



CONSTITUTION

REVISION 2: 29 SEPTEMBER 2026

**Constitution of the
Botmaskop Estate
Home Owners Association
(HOA)**

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1. DEFINITIONS

In this Constitution and unless inconsistent with the context, the following words and expression shall have the meanings hereby assigned to them:

- 1.1. Alienate means alienate any Erf or part thereof and includes alienation by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive condition and Alienation shall have a corresponding meaning.
- 1.2. Architect means Architects as appointed from time to time as such by the Developer.
- 1.3. Architectural Committee means, until the development period has lapsed, the Developer acting alone and/or the architect appointed by the Developer, and after such period a committee of at least three persons appointed by the trustees.

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- 1.4. Architectural Guidelines means the architectural, environmental and development guidelines in respect of the Development, as approved by the Developer and the Local Authority, as may be amended from time to time.
- 1.5. Association means the Botmaskop Homeowners' Association which is bound by the provisions of this Constitution.
- 1.6. Auditors means the Auditors of the Association as may be appointed from time to time.
- 1.7. Chairman means the Chairman of the Trustees.
- 1.8. Constitution means this document with the annexures hereto, prepared in terms of common law.
- 1.9. Contractor means a building contractor approved by the Developer during the development period and thereafter the Association in terms of this Constitution in accordance with criteria determined by the Developer or the Association and employed by an Owner of an Erf for the construction of Improvements.
- 1.10. Developer means Botmaskop Fynbos Estate (Propriety) Limited, Registration Number 2022/517871/07, a private company duly registered in terms of the company laws of South Africa.
- 1.11. Developer Trustee means a trustee appointed by the Developer.
- 1.12. Development means a Portion of Portion 2 (Botmaskop) of the Farm Number 490, situated in the Municipality and division of Stellenbosch and as indicated on the draft general attached hereto as **Annexure A**.
- 1.13. Development Period means the period commencing on the date of the registration of the first transfers of the first Erven in the Development until the last Erf has been transferred from the Developer; alternatively, and in the sole discretion of the Developer on the date on which the Developer notifies the Association in writing that it terminates the Development Period.
- 1.14. Erf means every Erf in the Development.
- 1.15. Erven means every Erf in the Development collectively, and includes immovable property transferred or to be transferred in accordance with the provisions hereto to the Association.
- 1.16. Farm means the Remainder of Portion 2 of the Farm Botmaskop Number 490.
- 1.17. Improvements mean any structure of whatever nature constructed or erected or to be constructed or erected on an Erf.
- 1.18. Levy means the levy referred to in clause 16 hereof.
- 1.19. Local Authority means the Local Authority having jurisdiction over the Development which, at date of approval of the Development, is the Stellenbosch Municipality.
- 1.20. Managing Agent means any person or body appointed by the Developer or the Association (as the case may be) as an independent contractor to undertake any of the functions of the Association.

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- 1.21 Member means every registered Owner of an Erf as well as every registered Owner of a subdivision of an Erf. If a Member consists of more than one person such persons shall be jointly and severally liable in solidum for all obligations in terms of this Constitution.
- 1.22. Member Trustee means a trustee appointed by the Members.
- 1.23. Owner means the registered Owner of an Erf.
- 1.24. Private Open Spaces means the spaces as indicated on the draft general plan attached hereto as Annexure A, as well as all servitudes servicing or benefiting the Development.
- 1.25. Resolution means a resolution passed at an annual general meeting or any other general meeting of the Association by an ordinary majority of the total votes represented at such meeting by members present in person or by proxy.
- 1.26. Services means all infrastructure services and other utilities and amenities serving the Development or provided by or on behalf of the Association for the Members and residents within the township including but not limited to all services, amenities and utilities referred to in the services agreement entered into between the Developer and the Local Authority.
- 1.27. Trustee means the Developer Trustees and the Member Trustees of the Association, collectively from time to time and includes alternate and co-opted Trustees.
- 1.28. Traversing Rights means the rights of Members to traverse the Private Open Spaces (as defined) only by foot or bicycle in accordance with the provisions of this constitution as far as it relates to the Private Open Spaces and in accordance with an agreement of traversing rights to be entered into between the Developer and the Home Owners Association as far as it relates to the development and the Farm.

2. INTERPRETATION

- 2.1. The clause headings are for convenience and shall be disregarded in the interpretation of this Constitution.
- 2.2. Unless the context clearly indicates a contrary intention:
- 2.2.1. the singular shall include the plural and vice versa; and
- 2.2.2. 2.2.2 a reference to any one gender shall include the other genders; and
- 2.2.3. a reference to natural persons includes legal persons and vice versa.
- 2.3. Words and expression defined in any sub-clause shall, for the purpose of the clause to which that subclause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
- 2.4. When any number of days is prescribed, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

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- 2.5. Where the figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6. The annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.

3. RECORDAL

- 3.1. The Local Authority when approving the application for the rezoning and subdivision to allow the Development, imposed a condition in terms of section 29(1) of LUPO whereby the Owner of each subdivided portion of the immovable property comprising the Development and all successor in title shall be members of a homeowners association in respect of the Development.
- 3.2. The Developer is desirous of regulating and controlling harmonious development of the Development.

4. COMMENCEMENT DATE

The Association, as contemplated in terms of Section 29 of LUPO, will come into existence simultaneously with the first registration or transfer of an Erf from the Developer to an Owner.

5. STATUS

- 5.1. The Association shall:
 - 5.1.1. have legal personality and be capable of suing and being sued in its own name; and
 - 5.1.2. not operate for profit but for the benefit of the Members.
- 5.2. No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees.

6. OBJECTIVES

The Association shall have as its objectives and obligations:

- 6.1. The matters referred to in Section 29(2)(b) and (c) of the LUPO and without detracting from the generality thereof to ensure compliance with all conditions imposed at the rezoning and subdivision of the development by all competent authorities with jurisdiction and, more specifically:
 - 6.1.1. to oversee, manage, maintain and control the Development and all private open spaces;
 - 6.1.2. ensure the general high standard of the Development;

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- 6.1.3. generally to promote, advance and protect the Development and the interests of the Association.
- 6.2. The regulation and control of harmonious development of the Development.
- 6.3. To promote a high standard of Improvements on the Development.
- 6.4. To administer and enforce the Architectural Guidelines.
- 6.5. To manage, control, maintain, upkeep, upgrade and install, where required, all services, infrastructure and Private Open Spaces serving the Development, such as but not limited to, pathways, all landscaping, roads, all servitude areas (including all access servitudes of right of way), all electrical- and civil services, gas lines, the dams, pathways, sewerage and drinking water reticulation and stormwater systems, security fences, private roads as well as the areas in respect of which traversing rights will be exercised by members on the Farm from time to time.
- 6.6. To manage, control, execute and administer all financial and administrative functions of the Association required for the proper functioning and operation of the Association.
- 6.7. To control the transfer of Erven and Units in the Development and to monitor and enforce all conditions imposed by all competent authorities at the rezoning and subdivision of the Property as well as the contractual provisions of the Agreements of Sale entered into between the Developer and the first owner of an Erf.
- 6.8. To manage and / or take transfer of the Private Open Spaces, as per Annexure A and to maintain and insure, where necessary, all services and infrastructure within the Development including the roads, the private open space and improvements thereupon in the Development and control the usage thereof and of the facilities belonging to the Association or falling under its control.
- 6.9. The preservation of the natural environment and landscaping on the Development.
- 6.10. To regulate the conduct of any person and the prevention of nuisance of any nature of the owner of any property forming part of the Development.
- 6.11. To introduce, manage and control a system of central traffic control.
- 6.12. To impose fines and other penalties that may be payable by and enforced against members of the Association.
- 6.13. In order to give effect to the abovementioned objectives, to make house rules to accomplish these objectives. During the Development Period it will be in the sole discretion of the Developer to make house rules.
- 6.14. The ASSOCIATION herewith indemnifies the DEVELOPER or any Successor in Title against any liability and/or responsibility imposed on the DEVELOPER or any Successor in Title by virtue of any official approval or condition or other responsibility referred to in terms of this Clause.



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The Association shall have the power to do all such acts as are necessary to accomplish the fulfilment of the foregoing objects, including, but not restricted, to powers specifically contained in this Constitution.

7. MEMBERSHIP

7.1. The Association shall have as its Members:

- 7.1.1. the Developer for as long as the Developer remains an owner of any portion of the Development and, without detracting from the generality of the foregoing, specifically including any Erf;
- 7.1.2. every Owner upon registration of transfer of an Erf into his name provided that where an Owner comprises more than one person, such persons shall be deemed jointly to be one Member of the Association and shall be responsible jointly and severally for the obligations of such membership.

7.2. An Owner of an Erf and shall be a member of the Association until he ceases to be the registered owner of such Erf.

8. PHASES

- 8.1. The Developer intends to develop and market the Development in phases as the Developer deems fit and for as long as the Developer is a Member of the Association, the Developer shall enjoy unrestricted rights with regard to the marketing of the Development and, in particular, the right to erect signage within and outside the Development.
- 8.2. The Developer shall, in its absolute discretion, be entitled to apply for and subject to approval by the Local Authority, vary the layout and/or zoning and/or size and/or boundaries and/or number of Erven and/or the extent and position of streets comprising the Development and Members shall be bound thereby and shall have no claim of whatever nature against the Developer arising therefrom.

Insofar as the consent of a Member is required for any of the foregoing, the Developer (represented by any one of its Directors) is irrevocably granted a power of attorney to grant any/all such consents on behalf of Members, as may be required.

9. MEMBERS' OBLIGATIONS

9.1. Every Member is obliged to comply with:

- 9.1.1. the provisions of this Constitution and all rules or regulations passed by the Association or the Trustees;

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- 9.1.2. the provisions of the Architectural Guidelines annexed hereto;
- 9.1.3. any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member;
- 9.1.4. any directive given by the Developer during the Development Period and thereafter by the Association and/or the Trustees in enforcing the provisions of this Constitution.
- 9.2. The rights and obligations of a Member are not transferable and every Member shall:
 - 9.2.1. to the best of his ability, further the objects and interest of the Association;
 - 9.2.2. observe all directives made or given by the Developer or Association and/or the Trustees.
- 9.3. The Members shall be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein.
- 9.4. A Member shall not be entitled to alienate or transfer an Erf without the written consent of the Developer for as long as the Developer is a Member and, thereafter, by the Trustees which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this Constitution.
- 9.5. A Member shall not consolidate an Erf with one or more Erven without the written consent of the Developer for as long as the Developer is a Member and, thereafter, of the Association.
- 9.6. A Member shall not alienate or transfer an Erf unless:
 - 9.6.1. the proposed transferee has irrevocably bound himself to become a member of the Association and to observe the Constitution for the duration of his ownership of the Erf;
 - 9.6.2. the Association has issued a clearance that all amounts owing to the Association by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution;
 - 9.6.3. the proposed transferee acknowledges that upon the registration of the Erf into his name, he shall ipso facto become a Member of the Association.
- 9.7. No Member shall let or otherwise part with the occupation of his Erf whether temporarily or otherwise unless the proposed occupier has agreed to be bound by this Constitution. The Member shall, nonetheless, remain bound by this Constitution and is required to ensure compliance therewith by such occupier.
- 9.8. A Member may not resign from the Association.

10. STATUS OF THE DEVELOPER

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- 10.1. No person or any Member of the Association shall prevent or hinder in any way the Developer from:
- 10.1.1. gaining access to and egress from the Development.
 - 10.1.2. Continuing its building and/or construction operations at the Development.
 - 10.1.3. Marketing and selling any Erven.
 - 10.1.4. Generally carrying on its business operations, provided that the provisions of clause 10.1.1 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless 48 hours prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the Member. No Member shall be entitled to refuse the Developer immediate access if the required notice has been given.
 - 10.1.5. The Developer shall have the sole right of appointment and dismissal of any managing agent during the Development Period.
- 10.2. The Developer shall have the unrestricted right to fully implement the whole of the Development as approved by all the Competent Authorities in respect of the Development (as defined), the Farm within the parameters of the statutory Development approvals and to the full extent of the land use rights afforded in such approvals and shall be furthermore be entitled to continue to improve, build and establish on the Development various dams, Private Open Spaces and pathways and any other amenities and facilities on the Farm and on the Development as it in its sole discretion deems fit. This constitution does not regulate or restrict any right of the Developer in respect of the Farm and the exercising of any current or future land use rights thereon. The Developer may expand or increase the size of the Development and the number or location or size of erven in the Development, as well as the surrounding land, as per his sole discretion at any time.
- 10.3. The Developer shall have the sole and exclusive right to the water from the reservoir on the Development and may use or utilize the water extracted from this source as per his sole discretion. It is hereby recorded that the Developer shall have the sole and exclusive right to the use of any existing lawful water use, as defined in section 32 of the NWA or to have any water use declared as an existing lawful water use in terms of section 33 of the NWA or to water uses authorised by virtue of any general authorisation in terms of section 39 of the NWA. No member, except the Developer shall have the right to apply for any water license in terms of section 40 of the NWA. The Developer shall have the sole and exclusive right to improve and develop Private Open Space in its sole discretion including the right to build dams and pathways on any portion of the Development.
- 10.4. The recreational facilities and common property on the Private Open Spaces, as per Annexure A hereto shall be transferred to the Association by the Developer at the discretion of the Developer at the completion of the Development.

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- 10.5. The Association will not be entitled to change, amend or impact on the rights of the Developer or his successors in title in respect of the amenities and facilities referred to above, without obtaining the written consent of the Developer or his successors in title beforehand.
- 10.6. In the event of any member deciding to sell his erf, the DEVELOPER or its nominee shall as long as the member remains of the intention to sell his erf have a mandate to sell the property of such member on similar terms and conditions as mandated to any estate agent. The aforesaid member shall forthwith inform the DEVELOPER or its nominee of his intention to sell his erf and let the DEVELOPER or its nominee have the written particulars of any mandate given to any other estate agent, which particulars shall then be considered as a written mandate to the DEVELOPER or its nominee, at the same rate of commission to be paid to the Developer or its nominee, on the successful sale and transfer of such erf to any buyer.

11. ACCESS TO THE DEVELOPMENT AND SERVITUDES

- 11.1. There shall be one permanent entrance to the Development.
- 11.2. It is recorded that officials, employees and contractors employed by the Developer, the Association, Local Authority and/or any public service company shall, at all times, have reasonable access to the Erven and Private Open Spaces for purposes of inspecting and/or maintaining all services, infrastructure, amenities and facilities and the Association shall be obliged and is hereby irrevocably authorized and empowered on behalf of the Members to give access thereto over Private Open Spaces .

12. SERVITUDES AND TRAVERSING RIGHTS

- 12.1. All members shall have traversing rights over the Private Open Spaces which rights shall be subject to any terms, conditions and rules as laid down by the Developer, during the Development Period, and thereafter by the Association from time to time and subject to the terms and conditions of this constitution.
- 12.2. As from the date of occupation of the first property by a Member, the Members of the Association shall have traversing rights over the private open spaces, the contents of which rights and the control and management thereof will be in the sole discretion of the Developer and which rights shall at all times be subject to the operational and safety requirements of the farming operation of the Developer without limiting the generality of the aforementioned discretion of the Developer it is hereby recorded that the Discretion of the Developer will include the following:
- 12.2.1. To determine in which area or areas traversing rights will be allowed only by foot, bicycle or any other form of transport. For example, in certain areas traversing rights will be restricted to access by foot only or to any other one or more of the rights incidental to the definition of traversing rights;
- 12.2.2. To determine during which periods of the year specific traversing rights are allowed;
- 12.2.3. To control and regulate the day times during which traversing rights may be exercised;

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- 12.2.4. To stop or restrict traversing rights by reason of operational- or any safety or health risks or reasons;
- 12.2.5. To change the areas in which traversing rights may be exercised from time to time.
- 12.3. After the final spatial and operational planning of the Farm has been completed the Developer shall from time to time submit to the Association the regulatory prescripts relevant to the traversing rights.
- 12.4. The Association shall be responsible for the maintenance and upkeep of the areas in respect of which traversing rights are exercised by its members from time to time which costs the Association shall recover from its members by means of appropriate levies.
- 12.5. The Developer during the development period and thereafter the Association may register in respect of the Development in their entire and sole discretion and where necessary, services servitudes, including those referred to in clause 12.8 below, in favour of the local authority, the Developer, the Association, and/or any adjacent property development or property.
- 12.6. The Developer during the development period and thereafter the Association shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, security communication, and any other services over any erf or building and shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.
- 12.7. The members of the Association will allow reasonable access and provide their co-operation to employees or representatives of the Developer, the Association or the Council (as the case may be) to all services and infrastructure as well as into the buildings or erven for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above.
- 12.8. Without limiting the generality of the provisions of clause 12.5 the Developer during the development period and thereafter the Association shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, gas lines, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The members accept and shall be bound by and consents to the registration of the servitudes referred to in this clause and clause 12.5.

13. ARCHITECTURAL GUIDELINES

- 13.1. The Architectural Guidelines constitutes an integral part of this Constitution and for as long as the Developer is a Member the Architectural Guidelines may be amended, substituted, added to or repealed only at the instance of the Developer and, thereafter, by the Association.

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- 13.2. All landscaping, plants and all improvements shall be of approved design and of sound construction and shall comply with the provisions of the Architectural Guidelines.
- 13.3. No construction or erection of Improvements on an Erf may commence prior to the approval of plans for such Improvements and, in this regard:
- 13.3.1. a full set of proposed building- landscaping plans which indicate both construction and design details shall be submitted to the Association for approval by the Architectural Committee;
- 13.3.2. thereafter, the approved plans shall be submitted to the Local Authority for approval;
- 13.3.3. having obtained the approval of the Local Authority, the Member shall comply with all conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Architectural Guidelines read with the plans.
- 13.3.4. The scrutiny fee payable to the Architect will be paid by the Owner, such scrutiny fee to be determined by the Developer, from time to time.
- 13.4. Approval of building plans will not be granted by the Local Authority without the prior written approval of the Architect thereto which approval shall be evidenced by an endorsement by the Architects.
- 13.5. No Improvements may be effected by an Owner other than by an approved Contractor. The Developer during the Development Period and thereafter the Association shall designate a list of contractors who will be allowed to do building work of whatever nature in the Development. Before any Member may employ the services of a Contractor the Members shall be obliged to see that the appointed Contractor has signed acceptance of the Contractor's Code of Conduct provided by the Developer, during the Development period and thereafter by the Association.
- 13.6. An Owner will have no claim for damages or loss against the Developer or the Association, arising from whatever cause as a result of any acts or omissions of a Contractor and hereby indemnifies the Developer and Association against any claim from any third party arising from the construction of such Improvements.

14. FURTHER OBLIGATIONS OF MEMBERS

14.1. Each Member shall:

- 14.1.1. maintain his Erf in accordance with the Architectural Guidelines and the Association rules respectively;
- 14.1.2. maintain in a neat and tidy condition and in a state of good repair all Improvements on his Erf;

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- 14.1.3. establish and maintain a garden according to a standard acceptable to the Association, as well as maintaining the road verge bordering his Erf, in terms of the Architectural Guidelines;
- 14.1.4. be responsible for the maintenance of external and boundary walling inclusive of regular painting thereof;
- 14.1.5. not park any commercial type vehicle, boat, caravan, trailer or any vehicle not in good working order, on any roadway or pavement in the Development and such vehicle,

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boat, caravan or trailer shall be parked on the Member's Erf so as not to be visible from the street forming a boundary of such Erf;

- 14.1.6. not do or suffer to be done on any Erf anything which, in the opinion of the Trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any Member, tenant or occupier of any Erf in the Development;
- 14.1.7. strictly comply with the Architectural Guidelines in connection with the improvement of any property;
- 14.1.8. adequately insure the Improvements on his Erf and, if requested by the Trustees, furnish proof of such insurance to them and, in the event of total, partial destruction, he shall, within a reasonable time period, make good such damage or reconstruction in accordance with the approved plans or, in the event of total destruction in accordance with the Architectural Guidelines;
- 14.1.9. where the erection of structures to house animals or birds or the construction/erection of garden/tool shed(s) is permitted, such structures shall be screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to Members or their tenants or occupiers and the Trustees shall, in their absolute discretion, be entitled to require the permanent removal from the Development of any animals or birds which, in the opinion of the Trustees, constitute a disturbance or nuisance;
- 14.1.10. all domestic animals must be registered with the BKE HOA please contact the coordinator for assistance on this matter. All animals must be kept on a leash when outside of the owner's property. All animal waste deposits must be picked up and disposed of in your private refuse container. All domestic animals must be kept within the confines of the owner's property. If you are planning to be away for an extended period of time, please make proper arrangements for your animal's care. Residents may not keep any poisonous, exotic or other undomesticated or wild animals, poultry, pigeons, aviaries or livestock on their property. Not more than a total of 4 domestic animals may be kept on a property at any one time strictly limited to a maximum of 2 (two) dogs and/or 2 (two) cats.
- 14.1.11. comply with all security procedures implemented from time to time;
- 14.1.12. generally ensure that gardening and landscaping of his Erf is undertaken so as to be compatible with the gardening and landscaping of adjoining Erven;
- 14.1.13. ensure that his dog is kept on a leash in all open areas within the Development and is controlled to ensure that other dogs are not interfered with and that the dog does not cause uncleared fouling of sidewalks within the Development or on open spaces within the Development;
- 14.1.14. adhere strictly to the terms of servitudes granting access to Erven;

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- 14.1.15. ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of the Development and that planting on his Erf does not interfere with pedestrian traffic or obscure the vision of motorists;
- 14.1.16. tolerate access to irrigation pipe lines by owners of these lines their employees and/or contractors;
- 14.1.17. not erect any structure over the services or infrastructure; and

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- 14.1.18. pay the fees as set in the Architectural Guidelines and as amended by the Association from time to time, before the commencement of any building operations on his Erf - Fee will be calculated before transfer of property
- 14.2. Except for the Developer in respect of whom the provisions of this paragraph do not apply, Members shall within a period of 4 (four) years after date of the first registration of transfer of the property (or such later date as the Association may direct in writing), commence with the Improvements on the property (the plans and specifications of which shall have been approved in terms of clause 13 above) and shall complete such Improvements within a period of 18 (eighteen) months thereafter or within the said extended period. This will be the date from which such periods will be calculated irrespective of whether the property has been transferred subsequently. If the Member fails to comply with the provisions of this clause 14.2 the Association shall be entitled, without prejudice to any other rights which it may have and/or at law and at its election to –
- 14.3. To pay 3 times the levies due on the Property to the Association as from the expiry of the period referred to in 14.2 above until the date upon which the dwelling referred to in 14.2 above is completed and an occupation certificate can be provided by the Owner, or
- 14.4. To pay the Association an increase of 3 times the current levy as penalties, calculated as from the date upon which the period referred to in 14.2 expires, until the date upon which the dwelling referred to in 14.2 above is completed, such interest to be calculated monthly in arrears.
- 14.5. Any further structural improvements that a Member wishes to make to his property after finalization of the construction of his house should also be submitted to the Association for approval by the Architectural Committee and has to be finalized within 6 (six) months of commencement of construction thereof, otherwise the same levies will be due and payable as per clause 14.3 above for such extended period of time, beyond the 6 (six) month period.
- 14.6. No Estate Agent shall be entitled to market and/or sell properties in the Development without the written consent of the Developer.

15. RESTRICTIONS

- 15.1. No Member shall apply for the rezoning of his Erf or Unit with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf for any purpose other than the permitted use applicable upon establishment of the Development. In particular, no member shall be allowed to use his Erf for the supply of temporary accommodation for consideration and/or letting out on a short-term basis, i.e. for periods shorter than one month, other than the uses envisaged here-in.
- 15.2. No Member shall conduct any business on an Erf without the consent of the Developer and the Association.
- 15.3. Subject to 14.6, in the event of any member deciding to sell his erf, the Developer or its nominee shall as long as the member remains of the intention to sell his erf have a mandate to sell the property of such member on similar terms and conditions as mandated to any estate agent. The

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aforesaid member shall be obliged to forthwith inform the Developer or its nominee of his intention to sell his erf and let the Developer or its nominee have the written particulars of any mandate given to any other estate agent, which particulars shall then be considered as a written mandate to the Developer or its nominee.

15.4. No Member shall be entitled to:

15.4.1. At any time operate a guest house on his Erf; and

15.4.2. Lease his Erf for any period less than 30 (thirty) days without the approval of the Developer and the Association.

15.4.3 In Residence will have an exclusive agreement for all short-term rentals on Botmaskop Fynbos Estate.

15.4.4. This exclusive agreement is written into the constitution, and will be shared with all Homeowners.

15.4.5. Rental period from 3 nights to 90 nights.

15.4.6. Any rental longer than 90 nights will be deemed as long-term, and will be managed by the homeowners directly.

15.4.7. In Residence will charge a market-related agreed commission for all services
In Residence will charge 20% plus VAT on the management of each villa.

15.4.8. In Residence will take on the role as exclusive estate manager from the date of the first completed property.

15.5. No Member shall permit the number of occupants of his Erf to exceed 2 (two) persons per bedroom. The word "occupants" shall include but shall not be limited to any person who resides or stays on such Erf on a regular or occasional basis irrespective of whether such person is related to or is financially upon the Owner or whether such persons pays rental or gives any other form of consideration in respect of such Erf or any portion thereof.

16. LEVIES

16.1. The Trustees shall :

16.1.1. establish and maintain a levy fund for the purposes of meeting all expenses of the Association directly or indirectly incidental to the objectives of the Association including the control, management and administration of the Development, including the dams, services, pathways, Private Open Spaces and for charges for the supply of any services required by the Association;

16.1.2. prepare a budget which will be required by the Association to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the

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preceding year and may include in such estimate and amount to be held in reserve to meet anticipated future expenditure not of an annual nature;

- 16.1.3. require Members whenever necessary to make contributions to such fund for the purposes of satisfying the expenses referred to in clauses 16.1.1 and 16.1.2, equal as nearly as is reasonably practical to such estimated amount.
- 16.2. The Trustee may, from time to time, make special levies upon members effective from the date of passing of the applicable Resolution in respect of such expenses referred to in clause 16.1 (which are not included in any estimate made in terms of clause 16.1.2) and such special levies may be imposed and shall be payable in on sum or by such instalments and at such time or times as the Trustees shall deem fit.
- 16.3. Any amount due by a Member by way of a levy shall be a debt due by him to the Association payable within such time as determined by the Trustees. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member. No levies paid by a Member shall be repayable by the Association upon his ceasing to be a Member. A 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 such Erf to pay the levies attributable to that Erf. No Member shall be entitled to transfer his Erf until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association. Members shall not be entitled to withhold or refuse to pay any levies by reason of the fact that all amenities, facilities and services might not have been fully completed before expiry of the Development Period. Without limiting the generality of the aforementioned, Members shall not be entitled to withhold any payments of levies or refuse to take transfer of any property by reason of the non completion of any amenities, facilities, services or infrastructure;
- 16.4. In calculating levies, the Trustees shall take into account income, if any, earned by the Association.
- 16.5. The decision of the Trustees in calculating the levies shall be final and binding on all Members.
- 16.6. No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof;
- 16.7. All levies are due and payable by Members on the first day of the month immediately following the month in which such liability arose and , thereafter, on the first day of each and every following month.
- 16.8. Members shall be liable for payment of interest on outstanding amounts at a rate determined by the Trustees from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.
- 16.9. The Developer shall not be obliged to pay levies in respect of any portion of the Development, and, without detracting from the generality of the foregoing, specifically including any Erf, for as long as he remains the Owner thereof.

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16.10. The levies payable by non-residential Erven, if any, shall at all times be the same as the levies payable by residential Erven. This clause shall not be amended without the prior written consent of the Developer or his successor in title as owner of any such non-residential Erf.

17. BREACH

17.1. The Trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause.

17.2. If any Member fails in the observance of any of the provisions of this Constitution with regard to improvements and/or the provisions of the Architectural Guidelines and/or fails to comply with any rules or regulations made in terms thereof, the Trustees may on behalf of and in the name of the Association serve notice on such Member calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:

17.2.1. enter upon the Erf to take such action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand; and/or

17.2.2. call upon such Member in writing to remove or alter within a specified period any portion of the Improvements or any addition erected contrary to the provisions of this Constitution read with the Architectural Guidelines and, failing which, the matter shall be referred to a special meeting of the Association convened to afford Members the opportunity to give directions to the Trustees. The Resolution of the Association at such meeting shall be binding upon such defaulting Member and shall be implemented by the Trustees; and/or

17.2.3. institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.

17.3. If any Member fails to make payment on the due date of levies or other amounts payable by such Member, the Trustees may give notice to such Member requiring him to remedy such breach within such period as the Trustees may determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in obtaining recovery. Any notice given in terms of this clause shall attract a fee as determined by the Association and payable by such member.

17.4. Nothing in the foregoing shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any Member arising from any cause of action whatsoever or for any other relief.

17.5. In the event of any breach of this Constitution by the members of any Member's household or his invitees or lessees, such breach shall be deemed to have been committed by the Member

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himself but, without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Member.

18. TRUSTEES

18.1. The Trustees of the Association shall comprise 3 (three) Developer Trustees until the first annual general meeting of the Association whereupon the number of Trustees shall be 5 (five) comprising 3 (three) Developer Trustees and 2 (two) Member Trustees for as long as the Developer is a Member and upon the Developer ceasing to be a Member the 5 (five) Trustees shall be Member Trustees save that the Association shall in general meetings held after the Developer has ceased to be a Member, be entitled to increase or decrease the number of Trustees.

18.2. A Trustee appointed or nominated by the Developer, shall be an individual but need not himself be a Member, provided that the Member Trustees nominate dby the Association, shall all be Members.

18.3. A trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.

18.4. The Developer shall appoint the first Developer Trustees upon formation of the Association.

18.5. Subject to the provisions of clause 18.6, each Member Trustee shall continue to hold office until the annual general meeting of the Association following his appointment, at which meeting each Member Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The Developer shall, by written notice to the Trustees, be entitled to remove any Developer Trustee appointed by the Developer and upon such removal or upon any Developer Trustee ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.

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

18.6.1. his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;

18.6.2. his making any arrangement or composition with his creditors;

18.6.3. his conviction for any offence involving dishonesty;

18.6.4. his becoming of unsound mind and or being found lunatic;

18.6.5. his resigning from such office in writing;

18.6.6. his death;

18.6.7. his being removed from office by a resolution of Trustees;

18.6.8. his being disentitled to exercise a vote in terms of this Constitution provided he is a Member Trustee.

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- 18.7. Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 18.6, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustees. Should the office of a Trustee fall vacant prior to the next annual general meeting of the Association, the vacancy in question may be filled by the Developer if the vacancy is in respect of a Developer Trustee and by the remaining Member Trustees if the vacancy is in respect of a Member Trustee and the person so appointed shall hold office until the next annual general meeting.
- 18.8. The first Chairman shall be appointed by the Developer and shall hold office until the later date of the first annual general meeting or the date of the registration of transfer of the last Erf from the Developer to an Owner, until which the Chairman shall have the right to veto any proposal and/or resolution which relates to, directly or indirectly, the Private Open Spaces in the Development including the dams, pathways, roads and servitude areas.
- 18.9. Subject to the provisions of paragraph 18.8 above, within 7 (seven) days of the holding of each annual general meeting of the Association the Trustees shall meet and shall elect from their own number the Chairman who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the aforesaid office, the Trustee shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 18.10. Save as otherwise provided in the Constitution, the Chairman shall preside at all meetings of the Trustees and all general meetings of the Association and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a Member's spouse shall be entitled to speak at any meeting.
- 18.11. If the Chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such meeting shall choose another Chairman for such meeting.
- 18.12. If any Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.
- 18.13. A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the Association, by virtue of any interest he may have therein.
- 18.14. No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by the Chairman and one Trustee, the latter specifically appointed as authorised signatory in terms of the Resolution of Trustees whereby the Trustees bind the Association.
- 18.15. Trustee shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees and/or Chairman, 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.

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18.16. Trustees may not make loans on behalf of the Association to Members or to themselves.

19. FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

- 19.1. Subject to the express provision of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any Managing Agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by this Constitution required to be exercised or done by the Association in general meeting subject however to such regulations as may have been made by the Association in general meeting provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustees which would have been valid if such regulation had not been made.
- 19.2. Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 19.3. The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 19.4. The Trustees shall have the right to co-opt any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees provided that such co-opted Trustee shall only serve until the next annual general meeting.
- 19.5. The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution in such reasonable manner as they shall decide from time to time.
- 19.6. The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting:
- 19.6.1. as to the resolution of disputes generally;
 - 19.6.2. for the furtherance and promotion of any of the objects of the Association;
 - 19.6.3. for the better management of the affairs of the Association;
 - 19.6.4. for the advancement of the interests of Members;
 - 19.6.5. for the conduct of Trustees at meetings of Trustees and meetings of the Association;
 - 19.6.6. to levy and collect contributions from Members in accordance with clause 19;

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- 19.6.7. to levy and recover from Members moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association;
- 19.6.8. to assist it in administering and governing its activities generally;
- 19.6.9. to impose fines in respect of Members not complying with this constitution or any rules imposed by the Association.
- 19.7. Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
- 19.7.1. the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven in the Development in strict accordance with the provisions of the Architectural Guidelines which shall be additional to the powers of the Developer for as long as the Developer is a Member. The Trustees shall be entitled to require any Member, who shall be obliged, to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;
- 19.7.2. entering into of agreements with third parties on behalf of the Association for any purposes of the Association;
- 19.7.3. the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;
- 19.7.4. the taking of steps in all matters of common interest in respect of the Association and including, without detracting from the generality thereof, such as common sewage, electricity supply, water supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable;
- 19.7.5. the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose.

20. PROCEEDINGS OF TRUSTEES

- 20.1. The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
- 20.2. Meetings of the Trustees shall be held at least once every 6 (six) months.
- 20.3. The Chairman always has the right to convene meetings of Trustees.
- 20.4. A Trustee may, provided he has the support in writing of 3 (three) other Trustees, at any time convene a meeting of Trustees by giving to the other Trustees not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in case of urgency, such shorter notice as it reasonable in the circumstances may be given.

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- 20.5. A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.
- 20.6. The quorum necessary for the holding of any meeting of Trustees shall be 4 (four) Trustees present personally provided that, for as long as the Developer is a Member, no less than 3 (three) Trustees present are Developer Trustees. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum.
- 20.7. Any Resolution of the Trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a Resolution, the Chairman shall have a second casting vote.
- 20.8. The Chairman shall prescribe as such at all meetings of Trustees provided that, should at any meeting of Trustees the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 20.9. A Trustee may be represented at a meeting of Trustees by a proxy provided such proxy is a Trustee.
- 20.10. The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall be deposited with the Chairman at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.
- 20.11. The Trustees shall:
- 20.11.1. ensure that minutes are taken of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;
 - 20.11.2. cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;
 - 20.11.3. keep all books of meetings of Trustees in perpetuity;
 - 20.11.4. on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.
- 20.12. All Resolutions recorded in the minutes of any meeting of Trustees 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 Trustees shall be of any force or effect or shall be binding upon the Members or any of the Trustees unless such Resolution is competent within the powers of the Trustees.

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20.13. Save as otherwise provided in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

21. MANAGING AGENT

21.1. Subject to 10.1.5, the Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Trustees notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.

21.2. The Trustees shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Trustees and/or the Association as a result of such cancellation.

22. GENERAL MEETINGS OF THE ASSOCIATION

22.1. The Association shall, within 12 (twelve) months of the date of commencement of the Association hold a general meeting as its first annual general meeting. Thereafter, within 6 (six) months of the financial year end of the Association it shall hold second and subsequent annual meetings.

22.2. Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time, but subject to such meeting being held within the jurisdiction area of the Stellenbosch Magistrate's Court.

22.3. The Trustees may, whenever they deem fit, convene a general meeting and a general meeting shall also be convened on a requisition made by not less than 25% (twenty five per centum) of Members or should the Trustees fail to do so such meeting may be convened by the requisitionists themselves provided that notice thereof be given in terms of clause 23.

23. NOTICE OF MEETINGS

23.1. An annual general meeting shall be called by not less than 21 (twenty one) days notice and a general meeting by not less than 14 (fourteen) days notice, as provided in clause 23.3. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in the Constitution, the general nature of that business and the reasons for it all be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Trustees to such persons as are, under this Constitution, entitled to receive such notices from the Association; provided that a general meeting or an annual general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in the Constitution, be deemed to have been duly

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called if it is agreed to by not less than 60% (sixty per centum) of Members having a right to attend and vote at the meeting.

- 23.2. The accidental omission to give notice of any Resolution or to present any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings at or any Resolution passed at any meeting.
- 23.3. Notice of the annual general meeting and/or a general meeting shall be mailed to Members at the omicilium citandi et executandi of such Member as contemplated in clause 38.2.
- 23.4. The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

24. PROXIES

- 24.1. A Member may be represented at an annual general meeting and/or general meeting by a proxy who must be a Member of the Association.
- 24.2. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorized agent in writing but need not be in any particular form provided that where a Member is more than one person any one of those persons may sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company, the proxy may be signed by any person authorized by resolution of the board of directors of the company or by its secretary and, where a close corporation, by any member of such close corporation and, where an association of persons, by the secretary thereof and, where a trust, by a person duly authorized by the trustees of such trust.
- 24.3. 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 lodged with the Association at least 24 (twenty four) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.
- 24.4. Notwithstanding the foregoing, the Chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

25. QUORUM

- 25.1. No business shall be transacted at any annual general meeting or general meeting unless a quorum is present when the meeting proceeds to business and when any Resolution is to be passed. The quorum necessary for the holding of any meeting shall be 50% of the total Members entitled to attend and vote thereat but shall not, until such time as all Erven which belongs to the Developer have been transferred to Owners, be attained unless the Developer or its duly authorized representatives are present at the meeting .
- 25.2. If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the

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Members present shall, subject to the presence of the Developer or its duly authorized representatives is present thereat, constitute a quorum.

26. AGENDA AT MEETINGS

In addition to any other matters required by legislation or by this Constitution to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 26.1. the consideration of the Chairman's report;
- 26.2. the election of Member Trustees;
- 26.3. the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
- 26.4. the consideration of the budget as presented by the Trustees and confirmation of levies as currently levied by the Trustees;
- 26.5. any other business pertinent to such meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions.

27. PROCEDURE AT MEETINGS

- 27.1. The Chairman shall preside as such at all meetings provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Trustees present at such meetings shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 27.2. The Chairman may, with the consent of any 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 that might have been transacted at the meeting from which the adjournment took place. No notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

28. VOTING

- 28.1. At every annual general meeting or general meeting every Member in person or by proxy and entitled to vote shall be allocated voting rights as follows:
 - 28.1.1. the registered owner of an Erf : 1 (one) vote per Erf registered in his name, provided that if an Erf is registered in more than one person's name, then they shall jointly have 1 one vote;

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- 28.1.2. During the Development Period, the Developer shall be entitled to 3 times the total number of votes of all the other Members of the Association.
- 28.2. At any meeting of Members a Resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Member. If a poll is duly demanded it shall be taken in such manner as the Chairman directs and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded.
- 28.3. Save as expressly provided for in this Constitution, no person other than a Member duly registered and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present and to vote on any question either personally or by proxy.
- 28.4. At any annual general meeting or general meeting a Resolution put to the vote at the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereon present in person or by proxy in accordance with the value of voters recorded in clause 28.1.
- 28.5. Voting on any question of adjournment shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereat present in person or by proxy.
- 28.6. Every Resolution and every amendment of a Resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 28.7. Unless any Member present in person or by proxy at a meeting shall, before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes of the Association to the effect that any motion has been carried or lost with or without a record of the number of votes recorded in favour of or against such motion shall be conclusive evidence of the Resolution so recorded if such entry confirms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

29. MINUTES OF MEETINGS OF THE ASSOCIATION

29.1. The Trustees shall :

- 29.1.1. ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;

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- 29.1.2. cause such minutes to be kept of all such meetings of the Association in a minute book of meetings of the Association kept for the purpose.
- 29.2. The Trustees shall keep all minute books or meetings of the Association in perpetuity.
- 29.3. On the written application of any Member the Trustees shall make all minutes of the proceedings and/or meetings of the Association available for inspection by such Member.
- 29.4. All Resolutions recorded in the minutes of any meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such Resolutions, and until varied or rescinded, but no Resolution or purported Resolutions of the Association shall be of any force of effect, or shall be binding upon the Members or any of the Trustees, unless such Resolution is competent within the powers of the Association.
- 29.5. Save as otherwise provided in the Constitution, the proceedings at any meeting of the Association shall be conducted in such manner and form as the Chairman of the meeting shall decide.

30. FINANCIAL YEAR END

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

31. ACCOUNTS

- 31.1. The Trustee shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association including :
- 31.1.1. a record of the assets and liabilities of the Association;
 - 31.1.2. a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
 - 31.1.3. a register of Members showing in each case their addresses;
 - 31.1.4. individual ledger accounts in respect of each Member.
- 31.2. On the application of any Member the Trustees shall make all of any of the books of account and records available for inspection by such Member.
- 31.3. The Trustees shall cause all books of account and records to be retained for a period of 5 (five) years after completion of the transactions, acts or operations to which they relate.
- 31.4. The Association in general meeting or the Trustees may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by Members of the accounts and books of the Association, or any of them, and subsequent to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

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31.5. At each annual general meeting the Trustees shall lay before the Association financial statements for the immediately preceding financial year of the Association or, in the case of the first period since the dated of commencement of the Association, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

32. DEPOSIT AND INVESTMENT OF FUNDS

32.1. The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.

32.2. Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the Trustees from time to time.

32.3. Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

33. AUDIT

33.1. Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

33.2. The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards.

34. INDEMNITY

34.1. All the Trustees managers, servants, agents or employees of the Association are indemnified by the Association against any liabilities bona fide incurred by them in their capacities as such and in the case of the Chairman in his capacity as Chairman, as well as for all costs, losses and expenses (including traveling expenses) which they may incur or become liable for by reason of any authorized contract entered into, or any authorized act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by court.

34.2. A Trustee shall not be liable for the acts, or omission of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairman or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by an error of judgment or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his

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duties or in relation thereto unless occurring as a result of mala fides, breach of duty or breach of trust.

35. DEFAMATION PRIVILEGE

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

36. OWN RISK

Any person using any of the services, land, facilities, infrastructure or amenities of the Association, the Development and the Farm does so entirely at his own risk and neither the Association, its Trustees, Members, the Developer and its successors-in-title or their contractors, employees, guests and family members shall be liable for any damages, injury or loss of life which may result from any of their acts or omissions. The Association and all members hereby indemnifies the Developer from any and all liability arising from the aforementioned use by members and specifically from any incidental risks and all liability to the exercising of the Traversing Rights on the Farm.

37. ARBITRATION

37.1. Should any dispute, question or difference arise between Members or between a Member and Trustees out of or in regard to:

37.1.1. the interpretation of ;

37.1.2. the effect of ;

37.1.3. their respective rights or obligations under ;

37.1.4. a breach of (save for non-payment of levies or any other amount due by a Member in terms of this Constitution) this Constitution, such dispute shall be decided by arbitration in the manner set out in this clause 37.

37.2. In respect of any claim arising from non-payment of levies or any other amount due by a Member to the Association in terms of this Constitution, the Association and Trustees shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

37.3. The arbitration referred to in clause 37.1 shall :

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- 37.3.1. be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence ; and
 - 37.3.2. commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded ; and
 - 37.3.3. be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 37.4. The arbitrator shall be a practicing senior or attorney of not less than 5 (five) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the President of the Cape Town Bar or the Stellenbosch Attorneys Association.
- 37.5. The arbitrator shall in giving his award have regard to the principles contained in this Constitution and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 37.6. Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings :
- 37.6.1. shall be final and binding on each of them; and
 - 37.6.2. shall be carried into effect immediately; and
 - 37.6.3. may be made an order of any Court to whose jurisdiction the parties are subject.
- 37.7. Notwithstanding anything to the contrary contained in this clause 37, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, including the Architectural Guidelines.

38. DOMICILIUM

- 38.1. The Trustees shall from time to time determine the address constituting the domicilium citandi et executandi of the Association, subject to the following :
- 38.1.1. such address shall be the address of the Chairman or of a resident Trustee nominated by the Trustees or the address of any duly appointed Managing Agent;

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- 38.1.2. the Trustees shall give notice to all Members of any change of such address.
- 38.2. The domicilium citandi et executandi of each Member shall be the street address of the Member's Erf.
- 38.3. It shall be competent to give notice by telefax or email where the Member's telefax number or email address is recorded with the Trustees.
- 38.4. A Member may by notice in writing to the Trustees alter his domicilium provided such new address may not be a post office box or post restante and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.
- 38.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member shall be adequate written notice or communication to such Member notwithstanding that it was not sent to or delivered at his domicilium citandi et executandi.
- 38.6. Any notice to a Member :
- 38.6.1. sent to him by prepaid registered post in a correctly addressed envelope at his domicilium citandi et executandi shall be deemed to have been received on the 7th day after posting (unless the contrary is proved); or
 - 38.6.2. delivered by hand to a responsible person at his domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
 - 38.6.3. successfully transmitted by telefax to his chosen telefax number shall be deemed to have been received on the 1st day after the dated of transmission, unless the contrary is proved.

39. AMENDMENT

- 39.1. No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of :
- 39.1.1. the Local Authority, and
 - 39.1.2. the Developer for as long as the Developer is a Member, provided that clauses 10.5; 13.3; 15.4 and 16.10 shall not be amended without the written approval of the relevant successor in title of the developer.
- 39.2. Subject to the provisions of clause 39.1, such addition, amendment, substitution, or repeal shall require the approval of at least 51% (fifty one per centum) of the total number of votes of Members of the Association given at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirement for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed : Provided that during the development period the

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Developer shall be entitled to add, amend, substitute, or repeal the Constitution in his sole and absolute discretion, subject to the prior consent in writing of the local Authority.

40. INCORPORATION OF FURTHER PHASES

The Developer has continuing and permanent interest to ensure that certain provisions are entrenched in perpetuity to ensure the success of the Development. Accordingly, none of the following provisions may be deleted or varied in any way, in terms of clause 40 without the prior written consent of the Developer:

- 40.1. the Developer has the right at any time and from time to time to extend, increase or alter the area or composition or size of the Development by requiring the Association to incorporate into the Development any part/s of any adjoining properties owned by the Developer or any of its associate or subsidiary companies, from time to time as further phases of the Development, which the Developer shall be entitled to develop as it may deem fit;
- 40.2. should any further property be incorporated into the Development or the layout or size or number of erven are amended or changed by the Developer, the Developer shall be entitled to require that the first and all subsequent Owners of Erven therein become Members of the Association in respect of those parts from such date as the Developer may determine, and on the same terms and conditions as are applicable to the other Members of the Association. The Members shall be bound by any such requirement of the Developer.

41. REGISTRATION

It is recorded that the Developer has registered or is in the process of registering the name BOTMASKOP FYNBOS ESTATE (PTY) LTD for the development. Accordingly, no Member will be entitled to use such name without the written consent of the Developer beforehand.