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Application Number: LU/9984

Our File Reference Number: Erf 2714, Franschhoek

Your Reference Number:

Enquiries: Ulrich von Molendorff

Contact No: 021 808 8682

Email address: Ulrich.Vonmolendorff@stellenbosch.gov.za

PER E-MAIL: [REDACTED]

Sir/Madam

APPLICATION FOR THE AMENDMENT OF LA FERME CHANTELE HOME OWNERS ASSOCIATION: ERF 2714, FRANSCHHOEK

1. The above application refers.
2. The duly authorised decision maker has decided on the above application as follows:
 - 2.1 That the application in terms of Section 15(2)(l) of the Stellenbosch Municipality Land Use Planning By-Law, 2015 for amendment of La Ferme Home Owner's Constitution on Erf 2714, Franschhoek.

BE APPROVED in terms of Section 60 of the said Bylaw and subject to conditions of approval.

2.2 The approval is subject to the following conditions imposed in terms of Section 66 of said Bylaw:

- 2.2.1 The approval only applies only to the amendment of the constitution, as indicated on **Annexure B** and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council or other legislation or Bylaws or Regulations that may be applicable.

2.3 The reasons for the above decision are as follows:

- 2.3.1 The proposed amendments to the La Ferme Home Owners Association Constitution have no bearing on the Zoning Scheme Parameters.

3. You are hereby informed in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning Bylaw, 2015, of your right to appeal the above decision to the Appeal Authority within 21 days from the date of notification of the above decision. Please note that no late appeals or an extension of time for the submission of appeals are permitted in terms of Section 80(1)(a) of the said By-Law.

4. Appeals must be submitted with the prescribed information to satisfy the requirements of Section 80(2) of the said By-law, failing which the appeal will be invalid in terms of Section 81(1)(b) of the said By-Law. The following prescribed information is accordingly required:
 - (a) The personal particulars of the Appellant, including:
 - (I) First names and surname;
 - (II) ID number;
 - (III) Company of Legal person's name (if applicable)
 - (IV) Physical Address;
 - (V) Contact details, including a Cell number and E-Mail address;

 - (b) Reference to this correspondence and the relevant property details on which the appeal is submitted.

 - (c) The grounds of the appeal which may include the following grounds:
 - (i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
 - (ii) grounds relating to the merits of the land development or land use application on which the appellant believes the authorised decision maker erred in coming to the conclusion it did.

 - (d) whether the appeal is lodged against the whole decision or a part of the decision;

 - (e) if the appeal is lodged against a part of the decision, a description of the part;

 - (f) if the appeal is lodged against a condition of approval, a description of the condition;

 - (g) the factual or legal findings that the appellant relies on;

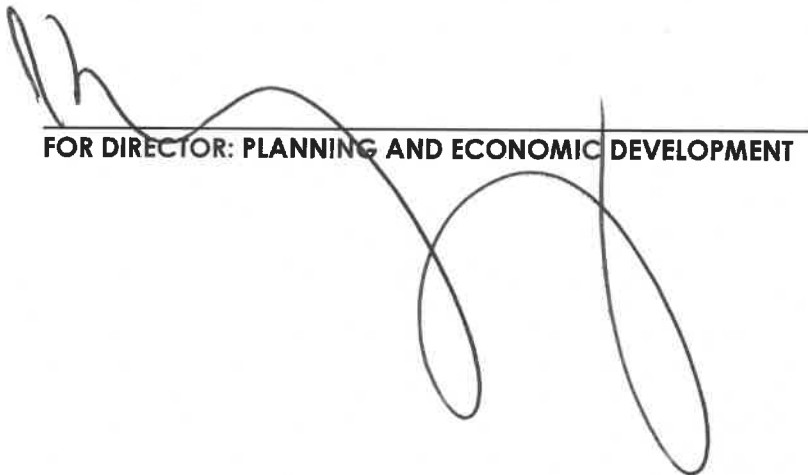
 - (h) the relief sought by the appellant; and

- (i) any issue that the appellant wishes the Appeal Authority to consider in making its decision;
 - (j) That the appeal includes the following declaration by the Appellant:
 - (i) The Appellant confirms that the information contained in the subject appeal and accompanied information and documentation is complete and correct
 - (ii) That the Appellant is aware that it is an offence in terms of Section 86(1)(d) of the said By-Law to supply particulars, information or answers in an appeal against a decision on an application, or in any documentation or representation related to an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct.
5. Appeals must be addressed to the Municipal Manager and submitted to his/ her designated official by means of E-mail at the following address: landuse.appeals@stellenbosch.gov.za
6. Any party (applicant or other) who lodges an appeal must pay the applicable appeal fee in terms of the approved municipal tariffs and submit the proof of payment together with the appeal. The **LU** Reference number on this correspondence, or the applicable Erf/ Farm Number must be used as the reference for the payment of the appeal fee.
7. The approved tariff structure may be accessed and viewed on the municipal website (<https://www.stellenbosch.gov.za/documents/finance/rates-and-tariffs>) and the banking details for the General Account can also be accessed on the municipal website (<https://www.stellenbosch.gov.za/documents/general/8314-stellenbosch-municipality-banking-details-1/file>).
8. An applicant who lodge an appeal must also adhere to the following requirements stipulated in terms of section 80(3) to (7) of the said By-law:
- (a) Simultaneously serve the appeal on any person who commented on the application concerned and any other person as the municipality may determine.
 - (b) The notice by the applicant must invite persons to comment on the appeal within 21 days from date of notification of the appeal.
 - (c) The notice must be served in accordance with section 35 of the said legislation and in accordance with the prescripts or such additional requirements as may be determined by the Municipality.

(d) Proof of serving the notification must be submitted to the Municipality at the above E-mail address within 14 days of serving the notification.

9. Kindly note that no appeal right exists in terms of Section 62 of the Local Government Municipal Systems Act, No 32 of 2000.
10. Kindly note the above decision is suspended, and in the case of any approval, may therefore not be acted on, until such time as the period for lodging appeals has lapsed, any appeal has been finalised and you've been advised accordingly.

Yours faithfully



FOR DIRECTOR: PLANNING AND ECONOMIC DEVELOPMENT

11/10/2022
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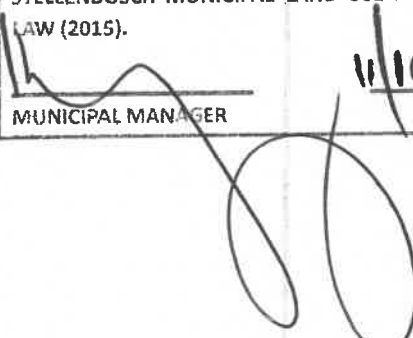
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ANNEXURE B

**(AMENDMENT OF LA FERME CHANTELE HOME OWNERS ASSOCIATION: ERF 2714,
FRANSCHHOEK)**

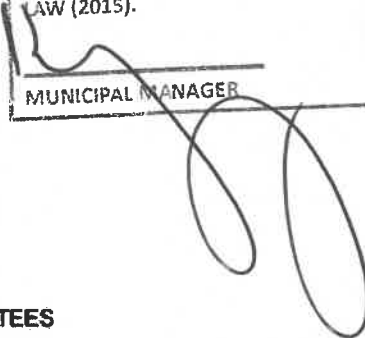
PROPOSED AMENDMENTS & HOA RESOLUTION

**LA FERME CHANTELLE
HOME OWNERS ASSOCIATION
CONSTITUTION**

STELLENBOSCH MUNICIPALITY	
THE OWNERS ASSOCIATION CONSTITUTION IS HEREBY APPROVED IN TERMS OF SECTION 60 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015).	
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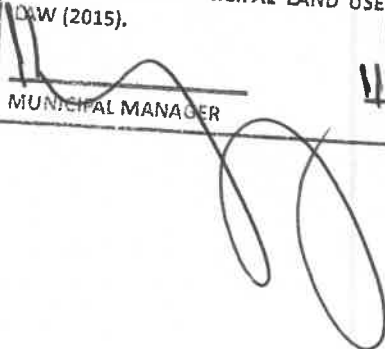
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1 **NAME**

The name of the Association is: "La Ferme Chantelle Home Owners Association".

2 **DEFINITIONS**

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.

Words importing the singular shall include the plural and *vice versa*.

Words importing the masculine shall include the feminine.

Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the following meanings:

"the Act" shall mean the Companies Act 71 of 2008;

"Aesthetics Committee" shall mean a person, persons, body, firm or entity appointed by the Trustees to perform this function on behalf of the Association;

"Annual Levy" shall mean the normal levy approved by way of an Ordinary Resolution at a duly constituted General Meeting of Members, which levy is intended to fund the net operating expenditure of the Association, as reflected in the operating budget of the Association for the ensuing period, submitted to such meeting;

"the Association" shall mean the La Ferme Chantelle Home Owners Association;

"the Auditors" shall mean a firm of Chartered Accountants or Certified Accountants appointed by the Association for the purpose of performing the functions and responsibilities of Auditors/Accountants as provided for in this Constitution;

"the Board of Trustees" or "Trustees" shall mean that body elected by the Members of the Association to manage and control the business and affairs of the Association;

"the common property" shall mean the remainder of the land after deduction of all Residential Erven within the development; thus being Erven registered in the name of the Association as Erven 2805, 2796, 2767, 2768, 2806, 2807, 2808, 2809, 2810, 2811 and 2812 Franschoek, the road (registered in the name of the Association as Erven 2805, 2767, and 2796 Franschoek), private open spaces applied for the cultivation of vines and olives (registered in the name of the Association as Erven 2768, 2806, 2807, 2808 and 2809 Franschoek) and the remainder of the open spaces applied as landscaped gardens (registered in the name of the Association as Erven 2810, 2811 and 2812 Franschoek) and all other portions of land registered in the name of the Association;

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"CSOS" shall mean Community Schemes Ombud Service Act, No 9 of 2011;

"Day/s" shall mean calendar days unless where it is specifically prescribed as business days in terms of legislation or in terms of this Constitution;

"the development" or "the Estate" shall mean The La Ferme Chantelle Estate, Main Road, Franschhoek, together with all improvements, dwellings, buildings and services thereon;

"dwelling" means the constructed Building on an Erf suitable for occupation and use for residential purposes by natural person;

"entity" shall mean a Company or Closed Corporation duly registered in terms of the Laws of The Republic of South Africa;

"Erf" (being any reference to "Erf" where such reference relates to an Erf owned by a Member) or **"his Erf"** or **Member's Erf** or **"Residential Erf"** shall mean a portion of private land with improvements and dwelling thereon owned by the Member within the Estate, which shall have been allocated a cadastral number by the surveyor general upon approval of the general plan and allocated an Erf number by the local authority, excluding the Common Property;

"The Estate Manager" shall be a person appointed by the Association as the Estate Manager from time to time;

"the general plan" shall mean the general plan relating to Erf 2714 Franschhoek, as approved by the surveyor general and registered in the name of the Association as Erf 2714, Franschhoek;

"Local authority" or **"Municipality"** or **"Council"** shall mean the Stellenbosch Municipality or its lawful successor;

"LUPO" shall mean Land Use Planning Ordinance, No. 15 of 1985;

"LUPA" shall mean the Stellenbosch Municipality Land Use Planning By-Law 2015;

"Member" shall mean a natural person being the registered owner of a Residential Erf in the Estate, or a trust or entity being the registered owner of a Residential Erf in the Estate duly represented by its authorised representative;

"Month" shall mean a calendar month;

"occupant" shall mean any person lawfully occupying an Erf by virtue of his Membership or relationship to or with a Member of the Association;

"Ordinary Resolution" shall mean a resolution taken at an Annual General Meeting of Members or a Special General Meeting of Members in circumstances where a majority of Members (more than 50 %) who are entitled to attend and to vote at such

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meeting and who are present at such meeting, either in person, or by way of proxy, vote in favour of such resolution;

"Registered Owner" shall mean the registered owner of any Residential Erven in the Estate;

"Rules and Regulations" shall mean all Rules and Regulations determined by the Trustees in their sole discretion acting on behalf of the Association which shall include, but not be limited to, the Rules of La Ferme Chantelle, building guidelines, architectural guidelines and building plans submission procedures, Code of Conduct and any other Policy Document by the Association and/or Trustees;

"the secretary and managing agent" shall mean that agency appointed by the Trustees to carry out secretarial, administrative and accountancy functions on behalf of the Board of Trustees and/or Association;

"Special Levy" shall mean the levy approved by way of a Special Resolution at a duly constituted General Meeting of Members, which levy is intended to fund the capital expenditure (and expenditure of a similar nature) of the Association, as reflected in a duly prepared Special Levy Budget for the ensuing period, submitted to such meeting;

"Special Resolution" shall mean a resolution taken at a duly constituted Annual General Meeting of Members or a Special General Meeting of Members in circumstances where ~~sixty six~~ **sixty six per cent (66%)** of Members who are entitled to attend and to vote at such meeting and who are present at such meeting (either in person, or by way of proxy) vote in favour of such resolution;

"Trustee" means one of the Trustees on the Board of Trustees of the Association;

"Trust" shall mean a trust registered in terms of the laws of the Republic of South Africa;

3 OBJECT AND PURPOSE

3.1 The object of the Association is to manage and represent the collective mutual interests common to all its Members and of the Estate as set out in this Constitution, which includes expenditure applicable to the common property of such Members and the collection of levies for which such Members are liable.

3.2 The Association must formally represent the collective mutual interests of the Members and the Estate as set out in this Constitution and all relevant and applicable conditions of approval.

3.3 The Association has control over and will maintain the property, buildings,

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services and amenities of the Estate and it will enforce the provisions of this Constitution, Rules and Regulations and/or any other relevant and applicable law, by-law or ordinance.

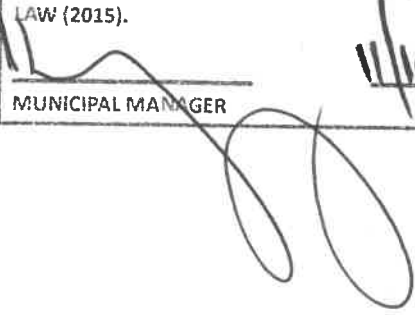
- 3.4 The Association is to promote, advance and protect the interests of its Members, relative to their ownership of Erven in the development and will have control over the design guidelines of the buildings within the Estate.

4 MEMBERSHIP

- 4.1 Membership of the Association shall be limited to and compulsory for all registered owners. The Membership of a Member shall commence simultaneously with the registration of the transfer of the Erf in the Estate, into the name of the relevant registered owner provided that:
- 4.1.1 a person who is entitled, in terms of the provisions of Section 43 of Act 47 of 1937, to obtain a Certificate of Registered Title to any such Erf shall be deemed to be the registered owner thereof;
- 4.1.2 when any registered owners of such Erf is more than one natural person and/or trust and/or entity, all the registered owners of that Erf shall be deemed, jointly, to be one Member of the Association, subject thereto that their liability shall be jointly and severally in all regards.
- 4.2 When a Member ceases to be the registered owner of an Erf, he shall immediately cease to be a Member of the Association.
- 4.3 The registered owner of an Erf may not resign as a Member of the Association.
- 4.4 The rights and obligations of a Member are not transferable and every Member shall;
- 4.4.1 to the best of his ability further the aims and objects of the Association and;
- 4.4.2 observe and be bound by this Constitution and all Rules and Regulations and other directives by the Trustees from time to time.
- 4.5 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, subject to the written approval of the Association.
- 4.6 Each Member of the Association shall be jointly liable for any expenditure incurred in connection with the Estate and in connection with the main object

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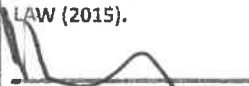
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or purpose of the Association and for anything done by the Association with the intention of benefiting its Members.

- 4.7 The Association shall charge Annual Levies and Special Levies to cover all expenses which are incurred or anticipated for the Estate and/or the Association, and which shall be borne by each Member equally, as one twenty-eighth of the total amount.
- 4.8 No Member shall let or otherwise part with the occupation of his Erf and/or dwelling (or part thereof) without obtaining the prior written agreement of the proposed occupier that he accepts that he will be bound by this Constitution, the Rules and Regulations and/or any directive/s by the Trustees from time to time. The Member shall at all times be responsible for the conduct, acts and/or omissions, whether lawful or unlawful, of all persons occupying or visiting his Erf whom will include, but not be limited to, representatives, lessees, guests, workers, servants, employees, invitees, contractors, related persons or agents.
- 4.9 No Member shall be entitled to alienate or transfer his Erf, or, if the Member is an entity, alienate or transfer all of his shares/Membership in the Member, unless the following conditions of title and/or transfer are imposed and adhered to, namely:
- 4.9.1 The Purchaser and his successors in title shall, from registration of transfer for as long as the Purchaser remains the registered owner of the property, be obliged to be a Member and to comply with this Constitution and the Rules and Regulations.
 - 4.9.2 Written confirmation by the Purchaser that no external improvements, alterations or restructuring, or any external 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 in accordance with the Constitutions and/or Rules and Regulations.
 - 4.9.3 the Member uses the standard documents of resale as prescribed by the Trustees from time to time; and
 - 4.9.4 the Estate Agent used by the Member to procure a purchaser for the his Erf is accredited by the Board of Trustees; and
 - 4.9.5 include in the Title Deeds of Residential Erven that transfer of such Erven shall be subject to the Association granting its written consent in respect of such transfer.

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- 4.9.6 the Member obtains a clearance certificate from the Association as per clause 4.10 below
- 4.10 Transfer of an Erf to the purchaser thereof shall not be registered unless the Member obtains a clearance certificate from the Association that the following have been complied with:
- 4.10.1 All levies and any other amounts due to the Association by the Member (and all occupants claiming through him) of the property sought to be transferred, have been fully paid to the Association up to date of registration of transfer.
- 4.10.2 All structures and improvements on the property sought to be transferred, not approved of by the Association through its Trustees and/or Aesthetics Committee of the Association as contemplated herein, have been removed to the satisfaction of the Aesthetics Committee or the approval of the Aesthetics Committee and/or Trustees has been given in respect of such structures or improvements, as contemplated herein.
- 4.10.3 All obligations of the Members in terms of the Constitution and Rules and Regulations have been fully complied with and the Member ensures that the Purchaser agrees in writing to accept and abide by the Constitution and Rules and Regulations.
- 4.11 In the unlikely event that the Association should cease to function for any reason whatsoever the consent of the Association to transfer an Erf will be obtained from and granted by the Auditors subject to the relevant provisions of this Constitution (including clause 4.9 and 4.10 above) being applicable and to be adhered to before any transfer of any Erf may be registered. For purposes of this clause all certificates and other documents will be provided by the Auditors and they will obtain the consent of the individual Members as per the procedures set out herein.

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 or the like) have any claim upon or interest in the funds, reserves or other property of the Association. This clause shall be without prejudice to the rights of the Association to claim from such Member or his Estate any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a Member.

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6 BOARD OF TRUSTEES AND TRUSTEES

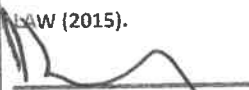
- 6.1 There shall be a Board of Trustees of the Association which shall consist of a minimum of 3 (three) and a maximum of 5 (five) Members.
- 6.2 Only Members and their spouses shall be considered for appointment and be appointed as Trustees. A Trustee shall, by accepting appointment as Trustee, be deemed to have agreed to be bound by all the provisions of this Constitution and the Rules and Regulations. No Member or his/her spouse may be a Trustee if the Member has not paid all levies due up to date of the election of the Member or his/her spouse as a Trustee.
- 6.3 The Board of Trustees may, as the need arises, co-opt Members as additional Trustees to serve on the Board of Trustees. In the event that additional Trustees were co-opted the maximum number of Trustees shall be limited to 6 (six) Trustees.

7 REMOVAL & ROTATION OF TRUSTEE MEMBERS

- 7.1 Save as set forth in 7.2 below, each Trustee shall continue to hold office until the next Annual General Meeting 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 Board of Trustees at such meeting.
- 7.2 A Trustee shall be deemed to have vacated his office as such:
- 7.2.1 If he commissions an act of Insolvency in terms of The Insolvency Act
- 7.2.2 If his Estate is being sequestrated, whether provisionally or finally, or he's surrendering his Estate or he is put under debt management;
- 7.2.3 Upon him being removed from office by the majority vote of the Board of Trustees;
- 7.2.4 Upon him making any arrangement or compromising with his creditors;
- 7.2.5 Upon his conviction for any offence involving dishonesty and/or fraud and/or theft and/or corruption or money-laundering;
- 7.2.6 If he becomes incapacitated or of unsound mind or being found a lunatic;
- 7.2.7 If he resigns from such office in writing, delivered to the Chairperson of the Board of Trustees;

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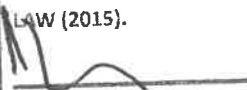
- 7.2.8 Upon his death;
 - 7.2.9 Upon him being removed from office for a reason that accords with the provisions of the Act relating to the removal of Directors;
 - 7.2.10 Upon registration of transfer of the property that forms the basis of such Trustee's Membership of the Association, into the name of a new owner;
 - 7.2.11 If he is absent for 2 (two) consecutive meetings of Trustees without written leave of absence from the Chairperson;
 - 7.2.12 upon the Annual Levy, Special Levy or Penalty Levy, payable in respect of the property that forms the basis for such Trustee's Membership of the Association falling into arrears for a period of 3 (three) consecutive months;
- 7.3 Anything done in good faith and in the capacity as a Trustee, by a person who ceases to be a Trustee, shall be valid for as long as he was a Trustee. Upon any vacancy occurring on the Board of Trustees prior to the next Annual General Meeting, the vacancy in question may be filled by a person nominated by majority vote of those remaining Trustees, for the time being, of the Board of Trustees.

8 OFFICE OF TRUSTEES

- 8.1 Members shall, at an Annual General Meeting, appoint from amongst themselves the Board of Trustees as per 6.1 above.
- 8.2 The Trustees shall, upon being appointed as Trustees at an Annual General Meeting, appoint from among themselves a Chairperson and Vice-Chairperson.
- 8.3 The Chairperson, Vice Chairperson and Trustees shall hold their respective offices until the following Annual General Meeting, held next after their said appointment, provided that the office of the Chairperson or Vice-Chairperson 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 any of the aforesaid offices of Chairperson or Vice-chairperson at any time, the Board of Trustees shall immediately meet to appoint one of them as a replacement to such office.
- 8.4 Save as otherwise provided in this Constitution, the Chairperson, and in his absence the Vice-Chairperson, and in his absence one of the Trustees agreed by a majority of the remaining Trustees voting, shall preside at all

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meetings of the Board of Trustees, and at all General Meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Board of Trustees 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.

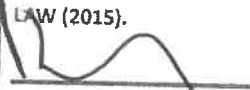
- 8.5 The Vice-Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson, and shall perform such other duties as may from time to time be assigned to him by the Chairperson or by the Board of Trustees.
- 8.6 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, 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 BOARD OF TRUSTEES**

- 9.1 Subject to the express provisions of this Constitution, the Board of 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 and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and perform all actions on behalf of the Association as may be exercised and done by the Association.
- 9.2 The authority hereby granted to the Trustees shall exclude any actions that in terms of the provisions of the Act are prescribed as matters that have to be referred to a general meeting of shareholders as well as actions that in terms of this Constitution requires to be exercised or done by the Association at a General Meeting.
- 9.3 All actions taken by Trustees shall nevertheless be subject to any Regulations made or directives given by the Association in a General Meeting/s from time to time, provided that no Regulation made or directive given by the Association in General Meeting/s shall invalidate any prior act of the Board of Trustees which would have been valid if such regulation had not been made.
- 9.4 The Trustees may, in their sole discretion, and upon obtaining proposals by a debtor to the collection attorneys of the Association, for repayment of the amounts due, agree with such proposals for payment arrangements as proposed by the Association's collection attorneys and give instructions

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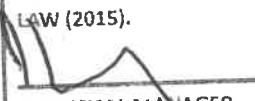
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accordingly if they believe, in their sole discretion, that the proposals are advantageous to the Association. Such repayment proposal shall in no manner or form release a Member from the obligation in terms of this Constitution to pay all outstanding levies and other amounts in order to be entitled to a clearance certificate and/or to vote at a general meeting and/or to be eligible to be a Trustee.

- 9.5 The Board of Trustees shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 9.6 A Trustee co-opted in terms of this Constitution shall enjoy all the rights and be subject to all the provisions hereof and shall be bound to all the obligations of the Trustees as set out herein.
- 9.7 The Board of Trustees 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.
- 9.8 The Board of Trustees may make Rules and Regulations that are not inconsistent with this Constitution, or, not inconsistent with any directives given at any General Meeting:
 - 9.8.1 as to the settlement of disputes in general;
 - 9.8.2 for the furtherance and promotion of any of the objects of the Association and the business of the Association and for the general operations of the Estate and the Association in general;
 - 9.8.3 for the better management of the affairs of the Association;
 - 9.8.4 for the advancement of the interests of Members;
 - 9.8.5 for the Regulation and control of the conduct of Members and occupants while in the Estate, whether on Residential Erven or on the common property;
 - 9.8.6 governing the manner and methods of the use of the common property by or on behalf of the Members or any occupant;
 - 9.8.7 for the conduct of Board of Trustees meetings and General Meetings; and
 - 9.8.8 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.
- 9.9 For the purpose of transacting its business as provided herein, the Board of Trustees shall be entitled to open and operate a banking account in the name

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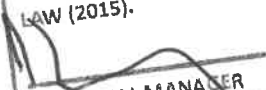
of the Association at a registered banking institution.

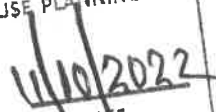
- 9.10 The Board of Trustees may engage on behalf of the Association, the services of Agents, Consultants, Independent Contractors, Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm whatsoever, for any reasons deemed necessary by the Board of Trustees and on such terms and fee as the Board of Trustees shall decide and accept, in their sole discretion.
- 9.11 Save as specifically provided otherwise in this Constitution, the Board of Trustees shall at all times have the right to appoint and employ any managers (including an Estate Manager) or any employee/s of and for the Association whatsoever, for any reasons deemed necessary by the Board of Trustees and at such remuneration and on such terms as the Board of Trustees shall decide.
- 9.12 The Trustees shall keep a proper set of accounts and compile financial statements that comply with prudent accounting principles appropriate for a voluntary association, as determined by the auditors.

10 TRUSTEES' FURTHER POWERS

- 10.1 Without derogating from any other powers which the Trustees may have herein or in general their powers shall include:
- 10.1.1 To accredit and approve architects and builders to be utilised by Members in respect of the alterations and work to their Erven and dwellings, in accordance with such criteria as the Association may stipulate from time to time;
- 10.1.2 To accredit Estate Agents appointed by Registered Owners in respect of the resale of their Residential Erven, in accordance with such criteria as the Association may stipulate from time to time;
- 10.1.3 To enter into agreements with other developments located in close proximity to the Estate with regards to the sharing of facilities or services of any nature whatsoever, including but not being limited to security, landscaping, gardening, agricultural services, water sewerage, electricity, roads, whether or not for the purposes of sharing the cost thereof;
- 10.1.4 To accredit and approve service providers or contractors in respect of services to be rendered to Members of the Association, including but not limited to pool cleaning and garden service contractors;

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10.1.5 To make decisions to advance the general security of the Estate and the protection of the property of the Association:

10.1.6 To grant or refuse a Registered Owner consent to transfer his Residential Erf, depending as to whether or not there has been compliance with the Constitution, the Architectural Guidelines, the Conduct Rules or such other Rules/determinations made by the Association and/or Trustees from time to time.

11 PROCEEDINGS OF THE BOARD OF TRUSTEES

11.1 The Board of Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit and in their sole discretion, subject to any provisions of this Constitution and directives agreed to at a General Meeting. The Trustees shall have a meeting in at least every quarter of a calendar year.

11.2 Trustees shall be given reasonable notice of meetings. Notices by way of electronic mail shall be deemed as proper notice of a meeting. Such notice shall be accompanied with a written agenda except in cases where meetings are called to consider exceptionally urgent matters.

11.3 A Trustee who is unable to attend a meeting may appoint another Trustee as his proxy, by way of an electronic mail confirming same, to vote on his behalf at a meeting of the Board of Trustees.

11.4 Meetings of the Board of Trustees 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 Board of Trustees needs be held for that quarter. All meetings of the Board of Trustees may be held by way of telephonic or video conference or any other electronic platform and the Trustees therefore need not be physically in each other's presence as long as the Chairperson can reasonably establish and confirm the Trustee's identity and the meeting can functionally be conducted with all Trustees able to properly communicate with each other during the said meeting.

11.5 The quorum necessary for the holding of any meeting of the Board of Trustees shall be 3 (three) Trustees where 4 (four) Trustees have been appointed to the Board of Trustees and the quorum shall be 4 (four) Trustees where 1 (one), or more Trustees present have been appointed by way of co-opt to the Board of Trustees.

11.6 The Chairperson shall preside as such at all meetings of the Board of

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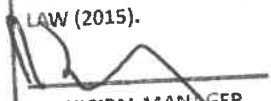
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Trustees, provided that should at any meeting of the Board of Trustees the Chairperson not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairperson shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson also not be present within the 15 (fifteen) minutes of the time appointed for the holding of such meeting, subject to a quorum in terms of 11.5 above those present of the Trustees shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

- 11.7 A Trustee or any other competent person, nominated by the Chairperson, shall take minutes of every Board of Trustees meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then, after giving consideration to the correctness thereof, be certified correct by the Chairperson of the meeting, with or without amendments. All minutes of Board of Trustees meetings shall after certification as aforesaid be placed in a Board of Trustees Minute Book to be kept in accordance with the provisions of the law, mutatis mutandis, relating to the keeping of minutes of meetings of directors of companies in terms of the Act. The Board of Trustees Minute book shall, from the seventh day after receipt of a written request for inspection of the Minute Book, be open for inspection at all reasonable times by a Trustee, the Auditors, Members and the Local Authority.
- 11.8 All competent resolutions recorded in the minutes of any Board of Trustees 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 Board 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 Board of Trustees.
- 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 Chairperson of the meeting shall decide.
- 11.10 A resolution of a decision signed by a majority of Trustees shall be valid in all respects, as if it had been duly passed at a meeting of the Board of Trustees duly convened. Such Trustees' decisions shall be ratified at the next meeting of the Board of Trustees. Any resolution may be signed by way of an email round exchange and the signatures of the Trustees can therefore be attached electronically and a copy as long as the resolution is attached to an email

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from the Trustees usual email address.

12 **GENERAL MEETINGS OF THE ASSOCIATION**

- 12.1 The Association shall as soon as is practicable after the end of the financial year of the Association, but not later than the month of June in each calendar year, hold a General Meeting as its Annual General Meeting. The Annual General Meeting shall be held in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices calling it, in terms of clause 13 below.
- 12.2 Such Annual General Meeting shall be held at such time and place subject to the foregoing provisions, as the Board of Trustees shall decide and determine from time to time.
- 12.3 All General Meetings other than Annual General Meetings shall be called Special General Meetings.
- 12.4 The Board of Trustees, may, whenever they deem fit, convene a Special General Meeting. The Board of Trustees shall be obliged to convene a Special General Meeting on the request of not less than 10 (ten) Members.
- 12.5 Any resolution, other than those set out in section 17 of the Constitution shall be validly passed by a written resolution, being an **Ordinary resolution** or a **Special resolution (which ever applicable in terms hereof)** and as voted on and passed as set out in the respective definitions in clause 2 above.

13 **NOTICE OF MEETINGS**

- 13.1 The Annual General Meeting and a General 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. 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 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 Board of Trustees to such persons as are under this Constitution entitled to receive such notices from the Association; provided that a General Meeting of the Association shall, notwithstanding that it is called by shorter

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notice than that specified in this Constitution, 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 present at the meeting (either in person or by way of proxy) who are entitled to attend and vote at the meeting; and

13.1.2 in the case of a Special General Meeting, by a majority in number of the Members present at the meeting (either in person or by way of proxy) who are entitled to attend and vote at the meeting, being a majority together holding not less than 66% (sixty six percent) of the total voting rights of those Members so present at the meeting either in person or by way of proxy.

14 SERVICE OF NOTICES

14.1 A notice shall be in writing and shall be given or served by the Association upon any Member:

14.1.1 personally, or

14.1.2 by post in a prepaid registered letter, properly addressed to the Member at the last postal address in South Africa, provided by such Member to the Estate Manager ;

14.1.3 by dispatch of electronic mail to the last e-mail address provided by such Member to the Estate Manager. To this end, every Member shall at all times keep the Trustees, Estate Manager or managing agent advised of the operational e-mail address to which notices should be transmitted and of any changes in the said e-mail address.

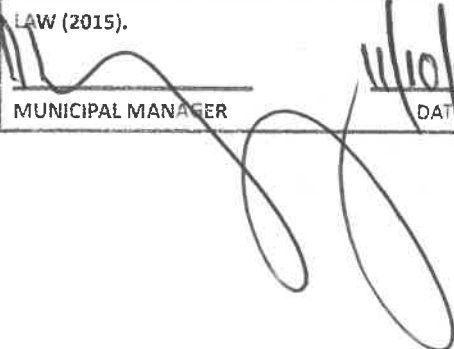
14.2 No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice given to the Estate Manager to record a postal address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.

14.3 Any notice by post shall be deemed to have been served and received 4(four) days after the date 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 Any notice by electronic mail shall be deemed to have been served and received at the date and time of dispatch of the electronic transmission, and proof of the dispatch of the notice by electronic mail, shall be sufficient to

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prove that the document containing the notice was properly transmitted.

- 14.5 The accidental omission to give notice of a meeting or of any resolution or any other document or notification to, or the non-receipt of notice of a meeting, resolution or any other document or notification 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 a place as shall be determined by the Board of Trustees 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, as together for the time being in person or by proxy, represent one-half of the total votes of all Members of the Association entitled to vote.

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 Chairperson 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 in person or by proxy shall constitute a quorum.

17 **AGENDA AT ANNUAL GENERAL MEETINGS**

17.1 In addition, to any other matters as would be reasonably required by the Act to apply to a company in the circumstances, at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting of the Association:

- 17.1.1 the consideration of the Chairperson's report to the Members;
- 17.1.2 the election of the Board of Trustees;
- 17.1.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;

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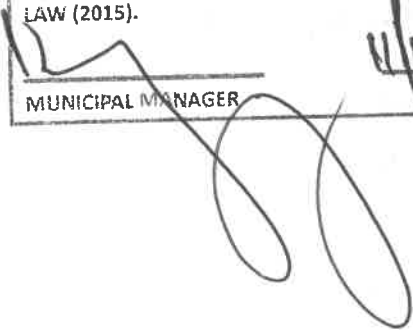
- 17.1.4 the consideration of the Financial Statements of the Association for the last financial year of the Association preceding the date of such meeting;
- 17.1.5 the consideration of the report of the Auditors;
- 17.1.6 the consideration and adoption of the budgeted Operating Income and Expenditure (including expenditure related to the maintenance of capital assets) of the Association for the ensuing financial year;
- 17.1.7 the consideration and adoption of the budgeted Capital Expenditure of the Association for the ensuing financial year and the consideration and approval, or otherwise, of the manner in which such Capital Expenditure may be funded, which may include funding by way of a Special Levy;
- 17.1.8 The consideration and adoption of the Annual Levy and Special Levy;
- 17.1.9 The appointment of the managing agent; and
- 17.1.10 The appointment of the auditors.

18 **PROCEDURE AT GENERAL MEETINGS**

- 18.1 The Chairperson shall preside as such at all General Meetings, provided that should he not be present within fifteen (15) minutes after the time appointed for the holding thereof, then the Vice-Chairperson, shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson also not be present within fifteen (15) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 18.2 The Chairperson 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

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of the business to be transacted at an adjourned meeting.

- 18.3 Except as otherwise set forth in this Constitution, all General Meetings shall be conducted in accordance with generally accepted practice.

19 **PROXIES**

19.1 A Member who is unable to attend a General Meeting may be represented by a proxy who need not be a Member of the Association as long as the proxy is and adult natural person. The aforesaid proxy must be acting in terms of a written proxy granted by such absent Member. The instrument appointing a proxy shall be in writing including by way of electronic mail, 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 an entity or Trust, the proxy may be provided and signed by any of the Directors/Members/Trustees (whichever is applicable) of the entity or trust, or any other duly authorised representative of the entity or Trust.

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 with any Trustee, the Estate Manager or the managing agent at least on the day preceding the day before the date appointed for 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 Board of Trustees at least one hour before the time fixed for the holding of the meeting.

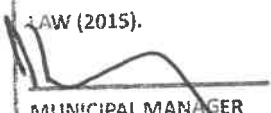
20 **VOTING**

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 hereof. Members attending a General Meeting may exercise one vote on their own behalf and one vote on behalf of each Member whose proxy they hold.

20.2 Save as expressly provided for in this Constitution, no person other than a Member (who's voting rights are not suspended by failing to make payments

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as mentioned below and who is entitled to vote in terms hereof) shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting. No Member or his proxy shall be entitled to vote, as aforesaid, and his right to vote shall be automatically suspended, if the Annual Levy, Special Levy, Penalty Levy or any other amount due and payable to the Association in respect of Membership and the property that forms the basis for such Member's Membership of the Association, has fallen into arrears for a period of 3 (three) consecutive months.

- 20.3 At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 20.4 Notwithstanding the provisions of 20.3 aforesaid, voting on the election of a Chairperson of a General Meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.
- 20.5 Every resolution and every amendment of a resolution proposed for adoption by a General Meeting shall be seconded at the meeting and, if not seconded, shall not be deemed proposed and shall not be voted upon.
- 20.6 An **Ordinary Resolution** (which is a Resolution other than a Special Resolution) and a **Special Resolution** shall be voted on and be carried by a majority as set out in the respective definitions in clause 2. An abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the General Meeting shall be entitled to a casting vote in addition to his deliberate vote as Member.
- 20.7 Notwithstanding anything contained in this Constitution, any resolution or the amendment of a resolution:
- 20.7.1 which would have the effect of amending or repealing any part of this Constitution; or
 - 20.7.2 which would have the effect of amending or repealing clause 32 of this Constitution which clause precludes subdivision or rezoning of the Erven or the erection of more than one dwelling per Erf; or
 - 20.7.3 which determines a Special Levy; or
 - 20.7.4 which would have the effect of amending or repealing clause 33

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and 34 dealing with the Aesthetics Approval and the Architectural Guidelines of the Association shall require a **Special Resolution**; and

20.7.5 any amendment or resolution which determines the Annual Levy which shall require an **Ordinary Resolution**.

20.8 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 Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson 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 Chairperson of the meeting as to the result of any voting at the meeting. For the avoidance of doubt any resolution proposed to an Annual or Special General Meeting may be modified at the meeting and the modified resolution if passed by the appropriate majority shall be valid as though it was proposed with adequate notice for the meeting. Should an aforesaid objection by a Member be unresolved within 15 (fifteen) minutes from it being made the Chairperson shall direct that the vote shall be taken again. Which further and final vote shall then be deemed in all respects be deemed to have been properly and validly constituted and conducted and entered into the minutes as aforesaid.

21 **RESOLUTIONS BY MEMBERS ACTING OTHER THAN AT A MEETING**

21.1 Save for the applicable provisions of the Constitution relating to a meeting, resolutions, notice and voting, in general, on any resolution (other than the decisions set out in 17 above or the amendment of this Constitution) any matter or resolution to be voted upon may instead be-

21.1.1 Submitted by the Trustees, by hand or to the last recorded email address of the Members, for consideration by the Members entitled to exercise their voting rights in relation to the resolution; and

21.1.2 voted upon in writing by at least 50% of those Members entitled to vote within a period of 10 days after the resolution was submitted to

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them.

- 21.2 A vote on the proposed resolution contemplated in 21.1
- 21.2.1 will be seen as conducted in writing by the Members if it is in the form of return electronic mail, fax or by hand delivery; and
- 21.2.2 will be adopted if it is supported by the persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary resolution or special resolution as the case may be, at a properly constituted meeting of Members.
- 21.3 Within 10 (ten) days after adopting of a resolution in terms hereof the Trustees shall deliver a statement confirming the resolution and describing the results of the vote and election of every Member who was entitled to vote on or consent to it.
- 21.4 Any amendment of this Constitution may not be conducted in terms of this clause and is to be conducted at an annual general meeting or special general meeting by way of a special resolution.

22 **FINANCIAL YEAR END**

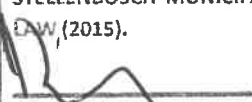
The financial Year End of the Association is the end of February each year which date may be changed with an **Ordinary Resolution**.

23 **ACCOUNTS**

- 23.1 The Association in a General Meeting or in a meeting of the Board of Trustees, 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 and unfettered access to Members at all reasonable and convenient times during normal business hours and at the general office of the Association, the office of the management agents or any other place as directed by the Chairperson. The access to any confidential information of a homeowner shall only be open for inspection by another Member with the consent of the particular Member and any restrictions imposed by the Trustees. At each Annual General Meeting the Board of Trustees shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by a proper

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and extensive report of 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 report (all of which shall be framed in accordance with the guidelines provided by the Auditors) and any other documents required by law to accompany same.

24 **AUDIT**

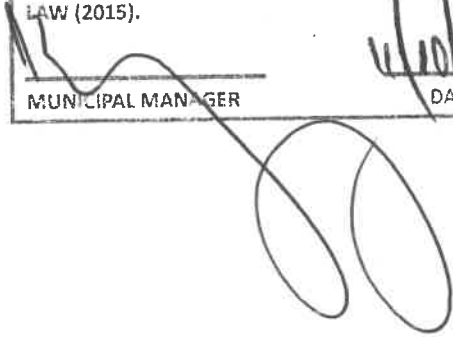
- 24.1 At least once every year the accounts and Financial Statements of the Association shall be examined and the correctness of the income and expenditure account and balance sheet ascertained and compiled by the Auditors.
- 24.2 The Auditors shall perform such duties as are performed by Auditors of any company registered in terms of the Act.

25 **INDEMNITY**

- 25.1 All Members of the Board of Trustees and the Auditors shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a Trustee Member, in his capacity as Chairperson, Vice-Chairperson, 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 Board of Trustees, 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 Board of Trustees out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including the case of a Trustee Member, his duties as Chairperson or Vice-Chairperson. 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 shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustees, whether in their capacities as

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Trustee or as Chairperson or Vice-Chairperson, 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 Board of Trustees 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, to have waived, as against every other Trustee, the Board of Trustees, the Chairperson or Vice-Chairperson, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Board of Trustees, 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 Board of Trustees 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, or otherwise injurious to the dignity, reputation, business or financial interest of such Member of Trustee Member, whether such statement be true or false.

27 **BREACH**

27.1 Should any Member:

27.1.1 fail to pay on the due date any amount due by that Member in terms of this Constitution or any regulation or rule made thereunder; or

27.1.2 commit any other breach of the provisions of this Constitution or any rule or 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

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remedying of such breach within a time set in the notice;

27.1.3 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 of the Association or any other Member may have in law, including the right to claim damages:

27.1.3.1 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 rule or regulation made thereunder, as the case may be; or

27.1.3.2 in the case of any other breach as per 27.1.2 above, to remedy such breach and immediately recover the total costs incurred by the Trustees or the Association in so doing from the Member.

27.2 Should the Trustee/Association institute any legal proceedings against any Member pursuant to a breach by the 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 Trustee/Association/Member as (the case may be) shall be entitled to recover from such Defaulting Member all legal costs incurred by it, including attorney and own client charges calculated on the non-litigious tariff recommended by the Law Society of the Cape of Good Hope (or its successors) trading fees and collection commission.

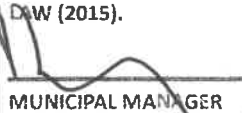
27.3 Without prejudice to all or any of the rights granted to the Trustees of the Association under this Constitution, should any Member fail to pay and amount due by that Member on due date, then such Member shall pay interest thereon calculated at 2% (two percent) above the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date of payment until the actual date of payment of such amount. A certificate issued by the Association's bankers as to the prime rate applicable shall constitute prima facie proof thereof.

28 WATER

28.1 Each Erf has a municipal water supply of water for household use and shall be obliged to pay the Association for such water consumed. It is recorded that the Association is billed directly by the Local Authority for such water and

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that the Association will install a sub meter at the cost of each relevant registered owner of an Erf who shall pay to the Association, on demand, from time to time for such water used, in the manner and periods as determined by the Trustees.

28.2 Subject to the control and directives of the Board of Trustees all Members may have access to the water supply from bore hole/s of the Association on the Estate through the water delivery system installed by the Association on the Estate. The Members who choose to have access to the aforesaid borehole water and system shall pay a utilisation levy to be determined by the Trustees from time to time.

28.3 All water consumed in respect of the common area shall be paid for by the Association, out of its funds or levies collected.

28.4 The Trustees shall determine the manner and conditions under which the subterranean water and bore holes on the Estate will be used and applied for the irrigation of the vineyards and olive orchards, the common area gardens and the gardens on Residential Erven. No Member shall be allowed to install a borehole on his Erf.

29 **RATES AND TAXES**

Every owner of an Erf shall pay to the relevant local authority, such rates and taxes as are levied in respect of his Erf and the Association shall likewise pay rates and taxes levied on its property, the latter being funded by the Annual Levy.

30 **MAINTENANCE OF COMMON PROPERTY**

It is recorded that the Association owns all the common property and that it is responsible for the maintenance and upkeep thereof.

31 **DEALINGS WITH THE COMMON PROPERTY**

31.1 The Association shall control and administer the common property and it shall make arrangements for the conduct of farming operations and/or Business on the common property, or such other activities as they may be directed to perform at any General Meeting of the Association. All income derived as a consequence of such arrangements will be for the benefit of the Association.

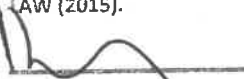
31.2 Neither the whole nor any portion of the common property shall be:

31.2.1 sold, alienated, otherwise disposed of, subdivided or transferred; or

31.2.2 subjected to a mortgage, unless authorised by a Special Resolution;

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or

31.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude (save those enjoyed by the Members in terms hereof); or

31.2.4 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 layout plan, without the sanction of a Special Resolution.

32 **NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING**

32.1 No Member shall be entitled to subdivide or rezone his Erf.

32.2 No more than one dwelling together with such outbuildings as are reasonably ordinarily required to be used in connection therewith shall be erected on any Member's Erf.

32.3 No commercial activity will be allowed and will be prohibited on any Erf which commercial activity has, in the opinion and discretion of the Trustees, the risk of, in any way, detracting from the general ambience of the Estate and/or the use and enjoyment of their properties by any of the other Members or the Association and/or in general will be in contravention of the Rules and Regulations or prohibited by law. Commercial activity of such aforesaid kind and/or those not approved by the Trustees in writing is strictly prohibited.

33 **BUILDING STANDARD RULES**

33.1 No owner of any Erf shall be entitled to build on his Erf or effect any improvement or alteration or addition thereto or erect any structure thereon without the prior written approval of the Board of Trustees who may delegate that function to a subcommittee of the Board of Trustees, an architect or other third party selected by the Trustees.

33.2 No owner of any Erf shall be entitled to alter or add to or do any construction thereon or to alter or vary the design or façade of his building, dwelling or improvements so constructed, without the prior written approval of the Board of Trustees, subcommittee of the Board of Trustees, architect or third party appointed by the Trustees.

34 **AESTHETICS APPROVAL**

34.1 Only dwellings which would be in harmony with the traditional ambience of

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the Estate and/or Franschhoek, and which would enhance the charming traditional character of the Estate and town and which dwellings would be sympathetic in style to each other, may be built on the Estate. For this purpose the Board of Trustees may appoint a subcommittee, or duly qualified third party to ensure compliance with the Rules and Regulations and to manage and control building activities within the Estate.

34.2 The Aesthetics approval procedure shall consist of the following:

34.2.1 The designation of a suitably qualified and experienced registered architect as review authority for all building plans. All building plans shall be drafted by registered architects only.

34.2.2 All building plans shall, prior to being submitted to the local authority, be submitted first to the Association's Architect and may not be submitted to the Local Authority without his written approval.

34.2.3 No building plans may be submitted to the Association's Architect unless the Architect that drafted the plans, had certified in writing that he had thoroughly familiarised himself with the Aesthetics, Building and Architectural Guidelines and that the plans submitted, in his professional opinion conform thereto.

34.2.4 In assessing plans submitted to him, the Association's Architect shall be guided by a reasonable interpretation of the Architectural Guidelines. He may solicit the opinion of the Board of Trustees and the immediate neighbours to the proposed building site, but shall not be bound thereby. He will be bound by the decision of majority of the Trustees or as directed by a resolution passed by a simple majority at a General Meeting.

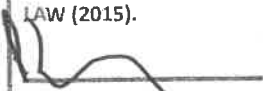
34.2.5 The Association's Architect shall act reasonably and endeavour to negotiate with the Member's Architect an acceptable plan if at first sight that submitted is not suitable for approval. Any given architect may submit three improved versions of a plan once rejected, and should that not be accepted, then the Member shall be obliged to appoint a new architect and recommence the application procedure de novo.

35 **OBLIGATION UPON MEMBERS TO MAINTAIN EXTERIOR PORTIONS OF THEIR PROPERTIES**

35.1 Every Member shall be obliged to maintain in good order and repair and in a clean and tidy condition, up to the high standard of the Estate:

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- 35.1.1 the exterior of all buildings on his Erf;
- 35.1.2 all private gardens and patios and all visible exterior portions of his Erf.

35.2 In the event of any Member failing to comply with the a foregoing the Board of Trustees shall be entitled, but not obliged, to have such repair work or maintenance work carried out as the said Committee deems necessary to ensure compliance with 35.1 and 35.2 above, in which event the registered owner of the Erf in question shall be liable to pay to the Association, upon demand, by the latter the costs as determined by the Association for the work aforesaid including for work aforesaid including a reasonable charge as determined and levied by the Association for arranging the necessary work. The Association shall not be liable to the registered owner for any damages suffered by the latter arising out of the execution of such work nor shall the Association be liable for the quality or lack of quality of any such work carried out.

36. **INCOME TAX EXEMPTION REQUIREMENTS**

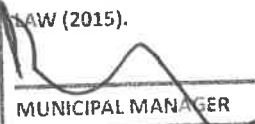
- 36.1 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 36.2 On dissolution, the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act.
- 36.3 Any amendments to the Constitution must be submitted to the Commissioner for the South African Revenue Service.
- 36.4 The Association confirms that it is not or was not knowingly a party to, or does not knowingly permit or has not 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.

37. **APPOINTMENT OF MANAGING AGENTS**

- 37.1 The Association shall be entitled to appoint a managing agent or firm of managing agents to administer the finances of the Estate including *inter alia* the issue of levy clearance certificates and the reading of water meters etc.,

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and to carry out any secretarial duties for the Association such as the managing of meetings and the keeping of minutes etc.

- 37.2 The Managing Agent, if required, by the Members shall be appointed at each Annual General Meeting for the ensuing year upon such terms and conditions as the Board of Trustees may decide, subject to any direction given by the Members at the Annual General Meeting.

38 **DISPUTE RESOLUTION AND APPLICABLE LAW**

- 38.1 Should any dispute, question, difference or disagreement arise between the Association and a Member concerning this Constitution or the Rules and Regulations or any rights, matters or duties arising therefrom and/or the interpretation thereof (the "dispute"), the parties shall first attempt to resolve the dispute by negotiation between the parties.
- 38.2 Any party ("first party") may invite the other party in writing to meet and to attempt to resolve the dispute and such a meeting shall be held within 20 (twenty) days from the first parties request.
- 38.3 If after such meeting or after 20 (twenty) days from the invitation to meet as per 38.2 above, the dispute still exists either party may deliver a notice of dispute on the other party.
- 38.4 The dispute, shall, be referred for Arbitration to a single arbitrator appointed by mutual consent of the parties within 10 (ten) days from date of the notice of dispute. The Arbitrator shall be a Member of the **Association of Arbitrators (SA)** and must have experience in the field related to which the dispute relates. Failing such mutual consent on the appointment of an Arbitrator, the appointment of such Arbitrator shall be made by Chairperson of the **Association of Arbitrators(SA)** within 20 (twenty) working days from being requested to do so, in writing, by either party. In all circumstances the arbitrator must be duly qualified and experienced to preside over the specific dispute at hand and the Rules of the Arbitration shall be such Rules of the Association. The parties will initially contribute equally to Arbitrators fees who will make the appropriate cost order within his powers in his award(including his own fees). The Arbitrator must use all its powers to make a finding as speedily as possible. The Arbitration is to be held in Franschoek and the applicable law shall be the laws of the Republic of South Africa.
- 38.5 The aforesaid does not deprive the parties of the right to refer the dispute to mediation by mutual consent by the parties. Such mediation process to be finalized within 30 (thirty) working days from the date of delivery of the notice

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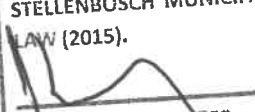

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of dispute and if the dispute is not resolved by mediation, the parties cannot agree on a mediator or ended by the mediator, the matter will proceed to Arbitration and the time clauses and other provisions of this clause 39 above will mutatis mutandis be applicable. The cost of the mediator will be borne by the parties in equal shares.


- 38.6 The provisions of this clause 38 shall be deemed to be severable from the remainder of the Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled, amended or declared of no force and effect for any reason.
- 38.7 Notwithstanding anything to the contrary contained in this Constitution the Trustees shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this Constitution, including legal action for due and payable amounts owed by a Member.
- 38.8 Notwithstanding the above the Association and its Members acknowledge and confirm their respective rights within the scope of CSOS. Prior to a dispute which falls within the scope of CSOS being referred to resolution in terms of CSOS the Members will first endeavor, as far as possible, to first attempt to amicably resolve all such disputes as far as possible in terms of the applicable alternative dispute resolution procedures set out herein.

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LA FERME CHANTELLE HOMEOWNERS ASSOCIATION

MINUTES OF THE SPECIAL GENERAL MEETING OF ALL MEMBERS HELD ON
WEDNESDAY, 11TH APRIL 2018 AT RICKETY BRIDGE, FRANSCHHOEK AT 18:00.

PRESENT

Owners

(In house number order)

Mr Stewardson – House 3
Mr R Lawrence – House 4
Mr & Mrs Phillips – House 9
Mr & Mrs M Van Rooyen – House 10
Mr T Lötter – House 11
Mrs V Harrison – House 12
Mr J Swan & Ms L Wood – House 13
Mr Wainwright – House 17
Mr P Kempton-Jones – House 22
Mr & Mrs W Morris – House 23
Mr Newman – House 28

Proxies

Mr Crannigan i.f.o. T Lotter
Heather's Trust i.f.o T Lotter
Bowman Properties Limited i.f.o T Lotter
Coconut Palm Properties i.f.o. T Lotter
Cadman & Bowker i.f.o Swan & Wood
Mr D Needham i.f.o. M Wainwright
Mrs DJ van Niekerk i.f.o M Wainwright
De La Rey H Family Trust i.f.o. M van Rooyen
Mr & Mrs Drew i.f.o W Morris
The Chantelle Collection i.f.o. M Wainwright
Mr A Berger i.f.o. P Kempton-Jones
Mrs LF Truswell i.f.o. S Truswell
Mr C Lawrenson i.f.o. T Lotter
Mr R Kilsby i.f.o T Lotter

Managing Agents

Ms T Jordaan (Representing JPS Trust cc)
Ms A Theron (Representing JPS Trust cc).

1. Opening/Welcome

The Chairman, Mr Theo Lotter, welcomed all owners to the meeting.

2. Signing of attendance register and verification of contact details: apologies and consideration of proxies

Mr. Lotter confirmed that all members present in person and/or by proxy had duly signed the attendance register and all apologies and proxies were duly noted and accepted.

3. Constitution of meeting

Mr. Lotter confirmed that as a quorum was present the meeting was declared duly constituted.

4. Table draft constitution marked LFC Constitution – April 2018

On the proposal of R Lawrence and seconded by J Swan it was unanimously approved and resolved that the current Constitution be amended as per the revised Constitution and that the revised Constitution is duly adopted and in force as the Constitution of La Ferme Chantelle Home Owners Association henceforth.

If any changes are to be made to the document, to comply with municipal or other requirements, it was agreed that the changes can be circulated to all members via a round robin e-mail for approval and will be ratified at the next AGM.

5. Closure

There being no further business the meeting terminated at 18:35.

CONFIRMED

SIGNED:.....

DATE:.....

**LA FERME CHANTELLE
HOME OWNERS ASSOCIATION
CONSTITUTION**

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1. **NAME**

The name of the Association is; "La Ferme Chantelle Home Owners Association".

2. **DEFINITIONS**

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

Words importing the singular shall include the plural and vice versa.

Words importing the masculine shall include the feminine.

Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the following meanings:

"the Act" shall mean the Companies Act of 2009, signed by the State President of the Republic of South Africa on 9 April 2009 and published in Government Gazette No 32121 (Notice No 421);

"Aesthetics Committee" shall mean a person, persons, body, firm or entity appointed by the Trustees to perform this function on behalf of the Association

"Annual Levy" shall mean the levy approved by way of an Ordinary Resolution at a duly constituted General Meeting of Members, which levy is intended to fund the net operating expenditure of the Association, as reflected in the operating budget of the Association for the ensuing period, submitted to such meeting;

"the Association" shall mean the La Ferme Chantelle Home Owners Association;

"the Auditors" shall mean a firm of Chartered Accountants or Certified Accountants appointed by the Association for the purpose of performing the functions and responsibilities of Auditors as provided for in this Constitution;

"the Board of Trustees" shall mean that body elected by the members of the Association to manage and control the business and affairs of the Association;

"the common property" shall mean the remainder of the land after deduction of all residential erven within the development; thus being erven 29 to 36 (registered in the name of the Association as erven 2805, 2796, 2767, 2768, 2806, 2807, 2808, 2809, 2810, 2811 and 2812 Franschoek) , with erf 29 being the road (registered in the name of the Association as erven 2805, 2767, and 2796 Franschoek), erven 30 to 33 being private open spaces applied for the cultivation of vines and olives (registered in the name of the Association as erven 2806, 2807, 2808 and 2809 Franschoek) and the remainder of the open spaces applied as landscaped gardens (registered in the name of the Association as erven 2810, 2811 and 2812 Franschoek)

"the development" or "the estate" shall mean erf 2714, Franschhoek, together with all improvements and services thereon.

"erf" shall mean a portion of private land owned by the Member within the development which shall have been allocated a cadastral number by the surveyor general upon approval of the general plan.

"the general plan" shall mean the general plan relating erf 2714 Franschhoek, as approved by the surveyor general and registered in the name of the Association as erf 2714, Franschhoek.

"Member" shall mean a natural person registered as the owner of a residential erf in the estate and the authorised representative of an entity, other than a natural person, that is registered as the owner of a residential erf in the estate;

"occupant" shall mean any person lawfully occupying an erf by virtue of his relationship to or with a Member of the Association;

"Ordinary Resolution" shall mean a resolution taken at an Annual General Meeting of Members or a Special General Meeting of Members in circumstances where a majority of Members who are entitled to attend and to vote at such meeting and who are present at such meeting, either in person, or by way of proxy, vote in favour of such resolution.

"Penalty Levy" shall mean the levy payable by a Member as a consequence of his failure to have completed the building of his house within the stipulated period of 36 (thirty six) months from the first date of transfer of his erf from the developer of the estate, as determined and prescribed by the Rules of La Ferme Chantelle, forming part of the Rules and Regulations. (At the 2013 AGM this section modified to read as follows:)

Penalty levies shall be set at R3,300 for the two years to February 2015 and any new owner be granted a grace period of one year from completion of purchase with nil penalty levies on condition that the four current plot owners provide to the Trustees a reasonable date of commencement and completion of developing their erven and that if their development is not completed on that date or a reasonable time period around that date their penalty levies will revert to penalty levies of two times the annual levy due from 18 April 2013.

"Rules and Regulations" shall mean all rules and regulations determined by the Association or the Trustees acting on behalf of the Association which shall include but not be limited to the Rules of La Ferme Chantelle, building guidelines, architectural guidelines and building plans submission procedures.

"the secretary and managing agent" shall mean that agency appointed by the Trustees to carry out secretarial, administrative and accountancy functions on behalf of the Board of Trustees;

"Special Levy" shall mean the levy approved by way of a Special Resolution at a duly constituted General Meeting of Members, which levy is intended to fund the capital expenditure (and expenditure of a similar nature) of the Association, as reflected in a duly prepared Special Levy Budget for the ensuing period, submitted to such meeting.

"Special Resolution" shall mean a resolution taken at a duly constituted Annual General Meeting of Members or a Special General Meeting of Members in circumstances where sixty seven per cent (67%) of Members who are entitled to attend and to vote at such meeting and who are present at such meeting (either in person, or by way of proxy) vote in favour of such resolution.

3. OBJECT AND PURPOSE

3.1 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.

3.2 The main object and purpose of the Association is to provide for:

3.2.1 the promotion and enforcement of standards in keeping with the character of the La Ferme Chantelle development, in such a way that Members derive the maximum collective benefit.

3.2.2 the control over- and protection of- areas owned by the Association, regarded as common to all Members and all facilities and related aspects including such areas as may be managed, operated, rented or leased to a third party in terms of an appropriate agreement.

3.2.3 the maintenance of services, amenities and common property, the incurring of capital expenditure (and expenditure of a similar nature) in relation thereto and the apportionment of such expenditure as may be incurred in relation to the foregoing between the Members by the charging of Annual Levies and Special Levies to the Members.

4. MEMBERSHIP

4.1 Membership of the Association shall be limited to Members and the Membership of a Member shall commence simultaneously with the transfer of the erf in the development into the name of the relevant registered owner; provided that:

4.1.1 a person who is entitled, in terms of the provisions of Section 43 of Act/1937, to obtain 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 Association. The registered owner of an erf may not resign as a Member of the 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.
- 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 Each Member of the Association shall be jointly liable for any expenditure incurred in connection with the main object or purpose of the Association and for anything done by the Association with the intention of benefiting its Members. The Association shall charge Annual Levies and Special Levies to cover all expenses which are incurred or anticipated, and which shall be borne by each Member equally, as one twenty-eighth of the total amount.
- 4.6 No Member shall be entitled to transfer an erf, unless the following conditions of title are imposed, namely:
- 4.6.1 The Purchaser and his successors in title shall, for as long as the Purchaser remains the registered owner of the property, be obliged to be a Member and to comply with this Constitution and the Rules and Regulations.
- 4.6.2 No external improvements, alterations or restructuring, or any external 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 in accordance with the Rules and Regulations.
- 4.7 Transfer of an erf to the purchaser thereof shall not be registered unless the following have been complied with:
- 4.7.1 Levies and any other amounts due to the Association by the registered owner (and all occupants claiming through him) of the property sought to be transferred, have been paid up to date to transfer or that provision has been made to the satisfaction of the Board of Trustees for the payment thereof against registration of transfer.
- 4.7.2 All structures and improvements on the property sought to be transferred, not approved of by the Aesthetics Committee of the Association as contemplated herein, have been removed to the satisfaction of the Aesthetics Committee or the approval of the Aesthetics Committee has been given in respect of such structures or improvements, as contemplated herein.
- 4.7.3 An amount equal to 0.25% of the purchase consideration shall have been paid into trust at the transferring attorney for distribution to the Franschoek Empowerment Conservation Trust or similar fund nominated by the local authority.
- 4.8 The Board of Trustees may, by regulation, provide for the issue of a Membership certificate, which certificate shall be in such form as may be prescribed by the Board of Trustees.

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 estate 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. **BOARD OF TRUSTEES**

6.1 There shall be a Board of Trustees of the Association which shall consist of a minimum of 3 (three) and a maximum of 7 (seven) Members.

6.2 Only Members and the spouse and declared long term partners of Members on the relevant erf shall be considered for appointment – and be appointed as Trustees. A Trustee shall, by accepting appointment as Trustee, be deemed to have agreed to be bound by all the provisions of this Constitution and the Rules and Regulations.

6.3 The Board of Trustees may, as the need arises, co-opt Members as additional Trustees to serve on the Board of Trustees. In the event that additional Trustees were co-opted the maximum number of Trustees shall be limited to ten Members.

7. **REMOVAL & 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 Board of Trustees at such meeting.

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

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 for a reason that accords with the provisions of the Act relating to the removal of Directors.

7.2.8 Upon registration of the property that forms the basis of such Trustee's Membership of the Association, in the name of a new owner.

7.2.9 upon the Annual Levy, Special Levy or Penalty Levy, payable in respect of the property that forms the basis for such Trustee's Membership of the Association falling into arrears for a period of 3 (three) consecutive months,

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 Board of Trustees.

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

8. OFFICE OF TRUSTEES

8.1 Members shall, at an Annual General Meeting, appoint from amongst themselves no less than 3 (three) and no more than 7 (seven) Trustees.

8.2 The Trustees shall, upon being appointed as Trustees at a Annual General Meeting, appoint from among themselves a Chairman and Vice-Chairman.

8.3 The Chairman, Vice Chairman and Trustees shall hold their respective offices until the following Annual General Meeting, held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices.

In the event of any vacancy occurring in any of the aforesaid offices at any time, the Board of Trustees shall immediately meet to appoint one of their number as a replacement to such office.

8.4 Save as otherwise provided in this Constitution, the Chairman and in his absence the Vice Chairman and in his absence one of the Trustees agreed by a majority of Trustees voting shall preside at all meetings of the Board of Trustees, 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 Board of Trustees 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 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or by the Board of Trustees.

8.6 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, 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 BOARD OF TRUSTEES

- 9.1 Subject to the express provisions of this Constitution, the Board of 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 and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and perform all actions on behalf of the Association as may be exercised and done by the Association. The authority hereby granted shall exclude actions that the provisions of the Act prescribe as matters that have to be referred to a general meeting of shareholders as well as actions that this Constitution requires to be exercised or done by the Association in General Meeting. All actions taken by Trustees shall nevertheless be subject nevertheless to any regulations made or directives given by the Association in General Meeting from time to time, provided that no regulation made or directive given by the Association in General Meeting shall invalidate any prior act of the Board of Trustees which would have been valid if such regulation had not been made. The trustees may grant extension of payment of levies on application by a homeowner but may only grant extension of such payment of levies for a period of more than 120 days with the consent of a majority of homeowners (which may be by written resolution circulated, received and voted on by electronic mail). The Trustees are empowered to agree with arrangements proposed by collection attorneys agreed with overdue debtors which they believe are advantageous to the Home Owners Association.
- 9.2 The Board of Trustees shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 9.3 The Board of Trustees shall have the right to co-opt onto the Board of Trustees any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 9.4 The Board of Trustees 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 Board of Trustees may make Rules and Regulations that are not inconsistent with this Constitution, or inconsistent with any directives 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;
 - 9.5.5 for the regulation and control of the conduct of Members and occupants while in the estate, whether on residential erven or on the common property;
 - 9.5.6 governing the manner and methods of the use of the common property by or on behalf of the Members or any occupant;

9.5.7 for the conduct of Board of Trustees meetings and General Meetings; and

9.5.8 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 Board of Trustees shall be entitled to open and operate a banking account in the name of the Association at a registered banking institution.

9.7 The Trustees shall keep a proper set of accounts and compile financial statements that comply with prudent accounting principles appropriate for a voluntary association, as determined by the auditors.

10. OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this Constitution, the Board of Trustees shall at all times have the right 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 Board of Trustees and on such terms as the Board of Trustees shall decide.

11. PROCEEDINGS OF THE BOARD OF TRUSTEES

11.1 The Board of Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution and directives agreed to at a General Meeting.

11.2 Trustees shall be given reasonable notice of meetings. Such notice shall be accompanied with a written agenda except in cases where meetings are called to consider exceptionally urgent matters.

11.3 A trustee who is unable to attend a meeting may appoint another trustee as his proxy to vote on his behalf at such meeting.

11.4 Meetings of the Board of Trustees 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 Board of Trustees needs be held for that quarter.

11.5 The quorum necessary for the holding of any meeting of the Board of Trustees shall be 2 (two) Trustees where 3 (three) Trustees have been appointed to the Board of Trustees and 3 (three) Trustees where 4 (four), or more, Trustees have been appointed to the Board of Trustees

11.6 The Chairman shall preside as such at all meetings of the Board of Trustees, provided that should at any meeting of the Board of Trustees the Chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, 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, nominated by the Chairman, shall take minutes of every Board of Trustees meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then, after giving consideration to the correctness thereof, be certified correct by the Chairman of the meeting, with or without amendments. All minutes of Board of Trustees meetings shall after certification as aforesaid be placed in a Board of Trustees Minute Book to be kept in accordance with the provisions of the law, mutatis mutandis, relating to the keeping of minutes of meetings of directors of companies in terms of the Act. The Board of Trustees Minute book shall, from the seventh day after receipt of a written request for inspection of the Minute Book, be open for inspection at all reasonable times by a Trustee, the Auditors, Members and the Local Authority.
- 11.8 All competent resolutions recorded in the minutes of any Board of Trustees 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 Board 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 Board of Trustees.
- 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.
- 11.10 A resolution signed by a majority of Trustees shall be valid in all respects, as if it had been duly passed at a meeting of the Board of Trustees duly convened. Such resolutions shall be ratified at the next meeting of the Board of Trustees.

12. GENERAL MEETINGS OF THE ASSOCIATION

- 12.1 The Association shall as soon as is practicable after the end of the financial year of the Association, but not later than the month of June in each calendar year, hold a General Meeting as its Annual General Meeting. The Annual General Meeting shall be held in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices calling it, in terms of paragraph 13 below.
- 12.2 Such Annual General Meeting shall be held at such time and place subject to the foregoing provisions, as the Board of Trustees 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 Board of Trustees, may, whenever they think fit, convene a Special General Meeting, and a Special General Meeting shall also be convened on the request of not less than 5 (five) Members.

- 12.5 Any resolution, other than those set out in section 17 of the constitution shall be validly passed by a written resolution, approved by 51% of those voting and able to do so for an ordinary resolution and 66.7% of those voting and able to do so for a Special resolution, provided only that 21 days (including non business days) shall elapse from the date of circulation of the resolution and declaration of the voting result. Such resolution shall be valid if circulated to homeowners last recorded email address and replied to by email and as long as replies are received from at least 50% of those entitled to vote.

13. NOTICE OF MEETINGS

- 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 contained in this Constitution, the general nature of that business, and in the case of a Special Resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any as may be prescribed by the Board of Trustees to such persons as are under this Constitution entitled to receive such notices from the Association; provided that a General Meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed:

13.1.1 in the case of a meeting called as the Annual General Meeting, by all the Members present at the meeting (either in person or by way of proxy) who are entitled to attend and vote at the meeting; and

13.1.2 in the case of a Special General Meeting, by a majority in number of the Members present at the meeting (either in person or by way of proxy) who are entitled to attend and vote at the meeting, being a majority together holding not less than 67% (sixty seven percent) of the total voting rights of those Members so present at the meeting.

14. SERVICE OF NOTICES

- 14.1 A notice shall be in writing and shall be given or served by the Association upon any Member:

14.1.1 personally, or

14.1.2 by post in a prepaid registered letter, properly addressed to the Member at the last postal address in South Africa, provided by such Member to the secretary or managing agent

14.1.3 by electronic mail to the last e-mail address provided by such Member to the secretary or managing Agent. To this end, every member shall at all times keep the secretary or managing agent advised of the operational e-mail address to which notices should be transmitted and of any changes in the said e-mail address.

- 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 given to the secretary or managing agent, to record a postal 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 Any notice by electronic mail shall be deemed to have been served at the time of electronic transmission, and proof of the giving of the notice by electronic mail, shall be sufficient to prove that the document containing the notice was properly transmitted.
- 14.5 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 Board of Trustees 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 entitled to vote shall be represented at the meeting 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 at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting of the Association:
- 17.1.1 the consideration of the Chairman's report to the Members;
 - 17.1.2 the election of the Board of Trustees;
 - 17.1.3 the consideration of any other matters raised 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 Financial Statements 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 and adoption of the budgeted Operating Income and Expenditure (including expenditure related to the maintenance of capital assets) of the Association for the ensuing financial year.

17.1.7 the consideration and adoption of the budgeted Capital Expenditure of the Association for the ensuing financial year and the consideration and approval, or otherwise, of the manner in which such Capital Expenditure may be funded, which may include funding by way of a Special Levy.

17.1.8 The consideration and adoption of the Annual Levy and Special Levy.

17.1.9 The appointment of the secretary and managing agent.

17.1.10 The appointment of the auditors

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 five minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

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 in this Constitution, all General Meetings shall be conducted in accordance with generally accepted practice.

19. PROXIES

19.1 A Member who is unable to attend a General Meeting may be represented by another Member at a General Meeting, acting in terms of a proxy granted by such absent Member. The instrument appointing a proxy shall be in writing including by electronic mail, 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 of Directors of the Company or by its secretary, where an association of persons, by the secretary thereof, where a close corporation, by any member of the close corporation, where a trust, by any trustee of such trust and in respect of any other entity its authorised representative.

- 19.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited with any Trustee, the secretary or the managing agent at any time before 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 Board of Trustees at least one hour before the time fixed for the holding of the 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 paragraph 4 hereof. Members attending a General Meeting may exercise one vote on their own behalf and one vote on behalf of each member whose proxy they hold.
- 20.2 Save as expressly provided for in this Constitution, no person other than a Member, who is not under suspension and who is entitled to vote, shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting. No Member shall be entitled to vote, as aforesaid, if the Annual Levy, Special Levy or Penalty Levy, payable in respect of the property that forms the basis for such Member's Membership of the Association, has fallen into arrears for a period of 3 (three) consecutive months.
- 20.3 At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 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 show of hands by a majority of the Members present in person or by proxy, and entitled to vote.
- 20.5 Every resolution and every amendment of a resolution proposed for adoption by a General Meeting shall be seconded at the meeting and, if not seconded, shall not be voted upon.
- 20.6 An Ordinary Resolution or the amendment of an Ordinary Resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the

case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the General Meeting shall be entitled to a casting vote in addition to his vote as Member.

20.7 Notwithstanding anything contained in this Constitution, any resolution or the amendment of a resolution:

20.7.1 which would have the effect of amending or repealing any part of this Constitution; or

20.7.2 which would have the effect of amending or repealing paragraph 31 of this Constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf; or

20.7.3 which determines a Special Levy; or

20.7.4 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Aesthetics Approval and the Architectural Guidelines;

shall require a Special Resolution; and

20.7.5 any amendment or resolution which determines the Annual Levy which shall require an Ordinary Resolution.

20.8 Unless any Member present in person or by proxy at a General Meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety 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. For the avoidance of doubt any resolution proposed to an Annual or Special General Meeting may be modified at the meeting and the modified resolution if passed by the appropriate majority shall be valid as though it was proposed with adequate notice for the meeting.

21. FINANCIAL YEAR END

The financial Year End of the Association is the end of February each year which date may be changed with an Ordinary Resolution.

22. ACCOUNTS

22.1 The Association in a General Meeting or the Board of Trustees, 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. (Note: The following was passed at 2011 AGM: After lengthy discussion and due consideration it was unanimously resolved by special resolution that 22.1 be interpreted as permitting unfettered access to La Ferme Chantelle Homeowners Association's record by a homeowner with restriction only as to convenience of such access and discretion of the trustees with regards to a request by a homeowner for confidentiality concerning his personal circumstances).

- 22.2 At each Annual General Meeting the Board of Trustees shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by a proper and extensive report of 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 report (all of which shall be framed in accordance with the guidelines provided by the Auditors) and any other documents required by law to accompany same.

23. **AUDIT**

- 23.1 Once at least in every year, the accounts and Financial Statements of the Association shall be examined - and the correctness thereof reported upon by the Auditors.
- 23.2 The Auditors shall perform such duties as are performed by Auditors of any registered company.

24. **INDEMNITY**

- 24.1 All Members of the Board of Trustees and the Auditors shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a Trustee Member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 24.2 Every Member of the Board of Trustees, 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 Board of Trustees out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including the case of a Trustee Member, his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 24.3 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustees, whether in their capacities as Trustee

or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Board of Trustees 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.

25. 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, to have waived as against every other Trustee, the Board of Trustees, the Chairman or Vice-Chairman, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Board of Trustees, 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 Board of Trustees 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, or otherwise injurious to the dignity, reputation, business or financial interest of such Member of Trustee member, whether such statement be true or false.

26. BREACH

26.1 Any Member who fails to make payment to the Association on due date therefore of any levy or other amount payable by such Member, or who otherwise breaches or fails in observance of any of the provisions of this Constitution or the Rules, if so determined by a resolution passed by not less than $\frac{1}{2}$ (one half) of the Trustees present at a meeting of the Board of Trustees, shall:

26.1.1 be obliged to pay all amounts outstanding to the Association forthwith and / or

26.1.2 be obliged to rectify the breach or failure in question, forthwith and / or

26.1.3 pay interest on the outstanding amount as determined by the Trustees and/ or

26.1.4 forfeit the right to participate in- and vote as Member- at any meeting of the Association and/ or

26.1.5 if the defaulter were a Trustee be suspended from acting as such until the breach has been remedied

as in each case shall have been determined at the said meeting of the Board of Trustees. The Trustees shall forthwith advise the defaulting Member of their said determination.

- 26.2 The Member concerned shall be invited to attend Board of Trustees meeting referred to in 26.1, above, 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. **WATER**

- 27.1 Each erf shall have a municipal water supply of water for household use and shall be obliged to pay the Association for such water consumed. It is recorded that the Association is billed directly by the Local Authority for such water and that the Association will install a submeter at the cost of each relevant registered owner of an erf who shall pay to the Association from time to time for such water used, in the manner determined by the Association.
- 27.2 All water consumed in respect of the common area shall be paid for by the Association, out of its funds or levies collected.
- 27.3 The Trustees shall determine the manner and conditions under which the subterranean water and bore holes on the estate will be used and applied for the irrigation of the vineyards and olive orchards, the common area gardens and the gardens on residential erven.

28. **RATES AND TAXES**

Every owner of an erf shall pay to the relevant local authority, such rates and taxes as are levied in respect of his erf, and the Association shall likewise pay rates and taxes levied on its property, the latter being funded by the Annual Levy.

29. **MAINTENANCE OF COMMON PROPERTY**

It is recorded that the Association owns all the common property and that it is responsible for the maintenance and upkeep thereof.

30. **DEALINGS WITH THE COMMON PROPERTY**

- 30.1 The Association shall make arrangements for the conduct of farming operations on the common property, or such other activities as they may be directed to perform at any General Meeting of the Association. All income derived as a consequence of such arrangements will be for the benefit of the Association.
- 30.2 Neither the whole nor any portion of the common property shall be:
- 30.2.1 sold, alienated, otherwise disposed of, subdivided or transferred; or
 - 30.2.2 subjected to a mortgage, unless authorised by a Special Resolution; or

30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude (save those enjoyed by the Members in terms hereof); or

30.2.4 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 layout plan, without the sanction of a Special Resolution.

31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING

31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that erf 20 enjoys a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the private open space units being let for growing vines and olives.

31.2 No more than one dwelling together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on any Member's erf, except for erf 20 which, being the main farm complex for the cultivation and harvest of vines and olives, may erect such structures as relate to its cultivation, harvesting, processing and marketing activities of the produce produced on the private open space units let for cultivation.

31.3 The Association will not support commercial activity on any erf which has the risk of, in any way, detracting from the general ambience of the Estate and/or the use and enjoyment of their properties by any of the owners. Commercial activity of such kind is strictly prohibited.

32. BUILDING STANDARD RULES

32.1 In compliance with paragraph 4.6.2 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 Board of Trustees who may delegate that function to a sub committee of the Board of Trustees, an architect or other third party selected by the Trustees.

32.2 No owner of any erf shall be entitled to alter any construction thereon or to alter or vary the design or façade of his building, dwelling or improvements so constructed, without the prior written approval of the Board of Trustees, sub committee of the Board of Trustees, architect or third party appointed by the Trustees.

33. AESTHETICS APPROVAL

33.1 Only dwellings which would be in harmony with the traditional ambience of Franschhoek, and which would enhance the charming traditional character of the town and which dwellings would be sympathetic in style to each other, may be built on the estate. For this purpose the Board of Trustees may appoint a sub committee, or duly qualified third party to ensure compliance with the Rules and Regulations and to manage and control building activities within the estate.

33.2 The Aesthetics approval procedure shall consist of the following:

33.2.1 The designation of a suitably qualified and experienced registered architect as review authority for all building plans, it being recorded that the Dennis Moss Partnership has been duly appointed as first incumbents.

33.2.2 All building plans shall be drafted by registered architects only.

33.2.3 All building plans shall, prior to being submitted to the local authority, be submitted first to the Association's Architect and may not be submitted to the Local Authority without his written approval.

33.2.4 No building plans may be submitted to the Association's Architect unless the Architect that drafted the plans, had certified in writing that he had thoroughly familiarised himself with the Architectural Guidelines and that the plans submitted, in his professional opinion conform thereto.

33.2.5 In assessing plans submitted to him, the Association's Architect shall be guided by a reasonable interpretation of the Architectural Guidelines. He may solicit the opinion of the Board of Trustees and the immediate neighbours to the proposed building site, but shall not be bound thereby. He will be bound by the decision of majority of the Trustees or as directed by a resolution passed by a simple majority at a General Meeting.

33.2.6 The Association's Architect shall act reasonably and endeavour to negotiate with the Member's Architect an acceptable plan if at first sight that submitted is not suitable for approval. Any given architect may submit three improved versions of a plan once rejected, and should that not be accepted, then the Member shall be obliged to appoint a new architect and recommence the application procedure de novo.

34. OBLIGATION UPON MEMBERS TO MAINTAIN EXTERIOR PORTIONS OF THEIR PROPERTIES

Every member shall be obliged to maintain in good order and repair and in a clean and tidy condition, up to the high standard of the estate:

34.1 the exterior of all buildings on his erf;

34.2 all private gardens and patios and all visible exterior portions of his erf.

In the event of any Member failing to comply with the foregoing the Board of Trustees shall be entitled, but not obliged, to have such repair work or maintenance work carried out as the said Committee deems necessary to ensure compliance with 34.1 and 34.2 above, in which event the registered owner of the erf in question shall be liable to pay to the Association upon demand by the latter the costs as determined by the Association for the work aforesaid including for work aforesaid including a reasonable charge as determined and levied by the Association for arranging the necessary work. The Association shall not be liable to the registered owner for any damages suffered by the latter arising out of the execution of such work nor shall the Association be liable for the quality or lack of quality of any such work carried out.

35. COMING INTO OPERATION OF THE ASSOCIATION

The Association shall come into operation upon the registration of transfer of an erf in the development from the Developer into the name of any other third party.

36. APPOINTMENT OF MANAGING AGENTS

The Association shall be entitled to appoint a managing agent or firm of managing agents to administer the finances of the estate including *inter alia* the issue of levy clearance certificates and the reading of water meters etc, and to carry out any secretarial duties for the Association such as the managing of meetings and the keeping of minutes etc.

The Managing Agent, if required, by the Members shall be appointed at each Annual General Meeting for the ensuing year upon such terms and conditions as the Board of Trustees may decide, subject to any direction given by the Members at the Annual General Meeting.

37. DISPUTE RESOLUTION AND APPLICABLE LAW

37.1 Should any dispute, disagreement or claim arise between the Association and a Member concerning this Constitution or the Rules and Regulations (collectively referred to as "the Governing Directives") or actions taken in terms thereof the parties shall try to resolve the dispute by negotiation. This entails that the one party invites the other in writing to meet and to attempt to resolve the dispute in 7 (seven) days from date of the written invitation and such a meeting shall be held within 30 (thirty) days from the first parties request, before any dispute is declared

37.2 Failing resolution of a dispute in terms of Clause 37.1, above, all unresolved disputes of whatsoever nature relating to the Governing Directives, including, but not limited to, the interpretation of the Governing Directives or anything contained therein, the matters specifically mentioned therein, the assessment of any damages emanating from a failure to effect payment of amounts due in terms of the Governing Directives or any other default of any of the conditions thereof, the dispute shall then be referred to the senior partner of a firm of attorneys, nominated by the Trustees, for an advisory opinion which shall not be binding on the parties. The cost of the opinion shall be paid by the parties in equal shares on presentation of an account. If either party does not accept the said opinion (and it shall notify the attorneys within 7 days after receipt thereof, in default whereof it shall be deemed to have accepted such opinion and be bound thereby) then the dispute shall be resolved by a Referee, described in 37.3, appointed by mutual consent or, failing agreement on the appointment of such person, then the Referee shall be appointed by the chairman of the Association of Advocates ("the Bar Association") of the Cape High Court. The Referee shall resolve the dispute on the following basis:

37.2.1 the party raising the complaint and/or declaring a dispute shall notify the Referee, in writing as soon as may be practicably possible under the circumstances, and set out in detail the nature and extent of the dispute;

37.2.2 the Referee shall at all times be acting solely as an expert and not as an arbitrator;

37.2.3 the Referee shall decide the matter submitted to him or her and the procedure to be followed including, but not limited to, the questions of the holding of a hearing or a decision on the basis of written documents, the representation of parties at any hearing, and of the costs of such proceedings, in such manner and on such basis as he or she in his or her sole discretion considers to be fair, just and equitable under the circumstances then prevailing, subject to the proviso that both parties shall be entitled to an equal opportunity for the submission of such written and/or oral representations as the Referee may, in his or her discretion, determine;

37.2.4 accordingly, neither the Arbitration Act, any other Act of Parliament or Law nor the rules of law, custom and practice governing hearings, evidence or procedure need be observed or taken into account by him or her, but it is specifically recorded that the Agreement and its interpretation shall be subject to the Laws of the Republic of South Africa;

37.2.5 both parties shall be bound to continue with such proceedings and, insofar as may be necessary, irrevocably consent thereto including, but not limited to, the continuation of such proceedings should either party unilaterally withdraw there from;

37.2.6 the decision of the Referee shall be final and binding on both parties, and may be made an Order of any Court selected by either party, for which purpose the other party consents to its jurisdiction.

37.3 The Referee shall be:

37.3.1 if the issue is primarily a legal matter or about the manner in which the dispute resolution process should be initiated and continued up to the appointment of the Referee, a practicing Attorney – or Senior Advocate, in both cases of at least 15 (fifteen) years standing;

37.3.2 if the issue is primarily an accounting matter or the quantum of any damages, and the question of whether or not damages were suffered at all arising out of a breach of this agreement, a practicing Chartered Accountant of at least 15 (fifteen) years standing;

37.3.3 if the issue is primarily a technical matter an appropriately qualified and skilled person of stature in the applicable technical area and who is totally independent from the parties and who is in no way whatsoever involved with or connected with the Member, or the Association;

37.4 This clause 37 is severable from the other provisions of the Governing Directives and shall remain in full force and effect, notwithstanding the termination of any of the Governing Directives.

37.5 The declaration of a dispute in terms of this Clause 37 shall not relieve the parties from their obligation to continue fulfilling the terms of the Governing Directives.

37.6 The Governing Directives and the resolution of disputes, as provided for herein, shall in their entirety be regulated by the laws of the Republic of South Africa.

7

Section Number	Existing	New
2	Definitions – common property	Updated to reflect all the correct erf numbers
	Definitions	Various legislative references updated to reflect latest Acts. CSOS, LUPO and LUPA Act references added
	Definitions	Penalty levies deleted, no longer applicable as all houses have now been built
4.7.3	Transfer of property	Section deleted upon receiving Counsel opinion
6.1	Board of Trustees	Number of Trustees changed from 7 to 5 maximum
6.2	Board of Trustees	Addition of spouses to be eligible as a Trustee – voted at AGM 2016
6.3	Board of Trustees	Maximum number of Trustees together with co-opted members changed to 6
12.4	General Meetings	Number of members to call a Special General Meeting changed to 10
21	Resolutions by Members	Section added
37	Dispute Resolution	Now section 38 Re-written to streamline and CSOS Act added

LA FERME CHANTELLE HOMEOWNERS ASSOCIATION

MINUTES OF THE SPECIAL GENERAL MEETING OF ALL MEMBERS HELD ON
WEDNESDAY, 11TH APRIL 2018 AT RICKETY BRIDGE, FRANSCHHOEK AT 18:00.

PRESENT

Owners

(In house number order)

Mr Stewardson – House 3
Mr R Lawrence – House 4
Mr & Mrs Phillips – House 9
Mr & Mrs M Van Rooyen – House 10
Mr T Lötter – House 11
Mrs V Harrison – House 12
Mr J Swan & Ms L Wood – House 13
Mr Wainwright – House 17
Mr P Kempton-Jones – House 22
Mr & Mrs W Morris – House 23
Mr Newman – House 28

Proxies

Mr Crannigan i.f.o. T Lotter
Heather's Trust i.f.o T Lotter
Bowman Properties Limited i.f.o T Lotter
Coconut Palm Properties i.f.o. T Lotter
Cadman & Bowker i.f.o Swan & Wood
Mr D Needham i.f.o. M Wainwright
Mrs DJ van Niekerk i.f.o M Wainwright
De La Rey H Family Trust i.f.o. M van Rooyen
Mr & Mrs Drew i.f.o W Morris
The Chantelle Collection i.f.o. M Wainwright
Mr A Berger i.f.o. P Kempton-Jones
Mrs LF Truswell i.f.o. S Truswell
Mr C Lawrenson i.f.o. T Lotter
Mr R Kilsby i.f.o T Lotter

Managing Agents

Ms T Jordaan (Representing JPS Trust cc)
Ms A Theron (Representing JPS Trust cc).

1. Opening/Welcome

The Chairman, Mr Theo Lotter, welcomed all owners to the meeting.

2. Signing of attendance register and verification of contact details; apologies and consideration of proxies

Mr. Lotter confirmed that all members present in person and/or by proxy had duly signed the attendance register and all apologies and proxies were duly noted and accepted.

3. Constitution of meeting

Mr. Lotter confirmed that as a quorum was present the meeting was declared duly constituted.

4. Table draft constitution marked LFC Constitution – April 2018

On the proposal of R Lawrence and seconded by J Swan it was unanimously approved and resolved that the current Constitution be amended as per the revised Constitution and that the revised Constitution is duly adopted and in force as the Constitution of La Ferme Chantelle Home Owners Association henceforth.

If any changes are to be made to the document, to comply with municipal or other requirements, it was agreed that the changes can be circulated to all members via a round robin e-mail for approval and will be ratified at the next AGM.

5. Closure

There being no further business the meeting terminated at 18:35.

CONFIRMED

SIGNED:.....

DATE:.....

