



## **High Riding Estate Home Owners' Association**

**P O Box 3069  
Somerset West  
7129**

### **HIGH RIDING CONSTITUTION DATED 13 FEBRUARY 2020 as updated on 29 OCTOBER 2020**

#### **1. NAME**

The name of the Association is:

HIGH RIDING ESTATE HOME OWNERS' ASSOCIATION

#### **2. STATUS OF THE ASSOCIATION**

The Association shall be an Association:

- 2.1. with legal personality, capable of suing and being sued in its own name; and
- 2.2. none of whose Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the Executive Committee in terms hereof; and
- 2.3. not for profit, but for the collective benefit and interest of its Members as owners of immovable property situated in the Development; and
- 2.4. with the right to acquire, hold, lease and alienate property, both movable and immovable to or from its Members or any other person; and
- 2.5. with the objective, subject to the provisions of Clause 4, to manage the collective interests common to all its Members, which includes expenditure applicable to the common property of the Development and the collection of levies for which such Members are liable; and
- 2.6. that may not distribute any funds for no return value to any person other than to another association of similar functions and objectives which is also exempt from tax in terms of Section 10(1)(e)(iii) of the Income Tax Act; and
- 2.7. that upon dissolution must distribute its remaining assets to such similar association; and
- 2.8. that shall only invest funds with financial institutions as defined in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990 (as amended from time to time)) and in securities listed on a stock exchange as defined in Section 1 of the Stock Exchange Control Act 1985 (Act No. 1 of 1985 (as amended from time to time)); and
- 2.9. that may not knowingly be party to, or may not knowingly permit or may 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 become payable by any person under the above Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Service; and
- 2.10. that must submit annual returns of income tax with financial statements to the South African Revenue Services or similar relevant government departments; and



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- 2.11. that shall submit any amendments to its Constitution to the Office of the Common Interest Community Schemes Ombudsman and the local Municipal Authority within whose jurisdiction the Development is situated; and
- 2.12. that shall comply with the provisions of the Community Schemes Ombud Service Act, No. 9 of 2011 (as amended from time to time), and Regulations promulgated thereunder.

### **3. INTERPRETATION**

- 3.1. In these presents the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
- 3.2. Area means the entire development comprising farm 1309, Sir Lowry's Pass situated in Sir Lowry's Pass in the City of Cape Town Municipality, Helderberg Administration, of the Western Cape, including any subdivision thereof and Development shall have the corresponding meaning;
- 3.3. Association means HIGH RIDING ESTATE HOMEOWNERS' ASSOCIATION;
- 3.4. Auditors mean the Auditors of the Association;
- 3.5. Bridle Path means: it is recorded that a 5 (five) metre wide Bridle Path servitude is registered in favour of the Association by each Owner of an erf in the Estate, except the Owners of erven 334, 335, 336, 337, 343, 351, 352, 353, and 354 in the Estate.
- 3.6. Business Day means weekdays other than Saturdays, Sundays and Public Holidays;
- 3.7. Chairperson means the Chairperson of the Executive Committee;
- 3.8. Committee Member means a member of the Executive Committee;
- 3.9. Communal Area means the Private Open Space, including all roads, verges, gardens, open areas, all features, improvements and facilities of the Area that are intended for common usage and benefit;
- 3.10. Constitution means this Constitution (including the Estate Regulations and the Design Regulations Manual) of the Association and includes all and any amendments made thereto from time to time;
- 3.11. Design Regulations Manual means the architectural regulations prepared for the Development and attached as Appendix A and made a part hereof, and includes all and any amendments made thereto from time to time, and Design Regulations shall have the corresponding meaning.
- 3.12. Erf or Erven means any erf or erven resulting from any subdivision referred to in clause 3.1.1 and registered in the Cape Town Deeds Registry as such. Undeveloped erf or erven means any vacant erf or erven on which a dwelling house as approved by the HOA has not been built.
- 3.13. Estate shall mean the entire Area or Development, otherwise known as the HIGH RIDING ESTATE, as depicted in the sub-division plan held by the Executive Committee.
- 3.14. Estate Regulations mean such Regulations governing conduct on the Estate, and Design Regulations, as are written into this constitution.



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- 3.15. Estate Rules shall mean such Rules that the Members of the Association may make from time to time in general meeting and such Rules as the Executive Committee may make from time to time in terms of the provisions of this Constitution, regarding the management of the Estate.
- 3.16. Executive Committee means the Executive Committee of the Association collectively from time to time and includes alternate and co-opted Committee Members;
- 3.17. Financial Year means the period commencing on the first day of March in a particular year and terminating on the last day of February of the following year;
- 3.18. In writing means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 3.19. Levy means the levy contribution, including special levies, due to the Association by an Owner in terms of this Constitution;
- 3.20. Managing Agent means any person or entity appointed by the Association as an independent contractor to undertake any of the administrative and management functions of the Association;
- 3.21. Member means every owner of an erf in the Area, as evidenced by registration in the Cape Town Deeds Registry;
- 3.22. Month means calendar month;
- 3.23. Municipality means the City of Cape Town Municipality or its successors in title from time to time succeeding to its present statutory responsibilities;
- 3.24. Office means the registered office of the Association;
- 3.25. Owner means the registered owner of an erf in the Area, as evidenced by registration in the Cape Town Deeds Registry.
- 3.26. Scrutiny Architect means a registered Architect, not a member of the Association and not residing within the Development, appointed to approve architectural and design plans in the Development using the Design Regulations Manual;
- 3.27. Unit means an erf together with a dwelling, outbuilding(s), garden, driveway and all improvements of a permanent nature, if any.
- 3.28. The Works shall mean civil engineering services including the roads, security fences, gate house, bridle paths, water reticulation, and all related services and amenities situated on the communal property.
- 3.29. The clause headings are for convenience and shall be disregarded in construing this Constitution.
- 3.30. Unless the context clearly indicates contrary intention:
  - 3.30.1. the singular shall include the plural and vice-versa; and
  - 3.30.2. a reference to any one gender shall include the other genders; and
  - 3.30.3. reference to natural persons shall include legal persons and vice-versa.



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- 3.31. Appendices to this Constitution shall be deemed to be incorporated in, and form part of, this Constitution.
- 3.32. In the event of a conflict between the provisions of the Constitution and the provisions of the Design Regulations Manual or the Estate Regulations, the provisions of the Constitution shall take precedence.

#### 4. OBJECTS

High Riding Estate is an agricultural development where privacy, open spaces, and the right of way of animals, horses and especially children, are respected. The primary objective is to serve the Members, including the equestrian population, and includes the blending of the development with the environment and preserving its character as aforesaid, and protecting Members' rights to a peaceful rural residential atmosphere.

- 4.1. The associated objectives of the Association are to:
  - 4.1.1. promote and enforce standards, not the least of which should be a congenial atmosphere in the Area, in such a way that Members may derive the maximum collective benefit therefrom;
  - 4.1.2. promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Area, in order to achieve harmonious development thereof and ensure minimal impact on the natural environment;
  - 4.1.3. monitor and control the planting of locally indigenous trees and shrubs on the Development and to liaise with the relevant Nature Conservation Authorities in regard to the control and removal of alien plants;
  - 4.1.4. administer, manage and maintain all common areas, services, facilities, installations and other assets belonging to the Association or falling under its control;
  - 4.1.5. maintain and repair the works in the Area;
  - 4.1.6. control and enhance the security in the Estate;
  - 4.1.7. control and maintain the Bridle Paths and equestrian park, if established;
  - 4.1.8. promote advancement and protection of the communal interests of the members generally;
  - 4.1.9. establish a fund for expenses of the Association, including provision for future expenses and contingencies;
  - 4.1.10. collect for the purposes of such fund, monetary contributions from the Members by way of levies;
  - 4.1.11. control the transfer of erven in the Area and ensure compliance with the provisions of this Constitution and any Estate Regulation or Rule promulgated hereunder;



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- 4.1.12. ensure that all applicable services are supplied to the Area and the erven within; and
- 4.1.13. monitor the quality of the groundwater by means of expert opinion and to regularly report thereon to the Department of Water Affairs and Forestry;

and the Association shall have all such powers as are necessary to enable it to achieve such purposes and objectives.

### 5. MEMBERSHIP

The Members of the Association shall consist of every registered owner of an erf in the Area, evidenced by registered ownership in the Deeds Registry in Cape Town of one or more erven in the Area. Membership shall be automatic and compulsory and Members shall be obliged to comply with the provisions of this Constitution. No Member may resign, or cede or assign his Membership to another, without also alienating his erf to such person simultaneously.

- 5.1. Where any owner is more than one person, all the registered owners of an erf shall be deemed jointly and severally, in solidum, to be one Member of the Association, and such joint owners accept liability, jointly and severally, in solidum, for all obligations in terms of this Constitution.
- 5.2. Where any person is the registered owner of more than one erf, such person shall be regarded as a Member and shall have the rights and obligations of a Member in respect of each individual erf registered in such person's name.
- 5.3. A Member shall not be entitled to alienate or transfer an erf without the written consent of the Executive Committee, which consent shall not be unreasonably withheld, provided that:
  - 5.3.1. all levies or other moneys due in respect of such erf have been paid or secured to their satisfaction; and
  - 5.3.2. there has been substantial compliance with the provisions of this Constitution, the Design Regulations Manual and the Estate Regulations and Rules.
- 5.4. The rights and obligations of a member shall not be transferable and every member shall:
  - 5.4.1. be entitled to enjoy the Common Area including the road access to all erven;
  - 5.4.2. to the best of his ability further the objectives and interests of the Association;
  - 5.4.3. comply with the provisions of the Constitution and the Design Regulations Manual and observe all Estate Rules made by the Association or the Executive Committee;
  - 5.4.4. be jointly liable with all the members for all expenditure incurred in connection with the Association insofar as third parties are concerned;

provided that nothing contained in this Constitution shall prevent a member from ceding his rights in terms of this Constitution as security to the Mortgagee of that member's erf.

- 5.5. Each Member of the Association and his successors in title shall be entitled to use the Bridle Path at all reasonable times and instances and in such a manner so as to cause the Owners of the affected erven the least possible inconvenience.



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- 5.6. No Member ceasing to be a Member of the Association for any reason shall, nor shall any such Member's shareholders, trust beneficiaries, executor, curator, or liquidator, 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 arrear levies or other sums due by him to the Association at the time of his so ceasing to be a Member.
- 5.7. Erf 355 will be transferred to the Association, which erf constitutes the access road to all erven. The Association shall maintain the road, and shall at all times allow access over the said erf to all Members.
- 5.8. Erf 410 will be transferred to the Association. Erf 355 joins and gives access to Erf 410 at the point where it meets the south-east corner of plot 87 (Erf 375). From this point onwards Erf 410 constitutes the access road to all erven on the western side of the wetland. Such area (Erf 410) shall be part of the Communal Area and the Association shall maintain the road, and shall at all times allow access over the said erf to all Members.
- 5.9. Erf 338, the area containing the dam, will be transferred to the Association, as will Erf 330, the wetland below the dam. These erven shall constitute part of the Communal Area and will be maintained by the Association.

### **6. EXECUTIVE COMMITTEE**

- 6.1. The affairs of the Association shall be managed and controlled by an Executive Committee, consisting of 5 (five) Members.
- 6.2. A Committee Member must be a natural person, whether as owner (single or joint) of an erf in his personal name or one of the joint owners of an erf, the registered owner of which is a company, close corporation, trust or other legal entity.
- 6.3. No owner may be appointed as a Committee Member if he is in arrears with his levy or other payments. Should a Committee Member in office become in arrears with his levy or other payments for longer than 90 (ninety) days, he shall be deemed to automatically have been removed from office and the Executive Committee must appoint a new Committee Member in his place and stead within 30 (thirty) days from date of his removal from office, which replacement Committee Member shall serve in such capacity until conclusion of the next general meeting.
- 6.4. Not later than 5 (five) business days before the date on which the annual general meeting is to take place, Members must furnish their written nominations for Committee Members to the Executive Committee or Managing Agent, if appointed. A nomination by a Member shall be seconded by another Member and shall be duly endorsed by the nominee. In the event of less than 5 (five) seconded nominations being submitted, nominations from the floor will be invited during the annual general meeting. If no nominations are proposed and accepted at the annual general meeting, the meeting shall then be adjourned and the existing executive committee shall continue to manage the affairs of the Estate, whilst organizing a continuation of the adjourned meeting as soon as nominations are received.



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- 6.5. At the annual general meeting, the Members of the Executive Committee, shall, after proposal and seconding, be elected by majority vote of the Members present in person or by proxy, such proxy to be appointed in accordance with clauses 17.1 – 17.3 below. In the event of less than 5 (five) Members being elected to the Executive Committee, those elected will be required to co-opt ordinary Members of the Association in accordance with clauses 6.7 and 7.3, to make up the required total of 5 (five) on the Executive Committee. The said co-option(s) shall be decided upon during the new Executive Committee's first meeting, in accordance with clause 6.7.
- 6.6. A Committee Member shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution, and be deemed to have agreed to uphold the Constitution in all decisions.
- 6.7. Within 7 (seven) days of the holding of an annual general meeting, the Executive Committee must meet and must elect from their own ranks a Chairperson, a Vice Chairperson, Treasurer, and a Secretary, who shall hold their respective offices until the annual general meeting held next after their said appointment. No one Committee Member may 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 Executive Committee must immediately meet to appoint one of their number as a replacement in such office. Should the number of Committee Members fall below the minimum number of Committee Members, the Executive Committee must co-opt and appoint an ordinary Member of the Association as Committee Member to make up the aforementioned minimum, as stipulated in clause 7.3.
- 6.8. Save as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Executive Committee, 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 Executive Committee or by the Members, and shall 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.
- 6.9. 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. The Vice Chairperson and Secretary shall perform such other duties as may from time to time be assigned to them by the Chairperson or the Executive Committee.
- 6.10. The Treasurer shall manage the financial records for the Association including the collection, deposit and expending of funds for the Association in line with the approved Budget and any resolutions of the Executive Committee, and shall prepare the year-end financial reports.
- 6.11. The Committee Members 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 Committee Members or office bearers, as the case may be, but limited to the agreed budget, if any, for the expense, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.



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- 6.12. Save as set forth in clause 6.13 below, each Committee Member shall continue to hold office until the end of the annual general meeting next following his said appointment, at which meeting each Committee Member shall be deemed to have retired from office as such, but will be eligible for re-election to the Executive Committee at such meeting, subject to clauses 6.1, 6.2 and 6.3 above.
- 6.13. In addition to Clause 6.12 above, a Committee Member shall be deemed to have vacated his office as such upon:
- 6.13.1. his Estate being sequestered, whether provisionally or finally, or his surrendering his Estate;
  - 6.13.2. his making any arrangement or compromise with his creditors leading to his insolvency;
  - 6.13.3. his conviction for any offence involving dishonesty;
  - 6.13.4. his becoming of unsound mind or being found lunatic;
  - 6.13.5. receipt by the Executive Committee of a written notice of his resignation;
  - 6.13.6. his death;
  - 6.13.7. his ceasing to be a member of the Association;
  - 6.13.8. his failure, as judged by the rest of the Executive Committee in 2 (two) consecutive meetings, to satisfactorily discharge his obligations in respect of his given portfolio;
  - 6.13.9. his being deliberately obstructive to the general operation of the Executive Committee;
  - 6.13.10. his being absent from three (3) consecutive Executive Committee meetings without leave of absence;
- provided that anything done and recorded in the Minute Book of the Executive Committee prior to his ceasing to be a Committee Member, shall remain valid.
- 6.14. In the event of a vacancy occurring on the Executive Committee prior to the next Annual General Meeting the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Executive Committee. Any resolution made or function executed by the remainder of the Executive Committee shall be valid.

## **7. FUNCTIONS & POWERS OF THE EXECUTIVE COMMITTEE**

- 7.1. Subject to the express provisions of this Constitution, the Executive Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this Constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such Estate Rules as may be decided upon by the Association in general meeting from time to time, provided that no Rule made by the Association in general meeting shall





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invalidate any prior act of the Executive Committee which would have been valid if such Rule had not been made

- 7.2. The Executive Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time provided that this is not at variance with any provision of this Constitution or any decision or resolution taken at a general meeting of the Association.
- 7.3. The Executive Committee shall have the right to co-opt onto the Executive Committee any Member or Members chosen by it, provided that nominees not elected at the immediate prior annual general meeting are given first right of refusal, that volunteers offering to be co-opted have been sought via an invitation to all members and any who have put their names forward have been given due consideration, and that any co-option decided upon is ratified at the next general meeting. A co-opted Committee Member shall enjoy all the rights and be subject to all the obligations of the Committee Members.
- 7.4. The Executive Committee may, should it so decide, investigate any suspected or alleged breach of this Constitution or the Estate Rules, by any Member or Committee Member and in such reasonable manner as it shall decide from time to time.
- 7.5. If twenty-five percent (25%) or more of all the Members object to a decision in a written petition to that effect, this shall be regarded as 'significant opposition' and the Executive Committee shall be obliged to stay the decision in question. It may then hold a postal ballot or a general meeting, as it deems fit, to determine the decision. For this purpose, an auditable on-line survey or an auditable electronic ballot will be considered the equivalent of a postal ballot.
- 7.6. The Executive Committee may make and apply Estate Rules not inconsistent with this Constitution, or apply Estate Rules made by the Association in general meeting:
  - 7.6.1. as to disputes generally;
  - 7.6.2. for the furtherance and promotion of any of the objects of the Association;
  - 7.6.3. for the better management of the affairs of the Association;
  - 7.6.4. for the advancement of the interests of members;
  - 7.6.5. for the conduct of Executive Committee meetings and general meetings;
  - 7.6.6. to assist it in administering and governing its activities generally,
  - 7.6.7. as to the conduct of owners and occupiers in furtherance of harmonious community living;and shall be entitled to cancel, vary or modify any of the same from time to time.
- 7.7. Without in any way limiting the powers granted, the duties and powers of the Executive Committee shall further include:
  - 7.7.1. the performance of such acts as are necessary to accomplish the objects expressed or implied herein;



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- 7.7.2. the determination of what constitutes appropriate standards for conduct, living, maintenance, repairs, additions to, and improvements in respect of Units with reference to the Design Regulations Manual, and the objects referred to in clause 4;
- 7.7.3. the making, amendment, substitution and repeal of Estate Rules, which shall be binding upon all owners and occupiers of units as if they form part of this constitution, provided that these have been passed at a general meeting of Members;
- 7.7.4. the formation of sub-committees and the delegation of such powers to such sub-committees as may be deemed necessary;
- 7.7.5. the investment and re-investment of money of the Association not immediately required in such manner as approved by members in a general meeting;
- 7.7.6. subject to the Association's procurement policy:
  - 7.7.6.1. the operation of banking and savings accounts with all powers required by such operations;
  - 7.7.6.2. the making of, entering into, carrying out and implementation of contracts or agreements with third parties for and on behalf of the Association, for the supply of works, services, equipment or property to the Development, and in general any agreement necessary to achieve the objects of the Association or to further the interests of the Association;
  - 7.7.6.3. the employment on behalf of the Association of agents, servants or any other persons and the payment of such persons;
  - 7.7.6.4. the appointment of a qualified Scrutiny Architect to assist the Executive Committee in exercising its powers in terms of this Constitution;
  - 7.7.6.5. the assessment of and imposition of a Scrutiny Fee payable in order to implement clauses 18.2 and 18.3;
  - 7.7.6.6. the appointment of an auditor to do an annual audit of the Association's financial records;
  - 7.7.6.7. apply for licenses and other rights enabling the Association to deal with its property in any lawful manner;
  - 7.7.6.8. to purchase, hire, or otherwise acquire movable property of a maximum value to be determined at each annual general meeting, and to insure, sell, let, or otherwise dispose of movable property; and
  - 7.7.6.9. provided such actions have been approved during a general meeting, to purchase or otherwise acquire, take transfer of, mortgage, sell, give transfer of, or hire or let, immovable property, including land, and to register servitudes and/or rights of use and occupation in respect thereof, and to make improvements to immovable property, and to remove improvements;



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- 7.7.6.10. to enter into agreements with owners and occupiers of Units for the provision of services and/or in respect of the use of the communal area and the works; and
  - 7.7.6.11. if so resolved by the Executive Committee, to appoint an Executive Committee Member or a Member of the Association to perform work on behalf of the Association in a professional capacity at an agreed fee.
  - 7.7.7. performances of such acts as are required to ensure the security of persons and property in the Area;
  - 7.7.8. the institution and defending of actions or other legal procedures in the name of the Association and the appointment of legal representatives for such purpose;
  - 7.7.9. the imposition of levies, ordinary and special, on Members in accordance with the provisions of this Constitution, as stated in clauses 7.9.1 and 7.9.2 below;
  - 7.7.10. the keeping of proper administration and accounting records;
  - 7.7.11. the taking of steps in all matters of common interest in respect of the Association, and without detracting from the generality thereof, such as storm water, common sewerage, electricity supply, fences and entrance, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable;
  - 7.7.12. to properly maintain the Communal Area and all improvements, amenities, facilities, works and services in respect of the Communal Area in a state of good and serviceable repair; and
  - 7.7.13. to manage the establishment in the Communal Area of such improvements, facilities, works, services, lawns or gardens as may be required; and
  - 7.7.14. to comply with any notice or order by any competent authority requiring any repairs to or works in respect of the communal area and/or services and to ensure compliance with any law relating to the Communal Area and/or services;
  - 7.7.15. to recover by legal process any levies or moneys due by Members or former Members to the Association, in accordance with clauses 9.13 and 9.14 below, payment of such levies to be in accordance with clauses 9.3 – 9.17 below;
- and to do all things necessary or required to attain the objects of the Association, and to further and promote the interests of Members and to implement and enforce the powers conferred on the Association in terms of this Constitution, the Design Regulations Manual or the Estate Rules.
- 7.8. The Executive Committee shall exercise the powers and perform the functions as set out in this Constitution, the Design Regulations Manual or the Estate Rules, and such ancillary functions as may be necessary in pursuit of the objects of the Association.
  - 7.9. The functions of the Executive Committee shall include, to:
    - 7.9.1. establish a levy fund of the Association sufficient in the opinion of the Association to meet the expenditure of the Association;



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- 7.9.2. raise and determine the levies payable by the Members as contributions to the levy fund;
  - 7.9.3. insure the improvements, facilities, works and services in respect of the communal area against such risks as the Association may determine and to take up public liability insurance in respect of the communal area, and to procure a fidelity guarantee, in accordance with clause 33.1 below;
  - 7.9.4. insure the payment of levies due by the members to the Association, in accordance with clause 33.2 below;
  - 7.9.5. pay the premiums on any policy of insurance effected by it.
- 7.10. Each Executive Committee Member shall stand in a fiduciary relationship to the Association. An Executive Committee Member shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the Association, by virtue of any interest he may have therein.
- 7.11. No agreement concluded on behalf of the Association shall be valid and binding unless it is signed by an Executive Committee Member, specifically appointed as authorised signatory in terms of a resolution of the Executive Committee.

### **8. PROCEEDINGS OF THE EXECUTIVE COMMITTEE**

- 8.1. The Executive Committee shall meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution and Estate Rules which may be issued in this regard.
- 8.2. Meetings of the Executive Committee must be held monthly, provided that if all the Committee Members shall in writing have waived the above requirement in respect of a particular month, then no meeting of the Executive Committee need be held for such month, provided that meetings of the Executive Committee shall be held at least once every quarter.
- 8.3. The quorum necessary for the holding of any meeting of the Executive Committee shall be 60% (sixty per cent) of the total number of Committee Members in office, present personally.
- 8.4. Any resolution of the Executive Committee must be carried by a simple majority of all votes cast, each Committee Member present having one vote. In the event of an equality of votes, the Chairperson of the meeting shall have a casting as well as a deliberative vote.
- 8.5. The Chairperson shall preside as such at all meetings of the Executive Committee, provided that should at any meeting of the Executive Committee the Chairperson not be present within 10 (ten) minutes after the time appointed for the holding thereof, then, provided the meeting is quorate, the vice Chairperson shall act as Chairperson at such meeting, provided further that should the vice Chairperson also not be present within 10 (ten) minutes of the time appointed for the holding of such meeting, then, provided the meeting is quorate, those present of the Committee Members 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.



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- 8.6. The Executive Committee must ensure that minutes are taken of every Executive Committee meeting, although not necessarily word for word, which minutes must be reduced to writing without undue delay after the meeting has closed. The minutes must, after being approved by the Executive Committee, be certified as correct by the chairperson of the meeting. The Executive Committee must keep the minutes of Executive Committee meetings for not less than 15 (fifteen) years. The Executive Committee must on the written application of any Member and against payment of the fees or costs stipulated in the Estate Rules, make minutes of their proceedings available for inspection by or on behalf of any Owner, during reasonable hours on business days and/or furnish them with the copies as may be required.
- 8.7. All competent resolutions recorded in the Executive Committee Minute Book 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 Executive Committee shall be of any force or effect, or shall be binding upon the Members or any of the Committee Members, unless such resolution is competent within the powers of the Executive Committee.
- 8.8. Save as otherwise provided in this Constitution, the proceedings at any Executive Committee meeting shall be conducted in such reasonable manner and form, as the Chairperson of the meeting shall decide.
- 8.9. A resolution signed by all the Executive Committee Members shall be valid in all respects as if it had been duly passed at a meeting of the Executive Committee duly convened subject to the requirements of Clauses 8.3 and 8.4 above.

### **9. THE BUDGET AND LEVIES**

- 9.1. The Executive Committee must, within 1(one) month prior to the end of each financial year, prepare a Budget for the following financial year for operational and capital expenses relating to the Communal Areas and all assets, amenities and services of the Association and all administrative and other expenses for which the Association is responsible and any amounts proposed to be held in reserve in respect of future maintenance, repairs, contingencies or capital expenditure.
- 9.2. The budget for the following financial year must be approved by Members, with or without amendments, at the Annual General Meeting or at a Special General Meeting called for that purpose.
- 9.3. Within 7 (seven) days after approval of the Budget, the Executive Committee must, by making a resolution to such effect, apportion the Budget to Members as annual levies. Such apportionment shall be made to Members equally in respect of every erf in the Development. Such apportionment shall be final and binding on all Members of the Association.
- 9.4. Liability for payment of the above levies to the Association shall vest in the individual Members.
- 9.5. The levies so determined shall be due and payable immediately upon members being notified in writing of the Executive Committee's resolution referred to in 9.3 above, (calculated from the first day of the month subsequent to the day of approval of the Budget) but may, without accrual of interest, be paid in equal monthly instalments over a period of 12 (twelve) months.



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- 9.6. All levies must be paid, in advance, on the first day of each month and every Member must arrange for payment to the Association.
- 9.7. In the event of any Member's levies falling in arrears for longer than 2 (two) months, such Member's levies for the remainder of the financial year shall immediately become due and claimable, subject to any relief which the Executive Committee may grant in writing.
- 9.8. Upon taking transfer of an erf, the new owner thereof shall become liable for payment of levies for the remainder of such financial year, as from the month of registration of transfer. In respect of the month during which transfer takes place, a pro rata apportionment shall be made.
- 9.9. The Executive Committee is limited to expenditure in accordance with the budget as approved by the Members at a general meeting or a special general meeting called for that purpose.
- 9.10. The Executive Committee may from time to time, when necessary, impose special levies upon the owners in respect of all expenses which have not been included in the Budget, and such levies may be made payable in one instalment or in such instalments as determined by the Executive Committee, provided that such special levies and instalments are approved at a special general meeting of Members. Such levies become due and payable on the date of notification thereof to the Members and shall be apportioned to Members equally in respect of every erf in the Development.
- 9.11. Where special levies have been approved for specific expenses, these levies must be expended as approved and may not be reallocated to other expenses, without the permission of the Members of the Association.
- 9.12. Where any erf is owned by more than one person, all the registered owners of that erf shall be jointly and severally liable, in solidum, for the due performance of any obligation to the Association.
- 9.13. If an owner fails to pay its levies in full to the Association on due date, the Association may institute an action for the recovery thereof in any competent court.
- 9.14. A Member shall be liable for and shall pay all costs, including all legal costs on the scale as between attorney and own client, together with collection commission, advocates' fees, administrative costs and all other expenses and charges, incurred by the Association in obtaining recovery of arrear levies, penalties, damage or other amounts due to the Association, or in enforcing compliance with the provisions of this Constitution. Such costs and expenses may be added to the owner's levy account and recovered in the same manner as applies to arrear levies, together with interest at the rate applicable to levies.
- 9.15. Interest may be charged on any amounts in arrears at 3% above the prime interest rate as determined by the Association's bankers from time to time.
- 9.16. All monies received from a Member towards his or her levy account, shall be apportioned firstly towards interest, then legal and other administrative costs, and then levies or other service charges.
- 9.17. After the end of any financial year, owners shall remain liable for payment of interim levies at the rate applicable before the end of such financial year, until new levies have been determined.



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- 9.18. Notwithstanding the general principles applicable to the apportionment of the levies as stipulated in clause 9.3, the Executive Committee shall be entitled to recover a contribution from a Member towards:
- 9.18.1. water expenditure, in accordance with his water meter reading; and
  - 9.18.2. other services in accordance with the charges determined and apportioned by the Executive Committee.

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

- 10.1. The Association shall within 4 (four) months of the end of each financial year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings held during that financial year, and shall specify the meeting as such in the notices, in terms of clause 11 below convening it.
- 10.2. Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Executive Committee shall decide from time to time.
- 10.3. All general meetings other than Annual General Meetings shall be called Special General Meetings.
- 10.4. The Executive Committee, may, whenever they deem it fit, convene a Special General Meeting, and shall convene such a meeting upon the requisition in writing of 7 (seven) Members.

### **11. NOTICE OF MEETINGS**

- 11.1. An annual general meeting shall be called by not less than 21 (twenty-one) days' notice to all Executive Committee Members and all Members, and a special general meeting by not less than 14 (fourteen) days' notice to all Executive Committee Members and all Members. 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 General Meetings, the business to be attended, in addition to any other requirements contained in this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Executive Committee, to such persons as are, under this Constitution, entitled to receive such notices from the Association.
- 11.2. Notice of general meetings shall be given in writing, by posting thereof to each Member at his domicilium citandi et executandi: Provided that it shall be competent to give any notice to a Member by telefax or e-mail, where he has advised the Executive Committee in writing of his telefax number or e-mail address.
- 11.3. The accidental omission to give notice of a general meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.



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### **12. VENUE OF MEETINGS**

- 12.1. General Meetings of the Association shall take place at such venue as shall be determined by the Executive Committee from time to time, provided that it is within 10 (ten) kilometres of the Development.

### **13. QUORUM**

- 13.1. 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 20% (twenty percent) of Members owning erven in the development, present personally or by proxy, and entitled to vote, any such proxy to be appointed in accordance with clause 17.1 – 17.3 below.
- 13.2. If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting 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 and entitled to vote, shall be a quorum.

### **14. AGENDA AT ANNUAL GENERAL MEETINGS**

- 14.1. In addition to any other matters required by this Constitution to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
  - 14.1.1. consideration of the Chairperson's report;
  - 14.1.2. consideration of the Treasurer's report, including but not limited to;
    - 14.1.2.1. consideration and approval of the audited financial statements of the Association for the last financial year of the Association, preceding the date of such meeting;
    - 14.1.2.2. consideration and approval of the Auditor's Report;
    - 14.1.2.3. consideration and approval of the Insurance of the Association;
    - 14.1.2.4. consideration and approval of the Investments of the Association;
    - 14.1.2.5. consideration and approval of the proposed amount, if any, to cover the costs of any actions which the Executive Committee may wish to pursue in regard to clause 7.7.6.9 above;
    - 14.1.2.6. the ratification of the Operating Budget, Capital Budget, and a ten-year capital expenditure plan as approved at a prior general meeting called for that purpose;
    - 14.1.2.7. the ten-year plan to show all proposed capital expenditure for the ten years, as well as cash flow and reserves for each year; and
    - 14.1.2.8. the consideration and confirmation of the system of fines and penalties to be valid for the ensuing year;





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- 14.1.3. appointment of Managing Agents;
- 14.1.4. election of Committee Members;
- 14.1.5. consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolution;
- 14.1.6. appointment of Auditors and consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

### **15. PROCEDURE AT GENERAL MEETINGS**

- 15.1. The Chairperson shall preside as such at all general meetings, provided that should he not be present within ten 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 ten minutes of the time appointed for the holding of such meeting, then the Members present at such meeting and 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.
- 15.2. 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 of the business to be transacted at an adjourned meeting.
- 15.3. Except as otherwise set forth in this Constitution, all general meetings shall be conducted in accordance with generally accepted practice.

### **16. VOTING AT GENERAL MEETINGS**

- 16.1. Representation and voting by proxy in general meetings shall be permitted. Any proxy must be appointed in accordance with the provisions of clause 17 below.
- 16.2. At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each erf owned by him, provided that if an erf is registered in more than one person's name, then they shall jointly have one vote.
- 16.3. Save as expressly provided for in this Constitution, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his Membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 16.4. 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.



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- 16.5. Voting on the election of a Chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on show of hands by the Members present in person or by proxy, and entitled to vote.
- 16.6. Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 16.7. An ordinary resolution or the amendment of an ordinary resolution shall be carried on a simple majority of all 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 Chairperson of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 16.8. 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.
- 16.9. The Executive Committee shall ensure that minutes are taken of every general meeting of the Association, which minutes shall be reduced to writing without undue delay after the general meeting has closed and shall after being approved by the Members at the following general meeting, be certified as correct by the chairperson of the meeting. The Executive Committee shall keep all minutes of general meetings of the Association for at least 15 (fifteen) years.
- 16.10. In accordance with clause 21.2 below, on the written application of any Member and against payment of reasonable fees or costs, the Executive Committee shall make the minutes of general meetings of the Association available for inspection by such applicant, during reasonable hours on business days and/or furnish them with the copies as may be required.
- 16.11. All resolutions recorded in the minutes of general meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Association shall be of any force or effect, or shall be binding upon the Members or any of the Executive Committee, unless such resolution is competent within the powers of the Association.



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### **17. PROXIES**

- 17.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where the Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, and where a Member is a company, the same may be signed by the Chairperson of the Board of Directors of the Company or by its Secretary, and where a Member is an Association of persons, the same may be signed by the Secretary thereof.
- 17.2. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified true copy thereof shall be deposited with the Secretary or, if the Secretary is not present, then the Chairperson, 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
- 17.3. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or the revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Secretary or, if the Secretary is not present, then the Chairperson, at least one hour before the time fixed for the holding of the meeting.

### **18. AESTHETIC AND ENVIRONMENTAL CONTROLS**

- 18.1. Building Operations must be completed within one year of commencing construction, unless otherwise determined and advised by the Scrutiny Architect to the Executive Committee at the time of the scrutiny of the proposed construction plans.
- 18.2. The Executive Committee shall, under the guidance of the Scrutiny Architect, have the power to do such acts and to frame and enforce conditions on Members as are necessary or expedient to accomplish the purposes expressed or implied herein, using the Design Regulations Manual and the Zoning Scheme for Agricultural land (see City of Cape Town Municipal Planning By-Law 2015 (as amended from time to time)), which acts shall include inter alia, but not be limited to:
  - 18.2.1. Any proposed changes to erven must comply with the original subdivision conditions.
  - 18.2.2. together with a Scrutiny Architect appointed for that purpose, the approval of, or refusal of plans, elevations and specifications of all buildings and structures, including plans, elevations and specifications relating to external renovations, alterations or additions and redecorations of any building structure;
    - 18.2.2.1. except that the Executive Committee does not have the right to overrule the opinion of the Scrutiny Architect regarding the approval of, or refusal of, plans, elevations and specifications of buildings and structures, including plans, elevations and specifications relating to external renovations, alterations or additions and redecorations of any building



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- structure; and
- 18.2.2.2. in the event of a dispute arising between the Executive Committee and the Scrutiny Architect, the Association of Residential Communities (ARC) will be called upon to recommend an architect to bring about the resolution of such dispute;
  - 18.2.3. compel Members to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such Member, which power shall include the imposition of penalties for non-compliance with the Estate Rules and stipulations contained herein or arising herefrom and/or the conditions contained in or arising from the Deeds of Sale whereby the erven had originally been sold by the Developers to the First Members of the Association;
  - 18.2.4. ensure that all Members maintain their Unit(s) in a clean and tidy condition and proper state of repair and to implement and control security, vegetation, parking, signage and advertising within the Area.
- 18.3. Members shall submit all building plans, and building plans for external renovations, alterations or additions to the Executive Committee for approval prior to the submission of such plan to the Relevant Authority for approval. Final inspection of the completed dwelling must be made by the Scrutiny Architect before the Member applies for a Municipal Occupational Certificate at Council.
  - 18.4. All charges relating to the Scrutiny Architect are for the account of the Member / Owner and shall be payable in advance prior to the approval of the plans by the Scrutiny Architect and/or the Executive Committee.
  - 18.5. Open fires will not be permitted within the Development unless:
    - 18.5.1. in a demarcated braai area with the necessary facilities and adult supervision;
    - 18.5.2. on a Member's property with the necessary facilities and adult supervision;
    - 18.5.3. or, in the case of burning as a result of clearing properties of alien vegetation with the required permits,
  - 18.6. No Member shall be entitled to dump waste or other material or matter within the Area or on any erf or on the common area and shall be liable for payment of the cost of rectifying the damage or removal of such material or goods.
  - 18.7. No Member shall be allowed to display any advertisement or sign on his erf nor do or suffer to be done on the same anything which in the opinion of the Executive Committee can be noisome, injurious, objectionable or detrimental or a public or a private nuisance or a source of damage or disturbance to any other owner, tenant, occupier of erven, or animal in the Area.
  - 18.8. Every Member shall observe and comply with all laws, ordinances, by-laws and regulations or rules imposed by any statutory or other authority.
  - 18.9. No Member shall be entitled to apply to the City of Cape Town Municipality and/or any other competent authority for:



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- 18.9.1. a relaxation of building lines unless such relaxation has been applied for and approved by the Executive Committee;
- 18.9.2. a deviation from the existing use zoning of any erf within the Area unless such deviation has been applied for and approved by the Executive Committee.

### **19. DENSITY CONTROLS**

- 19.1. An owner shall be entitled to let a portion of her/his property to a tenant or tenants, but sub-letting by such tenants shall be strictly prohibited.
- 19.2. The number of people living on an erf shall be governed by the total number of bedrooms in the dwellings and outbuildings on that erf. The number of people living on the plot shall be no more than twice the total number of bedrooms shown in the approved as-built drawings. However, the total number of people living on any erf shall not be more than 12 (twelve) irrespective of the number of bedrooms in the dwellings and outbuildings unless approved in writing by the Executive Committee.
- 19.3. For the purposes of this constitution, "permanent basis" shall mean for a period longer than 3 (three) consecutive months within any 12 (twelve) month period.
- 19.4. Any others who are accommodated on a plot for any period shorter than three months shall be classified as guests.
- 19.5. A register of all people resident on the estate shall be kept in the guardhouse and updated as and when any changes occur.
- 19.6. All of those living on a plot at any particular time, whether on a permanent basis or as guests must be registered and any changes must be reported to the guard on duty as and when they occur.
- 19.7. The Executive Committee shall exercise control over the number and type of animals kept per erf as well as the conditions in which they are kept. Owners should keep animals in accordance with the applicable zoning regulations, HRE Constitution and rules and any applicable statutory guidelines – for example see City of Cape Town by-laws.

### **20. MANAGING AGENT AND OTHER PROFESSIONAL OFFICERS**

- 20.1. Subject to the Estate's procurement policy, the Executive Committee shall appoint in terms of a written contract, a Managing Agent to control, manage and administer the Development, including the keeping of proper books of account and regular reports against budget, and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Executive Committee notifies the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.



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- 20.2. The Executive Committee shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Executive Committee may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Executive Committee and/or the Association as a result of such cancellation.
- 20.3. Save as specifically provided otherwise in this Constitution, the Executive Committee 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 thought necessary by the Executive Committee and on such terms as the Executive Committee shall decide, subject to any of the provisions of this Constitution.

### **21. BOOKS OF ACCOUNTS, RECORDS AND FINANCIAL STATEMENTS**

- 21.1. The Executive Committee shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association. The Executive Committee shall cause all books of account and records to be retained for a period of 7 (seven) years after completion of the transactions, acts or operations to which they relate.
- 21.2. The Association in general meeting or the Executive Committee, may from time to time make reasonable conditions and Estate Rules as to the time and manner of the inspection by the Members of the accounts and books of the Association, and subject to such conditions and Estate rules, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours. On the written application of a Member and against payment of reasonable fees or costs, the Executive Committee shall furnish such applicant with copies as may be required drawn from the financial statements, books of account and, records.
- 21.3. At each Annual General Meeting the Executive Committee shall lay before the Association, financial statements for the immediately preceding financial year of the Association. Copies of the financial statements and reports shall be attached to the notice convening each Annual General Meeting, as set forth in clause 11 above.
- 21.4. The financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Executive Committee, or as may be requested by the Members.

### **22. AUDIT**

- 22.1. Once at least in respect of every financial year, the accounts of the Association shall be examined and the correctness of the financial statements be ascertained by the Auditors.
- 22.2. The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards in terms of the Auditing Profession Act, No. 26 of 2005 (as amended from time to time).



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### **23. DOMICILIUM AND NOTICES**

- 23.1. The domicilium citandi et executandi of each Member at which all documents and all notices may be delivered, shall be the street address of the Member's erf in the Development. Provided that such Member shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be situate in the Republic of South Africa, and that the change shall only be effective on receipt of written notice thereof by the Association at its domicilium.
- 23.2. All accounts, letters of demand, legal documents, etcetera will be forwarded to a Member's domicilium address, unless otherwise requested by the Member. A Member is thus responsible to ensure that the Association as well as its managing agents (usually responsible for sending of accounts, letters, notices, etc.) are kept informed of any changes to his domicilium address (postal and residential).
- 23.3. It shall be competent to give any notice to a Member by telefax or e-mail where he has advised the Executive Committee in writing of his telefax number or e-mail address.
- 23.4. A notice shall be deemed to have been properly served on the date, 5 (five) days after posting to the Member's domicilium address, or if faxed or e-mailed, on the first business day following on the day of faxing or e-mailing thereof to the Member's elected telefax number or e-mail address.
- 23.5. The Executive Committee shall from time to time determine the address constituting the domicilium citandi et executandi of the Association, subject to the following:
  - 23.5.1. such address shall be the address of the Chairperson or of a Committee Member nominated by the Executive Committee or the address of any duly appointed Managing Agent;
  - 23.5.2. the Executive Committee or its managing agent shall give notice to all Members of any change of such address.

### **24. INDEMNITY**

- 24.1. All Committee Members shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective capacities as Committee Members, including any liabilities bona fide incurred by them when defending any proceedings, civil, criminal or otherwise, in which relief is granted to any claimant by the Court.



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- 24.2. Every Committee Member, every servant, agent and employee of the Association shall be indemnified by the Association against (and it shall be the duty of the Executive Committee to pay out of the funds of the Association) 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 in the case of a Committee Member, his duties as Committee Member.
- 24.3. 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, is in accordance with the Constitution, Design Regulations Manual and Estate Rules, was not due to gross negligence, and due diligence was applied.
- 24.4. A Committee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Committee Members, whether in their capacities as Committee Members or as Chairperson, Treasurer or Secretary, 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 Executive Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortious 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, was not done in good faith, is not in accordance with the Constitution, Design Regulations Manual and Estate Rules, was due to gross negligence, and due diligence was not applied.

## **25. PRIVILEGE IN RESPECT OF DEFAMATION**

- 25.1. Every Member of the association and every Committee Member shall be deemed by virtue of his membership or, as the case may be, his holding office as a Committee Member, to have waived as against every other Member, the Executive Committee, the Chairperson, Treasurer or Secretary, every other Committee Member, all claims and rights of action which such Member or Committee Member might otherwise have had in law arising as a result of any statement, report, complaint or notice of, or concerning such Member or Committee Member, or any reference to such Member or Committee Member, made at any Executive Committee meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or Committee Member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Committee Member, whether such statement be true or false, unless made in bad faith or through gross negligence or unless it constitutes or is akin to harassment of the person.





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### 26. ESTATE REGULATIONS AND RULES

- 26.1. Each Member and all other lessees or occupiers of Erven shall comply with:
  - 26.1.1. the provisions of this Constitution; and
  - 26.1.2. the Estate Regulations and Design Regulations referred to in this Constitution and the Estate Rules made from time to time in terms of Clauses 26.12 and 26.13.
- 26.2. As undeveloped erven pose a threat to owners and residents on the Estate as possible refuges for people illegally on the Estate, as well as being possible fire hazards, it is recorded that owners have previously been notified that all undeveloped properties are required to be developed by 31 December 2018. Developed means the building of a dwelling house in accordance with this constitution. Failure to do so will result in penalties being applied. Details of penalty process set out in New Owners' Penalty Policy, published by the Executive Committee.
- 26.3. Owners of undeveloped erven are required to clear their properties a minimum of 3 (three) times annually, one of those times to be during the months of June or July of each year;
  - 26.3.1. Clearing the property means cutting down and poisoning all Port Jacksons and other alien vegetation as stipulated in the Conservation of Agricultural Resources Act No 43 of 1983 (as amended from time to time) and the National Environmental Management Biodiversity Act (Act 10 of 2004), Alien and Invasive Species Regulations 2014 (as amended from time to time) in accordance with guidelines published in the House Rules from time to time;
  - 26.3.2. Cuttings as a result of clearing may be burnt, subject to legislation and a permit from the City of Cape Town Fire Department, otherwise cuttings must be removed from the cleared property within 2 (two) weeks of the clearing being undertaken.
- 26.4. Owners of developed erven are likewise required to keep their properties clear of alien vegetation in accordance with the stipulations of 26.3.1 and 26.3.2.
- 26.5. No Member, lessee or occupier of an erf shall keep any wild and/or indigenous animal, insect, reptile or bird in a dwelling on his erf or on the Communal Property in the Area, without the approval of the Executive Committee and a relevant permit to do so.
- 26.6. Quad Bikes will not be permitted to be driven in the Development. Quad Bikes may be brought into the Development on a trailer and then removed in the same manner.
- 26.7. No motorized vehicles are permitted to use the Bridle Path, except vehicles used in the course of maintenance work on the Bridle Path or the fence, organised and authorised security patrols, and emergency vehicles in cases of emergency.
- 26.8. Fire Works of any kind may never be discharged in or around the Development due to the high risk factor of veld fires, danger to dwellings and trauma to animals.
- 26.9. No hooting at the access gate to the Development or access gates to individual erven in the Development is permitted
- 26.10. All resident Members must have sufficient SABS approved Fire Extinguishers in their dwellings as determined in terms of the relevant laws and regulations.



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- 26.11. Walking will only be permitted along the roadway or designated pathways, and the use of private land as a general thoroughfare is prohibited.
- 26.12. The Members of the Association may from time to time in general meeting make Estate Rules with regard to any aspect of the Constitution.
- 26.13. Subject to the approval of Members at a general meeting called for that purpose, the Executive Committee may from time to time make Estate Rules governing inter alia:
  - 26.13.1. the Members' rights of use, occupation and enjoyment of the Communal Areas;
  - 26.13.2. the external appearance of and the maintenance of the Communal Areas;
  - 26.13.3. the erection of any buildings and/or structures of any nature whatsoever in the Communal Areas, and the alteration, modification and renovation to such buildings and/or structures, which Regulations may be incorporated in the Design Regulations Manual, if the necessary constitution change is effected;
  - 26.13.4. the use by Members, their households, their guests, clients and lessees of the Communal Areas, including the right to prohibit, restrict and control the Communal Areas as may from time to time be necessary;
- 26.14. Every Member shall observe all laws, ordinances, by-laws and regulations or rules imposed by any statutory or other authority and, without detracting from the generality of the foregoing, shall observe and comply with the provisions of the Cape Provincial Road Traffic Ordinance No 21/1966 as amended, or any ordinance or Act substituted therefor, or amendment thereto, as fully and effectually as though the private road were a public road as defined in terms of Section 1 of the Ordinance.
- 26.15. For purposes of these Estate Regulations and Estate Rules, reference to a Member shall include their households, their guests, visitors, clients, employees, lessees and other occupiers of their Units.

## 27. BREACH

- 27.1. Should any Member:
  - 27.1.1. fail to pay on due date the amount payable by such Member in terms of this Constitution or any Rule made in terms of this Constitution and remain in default for more than 7 (seven) days after written demand; or
  - 27.1.2. commit any other breach of any of the provisions of this Constitution or any Rules made thereunder and fail to commence to remedy that breach within a period of 7 (seven) days after the receipt of written notice to that effect and to complete the remedying of such breach within a reasonable time;

then and in either event, the Executive Committee Members shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Executive Committee Members of the Association or any other Member may have in law, including the right to claim damages:



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- 27.1.3. to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any Rule made thereunder, as the case may be; or
  - 27.1.4. in the case of clause 0 to remedy such breach and immediately recover the total cost incurred by the Executive Committee or the Association in so doing from such Member.
- 27.2. Should the Executive Committee institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any rule made thereunder, then without prejudice to any rights which the Executive Committee Members or the Association or any other Member may have in law, the Executive Committee shall be entitled to recover from such Member all costs, including all legal costs as agreed to with any attorney (to the maximum as prescribed in the Guidelines of the Cape Law Society) and incurred by the Association, tracing fees, collection commission, Advocate's fees, expenses, as well as all other costs and expenses, administrative or otherwise, incurred by the Association in instituting such legal action against a Member.
- 27.3. Without prejudice to any of the rights of the Executive Committee Members or the Association granted under this Constitution, should any Member be in breach in terms of either or both of clauses 0 and 0, the Committee shall be entitled to impose penalties on such Member, the quantum of which penalties must be determined from time to time and approved at a general meeting.

## 28. DISPUTE RESOLUTION

- 28.1. Should any dispute, question or difference arise between Members or between a Member or Members and the Association or the Executive Committee, out of or in regard to:
- 28.1.1. the interpretation of;
  - 28.1.2. the effect of;
  - 28.1.3. their respective rights or obligations under;
  - 28.1.4. breach of (save for non-payment of levies or any other amount due by a member or owner in terms of this Constitution), this Constitution or any of its ancillary documents;
- such dispute shall be resolved by a dispute resolution procedure in the manner set out in this clause.
- 28.2. In respect of any claim arising from non-payment of levies or any other amount due by a Member or owner to the Association in terms of this Constitution, the Association and Executive Committee Members shall continue to enjoy common law rights and shall not be required to proceed to dispute resolution and shall not be precluded from instituting proceedings in any court of competent jurisdiction.



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- 28.3. The dispute resolution referred to in clause 28.1 shall:
- 28.3.1. be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence;
  - 28.3.2. comply with the requirements of the Ombud Service established in terms of the Community Schemes Ombud Service Act, No 9 of 2011 (as amended from time to time); and
  - 28.3.3. commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded.
- 28.4. If the dispute is not resolved to the satisfaction of both parties, either party may refer the matter to the aforementioned Ombud Service for adjudication.
- 28.5. The option given in clause 28.4 above is the only resort open to the claimant.
- 28.6. Notwithstanding anything to the contrary contained in this clause, the Executive Committee shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, including the Estate Regulations and Design Regulations, or for any order of an urgent nature.

### **29. AMENDMENTS TO THE CONSTITUTION**

- 29.1. Subject to clause 13.1 and 29.3, the provisions of this Constitution may be added to, amended, substituted, or repealed from time to time by a resolution passed at a general meeting by a majority of not less than 70% (seventy percent) of the votes of all the members, present in person or by proxy and entitled to vote, in favour thereof.
- 29.2. For the purposes of amending the Constitution, a resolution in writing signed by 70% (seventy percent) of all the Members, in person or by representative recognized in law, shall be valid in all respects as if it had been duly passed at a general meeting duly convened.
- 29.3. The Design Regulations Manual (Appendix A) and the Estate Regulations form part of this Constitution and may only be added to, amended, substituted, or repealed from time to time in terms of clause 29.1 above.
- 29.4. Clauses 3.5, 5.5, 5.7, and 5.8 shall not be amended under any circumstances.
- 29.5. Any amendments to this Constitution and the Design Regulations Manual shall be submitted to the Municipality and to the Office of the Common Interest Community Schemes Ombudsman.

### **30. IMPOSITION OF PENALTIES**

- 30.1. If the conduct of an owner or the occupiers of his Unit or the family Members, employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees of an owner or of the occupiers of his Unit constitutes a nuisance, or a breach or contravention of the provisions of this Constitution or the Estate Rules in the opinion of the Executive Committee, the Executive Committee must by written notice inform the owner of the nuisance, breach or



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contravention and warn the owner that if he or the offender fails to remedy the contravention, or if the offender persists in the conduct or contravention, or if the conduct or contravention is repeated, a penalty will be imposed on the owner of the Unit.

- 30.2. If, notwithstanding the written notice in terms of clause 30.1 above, the owner fails to remedy the breach or contravention or the offender persists in the conduct, breach or contravention, or if the conduct, breach or contravention is repeated, the Executive Committee shall by written notice, impose a penalty on the owner of the Unit.
- 30.3. The penalty imposed under clause 30.2 above, shall become due on the date of the written notice and shall be added to the owner's levy statement, and shall be recovered from the owner in the same manner as applies to arrear levies, together with interest at the rate applicable to arrear levies.
- 30.4. The Executive Committee shall from time to time determine the amounts of penalties in respect of the various contraventions and in respect of first and successive contraventions, subject to the directions given or restrictions imposed on the Executive Committee at a general meeting of the Association.
- 30.5. A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the owner shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable for a penalty in respect of each such separate contravention.
- 30.6. An owner may within 30 (thirty) days of the date of the written notice in terms of clause 30.1, submit an objection, with a motivation against the penalty imposed, to the Executive Committee.
- 30.7. Upon receipt of the objection, the Executive Committee may:
  - 30.7.1. withdraw or reduce the penalty; or
  - 30.7.2. schedule an Executive Committee meeting (hearing) for the purpose of considering the objection and invite the owner to attend.
- 30.8. At the Executive Committee meeting (hearing) referred to in clause 30.7.2 above, the owner shall have the right to:
  - 30.8.1. present his case;
  - 30.8.2. present any evidence, including the calling of witnesses to substantiate his case;
  - 30.8.3. cross-examine any person called as a witness in support of the charge;
  - 30.8.4. have access to documents produced in evidence; and
  - 30.8.5. produce mitigating factors.



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- 30.9. The failure of the owner charged to attend the Executive Committee meeting referred to in clause 30.7.2 shall not render the proceedings at the meeting void. Should the owner or his representative fail to attend the Executive Committee meeting and fail to provide a reasonable request for postponement, the Executive Committee may, in their sole discretion, continue with the Executive Committee and consider the objection in the absence of the owner.
- 30.10. A member of the Executive Committee shall not be entitled to participate in the hearing in the event of a conflict of interest.
- 30.11. Subject to clauses 30.8 and 30.9 above, the Executive Committee shall deliberate the evidence and if so resolved, they may:
  - 30.11.1. uphold the penalty; or
  - 30.11.2. withdraw or reduce the penalty.

### **31. IMPOSITION OF PENALTIES**

- 31.1. Every Member is bound by the following:
  - 31.1.1. any service provided to the Members, jointly or individually, by the Association is purchased from a third party service provider, who must be paid regularly on a consumption or availability basis;
  - 31.1.2. should he or she fail to make payment for these services, he or she is in fact receiving and/or using services without paying for them and, thus, is being subsidised by other paying Members;
  - 31.1.3. he or she will not withhold payment due to deficient service that is the result of the acts (or omissions) of the relevant service provider as this would cause harm to the Association or its Members.
- 31.2. Therefore, if a Member should fail and/or refuse to pay any levy or other charge (whether for services, levies, or otherwise), the Executive Committee shall have the right to discontinue or restrict the supply of any services to the Member by giving 7 (seven) days' written notice to this effect.
- 31.3. However, in the case of drinking water, the Executive Committee shall not be allowed to completely discontinue the supply of drinking water, and may only restrict it by means of an apparatus, known as a water-flow restrictor, which shall be installed on the pipe-line to the relevant property. The water may not be restricted below the same volume of water, defined as the "human basic need" in the National Water Act (Act No. 36 of 1998 (as amended from time to time)).
- 31.4. Members shall be obliged to give their co-operation and grant access to any property on which the Executive Committee, or an officer or agent or contractor appointed by the Executive Committee, wishes to effect such termination or restriction of a service.
- 31.5. Members shall have no claim for damages of whatsoever nature or cause, against the Executive Committee or the Association or any of its Members, due to the discontinuation and/or restriction of such a service.



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- 31.6. Members shall not be allowed to access any of these services so discontinued or restricted in terms of this clause, from the properties of other Members.
- 31.7. No Member shall supply such a service from his property to another Member, without the prior written consent of the Executive Committee. Should a Member supply such a service to another Member whose service has been discontinued and/or restricted, the Executive Committee shall be entitled to discontinue and/or restrict the relevant service to the supplying Member without prior written notice.

### **32. OBLIGATIONS OF OWNERS AND OCCUPIERS OF UNITS**

- 32.1. Every owner is obliged to comply with:
  - 32.1.1. the provisions of this Constitution, the Design Regulations Manual and the Estate Rules;
  - 32.1.2. any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member; and
  - 32.1.3. any Rule passed by the Association or the Executive Committee in enforcing the provisions of this Constitution, the Design Regulations Manual or the Estate Rules.
- 32.2. Except for voting rights in terms of this constitution, the rights and obligations of an owner are not transferable barring as set out in clause 5.6.4 and every owner shall to the best of his ability, further the objects and interests of the Association.
- 32.3. An owner may not resign from the Association.
- 32.4. The owners shall be jointly liable for expenditure incurred in connection with the Association according to the provisions of this Constitution.
- 32.5. In addition to and / or accordance with clauses 26.13 – 26.15, every owner shall:
  - 32.5.1. retain the existing outdoor colour scheme in respect of his Unit and any change thereto must be approved by the Executive Committee;
  - 32.5.2. adhere strictly to the terms of servitudes in respect of his property, if applicable;
  - 32.5.3. not do or suffer to be done on or in any property anything which, in the opinion of the Executive Committee is unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any owner or occupier of a Unit;
  - 32.5.4. adequately insure his Unit and, if requested by the Executive Committee, shall furnish proof of such insurance to them and, in the event of the total or partial destruction thereof, the Member must, within a reasonable time period, reinstate the improvements in accordance with the Design Regulations Manual and building plans to be approved by the Scrutiny Architect and the Executive Committee;
  - 32.5.5. permit access to any services or to the security perimeter by persons authorised in writing by the Association; and



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- 32.5.6. not erect any improvement or structure over the services.
- 32.6. An owner shall maintain his Unit in a state of good repair and in a clean and neat condition. If an owner fails to repair or maintain his Unit and any such failure persists for a period of 30 (thirty) days after the giving of written notice to repair or maintain given by the Executive Committee or the Managing Agent on their behalf, the Executive Committee shall be entitled to remedy the owner's failure and to recover the reasonable cost of doing so from such owner. Any costs incurred by the Executive Committee in terms of this Constitution, shall be due and payable by the owner upon demand, and failing which, the costs may be added to the owner's levy statement and the costs may be recovered from the owner in the same manner as applies to arrear levies, together with interest at the rate applicable to levies.
- 32.7. No owner shall apply to the local authority for the rezoning, consent use, departure or any other relaxation in terms of the approved zoning scheme of his property with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his property for any purpose other than the permitted use applicable upon establishment of the Development without the prior written consent of the Executive Committee and subject to compliance with the conditions imposed by the Executive Committee.
- 32.8. No owner shall consolidate two or more erven into one erf without the prior written consent of the Executive Committee and subject to compliance with the conditions imposed by the Executive Committee.
- 32.9. No owner shall subdivide an erf into two or more erven, without the written consent of the Executive Committee and subject to compliance with the conditions imposed by the Executive Committee.
- 32.10. This Constitution, the Design Regulations and the Estate Rules and the duties of an owner in relation to the use, occupation and enjoyment of his Unit and the use and enjoyment of the communal area shall be binding on all owners and occupiers of Units. It shall be the duty of an owner to ensure compliance with this Constitution, the Design Regulations Manual or the Estate Rules by the occupiers of his Unit including by his or their family members, employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees.
- 32.11. An owner shall be vicariously liable for the acts or omissions by the occupiers of his Unit, including by his or their family members, employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees within the Development. In the event of any breach or contravention of any provision of this Constitution, the Design Regulations Manual or the Estate Rules by the occupiers of a Unit or by the family members, employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees of an owner or of the occupiers of his Unit, such breach or contravention shall be deemed to have been committed by the owner of the Unit concerned. Without prejudice to the foregoing, the Executive Committee shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the owner of the Unit.





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- 32.12. Should any damage be caused to the communal area or the works by the occupiers of a Unit or by the family members, employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees of an owner or of the occupiers of his Unit, the owner of the Unit concerned shall be liable to the Association for the costs to repair such damage, and the costs may be added to the owner's levy statement. Without prejudice to the foregoing, the Executive Committee shall be entitled to take or cause to be taken such steps against the person who actually caused the damage as they may in their discretion deem fit, with or without proceedings against the relevant owner.

### **33. INSURANCE**

- 33.1. The Executive Committee shall insure the buildings, improvements, facilities, works and services in respect of the communal area to the full replacement value of such items against such risks determined by the Executive Committee or as may be directed by the Members by an ordinary resolution, and take up public liability insurance in respect of the communal area, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the Executive Committee are most beneficial to the Members.
- 33.2. The Executive Committee shall insure against loss of levies and other payments due by the Members to the Association.
- 33.3. The Executive Committee shall pay the premiums on any policy of insurance effected by it.
- 33.4. The Executive Committee shall procure, at its cost, general public indemnity liability insurance in such amounts and on such terms as the Executive Committee may from time to time agree or as may be directed by the Members in general meeting.
- 33.5. The Executive Committee may procure to the extent, if any, as determined by the Members of the Association in a general meeting, a fidelity guarantee in terms of which shall be refunded any loss of money belonging to the Association or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the service of the Association and/or Executive Committee and any person or persons acting in their capacity as Managing Agent of the Association.

### **34. EXCLUSION OF LIABILITY**

- 34.1. Any Member or other person present in the Development or in the communal area or using any of the works, facilities or services of the Association does so entirely at their own risk. Any claim of a Member or any other person shall be limited to the amount actually recovered by the Association from the receipt of proceeds of any general public indemnity liability insurance, if any. If and to the extent that the Association does not have any such public indemnity liability insurance, no such person shall have any claim against the Association, save in the case of bad faith or gross negligence.



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- 34.2. Subject to clause 34.1, the Association, the Executive Committee, the Managing Agent or any of the Association's agents, employees or contractors shall not be liable for any loss (including consequential loss), injury, loss of life or damage to person or property of any nature whatsoever which any Member or other person whosoever may sustain:
- 34.2.1. by reason of any defect in or state of disrepair of the Development or the communal area, or any facility, service, works or property, or any part thereof, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein, notwithstanding that such defect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Executive Committee, the Managing Agent, or any of the Association's agents, employees or contractors; or
- 34.2.2. directly or indirectly, in or about the Development (including, without limiting the generality of the foregoing), the communal area, the works and any property, whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire water leakage, seepage, cessation or interruption of, or defect in, any electric, gas, fuel, water, sanitary, telephone, air conditioning or other services to the Development (irrespective of the cause thereof), or be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Executive Committee, the Managing Agent, or any of the Association's agents, employees or contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.
- 34.3. The Members undertake in favour of the Association, as soon as practical, to notify the tenants or other occupiers of their erven, and their family members, employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees, of the provisions of this clause 34, and to take all such steps required and/or necessary to ensure that such persons agree hereto in writing in such form as the Executive Committee may from time to time determine so as to enable the Association to accept the benefits hereof at any time without notice to such person.
- 34.4. Subject to clause 34.1, every Member individually hereby fully and completely indemnifies and holds harmless the Association against all claims of whatsoever nature and howsoever arising which may be brought against the Association by that Member or the occupiers of his Unit, or any family members, employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees of the Member or of the occupiers of his Unit, or any other person within the Development at the invitation of or under the control of the Member or the occupiers concerned, notwithstanding the nature of such claim.
- 34.5. The Association shall not be liable for any costs of suit in any legal proceedings instituted against it in any court or arbitration forum or other tribunal by any Member. The exclusion herein contained will not apply if the proceedings in question are founded on any conduct of the Association or its representatives or employees which is alleged by the claimant, and found by the court, arbitrator or tribunal, as the case may be to be mala fide or wilfully wrongful.
- 34.6. The Association shall not be liable for any damage suffered by an owner or occupier of a Unit or any other person present in the Development by reason of power surges.



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

- 35.1. The Executive Committee shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered South African commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or for investment purposes.
- 35.2. The Executive Committee may authorise a Managing Agent to administer and operate the accounts referred to in clause 35.1 above, subject to such conditions and restrictions as they may impose.
- 35.3. Any funds not immediately required for disbursements may be invested in a savings account, money market account or similar account with any registered South African commercial bank approved by the Executive Committee from time to time, and/or may also be invested with any financial institution approved by the Executive Committee from time to time.
- 35.4. The Association shall use interest on moneys invested for any lawful purpose in the interest of the Association.
- 35.5. The Association shall build up a reserve fund by investing annually, as per clause 35.3 above, a maximum of 25% (twenty-five percent) of the total levy payments received during that year.



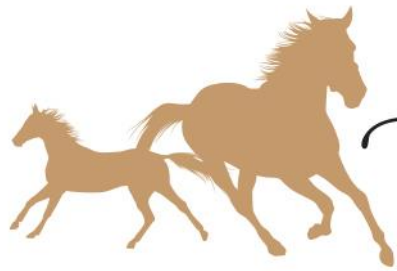
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**36. APPENDIX A: DESIGN REGULATIONS MANUAL**

- 36.1. This Design Regulations Manual is included in the constitution as a specific condition of the original approval of subdivision of Farm 1309 into the 87 privately owned erven, plus communal space (see Appendix B, Condition (a)(ii)).
- 36.2. The design criteria set out in this manual are in accordance with City of Cape Town (CoCT) Agriculture Zoning, that is, the zoning category within which the Estate falls. These criteria are additional to, and regarding aesthetic considerations, in some instances more stringent than, any Municipal (City of Cape Town Municipal Planning By-Law 2015, as amended) or National Building Regulations, and any design submitted will not be approved by the CoCT unless it has been approved by the HOA.
- 36.3. The HOA executive committee will treat all design submissions on merit, balancing the requirements of individual owners with the benefits to the Estate as a whole. But, in collaboration with the scrutiny architect, it has the power to veto any design judged not to be of Architectural merit or in keeping with the character of the Estate. Submissions must have a minimal impact on the natural beauty of the site. The impact, whether positive or negative, on the environment and investment value of the properties will be considered. It should be emphasised that owners should consult with the Scrutiny Architect at an early stage of the design of any new building to ensure that the final result is likely to be acceptable, before paying professional design fees.
- 36.4. The HOA reserves the right to alter or amend the Design Regulations Manual, if necessary, to maintain the visual integrity and character of the Estate, such alteration or amendment to be effected in terms of clause 29.
- 36.5. The HOA executive committee does not want to dictate the use of any particular style but rather to control the aesthetics and architectural quality of any design.
- 36.6. Further to Clause 18 of the Constitution, the GENERAL DESIGN CRITERIA detailed below are intended for the purpose of controlling the aesthetics of the development.
- 36.7.

Criterion	Requirements
<b>Building</b>	<p><b>Form</b></p> <ul style="list-style-type: none"> <li>• All buildings must be aesthetically compatible with and complementary to, the surroundings in which they are positioned.</li> <li>• Roof ridges are to comply with CoCT Municipal Planning By-Law 2015, as amended).</li> <li>• Raised buildings on columns are not permitted; and</li> </ul>

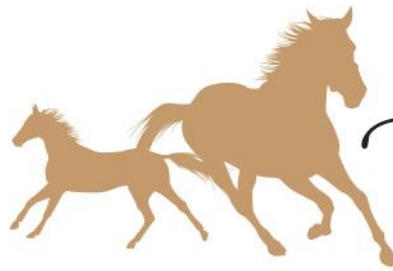


# HIGH RIDING *Country Estate*

## High Riding Estate Home Owners' Association

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	<ul style="list-style-type: none"> <li>• Use of courtyards and roof space is encouraged.</li> </ul>
<b>Roof</b>	<p><b>Materials</b></p> <p>The following are not permitted:</p> <ul style="list-style-type: none"> <li>• Profiled fibre cement sheeting;</li> <li>• Mitred or scalloped fibre cement tiles;</li> <li>• Unpainted metal sheeting;</li> <li>• Flat roofs with exposed waterproofing and/or mitred or scalloped fibre cement tiles.</li> </ul>
	<p><b>Colour</b></p> <ul style="list-style-type: none"> <li>• Must be an appropriate colour in context of the design, form and surrounding environment.</li> </ul> <p><b>Form</b></p> <ul style="list-style-type: none"> <li>• Painted flat roofs must have parapets and fascias;</li> <li>• Pitches exceeding 500 are not permitted (see CoCT by-laws, p100 – Provincial Gazette Extraordinary 7414);</li> <li>• For aesthetic reasons, roofs must be appropriate to the shape and form of the building.</li> </ul>
<b>External Walling</b>	<p><b>Materials</b></p> <ul style="list-style-type: none"> <li>• Heavily textured Mediterranean style plastering is not permitted;</li> <li>• Highly reflective finishes are not permitted;</li> <li>• Brickwork is to be in either selected face brick or painted fair-face brick. No elaborate styles or mock gabling/features are permitted;</li> <li>• 'Log' type dwellings are not permitted;</li> </ul>
	<p><b>Colours</b></p> <ul style="list-style-type: none"> <li>• Bright or primary colours are excluded;</li> </ul>



# HIGH RIDING *Country Estate*

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	<ul style="list-style-type: none"> <li>Natural 'earthy' or white and off-white colours of merit in their environment are acceptable.</li> </ul> <p><b>Form and Elements</b></p> <ul style="list-style-type: none"> <li>Elaborate decorated gables, such as mock Cape Dutch are not permitted;</li> <li>Decorative moulded panels are not permitted;</li> <li>Columns are required to be in the simple, unelaborated style. They may not be in any classical style.</li> </ul>
<p><b>Windows and Doors</b></p>	<p><b>Materials</b></p> <ul style="list-style-type: none"> <li>Window and door frames are to be of PVC, Aluminium or natural or painted hardwood;</li> </ul>
	<p><b>Colours</b></p> <ul style="list-style-type: none"> <li>Bright or primary colours are not permitted.</li> </ul>
	<p><b>Form and Elements</b></p> <ul style="list-style-type: none"> <li>Arched openings are to be flat-arched, not rounded.</li> </ul>
<p><b>Verandahs, Balconies, Balustrades and other External Elements</b></p>	<p><b>Submission of Plans (see 36.8 below)</b></p> <ul style="list-style-type: none"> <li>Verandahs, balconies, balustrades and other external elements may be attached to a dwelling unit.</li> <li>They must be shown on the plans submitted for approval.</li> <li>Should an owner wish to attach any of these to a dwelling unit at some stage after the dwelling unit was built, plans must be submitted for approval by the Scrutiny Architect and then the Municipality before construction.</li> <li>Balustrades must comply with the regulations for testing and strength certification and must be simple and not elaborate or over-decorated and inappropriate.</li> </ul>



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	<p><b>Materials</b></p> <ul style="list-style-type: none"> <li>• Decorative wrought or cast iron, or 'gumpole' structures are not permitted;</li> <li>• Designs should be consistent with roofs, windows, shutters, etc., of the main house.</li> </ul> <p><b>Colours</b></p> <ul style="list-style-type: none"> <li>• Colours should be consistent with those of the main structure;</li> <li>• Bright or primary colours are not permitted.</li> </ul> <p><b>Form and Elements</b></p> <ul style="list-style-type: none"> <li>• External elements must not look like add-ons;</li> <li>• Elaborately decorated designs are not permitted;</li> <li>• To assist towards compliance with energy conservation requirements, there should be deep overhangs to large glazed areas.</li> </ul>
<p><b>Pergolas and Awnings</b></p>	<p><b>Submission of Plans (see 36.8 below)</b></p> <ul style="list-style-type: none"> <li>• Pergolas and awnings must be attached to a dwelling unit.</li> <li>• They must be shown on the plans submitted for approval.</li> <li>• Should an owner wish to attach a pergola or awning to a dwelling unit at some stage after the dwelling unit was built, plans must be submitted for approval.</li> </ul> <p><b>Materials</b></p> <ul style="list-style-type: none"> <li>• Unpainted metal sheeting is not permitted.</li> </ul> <p><b>Colours</b></p> <ul style="list-style-type: none"> <li>• White, off-white or subdued hues are required;</li> <li>• Bright or primary colours and striped patterns are not permitted.</li> </ul>



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	<p><b>Form and Elements</b></p> <ul style="list-style-type: none"> <li>• Awnings should be treated as ancillary elements to the main structure;</li> <li>• Small, semi-circular canvas awnings are not permitted.</li> </ul>
<p style="text-align: center;"><b>Garages and Out Buildings</b></p>	<p><b>Submission of Plans (see 36.7 below)</b></p> <ul style="list-style-type: none"> <li>• Garages and car-ports may be attached to a dwelling unit or they may be separate and building plans must be submitted for approval.</li> <li>• If not attached the placing of structure should create a considered relationship of space comprising solids and voids of courtyards and werf walls.</li> <li>• Should an owner wish to attach a garage or car-port to a dwelling unit at some stage after the dwelling unit was built, plans must be submitted for approval.</li> <li>• Any building, other than a garage or car-port, not attached to the dwelling unit(s) on a property is regarded as an out building. Garden sheds and Wendy houses (see also Garden Features below), as well as stables and feed stores, are examples of out buildings, as are shipping or storage containers. Shipping and storage containers are expressly forbidden on the Estate however they can be used during construction with the formal written approval of the HOA Executive Committee.</li> <li>• Plans for any unattached garages and car-ports, as well as any other out buildings, must be submitted to and approved by the Scrutiny Architect and then the Municipality before construction.</li> </ul>
	<p><b>Materials</b></p> <ul style="list-style-type: none"> <li>• Construction and design must match the main structure so far as reasonably possible;</li> <li>• Finish must match the main structure so far as reasonably possible.</li> </ul>





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	<ul style="list-style-type: none"> <li>• The Scrutiny Architect will assess whether the materials used are durable and the finish aesthetically sound.</li> </ul> <p><b>Colours</b></p> <ul style="list-style-type: none"> <li>• Bright or primary colours are not permitted;</li> <li>• Colours must match, or be complementary to, the main structure.</li> <li>• In assessing whether colours are appropriate the Scrutiny Architect will consider the agricultural nature of the estate, in particular when dealing with structures like stables and feed stores.</li> </ul> <p><b>Form and Elements</b></p> <ul style="list-style-type: none"> <li>• Should be in keeping with those of the main structure so far as reasonably possible.</li> <li>• In assessing whether form and elements are appropriate the Scrutiny Architect will consider the agricultural nature of the estate, in particular when dealing with structures like stables and feed stores.</li> </ul>
<p><b>Swimming Pools</b></p>	<p><b>Form and Elements</b></p> <ul style="list-style-type: none"> <li>• Portable or 'above ground' type pools must be approved by the HOA and must be discreetly positioned.</li> <li>• Pumps and equipment must not be visible;</li> </ul> <p>• Equipment should be discreetly placed and preferably built in.</p>
<p><b>Aerials, Roof Fixtures and Satellite Dishes</b></p>	<p><b>Form and Elements</b></p> <ul style="list-style-type: none"> <li>• Devices must not project above roof ridge or parapet of flat roofs;</li> <li>• Devices must be discreetly placed.</li> </ul>



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<p><b>Boundary Walls, Fences and Enclosures</b></p>	<p><b>Materials</b> <b>Strictly not permitted:</b></p> <ul style="list-style-type: none"> <li>• Concrete panels;</li> <li>• Barbed/razor wire;</li> <li>• Unpainted cement brick or blockwork;</li> <li>• Shade cloth.</li> </ul>
	<p><b>Permitted:</b></p> <ul style="list-style-type: none"> <li>• Selected face brick or painted fair-face;</li> <li>• Natural or simulated stonework;</li> <li>• Wire mesh fencing with screening vegetation;</li> <li>• Natural or painted timber picket or palisade fencing;</li> </ul>



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	<ul style="list-style-type: none"> <li>• Design and construction to be compatible with main structure.</li> <li>• Written approval in accordance with prescribed procedures for the building of boundary walls to be sought from the Executive committee/Scrutiny Architect before building commences as walls are to be approved by the Municipality.</li> </ul> <p><b>Colours</b></p> <ul style="list-style-type: none"> <li>• Bright or primary colours are not permitted;</li> <li>• Colours should be natural or white or off-white and match those on the main structure.</li> </ul> <p><b>Form and Extent</b></p> <ul style="list-style-type: none"> <li>• The maximum height permitted is 1,8m.</li> </ul>
<p><b>Levels, Siteworks and Heights of Buildings</b></p>	<ul style="list-style-type: none"> <li>• Excessive excavations and 'cut and fill' are not permitted;</li> <li>• Buildings must be designed and located to rationalise slope and site conditions;</li> <li>• Concrete block retaining wall structures must be of an approved structural system type;</li> <li>• Buildings should be designed and located to rationalise slope and site conditions;</li> <li>• Double storey buildings are permitted only where there is no adverse impact on neighbouring sites.</li> </ul>
<p><b>Garden Features</b></p>	<ul style="list-style-type: none"> <li>• Wendy houses, garden sheds, tree houses and children's play apparatus (jungle gyms, swings, slides, etc.) may only be erected if first approved by the Executive Committee of the Home Owners' Association and then by the CoCT if applicable.</li> <li>• The Executive Committee shall have the right to report to the Municipality home owners who have not been granted approval for the erection of such structures and/or to require owners to dismantle such structures.</li> </ul>



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<p><b>Signage and Street Furniture</b></p>	<ul style="list-style-type: none"> <li>• Illuminated house names/numbers are not permitted;</li> <li>• High mounted lights and floodlighting are not permitted;</li> <li>• Lighting must be bollard- or wall-mounted, out of eye-line and hooded to prevent visible light bulbs.</li> </ul>
<p><b>Soft Landscaping</b></p>	<ul style="list-style-type: none"> <li>• Trees, wetland and fynbos are to be retained wherever possible and protected during construction work;</li> <li>• Replanting of recommended species is encouraged.</li> </ul>
<p><b>Solar panels and other renewable electricity sources such as wind turbines</b></p>	<ul style="list-style-type: none"> <li>• Solar panels are permitted although the placing of solar panels should not interfere with the aesthetics of the estate and/or the unrestricted enjoyment of the estate by owners or animals and must be approved by the Executive Committee before formal application to the COCT in terms of current legislation. Small-scale embedded generation (SSEG) systems must be registered for Council authorisation in terms of current legislation. This applies to both on-grid and off-grid systems, for example solar powered pool pumps.</li> <li>• Any other renewable energy sources must obtain Executive Committee prior written authorisation before submission to COCT for approval.</li> </ul>

### 36.8. APPROVAL OF BUILDING PLANS AND LANDSCAPE PROPOSALS

It should be noted that The City of Cape Town provides planners, developers, architects and building owners with a single helpful website where all application forms and relevant documents and systems are available online to the general public. Follow this link: <http://www.capetown.gov.za/en/Planningportal/Pages/default.aspx>.

Building plans and landscape proposals are to be dealt with as shown in the table below:

#### 36.8.1. SUBMISSION TO THE HOA

- Prior to the submission of building plans to the Local Authority, plans must first be submitted to the HOA for approval.



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- Plans will not be accepted by the Local Authority for scrutiny unless they carry the approval stamp of the High Riding HOA.
- The HOA reserves the right to request any changes in design or site layout that are, in their opinion, required to preserve the aesthetic, architectural and environmental objectives of this Design Regulations Manual and the High Riding Estate.

### 36.8.2. SUBMISSION PROCEDURE

- Stage 1: **SKETCH PLAN APPROVAL** (After complying with 36.5. to avoid unnecessary costs and/or the need for resubmission.)

Requirements: Two paper copies to a suitable scale (1:100 or 1:50) indicating:

- SITE PLAN indicating existing site contours at 1m intervals, location of any natural features, rocks/boulders and any protected vegetation species. This drawing should also indicate the siting of the buildings, extent of boundary walls and paving, and siting of any outbuildings.
  - PLANS of all floors of the buildings, as well as all elevations and at least one section through the slope of the site, indicating the extent of sitework required.
  - The prescribed scrutiny fee, inclusive of VAT (adjusted annually) must accompany the plans upon the submission to the HOA. Further submissions will carry no additional cost. If, in the opinion of the HOA, the original application requires a total re-design, then the resubmission will be considered a new submission, with a new fee to be paid.
  - The applicant will receive notification and comment on the submitted design within 2 weeks of submission. The HOA will retain one copy of the plans for their records.
- Stage 2: **WORKING DRAWING APPROVAL**

Requirements: Two paper copies, coloured up to the requirements of the Local Authority. These drawings are to include fully dimensioned working plans, sections and elevations of all the proposed buildings and constructions on the site, as well as concise specifications (see item 36.6).

- Plans must be submitted to the HOA for their final approval.
- Once all amendments have been made, the plans will be stamped with the HIGH RIDING HOA stamp of approval.
- The applicant will receive notification and comment on the submitted working drawings within 2 weeks of submission.
- The HOA will retain one uncoloured copy of the plans for their records and the second copy is for the home owner's record.



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- Stage 3: **FINAL SUBMISSION to the LOCAL AUTHORITY**
  - The second HOA approved set of plans must be collected from the HRE Managing Agent and submitted to the CoCT, together with all other submission requirements in digital format, for its scrutiny and approval.
  - Plans will only be accepted for scrutiny by the Local Authority if they carry the stamp of the HIGH RIDING HOA, and any building plan scrutiny fee payable must be paid directly to the Local Authority.
  - The details of any technical alterations required by the CoCT must be submitted to the HOA for its records.
  - No other approval in terms of this Design Regulations Manual may be so construed as to exempt anyone from the obligation to submit their building plans to the Local Authority for approval.

### 36.8.3. BUILDING DEPOSIT

- Owners must submit the prescribed refundable deposit to the HOA upon approval of the building plans. The purpose of the deposit is to cover any possible damage to public areas during the construction process. This will be held in an interest bearing account, the interest accruing to the HOA.
- No approved plans will be released to the applicant until the abovementioned deposit has been lodged with the HOA.
- The deposit will be refundable upon completion of the building works, subject to inspection of the property by the HOA, and rectification of any damage by the owner. If the owner fails to rectify any damage, the deposit shall be used by the HOA for that purpose.

### 36.8.4. DEVIATION FROM APPROVED PLANS AND SCHEDULE OF FINISHES

- No deviation from the approved plans will be permitted.
- The HOA shall be entitled to enforce rectification of any such deviations from the approved building plans, where such deviations, in the opinion of the HOA and the Scrutiny Architect, detract from the intentions of this Design Regulations Manual.

## 36.9. Other Development Controls

### 36.9.1. BUILDING LINES

- These are as required by the conditions of approval – see Appendix B, the stipulations of which over-ride the CoCT By-Laws.



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- The following definitions (CoCT Municipal Planning By-Law, 2015) apply:
  - 'Building Line' means an imaginary line on a land unit, which defines a distance from a specified cadastral boundary, within which the erection of buildings or structures are completely or partially prohibited.
  - 'Structure', without in any way limiting its ordinary meaning, includes any building, shelter, wall, fence, pillar, tower, pergola, steps, landing, terrace, sign, ornamental architectural feature, swimming pool, fuel pump or underground tank, any building ancillary to service infrastructure provision, and any portion of a structure.
- On any given plot, no structures are permitted within the building line restrictions of the original conditions of subdivision as amended.
- Siting of buildings may not unreasonably affect the amenity of adjoining properties. Due consideration should be given to the location and elevation of structures, thus affording adjacent sites optimum outlook, views and privacy.
- Applications for departures from building line stipulations should be well motivated and will be assessed and supported or rejected on their merits. If supported, the applicant must then submit the application to the CoCT.
- By statute, only the CoCT can permit any deviation from building line stipulations. The HOA cannot do so.
- The onus is on owners to report any existing building line encroachments which exist on their properties in writing to the Executive Committee.
- Such encroachments are illegal and must either be removed, or condonation must be sought.
- If, having taken advice from the Scrutiny Architect, the Executive Committee is willing to support any particular encroachment, the owner must then submit an application for a relaxation of the building line restriction to the Municipality.
- If the Municipality refuses the application, the owner will be required to remove the structure, or part thereof, which contravenes the building line restriction.
- Likewise, if the Executive Committee does not support the encroachment, the owner will be required to remove the structure, or part thereof, which contravenes the building line restriction.

### **36.9.2. COVERAGE**

- The Agricultural Zoning allows a maximum coverage (area on the ground) of 1500 square metres which does not apply to HRE as the subdivision approval differs.
- The onus will be on owners to check their total floor space and ensure that they comply with this restriction.



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- Defaulters will be required to make modifications so as to achieve the necessary compliance.

### **36.9.3. OUTBUILDINGS and ADDITIONAL DWELLINGS**

- Second dwellings and outbuildings are allowed, subject to normal Local Authority restriction, and may only be single storey and similar in style and finish to the main building.
- Historically, second dwellings were not allowed.
- Now second dwellings are allowed, provided they comply with all of the conditions listed in the City of Cape Town Municipal Planning By-Law, 2015, as amended from time to time.

### **36.9.4. SITE CLEARING**

- Minimal 'cut' and 'fill' will be permitted according to the discretion of the HOA.
- Materials used for bank stabilisation must be of the approved type.

### **36.9.5. WASTE PIPES/DOWNPIPES**

- All waste pipes, unless located within enclosed courtyards, shall be concealed.
- Gutters and downpipes should be unobtrusively located, and concealed as far as possible.

### **36.9.6. LIGHTING**

- Exterior lighting of the site and buildings must be 'low key' and unobtrusive.

### **36.9.7. SIGNAGE**

- No illuminated signage will be permitted.

### **36.9.8. LAUNDRY AND REFUSE**

- Laundry and refuse areas must be screened within enclosed courtyards.

### **36.9.9. BURGLAR BARS AND ALARMS**

- Burglar bars should be of simple rectangular forms and match, as far as possible, the design of the window or door mullions. They should preferably be placed internally.

### **36.9.10. SITES AND SERVICES**

- Specific details of individual sites can be obtained from the consultant Land Surveyors: Ken Hodge Land Surveyors.
- All sites must be surveyed before any design work is undertaken.





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### 36.9.11. BUILDING CONTROLS

- Building operations must comply with all municipal and national occupational safety and health legislation.
- Building operations shall not exceed 12 months in duration and no construction work shall be carried out after the times stipulated in the House Rules.
- All building work shall be executed in a workman-like manner and the site and surrounds thoroughly cleared of all builders' rubble and refuse upon completion.
- Strict control of all contractors and sub-contractors is the responsibility of the owner.
- Strict control of littering of the site must be ensured during the construction period.
- The building controls listed above are not really necessary as the Municipality issues its own documentation in this regard. So, if builders don't comply they should be reported to the CoCT. It is not the job of the Executive Committee, nor of the Scrutiny Architect, to try to force compliance. This is a matter which should be dealt with by the Municipality.

### 37. APPENDIX B: CONDITIONS OF APPROVAL

The conditions under which HRE and the HRE Home Owners' Association and its constitution were founded are given in the following table.

#### Original Subdivision Approval Conditions (January 1997)

Approval for subdivision

No.	Condition
(a) (i)	That a Home Owners' Association be Established. The Association must be responsible for the maintenance of any roads to be developed and for the provision and maintenance of any essential services which the local authority cannot provide. The constitution of the Association must be submitted to the Local Authority for approval prior to the transfer of any subdivided portion.
(ii)	That design rules be included in the constitution of the Home Owners Association to ensure that special measures are taken to retain appropriate trees and the rural character of the area.
(iii)	That the conditions stipulated in a letter from the Department of Water Affairs (Mrs Kloppers) to the applicant dated 1996-12-06 be adhered to.
(iv)	That a report be drawn up on the location of all the areas of the development where septic tanks and soak-aways are not desirable and that these areas be indicated on a plan by a soil expert. The report and plan must be approved by the Department of Water Affairs and Forestry.



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(v)	That the developer be responsible for the provision of all services to the satisfaction of the Acting Chief Engineer of the Cape Metropolitan Council (Stellenbosch) or his successor and that the developer make a proportional contribution to the cost of any external services when available as to be determined by the Acting Chief Engineer of the Cape Metropolitan Council (Stellenbosch) or his successor.										
(vi)	That the developer/applicant's attention be drawn to the fact that only 200 kilolitre water for household purposes is available to the proposed development and that the developer inform all future owners in this regard. The Home Owners' Association should be responsible for the maintenance of the internal water reticulation system.										
(vii)	That the quality of the groundwater be monitored by an expert on behalf of the Home Owners' Association and a report must regularly be supplied to the Department of Water Affairs and Forestry. The disposal of sewerage must also be to the satisfaction of the Acting Chief Engineer of the Cape Metropolitan Council (Stellenbosch) or his successor.										
(viii)	That the conditions stipulated by the Provincial Roads Engineer in his letter to the applicant dated 1996-12-09 regarding access to Divisional Road 1006 must be adhered to. The access should be designed and constructed to the satisfaction of the Acting Chief Engineer of the Cape Metropolitan Council (Stellenbosch) or his successor and the internal road must be surfaced with a 100mm thick layer of gravel for the total length of the road.										
(ix)	That a storm water management plan be submitted for approval by the Acting Chief Engineer of the Cape Metropolitan Council (Stellenbosch) or his successor, which addresses the management of storm water generated by subdivided portions. The implementation of any proposals contained in the management plan will be for the account of the developer.										
(x)	That the disposal of household refuse be to the satisfaction of the Acting Chief Engineer of the Cape Metropolitan Council (Stellenbosch) or his successor.										
(xi)	That the coverage of all structures on each of the subdivided portions be limited to 500m <sup>2</sup> in extent and be restricted to a maximum height of 2 storeys.										
(xii)	That all prospective buyers of property within the development be informed of the existence of the Cape Blue Rock Quarry by the owner and that a clause in this regard be included in each individual title deed.										
(xiii)	That the following zonings be made applicable to the subdivided erven:  <table border="0"> <thead> <tr> <th><b>ERVEN</b></th> <th><b>ZONING</b></th> </tr> </thead> <tbody> <tr> <td>18-87, 91</td> <td>Agricultural Zone I</td> </tr> <tr> <td>88-89</td> <td>Open Space Zone II</td> </tr> <tr> <td>90</td> <td>Open Space Zone I</td> </tr> <tr> <td>Remainder</td> <td>Transport Zone II</td> </tr> </tbody> </table>	<b>ERVEN</b>	<b>ZONING</b>	18-87, 91	Agricultural Zone I	88-89	Open Space Zone II	90	Open Space Zone I	Remainder	Transport Zone II
<b>ERVEN</b>	<b>ZONING</b>										
18-87, 91	Agricultural Zone I										
88-89	Open Space Zone II										
90	Open Space Zone I										
Remainder	Transport Zone II										



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(xiv)	That no structures be erected within the 1:50 year floodline and that a layout plan indicating the floodline (certified by a competent professional) be submitted to the satisfaction of the Acting Chief Engineer of the Cape Metropolitan Council (Stellenbosch) or his successor.
(b)	<p>That the application for departures from the 30m building lines applicable on all internal subdivision boundaries to 10m be approved with the exception of the existing boundaries of Farm 1309, where 30m building lines are still applicable.</p> <p>The Executive Committee has successfully applied to the Municipality for relaxation of the building line restriction on internal subdivision boundaries from 10m to 7,5m and around the perimeter of the estate from 30m to 10m.</p>

### Notes

1. The zoning applicable to the High Riding Estate was amended by the City of Cape Town (CoCT) in 2015. As of 1 July 2015, Agricultural Zone I was replaced by Agricultural (AG) Zoning.
2. This zoning amendment has brought about a change. The number of permissible dwellings per plot has been increased from one to two. This relaxation has been applied. Further, the permissible coverage is currently 500 square metres although Executive committee is applying for this to be increased to 1000 square metres (December 2018).