

DIRECTORATE: PLANNING & DEVELOPMENT
TOWN & SPATIAL PLANNING



ENQUIRIES | NAVRAE: H Olivier (Town Planner)
FILE REF | LEËRVERW: 4738 HON
APP ID AANSOEK ID: 4913/2025
DATE | DATUM: 19 March 2026

Hermanus Property Management
Ms Y Searle
21 Mitchell Street
HERMANUS
7200

yolanda@hpmhermanus.co.za

Dear Madam

NOTIFICATION

**ERF 4738, BERGHOF DRIVE, BERGHOF ESTATE, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA:
AMENDMENT OF CONSTITUTION: YM SEARLE ON BEHALF OF BERGHOF HOMEOWNERS' ASSOCIATION**

The above matter refers.

Kindly note that the amendment of the Constitution of Berghof Homeowners' Association for Erf 4738, Berghof Estate, Onrustrivier have been **approved** by the Divisional Manager : Town & Regional Planning on 11 March 2026.

Attached please find the approved amended Constitution for the Berghof Homeowners' Association duly stamped for your records.

In view of the above, our file has been closed.

Yours faithfully



R KUCCHAR

DIVISIONAL MANAGER: TOWN & SPATIAL PLANNING

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DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

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CONSTITUTION OF BERGHOF HOME OWNERS ASSOCIATION

Comments: Andrew Buttle 30.4.2024

FILE NO. <i>FF 4692</i>
<i>Berghof - Hout</i>
SCAN NO.
COLLABORATOR NO.
<i>2923704</i>

BERGHOF HOME OWNERS ASSOCIATION, ONRUSRIVIER, HERMANUS

11 MAR 2026

OVERSTRAND MUNICIPALITY
DEPARTMENT: TOWN PLANNING
P O BOX 20, HERMANUS, 7200

TP 4 DEC 2025

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- ANNEXURE A: BERGHOF HOA – DESIGN GUIDELINES
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ANNEXURE C: BERGHOF HOA – CONTRACTORS AGREEMENT

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OVERSTRAND MUNICIPALITY
DEPARTMENT: TOWN PLANNING
P O BOX 20, HERMANUS, 7268

1. **NAME**

The name of the association is Berghof Home Owners Association.

2. **DEFINITIONS**

2.1 In this Constitution, unless the context indicates the contrary:

2.1.1 **AGM** means the annual general meeting of the Association;

2.1.2 **Architect:** means a professional architect duly qualified and registered as such in terms of the Architectural Profession Act number 44 of 2000;

2.1.3 **Association** shall mean Berghof Home Owners Association;

2.1.4 **Board** means the board of Trustees;

2.1.5 **Common area** means open space in the development registered in the name of the association and accessible to all Residents;

2.1.6 **Constitution** means the constitution of the Association;

2.1.7 **Contractor's Agreement** attached hereto as Annexure C, shall mean the signed agreement concluded between the Managing Agent/ Association and the relevant Member/Member's contractor who wish to enter the Development to perform construction or similar works;

2.1.8 **Design Guidelines** means the Design Guidelines attached hereto as Annexure A or as amended by Members in terms of clause 14 from time to time;

2.1.9 **Development** means the residential development established on a portion of the Remainder of Erf 3710 Onrustrivier or any sub-division thereof, excluding Erf 4725 Onrustrivier known as Berghof (or Berghof Estate) in Hermanus;

2.1.10 **Erf or Erven** shall mean an erf or erven in the Development together with a dwelling, outbuilding(s), garden, driveway, and all other improvements thereon of a permanent nature;

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- 2.1.11 **Guardian's Fund** means the Guardian's Fund established in terms of section 91 of the Administration of Estates Act number 24 of 1913;
- 2.1.12 **House Rules** attached hereto as Annexure B shall mean those included as Annexure B or as amended by the Trustee in terms of clause 14 from time to time;
- 2.1.13 **Local Controlling Architect** is an architect/s appointed by the board to assist the board in exercising its powers in terms of the constitution regarding the approval of building plans, building processes, sign-off of completed works and compliance with the Design Guidelines;
- 2.1.14 **Member** shall mean a member as defined in clause 7;
- 2.1.15 **Municipality** means the Overstrand Local Municipality;
- 2.1.16 **Person** shall include an individual, a company, close corporation, partnership, trust, club or other association of persons entitled by law to hold title of immovable property;
- 2.1.17 **Private Spaces:** means the physical ground and improvements erected on the erven owned by the members of the Association;
- 2.1.18 **Receiver:** a neutral individual or entity with no interest in the assets of the Association appointed by the trustees to manage and oversee the process of converting the assets of the Association into cash and distributing same in the manner provided for in clause 15 below.
- 2.1.19 **Resident** means a resident in the Development;
- 2.1.20 **Trustee/s** means trustees appointed by the Members to represent the Association.
- 2.1.21 **Unit** means a specific portion of property which is an individual residential space
- 2.2 Words imparting the singular shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders.

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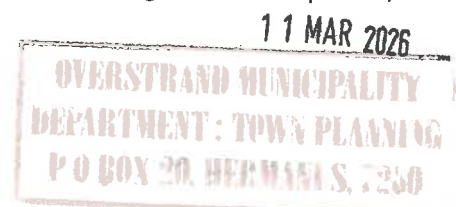
3. HEADNOTES

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

4. OBJECTIVES OF THE ASSOCIATION

The objectives of the Association are:

- 4.1 to oversee, maintain and control the Development and ensure the general high standard of the Development;
- 4.2 to promote and enforce standards and communal interests of Members, not the least of which should be the congenial atmosphere in the Development in such a way that Members may derive the maximum collective benefit therefrom;
- 4.3 to promote and enforce acceptable aesthetic, landscaping, environmental and architectural styles and design criteria for the Development to achieve harmonious development thereof, to enhance the ambiance thereof and preserve any sea views where possible;
- 4.4 to prescribe standards, conditions and guidelines for the maintenance of any buildings and outbuildings and external fixtures and fittings thereto, including aerials and satellite dishes of any description to be erected in the Development and thereby to exercise control over the external appearance of all such buildings, structures, erections, land and garden areas in the Development;
- 4.5 to control, regulate, maintain, and improve the Common area and all communal facilities thereon and to control and maintain all services, roads and amenities in the Development for the mutual benefit of Members;
- 4.6 to provide, promote and maintain essential and community services, amenities and activities within the Development;
- 4.7 to administer and enforce the Constitution, House Rules, Contractor's Agreement and Design Guidelines;
- 4.8 to ensure the maintenance, upkeep, upgrading and installation, where required, of the Association's infrastructure, the common services serving the Development,



such as, but not limited to, the sewerage and drinking water reticulation and storm water systems, security fences and common areas;

- 4.9 to control the transfer of Erven in the Development and withhold the authority to transfer erven in the development until all outstanding monies are paid and the property conforms to the design guidelines;
- 4.10 to ensure adherence to the conditions imposed by the Municipality in respect of any Erf;
- 4.11 to ensure that Members satisfactorily maintain their Erven in the Development and the improvements thereon in terms of the rules;
- 4.12 to collect levies and contributions towards funds of the Association for the attainment of the objectives of the Association or any of them, for the improvement of the Development, to impose and collect fines for the contravention of the House Rules, the Constitution and the Design Guidelines and Contractor Agreement,

5. STATUS OF THE ASSOCIATION

The Association shall be an association:

- 5.1 with legal personality, capable of suing and being sued in its own name, and
- 5.2 none of whose Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in the Association, and be controlled by the Board in terms hereof, and
- 5.3 not for profit, but for the benefit of the owners and occupants of erven situated in the Development, and with the right to acquire, hold, lease, offer as security and alienate property, both movable and immovable

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6. MEETINGS – ANNUAL GENERAL AND SPECIAL MEETINGS

6.1 Annual General Meetings (AGM):

6.1.1 AGM's shall be held once in every year at such time and place as may be determined by the Board, but so that no more than 15 (fifteen) months shall be allowed to elapse between any 2 (two) such successive meetings. A quorum at all General Meetings shall consist of not less than 1/3 (one third) or 33 (thirty three) Members of the Association present or represented by proxy at such meeting. The business to be done at the AGM shall include:

6.1.1.1 a report on the affairs of the Association;

6.1.1.2 the adoption of the Balance Sheet and accounts for the past financial year;

6.1.1.3 the adoption of an annual budget for the next financial year;

6.1.1.4 the consideration of any resolution concerning the affairs of the Association of which due notice has been given;

6.1.1.5 the election of Trustees to the Board;

6.1.1.6 the adoption and/or amendment and/or replacement and/or repeal of Constitution, and/or Design Guidelines required for the proper management of the Association;

6.1.1.7 any other business.

6.1.2 An AGM shall be convened by not less than 21 days' notice in writing to every Member's last known address (which includes an email address) and the minutes of the previous AGM, the financial accounts for the previous year, agenda, nomination and proxy forms as well as the budget for the next financial year and any necessary resolutions shall be sent to Members together with the notice convening the meeting.

6.2 Special General meetings:

6.2.1 The Trustees may call a Special General Meeting whenever necessary. Special General Meetings shall also be called upon the written request of not less than 20 (twenty) Members, directed to the Chairman of the Board. 11 MAR 2026



6.2.2 A Special General Meeting shall be convened by not less than 14 (fourteen) days' notice in writing. The notices shall specify the place, day and the hour of the meeting and the general nature of the matter to be discussed. A quorum at all Special General Meetings shall consist of not less than 1/3 (one third)) of the Members of the Association.

6.2.3 No special resolutions shall be valid unless it is supported by 75% of all the Members of the Association present or represented at such meeting by proxy.

6.3 Validity of meetings:

The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any Person entitled to receive such notice, shall not invalidate such meeting or its decisions, provided a quorum is present at such meeting.

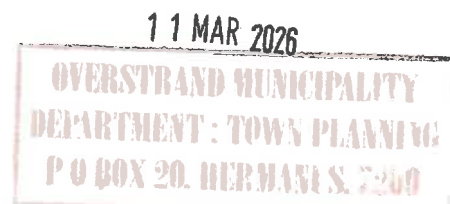
6.4 Adjournment:

If a quorum is not present within 30 (thirty) minutes from the time appointed for the holdings of any AGM or Special General Meeting, the meeting shall be dissolved. In such case it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present at the meeting and those Members represented by proxy at such adjourned meeting shall be the quorum. All Members of the Association shall be given notice of such adjourned meeting.

6.5 Chairman:

6.5.1 At all general meetings, the Chair shall be taken by the Chairman of the Trustees. In his absence, the Members shall elect a Chairman at the meeting provided a quorum is present;

6.5.2 If the Chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such meeting shall choose another Chairman for such meeting;



6.5.3 If any Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.

6.6 Votes:

At all meetings a resolution put to the vote of the meeting shall be decided on a poll which shall be taken immediately in accordance with the following provision:

6.6.1 each Member present in person shall have one vote for every Erf registered in his name;

6.6.2 each Person present as proxy for a Member shall have one vote for every Erf registered in the name of the Member for whom he is proxy;

6.6.3 each Member and Person present as proxy for a Member shall cast his vote to which he is entitled, orally, electronically, by show of hands or written vote;

6.6.4 except when stated herein specifically to the contrary, all resolutions shall be by simple majority of those Members present in person or proxy at the meeting and voting;

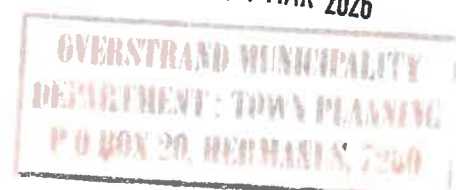
the Chairman of the meeting shall count the votes cast for and against the resolution and shall declare it carried or lost as the case may be;

6.6.5 a declaration by the Chairman of the result of the poll and entry thereof in the Minute Book of the Association shall be conclusive evidence of that fact.

6.7 Electronic meetings

Meetings of Members or Trustees may be conducted entirely by electronic communication (including voting thereat), or one or more Members or Trustees (or their proxies) may participate by electronic communication in all or part of Members or Trustees Meeting that is being held in person, as long as all of the participants in the meeting are able to communicate concurrently with each other, without an intermediary, and to participate reasonably effectively in the meeting.

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6.8 Incapacity of Member:

6.8.1 Should any Member be declared incapable of managing his own affairs, or a prodigal or insolvent, or in the case of a company, or a close corporation, placed under judicial management, or into liquidation, such Member shall be represented by his curator bonis, trustee, judicial manager or liquidator as the case may be, who shall be entitled to vote on his behalf, either personally or by proxy.

6.8.2 Any Member who is in breach of any provision of this Constitution, or who is in arrears (as at the date of the issue of a notice of a meeting) for a period of more than 30 days with respect to any amount payable to the Association, shall not be entitled to the rights and powers provided to him in terms of this Constitution (including the right to vote at Annual General or Special General meetings meeting), for so long as he remains in breach or in arrears.

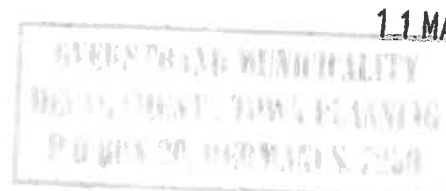
6.9 Proxy:

6.9.1 Votes may be cast either personally or by proxy;

6.9.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by the Trustee under the hand of the appointer, or of his attorney or agent, duly authorised in writing, or if such appointer is a juristic person, under the hand of an Officer duly authorised on that behalf;

6.9.3 The instrument of appointing a proxy, together with the Power of Attorney (if any) under which it is signed, or a certified copy thereof shall be deposited at the domicilium citandi of the Association or if the trustees or managing agent so direct, may be sent by e-mail to a designated e-mail account included in the notice to the meeting, at least **24 (twenty four) hours** before the time appointed for holding the meeting, or adjourned meeting, at which the Person named in such instrument proposes to vote, otherwise the Person so named shall not be entitled to vote in respect thereof; and

6.9.4 A proxy may only be given to another Member of the Association and a person who is not a Member of the Association is therefore not eligible to serve as a proxyholder. A Member proxyholder may only hold a maximum of 3 (three)



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proxies' at any meeting. The provision of this rule will not apply to proxies given to the Chairman.

6.10 Companies:

Any company or close corporation, partnership, trust, club or other association which is a Member of the Association shall, by resolution of its directors or members, authorise such Person as it thinks fit to act as its representative at any meeting of the Association and the Person so authorised shall be entitled to exercise the same powers on behalf of the Company which he represents as that Company could exercise if it were an individual Member of the Association. The foregoing provisions shall apply mutatis mutandis in the case of a trust, association, club or partnership

7. MEMBERS - RIGHTS AND RESPONSIBILITIES

- 7.1 The Association shall be constituted without capital, and membership thereof shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more Erven in the Development. Upon registration of ownership, membership of the Association shall be automatic, and Members shall be obliged to comply with the provisions of this Constitution. No Person shall be entitled to cease to be a Member of the Association while remaining the registered owner of an Erf in the Development.
- 7.2 Each Member shall be entitled to one vote for each Erf registered in the Member's name in the Development. Multiple ownership of an Erf in undivided shares shall constitute only one membership, which membership shall be represented by one individual.
- 7.3 Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry, Cape Town, passing transfer of one or more Erven in the Development from the previous Member to the new Member.
- 7.4 Should the Member or his successor in title sell, donate, bequeath or in any manner alienate or transfer his Erf, the contract in respect of such sale, donation, alienation, transfer of the Erf, or bequest to an heir shall be subject to the approval of the Board, which approval shall not be unreasonably withheld. The change of a Member's interest in a close corporation or change in the controlling interest in the

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shareholding in a company will be deemed to be a transfer of an Erf for the purposes of this clause.

- 7.5 Every Member shall pay such levy as determined by the Association from time to time as provided in clause 100.
- 7.6 The liability for the payment of levies shall commence on the Member taking transfer of any one or more Erven and shall be payable monthly in advance.
- 7.7 Any Member who is in breach of any provision of this Constitution, or who is in arrears shall not be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association or corrected the breach.
- 7.8 Any amount due by a Member by way of a levy shall be a debt due by him to the Association payable within such time as determined by the Trustees. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member save that he shall remain liable for all levies plus interest thereon calculated up to the date upon which he ceases to be a Member. No levies paid by a Member shall be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to an Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of such Erf to pay the levies attributable to that Erf. No Member shall be entitled to transfer his Erf until the Trustees have certified that the Member has at the date of transfer, paid all amounts owing by him to the Association.
- 7.9 **No Member shall make any alterations, additions or demolitions to the exterior of the property including boundary walls, fences, landscaping, etc., nor shall he be permitted to paint or change the colour scheme of the outside or exterior of any wall or structure whatsoever without the written consent of the Association.**
- 7.9.1 Members are obliged to submit all building plans, whether such plan is for the construction of new building/s or for renovations, alterations or additions to existing building/s to the Board for examination and approval in accordance with clause 9.5.15 prior to the submission of such plan to the Municipality for approval.

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OVERSTRAND MUNICIPALITY
DEPARTMENT: TOWN PLANNING
P O BOX 20, HERMANUS, 7250

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- 7.10 No construction or erection of improvements on an Erf may commence prior to the approval of plans for such improvements and, in this regard the scrutiny fee payable to the Architect will be paid by the Member, such scrutiny fee to be determined by the Trustees, from time to time.
- 7.11 In as much as any facilities and amenities referred to in clause 7.17 fall within the Development and access thereto will be necessitated via private spaces, the Association shall be obliged and is hereby irrevocably authorised and empowered on behalf of the Members to give access over Private Spaces to and in favour of such facilities and amenities.
- 7.12 A Member will have no claim for damages or loss against the Association, arising from whatever cause as a result of any acts or omissions of a contractor and hereby indemnifies the Association and the Trustees against any claim from any third party arising from the construction of such improvements.
- 7.13 Every member accepts that any person using the services, land or facilities of the Association does so entirely at his own risk.
- 7.14 Every Member shall observe and comply with the laws, ordinances, by-laws and regulations or rules imposed by any statutory or other authority.
- 7.15 Each Member and Resident, insofar as may be applicable, shall:
- 7.15.1 maintain his Erf and all improvements thereon in accordance with the Constitution, Design Guidelines and the House Rules respectively;
- 7.15.2 maintain in a neat and tidy condition and in a state of good repair all improvements on his Erf;
- 7.15.3 establish and maintain a garden according to a standard acceptable to the Association, as well as maintaining the road verge bordering his Erf;
- 7.15.4 all landscaping, plants and all improvements shall be of approved design and of sound construction and shall comply with the provisions of the Design Guidelines.

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- 7.15.5 be responsible for the maintenance of external and boundary walling inclusive of regular painting thereof, provided that this obligation shall only be applicable to Members;
- 7.15.6 permit nothing to be done on any Erf or in any Unit which, in the opinion of the Trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any Member or Resident of any Erf or Unit in the Development;
- 7.15.7 conform to the prescripts of the Design Guidelines in connection with the erection of a builder's board provided that this obligation shall only be applicable to Members;
- 7.15.8 where the erection of structures to house animals or the construction/erection of garden/tool shed(s) is permitted, such structures shall be screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to Members or their tenants or occupiers and the Trustees shall, in their absolute discretion, be entitled to require the permanent removal from the Development of any animal which, in the opinion of the Trustees, constitutes a disturbance or nuisance;
- 7.16 comply with all security procedures implemented from time to time.
- 7.17 It is recorded that officials, employees and contractors employed by the Association, Municipality and/or any public service company shall, at all times, have reasonable access to the Erven and Private Spaces for purposes of inspecting and/or maintaining all services.
- 7.17.1 In as much as any facilities and amenities (referred to in clause 7.15) fall within the Development and access thereto will be necessitated via private spaces, the Association shall be obliged and is hereby irrevocably authorised and empowered on behalf of the Members to give access over Private Spaces to and in favour of such facilities and amenities.
- 7.17.2 The Member and his successor in title shall permit access to the property by the Association, for the purpose of maintaining, cleaning, renovating, repairing, renewing, altering and adding to any property of the Association or any improvement thereon of any nature, and shall not do anything which will

prevent or hinder any such access or work from being done. The cost incurred in the aforementioned regard shall be covered by the levy fund.

7.18 Breach of the Constitution or other Rules

- 7.18.1 A breach of the Constitution or the Rules by a resident (or guest of a resident) shall be a breach by the Member whose property is occupied by such resident.
- 7.18.2 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 but, without prejudice to the afore going, the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Member:
- 7.18.3 The Trustees may, on behalf of and in the name of the Association, serve notice on such Member or Resident (as the case may be) calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance the Trustees or their authorised representatives may:
- 7.18.4 If the breach is not remedied by such notice(s), the Board shall call the Member to a meeting of the Trustees, by giving him no less than 5 days' written notice to attend. Attendance to such meeting may be in person, or via electronic communication applications, for instance Skype, Teams, Zoom.
- 7.18.5 Any such notice issued or given shall:
- 7.18.6 adequately describe the particular conduct which allegedly constitutes an offence.
- 7.18.7 clearly state the paragraph and clause number of the Constitution and/or House Rules and/or Design Guideline and/or Contractor's Agreement that has allegedly been contravened;
- 7.18.8 stipulate the steps which must be taken to remedy the situation, when such steps should commence and a reasonable period prescribed by the Board for it to be completed;

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- 7.18.9 stipulate what the outcome would be if the Member does not remedy the situation or otherwise adhere to the warning, notice or directive, within the prescribed time-period.
- 7.18.10 stipulate the date, time and venue / application for the purposes of conducting the hearing and invite him/her to attend the meeting.
- 7.18.11 The Board will conduct a hearing into the matter, giving the Member (if he is in attendance) a reasonable opportunity to present his case, orally or by way of submission in writing, but except insofar as he may be permitted by the Chairperson, they may not participate in the deliberation and/or voting at the meeting. Should the Member not attend the meeting after proper notice of the meeting was given, the meeting may be held in his absence.
- 7.18.12 The Board may make findings of fact as to whether or not an offence has been committed, decide inter alia whether the Member should be penalised for the offence and, if so, whether special circumstances warrant a deviation from comparable fines previously imposed.
- 7.18.13 The Board may call upon such Member or Resident in writing to remove or alter or procure the removal / alteration within a specified period any portion of the improvements or any addition erected contrary to the provisions of this Constitution, read with the Design Guidelines.
- 7.18.14 The Board may institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member or Resident 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.

8. INTERPRETATION / DISPUTES AND THE ASSOCIATION

- 8.1 Any dispute whatsoever between Members or between Members and the Association/Board/Trustees, including a dispute as to interpretation of this Constitution which arises shall, subject to the provisions of clause 8.4, be referred for decision to a practising Advocate of the Cape Bar of not less than 10 years standing, or in the event of a dispute an Architect of no less than 5 years standing, agreed upon by the parties to the dispute, who shall then adjudicate the dispute.

and his decision shall be final and binding upon the parties and capable of being enforced in a Court of Law;

8.2 In the event of the parties being unable to agree upon the Advocate who should be appointed to determine the dispute, then he shall be nominated by the President of the Cape Bar Counsel;

8.3 In the event of the parties being unable to agree upon the Architect who should be appointed, he shall be nominated by the President of the Cape Provincial Institute of Architects;

8.4 Notwithstanding anything to the contrary herein contained, the Board shall at its sole option be entitled to institute proceedings in the Court having jurisdiction for any relief to which it is entitled under the provisions of this Constitution including the recovery of arrear levies.

8.5 Should a dispute arise on a matter of interpretation between the English and Afrikaans texts of the Constitution or Rules imposed in terms thereof, the English text shall be accepted as correct.

8.6 Nothing contained in this clause shall preclude a Member and/or the Trustees from approaching the Community Schemes Ombud Service in terms of the Community Schemes Ombud Act, Act 9 of 2011 for relief in a dispute.

9. TRUSTEES – RIGHTS, RESPONSIBILITIES AND DUTIES

9.1 General:

9.1.1 The powers of the Association, other than those exercised by Members in General Meeting, shall be exercised by the Board of Trustees

9.1.2 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.

9.1.3 Trustees may not make loans on behalf of the Association, to Members or to themselves.

9.2 Composition:

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- 9.2.1 The number of Trustees shall be determined from time to time by the Members of the Association in a General Meeting, provided that there shall be not less than 3 (three) Trustees nor more than 7 (seven) Trustees.
- 9.2.2 The Board must include a chairman and treasurer. Three (3) Trustees shall form a quorum. All matters at any meeting shall be determined by a majority of those present and voting. In the event of an equality of votes, the Chairman of any meeting shall have the casting as well as a deliberative vote.
- 9.2.3 Trustees shall receive no remuneration, but will be entitled to a refund of expenses incurred in the execution of their duties within the budget as approved by the Members at the AGM.
- 9.3 Election at AGM:
- 9.3.1 Trustees shall be elected annually at the AGM and shall, subject to the following provisions, remain in office until the following AGM.
- 9.3.2 Only Members, their spouses or life partners duly authorised by written Power of Attorney, or, if the Member is a juristic person, one of the office bearers of such member shall be eligible for election as a Trustee if residing in the development.
- 9.3.3 Nominations of candidates for election to the Board at any meeting shall be in writing, signed by 2 (two) Members and accompanied by the written consent of the candidate nominated, so as to be received at the domicilium of the Association not later than 48 (forty-eight) hours before the meeting.
- 9.3.4 Trustees may fill any vacancy in their number or co-opt any additional Member, provided that the number of Trustees shall not exceed 7 (seven). Any Trustee so appointed or co-opted shall hold office until the next AGM when he shall retire and be eligible for re-election as though he had been elected at the previous AGM.
- 9.3.5 If insufficient nominations (as contemplated in 9.3.3) have been received by the start of the meeting, the Chairman may call for nominations from the assembled members.

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9.4 Vacation of office:

9.4.1 A Trustee shall cease to hold office as such if:

9.4.1.1 by notice in writing to the Trustees, he resigns his office;

9.4.1.2 he is or becomes of unsound mind and is so certified by a medical professional;

9.4.1.3 he surrenders his estate as insolvent, or his estate is sequestrated;

9.4.1.4 he makes any arrangement or composition with his creditors;

9.4.1.5 he dies;

9.4.1.6 he is removed from office by a resolution of the majority of Trustees;

9.4.1.7 he is disentitled to exercise a vote in terms of this Constitution, provided he is a Member Trustee;

9.4.1.8 he is disqualified to hold office as a director in terms of the Companies Act 71 of 2008.

9.4.1.9 he is convicted of an offence which involves dishonesty;

9.4.1.10 he absents himself from 3 consecutive meetings of the Board without special leave of absence from the Board;

9.4.1.11 by resolution of a General Meeting of the Association, he is removed from his office;

9.4.1.12 he ceases to be a resident Member.

9.4.2 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 9.4, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustees.

9.4.3 Should the office of a Trustee fall vacant prior to the next AGM of the Association, the vacancy in question may be filled in the manner provided for in clause 9.3.4 above.

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- 9.5 The management and administration of the Association shall be vested in the Board which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself and as are not in its Constitution required to be exercised or done by the Association in General Meeting. Without in any way limiting the generality of the foregoing, such powers and/or duties shall include, but not be limited to the following:
- 9.5.1 the determination from time to time of what constitutes appropriate standards for community living and the maintenance of properties in the Development, as are included in the House Rules, (Annexure B);
- 9.5.2 vary, cancel or modify any of their decisions and resolutions from time to time;
- 9.5.3 the performance of such acts as are necessary to accomplish the objectives expressed or implied herein;
- 9.5.4 the operations of banking accounts with all powers required by such operations;
- 9.5.5 the making of, entering into and carrying out of contracts or agreements for the benefit of the Association;
- 9.5.6 engage on behalf of the Association the services of managing agents, accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, town planners or any other professional firm or person whatsoever or any employees or persons for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide and the payment of such person;
- 9.5.7 institute proceedings in the name of the Association, to defend actions in the name of the Association and to appoint legal representatives for this purpose; in particular and without derogating from the generality of the foregoing, the power to sue shall include the right to sue Members for the payment of arrear levies and/or for the carrying out of their obligations in terms of the Constitution;
- 9.5.7.1 as to the resolution of disputes generally;

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- 9.5.7.2 for the furtherance and promotion of any of the objectives of the Association;
- 9.5.7.3 for the better management of the affairs of the Association;
- 9.5.7.4 for the advancement of the interests of Members;
- 9.5.7.5 for the conduct of Trustees at meetings of Trustees and meetings of the Association;
- 9.5.7.6 to levy and collect contributions from Members and recover from Members moneys which are necessary to defray the necessary expenses of the Municipality in the event of the Municipality imposing any levies and imposts against the Association;
- 9.5.7.7 to assist it in administering and governing its activities generally;
- 9.5.7.8 to determine the amount of and to impose fines in respect of Members and Residents not complying with this Constitution, the House Rules or any rules imposed by the Association.
- 9.5.8 perform all such acts as are required to promote the security of Persons and property in the Development;
- 9.5.9 the amendment and repeal of provisions of the Constitution or rules which shall be binding upon Members as if they form part of this Constitution (provided that such amendments have been passed in terms of clause 14 at an AGM or at a Special Meeting of Members called for that purpose and the prior written Consent of all the Relevant Authorities have been obtained;
- 9.5.10 levying of a charge payable by Members as provided in clause 10 and, subject to the said clause, the determination, from time to time and as frequently as they may, in their sole and absolute discretion, consider necessary or expedient, of the amount of the levy to be paid to the Association by its Members;
- 9.5.11 Appointment of a Local Controlling Architect, being a qualified, practising architect/s to assist the board in exercising its powers in terms of the

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- constitution regarding the approval of building plans, building processes, sign-off of completed works and compliance with the Design Guidelines;
- 9.5.12 assess and impose a scrutiny fee payable in order to implement clause 7.10;
- 9.5.13 the keeping of proper administration and accounting records;
- 9.5.14 investigate any suspected or alleged breach by any Member, Resident or Trustee of this Constitution, Design Guidelines and the House Rules in such reasonable manner as they shall decide from time to time;
- 9.5.15 the prescription and approval of plans in accordance with the Design Guidelines of the architectural style and the materials to be used in respect of any buildings to be erected or in respect of any alterations or additions to be carried out to existing buildings and in particular to control the exterior design of such buildings and the materials and colours used so as to ensure an attractive, aesthetic and pleasing character to the buildings in the Development;
- 9.5.16 the provisions of clause 9.5.15 shall apply mutatis mutandis to other site works on a Member's property, including but not limited to, fences, pergolas, boundary walls and paving;
- 9.5.17 the appointment of an auditor or a Person qualified to act as financial officer of a Close Corporation to do an annual audit of the Association's financial records.
- 9.5.18 without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
- 9.5.18.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven in the Development in strict accordance with the provisions of the Design Guidelines, (Annexure A). The Trustees shall be entitled by written notice to require any Member, who shall be obliged, to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;

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- 9.5.18.2 to repair or renovate any improvements which a member has failed to repair or renovate after notice to repair/renovate has been given to a member (as contemplated in clause 9.5.18.1), and to recover from such member the costs incurred by the Association in affecting the relevant repair or renovation;
- 9.5.18.3 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, water supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable;
- 9.5.18.4 the institution or defence of legal proceedings in the name of the Association and to appoint legal representatives for such purpose;
- 9.5.18.5 administrating, inspecting and maintaining all individual metered connections;
- 9.5.18.6 complying with and enforcing all applicable municipal by-laws including any water restrictions imposed on the Association by the Municipality from time to time.

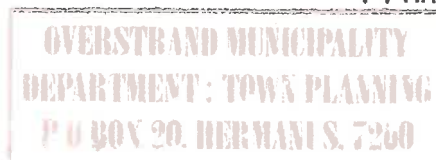
9.6 Validity of acts of Trustees:

Any act performed by a Trustee shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any Trustee, be as valid as if such Trustee has been duly appointed in office.

9.7 Indemnity:

- 9.7.1 No Trustee shall be liable to the Association or any Member thereof, or to any other Person whomsoever for any act of omission by himself, by the Association or by its servants or agents. A Trustee shall be indemnified by the Association against any loss or damage suffered by him in consequence of any purported liability, provided that such Trustee has, upon the basis of information known to him, acted in good faith and without gross negligence.

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9.7.2 All the Trustees, managers, servants, agents or employees of the Association are indemnified by the Association against any liabilities *bona fide* incurred by them in their capacities as such and in the case of the Chairman in his capacity as Chairman, 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.

9.7.3 A Trustee shall not be liable for the acts, or omission of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairman 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*, breach of duty or breach of trust.

9.8 BOARD MEETINGS AND PROCEDURES THEREAT

9.8.1 The Board may give 7 days' written notice convening meetings, meet for the dispatch of business, adjourn or otherwise regulate their meetings as they think fit subject to the provisions of the constitution.

9.8.2 Where a Trustee is temporarily absent from his residence, the Board must take reasonable steps to communicate the notice of the meeting to him; however such failed communication shall not invalidate any decision of the Trustees taken at such meeting.

9.8.3 At the commencement of the first meeting of the Trustees after each AGM, the Trustees shall elect a Chairman from their number who shall hold office as such until the end of the next AGM and such Chairman shall have a casting as well as a deliberative vote. If any Chairman vacates his office or is removed

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therefrom by the Members at a General Meeting, then the Trustees shall elect another Chairman who shall hold office for the remaining period in respect of which the first mentioned Chairman was elected and he shall have the same rights of voting. The first meeting of the new Trustees must take place within 7 days from the AGM. This date to be set prior to the AGM.

- 9.8.4 Meetings of the Trustees shall be held within such reasonable period as the conduct of the business of the Board of the Trustees is required.
- 9.8.5 The Chairman always has the right to convene meetings of Trustees.
- 9.8.6 A Trustee may, provided he has the support in writing of one other Trustee, at any time convene a meeting of Trustees by giving to the other Trustees not less than 14 days written notice of a meeting proposed by him, 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.
- 9.8.7 A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.
- 9.8.8 The quorum necessary for the holding of any meeting of Trustees shall be more than 50% of the Trustees in office, present personally. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting, then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum.
- 9.8.9 Any resolution of the Trustees, shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against such resolution, the Chairman shall have a second or casting vote.
- 9.8.10 The Chairman shall preside as such at all meetings of Trustees provided that, should at any meeting of Trustees the Chairman is not present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairman for the meeting who shall

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thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

- 9.8.11 The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall be deposited with the Chairman at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.
- 9.8.12 The Trustees shall:
- 9.8.12.1 ensure that minutes are taken of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;
- 9.8.12.2 cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;
- 9.8.12.3 keep all books of meetings of Trustees in perpetuity; and
- 9.8.12.4 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.
- 9.8.13 All resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force from when they're made until they're changed or cancelled. But these resolutions only count if they're within the powers that the Trustees have.
- 9.8.14 The Trustees may vote upon and pass resolutions by way of email correspondence or other electronic means subject to the following conditions:
- 9.8.14.1 each of the Trustees must be included in all such correspondence relating to any decision to be taken by the Trustees by email;
- 9.8.14.2 no decision shall be taken by email if any of the Trustees requires that the matter be decided at a meeting of the Trustees;
- 9.8.14.3 the necessary quorum required for a decision to be taken by email or other electronic means will be achieved if a majority of the Trustees vote in favour

of the decision by return email or other electronic means to each of the other Trustees;

9.8.14.4 all resolutions passed by email shall be recorded in the minute book containing the minutes of the meetings of the Trustees and shall be ratified at the following or any subsequent meeting of the Trustees

10. LEVIES

10.1 The Trustees shall:

10.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the Association for the control, management and administration of the Development and for payment of the costs of supplying any services required by the Association and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association;

10.1.2 estimate the amount which will be required by the Association to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;

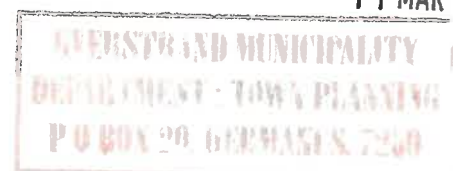
10.1.3 require Members whenever necessary to make contributions to such fund for the purposes of satisfying the expenses;

10.1.4 not increase the levy contributions payable by the Members by more than 20% from one year to the next without the sanction of a special resolution of the Association.

10.2 The Trustees may, from time to time, determine special levies which will become payable by Members with effect from such date as the Trustees shall determine and such special levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit Levies made in terms of clause 10 shall be charged in equal proportions on all Erven in the Development and shall be paid and borne by Members in the same proportion to the total levies imposed on Members pursuant hereto as the number of Erven owned by the Member bears to the total number of Erven in the Development.

- 10.3 Levies shall be charged in equal proportions on all Erven in the Development and shall be paid and borne by Members in the same proportion to the total levies imposed on Members pursuant hereto as the number of Erven owned by the Member bears to the total number of Erven in the Development.
- 10.4 All levies, other than special levies which will be payable in accordance with the provisions of clause 7.8, are due and payable monthly in advance on the first day of each and every month free of any deductions or set-off of any nature, commencing from such date as the Trustees will determine.
- 10.5 If any Member fails to make payment on the due date of levies or other amounts payable by such Member, the Trustees may give notice to such Member requiring him to remedy such breach within such period as the Trustees may determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in obtaining recovery. Any notice given in terms of this clause shall attract a fee as determined by the Association and payable by such Member.
- 10.6 Interest at the prime overdraft interest rate charged by commercial banks plus 5% per annum (with a maximum rate per annum permitted in terms of the National Credit Act, 2005 in respect of unsecured debt) shall be payable on all outstanding levy contributions unpaid 7 (seven) days after it becomes due and payable. Each Member consents to such additional amounts (legal, interest and/or collection fees) to be added to his levy statement until the debt is extinguished
- 10.7 The Board may refuse consent to the transfer or any alienation of an Erf in the Development unless any levy or other money due to the Association in respect of the Erf concerned have been paid or provision has been made to the satisfaction of the Trustee for the payment thereof
- 11. AUDIT AND ACCOUNTS**
- 11.1 The financial year of the Association is the period commencing 1 March in a particular year and terminating of the last day of February of the following year.

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11.2 The Trustee shall cause proper books of account of the administration and finance of the Association to be kept at the domicilium of the Association, or at such other place or places as it may consider necessary, and shall produce an annual audited Balance Sheet and an Income Statement;

11.3 The Trustee shall cause to be laid before the Association in AGM, the annual audited Balance Sheet, as well as an Income Statement.

12. DEPOSIT AND INVESTMENT OF FUNDS

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

12.2 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

12.3 The investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined provided that funds available for investment may only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984 and in shares listed on a licensed stock exchange as defined in the Stock Exchange Control Act, 1985 (Act No 1 of 1985)

13. NOTICES AND ADDRESS FOR SERVICE

13.1 For all purposes arising out of this Agreement, including the giving of notices and the serving of legal process, the Association and each Member chooses domicilium citandi et executandi as follows:

13.1.1 the Association: the street address of the current Managing Agent as voted in at the last AGM and their email address;

13.1.2 each Member – at the Erf registered in his name whether or not such Erf is vacant land and email address as notified to the Association.

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- 13.2 A party may change its address and email address to any other address within South Africa. Such change will only take effect upon receipt or deemed receipt of such notice by the other party.
- 13.3 Any notice or communication will:
- 13.3.1 if delivered by hand between 08h00 and 16h00 on a business day to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery; or
- 13.3.2 if sent by e-mail to the selected e-mail address of the addressee, be deemed to have been received on the first business day following the date on which it has been transmitted from the information system under the control of the sender.
- 13.4 Any written notice or communication which has actually been received by a party shall be regarded as sufficient notice even if it has not been sent in the manner or to the address provided for above.
14. **AMENDMENTS TO THE CONSTITUTION, DESIGN GUIDELINES OR RULES AND REGULATIONS.**
- Notwithstanding anything contained herein to the contrary:
- 14.1 any proposed:
- 14.1.1 rule or regulation or any proposed repeal of, or amendment or addition to, any rule or regulation by the Trustee in terms of clause 9.5.9; and
- 14.1.2 amendment or addition to the Constitution;
- 14.1.3 shall be submitted to the Trustee for approval and shall be subject to clauses 14.2, 14.3 and 14.54 (as applicable) and shall be of no force or effect whatsoever unless and until same has been approved by the Trustees.
- 14.2 Any proposed repeal or amendment or addition to the **Constitution** shall, subject to clauses 14.1, and 14.5, be effected by way of a Special Resolution taken in

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accordance with the provisions of clause 6.2.3 above, which requires the consent of **75% of Members** of the Association.

14.3 Any changes or additions to the **Design Guidelines** shall be approved by **50% of Members** and subject to clause 14.5.

14.4 Any changes or additions to the **House Rules and/or the Contractor's Agreement** shall be approved by a simple majority at a meeting of the Trustees.

14.5 Any amendments to the **Constitution and/or Design Guidelines** shall require the consent of the Municipality.

15. **WINDING UP OF ASSOCIATION**

15.1 The Association may be wound up by a resolution of the Members in General Meeting provided that:

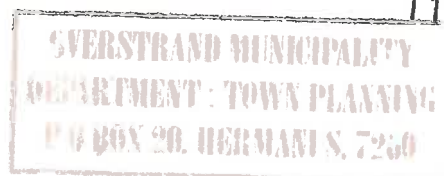
15.1.1 90% of Members present or represented at a meeting, duly convened, vote in favour thereof, and

15.1.2 the Municipality consents thereto.

15.2 In the event of such winding up, it shall be the duty of the Trustee or a Receiver to be appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to all the Members in accordance with the number of Erven registered in the name of each Member. If, within a period of 12 (twelve) months from such distribution, the Trustee or the Receiver is unable to find, locate or trace any Member, such Member's share shall then be paid to the Guardian's Fund.

16. **ERF 4725 (COTTAGE ON MOUNTAIN RESERVE)**

16.1 Notwithstanding anything to the contrary contained herein, it is recorded that **Erf 4725 Onrustvriër is excluded from the Development** for which the Association is established in terms of Section 29 of the Land Use Planning Ordinance No 15 of 1985 and that the registered owner from time to time thereof shall not be a Member of the Association. The registered owner/s of the aforesaid Erf shall,



notwithstanding the aforementioned, be entitled to utilise the electric, water and sewerage service take off points installed by the initial developer of the Development on the boundary of Erf 4725 Onrustrivier which are maintained by the Association. In consideration for the use of the aforesaid service take off points the aforesaid registered owner/s shall be liable for payment of a monthly levy to the Association which levy shall annually not exceed 0,1% of the capital value of the sewer and water reticulation replacement cost.

- 16.2 The registered owner/s from time to time of Erf 4725 Onrustrivier shall, in addition to the right to utilise the services referred to in clause 166, be entitled to a right of way over a portion of the road in the Development from the public link road to gain access to Erf 4725 Onrustrivier. The said access road shall be maintained by the Association at no cost to the registered owner/s of Erf 4725 Onrustrivier.
- 16.3 The rights of the owner/s of Erf 4725 Onrustrivier as contained in clause 166 and shall be notarially recorded and registered against the title deeds of the said owner/s and of the Association.

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