



CONSTITUTION

ROSEDALE ESTATE HOME OWNERS' ASSOCIATION

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1. ESTABLISHMENT IN TERMS OF STATUTE

The ROSEDALE ESTATE Home Owners' Association is constituted, as a body corporate, in terms of sections 61, 62 and 63 of the City of Cape Town Municipal Planning By-Law, 2015 in accordance with the conditions imposed by the City of Cape when approving the rezoning and subdivisions of portion 2 of the farm Zandkloof No 307 Durbanville, City of Tygerberg, Cape Division.

2. INTERPRETATION

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

- "**Association**" means Rosedale Estate Home Owners' Association including all members as described hereinafter;
- "**Auditors**" means the Auditors of the Association;
- "**Business Day**" means weekdays other than Saturdays, Sundays and Public Holidays;
- "**Chairman**" means the Chairman of the Trustee Committee;
- "**Member**" means a member of the Association;
- "**Month**" means calendar month;
- "**Local Authority**" means City of Cape Town or its successors in title from time to time;
- "**Office**" means the registered office of the Association;
- "**Constitution**" means this constitution, as may be amended from time to time;
- "**Registered Owner**" means a Rosedale Estate registered owner of any of the Unit Erven, save where any Unit Erf is a sectional title scheme, in which case the Registered Owner shall be deemed to be the respective sectional title body corporate and or Unit Apartment depending on the context;
- "**Special Resolution**" means a resolution passed at a special general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than three fourths of the number of Members entitled to vote at that meeting who are present in person or by proxy;
- "**Trustee**" means one of the Trustee Committee;
- "**Trustee Committee**" means the Board of Trustees of the Association;
- "**a Unit**" means a Unit Erf or Unit Apartment as after the case may be;
- "**Units**" means all Unit Erven and Unit Apartments;

"Unit Erf or Erven"	means any residential erf or erven resulting from the subdivision of portion 2 of the farm Zandkloof No 307, Durbanville, City of Tygerberg, Cape Division and (Manor subdivision);
"Unit Apartments"	means the apartments that form part of both the Villa Rosa and Villa Venezia sectional title schemes;
"Architectural Guidelines"	means the architectural guidelines, prepared for the Estate and includes all/any amendments made thereto from time to time;
"Rules and Regulations"	means the Rules and Regulations, including the Architectural Guidelines, made from time to time;
"Estate"	means the development situated on portion 2 of the farm Zandkloof No 307, Durbanville, City of Tygerberg, Cape Division;
"Common Areas"	means all parts of the Estate excluding privately owned Unit Erven, Unit Apartments and the common property of the sectional title schemes, and Rosedale Manor;
"the By-Law"	means the City of Cape Town Municipal Planning By-Law, 2015, as amended from time to time;
"CSOS"	means the Community Schemes Ombud Service established in terms of the Community Schemes Ombud Service Act, No 9 of 2011;
"Vice-Chairman"	means the Vice-Chairman of the Trustee Committee;
"in writing"	means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
"year"	means calendar year;

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

3. INCORPORATION AND FIRST MEETINGS

3.1 The Association came into existence simultaneously with the registration of transfer of the first Unit Erf in the Estate.

3.2 The first meeting of the Association shall be called within 60 days of the transfer of 60% of the Units arising from the subdivision or within two years of the transfer of the first Unit, whichever is the earlier.

3.3 The Association shall within 60 days of the first general meeting notify the Local Authority that the meeting has taken place and provide it with a copy of the minutes of such meeting.

3.4 The Members shall at the first general meeting of the Association elect Trustees.

4. STATUS

4.1 The Association shall:

4.1.1 have legal personality separate from its Members and be capable of suing or being sued in its own name; and

4.1.2 not operate for profit but for the benefit of the Members.

4.2 No Member in his personal capacity shall have any right, title or interests to or in the funds or assets of the Association, which shall vest in and be controlled by the Trustees.

5. PRIMARY GOALS

5.1 The primary goals of the Association are to:

5.1.1 promote and enforce standards, not the least of which should be the congenial atmosphere in the Estate, in such a way that Members may derive the maximum collective benefit therefrom;

5.1.2 promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Estate in order to achieve harmonious development thereof and to enhance the values of Units;

5.1.3 control, administer and manage the Common Areas, private road, road reserve areas and other services and amenities arising from the subdivision and buildings on land under the Association's control, for the benefit of all Members;

5.1.4 control any improvements or alterations to any Unit in terms of the Architectural Guidelines;

5.1.5 establish a fund for expenses of the Association, including provision for future expenses and contingencies;

5.1.6 collect from the Members by way of levies for the purposes of the said fund;

5.1.7 control the transfer of Unit Erven and Unit Apartments in the Estate and ensure compliance with this Constitution;

5.1.8 to enforce certain conditions of subdivision approval or management plans listed in such conditions of subdivision imposed by the Local Authority;

5.1.9 act in accordance with the collective mutual interests of its Members;

5.1.10 adopt and enforce such Rules and Regulations as the Association may find necessary to harmonise the different needs and aspirations of all Members;

and the Association shall have all such powers necessary to enable it to achieve such purposes and objects.

6. FINANCIAL YEAR END

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

7. MEMBERSHIP

7.1 Membership of the Association shall be compulsory:

7.1.1 for every registered owner of a Unit Erf;

7.1.2 for every registered owner of a Unit Apartment.

- 7.2 Membership of the Association shall be limited to the registered owners of the Units provided that:
- 7.2.1 a person who is entitled to obtain a certificate of registered title to any such Unit shall be deemed to be the registered owner thereof;
 - 7.2.2 where any such owner is more than one person, all the registered owners of that Unit shall be deemed jointly and severally to be one Member of the Association.
- 7.3 When a Member ceases to be the registered owner of a Unit, he shall simultaneously cease to be a Member of the Association.
- 7.4 A Member shall not be entitled to sell or transfer a Unit unless it is a condition of the sale and transfer that:
- 7.4.1 The transferee becomes a Member of the Association;
 - 7.4.2 The registration of transfer of that Unit into the name of that transferee shall so too constitute the transferee as a Member of the Association;
 - 7.4.3 He first obtains the written consent of the Home Owners' Association which consent shall be given provided the purchaser of such Unit agrees in writing to abide by the provisions of the Constitution, Rules and Regulations of the Association.
- 7.5 The registered owner of a Unit may not resign as a Member of the Association.
- 7.6 The Trustee Committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.
- 7.7 The rights and obligations of a Member shall not be transferable, and every Member shall:
- 7.7.1 To the best of his ability further the objects and interests of the Association;
 - 7.7.2 Observe and abide by all by-laws, Rules and Regulations made by the Association or the Trustee Committee provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the mortgagee of that Member's Unit;
 - 7.7.3 Be responsible for:
 - 7.7.3.1 the Common Areas;
 - 7.7.3.2 for the matters described in clause 5 above;
 - 7.7.3.3 comply with all duties of a Member;
 - 7.7.3.4 comply with the requirements of the Local Authority.
- 8. LEVIES**
- 8.1 The Trustee Committee is authorized from time to time, to levy contributions from the Members for the purpose of:
- 8.1.1 meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the Common Areas, and/or

- 8.1.2 payment of all rates and other charges payable by the Association in respect of the Common Areas, and/or for the services rendered to it, and/or
- 8.1.3 payment of all expenses necessary and reasonably incurred in connection with the management of the Association, the Common Areas and the Association's affairs.
- 8.2 In calculating levies, the Trustee Committee shall take into account income, if any, earned by the Association.
- 8.3 The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Members, equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee must include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 8.4 Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 8.5 The Trustee Committee, may from time to time, make special levies upon the Members in respect of all such expenses as are mentioned, and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit.
- 8.6 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies.
- 8.7 No levies, already paid by a Member, shall be repayable by the Association upon such member ceasing to be a Member. A Member's successor in title to a Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Unit, to pay the levy attributable to that Unit. No Member shall transfer his Unit until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.
- 8.8 The total levy payable by Members shall be borne in equal shares by each Member.
- 8.9 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 8.10 Notwithstanding the foregoing, the aggregate levy imposed per unit in any year shall not escalate with more than 10% without the sanction of a Special Resolution of the Association (and no Members shall be entitled to unreasonably vote against a resolution proposing an increase) provided that the aforesaid limit shall not apply if it shall have the effect of the Association being unable to fulfil its objects in respect of expenditure for:
 - 8.10.1 Rates and taxes; and/or
 - 8.10.2 Maintenance of the Common Areas; and/or
 - 8.10.3 Any other obligation assumed by it in terms of an agreement with the Local Authority.

9. THE COMMON AREAS

- 9.1 Neither the whole nor any portion of the Common Areas shall be:
- 9.1.1 Sold, let, alienated, or otherwise disposed of, subdivided or transferred; or
 - 9.1.2 Mortgaged; or
 - 9.1.3 Subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude (save those enjoyed by the Members of the Association in terms hereof); or
 - 9.1.4 Built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, the cost of which directly or indirectly to the Association exceed R150 000.00 (ONE HUNDRED AND FIFTY THOUSAND RAND),
- without approval by the Local Authority and the sanction of a Special Resolution of the Association (and no Member shall be entitled to unreasonably vote against any such Special Resolution which may be proposed).
- 9.2 The maintenance and repairs to the Common Areas shall be the sole responsibility of the Association, including the maintenance and repair, to the satisfaction of the Local Authority, of the boundary wall and fence on the perimeter of the Estate.
- 9.3 Members and occupants shall comply with the Rules and the reasonable conditions imposed from time to time by the Trustee Committee relating to the use of the Common Areas and facilities and amenities of the Association.
- 9.4 Any person present on the Estate or using any of the services, land, facilities or amenities of the Association does so entirely at his own risk. No person shall have any claim against the Association of whatsoever nature arising from such use, nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise. The Association shall not be liable for any injury, loss or damage of any description that any person may sustain, physically or to his property directly or indirectly, in or about the Estate nor for any act done or for any neglect on the part of the Association or any of the Association's employees, agents or contractors.
- 9.5 The Association shall take ownership of the Common Areas, private streets and internal engineering services arising out of the subdivision of the Estate.
- 9.6 Members shall maintain the road verges adjoining their Units and keep them in a clean and neat condition notwithstanding the fact that such road verges may form parts of the Common Areas.

10. BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS

- 10.1 The Units shall be used for Group Housing purposes only in accordance with the provisions of the relevant zoning scheme applicable to the Estate.
- 10.2 The Association shall have the power to:
- 10.2.1 frame and enforce conditions on Members in order to harmonise the architectural style and design criteria of, and the materials to be used in, all buildings erected or to be erected on the Estate;
 - 10.2.2 adopt Architectural Guidelines and amend them from time to time which shall contain the conditions referred to in 10.2.1 above;

- 10.2.3 do such acts as are necessary to accomplish the purposes expressed or implied herein, which acts shall include, inter alia, the examination and approval or refusal of building plans, whether such be for new constructions, renovations, alterations or additions;
 - 10.2.4 compel Members to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such Member which may entail written notice to remove or alter within a specified period, anything erected contrary to the requirements laid down pursuant thereto and failing which, to apply to CSOS or a Court for any appropriate order; and
 - 10.2.5 appoint professional advisors, e.g. an architect, to scrutinize all plans to ensure that the necessary architectural controls have been met.
- 10.3 Members shall be obliged to submit all building plans for new constructions, renovations, alterations or additions to the Association for examination and approval prior to the submission of such plans to the Council for approval and the Association shall make known its decision to the applicant within four (4) weeks of the plans being submitted to it.
- 10.4 Notwithstanding anything contained herein, all buildings erected on the Estate:
- 10.4.1 will be in accordance with the specifications annexed hereto; and/or
 - 10.4.2 will be in accordance to a plan that corresponds with the general plans, copies of which are annexed hereto; and/or
 - 10.4.3 will be painted in a colour in accordance with the colours annexed hereto.
- 10.5 No member shall be entitled to dump material or goods on any Unit not registered in his name and shall be liable for payment of the cost of rectifying the damage or removal of the material goods. Furthermore no material shall be visible from the public roads on any day other than that designated for refuse removal.
- 10.6 No television or radio antenna shall be erected on the Estate or attached to the buildings thereon, except for such communal masts as may be permitted by the Local authority.
- 10.7 All buildings or improvements constructed on any Unit must comply with the provisions of the approved Site Development Plan.

11. CONTRACTS AND REGULATIONS

- 11.1 The Trustees or its Committees may from time to time:
- 11.1.1 Make regulations governing inter alia:
 - 11.1.1.1 the general external appearance of all buildings and other improvements erected on a Unit Erven or a Unit Apartment building;
 - 11.1.1.2 the rights, duties and obligations of the Members in respect of the Units.
 - 11.1.2 Enter into agreement(s) with local authorities governing the matters set out in 11.1.1 and any other incidental matters.
- 11.2 Each Member undertakes to the Association that he shall comply with:
- 11.2.1 The provisions of this Constitution;

11.2.2 Any regulations made in terms of 11.1.1;

11.2.3 Any agreements referred to in 11.1 insofar as those agreements may directly or indirectly impose obligation on him.

12. BREACH

12.1 Any Member who fails to make payment to the Association on due date therefor of any monthly subscription or other amounts payable by such Member shall automatically be charged interest on such outstanding amount should same remain outstanding for more than 30 days from due date.

12.1.1 Interest will be charged at a rate so determined and adopted by the preceding years AGM, however same will be no less than the prime rate of interest.

12.1.2 Should legal action be instituted for the recovery of such liability as mentioned above, the costs shall be for the Member's account, which costs shall be on an attorneys and own client scale including collection commission.

12.2 Any Member who otherwise breaches or fails in the observance of any of the provisions of Constitution, the Rules and Regulations, and the Architectural Guidelines, may, if so determined by the Trustees present at a meeting of the Trustee Committee;

12.2.1 be fined by the Association in such amount; and/or

12.2.2 be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question, such sum as compensation;

as in each case shall have been determined at such Trustee Committee meeting.

12.3 The Member concerned shall be invited to attend such meeting by notice in writing delivered to such Member not less than 7 (seven) days prior to the holding thereof, and such Member shall be given the right to speak thereat, and to be represented legally, but not to be present at the voting or to take part in the proceedings, other than as allowed by the Chairman of such meeting.

12.4 A Members liability in terms of such amounts as mentioned above in 12.2 shall be payable within 10 days of demand, failing which legal action may be instituted for the recovery thereof the costs of which shall be for the Members account, which costs shall be on an attorneys and own client scale including collection commission.

13. CESSATION OF MEMBERSHIP

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

14. TRUSTEE COMMITTEE

14.1 There shall be a Board of the Trustees of Association which shall consist of not less than 4 (four) and not more than 7 (seven) Members.

14.2 Every Trustee must be a Member of the Association.

14.3 Every Trustee must be a resident residing within the Estate. In the event that a Trustee no longer resides in the Estate he shall be deemed to have resigned with effect from the date of such move.

14.4. The Trustee Committee shall as its board, with the aim of integration and co-operation, and if so nominated at the AGM, have a member from each of the internal separate entities within the Estate, namely; Villa Rosa, Villa Venezia and Rosedale Manor.

14.4.1 Such nominated member shall however be required to be a Trustee of such entity;

14.4.2 Should no such nomination be made the Trustee Committee shall invite a Trustee of such entity to attend its Trustee meetings in order to advance the intended integration and co-operation.

15. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

15.1 Save as set forth in 15.2 below each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting such trustees shall be deemed to have retired from office as such, but will be eligible for re-election to the Trustee Committee at such meeting.

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

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

15.2.2 His making any arrangement or compromise with his creditors;

15.2.3 His conviction for any offence involving dishonesty;

15.2.4 His becoming of unsound mind or being found incapable of handling his own affairs;

15.2.5 His resigning from such office in writing delivered to the Trustee Committee;

15.2.6 His death;

15.2.7 His being removed from office by a Special Resolution of the Members.

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

- 15.4 Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question may be filled by a person nominated by those remaining for the time being of the Trustee Committee.

16. OFFICE OF TRUSTEES

- 16.1 The Trustees shall appoint from amongst themselves a Chairman and Vice-Chairman.
- 16.2 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or of Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 16.3 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.
- 16.4 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

17. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

- 17.1 Subject to the express provisions of this Constitution, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this Constitution required to be exercised or done by the Association in a general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 17.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 17.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 17.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution, the Rules and Regulations, or the Architectural Guidelines in such reasonable manner as it shall decide from time to time.
- 17.5 The Trustee Committee may make Rules and Regulations, not inconsistent with this Constitution, or any Rules and Regulations prescribed by the Association in a general meeting:

- 17.5.1 As to disputes generally;
 - 17.5.2 For the furtherance and promotion of any of the objects of the Association
 - 17.5.3 For the better management of the affairs of the Association;
 - 17.5.4 For the advancement of the interests of Members;
 - 17.5.5 For the conduct of Trustee Committee meetings and general meetings; and
 - 17.5.6 To assist it in administering and governing its activities generally and shall be entitled to cancel, vary or modify any of the same from time to time.
- 17.6 The Trustee Committee shall, on behalf of the Association, enforce the provisions of this Constitution, the Rules and Architectural Guidelines.

18. PROCEEDINGS OF THE TRUSTEE COMMITTEE MEETINGS

- 18.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 18.2 Meetings of the Trustee Committee shall be held at least once every quarter, provided that the Chairman and Vice Chairman have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter.
- 18.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustees.
- 18.4 The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee, the Chairman not be present within 10 (ten) minutes after the time appointed for the holding thereof, then the Vice Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 10 (ten) minutes of the time appointed for the holding of such meeting, those present of the Trustee shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 18.5 A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting. All minutes of the Trustee Committee meeting shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and Local Authority.
- 18.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members of any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.

- 18.7 Save as otherwise provided in this Constitution, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 18.8 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee even if the signatures were obtained by making use of a “round robin process”.

19. GENERAL MEETINGS OF THE ASSOCIATION

- 19.1 The Association shall in each calendar year, as soon as reasonably possible after having received its audited financial statements, hold a general meeting as its Annual General Meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notice, in terms of 19.2 below calling it.
- 19.2 The above Annual General Meeting shall however take place no later than 31 July each year.
- 19.3 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 19.4 All general meetings other than Annual General Meetings shall be called special general meetings.
- 19.5 The Trustee Committee, may, whenever they think fit, convene a special general meeting.

20. NOTICE OF MEETINGS

- 20.1 An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by at least 21 (twenty-one) days’ written notice, and a special general meeting, other than one called for the passing of a Special Resolution, shall be called by at least 14 (fourteen) days’ written notice. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and in the case of a Special Resolution. The terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under this Constitution entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed:
- 20.1.1 In the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and
- 20.1.2 In the case of a special general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy-five percent) of the total voting rights of all Members.

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

21. VENUE OF MEETINGS

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

22. QUORUM

- 22.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent one-half of the total votes of all Members of the Association entitled to vote, for the time being save that not less than 3 (three) Members must be personally present.
- 22.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

23. AGENDA AT MEETINGS

In addition to any other matters required by this Constitution to be dealt with at an Annual General Meeting, the following matter shall be dealt with at every Annual General Meeting:

- 23.1 The consideration of the Chairman's Annual Report on behalf of the Trustee Committee;
- 23.2 The election of the Trustee Committee;
- 23.3 The consideration of the financial state of the Association for the prior financial year.
- 23.4 The consideration of the report of the Auditors;
- 23.5 The consideration of the total levy (as referred to in clause 8) for the calendar year during which Annual General Meeting takes place; and
- 23.6 The consideration and determination of the choice and remuneration of the Auditors for the calendar year.
- 23.7 The consideration of any other matter raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 23.8 Any proposed matters for discussion are however to be submitted in writing to the trustees no less than seven (7) days prior to such meeting being held, with full motivation for such matter.
- 23.9 The yearly rate of interest as provided for in clause 12.1.1.

24. PROCEDURE AT GENERAL MEETINGS

- 24.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within 10 (ten) minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 10 (ten) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 24.2 The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 24.3 Except as otherwise set forth in this Constitution, all general meetings shall be conducted in accordance with generally accepted practice.

25. PROXIES

- 25.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorized agent, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board or Directors of the Company or by its secretary, and where an association of persons, by the secretary thereof.
- 25.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be provided to the Trustee Committee at any time before the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.
- 25.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.
- 25.4 Should a Member not reside within Rosedale Estate and be absent from the Annual General Meeting on more than 2 (two) consecutive occasions and fail to appoint a proxy in the event of his third consecutive year being absent, then such Member shall not be entitled to vote, at any special general meeting called during such financial year.

26. VOTING

- 26.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Unit registered in his name provided that if a Unit is registered in more than one person's name, then they shall jointly have one vote.
- 26.2 Save as expressly provided for in this Constitution, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 26.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman or the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 26.4 Voting on the election of a Chairman of a meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.
- 26.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 26.6 An ordinary resolution (that is a resolution other than Special Resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 26.7 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

27. OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to any of the provisions of this Constitution provided that any expenditure incurred in respect of the above, shall not exceed 5% (five percent) of the total annual levy for the year in question unless authorized by a Special Resolution.

28. ACCOUNTS

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

28.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in 18 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

29. AUDIT

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

30. DOMICILIUM AND NOTICES

30.1 The domicilium citandi et executandi of each Member at which all documents and all notices may be delivered, shall be the address of the Member's Unit in the Estate, provided that such Member shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be a physical address situated in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its domicilium.

30.2 It shall be competent to give any notice to Members by telefax or e-mail where he has advised the Trustee Committee in writing of his telefax number or e-mail address.

30.3 A notice shall be deemed to have been properly served on the date, 5 (five) days after posting to the Member's domicilium address, or if faxed, e-mailed or delivered, on the day of faxing, e-mailing or delivery thereof to the Member's elected telefax number, e-mail address or domicilium address respectively.

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

- 30.4.1 such address shall be the address of the Chairman, or of a Trustee nominated by the Trustee Committee, or the address of any duly appointed managing agent; and
- 30.4.2 the Trustee Committee shall give notice to all Members and CSOS of any change of such address

31. INDEMNITY

- 31.1 All Trustee members and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 31.2 Every Trustee member, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including traveling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee member, his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 31.3 A Trustee member shall not be liable for the act's, receipts, neglects or defaults of the Auditors or of any of the other Trustee members, whether in their capacities as Trustee members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever Which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

32. PRIVILEGE IN RESPECT OF DEFAMATION

Every Member of the Association and every Trustee member shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee member, to have waived as against every other Member, the Trustee Committee, the Chairman or Vice-Chairman, every other Trustee member, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Trustee Committee, or any sub-committee, all claims and rights of action which such Member or Trustee member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee member, or any reference to such Member of Trustee member, made at any Trustee Committee meeting, or otherwise in the performance

or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee member, whether such statement be true or false.

33. ARBITRATION

- 33.1 Any dispute, question or difference arising at any time between Member or between Members and Trustees out of or in regard to:
- 33.1.1 Any matters arising out of this Constitution; or
 - 33.1.2 The rights and duties of any of the parties mentioned in this Constitution; or
 - 33.1.3 The interpretation of this Constitution shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.
- 33.2 Arbitration shall be held in Durbanville informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty-one) Business Days after it has been demanded.
- 33.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 33.3.1 Primarily an accounting matter - an independent accountant;
 - 33.3.2 Primarily a legal matter - a practicing counsel or attorney of not less than 10 (ten) years standing;
 - 33.3.3 Any other matter - an independent and suitable qualified person appointed by the Auditors as may be agreed upon between the parties to the dispute.
- 33.4 If agreement cannot be reached on whether the question in dispute falls under 33.1.1, 33.1.2 or 33.1.3 or upon a particular arbitrator in terms of 33.3, within 3 (three) Business Days after the arbitration has been demanded, then:
- 33.5 The President for the time being of the Legal Practice Council shall determine whether the question in dispute falls under 33.1.1, 33.1.2 or 33.1.3; or
- 33.6 The Arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The Arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 33.7 The decision of the Arbitrator shall be final and binding and may be made an Order of the Western Cape Division of the High Court of South Africa upon the application of any party to the arbitration.
- 33.8 Notwithstanding anything to the contrary contained in 33.1 to 33.6 inclusive, the Trustees shall be entitled to apply to CSOS for relief or to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

34. EFFECTIVE DATE

The provisions hereof shall come into force on upon final adoption of the amended Constitution.

35. AMENDMENTS TO CONSTITUTION

35.1 The Constitution shall not be altered or amended in any way save by way of a Special Resolution passed at general meeting.

35.1.1 In addition to the requirements set out in clause 33.1 above, no amendment or alteration to the Constitution shall be binding and effective which:

35.1.1.1 concerns a matter as provided for in section 62(1)(a) of the By-Law;
or

35.1.1.2 has the effect of dissolving the Association without the prior certification in writing by the Local Authority.

35.1.2 The first Constitution of the Association and any subsequent amendment thereof in terms of clause 33.1 above must be lodged with the Local Authority which shall certify it in terms of section 62(2) and/or 62(4) of the By-Law.

35.2 It is hereby recorded that the Local Authority is exempt from liability for any damage which may be caused by its certification of this Constitution, or any amendment thereof, or by the loss of this Constitution or amendment thereof.

36. ASSOCIATION FAILING TO MEET AN OBLIGATION OR CEASING TO FUNCTION

36.1 If the Association fails to meet any obligations as provided for in this Constitution and the Local Authority believes that the community is adversely affected by such failure, the Local Authority may take appropriate action to rectify such failure.

36.2 The Local Authority may recover any expenditure in respect of the action contemplated in clause 34.1 above from the Association or its Members, who are jointly liable.

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

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

36.4.1 convene a general meeting of the Members and to reconstitute itself; or

36.4.2 dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of the relevant provisions in the title deed.

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

36.5.1 the purpose of Association;

36.5.2 who will take over the obligations which the Association is responsible for (if any);

- 36.5.3 the costs of upgrading the internal infrastructure if the Local Authority is to take over the infrastructure (if applicable);
- 36.5.4 the impact of the dissolution of the Association on its Members and the community;
- 36.5.5 any written representations from the Association and its Members.
- 36.6 If the Association is dissolved, the Members shall jointly pay the costs of:
 - 36.6.1 the transfer to the Local Authority of the Association's property (if any);
 - 36.6.2 the upgrading of the internal engineering services to the standard of the Local Authority (if applicable).
- 36.7 In the event that the Association ceases to function and a Member wishes to transfer a Unit Erf, such Member must first obtain the consent of at least 60% (sixty percent) of the Members of the Association, which consent shall be deemed to be the consent of the Association.

37. WINDING UP

- 37.1 The Association may be wound up by resolution of the Members in general meeting provided that:
 - 37.1.1 75% (seventy five percent) of all Members in the Estate vote in favour thereof; and
 - 37.1.2 the Local Authority consents thereto in writing.
- 37.2 In the event of such winding up, it shall be the duty of the Trustee Committee, or a Trustee appointed by them, to convert the assets of the Association into cash, pay all liabilities of the Association and thereafter distribute the nett residue (if any) to all the Members in proportion to the number of Unit Erven registered in the name of each Member.

38. TAX EXEMPTION

- 38.1 In order to qualify for exemption in respect of the levy income in terms of section 10(1)(e)(iii) of the Income Tax Act, the following provisions shall apply:
 - 38.1.1 the Association is not permitted to distribute its funds to any person other than to a similar Association of persons;
 - 38.1.2 on dissolution, the remaining assets of the Association, must be distributed to a similar Association of persons, which is also exempt from Income Tax in terms of section 10(1)(e)(iii) of the Income Tax Act;
 - 38.1.3 any amendments to this Constitution shall be submitted to the Commissioner of the South African Revenue Service;
 - 38.1.4 funds available for investment shall only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001, as amended from time to time and includes any substituted legislation;

- 38.1.5 the Association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty of or Levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner;
- 38.1.6 annual returns of income together with financial statements shall be submitted to the South African Revenue Services.

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