



CONSTITUTION
OF
HEMEL & AARDE ESTATE HOME OWNERS'
ASSOCIATION

(Amended and adopted at a Special General Meeting on 3 June 2023)



INDEX

1. NAME AND ESTABLISHMENT

2. INTERPRETATION

3. THE ASSOCIATION

- 3.1 Main Business of the Association
- 3.2 Status of Association
- 3.3 Main Objects
- 3.4 Subdivision and the Common Area
- 3.5 Membership
- 3.6 Conduct Rules Architectural Guidelines and other Regulations
- 3.7 Members' obligations

4. TRUSTEE COMMITTEE

- 4.1 Composition of the Board of Trustees
- 4.2 Nominations for Members of the Board of Trustees
- 4.3 Functions and powers of the Board of Trustees
- 4.4. Trustee member or member of sub-committee with material interest
- 4.5 Other professional officers
- 4.6 Office bearers
- 4.7 Disqualification and rotation of Board of Trustees' Members
- 4.8 Indemnity

5. FINANCIAL AFFAIRS

- 5.1 Financial year end
- 5.2 Levies
- 5.3 Accounts
- 5.4 Audit
- 5.5 Cessation of membership

6. MEETINGS

- 6.1 Proceedings of the Board of Trustees
- 6.2 Annual General Meeting and Annual General Budget Meeting
- 6.3 Agenda at Annual General Meeting and Annual General Budget Meetings
- 6.4 Special General Meeting
- 6.5 Venue of meetings
- 6.6 Notice of meetings
- 6.7 Procedure at General Meetings
- 6.8 Quorum
- 6.9 Proxies
- 6.10 Voting
- 6.11 Resolutions: Ordinary and Special

7. DISPUTES

- 7.1 Breach
- 7.2 Arbitration
- 7.3 Informal Dispute Resolution
- 7.4 Community Schemes Ombuds Service

8. SERVICE OF NOTICES

9. GENERAL

- 9.1 The Constitution and Amendment thereof
- 9.2 Commencement Date
- 9.3 Veto Right
- 9.4 Winding up
- 9.5 The Municipality
- 9.6 Building Code of Conduct
- 9.7 Business
- 9.8 Interpretation
- 9.9 Health Hydro/Hotel
- 9.10 Building Conditions
- 9.11 Income Tax Exemption



1. NAME AND ESTABLISHMENT

The name of the Association is the HEMEL & AARDE ESTATE HOME OWNERS' ASSOCIATION, which is constituted as a Home Owners' Association in terms of relevant legislation.

2. INTERPRETATION

- 2.1 In these presents the following words and phrases shall, unless the context otherwise requires, have meanings hereinafter assigned to them:
- 2.1.1 **"Architectural Guidelines"** means the Architectural Design Manual attached hereto as Annexure "B", which are regulations formulated to govern the structure and appearance of buildings and gardens at Hemel & Aarde Estate;
 - 2.1.2 **"the Association"** means the HEMEL & AARDE ESTATE HOME OWNERS' ASSOCIATION (commonly abbreviated to HOA);
 - 2.1.3 **"Auditors"** means the Auditors of the Association, appointed in terms of these Presents;
 - 2.1.4 **"the Board of Trustees"** means any committee of Trustees of the Association appointed in terms of these Presents;
 - 2.1.5 **"Chairperson"** means the Chairperson of the Board of Trustees;
 - 2.1.6 **"the Clubhouse"** means the building containing the offices, lounge, bar and kitchen on erf 8202 of Hemel & Aarde Estate;
 - 2.1.7 **"the Clubhouse Precinct"** means the facilities on erf 8202, that include the Clubhouse, tennis courts, childrens' play area, braai area, squash courts, gym and swimming pool;
 - 2.1.8 **"the Common Area"** means the Clubhouse Precinct as well as all other land owned by the Association and will include all services (whether Municipal or otherwise) constructed within the Common Ground (Clause 3.3.2 below refers);
 - 2.1.9 **"Conduct Rules"** means regulations governing the conduct upon and affairs at Hemel & Aarde Estate (Clause 3.5 below refers);
 - 2.1.10 **"Erf"** or **"Erven"** means any Erf, Erven and/or Sectional Title Unit resulting from the subdivision of the Township Area not forming part of the Common Area;
 - 2.1.11 **"General Meeting"** means a General Meeting of the Members of the Association and shall include reference to an Annual General Meeting or a Special General Meeting;
 - 2.1.12 **"Guest"** means a person visiting and staying with a Member or Tenant overnight or for a period of short duration;
 - 2.1.13 **"Hemel & Aarde Estate"** means the Township Area on which the Estate is located;
 - 2.1.14 **"the Land"** means a portion of the property presently known as the Remainder of Portion 357 of the farm ONRUST RIVER No 581, Portion 1 of the farm ONRUST RIVER 581 and the Remainder of Portion 349 (a Portion of Portion 5) of the farm ONRUST RIVER No 581 shown on the sketch plan attached hereto, marked "C" excluding the area marked "W" on the aforesaid plan;
 - 2.1.15 **"Member"** means a Member of the Association;
 - 2.1.16 **"the Municipality"** means the Overstrand Municipality or such authority as may succeed it from time to time;
 - 2.1.17 **"Ordinary Resolution"** means a resolution passed in compliance with Clause 6.10.6 by a simple majority of Members entitled to vote and who participated in the voting procedure of a General meeting;
 - 2.1.18 **"Person"** means, as the context requires, a natural or a juristic person;
 - 2.1.19 **"these Presents"** means this Constitution and any Regulation, as amended from time to time;
 - 2.1.20 **"Regulation"** means any Conduct Rules and/or Architectural Guidelines, and/or any other regulation and/or by-laws of the Association;
 - 2.1.21 **"Resident"** means and refers to a person who resides on the Estate on a permanent basis as part of the household/family of a Member or Tenant;
 - 2.1.22 **"Secretary"** means the secretary of the Board of Trustees for the Hemel & Aarde Association.
 - 2.1.23 **"Special Resolution"** means a resolution passed by not less than three fourths of Members entitled to vote and who participated in the voting procedure of a General Meeting;



- 2.1.24 **“Tenant”** means a person leasing a property or part of a property from a member on the Hemel & Aarde Estate ;
- 2.1.25 **“Treasurer”** means the treasurer of the Board of Trustees for the Hemel & Aarde Association.
- 2.1.26 **“a Trustee Member”** means a person elected to the Board of Trustees;
- 2.1.27 **“the Township Area”** means all immovable property contained on the Land;
- 2.1.28 **“Vice Chairperson”** means the Vice Chairperson of the Board of Trustees;
- 2.1.29 **“Visitor”** means a person making a call on a Member, Tenant or Resident during the day;
- 2.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number and vice versa, and words importing any one gender only shall include the other gender, and reference to natural persons shall include juristic persons and vice versa, if the context so requires.
- 2.3 The headnotes to the clauses in this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

3. THE ASSOCIATION:

3.1 MAIN BUSINESS OF THE ASSOCIATION

The promotion, advancement and protection of the interests of the Members, living in Hemel & Aarde Estate.

3.2 STATUS OF THE ASSOCIATION

The Home Owners Association shall be an association:

- 3.2.1 with legal personality, capable of suing and being sued in its own name;
- 3.2.2 of which none of the Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association;
- 3.2.3 not for profit, but for the benefit of the Members;
- 3.2.4 with the right to acquire, hold, lease and alienate property, both movable and immovable.

3.3 OBJECTIVES OF THE ASSOCIATION

- 3.3.1 To promote the communal interests of the Members and shall include but not be limited to:
 - 3.3.1.1 The care, maintenance, upkeep and control of the Common Area, including all services constructed within the Common Area and to ensure that applicable Municipal Services are supplied to Hemel & Aarde Estate;
 - 3.3.1.2 The formulation and enforcement of rules and regulations at Hemel & Aarde Estate;
 - 3.3.1.3 The formulation and enforcement of aesthetic and environmental standards and Architectural Guidelines at Hemel & Aarde Estate;
 - 3.3.1.4 The provision and maintenance of access and egress control and security measures at Hemel & Aarde Estate;
 - 3.3.1.5 Own the Common Property and any improvements erected thereon;
 - 3.3.1.6 Ensure that all Erven shall have been developed by not later than the date set out in Clause 3.4.7.5 below unless prevented from so doing by vis maior or by operation of law;
 - 3.3.1.7 The preservation of the low density residential nature of Hemel & Aarde Estate;
 - 3.3.1.8 Ensure that Members satisfactorily maintain their Erven in Hemel & Aarde Estate and the buildings thereon;
 - 3.3.1.9 In general do everything necessary to promote the well-being of all residents of Hemel & Aarde Estate.
- 3.3.2 Without limiting the generality of the powers specifically referred to below, the Association shall, subject to this Constitution, have the power to do such acts as may be necessary to accomplish the objectives referred to herein.

3.4 SUBDIVISION AND THE COMMON AREA

- 3.4.1 The subdivision of the Land approved at the time for residential occupation by the Municipality of the Greater Hermanus is as per the attached sketch plan marked as Annexure “C”;
- 3.4.2 The Common Area is the Land excluding erven for residential occupation (marked “W” on Annexure “C”) and the Municipal area Portion 356 of the Farm Onrust;



- 3.4.3 Immovable property in Hemel & Aarde Estate or any portion thereof, which includes all Erven and the Common Area, shall not be subdivided without the sanction of a Special Resolution of the Association;
- 3.4.4 The Common Area or any portion thereof shall not without the sanction of a Special Resolution of the Association be:
 - 3.4.4.1 sold, let on a long term basis, alienated, otherwise disposed of or transferred from the Association; or
 - 3.4.4.2 mortgaged; or
 - 3.4.4.3 subjected to any rights for a period exceeding 12 (TWELVE) months, whether registered in a Deeds Registry or not, of use, occupation or servitude, other than the general servitude in favour of the Municipality, save those enjoyed by the Members of the Association in terms hereof;
 - 3.4.4.4 The Common Area or any portion thereof shall not without the sanction of a Special Resolution of the Association be built upon, whether by the construction of, or additions to buildings, facilities or amenities.

3.5 MEMBERSHIP

- 3.5.1 Membership of the Association shall be compulsory for every registered owner of an Erf, and the transferee of an Erf shall be deemed to have become a Member of the Association, subject to all the obligations of membership, forthwith upon registration of transfer of an Erf into his name;
- 3.5.2 Membership of the Association shall be limited to the registered owners of Erven provided that where any such owner is more than one Person, all registered owners of that Erf, or where it is a juristic person having more than one member, they shall be deemed jointly and severally to be one Member of the Association;
- 3.5.3 When a Member ceases to be the registered owner of the last Erf registered in his name, he shall ipso facto cease to be a Member of the Association;
- 3.5.4 The owner shall not be entitled to sell or transfer an Erf or an interest in any juristic entity which is the owner of an Erf unless it is a condition of the sale and/or transfer that:
 - 3.5.4.1 the transferee shall become a Member of the Association, as provided in Clauses 3.5.1 and 3.5.2
 - 3.5.4.2 the registration of the transfer of that Erf into the name of the transferee shall ipso facto constitute the transferee as a Member of the Association; and
 - 3.5.4.3 he first obtains the written consent of the Association, which consent shall be given without undue delay provided that:
 - 3.5.4.3.1 The purchaser of such erf agrees in writing to abide by these presents;
 - 3.5.4.3.2 The Member shall have paid all amounts due by the Member to the Association for the period to date of transfer of the erf; and
 - 3.5.4.3.3 All and/or any structures on the erf have been built according to plans therefore approved by the Architectural Review Committee and the Municipality;
 - 3.5.4.3.4 All structures on the erf comply with all the safety and other requirements of the Municipality.
- 3.5.5 A Member shall be obliged to forthwith give the Association notice in writing of:
 - 3.5.5.1 the sale of any Erf owned by him and furnish the Association with a copy of the signed Deed of Sale. The purchase price may however be deleted; and
 - 3.5.5.2 registration of transfer of the Erf into the name of the intended Purchaser within 7 (Seven) days of registration.
- 3.5.6 The registered owner of an Erf may not resign as a Member of the Association or cease to be a Member of the Association;
- 3.5.7 The rights and obligations of a Member shall not be transferable and every Member shall:
 - 3.5.7.1 to the best of his ability further the objects and interests of the Association;
 - 3.5.7.2 observe all Regulations;
 - 3.5.7.3 be jointly liable with all the Members for all approved expenditure properly incurred in connection with the Association;
 - 3.5.7.4 not be entitled, without the prior written approval of the Board of Trustees, to make any alterations to any building on Erven or do anything that will affect the architectural style or aesthetic appearance of the buildings within Hemel & Aarde Estate;



- 3.5.7.5 be obliged to ensure that each Erf owned by him shall have been developed by not later than the date so stipulated in the Deed of Sale which resulted in the original transfer of such Erf or Erven from the Developer to the first owner of that Erf or those Erven, by the erection of a dwelling(s) in conformity with the Architectural Guidelines in force from time to time unless prevented from doing so by vis maior or operation of law;
- 3.5.7.6 be obliged to submit any building plan, whether such plan is for new construction, renovation, alteration and/or addition (where such renovation, alteration or addition changes the exterior of the building), to the Board of Trustees for examination and approval prior to the submission of such plan to the Municipality or other local authority for approval and to obtain such approval before submitting such plan(s) to the relevant authorities.
- 3.5.8 Nothing contained in the Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of the Member's Erf.

3.6 CONDUCT RULES, ARCHITECTURAL GUIDELINES AND OTHER REGULATIONS

- 3.6.1 Attached hereto, marked as Annexures "D1", "D2", "D3", is a copy of the Rules of the Hemel & Aarde Estate (Conduct Rules; Clubhouse Precinct Rules; Rules pertaining to the booking of the Association's facilities);
- 3.6.2 Members, their guests, visitors and tenants shall be subject to all Rules, Architectural Guidelines and other regulations stipulated herein, which shall remain in force and effect, subject to any variations effected from time to time in the manner detailed herein;
- 3.6.3 The Rules, Architectural guidelines (Architectural Design Manual, Annexure "B") and regulations as promulgated and in force on the date of adoption of this constitution, as amended or supplemented from time to time, shall be binding on Members;
- 3.6.4 The Board of Trustees may modify or cancel the Rules and must announce such changes to Members in writing, providing reasons and an effective date;
- 3.6.5 Regulations may be promulgated and amended from time to time by the Board of Trustees and shall govern, *inter alia*:
- 3.6.5.1 the Members' rights of use, access to, occupation and enjoyment of the Clubhouse Precinct and the Common Area;
 - 3.6.5.2 the control of pets and other animals at Hemel & Aarde Estate;
 - 3.6.5.3 the external appearance of and the maintenance and use of the Clubhouse Precinct and Common Area and the buildings or other improvements erected thereon;
 - 3.6.5.4 the external appearance and maintenance of buildings or other improvements or structures erected at Hemel & Aarde Estate, architectural and aesthetic style and design criteria, and the type of plants and maintenance of gardens;
 - 3.6.5.5 the execution of building work within Hemel & Aarde Estate;
 - 3.6.5.6 the code of conduct at Hemel & Aarde Estate required of builders, other contractors and owners wishing to execute work within Hemel & Aarde Estate;
 - 3.6.5.7 the conditions of access to and egress from Hemel & Aarde Estate;
 - 3.6.5.8 security within Hemel & Aarde Estate;
 - 3.6.5.9 disputes and disciplinary measures relating to Members and others having access to Hemel & Aarde Estate in relation to matters affecting Hemel & Aarde Estate;
 - 3.6.5.10 the furtherance and promotion of the affairs of the Association;
 - 3.6.5.11 the management of the affairs of the Association;
 - 3.6.5.12 the conduct of the Board of Trustees;
 - 3.6.5.13 the conduct at Hemel & Aarde Estate of Members and any person resident on or entering the estate;
 - 3.6.5.14 any matter that may assist the Association and its representative organs in administering and governing the activities of the Association generally;
 - 3.6.5.15 the determination and imposition of fines, which shall become a debt owing to the Association.
- 3.6.6 Notwithstanding Clause 3.6.5 above, the Members, by Ordinary Resolution in General Meeting, may:
- 3.6.6.1 make any regulation, or
 - 3.6.6.2 cancel or modify any regulation.



- 3.6.7 Members shall be obliged to inform the members of their households, their guests, employees, invitees and/or tenants of the Regulations in force and the Association shall be entitled, but not obliged, in its discretion, to act against such guests, employees, invitees and/or tenants, in addition to the Member, for any breach. The Member shall be responsible and liable for the acts and omissions of their guests, employees, invitees and/or tenants and indemnifies the Association accordingly.
- 3.6.8 The Board of Trustees shall each year appoint an Architectural Review Committee consisting of suitably qualified person/s, who need not be Members, as it may from time to time, decide.
- 3.6.9 The Architectural Review Committee:
- 3.6.9.1 shall, in any deliberations be bound by the Architectural Guidelines and other relevant Regulations in force at the time; and
- 3.6.9.2 may recommend changes to the Architectural Guidelines for consideration by the Board of Trustees and Association in general meeting;
- 3.6.9.3 Dwellings on Hemel & Aarde Estate shall be for single family occupation, whether by Members, their guests or tenants. Exceptions to this clause shall be subject to the prior written approval of the Board of Trustees;

3.7 MEMBERS' OBLIGATIONS

- 3.7.1 Each Member undertakes to the Association that he shall comply with:
- 3.7.1.1 the provisions of this Constitution;
- 3.7.1.2 any Regulation;
- 3.7.1.3 any agreements entered into by the Association which impose obligations on the Member.
- 3.7.2 Every Member shall observe all laws, ordinances, by-laws, regulations or rules imposed by any statutory or other relevant authority and, without detracting from the generality of this clause, shall observe and comply with the provisions of any relevant road traffic legislation as fully and effectually as though the Hemel & Aarde Estate private roads were public roads as defined in the South African legislation.

4. BOARD OF TRUSTEES

4.1 COMPOSITION OF THE BOARD OF TRUSTEES

- 4.1.1 The affairs of the Association shall be managed and controlled by a Board of Trustees which shall comprise 7 (seven) Trustees to be elected by the Members at each Annual General Meeting of the Association. The Association shall have the right to increase or decrease the number of trustees;
- 4.1.2 Every Trustee Member must be a Member of the Association provided that the legal partner of a Member may be a Trustee Member and provided further that in the event that the Member is a company, close corporation or trust, a duly nominated shareholder, director, member or trustee, as the case may be, may be a Trustee Member. Notwithstanding the provisions of this clause, not more than 1 (ONE) person may be appointed as a Trustee Member in respect of an Erf;
- 4.1.3 A Trustee Member shall automatically cease to hold office if that Trustee Member ceases to be a Member of the Association.

4.2 NOMINATIONS FOR MEMBERS OF THE BOARD OF TRUSTEES

- 4.2.1 The Board of Trustees shall call for nominations of Members to fill vacancies on the Board not later than 6 (six) weeks before the Annual General Meeting;
- 4.2.2 Written nominations for Trustee Members shall be lodged not later than 3 (THREE) weeks before each Annual General Meeting and shall be proposed and seconded by Members and accepted by the nominee;
- 4.2.3 A list of nominees for vacant positions on the Board of Trustees shall be distributed to all Members not less than 14 (FOURTEEN) days before each Annual General Meeting. Each nominee must submit a brief curriculum vitae which shall be distributed with the list of nominees;
- 4.2.4 If an insufficient number of nominations are received in terms of Clause 4.2.2, further nominations may be proposed and seconded by Members at the Annual General Meeting with the consent of the persons nominated.



4.3 FUNCTIONS AND POWERS OF THE BOARD OF TRUSTEES

- 4.3.1 Subject to the express provisions of these Presents to the contrary and to any directions given to or restrictions imposed on the Board of Trustees by way of a Special Resolution of the Association in general meetings from time to time, the Trustees shall have full powers in the management and business affairs of the Association which powers shall, without limiting the generality of the aforementioned include the powers and right:
- 4.3.1.1 to do all that is necessary and appropriate to ensure that the objectives of the Association are met, fulfilled and communicated to members;
 - 4.3.1.2 to exercise all powers of the Association and do such acts on behalf of the Association as may be exercised and done by the Association, save those that are required to be done by the Association in General or Special Meeting;
 - 4.3.1.3 subject to the provisions of Clauses 3.5.3, 3.5.4, and 3.5.6 above, to make, cancel or modify any regulation;
 - 4.3.1.4 to vary, cancel or modify any decisions and resolutions of the Trustee Committee from time to time;
 - 4.3.1.5 to fill a vacancy on the Board of Trustees by co-opting any person who qualifies to be a Trustee Member as defined in Sub-Clause 4.1.2 above. The co-option shall be effected by a majority vote of the Board of Trustees. A co-opted Trustee Member shall enjoy all the rights and be subject to all the obligations of a Trustee Member duly elected by Members and serve until the next AGM. The Board of Trustees shall cause to have recorded the reasons for any co-option in the minutes of the relevant meeting;
 - 4.3.1.6 to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustee Members and/or Chairperson, Vice Chairperson, as the case may be, but save for aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties unless so determined by way of a Special Resolution at a General Meeting. Any such expenses shall be disclosed as a separate item in the income statement of the Association;
 - 4.3.1.7 Subject to the provisions of Clause 4.4 below and the unanimous approval of the Trustee Board, provided the Trustee involved recuses himself from any part of the discussion and decision making process, a Trustee may be appointed to perform services or provide goods, entitling him to remuneration or fees in respect of the performance of such duties. Any such expenses shall be separately disclosed in the financial statements of the Association;
 - 4.3.1.8 in the absence of any occupant of an Erf where there is an imminent and serious threat to property and/or persons arising from the Erf, to obtain entry, whether forcibly or not, to such Erf including any buildings thereon and to take whatever action is deemed necessary to rectify or remove such threat. Any reasonable expenditure incurred in this endeavour shall be for the account of the Member concerned and be a debt owing to the Association. The Member shall have no claim against the Association in this regard;
 - 4.3.1.9 to restrict, approve and control all and/or any commercial or other activity in the Common area and Clubhouse Precinct of the Association;
- 4.3.2 The Board of Trustees shall appoint an Architectural Review Committee referred to in Clause 3.6.8 above.

4.4 TRUSTEE MEMBER OR MEMBER OF SUB-COMMITTEE WITH MATERIAL INTEREST

- 4.4.1 A Trustee Member and/or a member of any sub-committee appointed by the Board of Trustees who has a direct or indirect material interest in any proposed contract with the Association:
- 4.4.1.1 must declare his full interest in respect of the subject matter of the proposed resolution or the proposed contract in writing to the committee concerned;
 - 4.4.1.2 shall not in any way seek to influence Trustees or members of any sub-committee regarding a proposed resolution or proposed contract;
 - 4.4.1.3 must recuse himself from the meeting when the item in which he has a direct or indirect material interest comes up for discussion;
 - 4.4.1.4 may not vote on such matter; and



4.4.1.5 shall not enter into any contract with the Association until such time as a resolution has been passed by the Board of Trustees or the sub-committee, as the case may be, approving thereof.

4.5 OTHER PROFESSIONAL OFFICERS

- 4.5.1 The Board of Trustees shall appoint a Manager to perform the functions related to management of the Association. Should the manager be a Member, he is not eligible to be a Trustee. In the event of the position of Manager becoming vacant, the Board of Trustees shall appoint a suitable replacement without undue delay;
- 4.5.2 Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the right to engage on behalf of the Association, and for its benefit, the services of accountants, auditors, attorneys, advocates, architects, engineers and any other professional person(s) or firm and/or any other employee(s) whatsoever, for any reasons thought necessary by the Board of Trustees and on such terms as the Board of Trustees shall decide subject to the provisions of these Presents.

4.6 OFFICE BEARERS

- 4.6.1 After the holding of any Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number a Chairperson, Vice Chairperson, Secretary and Treasurer;
- 4.6.2 The office of the Chairperson, Vice Chairperson, Treasurer and Secretary shall ipso facto be vacated by the Trustee Member holding such office upon his ceasing to be a Trustee Member for any reason. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Board of Trustees shall meet to appoint one of their number as a replacement for such office;
- 4.6.3 Save as otherwise provided in these Presents, the Chairperson shall preside at all meetings of the Board of Trustees, and all General Meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Board of Trustees or the Members, and permit 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;
- 4.6.4 The Vice Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the Board of Trustees.

4.7 DISQUALIFICATION AND ROTATION OF BOARD OF TRUSTEES MEMBERS

- 4.7.1 Any of the following persons shall be disqualified from being appointed or acting as a Trustee Member of the Association:
- 4.7.1.1 a juristic person;
 - 4.7.1.2 a minor or any other person under legal disability;
 - 4.7.1.3 any person disqualified from being a director of a company as envisaged in the Companies Act No. 71 of 2008, as amended;
 - 4.7.1.4 an unrehabilitated insolvent;
 - 4.7.1.5 any person being more than 3 (THREE) months in arrears with any debt due and payable to the Association;
 - 4.7.1.6 any person who persists in the breach of any of these Presents after being ordered by the Board of Trustees to refrain from doing so.
- 4.7.2 A Trustee Member shall be deemed to have vacated his office upon his:
- 4.7.2.1 ceasing to be a member of the Association.
 - 4.7.2.2 resignation from such office, in writing, being delivered to the offices of the Association;
 - 4.7.2.3 death;
 - 4.7.2.4 his insolvency or the insolvency of the company, close corporation or trust represented by the said person;
 - 4.7.2.5 being removed from office by an ordinary resolution of the Members;



- 4.7.2.6 absence from three consecutive meetings of the Board of Trustees without leave of absence;
- 4.7.2.7 being disqualified on any basis envisaged in Clause 4.7.1 above.
- 4.7.3 To encourage continuity, a limited number of Trustee Members shall be required to retire each year:
 - 4.7.3.1 The Trustee Members shall retire by rotation. At every Annual General Meeting at least 2 (TWO) Trustee Members shall retire from office;
 - 4.7.3.2 The Trustee Members to retire as aforesaid in each year shall be those who have been longest in office since their election, but as between persons who became Trustee Members on the same day as those to retire, unless they otherwise agree amongst themselves, shall be determined by lot;
 - 4.7.3.3 A retiring Trustee Member shall be eligible for re-election.
- 4.7.4 Anything done by a person in the capacity of a Trustee Member and in good faith, prior to the recording of the fact that he is no longer a Trustee Member in the minutes of the Board of Trustee, shall be valid, notwithstanding the fact of cessation as Trustee Member prior to the recording referred to;
- 4.7.5 A Trustee Member may be removed from office by an Ordinary Resolution of the Members.

4.8 INDEMNITY

- 4.8.1 All Trustee Members shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee Member, whether defending any proceedings, civil, criminal or otherwise, notwithstanding the fact that such liability may have been incurred or action instituted pursuant to a failure to follow the procedures provided for in these Presents alternatively based upon a misinterpretation of these Presents;
- 4.8.2 Every Trustee Member, every servant, agent and employee of the Association, shall be indemnified by the Association against, and it shall be the duty of the Board of Trustees out of the funds of the Association to pay, all costs, losses and expenses, including travelling expenses, which such person or persons may incur or become liable for by any reason for 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 Trustee Member, his duties as Chairperson or Vice Chairperson. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against 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 this duties, provided that any such act, deed or letter has been done or written in good faith;
- 4.8.3 No Trustee Member in his capacity as such shall be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustee Members, whether in their capacities as Trustee Members or as Chairperson or Vice Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Board of Trustees for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency, or for any loss or damage occasioned by any error of judgement or oversight on the part of the Trustee Members concerned, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of the office(s) of the Trustee Member concerned or in relation thereto, unless the same should happen through lack of bona fides, breach of duty or breach of trust or gross negligence of the Trustee Member concerned.

5. FINANCIAL AFFAIRS:

5.1 FINANCIAL YEAR END

The financial year end of the Association shall be the last day of February, and may be changed only by Ordinary Resolution of the Members.

5.2 LEVIES



- 5.2.1 Levies shall be made on Members for the purpose of meeting all the expenditure which the Association has properly incurred, or to which it may be reasonably anticipated that the Association will necessarily or reasonably be put by way of:
- 5.2.1.1 maintenance, repair, improvement and keeping in order and condition of the Common areas;
 - 5.2.1.2 mortgage payments;
 - 5.2.1.3 purchases of fixed or movable property;
 - 5.2.1.4 erection of or alterations to buildings;
 - 5.2.1.5 payment of all rates and other charges payable by the Association in respect of the Common areas;
 - 5.2.1.6 payment for all services rendered to the Association;
 - 5.2.1.7 payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, the Common Areas and the Association's affairs and the execution of its objects;
- 5.2.2 In calculating levies, account shall be taken of income, if any, earned by the Association;
- 5.2.3 The Board of Trustees shall prepare a budget for the ensuing year and estimate the total levy required to cover the budget. The Board of Trustees may include in such levy an amount to be held in reserve to meet necessary and/or reasonably anticipated future expenditure not of an annual nature and any deficiency from the preceding year;
- 5.2.4 The proposed budget and levies payable by members, must be considered by the Members at the Annual General Budget Meeting and shall be implemented only when approved;
- 5.2.5 The levies referred to in Clause 5.2.4 shall be payable annually in advance on the first day of the Financial year, provided that they may be paid in installments on terms and conditions determined by the Trustees.
- 5.2.6 The Board of Trustees may make special levies upon the Members for unbudgeted expenses, provided that:
- 5.2.6.1 The Board of Trustees shall announce the imposition of the special levy and the reasons therefore as soon as the Board of Trustees has resolved to impose the same;
 - 5.2.6.2 Where feasible, the Board of Trustees shall not commit itself to expenditure for which they intend to raise a special levy until 14 (FOURTEEN) days after the announcement of the levy, calculated from the date of posting the notice. If before this period has expired, a Special General Meeting is called by the Members in terms of Clause 6.4.2 below to discuss the Special levy, then the Board of Trustees shall not commit itself to the expenditure until it has been approved at the Special General Meeting, unless the situation is of such an urgent nature that no delay can be countenanced and immediate action is required;
 - 5.2.6.3 Such Special levies may be made in the sum or by installments and at such time or times as the Board of Trustees shall think fit;
- 5.2.7 Any amount due by a Member by way of a levy shall be a debt due and payable by him to the Association;
- 5.2.8 The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies and any other amount due by a Member to the Association;
- 5.2.9 Levies paid by a Member shall not be repayable by the Association upon his ceasing to be a Member. Notwithstanding the provisions of this clause, the outgoing Member shall be entitled to cede to his successor in title the benefit in and to prepaid levies;
- 5.2.10A Member's successor in title to an Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Erf, to pay the levy attributable to that Erf. No Member shall transfer his Erf unless the Member has at the date of transfer fulfilled all his financial obligations to the Association;
- 5.2.11 The levies due by a Member of the Association shall be paid without deduction or set-off, free of exchange at the offices of the Association or such other place as it may specify in writing from time to time;
- 5.2.12A Member shall not be entitled to any of the privileges of membership unless and until every levy and other sum, if any, which is due and payable to the Association in respect of his membership thereof has been paid, and the Association shall be entitled to discontinue rendering services supplied by the Association to any applicable Erven 28 (TWENTY EIGHT) days after posting



written notice per email, requiring payment, provided that the Association shall ensure that it does not infringe on a Member's constitutional rights to access basic services.

5.2.13 For reference purposes the initial levy structure is attached as Annexure "A"

5.3 ACCOUNTS

5.3.1 The Association in General Meeting or the Board of Trustees, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and/or books of the Association, and subject to such conditions and regulations, the accounts and/or books of the Association shall be open to inspection of Members during normal business hours;

5.3.2 At each Annual General Meeting the Board of Trustees shall lay before the Association, with comparative figures for the previous financial year, the Financial Statements of the Association (Income Statement, Balance Sheet, Cash Flow Statement and a Statement of Changes in Reserves) of the immediately preceding financial year. The Financial Statements referred to shall be accompanied by reports prepared by the Board of Trustees and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in Clause 6.6 below, copies of such specified reports and/or any other documents required by law to accompany same.

5.4 AUDIT

The financial statements of the Association shall be audited annually by the registered External Auditors, within 4 (FOUR) calendar months after the end of each financial year, to be available at the Annual General meeting.

5.5 CESSATION OF MEMBERSHIP

A Member ceasing to be a Member of the Association for any reason shall not, nor shall any such Member's executor, curator, trustee or liquidator, have any claim upon the interest in the funds or other assets of the Association. The provisions of this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his ceasing to be a Member.

6. MEETINGS

6.1 PROCEEDINGS OF THE BOARD OF TRUSTEES

6.1.1 Subject to any provisions of these Presents, the Board of Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit;

6.1.2 Notwithstanding Clause 6.1.1 meetings of the Board of Trustees shall be held at least once every quarter;

6.1.3 The quorum necessary for the holding of any meeting of the Board of Trustees shall be 4 (FOUR) persons;

6.1.4 The Chairperson shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Board of Trustees the Chairperson not be present within 10 (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 10 (TEN) minutes of the time appointed for the holding of such meeting, those present of the Board of Trustees shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting;

6.1.5 The Trustee Members shall cause minutes of all decisions to be taken at every Board of Trustee meeting to be prepared, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Trustees at the next monthly or quarterly meeting, as the case may be, of the Board of Trustees and thereafter signed by the Chairman. The minutes of the Board of Trustee meetings shall after certification be placed in a Board of Trustee Minute Book to be kept, mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors for companies. The Board of Trustee Minutes shall be open for inspection at all reasonable times by a Trustee member, the Auditors and the Association Members and the Municipality and a copy may, upon written request be made available either in electronic form or hard copy to any of the aforementioned parties;

6.1.6 All competent resolutions recorded in the minutes of any Board of



- 6.1.7 meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded;
- 6.1.8 Save as otherwise provided in these Presents, the proceedings at any Board of Trustees Meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide;
- 6.1.9 A resolution signed by all the Members of the Board of Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Board of Trustees duly convened;
- 6.1.10 In the case of an equality of votes, the Chairperson of that meeting shall have a casting vote in addition to his deliberative vote as Trustee Member;
- 6.1.11 Trustees must sign an ethics code of conduct at the time of taking office.

6.2 ANNUAL GENERAL MEETING AND ANNUAL GENERAL BUDGET MEETING

- 6.2.1 The Association shall within the last 2 (TWO) calendar months of the financial year (the last day of February) hold an Annual General Budget Meeting (AGBM) and shall specify the meeting as such in the notices to be given in terms of Clause 6.6 below.
- 6.2.2 The Association shall, within 4 (FOUR) calendar months of the end of its financial year, hold a general meeting as its Annual General Meeting (AGM), in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices to be given in terms of Clause 6.6 below.

6.3 AGENDA AT ANNUAL GENERAL BUDGET MEETING AND ANNUAL GENERAL MEETING:

6.3.1 Annual General Budget Meeting

The only matters that shall be dealt with at the Annual General Budget Meeting shall be the consideration and approval of a budget and the total levies payable pursuant thereto in the financial year following the financial year in which the Annual General Budget Meeting is held. The following items will be considered on the AGBM Agenda:

- 6.3.1.1 Presentation of the Budgeted income and expenditure for the following financial year;
- 6.3.1.2 Presentation of proposed spend on capital items and special projects for the following year;
- 6.3.1.3 Forecast statement of financial position and reserves for the next five years.

6.3.2 Annual General Meeting

In addition to any other matters required by these Presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 6.3.2.1 The consideration of the Chairperson's report;
- 6.3.2.2 The consideration of the financial statements of the Association for the financial year of the Association preceding the date of such meeting;
- 6.3.2.3 The consideration of the report of the Auditors;
- 6.3.2.4 The appointment of Auditors for the next financial year;
- 6.3.2.5 The election of the Board of Trustees;
- 6.3.2.6 The consideration of any resolutions of which due notice has been given and the voting upon any such resolutions;
- 6.3.2.7 The consideration of any resolution regarding procedural matters proposed for adoption by such meeting and the voting upon such resolution.

6.4 SPECIAL GENERAL MEETINGS

- 6.4.1 All General Meetings other than the Annual General Meeting and the Annual General Budget Meeting shall be called Special General Meetings;
- 6.4.2 The Board of Trustees may, whenever it thinks fit, convene a Special General Meeting of Homeowners;
- 6.4.3 The Board of Trustees shall be obliged to convene a Special General Meeting if called upon to do so by written and signed request from Members owning not less than 25 percent of the Erven. Should the Board of Trustees fail to call a Special General Meeting thus requested within 14 (FOURTEEN) days of delivery of the request, the Members concerned shall be entitled to call the Special General Meeting.



6.5 VENUE OF MEETINGS

Meetings of the Association shall take place at the Clubhouse of the Hemel & Aarde Estate, unless that facility is not available, in which case a venue not more than 25 km from the Estate, shall be determined by the Board of Trustees.

6.6 NOTICE OF MEETINGS

6.6.1 Notwithstanding the provisions of Clause 8, all notices relating to an Annual General Meeting, Annual General Budget Meeting or a Special General meeting called for the passing of an Ordinary Resolution or a Special Resolution shall be given by email to such persons as are under these Presents entitled to receive such notices from the Association, and shall be held not less than 28 (TWENTY EIGHT) days from the date of delivery of a notice. Calculation of the 28 day period shall be exclusive of the day on which the notice was emailed.

6.6.2 The notice shall specify the place, the date and the time of the meeting and the proposed resolutions. In the case of a Special Resolution, the terms and effect of the resolution and the reasons for it shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Board of Trustees.

6.7 PROCEDURE AT GENERAL MEETINGS

6.7.1 The Chairperson shall preside as such at all General Meetings, provided that should he not be present within 10 (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 10 (TEN) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting;

6.7.2 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 10 (TEN) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. If the adjournment is for less than 10 (TEN) days, the Members shall not be entitled to any notice of adjournment or any notice of the business to be transacted;

6.7.3 Except as otherwise set forth in these Presents, all General Meetings shall be conducted in accordance with generally accepted practice.

6.8 QUORUM

6.8.1 No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for holding any General Meeting shall be the presence, in person or by proxy, or virtually by means of an electronic link, of the Members entitled to vote, as represent 25% (TWENTY FIVE PER CENTUM) of the total votes of all Members of the Association entitled to vote, except where the purpose of the meeting is the passing of a Special Resolution, in which case the quorum shall be the presence, in person or by proxy, or virtually by means of an electronic link, of the Members entitled to vote, as represent not less than 50% (FIFTY PER CENTUM) of the total votes of all Members of the Association entitled to vote;

6.8.2 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 following week, at the same place and time, or at such other place as the Chairperson of the meeting shall appoint, provided that, if a Special Resolution is to be voted on at the meeting, the meeting shall stand adjourned for at least 28 (TWENTY EIGHT) days, and at least 28 (TWENTY EIGHT) days notice shall be given of the date on which the meeting has been reconvened. If at such adjourned meeting a quorum is not present within an hour from the time appointed for holding the meeting, Members present shall be a quorum, except that, if the meeting has been convened on the requisition of Members and a quorum is not present, the meeting shall be dissolved.

6.9 PROXIES (Annexures)



- 6.9.1 A Member may by proxy be represented at a General Meeting by the Member's legal partner or by another Member. A Member may appoint the Secretary of the Association as a proxy, in which case the Member shall give instructions to the Secretary on how to vote. The instrument appointing a proxy shall be substantially in the form given in Annexures "F1 and F2". Where a Member is a legal entity other than an individual (i.e. a company, closed corporation or trust), the instrument shall be signed by a duly authorised representative of that legal entity who shall warrant that he is duly authorised to do so.
- 6.9.2 Where the Member is a close corporation the instrument shall be signed by a member thereof who shall warrant that he is duly authorised and where the Member is a trust the instrument shall be signed by a trustee who shall warrant that he is duly authorised.
- 6.9.3 The instrument appointing a proxy and the Power of Attorney or other authority, if any, under which it is signed, or a notarially certified copy thereof shall be deposited at the office of the Association at any time but not less than 24 (TWENTY FOUR) week day hours 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, and it may be cancelled at any time by the Member who has appointed the proxy by giving written notice to this effect to the Secretary of the Association.

6.10 VOTING

- 6.10.1 Unless otherwise provided, at every General Meeting every Member entitled to vote, whether present in person or by proxy, or virtually by means of an electronic link, shall have one vote for each Erf, provided that if an Erf is registered in more than one name, they shall jointly have one vote;
- 6.10.2 Save as expressly provided for in these Presents, no person other than a Member duly registered, who has paid every levy and other sum, if any, which is 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 vote on any question, at a General or Special Meeting.
- 6.10.3 At any General Meeting a resolution put to the vote of the meeting shall be decided by way of electronic poll. The electronic poll shall open at the closure of the General Meeting and shall remain open for exactly (SEVEN) calendar days, commencing on the day of the meeting. Members shall be entitled to submit their votes via the electronic polling system at any time while the poll remains open, provided that once submitted via the electronic polling system a member's vote shall be final and may not be changed.
- 6.10.4 Notwithstanding the provisions of Clause 6.10.3 aforesaid, voting on the election of a Chairperson of a General Meeting, if necessary, or on any question of adjournment, or other procedural matters, shall be decided on a show of hands by a majority of the Members present in person or by proxy, including Members linked to the meeting virtually and entitled to vote.
- 6.10.5 Every resolution and every amendment of a resolution proposed for adoption by a General Meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 6.10.6 Every resolution other than a Special Resolution or the amendment of a Special Resolution, shall be carried on a simple majority of all the votes cast thereon by way of electronic poll, and an abstention shall not be counted as a vote for or against the resolution in question. A Special Resolution shall be carried by not less than three fourths of all the votes cast thereon by way of electronic poll, and an abstention shall not be counted as a vote for or against the resolution in question.
- 6.10.7 The Chairman shall declare the result of the electronic voting within 24 hours after the closure of the electronic poll and unless any Member shall within 24 hours after the closure of the electronic poll have objected to any declaration made by the Chairperson of the meeting as to the result of any voting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall 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 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 electronic voting;



- 6.10.8 The election of Trustees shall be decided on a poll. Nominees' names will appear on the electronic voting format as will be all motions that need voting;
- 6.10.9 An independent person (who may be the Manager or Managing Agent) or a representative of the Associations Auditors must be appointed to facilitate the counting of votes of an electronic poll.

6.11 RESOLUTIONS: ORDINARY AND SPECIAL

- 6.11.1 A Special Resolution shall be required in relation to the matters referred to in Clauses 3.4.3, 3.4.4 above and Clause 8.1.1 below. All other matters shall be decided by Ordinary Resolution;
- 6.11.2 For the specific quorum requirements for Ordinary and Special Resolutions, refer to Clause 6.8.1 above, and for the specific voting requirements for Ordinary and Special Resolutions, refer to in Clause 6.10.6 above.

7. DISPUTES

7.1 BREACH

- 7.1.1 The Board of Trustees may, in its discretion, investigate any suspected or alleged breach by any Member or Trustee Member of these Presents, in such a reasonable manner as it shall decide from time to time;
- 7.1.2 Should any Member:
 - 7.1.2.1 fail to pay on the due date any amount due by that Member in terms of these Presents or any regulation made thereunder and remain in default for more than 10 (TEN) days after the sending of a notice requiring payment to such Member; or
 - 7.1.2.2 commit any other breach of any of the provisions of these Presents and fail to commence remedying that breach within a period of 10 (TEN) days after sending of a notice to the Member concerned to that effect and complete the remedying of such breach within a reasonable time; then and in either such event, the Board of Trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Board of Trustees or Association or any other Member may have in law, including the right to claim any damages:
 - 7.1.2.2.1 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of these Presents; and
 - 7.1.2.2.2 in the case of Clause 7.1.2.2 above, to remedy the breach complained of and immediately recover all costs and expenses incurred by the Board of Trustees or the Association in so doing from such Member, and;
 - 7.1.2.2.3 deny the Member concerned the benefits of membership of the Association (including the right to vote), which Member shall nonetheless remain bound to perform his obligations in terms of these Presents.
- 7.1.3 Should the Board of Trustees and/or the Association institute any legal proceedings against any Member pursuant to a breach by that Member of these Presents or defend any proceedings brought by a Member against the Board of Trustees and/or the Association, then without prejudice to any other rights which the Board of Trustees and/or the Association or any other Member may have in law, the Board of Trustees and/or the Association shall be entitled to claim from such Member all legal costs incurred by the Board of Trustees or the Association, including all attorney / client charges, tracing fees and collection commission. The Member shall be entitled to claim costs from the Association on the same basis when suing the Association or defending himself against a breach alleged by the Association;
- 7.1.4 Without prejudice to all or any of the rights of the Board of Trustees or the Association in terms hereof or otherwise, should any Member fail to pay any amount due by that Member by due date, then such Member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's primary bankers from time to time plus 3% (THREE PER CENTUM) calculated from the due date for payment until the actual date of payment of such amount;
- 7.1.5 Notwithstanding anything to the contrary herein contained, the Association shall at the sole discretion of the Board of Trustees, be entitled to institute legal proceedings in any court having jurisdiction for any relief to which it is entitled under the provisions of this Constitution including but not limited to the recovery of arrear levies.



7.2 ARBITRATION

- 7.2.1 Subject to the provisions of Clause 7.3 below, any dispute, question or difference arising at any time between Members or between Members and the Board of Trustees relating to:
- 7.2.1.1 any matters arising out of these Presents;
 - 7.2.1.2 the rights and duties of any of the parties mentioned in these Presents;
 - 7.2.1.3 the interpretation of these Presents shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.
- 7.2.2 Arbitration shall be held at a venue situate within a radius of 15 (FIFTEEN) kilometres from the Magistrate's Court, Hermanus, informally and in the English language unless otherwise agreed between the parties and the arbitrator, in accordance with the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (TWENTY ONE) days after it has been demanded;
- 7.2.3 The parties to the dispute shall seek to appoint an arbitrator, who shall be any suitably qualified independent person mutually agreed between them or, if they are unable to reach agreement in 3 (THREE) days, an arbitrator appointed by the President for the Law Society for the Cape of Good Hope or any body that may replace it from time to time;
- 7.2.4 The arbitrator shall make an award within 7 (SEVEN) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration shall be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit;
- 7.2.5 The decision of the arbitrator shall be final and binding and may be made an order of the Cape of Good Hope Provincial Division of the High Court of South Africa upon the application of any party to the arbitration. Notwithstanding anything to the contrary contained in Clause 7.2.1 to Clause 7.2.4, the Board of Trustees shall be entitled to institute legal proceedings by way of application, action or otherwise in any Court having jurisdiction for the purpose of restraining or to recover levies and/or other amounts due to the Association, or in relation to any other matter it may deem fit.

7.3 INFORMAL DISPUTE RESOLUTION

- 7.3.1 Any dispute referred to in Clause 7.2.1 above may, by written agreement between the parties thereto, be submitted to and decided by a ad hoc Peer Review Committee in which event the provisions of this sub-clause shall apply;
- 7.3.2 An ad hoc Peer Review Committee shall be set up when there is need for such. The Peer Review Committee shall consist of 3 (THREE) members as described in Clause 7.3.3 below, nominated by the Board of Trustees. Should any member so determined, be unable or unwilling to act after having accepted such an appointment ceasing to act for any reason whatsoever then the Board of Trustees shall forthwith nominate a replacement;
- 7.3.3 The ad hoc Peer Review Committee shall consist of 3 (Three) persons nominated by the Board of Trustees provided that members of the committee shall:
- 7.3.3.1 Be a Member of the Hemel & Aarde Home Owners' Association;
 - 7.3.3.2 not be a serving Trustee Member;
 - 7.3.3.3 not be a person who shall have been disqualified from being appointed or acting as Trustee Member of the Association;
- 7.3.4 Any arbitration of the ad hoc Peer Review Committee shall be held:
- 7.3.4.1 at Hemel & Aarde Estate, in the English language unless otherwise mutually agreed upon by the parties to the dispute;
 - 7.3.4.2 in a summary manner which shall not require the ad hoc Peer Review Committee to observe;
 - 7.3.4.3 the usual formalities and procedures pertaining to legal proceedings;
 - 7.3.4.4 rule of evidence.
- 7.3.5 Any decision of the ad hoc Peer Review Committee shall be final and binding on the parties thereto.

7.4 COMMUNITY SCHEMES OMBUD SERVICE



No provisions contained in these Presents, shall in any way limit the rights of an aggrieved party to refer any dispute to the Community Schemes Ombud Service in terms of section 38 of the Community Schemes Ombud Services Act, 2011.

8. SERVICE OF NOTICES

- 8.1 Service of Notice shall, unless a Member shall have nominated an alternative domicilium, being a physical address in the Republic of South Africa, be by written or email notice delivered to the Association, a Member's domicilium citandi et executandi for all purposes in terms hereof and the serving of any legal process shall be at any Erf owned by the Member;
- 8.2 Any notice, acceptance, demand or other communication properly addressed by the Association to the Member's domicilium in terms hereof for the time being and sent by email shall be deemed to be received by the latter within twelve (hours) after the sending of the email. This provision shall not be construed as precluding the utilisation of other means and methods for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption shall arise if such other means or method is used;
- 8.3 The Board of Trustees shall from time to time determine the address constituting the domicilium citandi et executandi of the Association, subject to the following:
- 8.3.1 such address shall be the address of the Chairman or of a resident Trustee nominated by the Trustees or the office address of the Manager of the Estate or of any duly appointed Managing Agent;
- 8.3.2 the Trustees shall give notice to all members of any duly appointed Manager of the Estate or Managing Agent.
- 8.4 Any notice to a Member, Tenant or Resident actually received shall be considered proper notice irrespective of whether it was sent by email, postal service or delivered by hand.

9. GENERAL

9.1 THE CONSTITUTION AND AMENDMENT THEREOF

- 9.1.1 Subject to the provisions of Clause 9.1 below, this Constitution, or any part thereof, as contained herein, shall not be repealed or amended, save by a Special Resolution adopted at an Annual General Meeting or Special General Meeting of the Members.
- 9.1.2 Any amendment to this Constitution that affects the Municipality or a provision referred to in section 31(3) of the Municipality By-law on Municipal Land Use Planning, 2015, as amended, must be approved by the Municipality in terms of section 31(4) of said By-law."

9.2 COMMENCEMENT DATE

The Association came into existence simultaneously with the first registration of transfer in the Deeds Office of Cape Town of an Erf by the Developer into the name of the purchaser of such Erf.

9.3 WINDING UP

- 9.3.1 The Association may be wound up by a Resolution of the Members in General Meeting provided that:
- 9.3.1.1 90 % (NINETY PER CENT) of Members present or represented at a meeting, duly convened, vote in favour thereof; and
- 9.3.1.2 the Local Authority consents thereto.
- 9.3.2 In the event of such winding up, it shall be duty of the Board of Trustees or a Receiver to be appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the balance between the Members in accordance with the number of erven registered in the name of each Member. If, within a period of 12 (TWELVE) months from such distribution, the Board of Trustees or the Receiver is unable to find, locate or trace any Member, such Member's share shall then be paid to the Guardian's Fund.

9.4 THE OVERSTRAND MUNICIPALITY

If and when necessary the Employees of the Municipality or their agents, contractors and nominees shall, subject to clearance with the security of Hemel & Aarde Estate be entitled to access the area marked "W" on annexure "C" and/or any other area affected by servitudes registered in favour of, or any service provided by the Municipality.



9.5 BUILDING CODE OF CONDUCT (Annexure E)

- 9.5.1 The Association and all members thereof shall be bound by the provisions of the Building Code of Conduct and/or as it may be amended from time to time;
- 9.5.2 The Board of Trustees shall have the right to amend the provisions of the Building Code of Conduct if and when deemed necessary to do so.

9.6 BUSINESS/COMMERCIAL ACTIVITY

- 9.6.1 Save for as otherwise provided for in this clause no Member or Resident will be allowed to conduct any form of any Business, (including but not limited to a Bed and Breakfast and/or Guesthouse Business) from or on any Erf or Common Area;
- 9.6.2 A Member may apply in writing to the Board of Trustees for permission to conduct a business that does not compromise the main business of the HOA as set out in Clause 3.1 from an Erf provided that with such application the Member also submits written confirmation from all immediate neighbouring Members that such neighbours do not object to the requested permission being granted. Should the applicant feel that the neighbours are objecting unreasonably, they may appeal to the Board of Trustees to facilitate a Peer Review;
- 9.6.3 The Board of Trustees may approve an application in terms of Clause 9.6.2 above subject to:
- 9.6.3.1 Such conditions as the Board of Trustees may deem necessary and further subject to the condition that the Board of Trustees may at any time withdraw the approval if and when deemed necessary to do so;
- 9.6.3.2 The granting of an approval and/or the withdrawal of an approval shall be in the sole discretion of the Board of Trustees;
- 9.6.3.3 No Member shall have a claim for damage of whatsoever nature against the Board of Trustees and/or the Home Owners' Association due to the Board of Trustees refusing/approving an application in terms of Clause 9.6.2 above and/or due to the Board of Trustees withdrawing an approval granted.
- 9.6.4 Any business conducted from residential property on the Estate must comply with the Overstrand Municipal by-laws and any other relevant legislation.

9.7 BUILDING CONDITIONS

- 9.7.1 The construction of a dwelling on an erf shall be commenced within 4 (FOUR) years from the date of the original transfer of the erf from the Developer to the 1st owner thereof, which construction shall be completed within 12 (TWELVE) months from commencement thereof, on condition that the said dwelling shall comply with the requirements of the Association's Architectural Design Manual (Annexure B);
- 9.7.2 In the event that a Member fails and/or refuses to comply with the provisions of Clause 9.7.1 above, the Association shall, from the date that the Member is in default until the date on which a dwelling has been certified by the Municipality as 'fit for occupation' has been constructed on the erf of the defaulting Member, be entitled to impose on the defaulting Member the following levies:
- 9.7.2.1 During the first 2 (TWO) years of default a levy equal to 5 (FIVE) times the levy imposed at the time by the Association on erven with completed dwellings thereon;
- 9.7.2.2 During the 3rd and 4th years of default a levy equal to 15 (FIFTEEN) times the levy imposed at the time by the Association on erven with completed dwellings thereon;
- 9.7.2.3 During any period of default after the 4th year of default a levy equal to 20 (TWENTY) times the levy imposed at the time by the Association on erven with completed dwellings thereon.
- 9.7.3 If a dwelling on an erf is completely or partly destroyed by fire, water, earthquake and/or any other act of God, then the owner of such erf shall at the cost of the owner of such erf have the destroyed dwelling or the destroyed portion thereof removed and properly repaired within 9 (NINE) months from the date on which it was destroyed, failing which the Association shall, from the date that the relevant Member is in default until the date on which the default is rectified, be entitled to impose on the defaulting Member the following levies:
- 9.7.3.1 During the first 2 (TWO) years of default, a levy equal to 5 (FIVE) times levy imposed at the time by the Association on erven with completed dwellings thereon;.
- 9.7.3.2 During the 3rd and 4th years of default a levy equal to 15 (FIFTEEN) times the levy imposed at the time by the Association on erven with completed dwellings thereon;



9.7.3.3 During any period of default after the 4th year of default a levy equal to 20 (TWENTY) times the levy imposed at the time by the Association on erven with completed dwellings thereon.

9.7.4 All construction and/or renovation of dwellings that require plans to be submitted to the Municipality for approval must:

9.7.4.1 must first be submitted to the Home Owners' Association's duly authorised representative for approval;

9.7.4.2 must comply with the Architectural Design Manual of the Hemel & Aarde Home Owners' Association;

9.7.5 Incomplete dwellings shall be liable for the levy penalties as described in Clause 9.7.2.

9.8 INCOME TAX EXEMPTION

9.8.1 The sole object of the Association must be to manage the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable;

9.8.2 The Association is not permitted to distribute its funds to any person other than a similar association of persons;

9.8.3 On dissolution, the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act;

9.8.4 Any amendments to the Constitution must be submitted to the Commissioner for the South African Revenue Service.

9.8.5 Funds available for investment may only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act, 1990 (Act No 97 of 1990) or in securities listed on a stock exchange as defined in Section 1 of the Stock Exchange Control Act, 1985 (Act No 1 of 1985).





INITIAL LEVY SCHEDULE

Effective from 1 November 2007 to 29 February 2008
(Annexure "A")

All Erven smaller than 500 square meters - Monthly levy R 426.17
All Erven between 500 square meters and 749 square meters - Monthly levy R 472.82
All Erven between 749 square meters and 1000 square meters - Monthly levy R 519.43
All Erven larger than 1000 square meters - Monthly levy R 566.06