



# Lovemore Heights Estate

Homeowners  
Association  
Constitution

Version: 2024-04

The latest version  
supersedes and replaces  
all previous versions

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**1 TABLE OF CONTENTS**

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1. NAME .....	3
2. DEFINITIONS .....	3
3. THE STATUS OF THE ASSOCIATION .....	4
4. OBJECTS AND POWERS OF THE ASSOCIATION .....	4
5. CONTROL MEASURES OF THE DESIGN MANUAL .....	6
6. MEMBERS .....	6
7. EXECUTIVE COMMITTEE (EXCOM) .....	7
8. DUTIES OF EXCOM .....	8
9. LEVIES .....	9
10. GENERAL MEETING OF THE ASSOCIATION .....	10
12. VENUE OF MEETINGS .....	10
13. NOTICES OF MEETINGS .....	10
14. AGENDA AT ANNUAL GENERAL MEETINGS .....	11
15. PROCEEDINGS AT GENERAL MEETINGS .....	11
16. VIRTUAL MEETINGS .....	12
17. VOTING .....	13
18. QUORUM .....	14
19. PROXIES .....	15
20. SPECIAL RESOLUTIONS .....	15
21. SALE OF NON-MOVABLE ASSETS .....	16
22. SALE OF MOVABLE ASSETS .....	16
23. MINUTES OF MEETINGS OF THE ASSOCIATION .....	16
24. FINANCIAL YEAR END .....	17
25. ACCOUNTS .....	17
26. DEPOSIT AND INVESTMENT OF FUNDS .....	18
19. INDEPENDANT REVIEW .....	18
28. INDEMNITY .....	18
29. DEFAMATION PRIVILEGE .....	19
30. OWN RISK .....	19
31. MUNICIPAL SERVICES .....	19
32. ESTATE RULES .....	19

33. DOMICILIUM .....	20
34. DETERMINATION OF DISPUTES .....	21

## 1. NAME

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The name of the Association is: Lovemore Heights Estate Home Owners Association

## 2. DEFINITIONS

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In this Constitution, unless the context indicates to the contrary:

- 2.1. "the Association" shall mean the Lovemore Heights Estate Home Owners Association.
- 2.2. "the Council" shall mean the Council and/or Executive Committee of the Nelson Mandela Metropolitan Municipality.
- 2.3. "Development Area" named as the Lovemore Heights Estate means the complex established on erven 1652 – 1763 and 1767 - 1774 Theescombe situate in the area of the Nelson Mandela Metropolitan Municipality as depicted on Annexure "A" or any amendment thereto. Both references are interchangeable.
- 2.4. "the Developer" shall mean Lovemore Heights (Proprietary) Limited which developed Lovemore Heights Estate.
- 2.5. "EXCOM" shall mean the Executive Committee constituted in terms of Clause 8 hereof.
- 2.6. "Member" shall mean a Member as defined in terms of Clause 7 hereof.
- 2.7. "Services" shall mean electrical power cables, telephone cables, water supply, sewerage, storm water, drainage and refuse removal.
- 2.8. "Design Manual" shall mean the specifications to which all buildings in the development area must comply with to ensure that the scheme is developed under control and in an orderly manner and in compliance with the requirements as specified in the Design Manual, being Annexure "D".
- 2.9. Wording importing the singular number shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and the neuter gender shall include the masculine and feminine genders.
- 2.10. The head notes to clauses in this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.11. "co-opted member" shall mean a member of EXCOM that is appointed to the board (by EXCOM) because of a particular skill set or area of interest, usually on a short-term basis. It is usually done during the year and not at the AGM.
- 2.12. "Annual General Meeting or AGM" refers to a general meeting which must be held by the Home Owners Association every year, to discuss various business matters.
- 2.13. "Extraordinary General Meeting or EGM" refers to meetings other than the annual general meeting, held to deal with other important business that is not reserved for the annual general meeting

- 2.14. "General resolution" or "ordinary resolution" shall mean a decision to be made at a meeting of the Association requiring a simple majority of 50% + 1 of the members present at the meeting, whether physically or via proxy.
- 2.15. "special resolution" shall mean a decision to be made at a meeting of the Association requiring 75% of the members, eligible to vote, in favour.
- 2.16. "hybrid meeting" refers to home owners with the capability, hosting a few other owners in their unit to participate in a virtual meeting
- 2.17. "directive proxy" refers to a proxy that provides space for the member to direct votes in favour of, against or to abstain from voting on any resolution to be put at the meeting
- 2.18. "private services" refers to sewerage, plumbing and electrical services relating specifically to the Home Owners erf
- 2.19. Common areas refer to amenities or spaces available for use by all homeowners and residents. For example: park space, walking paths and athletic fields.

### **3. THE STATUS OF THE ASSOCIATION**

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"The Association" shall be an association:

- 3.1. with legal personality, capacity of suing and being sued in its own name; and
- 3.2. 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 EXCOM in terms hereof; and
- 3.3. not for profit, but for the benefit of the owners and occupants of immovable property situate in the development area.

### **4. OBJECTS AND POWERS OF THE ASSOCIATION**

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The objects of the Association are:

- 4.1. To create an environment for secure, healthy, harmonious and hygienic suburban living;
- 4.2. To control environmental pollution such as noise, litter and the like;
- 4.3. The care, maintenance, upkeep and control over the Development Area;
- 4.4. The control of the buildings erected and to be erected in the Development Area to ensure that they comply with the Design Manual applicable to buildings in the Development Area;
- 4.5. The control of the Services and amenities of the Development Area;
- 4.6. The promotion, advancement and protection of the communal group interest of the Members of the Association generally, including but not limited to the adoption, amendment of and enforcement of the General Rules as set out in paragraph 16 hereof;
- 4.7. Ownership and control of the roads and private open spaces;

- 4.8. The insurance and maintenance of the roads, private open spaces, boundary fence, guard house and related buildings and all future improvements that take place from time to time;
- 4.9. To control and manage heavy duty vehicles using the roads;
- 4.10. To read water and any form of meter which measures consumption and to attend to the management and collection and payment of amounts due by members in respect of any metered consumption where applicable;
- 4.11. To manage all aspects related to fire control on the estate,
- 4.12. The Home Owners' Association shall accept full responsibility for the access erf, Private Open Space, and/or any essential services downstream of the point of supply;
- 4.13. The Home Owners' Association shall accept full responsibility for the maintenance of the water reticulation and any private individual metres as well as the reading of such individual metres;
- 4.14. The Home Owners' Association shall accept full responsibility for the maintenance of the roads and storm water system and the Estate bulk sewer system;
- 4.15. The Home Owners' Association shall ensure access for refuse removal by the Council and any other removal contractor;
- 4.16. The functioning of all private services shall remain the responsibility of the Home Owner including all remedial work of any of these services;
- 4.17. The Home Owners' Association shall be responsible for street/area lighting;
- 4.18. The Home Owner's Association shall maintain any brick substations required by the Council. Council will maintain the equipment within such substations.
- 4.19. To amend the Design Manual and to ensure that the measures contained in the Lovemore Heights Estate Design Manual are implemented and complied with. Any major change to the aesthetics as outlined in the current design manual will require approval by a properly constituted special meeting.
- 4.20. Have the power to decide whether or not to give consent to an application by a member for the consolidation of an erf;
- 4.21. Have the power and exclusive right to approve the Building Contractors who will be permitted to undertake building works on any erf within the development area and the EXCOM's powers in this regard shall be absolute and binding on the member;
- 4.22. Have the power to enforce the Contractor's Code of Conduct against each member of the Home Owners Association;
- 4.23. In so far as reference is being made herein to the Developer, it is recorded that all such rights as the Developer may have herein have been ceded to the Home Owners' Association;

and the Association shall have all the powers to carry out such acts as are necessary to accomplish these objects.

## 5 CONTROL MEASURES OF THE DESIGN MANUAL

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The broad concepts of the Design Manual constitute an integral part of this constitution. Notwithstanding anything to the contrary contained in the Design Manual, which is Annexure "D" to the Sale Agreement, the Members shall:

- 5.1. complete the construction of the house within five (5) years of the date of first registration of the transfer of the property into the name of the Purchaser as provided for in the Deed of Sale.
- 5.2. ensure that no construction, erection or implementation of improvements on the property are commenced with prior to the approval of plans for such improvements and in this regard, reference shall be had to the provisions of the Lovemore Heights Estate Design Manual for the procedure for approval of plans.
- 5.3. ensure that Contractors hired to complete new builds abide by the Contractors' Code of Conduct and Cooperation Agreement which is Annexure "E" of the Lovemore Heights Home Owners Constitution.
- 5.4. ensure that Contractors hired to complete alterations, additions and renovations abide by the Contractors' Code of Conduct and Cooperation Agreement which is Annexure "F" of the Lovemore Heights Home Owners Constitution.

## 6 MEMBERS

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- 6.1 The Association came into existence simultaneously with the first registration of a transfer of an erf from the Developer to an owner.
- 6.2 Membership of the Association shall be compulsory and automatic upon the registration of an erf in the development area in the name of the Member and Members shall be obliged to comply with the provisions of this Constitution and any rules or regulations in terms hereof.
- 6.3 No person shall be entitled to cease to be a Member of the Association while remaining the registered owner of an erf in the development area or be entitled to resign there from.
- 6.4 When a Member ceases to be a registered owner of an erf in the development area he shall *ipso facto* cease to be a Member of the Association.
- 6.5 Membership shall be transferred by the passing of transfer of any erf in the complex from the previous Member to the new Member.
- 6.6 A Member shall not be entitled to sell or transfer an erf in the complex unless it is a condition of the Deed of Sale that the new purchaser becomes a Member of the Association.

- 6.7 When an Erf is registered in the name of more than one transferee, all the registered owners of the Erf shall be deemed jointly and severally to be one Member of the Association;
- 6.8 The rights and obligation of a Member shall not be transferable and every Member shall:
  - 6.8.1 to the best of his ability further the objects and interest of the Association;
  - 6.8.2 be jointly liable with all the Members for all expenditure incurred or foreseen in connection with the Association;
  - 6.8.3 insure his property for its replacement value and, on demand by the Association, provide proof of such insurance.
  - 6.8.4 Comply with the rules made by the Association.
- 6.9 No Member shall transfer his erf until the Association has certified that the Member has at the date of transfer;
  - 6.9.1 fulfilled all his financial obligations to the Association;
  - 6.9.2 fulfilled his obligations regarding any improvements to his property in accordance with the Design Manual to the satisfaction of the Association
  - 6.9.3 fulfilled his obligations, in the event of the first transfer of a newly built property, of providing a survey certificate confirming that the improvements to the property have not encroached the building lines and the building pegs.

## **7 EXECUTIVE COMMITTEE (EXCOM)**

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- 7.1. EXCOM shall consist of no less than 3 (three) Members and shall not exceed 8 (eight) persons who shall be Members or spouses of Members. Any EXCOM Member shall be eligible for re-election. EXCOM may co-opt members onto EXCOM. The co-opted members will not have voting rights but must be members in good standing.
- 7.2. Each EXCOM member shall continue to hold office from the date of his commencement of office until the Annual General Meeting following his said appointment, at which meeting each member shall be deemed to have retired from office as such and will be eligible for re-election to the EXCOM at such meeting.
- 7.3. Upon any vacancy occurring in the EXCOM 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 EXCOM. The EXCOM shall within 14 (fourteen) days after the Annual General Meeting appoint a Chairman who shall hold office until the following Annual General Meeting. In the event of any vacancy occurring, the EXCOM shall immediately appoint one of their number as a replacement in such office.

- 7.4. Except as otherwise provided, the Chairman shall preside at all meetings of the EXCOM and all general meetings of the Members and, in the event of the chairman of the EXCOM not being present within 15 (fifteen) minutes of the Scheduled time for the start of the meeting or in the event of his inability to act, a Chairman shall be appointed for the meeting.
- 7.5. Each member of the EXCOM shall be entitled to one vote and any resolution shall be carried on the simple majority of the votes cast at the EXCOM meeting.
- 7.6. No member shall be a Member of the EXCOM should such person:
  - 7.6.1. be an un-rehabilitated insolvent; or
  - 7.6.2. be convicted of fraud or theft.
  - 7.6.3. be convicted of corruption;
- 7.7. Any member of the EXCOM shall be entitled to be reimbursed for any costs or disbursements incurred in the fulfilment of his duties as an EXCOM member. No EXCOM member shall be reimbursed for his time spent as an EXCOM member in carrying out his duties and functions, unless the members by a simple majority decide otherwise and then only on such terms and conditions as such members may agree upon.

## **8 DUTIES OF EXCOM**

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- 8.1. Subject to any restriction imposed or direction given at a General Meeting of the Association, the EXCOM:
  - 8.1.1. shall pursue the objects and exercise the powers of the Association;
  - 8.1.2. may from time to time make charges upon the MEMBERS for the purpose of meeting all the expenses which THE ASSOCIATION has incurred or will incur, or to which EXCOM reasonably anticipates THE ASSOCIATION will be put in the attainment of its objects and the pursuit of its business;
  - 8.1.3. may appoint agents, professionals or service providers to carry on any function or duty that the EXCOM may direct from time to time;
  - 8.1.4. the EXCOM operates a bank account in the name of the Home Owners Association;
  - 8.1.5. the EXCOM shall keep books of all income and expenditure;
  - 8.1.6. the EXCOM shall budget for the running of the complex and shall adjust the levy accordingly;
  - 8.1.7. the EXCOM shall insure the common property and the improvements thereof for the full replacement value and take out the public liability insurance covering mishap on the common property;
  - 8.1.8. the EXCOM will maintain the common property;
  - 8.1.9. the EXCOM shall provide security for the home owners and will have a security guard man the entrance to the property for 24 hours per day for 365 days of the year;
  - 8.1.10. the EXCOM shall follow the procurement procedures outlined in Annexure A of the Lovemore Heights Estate Constitution

- 8.1.11. the EXCOM shall ensure that there is clear and consistent communication with its members as outlined in Annexure B of the Lovemore Heights Estate Constitution.
- 8.1.12. EXCOM shall abide by their Code of Conduct as outlined in Annexure C of the Lovemore Heights Estate Constitution
- 8.1.13. Appoint an auditor certified by the regulatory authority of accounting and auditing to perform an annual financial review of the books of accounts of the Home Owners Association or to perform special reviews of the books in the event of any special situation arising which in the discretion of the EXCOM warrants a special audit.
- 8.1.14. Make proposals for changes to the Constitution to be ratified at an Annual General Meeting or Extraordinary Meeting

## 9. LEVIES

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- 9.1. The EXCOM shall: -
  - 9.1.1. maintain a levy fund for the purpose of meeting all the expenses of the Home Owners Association for the control, management and administration of Lovemore Heights Estate and for the charges for any supply of any services required by the Home Owners Association and any other rates or levies which may from time to time be imposed by the local authority and/or competent authority and for payment of all expenses necessary or reasonably incurred in connection with the management of the Home Owners Association and the maintenance, repair and renewal of common areas and facilities;
  - 9.1.2. require members whenever necessary to make contributions to such fund for the purpose of satisfying the expenses referred to above equal as nearly as is practical to such estimated amount;
  - 9.1.3. from time to time impose special levies upon the members effective from the date of passing of the applicable resolution. Any special levy so imposed shall be payable in one sum or by such instalments and at such time or times as the EXCOM shall deem fit;
- 9.2. All levies are due and payable by the 1<sup>st</sup> day of the month immediately following the month that such liability rose and thereafter on the 1<sup>st</sup> of each and every following month;
- 9.3. The members shall be liable for interest on outstanding amounts at a rate determined by the EXCOM from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purpose of this calculation;
- 9.4. All overdue levies beyond 60days will be handed over for legal collection, unless the Member requested the EXCOM for extension. In extreme cases where the homeowner's property is occupied on the estate and the homeowner is thwarting the

collection agencies communication efforts, the EXCOM may curtail services to that homeowner's property in accordance with the municipal bylaws.

## **10 GENERAL MEETING OF THE ASSOCIATION**

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- 10.1. The Association shall within (3) three months after the end of each financial year hold its Annual General Meeting in addition to any other general meeting that year and shall specify the meeting as such in the notices convening the same. Such Annual General Meeting shall be held at such time and place as the EXCOM shall decide from time to time.
- 10.2. All general meetings other than Annual General Meetings shall be call Extraordinary General Meetings. Extraordinary General Meetings are for the purpose of discussing a single topic only.
- 10.3. Annual General Meetings shall be called by at least 21 (twenty-one) days' notice in writing and an Extraordinary General Meeting, shall be called by at least 15 (fifteen) days; notice in writing. Each notice shall specify the place, the date and hour of the meeting and the general nature of the business to be discussed.
- 10.4. In the event that a general meeting of the Association is unavoidably delayed, EXCOM is to communicate effectively with all members in whatever way is practical to keep them informed of the financial and operations issues they need to know of, and to continue to run the Association in accordance with its governance documents in every other way, to the extent that this is possible.

## **12. VENUE OF MEETINGS**

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Meetings of the Association shall take place at such place as shall be determined by the EXCOM from time to time, provided, however, that the Members may by simple majority direct that the annual general meeting of the Association shall be held at such other place as the Members may by simple majority deem fit.

## **13. NOTICES OF MEETINGS**

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- 13.1. An annual general meeting and a general meeting called for the passing of a special resolution shall be called by 21 (twenty one) days' notice in writing at least, and an extraordinary general meeting, other than one called for the passing of a special resolution shall be called by 15 (fifteen) days' notice in writing at least. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting, and in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business,

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

- 13.1.1. in the case of a meeting called as the annual general meeting: by the Members entitled to attend and vote thereat; and
- 13.1.2. in the case of an extraordinary general meeting: by a majority in number of the Members having a right to attend and vote at the meeting being a majority together holding not less than 75% (seventy five percent) of the total voting rights of all Members.
- 13.2. The non-receipt of any such notice, notification or document by any Member or other person entitled to receive same, shall not invalidate the proceedings at or any resolution passed at any meeting.

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

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In addition to any 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. the confirmation of the minutes of the preceding annual general meeting and of any general meetings held subsequently;
- 14.2. the consideration of the Chairman's report to the Members;
- 14.3. the election of the EXCOM;
- 14.4. the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 14.5. the consideration of the income statement and balance sheet of the Association for the last Financial year of the Association preceding the date of such meeting;
- 14.6. the noting of the levy for the Financial Year during which such annual general meeting takes place;
- 14.7. any other matters as may be required to be dealt with by the Members or the EXCOM.

## **15 PROCEEDINGS AT GENERAL MEETINGS**

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- 15.1 The Chairman shall preside as such at all general meeting provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Members present at such meeting entitled to vote, shall appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 15.2 The Chairman may, with the consent of any general meeting at which a quorum is present, and shall 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

business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting adjourned for 7 (seven) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting.

15.3 Save as otherwise provided in this Constitution, the proceedings at any general meeting shall be conducted in such reasonable manner as the Chairman of the meeting shall decide.

## 16 VIRTUAL MEETINGS

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- 16.1. A meeting may be hosted virtually by a resolution passed by EXCOM. EXCOM has the right to convene virtual meetings that may be appropriate in the context of a COVID lockdown or similar eventualities.
- 16.2. Members that are unable to attend a virtual meeting in their own home may participate in a “hybrid meeting”.
  - 16.2.1. Hybrid meetings must meet the requirements of the Disaster Management Act Lockdown Level (if this is applicable).
- 16.3. All of the standard meeting requirements, as recorded in paragraphs 13, 14, 15, 17, 18, 19 and 20 are to be complied with.
- 16.4. Circulate a “pre-meeting toolkit” to ensure that all members have an opportunity to be well prepared for the meeting.
  - 16.4.1. Circulate a list of requirements for Microsoft Teams / Google Meet / Zoom login
  - 16.4.2. Circulate a timeline of how the meeting will be run over three (3) weeks for an Annual General Meeting and Extraordinary Meeting that is voting on a special resolution; or over two (2) weeks for an Extraordinary Meeting voting on a general resolution
- 16.5. Voting
  - 16.5.1. Online voting can take place as follows:
    - 16.5.1.1. The “chat function” of the conferencing software can be used as a simple show of hands
    - 16.5.1.2. Voting software may be purchased or rented for the meeting
    - 16.5.1.3. A Google form/survey can be generated to list and describe each resolution to be addressed, with the multiple-choice selections of “accept”, “decline” or “abstain” as the options. The link to the form/survey is to be emailed out before the meeting, and members can fill this out as the matter is discussed.
    - 16.5.1.4. Tallying of the votes is to be carried out by at least two (2) EXCOM members to ensure that there is no vote tampering.
- 16.6. Delays to holding the meeting:
  - 16.6.1. Eskom loadshedding and power outages will necessitate a delay in holding the meeting.
  - 16.6.2. Where a majority of members do not have the ability to meet virtually, a delay in the meeting will be acceptable.

## 17 VOTING

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- 17.1 Every Member shall be entitled to one vote for each unit registered in his name.
- 17.2 If a unit is registered in the name of more than one person, then all such co-owners will jointly have one vote.
- 17.3 Any Member holding undeveloped land in the development area will have one vote for each separate piece of land registered in his name.
- 17.4 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 his membership, shall be entitled to vote at any meeting.
- 17.5 At any general meeting a resolution put to the vote shall be decided upon by the show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the meeting.
- 17.6 If a poll is duly demanded it shall be taken in such a manner as the Chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 17.7 Every resolution proposed for adoption and every amendment of a resolution proposed for adoption shall be seconded at the meeting, and if not so seconded, shall be deemed not to have been proposed.
- 17.8 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, by Members present in person or by proxy and entitled to vote at the meeting, 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 for and against any resolution, the resolution shall be deemed to have been defeated.
- 17.9 A special resolution shall be carried by a 75% majority of the members present physically or by proxy.
- 17.10 A vote cast under a proxy, power of attorney, or other authority, which has been revoked, shall nevertheless be valid unless:
  - 17.10.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
  - 17.10.2 the Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 17.11 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting whose decision shall be final and conclusive.

17.12 If any difficulty or dispute arises regarding the admission or rejection of a vote, or regarding any other matter, such difficulty or dispute is to be determined by the Chairman, whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.

17.13 Read with clause 15.11, unless any Member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

17.14 In the event that a general resolution needs to be passed and neither a physical nor a virtual meeting can be held, then the resolution may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of a minimum of seventy-five percent (75%) of the Members entitled to vote.

## **18 QUORUM**

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No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds with the business. A quorum for all meetings shall consist of 32 (being 20%) members physically present or by proxy at a meeting properly called by notice.

- 18.1. If a quorum is not present within 30 minutes from the time indicated on the notice calling the meeting, stands adjourned to the same day of the following week, at the same venue, and at the same time or at such other place or time as the Chairman of the meeting shall appoint.
- 18.2. If at such second adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.

## 19 PROXIES

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- 19.1. All Members may be represented at a general meeting by a proxy, who need not be a Member of the Association.
- 19.2. The instrument appointing a proxy shall be in writing signed by the Member concerned and shall be e-mailed to the secretary of the EXCOM 24 hours prior to the meeting, or handed to the secretary of the EXCOM prior to the start of the meeting.
- 19.3. The instrument appointing a proxy shall be directive and specify how the member wishes to vote for each matter on the agenda.
- 19.4. Where the appointed proxy is unable to attend the meeting, the proxy may be ceded to the Chairman of the meeting.
- 19.5. A member may appoint the Chairman of the meeting as their proxy.
- 19.6. No member, other than the Chairman of the meeting, may hold more than two proxies from other homeowners.

## 20 SPECIAL RESOLUTIONS

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- 20.1. Any special resolutions or an amendment of a special resolution, shall be caused at a general meeting of which not less than 21 (twenty-one) days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which –
- 20.2. Members holding in the aggregate not less than 20% (twenty percent) of the total votes of all the Members, are present in person or by proxy; and
- 20.3. The resolution has been passed on a show of hands by not less than 75% (seventy five percent) of the number of Members entitled to vote on a show of hands at the meeting who are present in person or by proxy, or where a poll has been demanded, by not less than 75% (seventy five percent) of the total votes to which the Members present in person or by proxy are entitled.
- 20.4. Special resolutions are required for the following matters:
  - 20.4.1. no Erven forming Common Areas shall be –
    - 20.4.1.1. sold; or
    - 20.4.1.2. mortgaged; or
    - 20.4.1.3. subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation and servitude, save as specified in the said conditions of establishment, and save as such rights as are enjoyed by the Members in terms hereof, without the sanction of a special resolution of the Association;
  - 20.4.2. the Association may, in its discretion, permit the Members, subject to the provisions of this Constitution, to use the Private Spaces and shall do so unless by special resolution taken at an extraordinary general meeting called for the purpose, it is otherwise resolved for good reason;
  - 20.4.3. no Member shall operate or conduct a time-sharing scheme as contemplated in the Property Time-Sharing Control Act No 71 of 1983, as amended, in respect of any

dwellings or Units owned by him save where such scheme arises from co-ownership or syndication involving not more than 4 (four) Members;

- 20.4.4. amending this Constitution;
- 20.4.5. ratifying actions by the Association or the EXCOM in excess of their authority in terms of this Constitution;
- 20.4.6. disposing of all or a greater part of the assets of the Association;
- 20.4.7. winding-up or dissolving the Association.

## **21. SALE OF NON-MOVABLE ASSETS**

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- 21.1. Common Areas, Recreational Areas (Park), Servitudes and any other areas in the Estate owned by the HOA cannot be sold, disposed of, sub-divided or leased out.
- 21.2. If any of these areas are considered applicable for sale, it will be the sole decision of the HOA, determined by a Special Resolution, tabled at an Extraordinary General Meeting, which requires 75% all members to be in favour, whether physically present or by proxy.
- 21.3. Areas that cannot be sold, leased out or disposed of for whatsoever reason are:
  - 21.3.1. the Park Recreation Area (Common / Park) Erf No 3251
  - 21.3.2. Servitude Between Erf 3245 & Erf 3244 which is a walkway and entrance to the Park Erf 3251

## **22. SALE OF MOVABLE ASSETS**

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- 22.1. All MOVABLE Assets that are obsolete and no longer in use may be sold.
- 22.2. The sale of these assets needs to be approved by the HOA and put out to tender via all internal communication structures. Three (3) tenders to purchase will be required.
- 22.3. Where a movable Asset has a nil value, or no tenders are submitted then the EXCOM can approve the disposal of the asset.

## **23. MINUTES OF MEETINGS OF THE ASSOCIATION**

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- 23.1. The EXCOM shall:
  - 23.1.1. ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;
  - 23.1.2. cause such minutes to be kept of all such meetings of the Association in a minute book of meetings of the Association kept for the purpose.
- 23.2. The EXCOM shall keep all minute books of meetings of the Association in perpetuity.

- 23.3. On the written application of any Member, the EXCOM shall make all minutes of the proceedings and/or meetings of the Association available for inspection at the Association's offices by such. The Association will not be obliged to distribute the minutes electronically.
- 23.4. All resolutions recorded in the minutes of any meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Association shall be of any force or effect, or shall be binding upon the Members or any of the EXCOM, unless such resolution is competent within the powers of the Association.

## **24. FINANCIAL YEAR END**

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

## **25. ACCOUNTS**

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- 25.1. The EXCOM shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association including:
  - 25.1.1. a record of the assets and liabilities of the Association;
  - 25.1.2. a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
  - 25.1.3. register of Members showing in each case their addresses;
  - 25.1.4. individual ledger accounts in respect of each Member.
- 25.2. On the application of any Member, the EXCOM shall make all or any of the books of account and records available for inspection by such.
- 25.3. The EXCOM shall cause all books of account and records to be retained for a period of (five) years after completion of the transactions, acts or operations to which they relate.
- 25.4. The Association in general meeting or the EXCOM may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by Members of the accounts and books of the Association, or any of them, and subsequent to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 25.5. At each annual general meeting the EXCOM shall lay before the Association financial statements for the immediately preceding financial year of the Association or, in the case of the first period since the date of commencement of the Association, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the EXCOM.

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

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- 26.1. The EXCOM shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- 26.2. The EXCOM will set up reserve accounts for funds that are held over and above one year's working capital requirements. These reserves may be invested in absolute return funds with an explicit target of no less than CPI + 5% (five percent) with any financial institution as approved by the EXCOM from time to time.
- 26.3. Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

## **19 INDEPENDANT REVIEW**

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- 27.1. Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.
- 27.2. The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards.

## **28. INDEMNITY**

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

## **29. DEFAMATION PRIVILEGE**

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Every Member of the Association and every EXCOM member shall be deemed by virtue of his membership of the Association, to have waived as against every other Member, the Chairman, every other EXCOM, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the Association, or the EXCOM, or any sub-committee, all claims and rights of action which such Member or Trustee might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee, or any reference to such Member or Trustee, made at any meeting of EXCOM, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false.

## **30. OWN RISK**

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

## **31 MUNICIPAL SERVICES**

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- 31.1. It is a requirement that a home owner shall install a prepaid electricity municipal box on its property as opposed to having consumption of electricity metered and read by the Municipal Officials.
- 31.2. It is a requirement that a member shall install a private water meter.
- 31.3. The EXCOM shall liaise with the Nelson Mandela Metropolitan Municipality to ensure that adequate arrangements are made for the collection of refuse, reading of estate's communal water consumption meter and all other essential services required for the purpose of living in a harmonious healthy and hygienic environment.

## **32 ESTATE RULES**

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- 32.1 The Association shall be entitled to make Estate Rules to be enforced in regard to all aspects of the development, operation of the Estate and conduct of members and their guests and the members undertake to abide by all such rules as approved by the Association.
- 32.2 Refer to Annexure H for the complete list Estate Rules

### 33. DOMICILIUM

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- 33.1. The EXCOM shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
  - 33.1.1. such address shall be the address of the Chairman or of a resident EXCOM member nominated by the EXCOM or the address of any duly appointed Managing Agent;
  - 33.1.2. the EXCOM shall give notice to all Members of any change of such address.
- 33.2. The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf or Unit (as the case may be).
  - 33.2.1. The *domicilium citandi et executandi* of each Resident shall be the street address of the Erf or Unit which such Resident occupies.
- 33.3. It shall be competent to give notice by telefax or email where the telefax number or email address of the Member or Resident is recorded with the EXCOM.
- 33.4. A Member or Resident who has furnished an electronic address to the Association authorises the Association to use that electronic address and to use electronic communication to give any notices, documents, records, legal process or statements which the Association is required to or wishes to serve upon the Member or Resident.
- 33.5. A Member or Resident may by notice in writing to the EXCOM alter his *domicilium*, provided such new address may not be a post office box or post restante and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.
- 33.6. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member or Resident shall be adequate written notice or communication to such Member or Resident notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi*.
- 33.7. Any notice to a Member or Resident:
  - 33.7.1. sent to him by prepaid registered post in a correctly addressed envelope at his *domicilium et executandi* shall be deemed to have been received on the 7th day after posting (unless the contrary is proved); or
  - 33.7.2. delivered by hand to a responsible person at his *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
  - 33.7.3. successfully transmitted by telefax to his chosen telefax number shall be deemed to have been received on the 1st day after the date of transmission, unless the contrary is proved.
  - 33.7.4. sent to him by electronic mail shall be deemed to have been received on the date and at the time recorded by the computer used by the Association, unless there is conclusive evidence that it was delivered on a different date or at a different time.

## 34. DETERMINATION OF DISPUTES

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- 34.1 If all internal dispute resolution mechanisms have been exhausted, the Home Owners Association, the Home Owner as well as the Residents may apply to the Community Schemes Ombud Service (CSOS) for dispute resolution, as they may deem fit.
- 34.2 Notwithstanding the above proceedings listed in paragraph 34.1 above, the EXCOM reserve the right to institute legal civil action in a court of competent jurisdiction or lay criminal charges against a transgressor, in the name of the HOA. Notwithstanding the foregoing, the EXCOM may in the name of the HOA enforce the provisions of any ESTATE RULES by proceedings in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 34.3 Should the EXCOM institute any legal proceedings against any Member or resident on the Estate for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 34.4 Any party to such dispute may demand that the dispute be resolved where possible first through Mediation. If the dispute cannot be resolved in this manner, then the route of Adjudication be followed, and only thereafter by means of Arbitration. Written notice is required to the other party and EXCOM.
- 34.5 The arbitrator shall be agreed upon between the parties. Should the parties fail to agree on an arbitrator within fourteen (14) days after giving of notice in terms of the preceding clause, the arbitrator shall be appointed on written request by either party by the chairman for the time being of the Eastern Cape Attorneys Association.
- 34.6 The arbitration shall be held at Port Elizabeth, in accordance with the formalities and procedures prescribed in terms of the Arbitration Act, No 42 of 1965.