



**VOLIÈRE**

**MASTER OWNERS ASSOCIATION**

**CONSTITUTION**

**First Amendment**

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# CONSTITUTION

## INTRODUCTION

### 1. DEFINITIONS

In the interpretation of this Constitution, unless the context otherwise indicates:

- 1.1 "Apartment" means a Unit in any of the Sectional Title for the purposes of Clause 45;
- 1.2 "Association" means the Voliere Master Homeowners Association as established in terms of Clause 3;
- 1.3 "Body Corporate" means a body corporate established in terms of the Sectional Title Scheme Management Act within the Estate;
- 1.4 "Common Property" means:
  - 1.4.1 in respect of freehold dwellings, the gateways, buildings, security fences, boundary walls, roads, common parking areas, park areas and open spaces;
  - 1.4.2 in respect of Unit in the Sectional Titles Schemes, the common areas indicated on the respective sectional title plans (if more than one Scheme will be registered).
- 1.5 "Conduct Rules" means all rules and regulations as from time to time determined and made by the Trustee Committee, and issued in respect of the Voliere Estate Master Home Owners Association;
- 1.6 "days" means all calendar days;
- 1.7 "Design Review Committee" means the Design Review Committee appointed by the Association from time to time;
- 1.8 "Developer" means Voliere Development Company (Pty) Ltd Registration Number 1999/002239/07, or its successors-in-title or assigns;

- 1.9 "Development Period" means that period from the date on which the first Erf and/or Unit in the development has been registered and/or Sectional Title register in the development is opened, until the date that the Developer has exhausted all of its Development Rights and transferred the last Erf and/or Unit owned by it in the development, or the date that the Developer notifies the Association in writing that it has ceased to further develop the Land, whichever is the earlier;
- 1.10 "*domicilium*" means the *domicilium citandi et executandi* of the Association or of a Member, as the case may be, as contemplated in Clause 74;
- 1.11 "Erf" or "Erven" means a portion or portions of land owned by a Member, or the Home Owners Association within the Estate, as well as any private road or public open space, which shall have been allocated a cadastral number by the Surveyor General;
- 1.12 "Estate" means the Estate currently known in its entirety as Voliere Estate which comprises the Erven described on a General Plan/s to be registered, and Units comprised in the Voliere Estate Sectional Title Scheme(s);
- 1.13 "General Plan" means the General Plan relating to the Land as approved by the Surveyor General;
- 1.14 "Land" means the land comprising the entire development;
- 1.15 "Levy" means the monthly levy determined under Clause 42, or the special levy contemplated in Clause 43, as the case may be;
- 1.16 "levy enhancement fund" means a reserve fund to be established as provided for in Clause 77, for additional maintenance and repair expenses not provided for or budgeted for in terms of Clause 42, or capital expenses deemed necessary for the enhancement of the Estate;
- 1.17 "Member" means a Member of the Association as defined in Clause 5;
- 1.18 "Occupier" means any person and/or tenant who is present in the property of a member;
- 1.19 "Person" with regard to Membership of the Association, shall include a company, partnership, trustees of a trust, or other association of persons entitled in law to hold title to immovable property;

- 1.20 "Reserve Fund" means the fund established in terms of Clause 39.
- 1.21 "Residential Dwelling" means an Erf sold and registered from a General Plan to the Purchaser thereof and on which a dwelling has been erected;
- 1.22 "Scheme" means the sectional title scheme or schemes established in terms of the STA within the Estate;
- 1.23 "STA" means the Sectional Titles Act No 95 of 1986 as amended or any substitution thereof;
- 1.24 "STSMA" means the Sectional Titles Schemes Management Act No 8 of 2011;
- 1.25 "Trustee Committee" and "Trustees" means the Trustee Committee of the Association contemplated in Clause 9;
- 1.26 "Unit" or "Units" in relation to a Voliere Sectional Title Schemes means a Unit together with its undivided share in the Common Property apportioned to that Unit in accordance with the participation quota of such Unit;
- 1.27 words and expressions to which a meaning has been assigned in this Constitution shall bear the meaning so assigned to them; and
- 1.28 words importing:
- 1.28.1 the singular number shall include the plural number, and the converse shall also apply; and
  - 1.1.2 the masculine and feminine genders shall include the neuter gender, and the converse shall also apply.

## 2. HEADINGS

The headings to the respective Clauses are provided for convenience of reference only and shall not be taken into account in the interpretation of the provisions of this Constitution.

## **MASTER HOMEOWNERS' ASSOCIATION**

### **3. ESTABLISHMENT OF ASSOCIATION**

- 3.1 The Association is established in terms of Section 29(1) of the Stellenbosch Municipality By-Law on Municipal Land Use Planning Ordinance 15 of 2018 as a requirement when approving the subdivisions of Erf 14425 Stellenbosch, Situated in the Municipality and Division Stellenbosch, Province of the Western Cape and the Remainder of the Farm Patrysen Valley Number 85, Situated in the Municipality and Division Stellenbosch, Province of the Western Cape in terms of Section 20 and 21 of the said Bylaws. The Association is established with effect from the date of registration of the first transfer of an erf arising from the subdivision to the purchaser thereof, or the first transfer of a Unit, whichever occurs first. The Association is established for the benefit of all owners of land units arising from the subdivision concerned.
- 3.2 The Body Corporate(s) of Sectional Title Scheme(s), will be established in respect of portions of Erf 14425 Stellenbosch, situated in the Municipality and Division Stellenbosch, Province of the Western Cape and the Remainder of the Farm Patrysen Valley Number 85, Situated in the Municipality and Division Stellenbosch, Province of the Western Cape. Certain of the functions and powers of the Body Corporate shall be assigned to the Association in terms of this Constitution and the Management Rules of the Body Corporate and all the members of the Body Corporate shall be members of the Association. The date of assignment of functions and powers of the Body Corporate shall be the date of approval of the Management Rules of the Body Corporate at the Community Schemes Ombud.
- 3.3 There shall be one Master Homeowners Association of which the members will be the members of the Freehold Erven, and the Members of the Body Corporates of the three Sectional Title Schemes.

#### **4. OBJECTIVE OF ASSOCIATION**

- 4.1 The objective of the Association is to promote the collective interests of all its Members by performing the functions entrusted to it by or under this Constitution, which functions shall include, but not be limited to, the functions:
- 4.2 to determine and maintain standards for community-living in the Estate in such a way that its Members may derive the maximum collective benefit there from;
- 4.3 to determine and preserve the basic aesthetic standards, including the basic architectural style, in the Estate;
- 4.4 to maintain the Common Property in the Estate for the mutual benefit of its Members;  
and
- 4.5 to monitor and enforce compliance with the provisions of this Constitution and the Conduct Rules.

#### **5. MEMBERSHIP OF ASSOCIATION**

- 5.1 Upon registration of ownership of an Erf or Unit in the Estate, the owner of such Erf or Unit shall automatically become a Member of the Association and shall be obliged to comply with the provisions of this Constitution and the Conduct Rules.
- 5.2 Ownership of an Erf or Unit, and thus Membership of the Association, shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more Erven or Units in the Estate.
- 5.3 No person shall cease to be a Member while remaining the registered owner of an Erf or Unit in the Estate.
- 5.4 Membership shall be transferred by registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of one or more Erven or Units in the Estate to a Voliere Estate Member.



## **6. STATUS OF ASSOCIATION**

- 6.1 The Association shall be an association as contemplated in Section 29(1) of the Stellenbosch Municipality By-Law on Municipal Land Use Planning Ordinance 15 of 2018.
- 6.2 The Association shall have legal personality, perpetual succession, and be capable of suing and being sued in its own name.
- 6.3 The Association shall not be for profit, but for the benefit of its Members.
- 6.4 The provisions of the Companies Act, No 71 of 2008, as amended, shall not apply in respect of the Association.
- 6.5 None of the Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association.

## **7. POWERS OF ASSOCIATION**

- 7.1 The Association may exercise the powers conferred upon it by or under this Constitution, and such powers shall include, but not be limited to, the powers:
  - 7.1.1 to establish a fund sufficient in the opinion of Members for the repair, upkeep, control, management and administration of the Common Property (including provision for maintenance of all roads), for the payment of rates and taxes and other charges by any competent authority and for any premiums of insurance, and for the discharge of any duty or the fulfilment of any other obligation of the Association;
  - 7.1.2 to make and enforce such Conduct Rules and make, issue and enforce other rules, regulations, policies and guidelines as may be required such as but not limited to access and egress control as it may from time to time deem necessary to achieve its objective and to perform its functions;
  - 7.1.3 to engage an estate manager and such agents, employees, and other persons, professionals, contractors and service providers as it may deem necessary to assist the Association to achieve its objective and to perform its functions;
  - 7.1.4 to acquire movable property required to facilitate its functions;

- 7.1.5 when essential for the proper fulfilment of its functions, subject to approval by the Members in general meeting, acquire, sell, or mortgage immovable property;
- 7.1.6 to borrow money required for the proper performance of its functions, subject to approval by the Members in a general meeting, provided that in the case of a complete electricity-, water- and/or sewerage breakdown or when the operational efficiency of the Estate is under threat the Trustee Committee can by resolution borrow money without the approval by the members in a general meeting;
- 7.1.7 to secure repayment of moneys borrowed and interest by hypothecation of Levies or by mortgaging property held by it;
- 7.1.8 to invest funds held by it with any registered financial service provider, at the discretion of the trustees;
- 7.1.9 to procure all necessary goods and services at a cost and in a manner which is fair, equitable, transparent, competitive and cost effective;
- 7.1.10 to specify all electrical and water meters installations on the Estate;
- 7.1.11 to ensure compliance with any law relating to the Common Property;
- 7.1.12 to procure, if required, suitable insurance cover against non-payment of Levies;
- 7.1.13 to do all other things reasonably necessary for:
  - 7.1.13.1 the control, management and administration of the affairs of the Association, including the maintenance of the Common Property; and
  - 7.1.13.2 the implementation and enforcement of the provisions of this Constitution and the Conduct Rules made thereunder;
- 7.1.14 to incur reasonable expenses in the discharge of any duty or fulfilment of any obligation of the Association, from time to time to determine the amounts required to defray such expenses, and to raise these amounts by collecting Levies from Members;

- 7.1.15 to construct, control, repair, replace and maintain all services and facilities;
- 7.1.16 to perform such functions and powers as may be mutually agreed to between the Body Corporate(s) and Voliere Estate Master Home Owners Association.
- 7.1.17 to take transfer of all open roads, public open spaces, common spaces, as specified by the Municipality of Stellenbosch when approving the development of Voliere Estate.

## 8. **DEVELOPER'S LEVY CONTRIBUTION**

- 8.1 Voliere Development Company (Pty) Ltd Registration Number 1999/002239/07, or its successors-in-title or assignees are exempt from levy contributions to the Association in respect of such erven or units not yet transferred.
- 8.2 Any shortfall in the expenses of the Association, either operational or capital in nature, will be covered by the Developer during the Development Period. The Developer shall provide such funds as may be required by way of a loan to the Association, the terms and conditions of which loan shall be contained in a separate agreement and shall be repaid from levies raised by way of the levy enhancement fee contemplated in clause 77. The loan will be repayable from the Levy Enhancement Fund, whereby a 1/3 of each contribution will be payable to the Developer upon such payment to the Fund by the member.

## **TRUSTEE COMMITTEE**

### **TRUSTEE COMMITTEE MEMBERS**

#### **9. APPOINTMENT, FUNCTIONS AND FIDUCIARY RELATIONSHIP**

9.1 The Members shall annually elect persons to constitute a Trustee Committee for the Association.

9.2 Subject to any restrictions imposed or directives given by Members in general meeting, the control, management and administration of the affairs of the Association shall vest in the Trustee Committee, who may, on behalf of the Association, exercise all such powers of the Association and do all such acts in the discharge of their duties or the fulfilment of their obligations as may be exercised and done by the Association itself or required to be done by the Association in general meeting.

9.3 Each trustee of the Association must stand in a fiduciary relationship to the Association.

9.4 Without prejudice from the generality of the expression "fiduciary relationship", the provision of sub clause 9.3 implies that a trustee:

9.4.1 shall in relation to the Association act honestly and in good faith, and in particular:

9.4.1.1 shall exercise his or her powers in terms of this constitution in the interest and for the benefit of the Association; and

9.4.1.2 shall not act without or exceed those powers aforesaid; and

9.4.2 shall avoid any material conflict between his or her own interests and those of the Association, and in particular:

9.4.2.1 shall not derive any personal economic benefit, to which he or she is not entitled by reason of his or her office as a trustee of the association, from the association or from any other person in circumstances in which that benefit is obtained in conflict with the interests of the Association; and

9.4.2.2 shall notify every other trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he or she may have in any contract of the Association.

9.4.3 Where a trustee fails to comply with the provisions of clause 9.4.2.2 and it becomes known to the Association that the trustee has an interest referred to in that clause in any contract of the Association, a Court may on application by any interested person, if the Court is of the opinion that in the circumstances it is fair to order that such contract should not be binding on the parties, give an order to that effect, and may make any further order in respect thereof which it may deem fit.

9.4.4 A trustee of the Association whose mala fide or grossly negligent act or omission has breached any duty arising from his or her fiduciary relationship, shall be liable to the Association for:

9.4.4.1 any loss suffered as a result thereof by the Association; or

9.1.1.2 any economic benefit derived by the trustee by reason thereof.

9.5 Except as regards his or her duty referred to in sub clause 9.4.1.1, any particular conduct of a trustee shall not constitute a breach of a duty arising from his or her fiduciary relationship to the Association if such conduct was preceded or followed by the written approval of the members of the Association where such members were or are informed of all the material facts.

9.6 The Developer will be the sole trustee until 50% of the development has been transferred.

## 10. **CONTRACTS**

The Trustee Committee shall have the power to make, enter into and carry out contracts or agreements on behalf of the Association.

## 11. **LEGAL PROCEEDINGS**

The Trustee Committee shall at its sole option be entitled to institute in any court (including a magistrate's court) of competent jurisdiction, proceedings in the name of the Association for any relief to which it is entitled under the provisions of this Constitution and / or the Conduct Rules, to defend actions in the name of the Association and to appoint legal representation for this purpose.

12. **DELEGATION OF POWERS, DUTIES AND OBLIGATIONS**

The Trustee Committee may delegate to one or more of its Members or to any person or service provider engaged by it, powers, duties and obligations as it may deem fit, and may at any time revoke such delegation.

13. **NUMBER, ELECTION AND QUALIFICATIONS OF TRUSTEE COMMITTEE MEMBERS**

13.1 The Trustee Committee shall consist of at least six (6), but not exceeding eight (8) Members, and shall include at least one (1) member of (each) of the Sectional Title Body Corporates, if more than one Scheme will be registered.

13.2 Save for the provisions of sub-Clause 3, and subject to the provisions of Clause 19, a Trustee Committee Member shall hold office until the **second** succeeding annual general meeting after the one at which she or he was elected, and shall be eligible for re-election, if so nominated.

13.3 At the annual general meeting held in the year of adoption of this Constitution, Members shall elect half the prescribed number of Trustee Committee Members to serve until the annual general meeting held in the next year and the other half to serve until the annual general meeting held in the year following.

13.4 At every annual general meeting held after the year of adoption of this Constitution the Members:

13.4.1 shall elect persons to replace those Trustee Committee Members whose term of office has expired; and

13.4.2 may elect a person to fill each vacancy in the Trustee Committee's number, provided that a trustee Committee Member so elected shall remain in office only for the remainder of the term of office of the Member whose seat became vacant.

13.5 A person shall be required to be a Member or spouse of a member to qualify for office as an elected or appointed Trustee Committee Member.

13.6 A person may not be elected or appointed as a Trustee Committee Member if she or he is indebted to the Association in any way in respect of Levies or other amounts which the Association may in terms of this Constitution or the Conduct Rules be entitled to levy on, or claim from, her or him and for the payment for which provision, has not been made to the satisfaction of the Trustee Committee, for a period of three (3) months.

14. **NOMINATIONS**

Nominations for the election of Trustee Committee Members shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the *domicilium* of the Association not later than ten calendar days before the meeting for circulation amongst members, provided that nominations may, with the consent of the nominee, also be accepted at the meeting itself.

15. **FILLING OF VACANCIES AND APPOINTMENT OF ALTERNATES**

15.1 The Trustee Committee may appoint a person:

15.1.1 to fill any vacancy in its number; or

15.1.2 to act as an alternate during the absence or inability to act of a Trustee Committee Member;

15.2 A Trustee Committee Member appointed to fill a vacancy shall hold office until the expiration of the term of office of the Trustee Committee Member whose seat became vacant;

15.3 A Trustee Committee Member appointed to act as an alternate shall cease to hold office if the Trustee Committee Member in whose place she or he acts, ceases to be a Trustee Committee Member, or if the alternate's appointment is revoked by the Trustee Committee;

15.4 A Trustee Committee Member appointed in terms of this Clause shall have the powers, duties and obligations of a Trustee Committee Member elected by Members at an annual general meeting and shall be eligible for election as a Trustee Committee Member, if so nominated.

16. **REMUNERATION**

Unless otherwise determined by a resolution of Members in general meeting, Trustee Committee Members shall not be entitled to any remuneration in respect of their services, provided that the Association may reimburse to Trustee Committee Members such disbursements and expenses actually and reasonably incurred by them in the exercising of their powers, the discharge of their duties or the fulfilment of their obligations.

17. **VALIDITY OF ACTS**

Any act performed by the Trustee Committee shall be valid, notwithstanding that it is after the performance of the act discovered that there was some defect in the election, appointment or continuance in office of any Trustee Committee Member.

18. **INDEMNITY**

18.1 Subject to the provisions of Sub-Clause 3, every Trustee Committee Member and person or service provider engaged by it in terms of Clause 7.1.3 shall be indemnified by the Association against all costs, losses, expenses and claims which she or he may incur or become liable to by reason of any act done by her or him in the exercising of her or his powers, the discharge of her or his duties or the fulfilment of her or his obligations, unless such costs, losses, expenses or claims are caused by the *male fide* or grossly negligent act or omission of such person.

18.2 The Trustee Committee shall pay such indemnity out of the funds of the Association.

18.3 The indemnity referred to in Sub-Clause 18.1 shall not apply in favour of any managing agent.

19. **DISQUALIFICATION AND/OR VACATION OF OFFICE**

A Trustee Committee Member shall cease to hold office as such if she or he:

19.1 by notice in writing resigns from office;

19.2 becomes of unsound mind;

19.3 surrenders her or his Estate as insolvent, or her or his Estate is sequestrated;

19.4 is convicted of an offence which involves dishonesty;

19.5 absents herself or himself from three (3) consecutive meetings of the Trustee Committee without special leave of absence from the Trustee Committee;

19.6 is removed from office by resolution of Members in general meeting, provided that the intention to decide upon such removal from office has been specified in the notice convening the meeting;



- 19.7 is for a period of three (3) months in arrears with the payment of her or his Levies or other amounts which the Association may in terms of this Constitution or the Conduct Rules be entitled to levy on, or claim from, her or him;
- 19.8 ceases to be a member of the Voliere Estate Home Owners Association.

## TRUSTEE COMMITTEE MEETINGS

### 20. **CONVENING OF MEETINGS**

- 20.1 The Trustee Committee may, after notice to its Members, meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it may deem fit.
- 20.2 A Trustee Committee Member may at any time convene a meeting by giving to the other Trustee Committee Members no less than seven (7) days written notice of a meeting proposed by her or him, which notice shall specify the reason for calling such a meeting, provided that in case of urgency such shorter notice as is reasonable in the circumstances may be given.
- 20.3 It shall not be necessary to give notice of a meeting to any Trustee Committee Member being absent from the Republic of South Africa.

### 21. **QUORUM**

- 21.1 Fifty percent (50%) of the Committee Members shall form a quorum.
- 21.2 If at any meeting a quorum is not present within thirty (30) minutes of the appointed time of the meeting, such meeting shall stand adjourned to the same day in the next week at the same time and place, and Trustee Committee Members then present, who shall not be less than two (2), shall form a quorum.
- 21.3 If the number of Trustee Committee Members falls below four (4), the remaining Trustee Committee Members or Member may continue to act, but only for the purpose of convening a general meeting of Members.

## 22. **VOTING**

- 22.1 All matters at any Trustee Committee meeting shall be determined by a majority of those Trustee Committee Members present and voting.
- 22.2 A Trustee Committee Member who has any interest in any contract or proposed contract, or any litigation or proposed litigation, with the Association, must declare such interest and shall by virtue of such interest be disqualified from voting or discussion in respect thereof.
- 22.3 The chairperson shall have a casting vote as well as a deliberative vote save where there are only two (2) trustees present.

## 23. **CHAIRPERSON**

- 23.1 At the commencement of the first meeting of the Trustee Committee seven (7) days after an annual general meeting. The Trustee Committee Members shall elect a chairperson from among their numbers, who shall hold office as such until the end of the next annual general meeting of the Members of the Association, subject to Sub-Clause 9.6 hereof.
- 23.2 If the chairperson resigns from office or ceases to be a Member of the Trustee Committee as contemplated in Clause 19, the Trustee Committee Members shall elect another chairperson from among their number, who shall hold office for the remaining term of office.
- 23.3 If the chairperson 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 Trustee Committee Members present shall choose another Trustee Committee Member to act as chairperson for such meeting.

## 24. **ATTENDANCE OF TRUSTEE COMMITTEE MEETINGS BY OTHER PERSONS**

The Trustee Committee may in its sole discretion allow any person to attend a Trustee Committee meeting and to address it at such meeting.

## 25. **RESOLUTION SIGNED BY TRUSTEE COMMITTEE MEMBERS**

A resolution in writing signed by all Trustee Committee Members for the time being present in the Republic of South Africa and being not less than Fifty percent (50%), shall be as valid and effective as if it had been passed at a meeting of the Trustee Committee duly convened and held.

26. **MINUTES OF PROCEEDINGS**

26.1 The Trustee Committee shall:

26.1.1 keep minutes of its proceedings;

26.1.2 cause minutes to be kept of all meetings of the Association and

26.1.3 keep a record of every resolution of the Trustee Committee or of the Association, as the case may be.

26.2 The Trustee Committee may, on written application without impinging on the rights of members, make all minutes of its proceedings and all minutes of the proceedings of meetings of the Association available.

26.3 The Trustee Committee shall keep minutes of its meetings for so long as the Association remains in existence.

27. **REPORT ON AFFAIRS OF ASSOCIATION**

The Trustee Committee shall annually prepare a report on the affairs of the Association, which report shall be:

27.1 Laid before Members at the first annual general meeting following on the period to which the report relates; and

27.2 available for inspection at the *domicilium* of the Association, and such other address as may be determined by the Trustee Committee, at least ten calendar (10) days prior to the annual general meeting concerned.

## ASSISTANCE FOR TRUSTEE COMMITTEE

### 28. **APPOINTMENT AND DUTIES OF ARCHITECT AND DESIGN REVIEW COMMITTEE**

28.1 The Trustee Committee may from time to time appoint a suitably qualified and experienced registered architect.

28.2 The Design Review Committee shall be responsible for the management and control of building activities within the Estate.

### 29. **APPOINTMENT OF MANAGING AGENT**

29.1 The Trustee Committee may from time to time subject to the provisions of sub clause 7.1.3 appoint in terms of a written contract a managing agent to discharge such duties or fulfil such obligations as may be entrusted to the managing agent: Provided that a managing agent shall be appointed for a year at a time and unless the Association notifies the managing agent to the contrary, such appointment will be automatically renewed from year to year: Further provided that if the agreement has not been reduced to writing within thirty (30) days of its conclusion, it shall be voidable at the instance of either party.

29.2 The Trustee Committee shall ensure that there is included in the contract of appointment of a managing agent a provision to the effect that if she or he is in breach of any of the provisions of her or his contract, or if she or he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustee Committee may, without notice, cancel such contract of appointment, and that the managing agent shall have no claim whatsoever against the Association or any of its Members as a result of such cancellation.

29.3 The contract shall further provide for the appointment to be revoked, and such managing agent shall cease to hold office, if:

29.3.1 where the managing agent is a juristic person, an order is made for its provisional or final liquidation or, where the managing agent is a natural person, she or he applies for the surrender of her or his Estate as insolvent or her or his Estate is sequestrated either provisionally or finally

or, where the managing agent is a company, it is placed under judicial management; or

29.3.2 the managing agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the managing agent is a company or a close corporation, any of its directors or Members is convicted of an offence involving an element of fraud or an element of dishonesty; or

29.3.3 a resolution by Members is passed to that effect: Provided that in such event the managing agent shall not be deprived of any right she or he may have to claim compensation or damages for breach of contract.

29.4 The managing agent shall keep full records of her or his administration and shall report to the Trustee Committee on her or his activities with regard to such administration.

## COMMON PROPERTY

### 30. **MANAGEMENT**

The control and management of the Association's Common Property shall vest in the Trustee Committee, who shall do all things reasonably necessary for the maintenance of such Common Property and to keep it in a state of good and serviceable repair.

### 31. **IMPROVEMENTS**

The Trustee Committee may affect any improvements to the Common Property provided that such improvements are provided for in the annual capital expenditure and approved at the Annual General Meeting.

### 32. **TRAFFIC CONTROL MEASURES**

32.1 The Trustee Committee may in its discretion from time-to-time effect, implement or carry out such traffic control measures, including, but not limited to, the erection of traffic signs and speed humps, the implementation of speed limits and measures

regarding the parking of vehicles, and the carrying out of speed checks, as it may deem necessary.

- 32.2 Where feasible, the Trustee Committee shall prior to effecting, implementing or carrying out an intended measure, consult with the owners in the immediate vicinity of the area where such measure will be affected, implemented or carried out.

**33. ALIENATION OF COMMON PROPERTY**

- 33.1 Neither the whole nor any portion of the Common Property may be sold, alienated, subdivided, transferred or mortgaged. Members may by resolution passed at a general meeting by a two-thirds (2/3rds) majority of Members, a quorum of not less than fifty percent (50) of all Members in person or by proxy, entitled to vote, of which at least (20) twenty percent must be present in person, direct the Trustee Committee on their behalf to alienate the Common Property of the Association or any part thereof, and thereupon the Trustee Committee shall, subject to compliance with any law relating to the subdivision of land or to the re-zoning of land, have power to deal with such Common Property or such part thereof in accordance with such directive, and to execute any deed required for that purpose.

- 33.2 The Trustee Committee shall keep a register of all alienated Common Property, which shall be available for inspection at the *domicilium* of the Association.

**34. LETTING OF COMMON PROPERTY**

- 34.1 The Trustee Committee may on behalf of the Association let Common Property or any part thereof under a written lease on the terms and conditions it may deem appropriate.

- 34.2 The Trustee Committee shall keep a register of all Common Property so let, which shall be available for inspection at the *domicilium* of the Association.

**35. INSURANCE OF COMMON PROPERTY**

- 35.1 The Trustee Committee shall cause to be prepared, and shall lay before every annual general meeting for the consideration of Members, schedules reflecting its estimate of the replacement values of the Common Property.

- 35.2 The Trustee Committee shall annually take steps to insure the Common Property to the extent and against such risks, perils or dangers as may be directed by Members at the meeting concerned.

## FINANCIAL MATTERS

### 36. **FINANCIAL YEAR**

The financial year of the Association ends on the last day of February.

### 37. **FINANCIAL STATEMENTS, BOOKS OF ACCOUNT AND ACCOUNTING RECORDS**

- 37.2 The Trustee Committee shall cause to be prepared, and shall lay before every annual general meeting for the consideration of Members:

37.1.1 financial statements in conformity with generally accepted accounting practice, which statements shall fairly present the state of affairs of the Association and its finances and transactions as at the end of the financial year concerned, including a report thereon prepared by an auditor.

37.1.2 a record of the assets and liabilities of the Association;

37.1.3 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occurred; and

37.1.4 a register of Members that are entitled to vote.

- 37.2 The Trustee Committee shall keep such books of account and records at the *domicilium* of the Association and shall cause them to be retained for a period of seven (7) years after completion of the transactions, acts or operations to which they relate.

- 37.3 The Trustee Committee may, on written application without impinging on the rights of members, make all books of account available for inspection by such Member at the *domicilium* of the Association.

38. **ANNUAL ESTIMATE OF ANTICIPATED INCOME AND EXPENDITURE**

- 38.1 At least two (2) months prior to the commencement of every financial year of the association, the Trustee Committee shall cause to be prepared an itemised estimate of the anticipated income and expenditure of the association for the ensuing financial year, which estimate shall be laid before the AGM at such a time and place as may be determined by the Trustee Committee, for consideration and the approval thereof with or without amendment.
- 38.2 Such estimate shall include a reasonable provision for future capital expenditure, maintenance and contingencies.
- 38.3 The Trustee Committee shall annually in consultation with the Trustee Committee of Voliere Estate Sectional Title Scheme(s) determine the contribution to be made towards the maintenance of irrigation and landscaping within Voliere Estate.

39. **RESERVE FUND**

- 39.1 The Association shall –
- 39.1.1 prepare a written maintenance, repair and replacement plan for the common property, to take effect on its approval by the members in a general meeting, setting out the major capital items expected to require maintenance, repair and replacement within a 10-year period;
- 39.1.2 create a Reserve Fund, which fund shall be used to cover the maintenance, repair or replacement of common property as set out in the written maintenance, repair and replacement plan.
- 39.2 The annual contribution to the Reserve Fund shall be determined according to the following formula: [(estimated cost minus past contribution) divided by expected life of the capital item].
- 39.3 The Association shall hold the funds collected in terms of clause 39.2 in a separate account from the Levy Account.
- 39.4 Money may be paid out of the Reserve Fund –
- 39.4.1 at any time in accordance with Trustees Resolutions and the approved maintenance, repair and replacement plan; or



- 39.4.2 If the Trustees resolve that such a payment is necessary for the purpose of an urgent maintenance, repair or replacement expense.

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

- 40.1 The Trustee Committee shall cause all moneys received by the Association to be deposited to the credit of an account or accounts at a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed by Members at a general meeting, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association, provided that Trustee Committee may:
- 40.1.1 invest and re-invest such moneys not immediately required in the manner it may from time to time determine, subject to Clause 38.2;
- 40.1.2 use interest earned on such moneys for any purpose of the Association.
- 40.2 The moneys of the Association may be deposited, invested or re-invested only with registered financial institutions as defined in Section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (No 28 of 2001) as amended from time to time.

### LEVIES PAYABLE BY MEMBERS

#### 41. **MONEYS TO DEFRAY EXPENSES**

- 41.1 The Trustee Committee, on behalf of the Association, shall be entitled to collect contributions from Members in the form of Levies to defray all the expenses which the Association has incurred, or which the Trustee Committee anticipates the Association will incur, in the attainment of its objective or the exercising of its powers, the discharge of its duties or the fulfilment of its obligations. Such Levies may be collected in advance.
- 41.2 Subject to the provisions of Clause 46, every Member shall pay Levies in respect of each Erf or Unit registered in her or his name.
- 41.3 A Member shall not be entitled to a refund of Levies lawfully levied upon her or him and duly paid by her or him.

42. **DETERMINATION OF ANNUAL LEVY**

42.1 The amount of the annual levy shall be determined and approved by the Trustee Committee using the approved estimate of anticipated income and expenditure of the Association for the year to which it relates and the total number of Erven and Units in the Estate as basis for such calculation and shall within **fourteen days of each annual general meeting advise** each owner of the levy payable by him or her.

42.2 The trustee Committee shall determine the manner in which the levy is payable by instalments.

42.3 The Trustee Committee may, in anticipation of the approval of the annual Levy for a financial year by members as contemplated in Clause 42.1 determine an interim monthly Levy based on its estimate of the anticipated income and expenditure of the Association as contemplated in Clause 38.1 and may collect such interim monthly Levies with effect from the first day of that financial year until such time as the annual Levy for that year has been determined as contemplated in Clause 42.1

43. **SPECIAL LEVIES**

The Trustee Committee may in the case of major electricity-, water- and/or sewerage breakdown or any other unplanned maintenance or when the operational efficiency of the Estate is under threat, by resolution impose a special levy without the approval by the members in a general meeting.

44. **OTHER AMOUNTS PAYABLE**

44.1 Any amount payable by a member for the provision of utilities or other services as may be determined by the Trustee Committee shall be due on the first day of each calendar month.

44.2 The Trustee Committee may authorise the estate manager to limit the provision of utilities or any other services while a Member is in arrears with the payment thereof.

45. **LEVIES IN RESPECT OF APARTMENTS**

The levies payable by a Member owning an apartment will be in addition to any levy that such member may be obliged to pay in terms of any Body Corporate rules.

#### 46. **PAYMENT OF LEVIES**

- 46.1 Any Levies or other amounts that may be collected in terms of this Constitution and / or the credit policy of the association may be recovered from the persons who were owners of Erven or Units at the time when such Levies were imposed.
- 46.2 Monthly Levies shall be due on the first day of each calendar month.
- 46.3 Special Levies shall be made payable in one sum or by such instalments and at such time or times as the Trustee Committee may deem fit.
- 46.4 If any Levies payable in terms of this Constitution are not paid within seven (7) days of the due date same shall bear interest compounded monthly in arrears, duly authorised by the Trustees, from the date of delinquency at a percentage as determined by the Trustee Committee from time to time.
- 46.5 A Member who is in arrears with the payment of Levies or any other amounts due by such Member, shall be liable for all costs and expenses incurred by the Trustee Committee in the recovery of such Levies and the interest thereon, which expense shall be added to the Levies payable by that Member and claimed as if it were part of such Levies.
- 46.6 Legal costs recoverable from a delinquent Member in terms of the foregoing provision shall be determined on an attorney and own client scale.
- 46.7 The Trustee Committee may institute legal proceedings as contemplated in Clause 10 against a Member for the recovery of arrear Levies, the interest thereon and the legal costs incurred by the Association in the recovery thereof.
- 46.8 In the event of a levy or other amount being in arrears for a period of three (3) months the balance of the annual levy may be recovered from the Member.
- 46.9 An invoice for a levy and any interest thereon is not an account tendered for goods or services provided and thus does not fall within the ambit of the National Credit Act.

- 46.10 In the event that future densification of the Estate result in the addition of erven and/or units and/or apartments, additional levies will be payable to provide for additional operating expenses.

## **GENERAL MEETINGS OF MEMBERS**

### **CALLING OF GENERAL MEETINGS**

#### **47. ANNUAL GENERAL MEETINGS**

- 47.1 Annual general meetings shall be held once in every year at such a time and place as may be determined by the Trustee Committee, provided that it shall be held within six (6) months after the end of each financial year.
- 47.2 Non-compliance with the above shall entitle a Member substantially prejudiced thereby to apply to the High Court to have the meeting set aside, but shall not ipso facto invalidate the meeting or the business conducted thereat.

#### **48. BUSINESS TRANSACTED AT ANNUAL GENERAL MEETING**

The business that shall be transacted at an annual general meeting shall include:

- 48.1 approval of the minutes of general and special meetings;
- 48.2 consideration of the report referred to in Clause 27;
- 48.3 consideration of the financial statements referred to in Clause 37;
- 48.4 approval with or without amendment of the estimate of income and expenditure referred to in Clause 38;
- 48.5 approval with or without amendment of the schedules of replacement values referred to in Clause 35;

- 48.6 election of Trustee Committee Members for the next year as contemplated in Clause 13;
- 48.7 the appointment of an auditor;
- 48.8 the giving of directives or imposing of restrictions referred to in sub clause 9.2
- 48.9 consideration of any draft Resolution concerning the affairs of the Association of which due notice has been given; and
- 48.10 any other business of which notice has been received at the *domicilium* of the Association at least fourteen (14) days prior to the date set for the meeting;

49. **SPECIAL GENERAL MEETINGS**

- 49.1 All general meetings other than the annual general meetings referred to in Clause 47 shall be called special general meetings.
- 49.2 The Trustee Committee may convene a special general meeting whenever it deems fit and shall convene such a meeting upon the written request of not less than twenty (20) Members, directed to the chairperson of the Trustee Committee.

50. **NOTICE OF AND MINUTES OF GENERAL MEETINGS**

- 50.1 The Trustee Committee shall convene an annual general meeting by giving at least twenty-one (21) days' notice thereof, provided that the Trustee Committee shall cause copies of the documentation relating to the business to be transacted at the meeting as contemplated in Clause 48 to be delivered to each Member at least fourteen (14) days before the date of the meeting concerned.
- 50.2 A special general meeting shall be convened by giving at least fourteen (14) days' notice thereof, provided that the Trustee Committee shall cause copies of the documentation relating to the business to be transacted at the meeting to be delivered to each Member together with the notice convening the meeting.
- 50.3 The notice convening a meeting shall be inclusive of the day on which it is given and shall be in writing and shall specify the place, the day and the hour of the meeting and the general nature of the business to be transacted at the meeting.

- 50.4 Inadvertent omission to give notice of a general meeting to, or the non-receipt of such notice by, any person entitled to such notice, shall not invalidate any proceedings at any such meeting.
- 50.5 Draft minutes of the meeting to be circulated within 21 days.

## PROCEEDINGS AT GENERAL MEETINGS

### 51. **QUORUM**

- 51.1 No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business.
- 51.2 For all purposes, other than provided for in this constitution, the quorum shall be not less than twenty percent (20) of all Members entitled to vote to be present in person or by proxy, provided that at least twenty percent (20%) are present in person.
- 51.3 If at any general meeting a quorum is not present within thirty (30) minutes of the appointed time of the meeting, the meeting, if convened at the request of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within thirty (30) minutes of the appointed time for the meeting, the Members present in person or by proxy shall be a quorum, provided that all Members shall be given notice of such adjourned meeting.

### 52. **CHAIRPERSON**

- 52.1 The chairperson of the Trustee Committee shall preside at a general meeting.
- 52.2 If there is no such chairperson or if the chairperson is not present within fifteen (15) minutes after the appointed time of the meeting, or if she or he is unwilling or unable to preside, the Members present shall elect from among the Trustee Committee

Members present or, if no such Trustee Committee Members are present, one of their number present to be chairperson of the meeting.

**53. VOTING PROCEDURE**

- 53.1 At any general meeting a resolution put to the vote shall be decided on a show of hands, unless the chairperson, in her or his discretion, directs that a ballot be taken, or, either prior to or on the declaration by the chairperson of the result of the show of hands, a ballot is demanded by any person entitled to vote.
- 53.2 A declaration by the chairperson that a resolution has on the show of hands been carried shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- 53.3 A directive or demand for a ballot may be withdrawn by the person concerned.
- 53.4 A ballot shall be taken in such manner as the chairperson may deem fit and the result of the ballot shall be deemed to be a resolution of the meeting at which such ballot was taken.
- 53.5 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by ballot, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

54. **MAJORITY REQUIRED**

All resolutions shall be by simple majority or by any other majority specifically required in a particular case by this Constitution of those Members who are entitled to vote and are present in person or by proxy and voting.

55. **VOTE ENTITLEMENT**

55.1 Subject to Sub-Clauses 2 and 3, each Member shall be entitled to one (1) vote for each Erf or Unit in the Estate registered in her or his name. Provided that ownership of an Erf or Unit in undivided shares shall constitute only one Membership.

55.2 When two or more persons are joint registered owners of an Erf or Unit, the vote to which they are entitled shall be exercised only by a person (who may or may not be one of them) jointly appointed by them as their proxy, provided that any one of them may demand a vote.

55.3 If an Erf or Unit is jointly owned by a natural person and a company, the vote to which they are entitled shall be exercised only by a person (who may or may not be such natural person or a director of the company) jointly appointed by such natural person and the directors of the company as their proxy, provided that such natural person and any one of the directors may demand a vote.

56. **RIGHT TO VOTE**

Each Member entitled to vote shall have the right, either in person or by proxy, to exercise a vote in respect of any matter to be voted on by Members in general meeting, provided that a Member may not exercise a vote to which she or he would otherwise be entitled:

56.1 if any Levies or other amounts payable by her or him in terms of this Constitution, together with any interest and costs in connection therewith, equal to or more than one and a half times the monthly levy contribution, have not been duly paid 72 hours prior to a general meeting, provided that the notice convening a general meeting notifies Members to remedy any such non-payment; or

56.2 she or he persisted in breach of any provision of this Constitution or any Conduct Rule after written notice requiring her or him to remedy such breach; or



56.3 in respect of any contract or proposed contract, or any litigation or proposed litigation with the Association, in which she or he has any interest.

## 57. **PROXY**

57.1 A Member may be represented in person or by proxy at a general meeting, provided that a person may not act as a proxy for more than fifteen (15) Members.

57.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by the Trustee Committee, under the hand of the appointer, or of her or his attorney or agent, duly authorised, or if such appointer is a company, under the hand of an officer thereof duly authorised in writing as such.

57.3 The person named as proxy shall be entitled to vote in respect thereof only if the instrument appointing a proxy, together with the power of attorney (if any) under which it is signed or a notarial certified copy thereof, is deposited at the *domicilium* of the Association at least twenty four (24) hours before the time appointed for the meeting, or adjourned meeting, at which the person named in such instrument proposes to vote, or is handed to the chairperson prior to the commencement of the meeting.

57.4 A proxy need not be a Member, but shall not be a person or service provider engaged by the Association in terms of Clause 7.1.3 or a managing agent (or any of her or his employees) appointed in terms of Clause 29.

## 58. **COMPANIES / TRUSTS**

58.1 Any Company which is a Member may, by resolution of its directors or other governing body, authorise such person as it deems fit to act as its representative at any meeting of the Association and the person so authorised shall be entitled to exercise the same powers on behalf of the company which she or he represents as that company could exercise if it were an individual Member.

58.2 The provisions of Sub-Clause 58.1 shall also apply in the case of a Trust.

59. **INCAPACITY**

Should any Member be declared incapable of managing her or his own affairs, or a prodigal or insolvent, or in the case of a company, placed under judicial management or into liquidation, such Member shall be represented by her or his *curator bonis*, trustee, judicial manager or liquidator, as the case may be, who shall be entitled to vote on her or his behalf, either personally or by proxy.

## CONSTITUTION

60. **PENALTIES DETERMINED BY TRUSTEE COMMITTEE**

60.1 If the conduct of a Member or an occupier of an Erf or a Unit, or the family members, guests, visitors, employees, contractors or other service providers of a Member or occupier constitute a nuisance in the opinion of the trustees, or a contravention of a provision of this Constitution or the Conduct Rules, the Trustee Committee may by written notice:

60.1.1 inform the Member of the nuisance or contravention and warn the Member that if he or she or the occupier of his or her Erf or Unit fails to remedy the contravention or persists in such conduct or contravention, a penalty will be imposed on him or her;

60.1.2 If the owner or occupier of the Erf or Section or his or her family members, guests, visitors, employees, contractors or other service providers repeats or persists in the conduct, nuisance or contravention despite the written warning or fails to remedy the contravention, the Trustee Committee may by written notice impose a penalty on the Member, which written notice shall state the reasons for the imposition of the penalty.

60.2 The penalty imposed under Sub-Clause 60.1.2 becomes due on the date of the written notice and must be paid within 30 (thirty) days from the date of the written notice. Should the penalty remain unpaid it shall be added to the Member's levy statement and shall be recovered from the Member in the same manner as applies to arrear Levies, together with interest at the rate applicable to arrear Levies and attorney and client costs.

- 60.3 The Trustee Committee may from time to time determine the categories of contraventions and the amounts of the penalties in respect of first and subsequent contraventions, subject to any directives given or restrictions imposed by the Members at a general meeting.
- 60.4 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Member shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable in respect of each such separate contravention.
- 60.5 A Member may within (30) thirty days of the date of the written notice referred to in Sub-Clause 60.1.2, lodge an objection against the penalty imposed with the Trustee Committee. Upon receipt of such objection, the Trustee Committee may:
- 60.5.1 withdraw or reduce the penalty; or
  - 60.5.2 schedule a meeting of the Trustee Committee for the purpose of considering the objection and invite the Member to attend.
- 60.3 At the meeting referred to in Sub-Clause 60.5.2, the Member shall have the right to:
- 60.3.1 present his or her case;
  - 60.3.2 present any evidence, including the calling of witnesses, to substantiate his or her case;
  - 60.3.3 cross-examine any person called as witness in support of the charge;
  - 60.3.4 have access to documents produced in evidence; or
  - 60.1.5 produce mitigating factors or evidence.
- 60.4 The failure of the Member charged to attend the meeting referred to in Sub-Clause 60.5.2 shall not render the proceedings at the meeting void. Should the Member not attend the meeting without providing a reasonable request for postponement, the Trustee Committee may, in their sole discretion, continue with the meeting and consider the objection in the absence of the Member.
- 60.5 Upon the conclusion of the meeting, the Trustee Committee shall deliberate the evidence and if so resolved, they may:

- 60.5.1 uphold the penalty; or
- 60.1.2 withdraw or reduce the penalty.
- 60.6 Any notice to a Member in terms of these rules, will be regarded as having been properly given if such notice is:
  - 60.6.1 delivered to the Member by hand, in which event it shall be regarded as having been received on delivery;
  - 60.6.2 delivered by registered post to the Member to his or her domicilium citandi et executandi or known postal address, in which event it shall be regarded as having been received on the 4th day after the date of postage;
  - 60.6.3 delivered to the Member by e-mail to the e-mail address of such Member, in which event it shall be regarded as having been received on the date of transmission.
- 60.7 Notices in terms of this rule may in the discretion of the Trustee Committee also be delivered to the occupier of the Erf or Section.

## 61. **AMENDMENT OF CONSTITUTION AND CONDUCT RULES**

- 61.1 The Trustee Committee or any Member may propose an addition to, or substitution, amendment or repeal of, a provision of the Constitution or the Conduct Rules by submitting a written motivated proposal to that effect to the Trustee Committee.
- 61.2 If the Trustee Committee is of the view that the matter should be proceeded with, it shall submit the proposal to Members for consideration at the next general meeting.
- 61.3 If the Trustee Committee is of the view that the matter should not be proceeded with, it shall inform the Member accordingly in writing, provided that the Trustee Committee shall upon the written request of not less than twenty (20) Members place the matter on the agenda of the next general meeting.
- 61.4 Any proposed addition to, or substitution, amendment or repeal of, a provision of the Constitution may be effected only by a resolution passed at a meeting by a two-thirds (2/3rds) majority of Members, a quorum of not less than fifty per cent (50%) of all Members entitled to vote being present in person or by proxy of which at least

twenty percent (20%) must be present in person and provided that due notice had been given to Members of the proposed substitution, amendment or repeal.

- 61.5 Any proposed addition to, or substitution, amendment or repeal of the Conduct Rules may be effected only by a resolution passed at a meeting by an ordinary majority of Members, a normal quorum of all Members entitled to vote being present in person or by proxy and voting, and provided that due notice had been given to Members of the proposed substitution, amendment or repeal.

## 62. **EXCLUSION DURING THE DEVELOPMENT PERIOD**

Notwithstanding anything to the contrary contained in this Constitution, during the Development Period those portions of the Development where the Developer has not yet exercised in full its Development Right, shall be excluded from the operation of this Constitution until such time as the Development Right in respect of such portions have been exhausted.

## 63. **LOCAL AUTHORITY PROVISIONS**

The following provisions have been inserted in this Constitution specifically for and by the local authority:

- 63.1 The sole objective of the Association must be to manage the collective interest to all its Members, which includes expenditure applicable to the Common Property of such Members and the collection of Levies for which such Members are liable.
- 63.2 The Association is not permitted to distribute its funds to any person other than a similar association of persons.
- 63.3 On dissolution, the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(l)(e)(iii) of the Income Tax Act.
- 63.4 Any amendments of the Constitution must be submitted to the relevant local authority professing jurisdiction in respect of this constitution, for its approval.

63.5 Funds available for investment may only be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (No 28 of 2001) as may be amended from time to time.

63.6 The Association is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.

Annual returns for income tax together with financial statements shall be submitted to the Tax Exemption Unit.

#### 64. **NOTIFICATION OF INTERESTED PARTIES**

64.1 The Trustee Committee shall, within twenty-one (21) days of its approval in writing inform all Members, and the Stellenbosch Municipality of any addition to, or substitution, amendment or repeal of a provision of the Constitution.

64.2 The Trustee Committee shall at least fourteen (14) days before its implementation in writing inform all Members of any addition to, or substitution, amendment or repeal of, a provision of the Conduct Rules and of any penalties determined under Clause 61.

#### 65. **RECORD OF CONSTITUTION AND CONDUCT RULES**

The Trustee Committee shall keep a complete record of the Constitution and of all Conduct Rules and penalties in force from time to time, which shall be available for inspection at the *domicilium* of the Association.

#### 66. **BINDING NATURE OF CONSTITUTION**

The provisions of this Constitution shall be binding on all Members and also on all other persons who for whatever purpose enter the Estate.

- 66.1 It shall be the duty of a Member to ensure compliance with the provisions of this Constitution and the Conduct Rules by her or his lessee or any other occupant of her or his dwelling, including the employee, worker, contractor, other service provider, guest and any member of the family of the Member concerned or of her or his lessee or of the other occupant of her or his dwelling.

## MISCELLANEOUS PROVISIONS

### 67. **SIGNING OF INSTRUMENTS**

No document signed on behalf of the Association shall be valid and binding unless it is signed by such person(s) duly authorised thereto by resolution of the Trustee Committee.

### 68. **LOANS**

The trustees may not make loans on behalf of the Association to members or themselves.

### 69. **WINDING UP**

69.1 The Association may be wound up by an order of court or by a resolution of Members provided:

69.1.1 that two-thirds (2/3rds) majority of Members, a quorum of not less than fifty per cent (50) of all Members in person or by proxy, entitled to vote, of which at least (20) twenty percent must be present in person;

69.1.2 that the resolution in 69 include arrangements for the transfer of erven in the event that the association ceases to function; and

69.1.3 that the Stellenbosch Municipality consents thereto.

69.2 In the event of such winding up, it shall be the duty of the Trustee Committee, or a suitably qualified person appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to a similar association of persons succeeding the Association and which is also exempt from income tax in terms of section 10(l)(e)(iii) of the Income Tax Act, 1962 (No 58 of 1962) as amended from time to time If the Association is not succeeded by such

an association, the remaining money shall then be paid to such fund as may be required by law.

69.3 If the association is dissolved, the members must jointly pay the costs of-

69.3.1 the transfer to the Municipality of the association's property which contains the internal engineering services and private open space;

69.3.2 the upgrading of the internal engineering services to the standards of the Municipality.

## 70. **ZONING SUBDIVISION AND CONSOLIDATION CONDITIONS**

70.1 The conditions pertaining to the municipal zoning scheme regulations applicable to the development of the Estate shall at all times be observed by the owner or owners of an Erf or Unit.

70.2 Any application to the Stellenbosch Municipality for permission to deviate from the zoning scheme regulations pertaining to an Erf or Unit shall be accompanied by the written consent of the Trustee Committee.

70.3 No Member shall be entitled to consolidate, subdivide or rezone her or his Erf or Unit other than as prescribed by the local authority in terms of the approved zoning scheme and with the approval of the Association.

70.4 No more than one dwelling, together with such outbuildings as ordinarily required, shall be erected on any Erf subject to the conditions prescribed in terms of the approved zoning scheme.

70.5 To the extent a Member consolidates 2 (two) or more Erven or Units, such Member shall be responsible to pay an equivalent number of contributions and/or other charges levied by the Association.

## 71. **SUBMISSION OF PLANS**

71.1 A Member shall be obliged to submit any building plan, prepared by a registered architect or architectural draftsman, whether such plan is for Voliere Estate constructions or for renovations, alterations or additions affecting the exterior



appearance of an existing structure, to the Design Review Committee at the *domicilium* of the Association for examination and approval prior to the submission of such plan to the Stellenbosch Municipality for approval.

- 71.2 Should the Design Review Committee not approve of a plan submitted in terms of Sub-Clause 71.1, it shall refer the matter to the Trustee Committee for final adjudication. The Trustee Committee if it concurs with the Design Review Committee shall furnish the Member concerned with its reasons in writing.

## 72. **BODY CORPORATE OF THE VOLIERE ESTATE SECTIONAL TITLE SCHEMES**

- 72.1 All decisions taken by the Body Corporate shall apply solely for and to the Members of such Scheme.
- 72.2 The administration of the Body Corporate shall be conducted according to its own rules.
- 72.3 The following function and power of the Body Corporate shall be assigned to the Association, namely to control, repair and maintainance the roads, the major infrastructure, engineering services of the Body Corporate.
- 72.4 Notwithstanding any other provision, to the extent there is a conflict between the provisions of the Body Corporate founding and/or governing document or rules and this Constitution, the Trustee Committee of the Body Corporate and the Trustee Committee of the Association shall be required to first resolve that conflict in the best interests of all Members before resorting to arbitration.

## DOMICILIUM AND NOTICES

### 73. **DOMICILIUM CITANDI ET EXECUTANDI**

- 73.1 For all purposes arising out of this Constitution, including the giving of notices and the serving of any process, the Association and each of its Members choose *domicilium citandi et executandi* as follows:

- 73.1.1 the Association, the administrative office of the Association and

73.1.2 each Member, at the Erf or Section registered in her or his name, provided that if such Erf is vacant land the *domicilium citandi et executandi* of a Member shall be the known physical address of such Member, provided further that the Association may at any time by notice change its, or a Member may at any time by notice change her or his, *domicilium* to some other address, which Voliere Estate address shall be in the Republic of South Africa and may not be a Post Office box or *poste restante*.

73.2 Such change of address:

73.2.1 by the Association shall be communicated to all Members by written notice;

73.2.2 by a Member shall be communicated to the Trustee Committee by written notice;

73.2.3 shall become effective only fourteen (14) days after receipt of the notice by the party concerned.

#### 74. **DELIVERY OF NOTICES AND DOCUMENTATION**

Unless determined otherwise, herein any written notice which may be required to be given, and any documentation or communication which may be required to be submitted, forwarded or delivered, in terms of this Constitution, may be delivered by hand or may be given by the despatch thereof in writing by pre-paid post addressed to the addressee at her or his *domicilium*, in which event such notice or documentation shall be deemed to have been received five (5) days after the posting thereof from any Post Office within the Republic of South Africa, or by way of e-mail, in which event it will be deemed to have been received, upon notice of the successful delivery of the e-mail to the specific email address.

#### 75. **ELECTRONIC COMMUNICATIONS**

Notwithstanding the provisions of Clause 74:

75.1 The Trustee Committee may for any purpose arising out of this Constitution, except the serving of legal process, agree to receive and acknowledge receipt of communications in electronic format at the e-mail address of the Administrative Office of the Association;

- 75.2 Any communication, except the serving of legal notice, may be given and received at the e-mail address provided by a Member
- 75.3 Any information requested shall be provided in electronic form: Provided that should a Member request hard copies of any documents such Member shall be required to collect same from the Managing Agents office after payment of the prescribed fee for copying same.

**76. RESTRICTION AGAINST ALIENATION**

No Erf or Unit may be sold, transferred or otherwise alienated or disposed of to any person unless:

- 76.1 The Association has granted its prior written approval, which approval may not be unreasonably withheld;
- 76.2 Any person to whom an Erf of Unit has been alienated shall ipso facto become a member of the Association and shall remain a member for so long as he/she is and remains the registered owner of an Erf of Unit;
- 76.3 Member wishing to sell, transfer or otherwise alienate (excluding mortgage) or dispose of any Erf or Unit shall be obliged to pay an advance payment, to the satisfaction of the Association, for a period of not less than 1 (one) month.
- 76.4 Transfer of any Erf or Unit must be effected before the expiry of the period referred to in clause 77.3.
- 76.5 The Association may claim from any member any arrear levies or interest or the amount due by him or her to the Association at the time of his or her ceasing to be a member notwithstanding that the Erf or Unit may have been transferred to a third party.

**77. LEVY ENHANCEMENT FEE**

- 77.1 Each member will be obliged to make a contribution to the levy fund of the Master Home Owners Association upon the sale of a property by the owner.
- 77.2 Such contribution will be equal to 0.75% of the gross selling price of the property and shall be due and payable against signature of an Agreement of Sale. The Master Home Owners Association may however in its sole discretion, defer such payment until registration of transfer of the property.

- 77.3 Such contribution will furthermore be payable in the event of a property being bequeathed in terms of a will or donated by virtue of an Act of Donation. In such event, the contribution will be based upon the average market value as may be determined by three independent estate agencies operational in the area.
- 77.4 The Master Owners Association will be entitled to withhold its written consent to transfer of a property until the contribution has been paid and secured.
- 77.5 Upon the repayment of any developer's contribution from the fund as provided for in clause 8.2, a similar 1/3 of each contribution shall be paid to a Treasury Trust, registered as a Public Benefit Organisation and administered by the Master Home Owners Association to provide financial support for social development in the greater Stellenbosch Municipal Area.

78. **PENALTY LEVIES**

- 78.1 In the event that a member purchased a vacant plot from the developer with the obligation to erect a dwelling thereon, construction of such dwelling must be completed within two years from date of registration of transfer into the name of the member.
- 78.2 Should the member fail to comply with paragraph 78.1 above, a monthly penalty levy equal to three times the standard levy will be payable to the Voliere Estate Master Home Owners Association, from the first of the month after the two year period, until completion.
- 78.3 The date of completion shall be the date on which Stellenbosch Municipality issues an occupancy certificate for the dwelling.

**I/We ,**

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**Hereby confirm have received a copy of the Voliere Master Owners Constitution**

**Signed at \_\_\_\_\_ on \_\_\_\_\_**

*~ Copies of this document will be made available on written request by an occupant at a reasonable cost as determined by the Trustees from time to time. ~*