

# **CONSTITUTION**

**OF**

**DIGTEBY ESTATE**

**HOME OWNERS**

**ASSOCIATION**

A Body Corporate established

in terms of Section 29 of the Land Use

Planning Ordinance. 15 of 1935

## 1. ESTABLISHMENT IN TERMS OF STATUTE

The Digteby Estate Home Owners Association is constituted, as a body corporate, in terms of Section 29 of the Land Use Planning Ordinance, No. 15 of 1985. in accordance with the conditions imposed by the Stellenbosch Municipality when approving in terms of Sections 25(1) and 42 of the said Ordinance of the subdivision of the Remainder of Farm 1307 Stellenbosch, situate in the Municipality of Stellenbosch.

## 2. INTERPRETATION

In this constitution:

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

“architectural guidelines” means the general architectural guidelines for Digteby Estate as determined by the Association, which are subject to change from time to time and which are available to members upon request.

“the Association” means the Digteby Estate Home Owners Association as hereby constituted;

“auditors” mean the auditors of the Association;

“business day” means weekdays other than Saturdays, Sundays and Public holidays;

“Chairman” means the Chairman of the trustee committee;

“the constitution” means this Constitution and regulations and by-laws of the Association from time to time in force;

“development period”	means the period commencing on the date of establishment of the Association and terminating on the date upon which the developer has sold and transferred to a third party the last of the Unit Erven owned by the developer;
“developer”	means the developer of Digteby Estate, namely The Property Farm (Proprietary) Limited (Registration No. 2004/024509/07) or any third party to whom The Property Farm (Proprietary) Limited may in future cede the rights conferred upon it in this constitution;
“Digteby Estate”	means the residential estate comprising of all of the Unit Erven;
“member”	means a member of the Association qualifying as such in terms of the provisions of clause 6 hereunder;
“the Municipality”	means the Stellenbosch Municipality or its successor in title from time to time succeeding to its present statutory responsibilities;
“the office”	means the registered office of the Association;
“month”	means calendar month;
“special resolution”	means a resolution passed a special 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 passed, on a show of hands, by not less than three-fourths of the total number of members present at that meeting who, at minimum, form a quorum for a general meeting;

“a trustee”	means one of the trustee committee;
“the trustee committee”	means the board of trustees of the Association;
“year”	means calendar year;
“in writing”	means written, printed, lithographed or transmitted in electronic format or partly one and partly another, and other modes of representing or producing words in a visible form;
“the Unit Erven”	means all erven, excluding, however, such erven, if any, zoned as “private open spaces”, arising from the subdivision of the Remainder of Farm 1307 Stellenbosch, situate in the Stellenbosch Municipality;
“vice-chairman”	means the vice-chairman of the trustee committee;

- 2.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other two genders.

### **3. PURPOSE DESCRIBING THE MAIN BUSINESS**

The main business of the Association is to carry on the promotion, advancement and protection of the members as well as to control and regulate the development of Digteby Estate.

### **4. MAIN OBJECT**

The main object of the Association is:

- 4.1 the control over –
  - 4.1.1 all buildings, and/or structures erected or to be erected on the Unit Erven;
  - 4.1.2 the landscaping and maintenance of pavements and private open spaces within the Digteby Estate; and
  - 4.1.3 the maintenance of the security fencing enclosing Digteby Estate as well as any security controls and/or structures which may be erected;
  - 4.1.4 the maintenance and management of all recreational facilities established with Digteby Estate; and
- 4.2 the promotion, advancement and protection of the communal and group interests of the members generally.

### **5. FINANCIAL YEAR END**

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

### **6. MEMBERSHIP**

- 6.1 Membership of the Association shall be compulsory for every registered owner of a Unit Erf.

- 6.2 Such membership shall commence simultaneously with the transfer of the Unit Erven into the name of the Transferee.
- 6.3 Membership of the Association shall be limited to the registered owners of the Unit Erven provided that:
  - 6.3.1 a person who is entitled to obtain a certificate of registered title to any such Unit Erf shall be deemed to be the registered owner thereof;
  - 6.3.2 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.
- 6.4 When a member ceases to be the registered owner of a Unit Erf, he shall ipso facto cease to be a member of the Association.
- 6.5 A member shall not be entitled to:
  - 6.5.1 use his Unit Erf or any improvements thereon or permit the use thereof in such manner or for such purposes as in the discretion of the trustee committee shall be injurious to the reputation of the development of The Digteby Estate.
  - 6.5.2 sell or transfer a Unit Erf unless it is a condition of the sale and transfer that:
    - 6.5.2.1 the transferee becomes a member of the Association;
    - 6.5.2.2 the registration of transfer of that Unit Erf into the name of that transferee shall ipso facto constitute the transferee as a member of the Association;
    - 6.5.2.3 he first obtains the written consent of the Association which consent shall be given provided the purchaser of such Unit Erf agrees in writing to abide by the rules of the

Constitution of the Association.

- 6.5.3 erect any buildings and/or structures of any nature whatsoever, nor to make any alterations, modifications or renovations to such buildings and/or structures (“the proposed work”) on his Unit Erf without the written approval of the trustees, which approval shall only be given -
- 6.5.3.1 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
  - 6.5.3.2 the trustees or their nominee are satisfied that the proposed work is in accordance with the Design Manual, 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
  - 6.5.3.3 provided that the foregoing shall not be interpreted as detracting from the sole and final responsibility of the Municipality to approve or reject building plans.
- 6.6 The registered owner of a Unit Erf may not resign as a member of the Association.
- 6.7 The trustee committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the trustee committee.
- 6.8 The rights and obligations of a member shall not be transferable and every member shall:
- 6.8.1 to the best of his ability further the objects and interests of the Association;

6.8.2 observe all by-laws and regulations made by the Association or the trustee committee

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 Unit Erf.

## **7. LEVIES**

- 7.1 The trustee committee shall from time to time, make levies upon the members for the purpose of meeting all the expenses which the Association has incurred, or to which the trustee committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in good order and condition within Digteby Estate all the security controls and structures, all landscaping, all private road areas, as well as all communal recreational and other facilities in respect of Digteby Estate, and/or for general maintenance or other services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, and the Association's affairs. In calculating levies the trustee committee shall take into account, income, if any, earned by the Association.
- 7.2 The trustee 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 make a levy upon the members, in accordance with the formula as stipulated in 7.5 hereunder. The trustee committee may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature. Every such levy shall be made payable by annual installments due in advance on the first day of each and every succeeding year.
- 7.3 The trustee committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in 7.2 (which are not included in any estimate made in terms of 7.2), and such levies may be made in the sum or by such installments and at such time or times as the trustee

committee shall think fit.

- 7.4 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 a Unit Erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of that Unit Erf, to pay the levy attributable to that Unit Erf.
- 7.5 The total amount(s) payable by all the members pursuant to the provisions of 7.2 shall be equally apportioned between and recovered from the members and shall be payable by the members as monthly levies. Such levies shall be payable by members monthly in advance.
- 7.6 Any special levies imposed by the trustees in terms of clause 7.3 shall 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. The manner in which any special levies which may be imposed by the trustees in terms of clause 7.3 shall be payable by the members concerned shall be determined by the trustees.
- 7.7 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. SECURITY FENCE**

- 8.1 The Association shall be responsible for the maintenance and upkeep of the perimeter security fence enclosing Digteby Estate.
- 8.2 The members who are owners of Unit Erven of which the boundaries are enclosed by the security fence shall permit the Association and/or its

contractors, reasonable access to their Unit Erven for purposes of the carrying out of maintenance and/or replacement of the security fence.

## **9. BUILDING DEPOSIT**

- 9.1 Each member shall, when submitting to the trustees for approval the detailed plans for the construction of new improvements or alterations to existing improvements on the member's Unit Erf in terms of clause 6.5.3. pay to the trustees a building deposit in an amount as may be determined from time to time by the trustees, which amount shall be retained by the trustees in trust until completion by the member/his contractors of such improvements (as approved by the trustees)
- 9.2 Upon completion of the building activities on the Unit Erf, the trustees shall, if they are satisfied that no damage has been effected by the member or any of his contractors to any of the landscaped areas within Digteby Estate and that the improvements have been constructed in accordance with duly approved plans, release the building deposit to the member. In the event of any landscaped areas as aforesaid having been damaged due to the building activities, the member shall, within 15 (fifteen) days of having been requested to do so in writing by the trustees, have the damage repaired 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 in terms of 9.1 above shall then be utilised to defray the expenses of the independent contractor. It is, however, recorded that should the damage caused by the member be such that the deposit is not sufficient to cover the costs of the repairs thereof, the claim of the trustees against the member shall not be limited to the amount of the said deposit.

## **10. ARCHITECTURAL GUIDELINES**

The trustees may, in liaison and with the consent of the Municipality amend, amplify, clarify or add to the provisions of the architectural guidelines. In the event of the provisions of the architectural guidelines being amended or added to and such amendment or addition will materially affect any further development of Unit Erven, the

trustees shall by written notice inform all members of the amendment or addition to the architectural guidelines.

## **11. CONTRACTS AND REGULATIONS**

11.1 The trustee committee may from time to time:

11.1.1 make regulations governing inter alia:

11.1.1.1 security control measures for Digteby Estate;

11.1.1.2 the landscaping and maintenance of side walks and open space areas within Digteby Estate;

11.1.1.3 the provision of and utilisation of recreational areas within Digteby Estate;

11.1.2 enter into agreement(s) with the local authorities governing the matters set out in 11.1 and any other incidental matters.

11.2. Each member undertakes to the Association that he shall comply with:

11.2.1 the provisions of this Constitution;

11.2.2 any regulations made in terms of 11.1.1;

11.2.3 any agreements referred to in 11.1.2 insofar as those agreements may directly or indirectly impose obligations on him.

## **12. BREACH**

12.1 Should any member:

12.1.1 fail to pay on due date any amount due by that member in terms of this Constitution or any regulation made thereunder and remain in

default for more than 7 (seven) days after being notified in writing to do so by the trustees; or

- 12.1.2 commit any other breach of any of the provisions of this Constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 (seven) 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 or the Association or any other member may have in law, including the right to claim damages 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 thereunder, as the case may be; or in the case of clause 12.1.2, to remedy such breach and immediately recover the total cost incurred by the trustees or the Association in so doing from such member.

- 12.2 Should the trustees institute any legal proceedings against any member pursuant to a breach by that member of this Constitution or any regulation made thereunder, 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.
- 12.3 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.

### **13. 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 estate any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a member.

### **14. TRUSTEE COMMITTEE**

14.1 There shall be a board of the trustees for the Association which shall consist of not less than 3 (three) and not more than 6 (six) trustees appointed by the members and, during the development period, a similar number of trustees as the number of trustees appointed by the members, plus an additional trustee, all of whom are to be appointed by the developer.

14.2 At the completion of the development period, the trustees so appointed by the developer shall cease to act as trustees of the Association.

### **15. REMOVAL & ROTATION OF TRUSTEE MEMBERS**

15.1 Save as set forth in 15.2 below, each trustee appointed by the members 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.

15.2 A trustee shall be deemed to have vacated his office as such upon:

15.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

15.2.2 his making any arrangement or compromise with his creditors;

- 15.2.3 his conviction for any office involving dishonesty;
- 15.2.4 his becoming of unsound mind or being found lunatic;
- 15.2.5 his resigning from such office in writing delivered to the Secretary;
- 15.2.6 his death;
- 15.2.7 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.

- 15.3 Upon any vacancy occurring on the trustee committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the trustee committee if the relevant trustee was appointed by the members. If the trustee was appointed by the developer, the developer shall be entitled to appoint a substitute trustee to serve in place of the trustee who vacated his office

## **16. OFFICE OF TRUSTEES**

- 16.1 The trustees shall appoint from amongst themselves, a Chairman and vice-chairman.
- 16.2 The first Chairman and vice-chairman, shall be appointed by the registered owner, 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.
- 16.3 Within 7 (seven) 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 office 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. In the event of any vacancy occurring in any of the aforesaid offices at any time, the trustee committee shall immediately meet to appoint one of their number as a replacement in such office.

- 16.4 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 of members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 16.5 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
- 16.6 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 or salary in respect of the performance of such duties.

## **17. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE**

- 17.1 Subject to the express provisions of this constitution, 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, and as are not by these presents required to be exercised or 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.

- 17.2 The trustee committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 17.3 The trustee committee shall have the right to co-opt onto the trustee committee any member or members chosen by it. A co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees.
- 17.4 The trustee committee may, should it so decide, investigate any suspected or alleged breach by any member or trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 17.5 The trustee committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed in the Association in general meeting:
- 17.5.1 as to disputes generally;
  - 17.5.2 for the furtherance and promotion of any of the objects of the Association;
  - 17.5.3 for the better management of the affairs of the Association;
  - 17.5.4 for the advancement of the interests of members;
  - 17.5.5 for the conduct of trustee committee meetings and general meetings; and
  - 17.5.6 to assist in administering and governing its activities generally and shall be entitled to cancel, vary or modify any of the same from time to time.

**18. PROCEEDINGS OF THE TRUSTEE COMMITTEE**

- 18.1 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 these presents.
- 18.2 Meetings of the trustee committee shall be held at least once every quarter, provided that if all the trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the trustee committee need be held for that quarter.
- 18.3 The quorum necessary for the holding of any meeting of the trustee committee shall be 3 (three) trustees.
- 18.4 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 5 (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 5 (five) 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.
- 18.5 A trustee shall take minutes of every trustee committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue 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 relating to the keeping of minutes of meetings of directors of companies. The trustee committee minute book shall be open for inspection at all reasonable times by a trustee, the auditors, the Association members and Local Authority.
- 18.6 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.

- 18.7 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.
- 18.8 A resolution passed 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.

## **19. GENERAL MEETINGS OF THE ASSOCIATION**

- 19.1 The Association shall within 4 (four) months of each financial year end of the Association, hold a general meeting as its Annual General Meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices, in terms of 20 below calling it.
- 19.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the trustee committee shall decide from time to time.
- 19.3 All general meetings other than Annual General Meetings shall be called special general meetings.
- 19.4 The trustee committee, may, whenever they think fit, convene a special general meeting.

## **20. NOTICE OF MEETINGS**

- 20.1 An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by 21 (twenty-one) 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 14 (fourteen) 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:

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

20.1.2 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 75% (seventy five percent) of the total voting rights of all members.

20.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, 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.

## **21. VENUE OF MEETINGS**

General Meetings of the Association shall take place at such place/s as shall be determined by the trustee committee from time to time.

## **22. QUORUM**

22.1 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 such of the members entitled to vote, as together for the time being, represent one-quarter of the total votes of all members of the Association entitled to vote, for the time being save that not less than 3 (three) members must be personally present.

- 22.2. If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

### **23. AGENDA AT MEETINGS**

- 23.1 In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting

23.1.1 the consideration of the Chairman's report to the trustee's committee;

23.1.2 the election of the trustee committee;

23.1.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;

23.1.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;

23.1.5 the consideration of the report of the auditors;

23.1.6 the consideration of the total levy (as referred to in 7) for the calendar year during which such Annual General Meeting takes place; and

23.1.7 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the Annual General Meeting.

## **24. PROCEDURE AT GENERAL MEETINGS**

- 24.1 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 at 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.
- 24.2 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 from time to time and from place to place, 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. Whenever a meeting is adjourned for ten 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.
- 24.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

## **25. PROXIES**

- 25.1 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:

- 25.1.1 a company, the proxy may be signed by the Chairman of the board of directors of the Company or by its secretary;
  - 25.1.2 a close corporation, the proxy may be signed by any of its members;
  - 25.1.3 a Trust, the proxy may be signed by any of its trustees; and
  - 25.1.4 where an association of persons, by the secretary thereof.
- 25.2 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 deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.
- 25.3 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.
- 25.4 Should a member be absent from The Digteby Estate, for a continuous period in excess of three (3) weeks, a proxy must be appointed by such member prior to his absence in accordance with 25.1 and 25.2, failing which a member shall not be entitled to vote, at any special general meeting, called during such member's absence.

## **26. VOTING**

- 26.1 At every general meeting, every member in person or by proxy and entitled to vote shall have one vote for each Unit Erven registered in his name provided that if the Unit Erf is registered in more than one person s name, then they shall jointly have one vote for every Unit Erf so registered, provided further that the

developer, during the development period, shall have 51% (fifty one percent) of the total votes.

- 26.2 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.
- 26.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 26.4 Notwithstanding the provisions of 26.3 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.
- 26.5 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.
- 26.6 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 an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 26.7 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 of the procedure at such

meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, 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 the meeting.

## **27 OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in this Constitution, the trustee committee shall at all times have the rights to engage on behalf of the Association, the services of Accountants, auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or 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, subject to any of the provisions of these presents, provided that any expenditure incurred in respect of the above, shall not exceed 5% (five per centum) of the total annual levy for the year in question unless authorised by a special resolution.

## **28. ACCOUNTS**

28.1 The Association in general meeting or 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.

28.2 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 a proper balance sheet made up as at 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 auditors, and there shall be attached to the notice sent to members convening each Annual General Meeting, as set forth in 19 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

## **29. AUDIT**

Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the auditors.

## **30. SERVICE OF NOTICES**

- 30.1 A notice shall be in writing and shall be given or served by the Association upon any member, either personally or by post in a prepaid registered letter, properly addressed to the member at the address of the Unit Erf owned by him or by electronic transmission, should the member have listed with the Association his electronic mail address.
- 30.2 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 within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 30.3 Any notice by post shall be deemed to have been served at any time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted. Any notice transmitted by telefacsimile or electronic mail shall be deemed to have been received by the addressee on the date upon which it is transmitted.
- 30.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to received notice shall not invalidate the proceedings of that meeting.

### 31. INDEMNITY

- 31.1 All trustee members and the auditors 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.
- 31.2 Every trustee member, every servant, agent and employee of the Association, and the auditors 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 traveling 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.
- 31.3 A trustee member shall not be liable for the acts, receipts, neglects or defaults of the auditors 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 or deficiency of title to any property acquired by the trustee committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person in whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

## 32. ARBITRATION

32.1 Any dispute, question or difference arising at any time between member or between members and trustees out of or in regard to:

32.1.1 any matters arising out of this Constitution; or

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

32.1.3 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.

32.2 Arbitration shall be held in Stellenbosch 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 21 (twenty-one) business days after it has been demanded.

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

32.3.1 primarily an accounting matter - an independent accountant;

32.3.2 primarily a legal matter - a practicing counsel or attorney of not less than 10 (ten) years standing;

32.3.3 any other matter - an independent and suitably qualified person appointed by the auditors;

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

32.4 If agreement cannot be reached on whether the question in dispute falls under 32.3.1, 32.3.2 or 32.3.3 or upon a particular arbitrator in terms of 32.3.3, within 3

(three) business days after the arbitration has been demanded, then:

32.4.1 the President for the time being of the Law Society of the Cape of Good Hope shall determine whether the question in dispute falls under 32.3.1, 32.3.2 or 32.3.3; or

32.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of 32.4.1 within 7 (seven) 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 32.2.

32.5 The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this 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.

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

32.7 Notwithstanding anything to the contrary contained in 32.3 to 32.6 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 or interdicting breaches of any of these provisions.

### **33. SPECIFIC PROVISIONS APPLICABLE DURING THE DEVELOPMENT PERIOD**

33.1 During the development period the developer shall be entitled:

33.1.1 to change the design and layout of the development;

33.1.2 to incorporate further land and new Unit Erven into the development;

33.1.3 to change the design and specifications of services and/or communal facilities within the development;

subject thereto that no member shall be unreasonably prejudiced by any such actions.

**34. EFFECTIVE DATE**

The provisions hereof shall come into force simultaneously with the first passing of transfer of the Unit Erven.

**35. AMENDMENTS TO CONSTITUTION**

This constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a special resolution of the members and save further that such proposed amendment or change to the Constitution shall not be inconsistent or in contravention of any current legislation.

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