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Collab Nr: 1726343
Date: 28 May 2021

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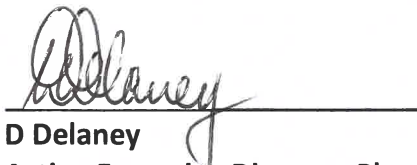
Dear Mr. Morey,

AMENDMENT OF THE AKARANA HOME OWNERS ASSOCIATION HOMEOWNERS' ASSOCIATION CONSTITUTION (ESTABLISHED ON PORTION 39 OF FARM 791 PAARL DIVISION)

You are hereby informed that, approval from a local government perspective, was granted in terms of Section 60(2) of the Drakenstein By-law on Municipal Land Use Planning, 2018, for the amended of the Akarana Home Owners Association Constitution, attached as Annexure A.

Notification of the decision will be placed on the municipal website and any person whose rights are affected, may appeal in writing, in terms of Section 62(3) of the Municipal Systems Act, to the Appeal Authority as stipulated in terms of Section 79(2) Drakenstein By-law on Municipal Land Use Planning, 2018.

Regards,



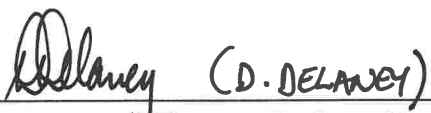
D Delaney
Acting Executive Director: Planning and Development

The Akarana Master Home Owners' Association

Constitution

Established as a Home Owners' Association in terms of section 29 of the Land Use Planning Ordinance, 15 of 1985, read together with Section 40(9) of the Western Cape Land Use Planning Act 3 of 2014

Approved by the members of the association at the special general meeting held on the _____ day of _____ 2021.

<p style="text-align: center;">DRAKENSTEIN MUNICIPALITY</p> <p>Approved in terms of Section 60 of the Drakenstein By-law on Land Use Planning, 2018.</p> <p style="text-align: center;"> (D. DELANEY)</p> <p>ACTING EXECUTIVE DIRECTOR: PLANNING AND DEVELOPMENT</p> <p>Ref: 1726343</p> <p>Date: 28 May 2021</p>

Contents

Preamble	4
1. Development overview	4
2. Definitions	5
3. Interpretation	9
4. Creation of association	10
5. Name and status of the association	10
6. Main business and objects of the association	10
7. Powers of the association	12
8. Exercise of powers by the association	13
9. Obligations of the association	14
10. Membership of the association	15
11. Members' obligations in respect of land units	16
12. Development of the Commercial Farming units	18
13. Alienation of land units	19
14. Dealings with common property	19
15. Budget and approval	21
16. Levies	21
17. Water	23
18. Appointment of a manager	24
19. Rules	24
20. Trustee committee	25
21. Powers and duties of the trustee committee	26
22. Composition of the trustee committee	27
23. Proceedings of the trustee committee	31
24. General meetings	32
25. Notice and venue of general meetings	33
26. Proxies for general meetings	34
27. Quorum for general meetings	35
28. Agenda at the annual general meeting	36
29. Procedure at general meetings	36
30. Voting at general meetings	37
31. Minutes of general meetings	38
32. Financial matters	39
33. Deposit and investment of funds	40
34. Tax	40
35. Indemnity	41
36. Non-compliance, warnings and penalties	41



37. Dispute resolution	43
38. Domicilium	44
39. Commercial rights	45
40. General	45
41. Amendments to the constitution	46
Appendix A Code of conduct	
Appendix B Architectural guidelines	
Appendix C Farming guidelines	
Appendix D Levy apportionment percentages	

Preamble

(1) Whereas the Akarana Master Home Owners' Association ("Akarana") has on two previous occasions resolved to amend its then Constitution by adopting an updated Constitution, viz. on 26 August 2005 (the "2005 Constitution") and on 6 November 2010 (the "2010 Constitution"), respectively.

(2) And whereas Akarana has managed the Estate in accordance with the 2010 Constitution since its aforesaid adoption.

(3) And whereas the members of Akarana and the two other governing bodies established in respect of certain subdivided farm portions forming part of the Estate, viz. the La Bella Vita Home Owners Association (the "LBV") and the Santé Winelands Body Corporate ("SWBC"), embarked upon mediation to improve the governance of the Estate and identify necessary amendments to the 2010 Constitution in respect of inter alia voting rights, levy apportionment and an allocation of responsibilities between the three aforesaid governing bodies for the provision and maintenance of services which is responsive to the needs and interests of their respective members;

(4) And whereas this Constitution is the product of the aforesaid mediation proceedings and seeks to give effect to the contemplated improvements.

1. Development overview

1. (1) In 1998, Portion 27 of the Farm Simonsvlei No. 791, Division Paarl (the "Parent Farm") was subdivided into 7 (seven) Portions, viz. Portions 36, 37, 38, 39, 40, 41 and 42. These portions are formally described as Portions 36, 37, 38, 39, 40, 41 and 42 (Portion of Portion 27) of the Farm Simonsvlei No. 791, Drakenstein Municipality, Division Paarl, Province of the Western Cape. Hereinafter, the Portions will simply be referred to as either Portion 36, 37, 38, 39, 40, 41 or 42.

(2) In 2000, designated areas of Portion 39 were rezoned from Agricultural I to:

(a) Resort Zone I to permit a guest house complex;

(b) Resort Zone II to permit fifteen 300m² land units (i.e. the building stands on the Villa Farms, with their remainder retaining the Agricultural I zoning); and

(c) Open Space Zone II.

(3) In 2001, Portion 39 was further subdivided into 21 (twenty-one) Portions, namely Portions 43 – 63. These portions are formally described as anyone of Portions 43 - 63 (Portion of Portion 39) of the Farm Simonsvlei No. 791, Drakenstein Municipality, Division Paarl, Province of the Western Cape. Hereinafter, these Portions will simply be referred to as anyone of the Portions from 43 – 63 (both

43 and 63 inclusive).

Three portions are classified as communal areas, namely Portions 60, 61 and 63.

(4) The aforesaid rezoning and subdivision approvals required the establishment of a home owners' association in respect of the property.

(5) In 2001, the then Winelands District Council approved the developer's proposed Constitutions, subject to certain amendments, in respect of the following home owners' associations:

(a) The Akarana Master Home Owners Association, then known as the Akarana Home Owners' Association, which was established in respect of the subdivided portions of the Parent Farm; and

(b) The LBV HOA, which was established in respect of Portion 39 and its subdivisions (Refer to clause 1(3)).

(6) In 2002, the 10 (ten) Resort Zone I cottages (now referred to as "spa units") forming part of the guesthouse complex were rezoned to Resort Zone II, so as to allow their separate alienation.

(7) In 2003, a sectional title register was opened in respect of Portion 58 (refer to clause 1(3)). The SWBC thus established comprises of 12 (twelve) individual sections, viz. a wellness centre (section 11); a hotel (section 12); and 10 (ten) spa units (sections 1 – 10).

(8) According to their relevant title deeds:

(a) owners of Portions 36 – 42 (refer to Clause 1(1)) (including the subdivisions of Portion 39) (refer to Clause 1(3)) are members of Akarana and will become subject to the provisions of this constitution, which governs, inter alia, the management and operation of matters that are of common interest and for the benefit of the property;

(b) owners of the subdivided portions of Portion 39, being Portions 43-63 (refer to clause 1(3)) are subject to the Constitution of the LBV and the Constitution of Akarana, and

(c) owners of sectional title units in the SWBC established in respect of Portion 58 are subject to the Sectional Titles Schemes Management Act 8 of 2011, as well as the management and conduct rules of SWBC.

2. Definitions

2. (1) In this constitution, and unless inconsistent with the context thereof, the following words and expressions shall have the meanings hereby assigned to them:

(a) "**accountant**" means the chartered accountant or firm of chartered accountants which is appointed to act as accountant of the association from time to time;

(b) “**Akarana**” means the master home owners’ association established in respect of the farming units, namely Portions 36 – 42 (including the subdivisions of Portion 39) and “**association**” shall have a corresponding meaning;

(c) “**alienate**” means alienate any land unit and includes by way of sale, exchange, donation, deed, intestate, will, cession, assignment, court order or insolvency, irrespective whether such alienation is subject to a suspensive or resolute condition, and “**alienation**” shall have a corresponding meaning;

(d) “**annual general meeting**” means the annual meeting of members to be held in August or September, at which, inter alia, the audited financial statements of the association for the previous financial year are tabled for approval, and at which each of the persons nominated by the Commercial Farms, SWBC and LBV to serve on the trustee committee for the period up to the next annual general meeting, are appointed;

(e) “**architectural guidelines**” means the LBV/villa farms architectural guidelines attached hereto, as Appendix B, which includes the landscaping code and the colour paint chart;

(f) “**chairperson**” means the chairperson of the trustee committee;

(g) “**code of conduct**” means the rules pertaining to the conduct of all members and persons occupying or visiting the property, through or on the authority of a member, which rules are contained in Appendix A hereto, provided that due to the application of the management and conduct rules in the case of SWBC, the aforementioned code of conduct does not apply to the members, occupants, guests or visitors to the property;

(h) “**Commercial** or “**farming units**” means Portions 36 – 38 and 40 - 42;

(i) “**common property**” means any land forming part of the relevant subdivision of Portion 27 of the Farm Simonsvlei No. 791, which does not form part of a land unit, including but not limited to all right of wayservitudes for access, as well as servitudes for internal services i.e. sewage treatment plant, the channel between the sewage treatment plant and the dam and water pump station, as well as wires, lighting and electrical systems, plumbing, drainage and storm-water systems, communication and service supply systems and other such services existing on the land which does not form part of a land unit;

(j) “**constitution**” means the constitution of the association as set out in this document and appendices A to E hereto, which shall form an integral part of it;

(k) “**developer**” means Fundeals Sixteen CC (1998/028403/23) (previously incorporated as Fundeals Sixteen (Pty) Ltd.) and Fundev Property Investments (Pty) Ltd (2001/015779/07);

(l) “**development scheme**” means any scheme established for the subdivision, rezoning or development of any Portion of the property;

(m) “**estate**” means the entire security fenced area of the property, including the roads, pathways, open areas, land units and dams situated on the property;

(n) “**farming guidelines**” means the LBV/villa farms’ farming guidelines attached hereto as Appendix C;

(o) “**financial year**” means the annual accounting period of the association commencing, on 1 March and ending on the last day of February of the ensuing year. The trustees may change, by majority resolution, the dates of the financial year if they are of the reasonable opinion that circumstances so require;

(p) “**general meeting**” means both an annual general meeting and/or a special general meeting of the members of the Association;

(q) “**improvement**” means any structure, whether of a permanent or temporary nature, inclusive of any building or pathway of whatsoever nature, constructed, modified or erected, or to be constructed, modified or erected on the property;

(r) “**La Bella Vita Home Owners’ Association**” or “**LBV/Villa Farms**” means the home owners’ association established in respect of subdivided portions of Portion 39, viz. Portions 43 – 63;

(s) “**land unit**” means any Portion of land comprising a subdivision of the property, including any subsequent subdivision of that Portion, and any unit in a sectional title scheme developed on a Portion of the property, which Portion or unit is registered or capable of being registered in the Deeds Office, with the inclusion of any improvements thereupon;

(t) “**law**” means any constitution, statute, regulation, By-Law, code, ordinance, decree, rule, judicial, arbitral, administrative, ministerial, departmental or regulatory judgment, order, decision, ruling, award, policy, voluntary restraint, guideline, directive, compliance notice, abatement notice, agreement with, requirement of, or instructions by any governmental body, and the common law;

(u) “**levies**” means the amounts payable by members to the association in accordance with the provisions of this constitution, to defray the expenses of the association;

(v) “**local authority**” means the local authority having jurisdiction over the relevant land from time

to time, which is the Drakenstein Municipality;

(w) "**maintenance**" includes repairs, renovations, replacements, cleaning and removals, and "**maintain**" has a corresponding meaning;

(x) "**manager**" means the person, who need not be a member, appointed by the trustee committee to undertake the management of Akarana or any part thereof;

(y) "**member**" means the registered owner of a land unit, provided that if any land unit is jointly owned by more than 1 (one) person, then such joint owners will, for the purposes of this constitution, be deemed to be 1 (one) member;

(z) "**offender**" means a person who contravenes any provision of this constitution or any of the rules made by the trustee committee;

(aa) "**ordinary resolution**" means a resolution of members, passed at a general meeting called for the purpose of passing such a resolution, which meeting shall be called on no less than 14 (fourteen) written days' notice, and which is passed by a simple majority of the votes exercised by the members present in person or represented by proxy or by lawful representation, at such general meeting and entitled to vote on such resolution; or in the absence of such a general meeting, which is approved in writing by members holding more than 50% (fifty percent) of the votes exercisable by all members on such resolution, provided that a written copy of such proposed resolution has been given to all members prior to the exercise of such votes;

(ab) "**owner**" means the person in whose name a land unit has been registered in the Deeds Office, or who is the owner of a land unit under any Law, including any successor-in-title to such person, or the person in whose hands the administration of such land unit vests as executor, trustee, administrator, curator, liquidator or business rescue practitioner, as the case may be;

(ac) "**penalty**" means a warning given to, or fine imposed on any offender for contravening any of the provisions of this constitution or any of the rules made by the trustee committee;

(ad) "**person**" includes a company, close corporation, trust, partnership or other association of persons;

(ae) "**property**" means the subsequent subdivided portions of Portion 27 of the Farm Simonsvlei No. 791, Drakenstein Municipality, Division Paarl, viz. Portions 36 – 42 (including the further subdivisions of Portion 39) as set out in Clause 1 above;

(af) "**public holiday**" means a gazetted national public holiday in the Republic of South Africa;

(ag) "**resident**" means the occupier of a building situated on the property, including a tenant, guest, lodger, visitor, family member or holiday maker;

(ah) "**remote attendance**" means the process whereby members are enabled to attend and participate in a general meeting electronically;

(ai) "**special general meeting**" means a meeting of members other than an annual general meeting;

(aj) "**special resolution**" means a resolution of members, passed at a general meeting of members called for the purpose of passing such a resolution, which meeting shall be called on no less than 21 (twenty-one) days' written notice, and in accordance with the provisions of this constitution and which is passed by no less than 75% (seventy-five percent) of the votes exercised by the members present in person or represented by proxy or by lawful representation at such general meeting, and entitled to vote on such resolution, including the majority support of the majority of the Commercial Farm owners; or which is approved in writing by members holding no less than 75% (seventy-five percent) of the votes exercisable by all members on such resolution, provided that a written copy of such proposed resolution has been delivered to every member prior to the exercise of such votes; provided that in the event of a proposed amendment to this constitution and/or Addendum D, a vote passed by no less than 85% (eighty-five percent) of the votes exercised is required;

(ak) "**SWBC**" means the Santé Winelands Body Corporate, a body corporate regulated by both the Sectional Title Schemes Management Act 8 of 2011, its Regulations, the rules of the body corporate and this constitution, and which is the registered owner of Portion 58;

(al) "**trustee committee**" means the trustee committee of the association appointed from time to time, and "**trustees**" have a corresponding meaning, and

(am) "**villa farms**" means Portions 43 – 57, which each comprise an area zoned as Agricultural I.

3. Interpretation

3. (1) The clause headings in this constitution are inserted for convenience only and shall be disregarded in construing or interpreting this constitution.

(2) In this constitution, unless the context clearly indicates a contrary intention:

(a) the singular shall include the plural and vice versa;

(b) a reference to any one gender shall include the other genders, and



(c) a reference to natural persons shall include legal persons and vice versa.

(3) Unless inconsistent with the context, words and expressions defined in any clause or subclause of this constitution shall, for the purpose of such clause or the clause of which that subclause forms part, and in subsequent clauses, bear the meaning assigned to such words and expressions in such clause or subclause.

(4) When any number of days is prescribed in this constitution, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which event the last day shall be the next succeeding day, which is not a Saturday, Sunday or public holiday.

(5) Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.

(6) If any provision of this constitution is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this constitution.

(7) If any provision in the definitions clause is a substantive provision, conferring rights or imposing obligations on anyone, then notwithstanding that it is only in the definitions clause, effect shall be given to it as if it were a substantive provision in the body of this constitution.

(8) The appendices to this constitution are deemed to be incorporated in and form part of this constitution.

4. Creation of association

4. (1) The association has been established as a Home Owners' Association in terms of section 29 of the Land Use Planning Ordinance 15 of 1985, read together with Section 40(9) of the Western Cape Land Use Planning Act 3 of 2014 and came into existence with the registration of the first transfer of a subdivided portion of Portion 39 from the developer to a third party.

5. Name and status of the association

5. (1) The association shall be known as "Akarana Master Home Owners' Association".

(2) The association shall:

(a) have legal personality, perpetual succession and be capable of suing and being sued in its own name;

(b) comprise the members, and

(c) not operate for profit, but for the benefit of the members.

(3) No member in his personal capacity shall have any right, title or interest to, or in the funds or assets of the association, which shall vest in the association and be controlled by the trustee committee on behalf of the members.

6. Main business and objects of the association

6. (1) The main business of the association is to promote, advance and protect the communal interests of members, provide high quality services and facilitate harmonious relationships amongst members, whilst at the same time ensuring that members comply with all the obligations imposed upon them in terms of this constitution.

(2) The main objects of the association are to:

(a) oversee, regulate, maintain and administer the common functions in respect of the property, which shall include:

(i) security and access control;

(ii) provision of sewage services and treatment effluent, to minimum SANS Standards and to the satisfaction of the Department of Water and Sanitation;

(iii) the regular testing as per SANS Standards, monitoring and supply of potable and non-potable water;

(iv) the maintenance of common property;

(v) refuse removal;

(vi) liaison with the local authority in relation to the electricity and water supply;

(vii) administrative and accounting management, and

(viii) liaison with the manager, members and neighbouring property owners.

(b) ensure that improvements are and remain of a high standard of quality;

(c) oversee the harmonious development of the property;

(d) determine and collect levies from the members;

(e) enforce members' obligations in terms of this constitution and the rules;

- (f) ensure compliance with the legal requirements and standards of the local authority, including the conditions of establishment and rezoning imposed by any competent authority;
- (g) promote, advance and protect the property and the interests of the members, including but not limited to controlling common facilities, the aesthetic appearance of the property, landscaping, buildings and improvements, farming guidelines, security and access measures, conduct on or about the property and the common infrastructure;
- (h) promote a high standard of living on the property;
- (i) ensure where applicable, compliance with the conditions imposed by the local authority in respect of any development scheme and/or the approvals granted in respect thereof, and
- (j) perform such services as the Commercial Farms, SWBC or the LBV/villa farms may mandate it to do on its behalf, provided that the performance of such services by the association has been authorised by the members by way of an ordinary resolution, provided further that members of the aforesaid body which wishes to mandate the association to perform such services shall not be entitled to vote on such ordinary resolution.
- (k) provide comments on building plan and land use planning applications.

7. Powers of the association

- 7. (1) The association shall have the power to do such acts and perform such functions as are reasonably necessary to enable it to achieve the objects of the association and to comply with its obligations. The association shall at all times exercise its powers in the interests of the members, as provided in this constitution and as further resolved by the members, where applicable.
- (2) The association shall have the power, inter alia, to:
 - (a) regulate the use of all recreational and entertainment facilities and all other amenities on the common property;
 - (b) open an account with a registered commercial bank;
 - (c) invest any monies received by the association;
 - (d) acquire and maintain such assets as are reasonably necessary to enable it to meet its objects and obligations;
 - (e) insure its assets and keep them insured at replacement value against fire and such other risks, and in any such manner, as it may decide upon;



- (f) utilize insurance payments received for damages to a building in order to rebuild or repair such building in so far as this can be done;
- (g) negotiate loans of monies needed to execute its powers or meet its objects and responsibilities, provided that the acceptance of such loans and the material terms and conditions thereof shall require the prior approval of members by way of a special resolution;
- (h) secure the repayment of monies borrowed and the payment of interest thereon, provided that the granting of such security and the material terms and conditions thereof shall require the prior approval of members by way of a special resolution;
- (i) purchase, hire or otherwise acquire such movable property as the members may approve by way of special resolution, for use by the association in order to enhance, protect or preserve a members' ownership of a land unit or to enhance, protect or preserve the use and enjoyment of the common property;
- (j) appoint such contractors, agents and employees as it may deem necessary to enable it to properly perform its duties, provided that any such appointments are made on an arm's-length basis, with independent contractors, agents and/or employees, as the case may be;
- (k) in general, develop, manage and administer the common property and services pertaining to the property for the benefit of all members and to the satisfaction of the local authority, and to maintain and have control over the structures, services and amenities thereon;
- (l) create, construct and maintain lawns, gardens and recreation facilities on the common property;
- (m) enforce standards regarding landscaping on land units;
- (n) enforce standards regarding farming on the villa farms and any other land units (excluding the commercial farms), which comprise areas zoned as Agricultural I;
- (o) enforce standards regarding maintenance of buildings on land units;
- (p) enter into agreements with the local authority or any other body for the supply of services to the property or any Portion thereof;
- (q) with reference to water services, establish a legal entity in collaboration with the neighbouring Winelands Estate to represent all members of Akarana and Winelands Estate respectively, such legal entity to assume responsibility for, in particular, all obligations relating to the common bulk water connection and water provision by Drakenstein Municipality, or any other water services that may be delegated or assigned to the common legal entity; and to enter into a Shared Services Agreement with Winelands Estate, which Agreement must include the terms governing the



provision of water services between the Association and Winelands Estate;

(r) enforce, modify, amend, make addition to and/or delete the rules made by the trustee committee from time to time, with regard to any matter contained in this constitution where empowered to do so by this constitution;

(s) enter into agreements with owners of properties adjacent or in close proximity to the property with regard to the sharing of facilities or services of any nature whatsoever, including but not limited to security, landscaping, gardening, agricultural services, water (whether potable or for irrigation purposes), sewerage, electricity and roads, whether or not for the purposes of sharing the cost thereof; and

(t) comply with any notice or instruction issued by a proper authority, demanding repair or other work in respect of the property and/or buildings thereon.

8. Exercise of powers by the association

8. (1) The powers of the association shall be exercised by the trustee committee in good faith, for a proper purpose and in the interests of the Association as a whole.

(2) A member (or any number of members) shall be entitled to exercise any of the powers of the association provided they are authorised thereto by way of a special resolution of the members.

(3) The trustee committee shall be entitled to exercise such additional powers as may be granted to it by members by way of a special resolution.

9. Obligations of the association

9. (1) In terms of the approval granted by the local authority in respect of the development scheme and in furtherance of its objects, the association shall be responsible for the following:

(a) maintenance, administration, regulation and control of dams, non-potable water resources, irrigation pumps and infrastructure on the property, in accordance with the architectural guidelines;

(b) maintenance, administration and care of sewage systems and infrastructure on the property;

(c) maintenance, administration and care of potable and non-potable water infrastructure and equipment on the property;

(d) supervision and administration of the architectural design of the property;

(e) maintenance, administration and care of communal roads and pathways on the property, provided that communal roads and pathways shall not, unless specifically stated elsewhere

herein, include roads situated within a land unit that are not for communal use or access servitudes granted by an owner in favour of another owner;

(f) administration and management of the removal of refuse from the property;

(g) promotion, administration and management of security on the property which shall include, but not be limited to, oversee the control of access to and egress from the property, installation and maintenance of perimeter fencing and regular foot and/or vehicular patrols of the perimeter of the property;

(h) maintenance, administration and care of the common property;

(i) installation and maintenance of landscaping on the common property in such a manner so as to ensure that the rural and agricultural landscape of the property is maintained and enhanced;

(j) ensuring that the landscaping on land units is integrated with the property as a whole;

(k) ensuring compliance with any stipulation of any Law or condition imposed by the local authority relating to the common property;

(l) keeping all machinery, equipment, fixtures and fittings used in connection with services, or for the purpose of the common property or farming activities, in working, useful and safe condition;

(m) maintenance, including replacement where reasonably necessary, of pipes and casings which exist under or on the surface, and are used for the enjoyment or the benefit of more than 1 (one) land unit or for the common property, or to the advantage of 1 (one) or more land unit(s), as well as the common property, subject to the regulations of the local authority;

(n) management, maintenance and testing of the structures, services and amenities situated on the common property, including but not limited to the testing of individual water meters for accuracy and the testing of water for safety purposes;

(o) ensuring that owners of the Commercial Farming units attend to the maintenance and upkeep of their land units to the satisfaction of the local authority, and in accordance with the rural agricultural aesthetics of the property, it being recorded, however, that owners of Commercial Farming units shall not be obliged to comply with the farming guidelines, and that SWBC is specifically excluded from any such governing regulations;

(p) where applicable, registering servitudes or taking transfer of those Portions of the common property that are to be owned by the association for the benefit of the members as soon as possible after the approval of this constitution;



(q) ensuring compliance with the conditions imposed by the local authority when approving the rezoning or subdivision of any land unit;

(r) administering, enforcing and ensuring compliance with and have control over the architectural guidelines, the farming guidelines, where applicable, the rules made by the trustee committee;

(s) entering into agreements with service providers for the provision of maintenance, upgrading and installation of services relating to water, electricity, sewerage, security, road maintenance and maintenance of the common property;

(t) imposing and enforcing penalties for contraventions of any of the provisions of this constitution;

(u) administering, enforcing and ensuring compliance with the provisions of this constitution;

(v) administering, enforcing and ensuring compliance with the conditions of approval or management plans imposed by the local authority; and

(w) ensuring compliance with all by-laws made by the local authority and compliance with all legislation pertaining to and in connection with the ownership of, and the use of and rights to immovable property, as well as all legislation and sub-ordinate legislation emanating from the Department of Water and Sanitation.

10. Membership of the association

10. (1) Every owner shall automatically become a member of the association upon registration of transfer of any land unit into his name, as provided by the relevant title deed condition, provided that where an owner comprises of more than 1 (one) person, such persons shall be deemed to be 1 (one) member of the association, and shall together have the rights and obligations of 1 (one) member, and be responsible jointly and severally for the obligations of such membership.

(2) When a member ceases to be an owner, he shall ipso facto cease to be a member.

(3) A member may not resign his membership of the association.

(4) Every member undertakes to the association that he shall comply with:

(a) the provisions of this constitution; and

(b) all rules made by the trustee committee from time to time.

- (4) A member shall notify the association immediately of any change in ownership of his land unit.
- (5) Every member shall make all reasonable endeavours to further the objects of the association.
- (6) No member shall let or otherwise part with occupation of his land unit without obtaining the written agreement of the proposed occupier that he will be bound by the provisions of this constitution.
- (7) A member shall be liable and accountable for the acts or omissions of all persons occupying his land unit, including but not limited to lessees, guests, visitors, employees, invitees, contractors and agents.
- (8) All members shall be jointly liable for all authorised expenditure and other such liabilities lawfully incurred by the association pro rata to their respective levy apportionments, provided that such expenditure does not exceed the annual budget, subject to any directive given or restriction imposed by the members.
- (9) No member shall be entitled to any of the privileges of membership of the association, including remote controlled access to the property and refuse removal, unless and until he has paid every levy, special levy, fee, expense, cost or other monies due and payable to the association from time to time, together with interest thereon.

11. Members' obligations in respect of land units

11. (1) A member shall:

- (a) save as otherwise expressly provided in this constitution;
 - (i) comply with the provisions of this constitution, the code of conduct, architectural guidelines, the farming guidelines;
 - (ii) take reasonable steps to ensure that an occupant on and/or a visitor to his land unit is adequately informed with regard to the content of the provisions referred to herein;
 - (iii) comply with any authorised agreement concluded by the association insofar as such agreement may lawfully impose obligations on a member, and
 - (iv) comply with any directive given by the association or the trustees in enforcing the provisions of this constitution.
- (b) use his reasonable endeavors to further the objects and interest of the association.
- (c) after reasonable notification, except in an emergency when no notice will be required, allow any person duly authorised thereto in writing by the trustee committee to enter upon his land unit

for inspection and maintenance, repair or replacement of pipes, wiring, cables and casings which exist for the use and the enjoyment of his land unit or any portion of the common property;

(d) properly maintain, and keep tidy and in good condition, his land unit, including his garden, farming land and dams, provided that such dam is not a dam forming part of the irrigation and system operated for the benefit of the property, for which the association will be responsible;

(e) subject to the zoning rights pertaining to his land unit, not use or authorise the use of his land unit in such a manner and for such a purpose that will cause a nuisance to any other occupant of any land unit;

(f) not consolidate a land unit with 1 (one) or more other land units without the written consent of the trustee committee, which consent shall not be unreasonably withheld;

(g) maintain his land unit and properly attend to the maintenance and upkeep of such land unit to the satisfaction of the local authority and in accordance with the rural agricultural aesthetics of the property;

(h) keep his land unit in a clean, hygienic, sanitary and neat condition;

(i) maintain his land unit according to the architectural guidelines;

(j) keep the buildings on his land unit in good order and repair, fair wear and tear excepted;

(k) ensure that all improvements and landscaping on his land unit are of an approved design and sound construction;

(l) allow reasonable access to, and across his land unit for the purpose of maintenance undertaken by the association;

(m) in the event of allowing his land unit to be occupied by a tenant, he must ensure that such tenant is properly vetted and must further ensure that a refundable deposit equal to 2 (two) months levy contribution is paid to the association;

(n) pay to the association any such levy and special levy, determined by the trustees from time to time. Failing which, such member will be responsible to pay to the association any costs incurred by the association in the recovery of the arrear amounts, and will abide by the trustees decision to restrict access, by use of a remote, to the association by such member and/or their occupant, as well as their access to non-potable water and refuse removal;

(o) not be entitled to withhold the payment of levies and special levies due to the association,



including in the event of dispute, and

(p) not be deemed to be a member in good standing if any levy and/or special levy remains unpaid to the association, including any conduct which is deemed, in the discretion of the Association, to be obstructive and/or negligent in the circumstances. In such event, such member will not be entitled to any of the privileges of membership, including meeting attendance, representation and voting, use of services and facilities, unrestricted access to the association by such member and/or their occupant, as well as unrestricted access to non-potable water and refuse removal.

12. Development of the Commercial Farming units

12. (1) If, at any time, an owner of any one or more of the Commercial Farming units is permitted by the local authority or by any other Law to:

(a) subdivide the whole or portion of his land unit into 2 (two) or more portions of not less than 1 (one) hectare in extent each; and

(b) rezone the whole or any subdivided portion of his land unit from Agricultural 1 to either Residential 1 or the same zoning as those attributed to the land units which form part of the villa farms.

any application which such owner may make to the local authorities, or any other regulatory or governmental body, for its approval of such subdivision and rezoning, such approval and support to be voted on by way of a special resolution by the association, the trustees and all other members.

(2) Once subdivided, the subdivided portions shall be appropriately and equitably levied taking into account the factors and considerations used to determine the levies for similar sized land units.

(3) Once subdivided, any development on the subdivided land units shall take place strictly in accordance with the architectural guidelines, and within timeframe set in the discretion of the Association.

(4) If an owner of a Commercial Farming unit wishes to establish a development scheme in respect of one or more of the land units owned by him, any application which such owner may make to the local authorities or any other governmental body for the establishment and or implementation of such development scheme for approval, such approval and support to be voted on by way of a special resolution by the association, the trustees and all other members.

(5) Each owner of a Commercial Farming unit shall, for as long as such farming unit is zoned Agricultural 1:

(a) adhere to the code of conduct, and not cause a nuisance to other members, but shall not be restricted to normal working hours; and

(b) be entitled to conduct agri processing, cattle farming or any other farming activities on such Commercial Farming unit.

(6) Notwithstanding the above, a member shall not be obliged to comply with the aforementioned provisions, unless the owner referred to therein, undertakes to the association in writing, that if his application for subdivision and rezoning, or for the approval of his development scheme, is approved by the local authority or the other appropriate governmental body, he will ensure that:

(a) all conditions imposed by the local authority in respect of such land unit are complied with;

(b) the rural and agricultural aesthetics of the land unit concerned is maintained and, if possible, enhanced;

(c) the owner of such land unit agrees to be bound by this constitution as well as the farming guidelines, and

(d) the development of such land unit is effected in accordance with the architectural guidelines.

13. Alienation of land units

13. (1) A member shall not be entitled to alienate or transfer his land unit or, if the said land unit is owned by a company, close corporation or trust, any shareholder, member, trustee or beneficiary thereof shall not be entitled to alienate all or any of their shares or members interest in such entity, unless:

(a) the proposed transferee of such land unit and its shareholders, members, trustees or beneficiaries, as the case may be, agree in writing to be bound by this constitution and become a member. Notwithstanding the foregoing, the registration of transfer of that land unit into the name of the proposed transferee shall ipso facto constitute such transferee as a member;

(b) he obtains the consent of the trustee committee to the alienation and/or transfer which the trustee committee shall be obliged to give if:

(i) the proposed transferee of such land unit agrees in writing to be bound by this constitution; and

(ii) all obligations of such member in terms of this constitution have been complied with in full and, in the case of monies being due and payable, such monies have been paid in full or satisfactorily secured in the discretion of the trustee committee.

(2) In the event of the association ceasing to function, a member must obtain the consent, as referred to in this clause, of the members to alienate or transfer his land unit by ordinary resolution at a general meeting.

14. Dealings with common property

14. (1) The common property has been set aside and, where applicable, developed for the common use and enjoyment of all owners.

(2) All members, by special resolution, and the trustee committee shall be obliged to do whatever is reasonably necessary or required, including the signing of all necessary documentation, to procure that any portion of the common property which is currently not registered in the name of the association, be transferred to, and registered in the name of a Non-Profit company, established for the sole purpose of taking transfer of the common property of the association, the voting rights of which, will be distributed as so resolved by the members, to the owners of the SWBC and the Villa Farms.

(3) It is recorded that the primary responsibilities of the association, include maintenance, monitoring and operation of security at the main entrance to the association and in respect of the electric fencing on the perimeter of the property, the maintenance of the gardens, landscaped areas, roads, structures and infrastructure, including water and effluent plant and equipment, which form part of the common property, as well as the management of the association's gardening and maintenance staff.

(4) A member's use of the common property shall be exercised in such a manner so as not to unreasonably infringe on the rights of other members or persons who are also entitled to the use thereof.

(5) Unless authorised by way of a special resolution, neither the whole nor any portion of the common property shall be:

(a) sold, let, alienated, otherwise disposed of, subdivided or transferred;

(b) mortgaged or otherwise encumbered, or

(c) subject to any rights of use, occupation or servitude other than those contained in the title deeds of the property or in the title deed(s) of the common property, if applicable or as contained in this constitution.

(6) The association acknowledges that it shall be solely responsible for the construction, care, repair, maintenance, cleaning, upkeep, testing, improvement and proper administration of the common

property, all services therein, other than services provided and/or maintained by the local authority, if any, and all amenities and improvements located, or to be located, on or within the common property.

(7) It is noted that there are various dams situated throughout the association, including on certain land units. To this end, owners are not permitted to interfere with the natural flow of water and must ensure that proper maintenance is undertaken and allowed to be undertaken.

(8) It is noted that the owners of the Commercial Farms will retain the right of use and enjoyment of the aforementioned parts of common property, including the dams and its water supply, and will contribute to the expenses associated to these parts of common property.

(9) The land on which the sewage treatment plant is situated, is to be transferred to common property, by way of a boundary move to the adjacent common property access roadway.

(10) It is further noted that the treated water emanating from the sewage treatment plant is to be stored in the main dam located on Portion 63.

15. Budget and approval

15. (1) The trustee committee shall, by not later than 30 (thirty) days prior to the end of each financial year, prepare a detailed budget and projection of the association's income and expenditure for the next financial year, including in respect of the common property, as well as the cash flows of the association for the next financial year.

(2) The trustee committee shall estimate the expenditure of the association for the next financial year after taking into account the estimated surplus or deficit, if any, which is carried forward from the preceding financial year, and may include in such estimate, an amount to be held separately in reserve to meet anticipated future maintenance, repairs, as determined by means of a maintenance repair and replacement plan, or capital expenditure. In particular, provision shall be made in such budget for the quantum of levies for the forthcoming financial year.

(3) In preparing the budget, in particular the quantum of levies, the trustee committee shall take into account:

(a) other income, if any, earned by the association;

(b) the extent of the services supplied to and/or utilised by specific land units, in particular which land units do not utilise all or any services, and

(c) the demand placed on the association by land units and/or owners for the supply of services by the association.

(4) The trustee committee shall present the proposed budget for the following financial year to members at the annual general meeting or a special general meeting called for that purpose, including the proposed levies and the allocation thereof amongst the members, as determined by applying the principles in the clause relating to levies and the cost drivers set out in Appendix D, for the following financial year.

(5) Such budget, including the allocation of proposed levies amongst members and the quantum thereof, must be approved by members at the said general meeting by way of an ordinary resolution.

16. Levies

16. (1) The association shall have the power to:

(a) raise the amount of estimated expenses, as detailed in the approved budget of the association, from members by imposing monthly levies on members for the financial year concerned;

(b) raise and impose special levies upon the members, provided that the amount to be raised has not been included in the budget approved, and is limited to not more than 10% (ten percent) of the overall budget, except in the event of an emergency, in the trustees discretion, where the trustees will be empowered to raise a special levy exceeding the aforementioned limitation, to be recovered from all members in accordance with the method in regard to the recovery of ordinary levies, provided that the majority Commercial Farm owners agree to the special levy;

(c) recover an additional levy contribution from the owner of a subdivided land unit, and

(d) recover a levy from the owner of an unbuilt land unit.

(2) The authority and function to collect levies from members may be delegated by the trustee committee to a manager or a managing agent in terms of an agreement entered into between the association and such manager or managing agent.

(3) The trustee committee shall determine the quantum of levies annually.

(4) Levies shall be apportioned amongst members in accordance with the specific cost drivers as set out in Appendix D hereto. Should, in respect of a specific land unit, any of the factors upon which such cost drivers are applied change, for example through alterations or extensions to a specific land unit, then the apportionment of levies to such land unit will automatically change by applying the amended factors to such cost drivers.

(5) Any proposed amendment of Appendix D hereto, including the method of calculating levies in

accordance with Appendix D hereto, other than a change referred to above, shall require the approval of members by way of a special resolution. At any general meeting where an amendment of Appendix D is proposed, the voting rights of members in respect of such special resolution will be determined in accordance with the apportionment of levies prior to the approval of such amendment.

(6) Any amount due by a member by way of a levy and/or special levy shall be a debt due by them to the association and shall be payable within such time as is determined by the trustee committee.

(7) The obligation of a member to pay levies shall automatically cease upon his ceasing to be a member save that he shall remain liable for all levies calculated to the date upon which he ceases to be a member.

(8) No levies paid by a member shall be repayable by the association upon his ceasing to be a member.

(9) A member's successor in title to a land unit shall be liable to pay levies as from the date upon which he becomes the registered owner of a land unit.

(10) For the purposes of determining levies, each land unit shall be deemed to be a contributor in the proportions set out in Appendix D hereto.

(11) All levies shall be due and payable by members monthly in advance by not later than the 7th day of each month.

(12) Members shall be liable for payment of interest on outstanding levies at a rate determined by the trustee committee from time to time, but not exceeding the maximum annual rate permitted by Law. Such interest shall be payable for the period from the date on which the levy is due and payable to the date of payment, provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.

17. Water

17. (1) The costs of water supplied to the association by the local authority shall be paid by the Association, calculated with reference to the reading of the bulk water meter situated at the approved draw off point as indicated by the local authority from time to time. The Association must recover such costs from its members in accordance with the meter reading attributable to that member's land unit.

(2) Water supplied to members by the association for irrigation purposes shall be paid by each member as follows:

(a) an availability fee as determined by the trustee committee in terms of the budget for a financial year, it being recorded that owners shall be liable to pay to the local authority the cost required to keep water flowing onto the property from the Berg River in accordance with the water right held in respect of the property irrespective whether such water is used or not;

- (b) a monthly basic charge, as determined by the local authority, payable to the local authority;
 - (c) a usage fee, either in accordance with the meter reading attributable to that member's land unit if a meter exists or based on water pumped per hour if a meter does not exist.
- (3) The Association guarantees unrestricted access to the Local Authority to read the bulk water meter, as situated within the City of Cape Town servitude at the approved draw off point.
- (4) The Association must ensure that all potable water supplied by the local authority is metered by the Association.
- (5) The trustee committee will from time to time, depending on the availability of non-potable water, determine the allowed usage thereof for each land unit, provided that the ratio in which land units are entitled to non-potable water shall, unless otherwise determined by the trustee committee, not exceed the ratio which the size of the land unit bears to the total size of all land units forming part of the property.
- (6) If its allowable usage of non-potable water is not required by a specific land unit, the trustee committee may allocate such usage to the land units making use of the non-potable water on a pro rata basis, provided that the land unit which makes use of such additional allocation shall pay for it as per the meter reading applicable to the land unit concerned or, if no meter exists, on the basis of water pumped per hour.
- (7) It is recorded that potable water is currently supplied by the local authority to the Association in accordance with an agreement between the parties.
- (8) The Association acknowledges its obligations to comply with all the local authority bylaws, including, but not limited to water restriction conditions.

18. Appointment of a manager

18. (1) In addition to its powers contained herein, the trustee committee shall have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a person to manage and administer the property and to exercise such powers and duties as may be entrusted to such person by the trustee committee, including the power to collect levies, upon such terms and conditions, including remuneration, as are agreed upon by the trustee committee and such person.

19. Rules

19. (1) The trustee committee may make any rules, provided that they are not in conflict with this constitution or any Law, they deem necessary with regard to:
- (a) any matters contained in the code of conduct or matters ancillary thereto required to improve the compliance therewith;
 - (b) the resolution of disputes generally;

- (c) the furtherance and promotion of any of the objects of the association;
- (d) the better management of the affairs of the association;
- (e) the conduct of trustee committee meetings;
- (f) the administration and governance of the association's general activities and responsibilities;
- (g) the execution of the duties and obligations of both the members and the trustee committee as set out in this constitution;
- (h) the advancement of the interests of members and the association generally;
- (i) the imposition of fines or penalties in respect of offenders;
- (j) compliance with this constitution;
- (k) the preservation of the good order, harmonious living, comfort, safety and convenience of members and occupants of land units;
- (l) the erection, maintenance and demolition of buildings and/or structures, including fences;
- (m) the promotion of the interests and quality of life of members;
- (n) the use of common property and restrictions on the use and enjoyment thereof;
- (o) the use of dams and amenities forming part of the common property;
- (p) the responsibility of members for the activities of employees and their guests and access of such persons to the property, and
- (q) the accreditation of service providers or contractors in respect of work to be conducted on behalf of members or the association on the property.

(2) If a member commits a breach of any of the rules made, the trustee committee may:

- (a) give notice to the member concerned requiring him to remedy such breach within such period as the trustee committee may determine;
- (b) take or cause to be taken such steps as it may consider reasonably necessary to remedy the breach, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the association; and/or



(c) take any such action, including the imposition of a fine or the institution of legal proceedings, as it deems fit.

(3) Notwithstanding anything to the contrary herein contained, the trustee committee may, in the name of the association, enforce any rules by civil action and for this purpose may appoint attorneys and counsel, as it deems fit.

(4) Any rule made under the provisions shall be binding upon all members and occupants of land units as if they were contained in this constitution and shall be made available to any member or occupant of a land unit authorized in writing by a member, for inspection at their request.

20. Trustee committee

20. (1) The association shall be administered, managed and represented by a trustee committee appointed as specified herein. All transactions entered into by the trustee committee in furthering the objects of the association and in exercising the powers of the association shall be deemed to be transactions of the association.

(2) A trustee is disqualified from holding such office in the event that he is in breach of the provisions of this constitution, the rules made by the trustees from time to time and in arrears of more than 60 (sixty) days with contributions payable to the association.

21. Powers and duties of the trustee committee

21. (1) Unless specifically stated otherwise in this constitution, the trustee committee shall manage and control the business and affairs of the association, shall have full powers in relation to the management of such business and affairs, and 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 itself and as are not by this constitution required to be exercised or done by members.

(2) The trustee committee shall:

(a) have the right to vary, cancel or modify any of their decisions from time to time, provided that rights vested in members shall not be affected thereby;

(b) have the right to appoint committees, consisting of such number of their members and such outsiders, including the manager, as it deems fit and to delegate to such committees such of its functions, powers and duties as it deems fit, with further power to vary or revoke such appointments and delegations as it may from time to time deem necessary, provided that rights vested in members shall not be affected thereby, provided further that any member of a subcommittee shall be deemed to be subject to the clauses herein, and

(c) should it so decide, investigate any suspected or alleged breach of this constitution by any

member or trustee in such reasonable manner as it shall decide from time to time.

(3) A trustee holds a fiduciary relationship with the association. Without derogating from the generality of the expression “fiduciary relationship”, such expression shall mean that a trustee shall act in good faith and honourably towards the association and its members and, in particular, exercise such powers that it has to administer and represent the association for the benefit and advantage of the association and its members.

(4) Without, in any way, limiting the powers granted to the trustee committee, the duties and powers of the trustee committee shall include:

- (a) the preparation and finalisation of the annual budget of the association;
- (b) the entering into of agreements with third parties on behalf of the association;
- (c) the employment and/or appointment, on behalf of the association, of contractors, professionals, agents and any other party, and the payment of such persons;
- (d) the taking of steps in relation to any matters of common interest in respect of the association, including without detracting from the generality thereof, steps in relation to the procuring of the supply and maintenance of sewage treatment, refuse removal, electricity supply, landscaping as well as the maintenance of private roads and access control;
- (e) the institution or defence of actions in the name of the association, and the appointment of legal representatives for such purpose;
- (f) pursuing the duties of the association;
- (g) not acting outside of the powers recorded in this constitution or exceeding the limit thereof;
- (h) avoiding any conflict between their personal interests and the interests of the association;
- (i) not receiving any personal economic benefit from the association or from any other person, to which they are not entitled as a trustee in circumstances where such benefit conflicts with the interests, of or are detrimental to the association;
- (j) disclosing to other trustees at the first practical opportunity, the nature and extent of any of their direct or indirect interests in any contract entered into or proposed to be entered into by the association; and
- (k) ensuring that sufficient fidelity insurance cover is in place, in order to protect the Association.

(5) If a trustee commits a breach of any of their obligations under this constitution or is grossly

negligent in their dealings on behalf of the association, they will be liable to the association for:

(a) any direct loss suffered by the association, and/or

(b) any economic benefit received by them as a result of such breach or negligence.

(6) If a trustee fails to comply with the aforementioned provisions and the association or trustee committee is made aware that such trustee became materially interested in a matter pertaining to the association, the remaining trustees shall have the option, if so permitted by Law, to set aside the contract in question.

(7) Notwithstanding the above, no act or transaction of a trustee shall be viewed as a breach of their fiduciary duties to the association in the event that the trustee, prior to undertaking such act or transaction, makes full disclosure to the remainder of the trustees of their interest in the act or transaction and the remaining trustees, provided they are satisfied that notwithstanding their interest in the act or transaction, the act or transaction will not in any way prejudice the association, consent thereto in writing.

22. Composition of the trustee committee

22. (1) The trustee committee shall at all times comprise of the following 7 (seven) persons:

(a) 2 (two) persons nominated and elected by the Commercial Farms;

(b) 2 (two) persons nominated and elected by SWBC, provided that 1 (one) is representative of The Studios and 1 (one) is representative of The Retreat;

(c) 2 (two) persons nominated and elected by the LBV/villa farms, and

(d) a chairperson who is an independent person not representing or owning a land unit and who is not a related or interrelated person to any owner or occupant, and otherwise has no direct or indirect personal financial or other interest in any land unit, appointed by the trustees respectively on an annual alternating basis.

(2) The trustee committee shall at all times ensure that relevant portfolios are delegated to a trustee and that the responsible trustee for each portfolio will take ownership of same, and report on any relevant matters accordingly.

(3) Any vacancy occurring on the trustee committee shall be filled by the association or body which nominated and elected the trustee who vacated his office for the balance of the financial year in question.

(4) Should any vacancy arise in the office the chairperson and should such vacancy not be filled by

a majority of the trustee committee within a period of 6 (six) months, an independent administrator shall be appointed to act as chairperson, on condition that the said administrator shall vacate office when he is satisfied that a chairperson is appointed as stipulated in this constitution and can function satisfactorily.

(5) A trustee shall be an individual but need not himself be a member, provided that:

(a) the majority of trustees shall be members, and

(b) at least 1 (one) trustee nominated and elected by the Commercial Farms, SWBC and the LBV/villa farms respectively shall be a member.

(6) A trustee who is not a member shall, by accepting his nomination as such, be deemed to have agreed to be bound by the provisions of this constitution.

(7) Any election of a trustee shall be effective from their appointment at the annual general meeting, and shall continue to hold office until the end of the following annual general meeting, whereafter such trustee or the chairperson shall be deemed to have retired from office as such but will be eligible for re-election.

(8) A trustee, excluding the chairperson, shall be deemed to have vacated his office as such upon:

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

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

(c) his conviction for any offence involving dishonesty;

(d) him becoming of unsound mind or being declared incapable of managing his own affairs;

(e) him resigning from such office in writing;

(f) him being in arrears with his levy contributions for a period of 60 (sixty) days or more;

(g) him being removed from office by the association or body which elected him or by a special resolution of the members, and

(h) his alienating his land unit in the event that he is an owner, and

(i) his death;

(9) Notwithstanding that a trustee or the chairperson shall be deemed to have vacated his office,

anything done by such trustee in his capacity as trustee or chairperson in good faith until he ceases to be a trustee or the chairperson, shall be valid until the fact that he is no longer a trustee or the chairperson has been recorded in the minute book of the trustee committee.

(10) Save as otherwise provided in this constitution, the chairperson shall preside as chairman of all meetings of the trustee committee and all general meetings of members. The chairperson shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the trustee committee or by members, as the case may be.

(11) If the chairperson vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting of the trustee committee or at any general meeting of members, the trustees or members, as the case may be, present at such meeting shall choose another chairperson from their number for the purpose of such meeting who, in the case of a general meeting of members, need not be a trustee.

(12) When exercising a vote in regard to a trustee resolution, a trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the association, by virtue of any interest he may have therein.

(13) No written contract proposed to be concluded by or on behalf of the association shall be valid and binding, unless it is signed by the chairperson and 1 (one) trustee, the latter having been specifically appointed as authorised signatory in terms of a resolution of the trustee committee.

(14) The trustees and the chairperson shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as trustees or chairperson, as the case may be. Save as aforesaid, the trustees, excluding the chairperson, shall not be entitled to be paid any other remuneration, fee or salary in respect of the performance of such duties, provided, however, that no trustee shall be precluded from being employed by the association in such trustee's professional capacity and from being paid a reasonable remuneration in respect of such professional services.

(15) The trustee committee shall not make loans on behalf of the association to members or to themselves.

(16) In the event that the Commercial Farms, SWBC and the LBV/villa farms refuse and/or fail to nominate and elect its representatives to the trustee committee, the chairperson will have the right to nominate and appoint such persons.

(17) The chairperson nominated by the trustee committee must meet the following requirements:

(a) The person to be retained must be:



- (i) professionally qualified, and belong to a professional regulatory body, that exercises ethical oversight of its members with powers of a disciplinary nature, and
 - (ii) able to express opinions, exercise judgment and make decisions impartially.
- (b) the person to be retained must not:
- (i) have any other relationship with the association or trustee, such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship;
 - (ii) have had any relationship contemplated above within the immediately preceding two years, or
 - (iii) be related to a person who has or has had a relationship contemplated above.

(18) “independent” or “acts independently”, when used in relation to a particular person or a contractual arrangement, means a person who:

- (a) acts at arms length in relation to an appointment, whether contractual or otherwise, and
- (b) in the case of an administrator or a chairperson:
 - (i) has no conflict of interest in relation to that appointment, and
 - (ii) is able to make impartial decisions in the discharge of that appointment.

23. Proceedings of the trustee committee

23. (1) The trustee committee may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this constitution, provided that members shall be timeously invited to propose any business for consideration at any such meetings.

(2) Meetings of the trustee committee shall be held at least once every 3 (three) calendar months, unless it is resolved by at least 75% (seventy-five percent) of the trustees to postpone the specific meeting, in which case a meeting of the trustee committee need not be held during that 3 (three) calendar month period.

(3) The chairperson shall have the right to convene a meeting of the trustee committee at any time.

(4) A trustee may, provided he has the support in writing of 2 (two) other trustees, at any time convene a meeting of the trustee committee by giving to the other trustees not less than 14 (fourteen)

days' written notice of such meeting, which notice shall specify the reason for calling such a meeting, provided that, in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.

(5) A resolution in writing which is signed by all the trustees shall be valid and effective as if it had been passed at a meeting of the trustee committee duly called and constituted.

(6) The quorum necessary for the holding of any meeting of the trustee committee shall be 4 (four) trustees, 3 (three) of whom shall be trustees who were appointed by the Commercial Farms, SWBC and the LBV/villa farms respectively, and the fourth of whom shall be the chairperson. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting, then the meeting shall stand adjourned to a day not earlier than 7 (seven) days and not later than 14 (fourteen) days later. If, at such adjourned meeting, a quorum is not present within 15 (fifteen) minutes after the time appointed for the meeting, the trustees present shall constitute a quorum.

(7) When a meeting of the trustee committee has been adjourned as aforesaid, the chairperson shall, by no later than close of business the following day, address a notice to each trustee stating:

(a) the date, time and place to which the meeting has been adjourned, and

(b) the matter/s before the meeting at the time when it was adjourned and the ground/s for the adjournment.

(8) Each trustee shall have 1 (one) vote on any proposed resolution or decision of the trustee committee.

(9) A resolution of the trustee committee shall be passed by a simple majority vote of the trustees who are present and who vote on such resolution. In the case of an equality of votes, the chairperson shall have a casting vote.

(10) The trustee committee shall:

(a) ensure that minutes are taken of every meeting of the trustee committee, which minutes shall be reduced to writing without undue delay after the meeting has ended and shall then be certified as correct by the chairperson prior to or at the next meeting of the trustee committee;

(b) cause such minutes to be kept in a minute book of meetings of the trustee committee;

(c) keep all books and records of meetings of the trustee committee in perpetuity;

(d) make the minute book available for inspection during business hours by the manager, a trustee, the local authority and the accountant, and

(e) on written application of any member, make all minutes of their proceedings available for inspection by such member by no later than 5 (five) days after receipt of such application.

(11) The minutes of a meeting of the trustee committee shall record, among other things:

(a) the name of every trustee present at the meeting;

(b) the business transacted at the meeting, and

(c) the resolution/s passed at the meeting.

(12) All resolutions recorded in the minutes of any meeting of the trustee committee shall be valid and of full force and effect as therein recorded with effect from the passing of such resolution and until varied or rescinded, but no resolution or purported resolution of the trustee committee shall be of any force or effect or be binding upon the members or any of the trustees unless the passing of such resolution is within the powers of the trustee committee.

(13) Save as otherwise provided in this constitution, the proceedings at any meeting of the trustee committee shall be conducted in such manner and form as the chairperson shall decide.

(14) Members shall be entitled to attend meetings of trustees upon written request.

24. General meetings

24. (1) The annual general meeting shall be held in August or September of each year and shall be convened by the trustee committee.

(2) All meetings of members, other than the annual general meeting, shall be called "special general meetings".

(3) The trustee committee may convene a special general meeting whenever it deems fit.

(4) The trustee committee shall be obliged to convene a special general meeting on the written request of the chairperson or on the written request of at least 25% (twenty-five percent) of the members, according to voting rights. Should the trustee committee fail to do so, such meeting may be convened by the chairperson or the members who requisitioned such meeting.

25. Notice and venue of general meetings

25. (1) The trustee committee may decide to send notices via electronic format but all meetings will be held in person, unless the trustee committee decides that remote attendance will be allowed.

(2) An annual general meeting, or a special general meeting that is called for the proposal of a special resolution, shall be called on not less than 21 (twenty-one) days' notice in writing. A special

general meeting, other than one called for the proposal of a special resolution, shall be called on not less than 14 (fourteen) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is given, shall specify the place, the date and the time of the meeting and, in the case of:

(a) special business, in addition to any other requirements contained in this constitution, shall specify the nature of that business, or

(b) the proposal of a special resolution, shall specify the terms and effect of the resolution and the reasons for it.

(3) Notice of a general meeting shall be given in the manner stated hereinafter or in such other manner, if any, as may be prescribed by the trustee committee to such persons entitled to receive such notice in terms of this constitution.

(4) A general meeting shall, notwithstanding that it is called by shorter notice than that specified in this constitution, be deemed to have been duly called if such shorter notice period is agreed to:

(a) in the case of an annual general meeting, by all the members entitled to vote at the general meeting, or

(b) in the case of a special general meeting, by no less than 85% (eighty-five percent) of members having a right to vote at the general meeting.

(5) Notice of a general meeting shall be given to:

(a) every member by electronic mail or, if not sent via electronic mail, at such member's appointed domicilium within the Republic of South Africa as indicated in writing by such member, and

(b) the accountant, but only in the case of an annual general meeting or a special general meeting at which matters having financial or budgetary implications are to be considered.

(6) No persons, other than those indicated herein shall be entitled to receive notice of a general meeting.

(7) The accidental omission to give notice of any resolution or to present any document required to be given or sent in terms of this constitution, shall not invalidate the proceedings or any resolution passed at any general meeting.

(8) The non-receipt of notice of a general meeting by any person entitled to receive notice shall not invalidate the proceedings of that general meeting.

(9) General meetings shall take place at such place and time and on such date as shall be



determined by the trustee committee from time to time.

26. Proxies for general meetings

26. (1) A member may be represented at a general meeting by a proxy who need not be a member.

(2) The instrument appointing a proxy shall be in writing, signed by the member concerned or his duly authorised agent, and shall be in the format shown in the form as set out herein, or as close as possible thereto, provided that where a land unit is owned by more than 1 (one) person, then any of the joint owners may sign the instrument appointing a proxy on such member's behalf and the joint owner signing the proxy will be deemed to have the necessary authority to do so.

(3) Where a member is a company, the proxy may be signed by any person authorised by resolution of the board of directors of the company and, where a close corporation is a member, by any member of such close corporation and, where an association of persons is a member, by the secretary thereof and, where a trust is a member, by a trustee of such trust or by a person duly authorised by the trustees of such trust.

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

(5) The instrument appointing a proxy shall be valid only for the specific general meeting or the adjournment thereof and no proxy shall be valid at an adjourned general meeting if such proxy was not in place at the date that the general meeting was adjourned.

(6) An instrument appointing a proxy shall, unless otherwise specified therein, only be valid for 6 (six) months after the date that it was signed by the grantor.

(7) Notwithstanding the foregoing, the chairperson of the general meeting may agree to accept a proxy tendered at any time before or during the general meeting.

(8) Proposed form of instrument of proxy:

"I/We being the registered owner of
..... hereby appoint or, failing
him, the chairman of the general meeting as my/our proxy to participate in the meeting and to
vote on my/our behalf at the general meeting of members of the association to be held on the
..... day of 20....., and at any resumption of that
meeting, if adjourned, in the following manner:

In favour of.....

Against

Abstain

(Indicate instructions to proxy by making a cross in the applicable space.)

Unless otherwise instructed, my proxy may cast a vote on any matter to be decided upon as my proxy deems fit.

Signed this day of20.....

..... Signature"

27. Quorum for general meetings

27. (1) No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. To the extent necessary to give legal effect to electronic voting, a member that votes electronically is deemed to have appointed one of the trustees as his/her/its proxy for the applicable resolution(s) at the relevant meeting.

(2) No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any general meeting shall be 9 (nine) members who have the right to vote at such general meeting, composed of:

(a) 2 (two) members of the Commercial Farms;

(b) 3 (three) members of SWBC, and

(c) 4 (four) members of the LBV/villa farms.

(3) If, within 30 (thirty) minutes after the time appointed for the commencement of the general meeting, a quorum is not present, the general meeting shall stand adjourned to for between 7 (seven) and 14 (fourteen) days and shall be held at the same place and time. If, at such adjourned general meeting, a quorum is not present, the members present or represented by proxy shall constitute a quorum; provided that no quorum for a general meeting shall ever be constituted unless 2 (two) members of each of the Commercial Farms, SWBC and the LBV/villa farms are present or represented by proxy at the commencement of and throughout the duration of the general meeting.

(4) When a general meeting has been adjourned as aforesaid, the chairperson shall either at the adjourned general meeting or by no later than close of business of the third day following the date

of the adjourned general meeting, address a notice to each member stating:

- (a) the date, time and place to which the general meeting has been adjourned, and
- (b) the matter before the general meeting at the time when it was adjourned and the ground for the adjournment.

28. Agenda at the annual general meeting

28. (1) In addition to any other matters required by Law or by this constitution to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:

- (a) the consideration of the chairperson's report;
- (b) the consideration of the financial statements of the association for the financial year of the association preceding the date of such meeting;
- (c) the consideration of the budget as presented by the trustee committee, and
- (d) determination of the levies for the next financial year.

(2) The trustee committee shall be obliged to lay an income statement as at the end of the financial year concerned before the annual general meeting, together with a balance sheet drawn up for the end of the financial year concerned. Every such balance sheet shall be accompanied by a proper and detailed report of the trustee committee and the accountant and copies of such accounts, balance sheet and reports shall be sent out with the notice sent to members to convene an annual general meeting.

29. Procedure at general meetings

29. (1) General meetings shall be held at such time and place, including the allowance of remote attendance, as the trustee committee shall decide from time to time as further set out below.

(2) Such general meeting shall be held at such time and place, which includes remote attendance, as the trustee committee shall decide from time to time.

(3) The chairperson shall preside as such at all general meetings; provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof or is unable or unwilling to act as chairperson, then the members present and entitled to vote at such general meeting shall vote to appoint a chairperson for the meeting who shall thereupon exercise all the powers and duties of the chairperson in relation to such general meeting.

(4) The chairperson may, with the consent of any general meeting at which a quorum is present, and if so directed by the general meeting, adjourn a general meeting from time to time and from

place to place, but no business shall be transacted at any adjourned general meeting other than the business that might have been transacted at the general meeting from which the adjournment took place save for an announcement at the general meeting of the date, time and venue of the adjourned general meeting unless the general meeting is to be adjourned for 30 (thirty) days or more, in which event notice shall be given in the same manner as for the original general meeting. Only business left uncompleted at the original general meeting may be transacted at the adjourned general meeting.

30. Voting at general meetings

30. (1) Voting at general meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded. Provided that members may vote electronically on proposed resolutions by such means as the trustee committee may determine from time to time.

(2) At any general meeting, every member who is present in person or by proxy and entitled to vote at such general meeting shall have such number of votes as is determined in accordance with such member's percentage of levy apportionment as per Appendix D hereto.

(3) Should any 1 (one) of the land units be registered in the name of more than 1 (one) person or entity, they shall jointly have the percentage of votes calculated read with Appendix D for that specific land unit.

(4) At any general meeting, a vote on any resolution shall be decided by way of a poll reflecting each member's percentage of voting rights.

(5) Scrutineers shall be appointed by the chairperson to count the votes and to declare the result of the poll, and their declaration, which shall be announced by the chairperson of the meeting, shall be deemed to be the resolution of the meeting at which the poll was demanded.

(6) Save as expressly provided for in this constitution, no person other than a member who has paid every levy and other sum, if any, which is due and payable to the association in respect of or arising out of his membership of the association, shall be entitled to be present and to vote on any resolution which is proposed at a general meeting, either personally or by proxy.

(7) No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive. In the event that the trustee committee reasonably believes that a malfunction, fraud or human error occurred in the voting process, it may cancel the vote and commission a re-vote.



(8) A declaration made in good faith by the chairperson of the general meeting to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed as the case may be. The trustee committee may delegate the count of the electronic votes to the managing agent whose determination, after acceptance by the trustee committee, shall be deemed to be the official vote count.

(9) At any general meeting, a decision and/or resolution put to the vote at the general meeting, unless specifically required to be a special resolution, shall be taken by way of an ordinary resolution. In the event of an equality of votes, the chairperson shall have a second or casting vote, it being recorded for clarification that abstention shall not be considered a vote for or against the resolution concerned.

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

(11) Unless any member present in person or by proxy at a general meeting, before closure of the general meeting, objects to any declaration made by the chairperson of the general meeting as to the result of any voting at the general meeting, or as to the propriety or validity of the procedure at such general meeting, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting and the general meeting shall be deemed to have been validly constituted and conducted. An entry in the minute book of the association to the effect that a general meeting has been properly and validly constituted or that any motion has been carried or lost with or without a record of the percentage of votes recorded in favour of or against such motion shall be conclusive evidence of the resolution so recorded if such entry conforms with the declaration made by the chairperson of the general meeting as to the result of any voting at the general meeting.

31. Minutes of general meetings

31. (1) The trustee committee shall:

(a) ensure that minutes are taken of every general meeting, which minutes shall be reduced to writing without undue delay after the general meeting has ended and shall then be certified as correct by the chairperson of the general meeting;

(b) cause minutes to be kept of all general meetings in a minute book kept for this purpose.

(2) The trustee committee shall keep all minute books of general meetings in perpetuity.

(3) On the written application of any member, the trustee committee shall make all minutes of general



meetings available for inspection by such members.

(4) All resolutions recorded in the minutes of any general meeting shall be valid and of full force and effect as therein recorded, with effect from the date of passing of such resolutions but no resolution or purported resolution of members shall be of any force or effect or binding upon the members or any of the trustees unless the passing of such resolution is competent within the powers of the association.

(5) Save as otherwise provided in this constitution, the proceedings at any general meeting shall be conducted in such manner and form as the chairperson of the general meeting shall decide.

32. Financial matters

32. (1) The financial year end of the association is the last day of February of each year.

(2) The trustee committee shall cause proper books of account and records to be kept so as fairly to reflect the transactions and financial position of the association including:

(a) a record of the assets and liabilities of the association;

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

(c) individual ledger accounts in respect of each member.

(3) On request by any member, the trustee committee shall make all or any of the books of account and records of the association available for inspection by such member at reasonable times during business hours.

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

(5) The members in a meeting or the trustee committee may from time to time prescribe reasonable conditions as to the time and manner of the inspection by members of the accounts and books of the association, or any of them.

(6) At least once in every year, the books of account of the association shall be examined, and the correctness of the income statement and balance sheet ascertained by the accountants.

33. Deposit and investment of funds

33. (1) The trustee committee shall cause all moneys received by the association to be deposited to the credit of an account/s with a registered commercial bank in the name of the association and, subject



to any direction given or restriction imposed at a general meeting, such moneys shall only be withdrawn for the purpose of payment of the expenses of the association.

(2) Any funds not immediately required for disbursement may be invested in a savings or similar account with any financial institution or any other registered deposit taking institution approved by the trustee committee from time to time.

(3) Interest on moneys shall be used by the association for any lawful purpose in the interest of the association.

34. Tax

34. (1) The association qualifies for exemption from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act (the "Act").

(2) The levy income will not be taxable. However, the association will be taxable on other income, including investment income. Only expenditure applicable to such other income will be allowed as a deduction in terms of section 11(a) of the Act.

(3) The association is not permitted to distribute any of its funds to any person other than to a similar association of persons.

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

(5) Any amendments to this constitution must be submitted to the Commissioner for the South African Revenue Service.

(6) Funds available for investment may only be invested with a financial institution as defined in section 1 of the Financial Sector Regulation Act 9 of 2017, and in securities listed on a stock exchange as defined in section 1 of the Financial Markets Act 19 of 2012.

(7) The association shall not be a party to, and shall not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner for the South African Revenue Service.

(8) Annual returns of income tax together with financial statements must be submitted to the South African Revenue Service.

35. Indemnity

35. (1) All the members of the trustee committee are indemnified by the association against any liabilities



bona fide incurred by them in their capacities as such and, in the case of the chairperson, in his capacity as chairperson, as well as for all costs, losses and expenses, including travelling expenses, which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise, in which relief is granted by a court.

(2) A trustee shall not be liable for the acts or omissions of the accountants or of any of the other trustees or for any loss or expense sustained or incurred by the association through the insufficiency or deficiency of any security in or upon which moneys of the association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of mala fides or gross negligence, nor will a trustee or the chairperson be liable for any loss or injury to a member due to security measures or the deficiency thereof applied in respect of the property.

(3) Any person using any of the services, land or facilities of the association does so entirely at his own risk.

(4) The association and the trustee committee shall be indemnified, by the members, from any claims with regard to the common area.

(5) The association will indemnify trustees and provide legal protection whenever necessary at the cost of the association.

36. Non-compliance, warnings and penalties

36. (1) The trustee committee may impose a fine on an offender in respect of:

- (a) pet related, nuisance and access control offences;
- (b) offences by contractors, and
- (c) other matters for which, in the opinion of the trustee committee, a warning is not sufficient.

(2) Fines imposed shall not exceed the monthly levy in respect of a specific land unit per offence.

(3) Warnings may be issued by the trustee committee if, in the opinion of the trustee committee:

- (a) the conduct of an offender constitutes a nuisance, or
- (b) the offender contravenes or breaches any provision of this constitution.



(4) If the offender is a member or an occupant, the trustee committee must serve such warning on the offender personally or by email.

(5) The warning notice must state the identity of the complainant, the particular conduct complained of, the provision of this constitution that has allegedly been contravened and, if appropriate, what steps the offender is to take to address the contravention, and within how many days such steps are to be taken.

(6) Should an offender nevertheless and notwithstanding the written warning persist in the particular conduct, the trustee committee may fine the offender. An offender shall have the right to object to the trustee committee against any fine that has been imposed. A notice of objection, stating the grounds of objection, must be lodged with the trustee committee within 14 (fourteen) days of the date upon which the fine was imposed. The trustee committee shall be obliged to consider the objection, shall make a final finding in relation thereto and impose a penalty if it thinks fit.

(7) Penalties shall be issued according to a transgression chart, as stipulated by the trustee committee from time to time. Penalties shall be paid into the association's bank account within 30 (thirty) days from date of being imposed.

(8) The trustee committee may not issue fines that exceeds of the maximum fine for a transgression as set out in Appendix E.

(9) The trustee committee, acting reasonably, shall investigate, in such manner as it deems fit, written complaints received from owners or occupants relating to the behaviour and/or conduct of other owners or occupants and persons and/or about the association and shall take such steps with regard thereto as it may deem fit as is reasonable in the circumstances.

(10) The trustee committee shall be entitled on its own initiative to investigate the conduct of any person and to take such action as it may deem fit, whether or not complaints are received is reasonable in the circumstances, and then only upon reasonable apprehension of a breach of this constitution.

(11) If any member fails to comply with any of the provisions of this constitution or fails to comply with any rules made in terms of this constitution or fails to make payment on due date of levies, fees, expenses, costs or other monies due and payable by such member, the trustee committee may serve notice on such member calling upon him to remedy such failure, details of which shall be set out in such notice, within not less than 7 (seven) days of the date of the notice and, failing compliance by the member within the time period stipulated in the notice, may:

(a) suspend the offender's remote controlled access to the property, provided that the notice contains an advice to the member that its access to the property will be suspended immediately upon non-compliance with the said notice;

(b) enter upon the land unit to take such action as may be reasonably required to remedy the



breach and the member concerned shall be liable to the association for all costs so incurred, which costs shall be due and payable upon demand; and/or

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

(12) Notwithstanding the above, any amounts due by a member and outstanding for 30 (thirty) days or more will, whether or not the trustee committee has issued a notice to a member, automatically result in:

(a) the collection of such arrear amounts being handed over to the association's attorneys for recovery without notification to the member, and

(b) the member's remote controlled access to the property being suspended, without the trustee committee being required to notify the member.

(13) Nothing stated herein shall derogate from or in any way diminish the right of the trustee committee or the association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any member arising from any cause of action whatsoever or for any other relief.

(14) The costs of the trustee committee or the association in taking any such steps considered reasonably necessary to remedy a breach of this constitution by a member, which shall include the cost of the association's attorneys relating thereto, shall be for the account of the defaulting member who shall be obliged to reimburse the association therefor. Such amount shall be debited to the account of the member concerned and shall be deemed to a debt owing to the association.

(15) In the event of any breach of this constitution by the members of any member's household or his invitees or lessees, such breach shall be deemed to have been committed by the member himself. Without prejudice to the foregoing, the trustee committee shall be entitled to take such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the member.

(16) No relaxation or indulgence which the trustee committee and/or the association may show to any member in terms of or in relation to this constitution shall in any way prejudice or be deemed to be a waiver of its rights hereunder, nor shall such relaxation or indulgence preclude or stop the trustee committee or the association from exercising any of its rights in terms this constitution generally.

37. Dispute resolution

37. (1) Any dispute arising from or in connection with this constitution shall be finally resolved at the Community Scheme Ombud Service, in accordance with the rules of the Community Schemes Ombud Service Act.



(2) Notwithstanding anything to the contrary herein contained, in respect of any claim arising from non-payment of levies or any other amount due by a member to the association in terms of this constitution, the association and trustee committee shall continue to enjoy all of their common law rights and shall not be precluded from instituting proceedings in any court of competent jurisdiction in relation to such claim.

38. Domicilium

38. (1) The trustee committee shall from time to time determine the address constituting the domicilium citandi et executandi ("Domicilium") of the association, subject to the following:

(a) such address shall be the address of the chairperson or of a trustee nominated by the trustee committee, or the address of the manager, and

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

(2) Unless the association is otherwise informed, the domicilium of each owner shall be the address of the owner's land unit.

(3) Each owner shall provide the association, represented by the chairperson or the manager, in writing with an electronic mail address and a physical address within the Republic of South Africa where notices and other communication can be served on such owner.

(4) The trustee committee shall keep a record of members and the address or electronic mail address of any owner entered into such register shall be deemed to be the registered address of such owner for the purpose of service of notices herein.

(5) Unless precluded by Law, notices in terms of this constitution may be given by way of electronic mail.

(6) In the case of joint ownership, only the relevant information of the person whose name appears first in the title to the land unit shall be entered into the register unless the owners request otherwise in writing.

(7) A member may, by notice in writing to the chairperson or manager, who shall be obliged to update the details of the member on the register, alter his domicilium provided such new address is within the Republic of South Africa and may not be a post office box or post restante. Such alteration shall not be effective until 14 (fourteen) days after receipt of such notification.

(8) Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a member shall be adequate written notice of communication to such member notwithstanding that it was not sent to or delivered at his domicilium.

(9) Any notice to a member:

(a) sent to him by prepaid registered post in a correctly addressed envelope at his domicilium

shall be rebuttably deemed to have been received on the 7th (seventh) day after posting; or

(b) delivered by hand to a responsible person at his domicilium shall be rebuttably deemed to have been received on the day of delivery, or

(c) successfully transmitted by electronic mail to his chosen electronic mail address shall be deemed to have been received on the 1st (first) day after the date of transmission.

39. Commercial rights

39. (1) It is noted that the members of the SWBC have the unfettered right to carry out commercial business activities from their land units, subject to their adherence to the management and conduct rules of the SWBC. It is further noted that no such exercise of the aforementioned commercial rights may be interfered with, in any way whatsoever, by any person.

40. General

40. (1) Save as otherwise expressly provided in this constitution:

(a) no remedy conferred by this constitution is intended to be exclusive of any other remedy which is otherwise available at Law, and

(b) each remedy is cumulative and in addition to every other remedy given hereunder or now or hereafter existing at Law.

(2) No person shall have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like not recorded in this constitution.

(3) A waiver of any right or remedy under this constitution or by Law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

(4) A failure to exercise, or a delay by a person in exercising, any right or remedy under this constitution or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy under this constitution or by Law shall prevent or restrict the further exercise of that or any other right or remedy.

(5) No indulgence, extension of time, relaxation or latitude which any person ("grantor") may grant to any other person ("grantee") shall constitute a waiver by the grantor of any of its rights and the grantor shall not be prejudiced thereby or be precluded from exercising any of its rights against the grantee which may then already have arisen or which may arise thereafter.

(6) If any provision of this constitution that is not material to its efficacy as a whole is rendered invalid,



void, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(7) Save as permitted by the provisions of this constitution, no person may cede, transfer or otherwise make over any of its rights or delegate any of its obligations under this constitution. A cession or delegation shall include any form of transfer of a person's rights and/or obligations under this constitution, or the change in legal entity which has rights and/or obligations under this constitution or by operation of Law.

(8) All matters arising from or in connection with this constitution, including its interpretation, validity, existence or termination for any reason, shall be governed by and shall be construed in accordance with the laws of the Republic of South Africa. All persons hereby consent to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Local Division, Cape Town.

41. Amendments to the constitution

41. (1) This constitution or any provision hereof shall not be added to, amended, varied, substituted or repealed other than by way of a special resolution of the members and with the written consent of the local authority if such consent is required by Law.