

CONSTITUTION  
OF  
WELGELEGEN  
HOME OWNERS ASSOCIATION

A STATUTORY BODY CORPORATE ESTABLISHED  
IN TERMS OF SECTION 29 OF THE LAND USE  
PLANNING ORDINANCE, 15 OF 1985

HEUNIS BOTHA & WIGGETT INC  
GEORGE

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## DEFINITIONS

Unless it otherwise appears from the context, the following words will have the meanings assigned to them hereunder;

- “ARCHITECTURAL GUIDELINES”** means the guidelines formulated to govern the structures and appearances of buildings and gardens at WELGELEGEN and includes all/any amendments made thereto from time to time.
- “ASSOCIATION”** means The WELGELEGEN HOME OWNERS ASSOCIATION
- “AUDITORS”** means the auditors or accountants of the Association
- “CHAIRMAN”** means The Chairman of the Board of TRUSTEES
- “COMMUNAL AREAS”** means an ERF / ERVEN owned by the Association.
- “CONSTITUTION”** means this document as amended from time to time with the annexures hereto.
- “DEVELOPER”** means REIGATE DEVELOPMENT PROJECTS [PROPRIETARY] LIMITED REGISTRATION NO: 1993/006590/07, a duly registered South African company or its successors-in-title.
- “DEVELOPER TRUSTEE”** means Trustee appointed by the DEVELOPER
- “ERF”** means every ERF in WELGELEGEN which in terms of the subdivision of WELGELEGEN enjoys single and/or general residential and/or business use rights.
- “ERVEN”** means every erf in WELGELEGEN collectively and includes immovable property transferred or to be transferred in accordance with the provisions hereto to the Association.

- “IMPROVEMENTS”** means any work undertaken on an ERF and/or in respect of a UNIT including the erection or alteration of any structures, landscaping and planting.
- “LEVY”** means the levy referred to in clause 15 hereof.
- “LOCAL AUTHORITY”** means the George Municipality or other Local Authority from time to time or any agent or contractor appointed by the George Municipality to act on its behalf.
- “LUPO”** means the Land Use Planning Ordinance No. 15/1985 (as amended) and includes any substituted legislation
- “MANAGING AGENT”** means any person or body appointed by the Association as an independent contractor to undertake any of the functions of the Association.
- “MEMBER”** means every registered OWNER of an ERF and/or a UNIT. If a MEMBER consists of more than one person such persons shall be jointly and severally liable in solidum for all obligations in terms of this CONSTITUTION.
- “MEMBER TRUSTEE”** means a Trustee appointed by the MEMBERS.
- “OPERATIONAL MANAGEMENT PLAN”** means the operational portion of the Environmental Management Plan produced for the development.
- “OWNER”** means the registered OWNER of an ERF and/or a UNIT.
- “RESOLUTION”** means a resolution passed at an annual general meeting or any other general meeting of the Association by an ordinary majority of the total votes represented at such meeting by members present in person or by proxy.
- “WELGELEGEN”** means the residential portion of the development of WELGELEGEN township by the DEVELOPER of certain immovable property being a Portion of Remainder Portion 1 of the farm KRAAIBOSCH No. 195 In the Municipality &

Division of George, Province Western Cape in accordance with approval obtained from the LOCAL AUTHORITY and includes all/any extension/s of the township approved by the LOCAL AUTHORITY upon application by the DEVELOPER.

“TRUSTEES” means the DEVELOPER TRUSTEES and the MEMBER TRUSTEES of the Association, collectively from time to time and includes alternate and co-opted TRUSTEES.

## 2. INTERPRETATION

2.1 The clause headings are for convenience and shall be disregarded in construing this CONSTITUTION.

2.2 Unless the context clearly indicates a contrary intention

2.2.1 words importing:

2.2.1.1 the singular shall include the plural and vice versa and

2.2.1.2 any one gender shall include the other genders; and

2.2.1.3 reference to natural persons includes created entities (corporate or non-corporate) and vice versa;

2.2.2 words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause;

2.2.3 when any number of days is prescribed in this CONSTITUTION, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

2.2.4 where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail;

- 2.2.5 if any provision of this CONSTITUTION is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this CONSTITUTION;
- 2.2.6 if any provision in a definition in this CONSTITUTION is a substantive provision conferring rights or imposing obligations on any of the MEMBERS then, notwithstanding that it is only in the definition clause of this CONSTITUTION, effect shall be given to it as if it were a substantive provision in the body of this CONSTITUTION.

### **3. RECORDAL**

- 3.1 The LOCAL AUTHORITY when approving the application for subdivision to allow for WELGELEGEN imposed a condition in terms of section 29(1) of LUPO whereby the OWNER of each subdivided portion of the immovable property comprising WELGELEGEN and all successors in title shall be members of a homeowners association in respect of WELGELEGEN.
- 3.2 The DEVELOPER is desirous of regulating and controlling harmonious development of WELGELEGEN.

### **4. COMMENCEMENT DATE**

The Association as contemplated in terms of section 29 of LUPO will come into existence simultaneously with the first registration of transfer of an ERF from the DEVELOPER to an OWNER.

### **5. STATUS**

- 5.1 The Association shall
  - 5.1.1 have legal personality and be capable of suing and being sued in its own name; and
  - 5.1.2 not operate for profit but for the benefit of the MEMBERS.

- 5.2 No MEMBER in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the TRUSTEES.

## 6. OBJECTS

The Association shall have as its objects:

- 6.1 the matters referred to in section 29(2)(b) and (c) of LUPO and without detracting from the generality thereof to ensure compliance with the conditions for subdivisions imposed by the LOCAL AUTHORITY when approving WELGELEGEN and more specifically
- 6.1.1 to oversee, maintain and control WELGELEGEN
  - 6.1.2 ensure the general high standard of WELGELEGEN
  - 6.1.3 generally to promote, advance and protect WELGELEGEN and the interests of the Association.
- 6.2 The regulation and control of harmonious development of WELGELEGEN
- 6.3 To promote a high standard of IMPROVEMENTS on WELGELEGEN.
- 6.4 To administer and enforce the ARCHITECTURAL GUIDELINES.
- 6.5 To control the transfer of ERVEN in WELGELEGEN and the conditions imposed by the LOCAL AUTHORITY and conditions imposed by the DEVELOPER in the Agreement of Sale between the DEVELOPER and the first OWNER of the ERF.
- 6.6 To promote environmental awareness responsibility amongst MEMBERS and to administer the relevant aspects of the OPERATIONAL MANAGEMENT PLAN.
- 6.7 The Association shall have the power to do all such acts as are necessary to accomplish the fulfillment of the foregoing objects including, but not restricted, to powers specifically contained in this CONSTITUTION.

## **7. MEMBERSHIP**

7.1 The Association shall have as its MEMBERS

7.1.1 the DEVELOPER for as long as the DEVELOPER remains an owner of any portion of WELGELEGEN, specifically including any ERF;

7.1.2 every OWNER upon registration of transfer of an ERF into his name provided that where an OWNER comprises more than one person, such persons shall be deemed jointly to be one MEMBER of the Association and shall be responsible jointly and severally for the obligations of such membership.

7.2 An OWNER of an ERF shall be a member of the Association until he ceases to be the registered owner of such ERF and/or a UNIT.

7.3 When a MEMBER ceases to be an OWNER he shall ipso facto cease to be a MEMBER of the Association .

## **8. CHANGES TO DEVELOPMENT**

The DEVELOPER shall, only if required by the Local Authority, be entitled to apply to vary the layout and/or zoning and/or size and/or boundaries of ERVEN and/or the extent and position of streets and or/or private open spaces comprising KRAAIBOSCH COUNTRY ESTATE AND KRAAIBOSCH MANOR and MEMBERS shall be bound thereby and shall have no claim of whatever nature against the DEVELOPER arising therefrom. Insofar as the consent of a MEMBER is required for any of the foregoing, the DEVELOPER (represented by its authorized representative) is irrevocably granted a power of attorney to grant any/all such consents on behalf of MEMBERS, as may be required.

## **9. MEMBERS OBLIGATIONS**

9.1 Every MEMBER is obliged to comply with:

9.1.1 the provisions of this CONSTITUTION and all rules or regulations passed by the Association or the TRUSTEES;

9.1.2 the provisions of the ARCHITECTURAL GUIDELINES;

- 9.1.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a MEMBER;
- 9.1.4 any directive given by the Association and/or the TRUSTEES in enforcing the provisions of this CONSTITUTION.
- 9.2 The rights and obligations of a MEMBER are not transferable and every MEMBER shall
  - 9.2.1 to the best of his ability, further the objects and interests of the Association.
  - 9.2.2 observe all directives made or given by the Association and/or the TRUSTEES.
- 9.3 The MEMBERS shall be jointly liable for expenditure incurred in connection with the Association referred to in this CONSTITUTION.
- 9.4 A MEMBER shall not be entitled prior to registration of transfer into his name to ALIENATE or transfer an ERF without the written consent of the DEVELOPER for as long as the DEVELOPER is a MEMBER and thereafter, by the TRUSTEES which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this CONSTITUTION until all Erven and/or Units in the Development and further phases available for sale have been transferred out of the name of the Seller. The a Member or his successor-in- title shall not sell the Erf and/or Unit personally through any Agency other than KRAAIBOSCH REALTY.
- 9.5 A MEMBER shall not consolidate an ERF with one or more erven without the written consent of the DEVELOPER for as long as the DEVELOPER is a MEMBER and, thereafter, of the TRUSTEES.
- 9.6 A MEMBER shall not ALIENATE an ERF unless
  - 9.6.1 the proposed transferee has irrevocably bound himself in writing to become a member of the Association and to observe the CONSTITUTION for the duration of his ownership of the ERF;
  - 9.6.2 The Association has issued a clearance that all amounts owing to the Association by such MEMBER have been paid and that the MEMBER is not in breach of any of the provisions of this CONSTITUTION;

- 9.6.3 the proposed transferee acknowledges in writing that upon the registration of transfer of the ERF into his name, he shall ipso facto become a MEMBER of the Association.
- 9.7 No MEMBER shall let or otherwise part with the occupation of his ERF whether temporarily or otherwise unless the proposed occupier has agreed in writing to be bound by the relevant provisions of this CONSTITUTION and all rules and regulations applicable to WELGELEGEN.
- 9.8 A MEMBER may not resign from the Association.
- 9.9 Each MEMBER shall
- 9.9.1 maintain his ERF and all IMPROVEMENTS in a neat and tidy condition and in a state of good repair;
- 9.9.2 in respect of his ERF establish and maintain a garden to a standard acceptable to the TRUSTEES and in compliance with the ARCHITECTURAL GUIDELINES and the Water Demand Management Plan where applicable;
- 9.9.3 not park any commercial type vehicle, boat, caravan, trailer or any vehicle not in good working order on any road, pavement, parking area or parkland in WELGELEGEN and such vehicle/boat/caravan/trailer shall be parked on the MEMBER's ERF so as not to be visible from a street or private open space.
- 9.9.4 not do or suffer to be done on any ERF anything which in the opinion of the TRUSTEES, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any MEMBER, tenant or occupier of any ERF in WELGELEGEN.
- 9.9.5 not erect or permit the erection of any advertising boards on any ERF without the written approval of the DEVELOPER for as long as the DEVELOPER is a MEMBER and, thereafter, of the TRUSTEES;
- 9.9.6 ensure that animals or birds housed on his ERF shall not constitute a disturbance or nuisance to MEMBERS or their tenants or occupiers and the TRUSTEES shall in their absolute discretion, be entitled to require the permanent

removal from WELGELEGEN of any animals or birds which, in the opinion of the TRUSTEES, constitute a disturbance or nuisance.

- 9.9.7 comply with all security procedures implemented from time to time;
  - 9.9.8 ensure that his dog is kept on a leash in all road reserves, parkland and open areas within WELGELEGEN and is properly controlled and, in particular, that no nuisance is caused by such dog and that the dog does not cause uncleared fouling of sidewalks within WELGELEGEN or on open spaces within WELGELEGEN.
  - 9.9.9 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of WELGELEGEN and the strip along the edges of the dams and that planting on his ERF does not interfere with pedestrian traffic or obscure the vision of motorists;
  - 9.9.10 ensure that, if his ERF has a dam or stream boundary, the ecobelt vegetation and the slope of the ground underneath is not altered and is maintained in a healthy state as this is essential for the stability of the dam and stream banks.
  - 9.9.11 ensure that, if the dam or stream forms part of his ERF, this area is maintained in a natural, healthy state; that no filling, landscaping or unauthorized planting takes place;
  - 9.9.12 the Association is afforded full access at all times to do all things reasonably necessary to construct and/or stabilize and/or maintain the dam or stream edges and, if applicable, the communal boardwalk/s abutting the MEMBER's ERF.
- 9.10 No MEMBER shall apply for the subdivision or rezoning of his ERF with a view to procuring a variation or amendment or substitution of use rights.
- 9.11 No MEMBER shall conduct any business on an ERF having single residential use rights or from a UNIT or use such ERF or a UNIT for purposes other than those for which it is zoned unless the TRUSTEES have, in writing, approved the use to which the ERF or UNIT (as applicable) is to be put; and the LOCAL AUTHORITY has, to the extent that it may be necessary, granted approval authorizing such use in terms of applicable laws and regulations. The TRUSTEES shall

be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the TRUSTEES deem necessary. The TRUSTEES shall not be entitled to grant approval if such proposed business involves visits by non-residents of WELGELEGEN.

9.12 Should any MEMBER to whom permission has been granted for the conduct of a business change any aspect of such business then such MEMBER shall submit a fresh application in accordance with the provisions hereof to continue such business.

9.13 No MEMBER to whom approval has been granted for the conduct of a business shall be entitled to erect any sign or advertisement on his ERF or on any of the common areas in WELGELEGEN in connection with such business.

9.14 No MEMBER shall permit the number of occupants of his ERF to exceed 2 (two) persons per bedroom. The word "occupants" shall include but shall not be

limited to any person who resides or stays on such ERF on a regular or occasional basis irrespective of whether such person is related to or is financially dependant upon the OWNER or whether such person pays rental or gives any other form of consideration in respect of such ERF or any portion thereof.

9.15 No MEMBER shall be permitted to conduct a guesthouse, "bed-and-breakfast" establishment or any other form of accommodation facility from a residence situated on any ERF

#### 9.16 WATER DEMAND MANAGEMENT PLAN

Each member and the ASSOCIATION shall be obliged to develop a Water Demand Management Plan which focuses on the hereinafter mentioned three main areas with the main purpose of minimizing water usage within the estates:

##### 9.16.1 INTRODUCTION

As stated in the Record of Decision (ROD) for the Welgelegen Estate, the each Member and the ASSOCIATION must develop and implement a water demand management plan for the activity, with the aim of minimising water use within the proposed development. The Plan is required to incorporate the George Municipality water demand management strategy, as well as to address the inter alia:

- Guidelines for water saving measures at the service level and at the residential level.
- The design and instillation of water saving measures, devices; and landscaping and agricultural design.
- Timeframes for the implementation plan.

The George water demand management strategy promotes: the use of rain collected water, water efficient fittings, user information, water recycling and leakage repair.

The report provides enforceable conditions for water use management at Welgelegen estate that are based on the George Municipality water demand strategy. These conditions will be incorporated into the architectural guidelines as well as the estate rules of Welgelegen estate. The Report also provides non-enforceable suggestions that will be promoted and encouraged by the Welgelegen Home Owners Association. Implementation of this water demand management plan will therefore be the responsibility of the architectural team, estate management, the residential contractors and the home owners.

#### 9.16.2 ENFORCED WATER SAVING MEASURES AT RESIDENTIAL LEVEL

The following measures **must** be implemented at the residential construction level:

1. All toilets installed need to have dual flushing (water saver) options.
2. All hot water pipes must be insulated in order to avoid wasting water while waiting for the water to heat up.
3. All showerheads installed must be ultra-low-flow version.
4. All irrigation systems are required to have low-flow sprinkler heads, efficient system design and layout in order to maximize efficiency while reducing the volume of water used.
5. All irrigation system timers need to be set for the correct time required to efficiently water the garden without spraying water for unnecessary additional time.
6. All water used to irrigate gardens must be obtained from the water that is collected in the mandatory rain water tanks.
7. Watering during the day results in high levels of evaporation. Irrigation/ watering of gardens is only permitted during the following times in order to prevent water loss through evaporation:  
Summer (September till March) 18:00 - 06:00  
Winter (April till August) 17:00 - 07:00
8. Swimming pools utilise large volumes of water, and have high rates of evaporation. The use of swimming pool covers will be required for all

pool owners. Covers are required to be used whenever the pool is not in use.

9. 80% of plants included in the garden need to be locally indigenous. The ASSOCIATION will have the right to instruct a homeowner to remove non-indigenous plants in the case of excessive water use for irrigation. Home owners must be encouraged to grow indigenous gardens which do not have to be irrigated.

#### 9.16.3 ENFORCED WATER SAVING MEASURES AT SERVICE INFRASTRUCTURE LEVEL

The following measures *must* be implemented at the service infrastructure level:

1. All individual homes as well as estate buildings must be equipped with rainwater collection tanks. The outdoor water connection points should be supplied through rainwater wherever possible. This water can be used for washing of cars and is the only water permitted for the watering of gardens.
2. Water budgeting must be done during the design process as it is essential to develop a water budget and commission the water distribution system as part of the overall building commissioning process.
3. Metering of all individual residences must be installed. With un-metered service leaks go undetected, there is no accountability and no incentive to save
4. Water conservation reminders must be sent to all residences on a monthly basis for the first 6 months, and a water conservation information notice board must be constructed in a place that is visible and accessible to all residences

#### 9.16.4 NON-ENFORCEABLE HOUSEHOLD SUGGESTIONS

- Never put water down the drain when there may be another use for it such as watering a plant or garden, or cleaning.
- Take shorter showers. A shower uses 10-20 litres of water every minute
- Operate automatic dishwashers and clothes washers only when they are fully loaded or properly set the water level for the size of load you are using
- Store drinking water in the refrigerator rather than letting the tap run every time you want a cool glass of water.

- Do not use running water to thaw meat or other frozen foods. Defrost food overnight in the refrigerator or by using the defrost setting on your microwave.
- Create an awareness of the need for water conservation among your children. Avoid the purchase of recreational water toys which require a constant stream of water.
- When running taps waiting for water to cool down or heat up, collect the water in a jug for use on the garden.
- Do not water automatically, first check whether the soil is dry or not.
- Many sought after plants may require regular watering, these should be grouped together in the most prominent part of the garden, where they are frequently seen and admired. Plants which may need watering only once a month should be considered for the rest of the garden.
- Ask your nursery which of them are Water wise, and enquire about mulching and water retention granules which reduce the need for water.

#### 9.16.5 NON-ENFORCEABLE TECHNICAL HOUSEHOLD SUGGESTIONS

- Verify that your home is leak-free as many homes have hidden water leaks. Read your water meter before and after a two-hour period when no water is being used. If the meter does not read exactly the same measurement, there is a leak.
- Repair dripping valves by replacing washers. If your valve is dripping at the rate of one drop per second, you can expect to waste 2,700 gallons per year which will add to the cost of water and sewer utilities, or strain your septic system.

#### 9.16.6 TIME FRAMES FOR IMPLEMENTATION

The technical specifications during the construction phase, have already been considered as part of the design. Home Owners on taking transfer of each of the particular erven will receive the requirements in terms of water demand management. Home owners will be responsible to ensure that the relevant requirements are implemented into their planning phase. The Welgelegen design review committee will, when reviewing plans, ensure that water demand is sufficiently addressed.

## 10. IMPROVEMENTS

### 10.1 MEMBERS shall not

- 10.1.1 be entitled to deviate from any plan approved by the DEVELOPER, or its authorized representative, unless the DEVELOPER's, or its authorized representative's, written approval for such proposed deviation has been obtained;
- 10.1.2 submit plans in respect of IMPROVEMENTS to the LOCAL AUTHORITY unless such plans have been approved of by the DEVELOPER or its duly authorized representative;
- 10.1.3 be entitled to challenge or contest any of the provisions of the ARCHITECTURAL GUIDELINES;
- 10.1.4 have any claim of whatsoever nature against the DEVELOPER, or its duly authorized representative, and/or the Association, arising from any refusal of approval of plans and/or conditional approval and, in that regard, the discretion of the DEVELOPER or its duly authorized representative is absolute;
- 10.1.5 breach any restrictions applicable to the MEMBER's ERF and, in particular, coverage, floor area, height and building line restrictions applicable to IMPROVEMENTS on such ERF.

### 10.2 GENERAL PROVISIONS

- 10.2.1 no building plan shall be approved on any erf without the prior written approval of the HOME OWNERS ASSOCIATION, and further subject to the Standard and/or Municipal Building Regulations that may be applicable from time to time.
- 10.2.2 no additions and or alterations to units shall be permitted without the prior written approval of the HOME OWNERS ASSOCIATION, and further subject to the standard and/or Municipal Building Regulations enforced from time to time.
- 10.2.3 no demolition or removal of any feature which constituted an original portion of the scheme shall be permitted without prior written approval of the HOME OWNERS ASSOCIATION, and further subject to the standard and/or Municipal Building Regulations that may be enforced from time to time.

- 10.2.4 should it be necessary to rebuild any unit in its entirety such rebuilding shall be in accordance with the building plan of the unit originally approved.
  - 10.2.5 any communal portion of a supporting wall, roof, pipe, gutter, fencing or other structure or object on such unit shall be maintained by the owner of the unit.
  - 10.2.6 each portion of such supporting wall, roof, pipe, gutter, fencing or other structure or object on such unit shall likewise be maintained by the owner of the unit.
  - 10.2.7 access to such unit shall be allowed for the purpose of maintenance, cleaning, renovations, repair, renewal, alterations of and in addition to such wall, roof, pipe, gutter, fencing or other structure or object and nothing shall be done which may prevent access to or hinder such access.
  - 10.2.8 should the HOME OWNERS ASSOCIATION resolve to approve any such alterations and or additions, they shall be of such a nature as to be applicable to all unit owners and all unit owners shall be permitted without exception to affect similar alterations and additions.
  - 10.2.9 a plan shall be provided showing the proposed location of the alterations and/or additions in relation to all units within the direct vicinity of the unit. (This does not imply that all unit owners should necessarily also affect such additions and alterations. The said plan is required only to enable and evaluation to be made of the total effect of a proposal on the aesthetic appearance of the scheme).
  - 10.2.10 should it be proposed to alter the colour scheme of the complex an indication must be given of the period in which the scheme in its totality of colour scheme will be altered and such period shall not be later than one year from the date of commencement of the alteration of the colour scheme.
- 10.3 Should the DEVELOPER take steps against a MEMBER pursuant to a breach of this clause 10, the DEVELOPER shall further be entitled to recover from such MEMBER who shall be liable to the DEVELOPER for payment of all the DEVELOPER's legal costs incurred on the scale as between attorney and own client.

- 10.4 With effect from the date on which the DEVELOPER ceases to be a MEMBER all the rights of the DEVELOPER in 10.1 to 10.3 hereof (inclusive) and 10.4 and 11.5 hereof shall automatically vest in the TRUSTEES who shall substitute for the DEVELOPER for all purposes in terms of the said clauses.

## 11. THE ARCHITECTURAL GUIDELINES

- 11.1 The broad concepts of the ARCHITECTURAL GUIDELINES constitute an integral part of this CONSTITUTION and may not be changed. Minor amendments may be made from time to time by the DEVELOPER for as long as the DEVELOPER is a MEMBER and thereafter by the TRUSTEES.
- 11.2 All IMPROVEMENTS shall comply with the provisions of the ARCHITECTURAL GUIDELINES.
- 11.3 No construction, erection or implementation of IMPROVEMENTS on an ERF may commence prior to the approval of plans for such IMPROVEMENTS and, in this regard
- 11.3.1 a full set of proposed plans prepared in accordance with the ARCHITECTURAL GUIDELINES shall be submitted to the DEVELOPER or its duly authorized representative for approval. The DEVELOPER or its duly authorized representative shall be the sole judge as to whether the plans and specifications conform to the ARCHITECTURAL GUIDELINES and its decision shall be final and binding upon the MEMBER
  - 11.3.2 the DEVELOPER or its duly authorized representative, shall be entitled to withhold approval subject to compliance with such modifications or amendments as the DEVELOPER or its duly authorized representative proposes to the plans submitted and/or such other conditions as may reasonably be imposed;
  - 11.3.3 the MEMBER shall be liable for all costs in respect of the scrutiny and consideration of plans submitted by the MEMBER to the DEVELOPER or its duly authorized representative;

- 11.3.4 thereafter, the approved building plans shall be submitted to the LOCAL AUTHORITY for approval;
  - 11.3.5 having obtained the approval of the LOCAL AUTHORITY, the MEMBER shall comply with all conditions and standards imposed by the LOCAL AUTHORITY insofar as these may be additional to the requirements of the ARCHITECTURAL GUIDELINES read with the plans.
- 11.4 Any plans, notwithstanding approval by the LOCAL AUTHORITY, which have not been prepared and/or submitted and/or approved in compliance with the above, shall be invalid.
- 11.5 Notwithstanding the provisions of clause 36.7, if a MEMBER fails to comply with any obligation contained in clauses 10 and clause 11, the DEVELOPER or its duly authorized representative may:
- 11.5.1 impose a daily financial penalty, the amount of which shall be determined from time to time by the DEVELOPER or its duly authorized representative, on notice to the MEMBER;
  - 11.5.2 enter upon the ERF in order to inspect the ERF and/or IMPROVEMENTS;
  - 11.5.3 appoint an independent contractor at the MEMBER's expense to ensure compliance with the obligations contained in clause 11.3 hereof;
  - 11.5.4 institute legal proceedings against the MEMBER who shall be liable to the DEVELOPER on the scale as between attorney and own client.

## **12. TITLE DEED CONDITIONS AND FURTHER OBLIGATIONS OF MEMBERS**

- 12.1 The following condition will be embodied in the deed of transfer relating to each ERF in WELGELEGEN as a condition of title:

"The within property shall not be transferred without the written consent of the WELGELEGEN HOMEOWNERS ASSOCIATION of which the within transferee and his successors in title shall automatically become a member."

and the DEVELOPER shall be entitled in its discretion, to embody in the deed of transfer relating to each ERF in WELGELEGEN such

further condition/s of title as it considers necessary with particular reference of sale of ERVEN.

12.2 The Association may withhold the written consent referred to in clause 12.1 hereof if the OWNER has not complied with all provisions of this CONSTITUTION or his obligations (whether financial or otherwise) in terms thereof or in terms of applicable rules or regulations.

12.3 A member shall not be entitled to ALIENATE his ERF unless it is a condition of the sale and transfer that the transferee acknowledges that he becomes a MEMBER of the Association upon registration of such transfer and that he agrees to abide by the terms of this CONSTITUTION and the ARCHITECTURAL GUIDELINES.

### 13. SERVICES : TAKEOVER/MAINTENANCE

13.1 In respect of water, electrical and sewerage systems for the entire WELGELEGEN the following shall apply:

13.1.1 upon completion by the DEVELOPER at its cost of such services, to the satisfaction of the LOCAL AUTHORITY, who shall act reasonably in that regard, ownership in such services shall automatically vest in the LOCAL AUTHORITY free of charge;

13.1.2 the LOCAL AUTHORITY shall at all times, at its cost, be solely responsible, up to the consumer side of water meters, the electricity connection cable and the sewer connection up to the individual property boundary, for the maintenance of such services, as well as the reading of meters and the issuing of accounts to the individual property owners;

13.1.3 electricity and water meters shall remain the property of the LOCAL AUTHORITY which retains ownership thereof;

13.1.4 all usual and normal conditions and fees for connections of water, sewer and electricity in terms of applicable by-laws shall apply;

13.1.5 the LOCAL AUTHORITY shall enjoy reasonable access to WELGELEGEN for the maintenance and inspection of the services and for the reading of meters, subject to

compliance with the security requirements from time to time of the Association ; and

- 13.1.6 no persons other than the authorized agents of the LOCAL AUTHORITY shall interfere with or connect to any municipal service or meter.
- 13.2 In respect of all other services including but not limited to maintenance and control of dams and streams, roads, pavements, parks and storm water disposal (i.e. only excluding water, electrical and sewer systems) for the entire WELGELEGEN, the following shall apply:
  - 13.2.1 upon completion by the DEVELOPER at its cost of such services to the satisfaction of the LOCAL AUTHORITY, who shall act reasonably in that regard, ownership in such services shall automatically vest in the Association free of charge;
  - 13.2.2 initially the DEVELOPER and, upon establishment of the Association and its operating structures, the Association shall be responsible for the maintenance of such services, as well as the ongoing implementation of environmental protection procedures.
- 13.3 Refuse removal will be undertaken by the LOCAL AUTHORITY at standard refuse collection tariffs applicable from time to time. The service provided by the LOCAL AUTHORITY in respect of refuse removal will be at the LOCAL AUTHORITY's normal service levels with regard to frequency and related aspects.
- 13.4 The DEVELOPER shall be responsible for the maintenance of any temporary services during development until replaced by permanent services which shall vest in the LOCAL AUTHORITY.

#### **14. COMMUNAL AREAS AND FACILITIES**

- 14.1 The DEVELOPER shall, free of consideration and at the cost of the DEVELOPER, transfer to the Association the following communal areas in each phase:
  - 14.1.1 Road reserves (being roads, pavements, parking areas and planted areas);

- 14.1.2 Dams and streams
- 14.1.3 Parks and parkland areas;
- 14.1.4 Erven designated by the DEVELOPER for Association use such as the Entrance gate erf/erven;
- 14.1.5 Any other areas designated as Private Open Space;

and includes any structures or facilities erected upon any of the above the risk wherein passes to the Association upon formation of the Association and in respect whereof the maintenance and upkeep thereof is the responsibility of the Association as well as liability for rates and taxes and all charges attaching thereto;

- 14.2 The DEVELOPER remains the owner of all portions of WELGELEGEN not transferred to MEMBERS or the Association.
- 14.3 Save as referred to in 13 hereof, the LOCAL AUTHORITY bears no responsibility for the infrastructure.

## 15. LEVIES

- 15.1 The TRUSTEES shall
  - 15.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the Association for the control, management and administration of WELGELEGEN and for charges for the supply of any service required by the Association and any rates or levies which may from time to time be imposed by the LOCAL AUTHORITY and/or other competent authority and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association and the maintenance, repair and renewal of common areas and facilities including the dams and streams.
  - 15.1.2 estimate the amount which will be required by the Association to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and must include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;

- 15.1.3 require MEMBERS whenever necessary to make contributions to such fund for the purposes of satisfying the expenses referred to in clauses 15.1.1 and 15.1.2, equal as nearly as is reasonably practical to such estimated amount.
- 15.2 The TRUSTEES may, from time to time, make special levies upon MEMBERS effective from the date of passing of the applicable RESOLUTION in respect of such expenses referred to in clause 15.1 (which are not included in any estimate made in terms of clause 15.1.2) and such levies may be imposed and shall be payable in one sum or by such installments and at such time or times as the TRUSTEES shall deem fit.
- 15.3 Any amount due by a MEMBER by way of a levy shall be a debt due by him to the Association payable within such time as determined by the TRUSTEES. The obligation of a MEMBER to pay a levy shall cease upon his ceasing to be a MEMBER save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a MEMBER. No levies paid by a MEMBER shall be repayable by the Association upon his ceasing to be a MEMBER. A MEMBER's successor in title to an ERF shall be liable as from the date upon which he becomes a MEMBER pursuant to the transfer of such ERF to pay the levies attributable to that ERF. No MEMBER shall be entitled to transfer his ERF until the TRUSTEES have certified that the MEMBER has, at the date of transfer, paid all amounts owing by him to the Association.
- 15.4 In calculating levies, the TRUSTEES shall take into account income, if any, earned by the Association and the allocation of voting rights to MEMBERS as recorded herein.
- 15.5 The decision of the TRUSTEES in calculating the levies shall be final and binding on all MEMBERS
- 15.6 The levy payable by a MEMBER shall bear the same proportion to the total levy imposed on MEMBERS as that MEMBER's voting right bears to the aggregate of voting rights of all MEMBERS.
- 15.7 No MEMBER shall be entitled to vote or to enjoy any of the other privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

- 15.8 All levies are due and payable by MEMBERS on the first day of the month immediately following the month in which such liability arose and, thereafter, on the first day of each and every following month.
- 15.9 MEMBERS shall be liable for payment of interest on outstanding amounts at a rate determined by the TRUSTEES from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.

## 16. BREACH

- 16.1 The TRUSTEES may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause 16.
- 16.2 If any MEMBER fails in the observance of any of the provisions of this CONSTITUTION, or any rules or regulations made in terms thereof, and/or fails to comply with the provisions of the ARCHITECTURAL GUIDELINES, the TRUSTEES may on behalf of and in the name of the Association serve notice on such MEMBER calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:
- 16.2.1 enter upon the ERF to take such action as may be reasonably required to remedy the breach and the MEMBER concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand;
- and/or
- 16.2.2 call upon such MEMBER in writing to remove or alter within a specified period any portion of the IMPROVEMENTS or any addition erected contrary to the provisions of this CONSTITUTION read with the ARCHITECTURAL GUIDELINES and, failing which, the matter shall be referred to a special meeting of the Association convened to afford MEMBERS the opportunity to give directions to the TRUSTEES. The RESOLUTION of the Association at such meeting shall be binding upon such defaulting MEMBER and shall be implemented by the TRUSTEES;

and/or

16.2.3 institute proceedings in any court of competent jurisdiction for such relief as the TRUSTEES may consider necessary and such MEMBER shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief;

and/or

16.2.4 impose a daily financial penalty, the amount of which shall be determined from time to time by the TRUSTEES, on notice to the MEMBER.

16.3 If any MEMBER fails to make payment on due date of levies or other amounts payable by such MEMBER, the TRUSTEES may give notice to such MEMBER requiring him to remedy such breach within such period as the TRUSTEES may determine and should he fail to timeously remedy his breach, the TRUSTEES may, on behalf of the Association, institute legal proceedings against such MEMBER without further notice and such MEMBER will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in obtaining recovery.

16.4 Nothing in the foregoing shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any MEMBER arising from any cause of action whatsoever or for any other relief.

16.5 In the event of any breach of this CONSTITUTION by the members of any MEMBER's household or his invitees or lessees, such breach shall be deemed to have been committed by the MEMBER himself but, without prejudice to the foregoing, the TRUSTEES shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the MEMBER.

## 17. TRUSTEES

17.1 The TRUSTEES of the Association shall comprise 3 (three) DEVELOPER TRUSTEES until the first annual general meeting of the Association whereupon the number shall be 5 (five) TRUSTEES comprising 3

(three) DEVELOPER TRUSTEES and 2 (two) MEMBER TRUSTEES for as long as the DEVELOPER is a MEMBER. Upon the DEVELOPER ceasing to be a MEMBER all 5 (five) TRUSTEES shall be MEMBER TRUSTEES. The Association shall in a general meeting held after the DEVELOPER has ceased to be a MEMBER be entitled to increase or decrease the number of TRUSTEES.

- 17.2 A TRUSTEE shall be an individual but need not himself be a MEMBER provided that the majority of MEMBER TRUSTEES shall be MEMBERS.
- 17.3 A TRUSTEE shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this CONSTITUTION.
- 17.4 The DEVELOPER shall appoint the first DEVELOPER TRUSTEES upon formation of the Association.
- 17.5 Subject to the provisions of clause 17.6, each MEMBER TRUSTEE shall continue to hold office until the annual general meeting of the HOA following his appointment, at which meeting each MEMBER TRUSTEE shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. the DEVELOPER shall, by written notice to the TRUSTEES, be entitled to remove any DEVELOPER TRUSTEE appointed by the DEVELOPER and upon such removal or upon any DEVELOPER TRUSTEE ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.
- 17.6 A TRUSTEE shall be deemed to have vacated his office as such upon:
- 17.6.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
  - 17.6.2 him making any arrangement or composition with his creditor;
  - 17.6.3 his conviction for any offence involving dishonesty;
  - 17.6.4 him becoming of unsound mind or being found lunatic;
  - 17.6.5 him resigning from such office in writing;
  - 17.6.6 his death;
  - 17.6.7 him being removed from office by a resolution of TRUSTEES;

- 17.6.8 his being disentitled to exercise a vote in terms of this CONSTITUTION provided he is a MEMBER TRUSTEE.
- 17.7 Notwithstanding the fact that a TRUSTEE shall be deemed to have vacated his office as provided in clause 17.6, anything done by such TRUSTEE in the capacity of a TRUSTEE in good faith shall be valid until the fact that he is no longer a TRUSTEE has been recorded in the Minute Book of the TRUSTEES. Should the office of a TRUSTEE fall vacant prior to the next annual general meeting of the Association, the vacancy in question may be filled by the DEVELOPER if the vacancy is in respect of a DEVELOPER TRUSTEE and by the remaining MEMBER TRUSTEES if the vacancy is in respect of a MEMBER TRUSTEE and the person so appointed shall hold office until the next annual general meeting.
- 17.8 The first CHAIRMAN shall be appointed by the DEVELOPER and shall hold office until the first annual general meeting provided that such office shall ipso facto be vacated by the TRUSTEE who was appointed CHAIRMAN upon his ceasing to be a TRUSTEE for any reason.
- 17.9 Within 7 (seven) days of the holding of each annual general meeting of the Association the TRUSTEES shall meet and shall elect from their own number the CHAIRMAN who shall hold office until the annual general meeting held next after his appointment, provided that the office of CHAIRMAN shall ipso facto be vacated by the TRUSTEE holding such office upon his ceasing to be a TRUSTEE for any reason. In the event of any vacancy occurring in the aforesaid office the TRUSTEES shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 17.10 Save as otherwise provided in this CONSTITUTION the CHAIRMAN shall preside at all meetings of the TRUSTEES and all general meetings of the Association and shall perform all duties incidental to the office of CHAIRMAN and such other duties as may be prescribed by the TRUSTEES or by MEMBERS and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a MEMBER's spouse shall be entitled to speak at any meeting.
- 17.11 If the CHAIRMAN vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the TRUSTEES present at such meeting shall choose another CHAIRMAN for such meeting.

- 17.12 If any CHAIRMAN vacates his office as CHAIRMAN or no longer continues in office for any reason, the TRUSTEES shall elect another CHAIRMAN who shall hold office as such for the remainder of the period of office of the first mentioned CHAIRMAN.
- 17.13 A TRUSTEE shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the Association, by virtue of any interest he may have therein.
- 17.14 No contract concluded on behalf of the TRUSTEES shall be valid and binding unless it is signed by the CHAIRMAN and one TRUSTEE, the latter specifically appointed as authorized signatory in terms of the RESOLUTION of TRUSTEES whereby the TRUSTEES bind the Association.
- 17.15 TRUSTEES shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as TRUSTEES 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.
- 17.16 TRUSTEES may not make loans on behalf of the Association to MEMBERS or to themselves.

## **18. FUNCTIONS, POWERS AND DUTIES OF TRUSTEES**

- 18.1 Subject to the express provisions of this CONSTITUTION, the TRUSTEES 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, including the right of appointment and dismissal of any MANAGING AGENT, 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 general meeting subject however to such regulations as may have been made by the Association in general meeting provided that no regulation made by the Association in general meeting shall invalidate any prior act of the TRUSTEES which would have been valid if such regulation had not been made.
- 18.2 Save as specifically provided in this CONSTITUTION the TRUSTEES shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys,

auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the TRUSTEES on such terms as the TRUSTEES shall decide.

- 18.3 The TRUSTEES shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 18.4 The TRUSTEES shall have the right to co-opt any person or persons chosen by them. A co-opted TRUSTEE shall enjoy all the rights and be subject to all the obligations of the TRUSTEES provided that such co-opted TRUSTEE shall only serve until the next annual general meeting.
- 18.5 The TRUSTEES may, should they so decide, investigate any suspected or alleged breach by any MEMBER or TRUSTEE of this CONSTITUTION in such reasonable manner as they shall decide from time to time.
- 18.6 The TRUSTEES may make regulations and rules not inconsistent with this CONSTITUTION or any regulations or rules prescribed by the Association in general meeting.
  - 18.6.1 as to the resolution of disputes generally;
  - 18.6.2 for the furtherance and promotion of any of the objects of the Association
  - 18.6.3 for the better management of the affairs of the Association;
  - 18.6.4 for the advancement of the interests of MEMBERS;
  - 18.6.5 for the conduct of TRUSTEES at meetings of TRUSTEES and meetings of the Association;
  - 18.6.6 to levy and collect contributions from MEMBERS in accordance with clause 15;
  - 18.6.7 to levy and recover from MEMBERS moneys which are necessary to defray the necessary expenses of the LOCAL AUTHORITY in the event of the LOCAL AUTHORITY imposing any levies and imposts against the Association;
  - 18.6.8 to assist it in administering and governing its activities generally;

18.7 Without in any way limiting the powers granted, the duties and powers of the TRUSTEES shall further specifically include:

18.7.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and IMPROVEMENTS of all ERVEN in KRAAIBOSCH COUNTRY ESTATE AND KRAAIBOSCH MANOR in strict accordance with the provisions of the ARCHITECTURAL GUIDELINES which shall be additional to the powers of the DEVELOPER for as long as the DEVELOPER is a MEMBER. The TRUSTEES shall be entitled to require any MEMBER, who shall be obliged, to repaint or renovate his IMPROVEMENTS if in the reasonable opinion of the TRUSTEES such IMPROVEMENTS require essential repairs or have become dilapidated;

18.7.2 entering into of agreements with third parties on behalf of the Association for any purposes of the Association.

18.7.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;

18.7.4 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, landscaping, maintenance of private roads and dams and streams, refuse facilities, removal of refuse and suchlike, where applicable;

18.7.5 the institution or defense of actions and/or applications in the name of the Association and to appoint legal representatives for such purpose.

## **19. PROCEEDINGS OF TRUSTEES**

19.1 The TRUSTEES may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this CONSTITUTION.

19.2 Meetings of the TRUSTEES shall be held at least once every 6 (six) months

- 19.3 The CHAIRMAN always has the right to convene meetings of TRUSTEES
- 19.4 A TRUSTEE may, provided he has the support in writing of 2 (two) other TRUSTEES, at any time convene a meeting of TRUSTEES by giving to the other TRUSTEES not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 19.5 A RESOLUTION in writing signed by all the TRUSTEES shall be valid and effectual as if it had been passed at a meeting of TRUSTEES duly called and constituted.
- 19.6 The quorum necessary for the holding of any meeting of TRUSTEES shall be 3 (three) TRUSTEES present personally provided that, for as long as the DEVELOPER is a MEMBER, no less than 2 (two) TRUSTEES present are DEVELOPER TRUSTEES. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the TRUSTEES then present shall be a quorum.
- 19.7 Any RESOLUTION of the TRUSTEES shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a RESOLUTION, the CHAIRMAN shall have a second or casting vote.
- 19.8 The CHAIRMAN shall preside as such at all meetings of TRUSTEES provided that, should at any meeting of TRUSTEES the CHAIRMAN not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the TRUSTEES shall vote to appoint a CHAIRMAN for the meeting who shall thereupon exercise all the powers and duties of the CHAIRMAN in relation to such meeting.
- 19.9 A TRUSTEE may be represented at a meeting of TRUSTEES by a proxy provided such proxy is a TRUSTEE
- 19.10 The instrument appointing a proxy shall be in writing and signed by the TRUSTEE concerned but need not be in any particular form. The proxy shall be deposited with the CHAIRMAN at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.

19.11 The TRUSTEES shall

- 19.11.1 ensure that minutes are taken of every meeting of TRUSTEES, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the CHAIRMAN of the meeting;
  - 19.11.2 cause such minutes to be kept of all meetings of the TRUSTEES in a minute book of meetings of TRUSTEES kept for that purpose;
  - 19.11.3 keep all minute books of meetings of TRUSTEES in perpetuity;
  - 19.11.4 on the written application of any MEMBER, make all minutes of their proceedings available for inspection by such MEMBER.
- 19.12 All RESOLUTIONS recorded in the minutes of any meeting of TRUSTEES 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 TRUSTEES 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 TRUSTEES.
- 19.13 Save as otherwise provided in this CONSTITUTION, the proceedings at any meeting of TRUSTEES shall be conducted in such reasonable manner and form as the CHAIRMAN of the meeting shall decide.

**20. MANAGING AGENT**

- 20.1 The TRUSTEES shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a MANAGING AGENT to control, manage and administer the WELGELEGEN and to exercise such powers and duties as may be entrusted to the MANAGING AGENT, including the power to collect levies, provided that a MANAGING AGENT shall be appointed for a year at a time, and unless the TRUSTEES notify the MANAGING AGENT to the contrary, such appointment will be automatically renewed from year to year.

20.2 The TRUSTEES shall ensure that there is included in the contract of appointment of a MANAGING AGENT a provision to the effect that if the MANAGING AGENT is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the TRUSTEES may, without notice, cancel such contract of employment and the MANAGING AGENT shall have no claim whatsoever against the TRUSTEES and/or the Association as a result of such cancellation.

20.3 With effect from the date of commencement of the Association, the DEVELOPER, in its sole discretion, is entitled to appoint the first MANAGING AGENT for a period of 12 (twelve) months or until the first annual general meeting of the Association, whichever first occurs.

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

21.1 The Association shall, within 12 (twelve) months of the date of commencement of the Association hold a general meeting as its first annual general meeting. Thereafter, within 4 (four) months of each financial year end of the Association it shall hold second and subsequent annual general meetings.

21.2 Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the TRUSTEES shall decide from time to time.

21.3 The TRUSTEES may, whenever they deem fit, convene a general meeting and a general meeting shall also be convened on a requisition made by not less than 25% (twenty five per centum) of MEMBERS or should the TRUSTEES fail to do so such meeting may be convened by the requisitionists themselves provided that notice thereof be given in terms of clause 22.

## **22. NOTICE OF MEETINGS**

22.1 An annual general meeting shall be called by not less than 21 (twenty one) days notice and a general meeting by not less than 14 (fourteen) days notice, as provided in clause 22.3. The notice 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 the

reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the TRUSTEES to such persons as are, under this CONSTITUTION, entitled to receive such notices from the Association; provided that a general meeting or an annual 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 agreed to by not less than 60% (sixty per centum) of MEMBERS having a right to attend and vote at the meeting.

- 22.2 The accidental omission to give notice of any RESOLUTION or to present any document required to be given or sent in terms of this CONSTITUTION, shall not invalidate the proceedings at or any RESOLUTION passed at any meeting.
- 22.3 Notice of the annual general meeting and/or a general meeting shall be placed in 2 (two) issues of the George Herald newspaper and in the event of the said newspaper becoming defunct, in 2 (two) issues of the highest circulation English language newspaper distributed in George.
- 22.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

### **23. PROXIES**

- 23.1 A MEMBER may be represented at an annual general meeting and/or general meeting by a proxy who must be a MEMBER of the Association.
- 23.2 The instrument appointing a proxy shall be in writing signed by the MEMBER concerned or his duly authorized 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 proxy may be signed by any person authorized by a resolution of the board of directors of the company or by its secretary and, where a close corporation, by any member of such close corporation and, where an association of persons, by the secretary thereof and, where a trust, by a person duly authorized by the trustees of such trust.
- 23.3 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 lodged with the Association at least 24 (twenty four) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.

## **24. QUORUM**

- 24.1 No business shall be transacted at any annual general meeting or general meeting unless a quorum is present when the meeting proceeds to business and when any RESOLUTION is to be passed. The quorum necessary for the holding of any meeting shall be 20% (twenty per centum) of the total MEMBERS entitled to attend and vote thereat.
- 24.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of MEMBERS, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the MEMBERS present shall constitute a quorum.

## **25. AGENDA AT MEETINGS**

In addition to any other matters required by legislation or by this CONSTITUTION to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 25.1 the consideration of the CHAIRMAN's report;
- 25.2 the election of MEMBER TRUSTEES;
- 25.3 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
- 25.4 the consideration and approval, with or without amendment, of the budget as presented by the TRUSTEES and confirmation of levies as currently levied by the TRUSTEES;
- 25.5 any other business pertinent to such meeting, including any RESOLUTIONS proposed for adoption by such meeting and the voting upon any such RESOLUTIONS.

## 26. PROCEDURE AT MEETINGS

- 26.1 The CHAIRMAN shall preside as such at all meetings provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the TRUSTEES present at such meetings 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.
- 26.2 The CHAIRMAN may, with the consent of any 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 that might have been transacted at the meeting from which the adjournment took place. No notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as for the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

## 27. VOTING

- 27.1 At every annual general meeting or general meeting every MEMBER in person or by proxy shall have ONE [1] vote per each Erf and/or Unit registered in his name. If an ERF is registered in more than one person's name, the owners shall jointly have ONE [1] vote per Erf and/or Unit.
- 27.2 At any meeting of MEMBERS a RESOLUTION put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any MEMBER. If a poll is duly demanded it shall be taken in such manner as the CHAIRMAN directs exercising voting rights in terms of clause 27.1 and the result of the poll shall be deemed to be the RESOLUTION of the meeting at which the poll was demanded.
- 27.3 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 and to vote on any question either personally or by proxy.

- 27.4 At any annual general meeting or general meeting a RESOLUTION put to the vote at the meeting shall be decided on an ordinary majority of votes represented by MEMBERS entitled to attend and vote thereon present in person or by proxy in accordance with the votes recorded in Clause 27.1
- 27.5 Voting on any question of adjournment shall be decided on an ordinary majority of votes represented by MEMBERS entitled to attend and vote there at present in person or by proxy.
- 27.6 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.
- 27.7 Unless any MEMBER present in person or by proxy at a 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 proprietary 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 of the Association 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 RESOLUTION 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.

## 28. MINUTES OF MEETINGS OF THE ASSOCIATION

28.1 The TRUSTEES shall

- 28.1.1 ensure that minutes are taken of every meeting of the Association, 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;

- 28.1.2 cause such minutes to be kept of all such meetings of the Association in a minute book of meetings of the Association kept for the purpose.
- 28.2 The TRUSTEES shall keep all minute books of meetings of the Association in perpetuity.
- 28.3 On the written application of any MEMBER the TRUSTEES shall make all minutes of the proceedings and/or meetings of the Association available for inspection by such MEMBER.
- 28.4 All RESOLUTIONS recorded in the minutes of any meetings of the Association 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 Association 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 Association.
- 28.5 Save as otherwise provided in this CONSTITUTION, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the CHAIRMAN of the meeting shall decide.

## **29. FINANCIAL YEAR END**

The financial year end of the Association is the last day of FEBRUARY of each year.

## **30. ACCOUNTS**

- 30.1 The TRUSTEES shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association including:
  - 30.1.1 a record of the assets and liabilities of the Association;
  - 30.1.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
  - 30.1.3 a register of MEMBERS showing in each case their addresses;
  - 30.1.4 individual ledger accounts in respect of each MEMBER

- 30.2 On the application of any MEMBER the TRUSTEES shall make all or any of the books of account and records available for inspection by such MEMBER.
- 30.3 The TRUSTEES shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.
- 30.4 The Association in general meeting or the TRUSTEES may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by MEMBERS of the accounts and books of the Association, or any of them, and subsequent 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.
- 30.5 At each annual general meeting the TRUSTEES shall lay before the Association financial statements for the immediately preceding financial year of the Association or, in the case of the first period since the date of commencement of the Association, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the TRUSTEES.

## **31. DEPOSIT AND INVESTMENT OF FUNDS**

- 31.1 The TRUSTEES shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- 31.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the TRUSTEES from time to time.
- 31.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

**32. AUDIT**

- 32.1 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.
- 32.2 The duties of the AUDITORS shall be regulated in accordance with general practice and applicable professional standards.

**33. INDEMNITY**

- 33.1 All the TRUSTEES are indemnified by the Association against any liabilities bona fide incurred by them in their capacities as such and in the case of the CHAIRMAN in his capacity as CHAIRMAN, as well as for all costs, losses and expenses (including traveling expenses) which they may incur or become liable for by reason of any authorized contract entered into, or any authorized act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.
- 33.2 A TRUSTEE shall not be liable for the acts, or omission of the AUDITORS or of any of the other TRUSTEES whether in their capacities as TRUSTEES or as CHAIRMAN or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgment or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of mala fides, breach of duty or breach of trust.

**34. DEFAMATION PRIVILEGE**

Every MEMBER of the Association and every TRUSTEE shall be deemed by virtue of his membership, or as the case may be, his holding office as a TRUSTEE, to have waived as against every other MEMBER, the CHAIRMAN, every other TRUSTEE, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the Association, or the TRUSTEES, or any sub-committee, all claims and rights of action which such MEMBER or TRUSTEE might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such MEMBER or TRUSTEE, or any

reference to such MEMBER or TRUSTEE, made at any meeting of TRUSTEES, 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, or otherwise injurious to the dignity, reputation, business or financial interest of such MEMBER or TRUSTEE, whether such statement be true or false.

### **35. OWN RISK**

Any person using any of the services, land or facilities of the Association does so entirely at his own risk.

### **36. ARBITRATION**

36.1 Should any dispute, question or difference arise between MEMBERS or between a MEMBER and TRUSTEES or the Association out of or in regard to:

36.1.1 the interpretation of;

36.1.2 the effect of;

36.1.3 their respective rights or obligations under;

36.1.4 a breach of (save for non-payment of levies or any other amount due by a MEMBER in terms of this CONSTITUTION)

this CONSTITUTION, such dispute shall be decided by arbitration in the manner set out in this clause 36.

36.2 In respect of any claim arising from non-payment of levies or any other amount due by a MEMBER to the Association in terms of this CONSTITUTION, the Association and TRUSTEES shall continue to enjoy common law rights and the remedies stipulated in this CONSTITUTION and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

36.3 The arbitration referred to in clause 36.1 shall:

36.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either

- the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and
- 36.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and
- 36.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 36.4 The arbitrator shall be a practicing senior counsel of not less than 5 (five) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing agreement on such appointment within the 7 (seven) day period, appointed by the President of the Cape Town Attorneys Association or he successor to that Association.
- 36.5 The arbitrator shall in giving his award have regard to the principles contained in this CONSTITUTION and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by both in such proportion as he may determine or by the Association as he in his sole discretion may deem fit.
- 36.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 36.6.1 shall be final and binding on each of them; and
- 36.6.2 shall be carried into effect immediately; and
- 36.6.3 may be made an order of any Court to whose jurisdiction the parties are subject upon application by any party or the Association.
- 36.7 Notwithstanding anything to the contrary contained in this clause 36, the TRUSTEES shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise

in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this CONSTITUTION, including the ARCHITECTURAL GUIDELINES.

**37. DOMICILIUM**

37.1 The TRUSTEES shall from time to time determine the address of the domicilium citandi et executandi of the Association, subject to the following:

37.1.1 such address shall be the address of the CHAIRMAN or of a TRUSTEE duly appointed by Members at a Meeting, or the administrative office of the Association;

37.1.2 the TRUSTEES shall give notice to all MEMBERS of such address and of any change in such address.

37.2 The domicilium citandi et executandi of a MEMBER shall be the street address of the Erf registered in his name; provided that he shall be entitled from time to time to change the said domicilium to a new domicilium in the Republic of South Africa, which change shall only be effective on receipt of written notice thereof by the Association at its domicilium.

**38 SOUTH AFRICAN REVENUE SERVICES REQUIREMENTS FOR INCOME TAX EXEMPTION**

38.1 The sole object of the association is to manage the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable.

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

38.3 On dissolution of the association, the remaining assets must be distributed to a similar association of persons, which is also exempted from income tax in terms of section 10[1][e][i][cc] of the Act.

38.4 Any amendments to the constitution must be submitted to the Commissioner for the South African Revenue Service.

- 38.5 Funds available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 [Act No. 97 of 1990], and in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 [Act 1 of 1985].
- 38.6 The association is not or was not knowingly a party to, or does not knowingly permit or has knowingly have 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 or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Service.
- 38.7 Annual returns of income tax together with financial statements must be submitted to the Tax Exemption Unit.

## 39. AMENDMENT

- 39.1 No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of
- 39.1.1 the LOCAL AUTHORITY, and
- 39.1.2 the DEVELOPER for as long as the DEVELOPER is a MEMBER
- 39.2 Subject to the provisions of clause 38.1, such addition amendment, substitution, or repeal shall require the approval of at least 67% (sixty seven per centum) of the total number of votes of MEMBERS of the Association given at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirement for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.