

# GREENWAYS

GOLF ESTATE

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# CONSTITUTION

## GREENWAYS COUNTRY ESTATE HOME OWNERS' ASSOCIATION

*A body corporate established in terms of  
section 29 of the Land Use Planning Ordinance No 15 of 1985  
and which continues to exist pursuant to  
section 40(9) of the Western Cape Land Use Planning Act  
No 3 of 2014, as read with sections 61 to 63 of the City of Cape Town Municipal By-Law,  
2015*

As approved –

- (a) at the Annual General Meeting of the Home Owners' Association held on 3 May 2004; and
- (b) by the Municipal Council in terms of section 29(2)(b)(iii) of the Land Use Planning Ordinance, 1985 on 29 January 2008 (see Certificate of Approval in Addendum 1);

and

as amended in terms of clause 29 at Annual/Special General Meetings of the Association held on –

- (a) 31 March 2010 (clause 17.2 amended) (This amendment was approved by the Municipal Council on 18 February 2011 - see Addendum 2.);
- (b) 14 March 2013 (clauses amended/replaced/inserted: 3.1, 3.3, 13.10, 32 and 33) (this amendment was noted by the Municipal Council on 23 January 2015 – see Addendum 3);
- (c) 19 March 2015 (clauses replaced: 10.1, 11.4, 11.4.1, 11.4.2, 11.4.3, 11.5.5, 11.6 and 12.2.11); and
- (d) 30 October 2019 – amended and restated version approved.

## INDEX

No.	CLAUSE HEADINGS	PAGE
1	ESTABLISHMENT IN TERMS OF STATUTE .....	1
2	INTERPRETATION .....	1
3	INTRODUCTION, OBJECTS AND PURPOSE OF THE ASSOCIATION.....	4
4	FINANCIAL YEAR END .....	6
5	MEMBERSHIP OF THE ASSOCIATION.....	6
6	LEVIES PAYABLE BY THE MEMBERS.....	9
7	BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS.....	12
8	RESPONSIBILITY FOR THE COMMON AREA .....	12
9	CONTRACTS AND REGULATIONS .....	13
10	TRUSTEE COMMITTEE.....	16
11	APPOINTMENT OF TRUSTEES .....	16
12	REMOVAL AND ROTATION OF TRUSTEE MEMBERS.....	19
13	FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE.....	21
14	PROCEEDINGS OF THE TRUSTEE COMMITTEE.....	22
15	GENERAL MEETINGS OF THE ASSOCIATION .....	25
16	NOTICE OF MEETINGS OF THE ASSOCIATION .....	26
17	QUORUM FOR GENERAL MEETINGS .....	27
18	AGENDA AT GENERAL MEETINGS.....	28
19	PROCEDURE AT GENERAL MEETINGS .....	29
20	PROXIES FOR GENERAL MEETINGS .....	30
21	VOTING AT GENERAL MEETINGS.....	32
22	SPECIAL RESOLUTION .....	33
23	OTHER PROFESSIONAL OFFICERS .....	34
24	ACCOUNTS .....	34

<b>25</b>	<b>BREACH .....</b>	<b>35</b>
<b>26</b>	<b>SERVICE OF NOTICES .....</b>	<b>36</b>
<b>27</b>	<b>DISPUTES.....</b>	<b>37</b>
<b>28</b>	<b>EFFECTIVE DATE.....</b>	<b>38</b>
<b>29</b>	<b>AMENDMENTS TO CONSTITUTION.....</b>	<b>38</b>
<b>30</b>	<b>MANAGING AGENT.....</b>	<b>38</b>
<b>31</b>	<b>PERSONAL LIABILITY OF THE MEMBERS .....</b>	<b>38</b>
<b>32</b>	<b>WINDING-UP / DISSOLUTION .....</b>	<b>38</b>
<b>33</b>	<b>LIMITATION AND DISTRIBUTION OF FUNDS.....</b>	<b>38</b>
<b>34</b>	<b>STATUS OF THE ASSOCIATION .....</b>	<b>39</b>

# 1 ESTABLISHMENT IN TERMS OF STATUTE

Greenways Country Estate Home Owners' Association was initially constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985 and continues to exist pursuant to section 40(9) of the Western Cape Land Use Planning Act, No 3 of 2014, as read with sections 61 to 63 of the City of Cape Town Municipal By-Law, 2015. The Association shall lodge a copy of this Constitution (as well as any subsequent amendments) with the relevant authorities in accordance with section 62(5) of the City of Cape Town Municipal By-Law, 2015.

# 2 INTERPRETATION

In these Presents –

2.1 the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them –

2.1.1 "**Association**" means the Home Owners' Association;

2.1.2 "**Auditors**" means the auditors of the Association;

2.1.3 "**Business Day**" means any day other than Saturdays, Sundays and Public Holidays;

2.1.4 "**Chairperson**" means the chairperson of the Trustee Committee;

2.1.5 "**Common Area(s)**" means the land owned by the Association, namely all areas designated as private open space on General Plan No. 6036/1993 and General Plan No. 8438/1994, which area includes the golf course, the Greenways Estate Clubhouse and related facilities, pavements, parks and other areas that are designated for common use;

2.1.6 "**Erf**" means any erf resulting from the original sub-division or subsequent consolidation of the Township Area (excluding the erven whereon the Sectional Title Schemes have been erected) and reference to "Erven" shall have the corresponding meaning;

- 2.1.7           **"Estate Manager"** means the estate manager appointed as such by the Association from time to time, acting personally or through his or her appointees;
- 2.1.8           **"Family"** means a family unit of which the members are related to one another by either blood or marriage;
- 2.1.9           **"Greenways Estate"** means –
- 2.1.9.1                 the Township Area, comprising of the Erven and the Units; and
- 2.1.9.2                 the Common Area;
- 2.1.10           **"Home Owners' Association"** means the Greenways Country Estate Home Owners' Association, which is more fully described in clauses 1 and 3;
- 2.1.11           **"In Writing"** means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 2.1.12           **"Land Unit"** means an Erf or Unit in the Greenways Estate;
- 2.1.13           **"Managing Agent"** means the managing agent appointed by the Association from time to time;
- 2.1.14           **"Member"** means the owner of a Land Unit, who in terms of clause 5 is a member of the Association;
- 2.1.15           **"Month"** means calendar month;
- 2.1.16           **"Municipality"** means the City of Cape Town or its successor in title from time to time, succeeding to its present statutory responsibilities;
- 2.1.17           **"Ordinary Resolution"** means a resolution passed by a simple majority by number of the Members at a general meeting;

- 2.1.18            "**post box**", in relation to a Member, means the post box in the Greenways Estate allocated to the Land Unit belonging to that Member;
- 2.1.19            "**Regulations**" means any rules or regulations made in terms of this Constitution and includes any Conduct Rules, Architectural Rules and any other rules instituted from time to time for the efficient running of the Greenways Estate;
- 2.1.20            "**Sectional Title Schemes**" means the following sectional title schemes developed as part of the Greenways Estate:
- 2.1.20.1            Laguna Beach Nos. SS568/1996, SS108/1997, SS106/1998 and SS271/1999;
- 2.1.20.2            Golf Beach No. SS321/1995;
- 2.1.20.3            Bermuda Beach Nos. SS178/1997 and SS70/1998; and
- 2.1.20.4            Emerald Bay Nos. SS11/1996, SS142/1996, SS575/1996 and SS263/1997;
- 2.1.21            "**Special Resolution**" means a resolution passed at a general meeting in accordance with the provisions of clause 22 below;
- 2.1.22            "**these Presents**" means this Constitution and Regulations of the Association from time to time in force;
- 2.1.23            "**Township Area**" means the areas depicted on General Plan No. 6036/1993 and General Plan No. 8438/1994, excluding the Common Area;
- 2.1.24            "**Trustee Committee**" or "**Trustees**" means the board of trustees of the Association;
- 2.1.25            "**Trustee**" means one of the Trustee Committee;
- 2.1.26            "**Unit**" means any unit as defined in section 1 of the Sectional Titles Act No. 95 of 1986, in any of the Sectional Title Schemes;

- 2.1.27 "Vice-Chairperson" means the vice-chairperson of the Trustee Committee;
- 2.1.28 "Year" means calendar year;
- 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 both genders, and vice versa, and words importing persons shall include natural and juristic persons such as partnerships, trusts and body corporates; and
- 2.3 the headnotes to the clauses are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which the headnotes relate.

### **3 INTRODUCTION, OBJECTS AND PURPOSE OF THE ASSOCIATION**

- 3.1 All owners of Land Units in Greenways Estate are Members of the Association. The Association is governed by a board comprised of volunteer owners (commonly known as Trustees) who are elected by the owners at an Annual General Meeting of the Association.
- 3.2 The sole object of the Association is to promote, manage, protect and advance the collective interests common to all its Members. This includes incurring expenditure applicable to the Common Area, as well as the collection of levies for which Members are liable. The purpose of the Association is to ensure a clean, safe and congenial living environment and to control and maintain the Greenways Estate, for the benefit of all Members. This is to be achieved by, inter alia, -
- 3.2.1 the control over the maintenance of the Common Area as well as all buildings, facilities, landscaping or improvements made or to be made on the Common Area;

- 3.2.2 the provision and maintenance of effective security measures at the Greenways Estate, including ingress and egress control;
- 3.2.3 the formulation and enforcement of the Regulations and ensuring compliance with the relevant provisions of the Western Cape Land Use Planning Act, No 3 of 2014, as read with sections 61 to 63 of the City of Cape Town Municipal Planning By-Law, 2015;
- 3.2.4 owning the Common Area, any improvements erected thereon and, to the extent legally permissible, all rivers and dams that fall within the Greenways Estate;
- 3.2.5 ensuring that all applicable municipal services are supplied at the Greenways Estate and entering into service agreements with the Municipality;
- 3.2.6 liaising with the Municipality and other organs of State responsible for any rivers and dams that fall within the Greenways Estate, with a view to ensuring the cleanliness of such rivers and dams;
- 3.2.7 enforcing the provisions of this Constitution;
- 3.2.8 the management of the financial accounts of the Association, including the raising and collecting of levies and special levies from Members; and
- 3.2.9 such other activities or objects as are incidental to the objects listed in clauses 3.2.1 to 3.2.8 above.
- 3.3 Without limiting the generality of the powers specifically referred to, but subject to this Constitution, the Association has the power to do such acts as may be necessary to accomplish the objects and purpose set out in clause 3.1.
- 3.4 The Association shall not knowingly be a party to or permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act, 1962,



or any other Act administered by the Commissioner for the South African Revenue Service.

## 4 FINANCIAL YEAR END

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

## 5 MEMBERSHIP OF THE ASSOCIATION

5.1 Membership of the Association shall be compulsory for every registered owner of a Land Unit and shall commence automatically upon and simultaneously with the registration of transfer of the Land Unit into the name of the transferee.

5.2 Membership of the Association shall be limited to the registered owners of Land Units provided that –

5.2.1 a person who is entitled to obtain a certificate of registered title to any such Land Unit shall be deemed to be the registered owner thereof; and

5.2.2 where any such owner is more than one person, all the registered owners of the Land Unit shall be deemed jointly and severally to be one Member of the Association and shall nominate one owner to represent them and vote at meetings of the Association.

5.3 When a Member ceases to be the registered owner of a Land Unit, he or she shall *ipso facto* cease to be a Member of the Association with respect to that Land Unit. The transferee of that Land Unit will automatically become a Member upon registration of transfer of that Land Unit into the transferee's name.

5.4 A Member may not sub-divide or consolidate any Land Units in the Member's name without the prior written consent of the Association, which consent may not be unreasonably withheld.

5.5 A Member may not sell or transfer a Land Unit registered in that Member's name, unless -

5.5.1 the deed of sale provides that –

- 5.5.1.1 the sale is subject to the written consent of the Association; and
- 5.5.1.2 the transferee will automatically become a Member of the Association upon the registration of the Land Unit in the transferee's name; and
- 5.5.2 the transferee acknowledges that the following wording shall be inserted in the title deed concerned -

*"The within property may not be sold or transferred without the prior written consent of Greenways Country Estate Home Owners' Association of which the within transferee shall become a member, which consent shall not be unreasonably withheld."*

- 5.6 A Member seeking the consent of the Association in terms of clause 5.5.1 must apply In Writing to the Trustee Committee. The Trustee Committee must give the consent without delay if –
  - 5.6.1 the Member has paid all levies and any other amounts owing by the Member to the Association;
  - 5.6.2 the purchaser of the Land Unit has agreed In Writing to become a Member of the Association and to abide by this Constitution and the Regulations; and
  - 5.6.3 the Managing Agent or Estate Manager is satisfied that the wording prescribed in clause 5.5.2 is included in the title deed in question.
- 5.7 A Member must notify forthwith the Association In Writing when a Land Unit owned by a Member is sold or is transferred into the name of another person.
- 5.8 The registered owner of a Land Unit may not resign as a Member of the Association and shall remain a Member for as long as such Member is the registered owner of any Land Unit.
- 5.9 The Trustee Committee may provide for the issue of a membership certificate.

5.10 Save as expressly contemplated in the proviso to this clause and as expressly permitted in the Regulations from time to time, the rights and obligations of a Member shall not be transferable and every Member shall –

5.10.1 to the best of his or her ability further the objects and interest of the Association;

5.10.2 observe all Regulations;

5.10.3 observe this Constitution and any amendment hereof;

5.10.4 be liable for the acts or omissions of his or her Family and his or her invitees, including employees, tenants and guests;

5.10.5 acknowledge that all Land Units are zoned residential and may not be used for non-residential purposes; and

5.10.6 be jointly liable with all the Members for all expenditure incurred in connection with the Association,

provided that nothing contained in this Constitution shall prevent a Member from ceding his or her rights in terms of the Constitution as security to the mortgagee of that Member's Land Unit.

5.11 No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other assets of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his or her estate any arrears of levies or other amounts due from him or her to the Association at the time of his or her ceasing to be a Member.

5.12 No Member shall permit more than one Family to permanently reside at or occupy his or her Land Unit at any given time without the prior written consent of the Estate Manager.

5.13 Each Member and his or her Family and guests or invitees may make use of the Common Area, subject to the Regulations.

## 6 LEVIES PAYABLE BY THE MEMBERS

- 6.1 Levies are payable by all Members to meet the expenditure of the Association for –
- 6.1.1 the maintenance, repair (including provisions for future maintenance and repair), control, administration and improvement of the Common Area and services therein, including landscaping, private roads, rivers and dams;
  - 6.1.2 mortgage and interest payments, if any;
  - 6.1.3 purchases of fixed or movable property;
  - 6.1.4 the erection of, and alterations or maintenance to, improvements on the Common Area;
  - 6.1.5 rates and other charges for the supply of electric current, gas, water, fuel and sanitary and other services to the Common Area;
  - 6.1.6 services rendered to the Association;
  - 6.1.7 expenses necessary or reasonably incurred in connection with the management of the Association and the Common Area, including any premiums for insurance;
  - 6.1.8 services and amenities on the Common Area;
  - 6.1.9 the provision and maintenance of effective security measures, including ingress and egress control and other security measures installed on the Greenways Estate;
  - 6.1.10 the payment of employees and engaging the services of professional or commercial persons or firms in respect of matters relating to the affairs of the Association; and

- 6.1.11 expenses related to the discharge of any duty or fulfilment of any other obligation of the Trustee Committee.
- 6.2 The amount of the levies is determined annually by the Trustee Committee (and accepted by the Members at the annual general meeting) to meet the expenses during each financial year, together with such estimated deficiency, if any, as shall result from the preceding financial year, and shall make levy upon the Members, equal or as nearly as is reasonably practical to the aggregate of such estimated amount plus any or all of such estimated deficiency as the Trustee Committee deems necessary to include and is approved by the Members at the annual general meeting in question. The levies may include an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. In calculating the levies, the Trustee Committee shall take into account any income earned by the Association.
- 6.3 Levies are payable on all original Erven and Units and, subject to clause 6.4, the same levy is payable in respect of each original Erf or Unit.
- 6.4 If a Member fails to commence or complete the construction of a new dwelling on an Erf in conformity with the time periods permitted in the applicable Regulations, the Trustee Committee may direct that the levy payable in respect of the Erf increases by up to a maximum of ten times the normal levy or make such other arrangement as it deems expedient.
- 6.5 All levies referred to in clauses 6.2 to 6.4 are payable monthly in advance and by the 7th day of each Month. All such levies must be paid without deduction or set-off, free of exchange. The owners of Land Units shall pay all levies due to the Association in accordance with invoices issued by the Association or the Managing Agent.
- 6.6 The Trustee Committee may, from time to time, offer discounts for early payment of levies, impose financial penalties on any Member who fails to pay levies on time more than 3 times in any consecutive 12 Month period and make special levies upon Members for unbudgeted expenses –
- 6.6.1 provided that –

- 6.6.1.1 the Trustee Committee must inform Members forthwith In Writing of a special levy and give reasons therefor;
- 6.6.1.2 if the special levy is more than 30% of the annual levy, then the Trustee Committee may not commit itself to the expenditure until the expenditure and the special levy have been approved at a general meeting;
- 6.6.2 clause 6.6.1.2 does not apply where, in the opinion of the Trustee Committee, the situation is of such an urgent nature that a delay may seriously harm the interest of the Association or its Members;
- 6.6.3 special levies are payable in the amount or in instalments and at the times as the Trustee Committee determines.
- 6.7 The amount due by a Member by way of a levy is a liquidated debt due and payable by the Member to the Association. All such amounts must be discharged in full before a Member ceases to be a Member. A Member shall cease to be liable for future levies (including special levies) upon his or her ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies.
- 6.8 No levies paid by a Member are repayable by the Association upon a Member ceasing to be a Member, but the account of the new owner of the Land Unit concerned must be credited with the amount of any levies prepaid by the outgoing Member. A Member's successor in title to a Land Unit shall be liable, as from the date upon which he or she becomes a Member pursuant to the registration of transfer of that Land Unit, to pay the levy attributable to that Land Unit.
- 6.9 To the maximum extent permitted by law and the Regulations from time to time, a Member may be refused any of the privileges of membership of the Association and/or any service supplied by the Association, for so long as he/she is, in the discretion of the Trustee Committee, in material breach of his or her obligations to the Association.

- 6.10 Should any dispute arise at any time between the Members and the Trustee Committee in regard to the determination or calculation of any levies, the decision of the Auditors (acting as experts and not as arbitrators) in regard to such dispute shall be final and binding on the Members and the Trustee Committee.
- 6.11 In the event of any dispute arising in regard to the determination or calculation of any levy, every Member shall until the determination of such dispute, pay the levies determined by the Trustee Committee.

## **7 BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS**

The Association shall be entitled to –

- 7.1 frame, implement and enforce conditions on Members in order to harmonise the architectural styles and design criteria of and the materials and colours to be used in all improvements erected within the Greenways Estate, including any refurbishment, alterations or additions thereto;
- 7.2 do such acts as are necessary to accomplish the purposes expressed or implied herein, which acts shall include, inter alia, the preparation of building/architectural rules, which documents will form part of the Regulations, and the examination and endorsement of the relevant building plans as necessary for any construction, renovation and / or alterations within the Greenways Estate;
- 7.3 appoint such advisors as are necessary to scrutinize the relevant plans referred to in clause 7.1; and
- 7.4 impose a scrutiny or similar fee on Members for the services as mentioned in this clause.

## **8 RESPONSIBILITY FOR THE COMMON AREA**

- 8.1 The Association shall be the registered owner of the Common Area and shall ensure that the Common Area is maintained to a high standard. No portion of the Common Area may be sold, let, alienated, otherwise disposed of, sub-

divided or transferred, mortgaged, or subjected to any rights whether registered in the deeds registry or not, of use, occupation or servitude, without obtaining a Special Resolution, in terms of clause 22, from the Members.

8.2 All officials, employees and contractors employed by the Association, the local Municipality and/or any public service company shall, at all times, have reasonable access to the Land Units and Common Areas for purposes of inspecting and/or maintaining all services supplying and/or traversing any part thereof.

## **9 CONTRACTS AND REGULATIONS**

9.1 The Association may conclude contracts for the purpose of achieving its purpose and objects. No such contract may endure for a period of more than 3 financial years without the approval of Members, through an Ordinary Resolution, at a general meeting.

9.2 Members and all other persons resident at or entering the Greenways Estate, including Members' guests, employees, tenants, Family and other invitees are subject to and must comply with all Regulations that are applicable to them.

9.3 Regulations in force on the date that this amended Constitution comes into effect are binding until repealed or amended in terms of this Constitution.

9.4 The Trustee Committee may make, amend or repeal Regulations, not inconsistent with this Constitution concerning –

9.4.1 access to, and the occupation, enjoyment and use of the Common Area or any part thereof by Members, their Family, guests, tenants, employees and other invitees, including the prohibition or restriction of such access, occupation, enjoyment or use;

9.4.2 the control of pets and other animals at the Greenways Estate;

9.4.3 the external appearance of, the maintenance and the use of the Common Area and the buildings and other improvements erected thereon;



- 9.4.4 the structure, external appearance and maintenance of buildings or other improvements on the Land Units, including architectural and aesthetic style and design criteria, the type of plants allowed and the maintenance of gardens;
- 9.4.5 the preservation of the natural environment, vegetation and fauna at the Greenways Estate;
- 9.4.6 the execution of building work at the Greenways Estate;
- 9.4.7 a code of conduct required for builders and other persons executing work at the Greenways Estate;
- 9.4.8 the conditions pertaining to ingress to and egress from the Greenways Estate;
- 9.4.9 the type of boundary fences and walling which may be erected;
- 9.4.10 security at the Greenways Estate, including the erection of any security gates and structures and the alteration, modification and renovation of such structures;
- 9.4.11 the conduct at the Greenways Estate of the Members and any person resident at or entering the Greenways Estate;
- 9.4.12 disputes and disciplinary measures relating to the Members and other persons resident at or entering the Greenways Estate in relation to matters affecting the Greenways Estate;
- 9.4.13 the use of Land Units and dwellings at the Greenways Estate;
- 9.4.14 the management and promotion of the affairs of the Association;
- 9.4.15 other matters that may assist the Association and its representative organs in administrating and governing the activities of the Association generally;
- 9.4.16 any other incidental matters; and

- 9.4.17 any other matter relevant to the Association.
- 9.5 When the Trustee Committee intends to make, amend or repeal the Regulations, or any part thereof, it must, by no later than 20 Business Days before the changes are scheduled to take effect, use reasonable endeavours to notify all Members In Writing and place notices at the Greenways post boxes, the Estate Manager's office and the Greenways Estate Clubhouse, which detail –
- 9.5.1 the proposed changes to the existing Regulations;
- 9.5.2 the reasons for those changes, and
- 9.5.3 the date on which the proposed changes are scheduled to take effect.
- 9.6 The Trustee Committee may enter into agreements with the Municipality governing the matters listed in clause 9.4 and any other incidental matters.
- 9.7 The Members, by Ordinary Resolution at a general meeting, must confirm or reject changes made to the Regulations in terms of clause 9.5 during the year preceding the meeting.
- 9.8 Members must inform their Family, guests, employees, tenants and other invitees of the Regulations. The Association may, in addition to any action against the Member, act against the Member's Family, guests, employees, tenants and other invitees for any breach of the Regulations. Members are liable for the acts and omissions at the Greenways Estate of their Family, guests, employees, tenants and other invitees and indemnify the Association accordingly.
- 9.9 The Trustee Committee may, with a view to enforcing the Regulations, propose a system of fines and penalties, which will not form part of the Regulations but which must, prior to first coming into force, be confirmed at a general meeting by Ordinary Resolution. Once such system of fines and penalties has been so confirmed, the Trustee Committee may update the amounts of the fines and penalties from time to time, by addressing at least 30 days written notice to this effect to the Members.

- 9.10 When a Member or any member of their Family or any guest, employee, tenant or other invitee of the Member breaches any of the Regulations that have been made available to them, the Trustee Committee or a person designated by the Trustee Committee may –
- 9.10.1 after affording the Member concerned an opportunity to be heard or to make representations, impose upon the Member a fine or other penalty provided for in terms of clause 9.9; and
- 9.10.2 take any other action referred to in clause 25.
- 9.11 Persons who enter the Common Area including the golf course, swimming pool, tennis courts, other facilities, or the Greenways Estate Clubhouse, do so at their own risk.
- 9.12 In the event of any conflict between any provision in any Regulation and this Constitution, this Constitution shall prevail.

## **10 TRUSTEE COMMITTEE**

- 10.1 The affairs of the Association are managed and controlled by a Trustee Committee, consisting of a minimum of 5 and a maximum of 7 Trustees.
- 10.2 In addition, the body corporate of each of the Sectional Title Schemes may nominate a Member to attend the Trustees' meetings on its behalf. The said Members will not be Trustees or entitled to vote at the Trustees' meetings, but may attend such meetings, participate in all discussions at such meetings and raise matters for consideration during such meetings. The said Members may also report to the respective body corporate on matters discussed at the Trustee's meeting.

## **11 APPOINTMENT OF TRUSTEES**

- 11.1 The Trustee Committee must, not later than 25 Business Days before each annual general meeting, by notice In Writing to the Members, call for nominations for Trustees, stating the date on which that meeting is to take place.

- 11.2 A nomination for a Trustee must be –
  - 11.2.1 In Writing;
  - 11.2.2 proposed by at least 3 Members;
  - 11.2.3 accepted by the nominee;
  - 11.2.4 accompanied by a brief résumé of the nominee; and
  - 11.2.5 delivered to the Managing Agent by not later than 20 Business Days before the annual general meeting.
- 11.3 The résumés and nomination forms of proposed Trustees must be distributed to all Members together with the notice of the general meeting, in accordance with 16.3.5.
- 11.4 A person elected as a Trustee must be –
  - 11.4.1 a Member;
  - 11.4.2 the spouse or life partner of a Member; or
  - 11.4.3 in the case of a Member who is a juristic person, a duly authorised shareholder, director, member or trustee, as the case may be, of the juristic person, provided that more than one person representing the same juristic person may not serve simultaneously as Trustees.
- 11.5 The following persons are disqualified from being a Trustee –
  - 11.5.1 a juristic person;
  - 11.5.2 a minor or any other person under legal disability;
  - 11.5.3 any person disqualified from being a director of a company as envisaged in the Companies Act No. 71 of 2008;

- 11.5.4 an un-rehabilitated insolvent;
- 11.5.5 a person who does not reside permanently at the Greenways Estate; and
- 11.5.6 a person who has, at any time during the 12 months preceding his or her nomination as a proposed Trustee, been more than 2 Months in arrears with any debt payable to the Association.
- 11.6 In the event that prior to the next annual general meeting, the Trustee Committee has, for any reason, less than 5 members, the Trustee Committee may, by majority decision, co-opt any person contemplated in clause 11.4 to serve as a Trustee until the next annual general meeting. The Trustee Committee shall without delay notify In Writing all Members of any such decision.
- 11.7 Within 10 Business Days of the holding of each annual general meeting, the Trustee Committee shall meet and shall elect from its own number the Chairperson, Vice-Chairperson and Treasurer, who shall hold their respective offices until the annual general meeting next held after their said appointment, provided that the office of the Chairperson, Vice-Chairperson or Treasurer shall *ipso facto* be vacated by the Trustee holding such office upon his or her ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office.
- 11.8 Save as otherwise provided in these Presents, the Chairperson shall preside at all meetings of the Trustee Committee, 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 Trustee Committee or the Members, and may allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 11.9 The Vice-Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his or her inability or refusal to act as

Chairperson, and shall perform such other duties as may from time to time be assigned to him or her by the Chairperson or the Trustee Committee.

- 11.10 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairperson, Vice-Chairperson or Treasurer, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

## 12 REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 12.1 Unless a Trustee resigns or is lawfully removed from office before then, each Trustee shall continue to hold office until the annual general meeting next following his or her appointment, at which meeting each Trustee shall be deemed to have retired from office as such with effect from immediately before the new Trustees are elected, and shall be eligible for re-election to the Trustee Committee at such meeting.

- 12.2 A person ceases to be a Trustee upon the person's –

- 12.2.1 written resignation from office, delivered to the office of the Association and/or the Managing Agent;

- 12.2.2 death;

- 12.2.3 insolvency or the liquidation of the Member represented by that person, whether provisional or final sequestration or surrender of his, her or its estate;

- 12.2.4 making any arrangement or compromise with his or her creditors;

- 12.2.5 allowing any judgement against him or her to remain unsatisfied or unchallenged for a period of 14 Business Days after the judgment first comes to his or her attention;

- 12.2.6 doing or allowing to be done any act or thing which prejudices the interests or rights of the Association;

- 12.2.7 removal from office by an Ordinary Resolution of the Members;
- 12.2.8 voluntary absence for 3 consecutive meetings of the Trustee Committee without leave of absence granted by the Trustee Committee;
- 12.2.9 being disqualified on any basis envisaged in clause 11.5;
- 12.2.10 conviction by a Court for any offence involving dishonesty;
- 12.2.11 ceasing to be a Member of the Association, or the spouse or life partner of a Member, as the case may be:
- 12.2.12 receiving a vote of no confidence by all the remaining Trustees; or
- 12.2.13 failing to sign the Statement of Conduct or similar document referred to in clause 12.6, in accordance with that clause,

provided that anything done in his or her capacity as a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he or she is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

- 12.3 If a Trustee has any personal or private financial or business interest, whether directly or indirectly, in any matter before the Trustee Committee or any structure of the Trustee Committee on which that Trustee serves, the Trustee must declare that interest to the Trustees, the Estate Manager and the Managing Agent, in advance and In Writing, and must withdraw from all proceedings, deliberations and decisions relating to such matter, unless the other Trustees resolve that Trustee's interest is trivial or irrelevant and minute it as such.
- 12.4 There is a relationship of trust between the Trustees and the Association and its Members. Without derogating from the generality of the expression "relationship of trust", it implies that a Trustee –
  - 12.4.1 must at all times act honestly and in good faith and in the best interest of the Association and its Members;

- 12.4.2 must at all times place the interests of the Association and its Members above his/her personal interests and the interests of others;
- 12.4.3 must diligently perform the functions assigned to Trustees by this Constitution or by the Members in general meetings;
- 12.4.4 may not exceed the powers conferred upon Trustees or in any other way act in a manner that is inconsistent with the Constitution; and
- 12.4.5 must prevent any conflict between the interests of the Trustee and those of the Association.
- 12.5 The books, records and publications of the Association shall be updated without delay to reflect changes in the Trustee Committee.
- 12.6 The Estate Manager shall propose a Statement of Conduct or similar document, outlining the behaviour expected of all Trustees, for approval by an Ordinary Resolution of the Members. All Trustees must sign such document within 14 days of written request by the Estate Manager.

### **13 FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

Subject to this Constitution, the Trustee Committee has full powers in the management and business affairs of the Association, including the power –

- 13.1 to do all that is necessary and appropriate to ensure that the objects of the Association are fulfilled, including the conclusion of contracts on behalf of the Association;
- 13.2 to exercise all powers of the Association on behalf of the Association except those powers that are required to be exercised by the Association in general meetings;
- 13.3 to vary or rescind any decision or resolution of the Trustee Committee;



- 13.4 to control, restrict or prohibit any particular commercial activity at the Greenways Estate;
- 13.5 to appoint employees and engage the services of professional or commercial persons or firms for and on behalf of the Association;
- 13.6 to perform all the functions assigned to the Trustee Committee by this Constitution or by the Members in general meetings;
- 13.7 insofar as possible, to implement and enforce decisions taken by the Members at a general meeting;
- 13.8 to delegate any of its powers, except the power to make Regulations, to a sub-committee or a Trustee or an employee of the Association;
- 13.9 to investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as the Trustee Committee decides from time to time;
- 13.10 to manage the finances of the Association, including preparing monthly and annual statements, approving the annual financial statements, raising and collecting levies and investing funds available for investment: Provided that such funds may be invested only with a bank as defined in section 1 of the Banks Act, 1990 (Act 94 of 1990) and in securities listed on an exchange as defined in section 1 of the Financial Markets Act, 2012 (Act No 19 of 2012); and
- 13.11 to enforce any Regulations.

## **14 PROCEEDINGS OF THE TRUSTEE COMMITTEE**

- 14.1 The Trustee Committee may meet for the dispatch of business, adjourn and otherwise regulate their meetings and access to such meetings, as they think fit, subject to any provisions of these presents.
- 14.2 The Chairperson or his designate shall circulate to all Trustees, the Estate Manager and the Managing Agent a written Agenda for each meeting of the Trustee Committee.

- 14.3 Copies of each such Agenda shall be placed at the Greenways post boxes and at the Estate Manager's office, by no later than 2 Business Days before the date of each such meeting. All Trustees, the Estate Manager, the Managing Agent and the Members referred to in clause 10.2 shall be entitled to attend and speak at meetings of the Trustees. However, only the Trustees shall have a vote at such meetings.
- 14.4 Members (other than Trustees and the Members contemplated in clause 10.2) are only entitled to attend a meeting of the Trustees –
- 14.4.1 by invitation from a Trustee or the Estate Manager after consultation with (or approval by) the Trustees; or
- 14.4.2 if he/she has given the Estate Manager at least 24 hours' advance written notice of his/her intention to attend the meeting and his/her reason for wishing to do so. In this event, the Member who gives such notice will be afforded up to 15 minutes, at the commencement of the meeting, within which to address the Trustees on the matter in question, after which the Member shall leave the meeting.
- 14.5 The Trustee Committee must meet at least once a Month, provided that if all the Trustees waive the above requirement in respect of a particular Month, then no meeting of the Trustee Committee need be held for that Month.
- 14.6 The quorum for a meeting of the Trustee Committee is 3 when there are 5 Trustees and 4 if there are 6 or 7 Trustees.
- 14.7 Any resolution of the Trustee Committee shall be carried by a simple majority of all votes cast. In the event that an equal number of votes are cast for and against a proposed resolution, the proposed resolution in question will fail.
- 14.8 No resolution of any kind may be passed at any meeting of the Trustees if it is inconsistent with, or in contravention of, the objects of the Association, this Constitution or any Regulations.

- 14.9 The Chairperson shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairperson not be present within 5 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 5 minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting, including, allowing or refusing to permit invitees to speak at any such meetings, provided however, that such invitees shall not be entitled to vote at any such meeting.
- 14.10 The Managing Agent shall take minutes at every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing and sent to the Estate Manager for comment within 5 Business Days after the close of the meeting. The Estate Manager shall mark-up his/her suggested edits to the draft minutes and shall thereafter circulate a clean and a marked-up copy of the draft minutes to the Trustees, within 3 Business Days after receiving the draft minutes. The Trustees shall send all comments on the draft minutes to the Estate Manager, who shall collate all such comments and send them to the Managing Agent. The Managing Agent shall present the updated draft minutes to the next meeting of the Trustee Committee for final comments, editing and, ultimately, certification as correct. All minutes of Trustee Committee meetings shall, after certification as aforesaid, be signed by the person who presided over the meeting at which the Trustee Committee certified such minutes as correct. Thereafter, the Managing Agent shall place the signed minutes in a Trustee Committee minute book. Copies of all such minutes shall be open for inspection at the Estate Manager's office and at the offices of the Managing Agent, at all reasonable times, by a Trustee, the Auditors, and each Member.
- 14.11 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.

- 14.12 A written resolution signed by at least 5 Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.
- 14.13 A Trustee is personally liable for any loss or damage suffered by the Association or any Member resulting from the lack of good faith, breach of trust, dishonesty or gross negligence of that Trustee or the Trustees jointly.
- 14.14 Subject to clause 14.3, a Trustee is not liable to any person for any act or omission or any loss or damage occurring in or arising from the exercise the powers or the performance of the functions of a Trustee.
- 14.15 Subject to clause 14.3, the Association indemnifies all Trustees for any cost, loss, damage or expenditure which they may incur or become liable for by reason of or arising from the exercise of their powers or the performance of their functions as Trustees.
- 14.16 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or any of the other Trustees, whether in their capacities as Trustees or as Chairperson or Vice-Chairperson or Treasurer, or for any loss or expenses sustained or incurred by the Association, unless same shall happen through a lack of good faith or breach of duty or breach of trust on the part of the Trustee in question.

## **15 GENERAL MEETINGS OF THE ASSOCIATION**

- 15.1 The Association shall, by the last day of February of each year, hold a general meeting as its annual general meeting.
- 15.2 Such annual general meeting shall be held at such convenient time and place, subject to these Presents, as the Trustee Committee shall decide from time to time.
- 15.3 All general meetings other than annual general meetings are special general meetings.
- 15.4 The Trustee Committee –
- 15.4.1 may convene a special general meeting whenever they think fit; and

- 15.4.2 shall convene a special general meeting within 15 Business Days, if requested to do so In Writing by at least 10 Members (who must provide detailed reasons therefor and nominate one authorised representative from their ranks with whom the Trustee Committee may liaise regarding the written request), provided that the Trustees cannot resolve the matter to the reasonable satisfaction of the authorised representative within 5 Business Days after receiving the written request.

## **16 NOTICE OF MEETINGS OF THE ASSOCIATION**

- 16.1 The Trustee Committee must give at least –
- 16.1.1 15 Business Days' notice to Members of the annual general meeting; and
  - 16.1.2 10 Business Days' notice to Members of all special general meetings.
- 16.2 The notice of the annual general meeting and special general meetings must include –
- 16.2.1 the place, date and time of the meeting;
  - 16.2.2 an agenda;
  - 16.2.3 the particulars of any draft resolutions to be considered at the meeting; and
  - 16.2.4 any proposed amendments to the Regulations.
- 16.3 The notice of the annual general meeting must also include –
- 16.3.1 minutes of the previous annual general meeting and any special general meetings;
  - 16.3.2 a copy of the previous year's audited financial statements and the documentation referred to in clause 24.2;

- 16.3.3 a Trustees' report, which includes a finance report endorsed by the Trustees;
- 16.3.4 a proposed budget and the proposed levy contributions for the coming financial year; and
- 16.3.5 résumés and nomination forms of proposed Trustees.
- 16.4 The period of 15 or 10 Business Days, as the case may be, is calculated from the next Business Day following the date on which the posting or transmission of notices to all Members has been completed.
- 16.5 The unintended omission to give notice to a particular Member of a meeting or of any draft resolution, or to give any other notification, or to send any document required to be given or sent in terms of this Constitution, or the non-receipt of any such notice, notification or document does not invalidate the proceedings at or any resolution passed at the meeting concerned.

## **17 QUORUM FOR GENERAL MEETINGS**

- 17.1 No business shall be transacted at an annual general meeting or special general meeting unless a quorum is present.
- 17.2 The quorum for an annual general meeting or special general meeting is the presence –
  - 17.2.1 in person, of at least 10% of the total number of Members entitled to vote; and
  - 17.2.2 in person or by proxy, including those contemplated in clause 17.2.1, of at least 15% of the total number of Members entitled to vote.

By way of example, if there are 650 members: –

If the number of Members present in person is below 65 then a quorum will not have been attained irrespective of the number of proxies received.

Should the number of Members present in person be 65 or more then only the shortfall between those present and 98 will be required by way of proxy to attain a quorum.

- 17.3 If, within 15 minutes of the time appointed for the general meeting, a quorum is not present, no meeting will have been held, and the Trustee Committee shall reschedule the meeting and give notice in terms of clause 16 (in particular, there must be compliance with the requirement in respect of the notice period), save that the annexures to the original notice, other than an agenda, the Trustee résumés and nomination forms and the draft resolutions that will be presented at the rescheduled meeting, will not be included with the notice of the rescheduled meeting that is sent to all Members.
- 17.4 If, at a meeting rescheduled in terms of clause 17.3, a quorum is not present within 15 minutes of the time appointed for the rescheduled meeting, the Members present in person or by proxy shall constitute a quorum.

## **18 AGENDA AT GENERAL MEETINGS**

In addition to any other matters by these Presents to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting –

- 18.1 any queries arising from the Trustees' report;
- 18.2 the election of the Trustee Committee;
- 18.3 the consideration of any resolutions proposed for adoption by such meeting and of which due notice has been given, and the voting upon any such resolutions;
- 18.4 the presentation and consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
- 18.5 any queries arising from the report of the Auditors;

- 18.6 the presentation, consideration and approval or rejection of the proposed budget and levy;
- 18.7 the evaluation of the performance of the Auditors and Managing Agent for the financial year of the Association preceding the annual general meeting and the consideration and appointment of Auditors and a Managing Agent for the current financial year; and
- 18.8 the confirmation of the Association's fidelity insurance cover.

## **19 PROCEDURE AT GENERAL MEETINGS**

- 19.1 The Chairperson or his nominated representative shall preside as such at all general meetings, provided that should he or she not be present within five minutes of 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 five minutes of the time appointed for the holding of such meeting, then any of the Trustees present at such meeting may act as Chairperson at such meeting.
- 19.2 The person presiding 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. Prior to adjourning a meeting, the person presiding shall select a venue, time and date for the adjourned meeting, which meeting shall be held between 5 and 10 Business Days after the initial meeting.
- 19.3 Every general meeting shall also be attended by the Estate Manager and the Managing Agent. The Managing Agent is responsible for –
  - 19.3.1 establishing that a quorum is present;
  - 19.3.2 determining whether any Member is eligible/ineligible to vote on any matter;



- 19.3.3 counting any votes taken;
- 19.3.4 acting as a facilitator, when called upon to do so; and
- 19.3.5 taking minutes.
- 19.4 Except as otherwise set forth in these Presents, all general meetings shall be conducted in accordance with generally accepted practice.
- 19.5 Only matters that were included in the Agenda that was circulated for each general meeting, as well as the draft resolutions contemplated in clause 16.2.3, may be voted on at such general meeting.
- 19.6 No resolution of any kind may be passed at any meeting of the Members if it is inconsistent with, or in contravention of, the objects of the Association, this Constitution or any Regulations.
- 19.7 The Trustee Committee must ensure that the draft minutes of each general meeting are available at the Estate Manager's office and circulated to all Members within 30 days of the date of the general meeting in question.

## **20 PROXIES FOR GENERAL MEETINGS**

- 20.1 A Member may be represented, and cast his or her vote, at a general meeting through a proxy. The proxy is only valid for one particular general meeting, including any adjournment of that meeting. The person to whom the proxy is granted shall be a Member of the Association or the Estate Manager.
- 20.2 The document appointing a proxy shall be In Writing and signed by the Member concerned in the format approved by the Trustees from time to time. Where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company, the same may be signed by the Chairperson of the board of directors of the company or by its secretary, and where an Association of persons, by the secretary thereof.

- 20.3 The document appointing a proxy shall be delivered by hand, or by email with a copy to the person appointed in terms of the proxy, to the office of the Managing Agent, at least 3 Business Days before the time fixed for the meeting, or adjourned meeting, at which the grantee (i.e. the person appointed in terms of the proxy) is proposed to vote. If the proxy is delivered by hand, it must be accompanied by evidence that the grantee is aware of the proxy. No proxy will be accepted from any person who is appointed in terms of that proxy. A proxy must be delivered as set out above by the grantor of the proxy in order to be valid. All such documents must be available for inspection by any person at the meeting concerned.
- 20.4 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the death of the grantor or the revocation of the proxy, provided that no notice In Writing of the death or revocation was received by the Managing Agent at least one hour before the time fixed for the holding of the meeting.
- 20.5 In order to be valid, a proxy form must (at a minimum) contain –
- 20.5.1 the full names of the grantor;
  - 20.5.2 the Land Unit to which the proxy applies;
  - 20.5.3 the first and last names of the grantee;
  - 20.5.4 the meeting to which the proxy applies;
  - 20.5.5 the draft Resolutions to which the proxy applies;
  - 20.5.6 a clear indication of whether the grantee is mandated to cast the proxy vote for or against each such Resolution, or to abstain from voting on each such Resolution; and
  - 20.5.7 in the event that the proxy form is to be used at an Annual General Meeting, the names of the nominated trustees for the following year with a clear indication of whom such nominated trustees, up to a maximum of 7, the grantor wishes the grantee to cast the proxy vote in favour of.

## 21 VOTING AT GENERAL MEETINGS

- 21.1 At every general meeting, every Member present in person or by proxy and entitled to vote shall have one vote for each Land Unit registered in his or her name. Provided that if –
- 21.1.1 a Land Unit is registered in more than one person's name, then they shall jointly have one vote;
- 21.1.2 two or more original Erven are consolidated, the registered owner of the consolidated Land Unit shall have voting rights as if the consolidation had not taken place.
- 21.2 Save as expressly provided for in these Presents, no Member who has, at any time during the 12 months preceding a general meeting, been more than 2 Months in arrears with any debt payable to the Association, may vote on any question or resolution, either personally or by proxy, at any general meeting.
- 21.3 At any general meeting, voting shall be by a show of hands, save for –
- 21.3.1 voting upon a resolution proposed for adoption by the meeting;
- 21.3.2 the election of Trustees; or
- 21.3.3 where a poll is required by any person entitled to vote at such meeting.
- 21.4 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.
- 21.5 Unless, before the closure of a general meeting a Member present at the meeting in person or by proxy has objected to any declaration made by the person presiding at the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at the meeting, such declaration is regarded to have been properly and validly made and the proceedings to have been properly conducted. Any such objection made in due time shall be

referred to the person presiding at the meeting whose decision shall be final and conclusive. An entry in the minutes to the effect that any resolution has been adopted or rejected is conclusive proof of the vote so recorded if the entry corresponds with the declaration made by the person presiding as to the result of the voting.

- 21.6 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 Managing Agent, whose decision shall be final and conclusive.
- 21.7 A declaration made in good faith by the Managing Agent at a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed, shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.
- 21.8 Subject to the provisions of clause 22, decisions taken at general meetings shall be carried by a simple majority of Members.
- 21.9 An individual Member shall have the right to veto any proposal for material changes to the use or development of the Common Area which that Member is able to show will have a substantial adverse effect on the value of their Land Unit.

## **22 SPECIAL RESOLUTION**

- 22.1 A resolution shall be a Special Resolution if it relates to –
- 22.1.1 any amendment to this Constitution; or
- 22.1.2 material changes to the area of, intended use of or construction of any improvements on, any portion of the Common Area; or
- 22.1.3 the sale, letting, alteration, or other disposal of, sub-division, transfer, mortgage or other encumbrance of the Common Area as contemplated in clause 8.1.

- 22.2 Special resolutions shall only be passed at a general meeting properly called and constituted in terms of clauses 15 to 17, by no less than 70% of the Members present, in person or by proxy, voting, by poll, in favour thereof.

## **23 OTHER PROFESSIONAL OFFICERS**

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, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to any of the provisions of these Presents, provided that any expenditure incurred in respect of the above, shall not exceed 5% of the total annual levy for the financial year in question unless authorised by the Members at a general meeting.

## **24 ACCOUNTS**

- 24.1 The Association in a general meeting or the Trustee Committee, may from time to time make reasonable conditions and Regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them. However, the accounts and books of the Association shall be open to the inspection of Members at the Estate Manager's office, or the office of the Managing Agent, as the case may be, at all reasonable times and during normal business hours.
- 24.2 At each annual general meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, if appointed, and there shall be attached to the notice sent to the Members convening each annual general meeting, as set forth in clause 16, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

24.3 Should the Trustees, or at least 10% of the Members so require, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors, at least once a financial year.

## 25 BREACH

25.1 The Trustee Committee may investigate any suspected or alleged breach of this Constitution or the Regulations by any person.

25.2 If any Member –

25.2.1 fails to pay by the due date any amount owing to the Association by that Member, and remains in default for more than 14 days after the service on that Member, in accordance with clause 26, of a notice In Writing requiring payment; or

25.2.2 commits any other breach of this Constitution or the Regulations and fails to commence remedying that breach within a period of 14 days after the service on that Member, in accordance with clause 26, of a notice In Writing to that effect and to complete the remedying of such breach within a reasonable time,

the Trustee Committee may, without prejudice to any other rights or remedies which the Trustee Committee or the Association or any other Member may have in law, including the right to claim damages –

25.2.3 institute legal proceedings on behalf of the Association against that Member for payment of the overdue amount or for compliance with this Constitution or the Regulations;

25.2.4 in the case of an outstanding debt referred to in clause 25.2.1, discontinue any service supplied by the Association to the Member or in respect of the Land Unit concerned;

25.2.5 in the case of a breach of this Constitution referred to in clause 25.2.2, to take such steps as it considers appropriate to remedy the breach

complained of, and immediately recover all costs and expenses incurred in so doing from the Member; and

- 25.2.6 notify Members, who are affected by the breach, of the breach and the action taken against the Member.
- 25.3 A suspended Member is not entitled to any of the benefits or privileges of membership of the Association (including the right to vote), but the Member nonetheless remains bound to perform all obligations in terms of this Constitution.
- 25.4 Without prejudice to any of the rights of the Trustee Committee or the Association in terms of this Constitution or otherwise, should any Member fail to pay any levy or other amount due by that Member to the Association by the due date, that Member is liable for interest on the outstanding amount at 2% per Month, or, if it is not permissible for the Association to charge interest at such rate, at such other maximum rate as may be permissible by law from time to time, calculated from the due date until the actual date of payment of the full amount.
- 25.5 The Trustee Committee may institute legal proceedings by way of application, action or otherwise in any court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution or the Regulations, or to recover levies or other amounts due to the Association, or in relation to any other matter it considers appropriate, and without prejudice to any other rights which the Trustees or the Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Association, including attorney/client charges, tracing fees and collection commission.

## **26 SERVICE OF NOTICES**

- 26.1 Notices relating to a breach of the Constitution by a Member or non-payment of any amounts owing to the Association by a Member, shall be In Writing and shall be served by the Association upon any Member, either personally, by email at the email address on record with the Managing Agent, or by hand-delivery to

his/her post box or to his or her physical address, at the Land Unit owned by him or her.

- 26.2 Any notice shall be deemed to have been served at the time when the letter containing the same was emailed or delivered by hand to the physical address or the post box of the recipient.

## 27 DISPUTES

- 27.1 Any dispute, question or difference arising at any time between any Members and the Trustees or the Association, out of or in regard to –

27.1.1 any matters arising out of this Constitution or the Regulations; or

27.1.2 the rights and duties of any of the parties mentioned in this Constitution; or

27.1.3 the interpretation of this Constitution,

which is not resolved via the Greenways Internal Dispute Resolution Procedure or any legal process that may be mandatory to comply with from time to time, shall be submitted to and decided by a suitably qualified, independent expert nominated by the Auditors for this purpose. Each party to the dispute may make written representations to the Expert within 15 Business Days after the date of the Expert's appointment, and the Expert shall issue his/her written determination (including his or her determination as to who should bear his or her costs) as soon as possible after considering any such representations and any other evidence identified by the Expert to be relevant to the dispute.

- 27.2 Any party to any such dispute may approach a court of competent jurisdiction to enforce or challenge the determination of the Expert.

- 27.3 Unless and until set aside by a court of competent jurisdiction or a binding decision made pursuant to the Community Scheme Ombud Service Act, 2011 or any other applicable law, the decision of the Expert shall be final and binding on the parties to the dispute.



## **28 EFFECTIVE DATE**

This amended Constitution shall come into force when it has been adopted by a Special Resolution passed at a general meeting of the Members.

## **29 AMENDMENTS TO CONSTITUTION**

This Constitution, or any part thereof, shall not be repealed or amended save by a Special Resolution adopted at a general meeting of the Members in terms of clause 22.

## **30 MANAGING AGENT**

The Trustees shall be entitled to appoint a Managing Agent from time to time to assist with the control, management and administration of the affairs of the Association and to exercise such powers and duties as may be entrusted to them by the Trustees, including the power to collect levies. The Trustees shall monitor the Managing Agent's compliance with its obligations and shall without delay take appropriate action in the event of any breach of such obligations. The Managing Agent shall inform the Trustees of their fiduciary and other duties as and when required.

## **31 PERSONAL LIABILITY OF THE MEMBERS**

No Member of the Association shall incur any personal liability in respect of acts done or liabilities incurred in good faith by, or on behalf of the Association.

## **32 WINDING-UP / DISSOLUTION**

The association may be wound up, liquidated or dissolved by unanimous resolution of all the Members, provided that it will upon its winding up, liquidation or dissolution, be obliged to distribute all its remaining assets, after the satisfaction of liabilities, to a similar association of persons which also is exempt from income tax in terms of section 10(1)(e)(i)(cc) of the Income Tax Act, 1962.

## **33 LIMITATION AND DISTRIBUTION OF FUNDS**

Notwithstanding anything to the contrary contained in this Constitution, the Association shall utilise its funds solely for the advancement of the purpose and

objects for which it was established, and shall not be permitted to distribute any of its funds to any person or association other than to a similar association of persons in accordance with clause 32.

## **34 STATUS OF THE ASSOCIATION**

34.1 The Association is an association –

34.1.1 with legal personality with a distinct and separate legal entity, capable of suing and being sued in its own name;

34.1.2 not for profit, but for the benefit of the Members;

34.1.3 with the right to acquire, hold, lease and alienate property, both movable and immovable;

34.1.4 with the capacity to acquire and assume legal and contractual rights and obligations and incur resultant debts and expenses; and

34.1.5 with perpetual succession.

34.2 The property, funds and assets of the Association vest in the Association in accordance with this Constitution. None of the Members and Trustees in their personal capacities have any right, title, interest to or in property, funds or assets of the Association.

34.3 All relevant actions, suits and other proceedings at law shall be brought by or against the Association in the name of the Association and the Trustees may authorise any person or persons to act on behalf of the Association and to sign all such documents and to take all such steps as may be necessary in connection with any such proceedings.

**Addendum 1**

**GREENWAYS GOLF ESTATE**

**HOME OWNERS ASSOCIATION**

**CERTIFICATE OF APPROVAL**

THIS IS TO CERTIFY THAT THE CONSTITUTION OF GREENWAYS HOME OWNERS ASSOCIATION WAS THIS DAY APPROVED BY COUNCIL IN TERMS OF SECTION 29(2)(b)(iii) OF THE LAND USE PLANNING ORDINANCE, 1985 (NO 18 OF 1985)

SIGNED AND SEALED AT Sonoma West ON THIS 29 DAY  
OF January 2008.

1. [Signature]  
Witness

[Signature]  
TOWN CLERK

2. [Signature]  
Witness

## Addendum 2



(T) 021-853-3889 (F) 021-853-0321 Greenways 4050, Beach Road / Kusweg, Strand, 7140  
(e) greenwaysestate@telkomsa.net (w) www.greenwaysestate.co.za VAT: 4500225356

# CONSTITUTION

(As approved at the AGM of 03 May 2004)

## GREENWAYS GOLF ESTATE

### HOME OWNERS ASSOCIATION

CITY OF CAPE TOWN	
PLANNING & BUILDING DEVELOPMENT MANAGEMENT	
Application no. 194012	
Amendments to section(s) 17.2 of	
this constitution of the GREENWAYS GOLF ESTATE	
Home / Property Owners' Association have been	
approved in terms of Section 29(2)(b)(iii) of	
Ordinance 15 of 1985, as per decision letter	
dated 18/2/11 file reference 22122 SR	
attached hereto, insofar as it addresses the	
requirements in Section 29(2)(b)(i), (ii) and (c) of	
said ordinance and any related condition of	
approval.	
Delegated	Date 18/02/2011

A body corporate established in terms of Section 29 of the  
Land Use Planning Ordinance, No 15 of 1985

## Addendum 3



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

ECONOMIC, ENVIRONMENTAL & SPATIAL PLANNING  
PLANNING & BUILDING DEVELOPMENT MANAGEMENT

JURGEN NEUBERT

Tel: 021 850 4346 Fax: 021 850 4487

File Ref No : Erf 22085 STR  
Date : 23 January 2015

The Chairperson  
Greenways Country Estate  
Home Owners Association  
Unit 4050  
Beach Road  
**STRAND**  
7140

Sir / Madam

### **GREENWAYS - STRAND**

Your letters dated 5 August 2013 and 14 January 2015 refer.

The Council does not approve (or refuse) names of developments.

Furthermore amendments to clauses which relate to the provision of Section 29(2) of the Land Use Planning Ordinance No 15 of 1985, only, require the approval of Council.

In view of the abovementioned the proposed name change and amendments have been noted.

Yours faithfully

A handwritten signature in black ink, consisting of several fluid, overlapping strokes.

(for) **DIRECTOR: PLANNING & BUILDING  
DEVELOPMENT MANAGEMENT**

CNR/O VICTORIA & ANDRIES PRETORIUS STREETS, SOMERSET WEST  
P O BOX 19, SOMERSET WEST, 7129  
[www.capetown.gov.za](http://www.capetown.gov.za)

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