been obtained and the grounds upon which such consent may be refused;	**Yes**	7.5	
18.	62(1)(a)(ix)	arrangements for the transfer of a land unit in the event that the association ceases to function;	**Yes**	41	
19.	62(1)(a)(x)	the association's implementation and enforcement of the provisions of subparagraphs (i) to (viii);	**Yes**		
20.	62(4)	The constitution of an owners' association may be amended in accordance with the provisions of the constitution provided that an amendment concerning a matter in subsection (1)(a) becomes effective only when certified by the City.	**Yes**	38.4	
21.	62(5)	The constitution of an owners' association and any amendment thereof must be lodged with the City and the latest copy duly lodged with the City, and which the City has certified in terms of subsection (2) or (4), is presumed to contain the operative provisions of the constitution.	**Yes**	38.5	
22.	62(6)	The City is exempt from liability for any damage which may be caused by its certification of a constitution of an owners' association or an amendment thereof or by the loss of a constitution lodged with the City.	**Yes**	38.6	
23.	62(7)	The owners' association must enforce the provisions of its constitution.	**Yes**	4.1	

ADDITIONAL REQUIREMENTS

Legal services was requested to peruse and confirm that the proposed Constitution of the above Owners Association is in order for approval by the relevant parties.

The undersigned signatory hereby states that the above-mentioned Constitution **is compliant** with applicable legislation.



Kind regards

Xavier Erasmus

Legal Advisor: Corporate Advisory Services

10 June 2022