



CONSTITUTION

OF THE

SUB-ASSOCIATION

OF

**THE SOMERSET LIFESTYLE AND
RETIREMENT VILLAGE**

THE SOMERSET

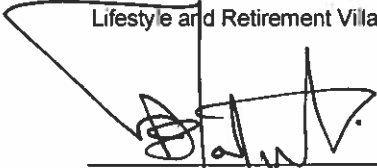
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The Somerset Lifestyle and Retirement Village

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SYNOPSIS: The constitution of the Sub-Association (Home Owners Association) of The Somerset Lifestyle and Retirement Village in Somerset West, Western Province, South Africa

APPROVAL:



D. Potgieter
Managing Director
Proud Heritage Properties 80 (Pty)
Ltd

Note: This document is a draft unless approved.

REVISION HISTORY

Date	Revision	Author	Amendment details
09 August 2012	DRAFT 5	R.L.JONES	Draft version submitted for review
12 September 2012	DRAFT 6	R.L.JONES	Draft version submitted for review
15 April 2013	<u>FINAL</u>	<u>R.L.Jones</u>	<u>Includes comments by Rabie & Rabie. For submission to local authority</u>
30 July 2019	<u>Revision 1</u>	<u>R.L. Jones</u>	<u>Addition of clauses 17.2, 24.4 and 19.4</u>
7 May 2023	<u>Revision 2</u>	<u>R.L.Jones</u>	<u>Comprehensive review with resident input</u>
October 2023	<u>Revision 3</u>	<u>TVDM</u>	<u>TVDM comprehensive review</u>
2 December 2024	<u>Revision 4</u>	<u>R.L.Jones</u>	<u>Errors and omissions corrected by Trustees</u>
10 October 2025	<u>Revision 5</u>	<u>TVDM</u>	<u>Review and minor amendment by TVDM based on the Community Schemes Ombud Service Consolidated Practice Directives (2025)</u>

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WHEREAS the Developer is developing certain land into a mixed use Development, comprising of commercial and residential components and whereas such land will comprise of a Development to be administered by a Master Owners' Association, and sub-Managing Bodies, subject, where applicable, to the provisions of the Land Use Planning Ordinance No. 15 of 1985, the Housing Development Schemes for Retired Persons Act No.65 of 1988 and the Property Practitioners Act No. 22 of 2019.

NOW THEREFORE this document shall henceforth serve as the Constitution of the Sub-Association, such being one of the aforementioned Sub-Owner Associations.

1 INTRODUCTION

- 1.1 The name of the Association is: "The Somerset Home Owners' Sub-Association", which Association has been established in terms of Section 29 of the Land Use Planning Ordinance No. 15 of 1985, in accordance with the conditions imposed by the Local Authority. It is an association formed *inter alia* to manage and control the common interest of the Development.
- 1.2 The Developer intends to develop a Housing village which shall comprise of individual Erven. In light of the fact that this development shall comprise of different housing components, and this Constitution shall be governed by a Master Constitution, called "The Somerset Master Home Owners' Association".
- 1.3 Where there is conflict of interpretation between the management rules in terms of Section 35[2] of the Sectional title Act, No. 95 of 1986, as amended and/or the Constitution herein, the interpretation of the Master Constitution shall prevail at all times.
- 1.4 Each and every registered owner of an Erf within the Somerset Lifestyle and Retirement Village, shall immediately upon registration of transfer of such Erf into the name of a third party, automatically become a member of The Somerset Lifestyle and Retirement Village Master Home Owners' Association and shall remain a member until the Erf has been transferred to another person.
- 1.5 In order to adapt this Constitution to accommodate the needs and interests of Members, but preserving the realistic and reasonable interests of the Developer, the Developer, through its appointed Trustees, shall retain the right to amend its provisions from time to time, until conclusion of the Development Period as described herein.
- 1.6 After conclusion of the Development Period, Members shall be able to exercise control through appointed Trustees and as otherwise provided for in this Constitution in its present or amended form.

2 OBJECT AND PURPOSE

- 2.1 The main business of the Association is to promote, advance and protect the interests of its Members, relative to their ownership of Erven in the Development.
- 2.2 The main object and purpose of the Association is to provide for:
 - 2.2.1 the promotion and enforcement of standards in keeping with the character of The Somerset Lifestyle and Retirement Village, in such a way that Members derive the maximum collective benefit.
 - 2.2.2 control over and protection and maintenance of the Common Property and areas regarded as common to all Members.
 - 2.2.3 maintenance of services, amenities and Common Property, and to apportion the expenses in relation thereto between the Members by the charging of levies to the Members. The Developer has entered into a Management Agreement with a Management Company to ensure compliance with The Somerset Lifestyle and Retirement Village Services Agreement.

3 DEFINITIONS

- 3.1 The headnotes 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.
- 3.2 Words importing the singular shall include the plural and *vice versa*.
- 3.3 Words importing the masculine shall include the feminine.
- 3.4 Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the following meanings:
 - 3.4.1 **"Architect"** means such Architect or Architects or their successors, as may be appointed by the Developer from time to time, or subsequent to the Development Period, by the Trustees;
 - 3.4.2 **"Architectural Guidelines"** means for the Architectural Guidelines compiled for the maintenance of aesthetic integrity and strict, consistent compliance of the architectural style, visual and building standards within the Development;
 - 3.4.3 **"Association"** means The Somerset Home Owners' Sub-Association, and **"Freehold Residential Association"** has a corresponding meaning;
 - 3.4.4 **"Capital Growth"**, for purposes of clause 24 below, means the difference between the selling price of a Freehold Residential Erf and the base cost and qualifying expenditure as defined in paragraph 20 of the Eighth Schedule to the Income Tax Act 58 of 1962;
 - 3.4.5 **"Common Property"** means the land transferred to The Somerset Lifestyle and Retirement Village Master Home Owners' Association, which shall include the Private Roads, the Private Open Spaces;

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- 3.4.6 **"Developer"** means Proud Heritage Properties (Pty) Ltd. Registration number 2004/022128/07 or its nominees, cessionaries or successors in respect of the Development of the whole or any part of the Development.
- 3.4.7 **"Development"** means The Somerset Lifestyle and Retirement Village, situate at 163 Bizweni Avenue, Somerset West.
- 3.4.8 **"Development Period"** means the period terminating upon the transfer from the Developer to another person of the last Erf in the Development;
- 3.4.9 **"Erf"** or **"Erven"** means a portion of private land owned by the Member within the Development, which shall have been allocated a cadastral number by the Surveyor General in terms of the approved General Plan;
- 3.4.10 **"Freehold Residential Erf"** or **"Freehold Residential Erven"** means an Erf located within the Development that is not subject to the provisions of the Housing Development Schemes for Retired Persons Act 65 of 1988;
- 3.4.11 **"General Plan"** means the General Plan relating to the land as approved by the Surveyor General;
- 3.4.12 **"Life Rights Association"** means the Erven within the Master Association subject to the provisions of the Housing Development Schemes for Retired Persons Act 65 of 1998 and the control of the Cape Peninsula Organisation for the Aged ("CPOA");
- 3.4.13 **"Management Company"** means any person or entity appointed by the Developer or the Association as an independent contractor, or as an employee, to undertake any of the administrative functions of the Association, including those of the sub-Managing Bodies;
- 3.4.14 **"Master Association"** means The Somerset Lifestyle and Retirement Village Master Owner's Association, which is split into 2 (two) components, namely the "Freehold Residential Association", consisting of Freehold Residential Erven, and the "Life Rights Association", consisting of cottages subject to the provisions of the Housing Development Schemes for Retired Persons Act 65 of 1998 and the control of the Cape Peninsula Organisation for the Aged ("CPOA"), and **"MHOA"** will have a corresponding meaning.
- 3.4.15 **"Member"** means every owner of a single residential erf in the Development, as evidenced by registration in the Cape Town Deeds Registry;
- 3.4.16 **"Occupant"** means any person lawfully occupying an Erf by virtue of his relationship to or with a Member of the Association;
- 3.4.17 **"Ordinary resolution"** means a resolution passed with more than 50% (fifty percent) of the voting rights exercised on the resolution by the Members at a general meeting;
- 3.4.18 **"Private Open Spaces"** means all areas generally designated as Private Open Space on the Site Development Plan of the Development as may be amended from time to time, including all roads, pavements, gardens and other open areas for common usage;

- 3.4.19 **"Site Development Plan"** means the Architect's drawing which was submitted and approved by the Planning Authorities;
- 3.4.20 **"Special resolution"** means a resolution passed by at least 75% calculated both in value and in number, of the votes of the Members of the Association who are represented at a general meeting, or agreed to in writing by Members of the Association holding at least 75% calculated both in value and in number, of all the votes.
- 3.4.21 **"Trustee/s"** means the member/s of the Trustee Committee from time to time.
- 3.4.22 **"Trustee Committee"** means the Trustee Committee comprised of the Trustees as referred to in 6.1 herein.

4 MEMBERSHIP

- 4.1 Membership of this Association shall be limited to registered owners of Erven situated in the Development, which membership shall commence simultaneously with the transfer of the Erf in the Development into the name of the registered owner; provided that:
- 4.1.1 a person who is entitled to obtain in terms of the provisions of Section 43 of the Deeds Registries Act 47 of 1937 a Certificate of Registered Title to any such Erf shall be deemed to be registered owner thereof;
- 4.1.2 when any such owner is more than one person or entity, all the registered owners of that Erf shall be deemed, jointly and severally, to be one Member of the Association.
- 4.2 When a Member ceases to be the registered owner of an Erf, he shall immediately cease to be a Member of the Master Association and Sub-Association. The registered owner of an Erf may not resign as a Member of the Sub-Association and Master Association.
- 4.3 The rights and obligations of a Member are not transferable and every Member shall;
- 4.3.1 to the best of his ability further the aims and objects of the Association and;
- 4.3.2 observe and be bound by, this Constitution and all rules and regulations made by the Association or by the Trustee Committee from time to time.
- 4.4 Nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security, to the mortgagee of that Member's Erf.
- 4.5 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 proceeding year, and shall make a levy upon the Members, equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every month of such year to this Association.

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- 4.6 The Trustee Committee, may from time to time, make special levies upon the members in respect of all such expenses, which are not included in any estimate as aforementioned, 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.
- 4.7 Any amount due by a Member by way of a levy shall be a debt due by him to this Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor-in-title to an Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of the Erf, to pay the levy attributable to that Erf.
- 4.8 No Member shall be entitled to transfer an Erf, unless a duly authorised representative of the Trustee Committee or the relevant party to which such function has been delegated has in writing consented to the transfer, and the following conditions of title are imposed, namely:
- 4.8.1 Subject to the following condition imposed by the City of Cape Town in terms of section 42 of Ordinance 15 of 1985 when approving the subdivision of Erf 16698 Somerset West namely:

That the property may not be alienated without the prior consent of the Home Owners Association of which the transferee or his successors-in-title shall become a member and bound by its Constitution, rules and regulations.

Each Property owner shall conform to any conservation and / or rationing programme or scheme introduced, adopted or implemented by a sphere of government or relevant regulating body by reducing his/her electricity consumption as required in terms of such programme or scheme.

- 4.8.2 No improvements, alterations, restructuring, repairs or any building work of any nature shall be effected to the property, nor shall the access to the property be altered, without the prior written approval of the Association, and after the Purchaser has submitted detailed plans of the proposed work to the Trustees, or any person nominated by the Trustees (who shall be an Architect, registered with the South African Council of Architects or the Institute of South African Architects) and –
- 4.8.2.1 The Trustees or their nominee are satisfied that the proposed work is in accordance with the character and style of The Somerset Lifestyle and Retirement Village and in particular in accordance with the provisions of the Architectural Guidelines, annexed hereto.

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- 4.8.2.2 The Architectural Guidelines have been designed to create strict control measures to discourage any external alterations and Extensions. Only under exceptional circumstances will such application be considered.
- 4.8.2.3 The Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature.
- 4.9 A consent to transfer as contemplated above shall be withheld by the Trustee Committee until the following have been complied with:
 - 4.9.1 Levies and any other amounts due to this Association by the registered owner (and all Occupants claiming through him) of the property sought to be transferred, have been paid up to date of transfer or that provision has been made to the satisfaction of the Trustee Committee for the payment thereof against registration of transfer.
 - 4.9.2 All structures and improvements on the property sought to be transferred, not approved of by the Master Association as contemplated herein, have been removed and the property has been reinstated to the same good order and condition as the property was received by the Member to the satisfaction of the Master Association or the approval of the Association has been given in respect of such structures or improvements, as contemplated herein.
- 4.10 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.
- 4.11 Should any Member -
 - 4.11.1 Fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation made thereunder and remain in default for more than 7 (seven) days after being notified in writing to do so by the Trustees; or
 - 4.11.2 Commit any breach of any of the provisions of this Constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time,

Then and in either such event, the Trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees or Association or any other Member may have in law, including the right to claim damages.

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- 4.11.3 To institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made thereunder, as the case may be; or
- 4.11.4 In the case of clause 4.9.2, to remedy such breach and immediately recover the total cost incurred by the Trustees or the Association from such Member.
- 4.12 Should the Trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation made thereunder, then without prejudice to any other rights which the Trustees or the Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Association, including attorney/client charges, tracing fees and collection commission.
- 4.13 Without prejudice to any of the rights the Trustees or the Association granted under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date for payment until the actual date of payment of such amount, both days inclusive.

5 CESSATION OF MEMBERSHIP

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

6 TRUSTEE COMMITTEE

- 6.1 There shall be a Trustee Committee for the Association, which shall consist of no less than 6 (six) Members.
- 6.2 A Trustee Member shall be a natural person. Every Member Trustee must be an Owner or a Representative of an Owner, which is a company, close corporation trust or other legal entity. Every Member Trustee shall reside in the Development as his permanent residence.
- 6.3 The Trustee Committee shall consist of not less than two representatives of the Developer and/or have a 50% (fifty *per centum*) representation, until such time as 80% (eighty *per centum*) of the erven have been registered into the names of third parties.

7 REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 7.1 Save as forth in 7.2 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office upon the election or re-election of the new trustees, but each trustee will be eligible for re-election to the Trustee Committee at such meeting.
- 7.2 A Trustee shall be deemed to have vacated his office as such provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee, under the following circumstances –
- 7.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 7.2.2 his making any arrangement or compromising with his creditors;
- 7.2.3 his conviction for any offence involving dishonesty;
- 7.2.4 his becoming of unsound mind or being found lunatic;
- 7.2.5 his resigning from such office in writing delivered to the Secretary;
- 7.2.6 his death;
- 7.2.7 his being removed from office by an ordinary resolution of the Members.
- 7.3 Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee.

8 OFFICE OF TRUSTEES

- 8.1 The Trustees shall appoint from amongst themselves, a Chairman.
- 8.2 Within 7 (seven) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman, who shall hold their respective office until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.
- 8.3 In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement to such office.

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- 8.4 Save as otherwise set out herein, 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 by the 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.
- 8.5 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, 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.

9 FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

- 9.1 Subject to the express provisions provided for herein, the Trustee Committee shall manage and control the business and affairs of this Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided for herein, 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, or by this Constitution required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed by the Association in a general meeting from time to time, provided that no regulation made by the Association in a general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 9.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 9.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any person or persons chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 9.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee, in such reasonable manner as it shall decide from time to time.
- 9.5 The Trustee Committee may make regulations and/or by- laws, not inconsistent with this Constitution, or any direction given at any General Meeting:
- 9.5.1 as to the settlement of disputes, generally;
 - 9.5.2 for the furtherance and promotion of any of the objects of the Association;
 - 9.5.3 for the better management of the affairs of the Association;
 - 9.5.4 for the advancement of the interests of Members;

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- 9.5.5 for the regulation and control of the conduct of Members and Occupants while in the Retirement Village, whether on Erven and/or on the Common Property and/or the communal facilities;
 - 9.5.6 the regulation of any and all access control procedures for Members, Occupants, visitors, employees, contractors, or any other persons when entering and/or exiting the Association;
 - 9.5.7 governing the manner and methods of the use of the Common Property by or on behalf of the Members of the Association or any Occupant;
 - 9.5.8 for the conduct of Trustee Committee meetings and general meetings; and
 - 9.5.9 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.
- 9.6 For the purpose of transacting its business as provided herein, the Trustee Committee shall be entitled to open and operate a banking account in the name of the Association at a registered banking institution.
- 9.7 For the purpose of assisting the Association in managing, conducting the day-to-day business of and supervising the services available at The Somerset Lifestyle and Retirement Village, the Association shall be entitled to enter into management agreements with various Management Companies from time to time.

10 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 deemed necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide.

11 PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 11.1 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 set out herein.
- 11.2 Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter then no meeting of the Trustee Committee needs be held for that quarter.

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- 11.3 At a meeting of the trustees 50% (fifty *per centum*) of the number of trustees, but not less than two shall form a quorum, provided that, until conclusion of the Development Period, no less than 1 (one) Developer Trustee is present. If the number of trustees falls below the number necessary to form a quorum, the remaining trustees who shall not be less than two, may continue to act, but only for the purpose of appointing or co-opting additional trustees to make up a quorum or for the purpose of convening a general meeting of owners.
- 11.4 Any resolution of the trustees shall be carried by a simple majority of all votes cast, and the Developer Trustee/s having a number of votes equal to the total number of trustees votes plus 1 (one), which votes may be exercised by a single Developer Trustee.
- 11.5 In the event of any decision resulting in a deadlock, the Chairman shall have the casting vote.
- 11.6 The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 11.7 A Trustee, or any representative so delegated and appointed by the Trustees, shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing within 7 (seven) days after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Members and Local Authority.
- 11.8 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 11.9 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.
- 11.10A 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 duly convened.

12 GENERAL MEETINGS OF THE ASSOCIATION

- 12.1 The Association shall at least 14 (fourteen) days prior to the Master Association's annual general meeting, hold a general meeting as its annual general meeting.
- 12.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 12.3 All general meetings other than annual general meetings shall be called special general meetings.
- 12.4 The Trustee Committee, may, whenever they think fit, convene a special general meeting, and must convene a special general meeting when requested to do so by Members entitled to 25% of the total voting rights within the Association delivering to the Association a written and signed request to call a special general meeting, provided that if the Trustee Committee do not call the meeting within 14 (fourteen) days of delivery of the request, the Members concerned are entitled to call the meeting themselves.

13 NOTICE OF MEETING

- 13.1 The annual general meeting and a meeting called for the passing of a special resolution, shall be called, with not less than 21 (twenty one) days notice in writing and a special general meeting, other than one called for the passing of a special resolution, shall be called with not less than 14 (fourteen) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is given, 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 set out herein, 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 herein 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 herein, be deemed to have been duly called if it is so agreed:
 - 13.1.1 in the case of a meeting called as the annual general meeting, by all the Members entitled to attend and vote thereat; and
 - 13.1.2 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 *per centum*) of the total voting rights of all Members.

14 SERVICE OF NOTICES

- 14.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the Erf owned by him.

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- 14.2 No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 14.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and proof of the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 14.4 The accidental omission to give notice of a meeting to, or the non- receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

15 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.

16 QUORUM

- 16.1 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, that of the Members entitled to vote, one-half of the total votes of all Members of the Association entitled to vote shall be represented at the meeting, save that not less than 3 (three) Members must be present in person or by proxy.
- 16.2 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 constitute a quorum.

17 AGENDA AT MEETINGS

- 17.1 In addition to any other matters as would be required by the Act to apply to a company or to this Constitution to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- 17.1.1 the consideration of the Chairman's report to the Trustee's Committee;

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- 17.1.2 the election of the Trustee Committee for this Association, noting that the 2 (two) Trustees with the highest votes received from the members present at the meeting, either personally or by proxy, will be the nominated representatives for this Association on the Master Association Trustee Committee for the upcoming financial year;
- 17.1.3 the consideration of any other matters raised 10 (ten) days prior to the meeting at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 17.1.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 17.1.5 the consideration of the report of the Auditors;
- 17.1.6 the consideration of the total levy (as referred to in clause 4.5) for the calendar year during which such Annual General Meeting takes place; and
- 17.1.7 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.
- 17.2 No matter shall be dealt with at a meeting other than those matters referred to in clause 17.1 unless written notice is submitted to the Chairman at least 14 days before the meeting by a member giving notice of his or her intention to raise the matter so specified in the notice.

18 PROCEDURE AT GENERAL MEETINGS

- 18.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within 5 (five) minutes after the time appointed for the holding thereof, 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.
- 18.2 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.
- 18.3 Except as otherwise set forth herein, all general meetings shall be conducted in accordance with the common law of meetings.

19 PROXIES

- 19.1 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

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by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board or Directors of the Company or by its secretary, where it is an association of persons, by the secretary thereof, where it is a close corporation, by any Member and where it is a trust, by any 2 (two) trustees.

- 19.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed shall be deposited at the office at least 24 (twenty-four) hours prior to the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy, shall be valid after the expiration of 12 (twelve) months from the date of its execution.
- 19.3 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.
- 19.4 Notwithstanding anything to the contrary contained in this constitution, no person may represent more than 2 (two) members, excluding themselves if the person is a member, through the holding of proxies, at a general meeting or special general meeting.

20 VOTING

- 20.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name subject to the provisions of clause 4.1.2 hereof. The Developer shall be entitled to a single vote in respect to each registered Erf held by it, in accordance with the deeming provision of clause 4.1.1 above.
- 20.2 Save as expressly provided for herein, no person other than a Member duly registered, who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 20.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a poll.
- 20.4 Notwithstanding the provisions of 20.3 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a poll of majority of the Members present in person or by proxy, and entitled to vote.
- 20.5 An ordinary resolution (that is a resolution other than a special resolution), or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution

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in question. In the case of an equality of votes the Chairman of the general meeting shall be entitled to a casting vote in addition to his vote as Member.

20.6 Notwithstanding anything contained in this Constitution, a special resolution or the amendment of a special resolution, shall require a 75% (seventy five *per centum*) majority of all Members entitled to vote, either present personally or by proxy at the relevant meeting, before the resolution may be passed, and:-

20.6.1 would have the effect of amending or repealing any part of this Constitution, or

20.6.2 would have the effect of amending or repealing clause 29 of this Constitution which clause precludes subdivision or rezoning of the Erven or the erection of more than one dwelling per Erf, or

20.6.3 would have the effect of amending or repealing clause 31 dealing with the Design and Architectural Manual Controls.

20.7 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, or to the propriety or 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.

21 FINANCIAL YEAR END

21.1 The financial year-end of the Association is the last day of March of each year, or such other date as may be determined by the Trustees from time to time.

22 ACCOUNTS

22.1 The Association in a 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.

22.2 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

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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, copies of such accounts, balance sheet and reports (all of which shall be framed in accordance with the accounting requirements of the Companies Act) and any other documents required by law to accompany same.

23 AUDIT

- 23.1 At least once 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.
- 23.2 The Auditors shall perform such duties as are performed by Auditors of any registered company.

24 LEVY STABILISATION FUND

- 24.1 It is hereby recorded that upon the sale of an Erf or a unit within the Association, a percentage of the proceeds of the sale shall be paid into a Levy Stabilisation Fund. Such percentage shall be calculated as:
- 24.1.1 25% of the capital growth in respect of the sale of a Freehold Residential Erf, and
- 24.1.2 10% of the capital growth in respect of the sale of a right of occupation of an Unit located within the Life Rights Association that is operating under the Housing Development Schemes for Retired Persons Act No.65 of 1988 and the CPOA.
- 24.1.3 Each sub-Managing Body will have its own separate and independently operating Levy Stabilisation Fund.
- 24.2 The funds allocated to the Levy Stabilisation Fund shall be exclusively for the purposes of levy stabilisation.

25 INDEMNITY

- 25.1 All Members of the Trustee Committee 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 as Members of the Trustee Committed and Auditors in respect of The Somerset Lifestyle and Retirement Village and, in the case of a Trustee Member, in his capacity as Chairman of The Somerset Lifestyle and Retirement Village, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 25.2 Every Member of the Trustee Committee, 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 travelling expenses) which such person or persons may

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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 the case of a Trustee Member, his duties as 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.

- 25.3 A Trustee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Members of the Trustee Committee, whether in their capacities as Trustee Members or as 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.

26 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 Trustee Member, the Trustee Committee, the Chairman, 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 or Trustee Member, made at any Trustee Committee meeting or general 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.

27 BREACH

- 27.1 Any Member who fails to make payment to the Association on due date thereof of any monthly levy or other amount payable by such Member, or who otherwise breaches or fails in observance of any of the provisions set out herein may, if so determined by a Resolution passed by not less than 50% (fifty *per centum*) of the trustees present at the meeting of the Trustees Committee:
- 27.1.1 be ordered to pay such outstanding amounts; and/or
- 27.1.2 be ordered to pay the Association or any Member or other person aggrieved by the breach or failure in question, such reasonable sum as compensation; and/or
- 27.1.3 be ordered to pay such interest as may be determined on the outstanding amount.
- 27.2 The Member concerned shall be invited to attend such Trustee Committee 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 the meeting;
- 27.3 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.

28 DEVELOPER'S RESERVED RIGHT TO OPERATE A SALES OFFICE

- 28.1 It is recorded that the Developer, namely Helderberg Property Services, shall have a reserved right to operate a sales office for the sole purpose of selling and re-selling freehold erven and life rights within the Association,
- 28.2 It is further recorded that the aforementioned right will only apply to the Developer as aforementioned.

29 COMMON PROPERTY

- 29.1 It is recorded that as soon as reasonably possible, after the coming into operation of the Association, the Developer shall transfer the Common Property to the Association which shall thereafter be responsible for the maintenance and upkeep thereof.
- 29.2 Neither the whole nor any portion of the Common Property shall be –
- 29.2.1 sold, alienated, otherwise disposed of, subdivided or transferred; or
- 29.2.2 subjected to a mortgage; or
- 29.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude (save those enjoyed by the Members of the Association in terms hereof);
- 29.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this Constitution and in the approved

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layout plan, without the sanction of a special resolution, being a 75% (seventy-five per centum) of the vote of the Members of the Association.

30 EFFECTIVE DATE

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

31 DESIGN AND BUILDING STANDARDS

- 31.1 No Member shall be entitled to subdivide or rezone his Erf, without the requisite written consent from the Master Association.
- 31.2 No more than one dwelling, shall be erected on any Member's Erf in accordance with the Architectural Guidelines.
- 31.3 In compliance with clause 4.8.2 above, no owner of any Erf shall be entitled to build on his Erf or effect any improvement thereto or erect any structure thereon without the prior written approval of the Association.
- 31.4 No owner of any Erf shall be entitled to alter any construction thereon or to alter or vary the design or facade of his building, dwelling or improvements so constructed, without the prior written approval of the Master Association. Any external alterations and/or amendments are strictly discouraged.
- 31.5 Only dwellings which comply with the design and architectural standards as set forth in the Architectural Guidelines shall be approved by the Master Association.
- 31.6 The approval procedure to be followed is set out in the Architectural Guidelines.
- 31.7 The Architect's decision is final and binding.

32 AMENDMENT OF THIS CONSTITUTION

Subject to the exercise right of the Developer to amend the Constitution until conclusion of the Development Period, any subsequent amendment, substitution, or repeal of a provision of this Constitution shall require the approval of at least 75% (seventy-five percent) of the total number of votes of owners in the Association, either present personally or by proxy, at a general meeting of the Association.