



CONSTITUTION

NEGESTER ESTATE ONRUS RIVER HOMEOWNERS' ASSOCIATION

("the Association")

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1. ESTABLISHMENT IN TERMS OF STATUTE

- 1.1 The Negester Estate Onrus River Homeowners' Association is constituted as an owners' association in terms of section 29 of the Land Use Planning Ordinance No 15 of 1985, in accordance with the conditions imposed by the Overstrand Municipality when approving the subdivision of erf 5455 Onrustvriër, and which came into existence simultaneously with the registration in the deeds office of the first of the erven in the development.
- 1.2 It is recorded that the Land Use Planning Ordinance has been repealed and replaced by the Western Cape Land Use Planning Act, 3 of 2014, read with section 31 of the Overstrand Municipality By-law on Municipal Land Use Planning, 2015.

2. INTERPRETATION

In this constitution:

- 2.1 the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
- 2.1.1 "**development rules**" means the development rules, as filed at Council, to control all aspects of design and landscaping of any development on the land, as amended from time to time in terms of this constitution;
- 2.1.2 "**Association**" means the Negester Estate Onrus River Homeowners' Association, also commonly referred to as the Negester Onrus River South Homeowners' Association;
- 2.1.3 "**body corporate**" means the Negester Estate Onrus River sectional title scheme SS 112/2015 situated on erf 5543;
- 2.1.4 "**common areas**" mean the following:
- 2.1.4.1 all the private roads and road reserve areas within the development;
- 2.1.4.2 all the private open spaces within the development;
- 2.1.4.3 all the common amenities, services and facilities within the development; and
- 2.1.4.4 any other area/s and/or facilities which the Board of Trustees may designate as common areas from time to time;

- 2.1.5 "**Council**" means the Overstrand Municipality or its successor/s in title;
- 2.1.6 "**development**" means the development established on the land with the sole purpose of being a lifestyle estate for people over the age of 50 years;
- 2.1.7 "**erven**" or "**single residential erven**" means the erven in the development, and "**erf**" or "**single residential erf**" means any one of them;
- 2.1.8 "**land**" means any land resulting from the subdivision of erf 5455 Onrustrivier in the Overstrand Municipality, division Caledon, Province of the Western Cape, which land shall include erf 5543;
- 2.1.9 "**member**" means a member of the Association;
- 2.1.10 "**rules**" mean the rules imposed by the Board of Trustees from time to time in terms of clause 11 relating to the management of the development;
- 2.1.11 "**sectional title unit**" means a primary section in the Negester Estate Onrus River sectional title scheme SS 112/2015, designed to be used for human occupation as a residence, but excludes a utility section designed to be used as an accessory to a primary section, such as a bathroom, toilet, storeroom, workshop, shed, servant's quarters, parking garage, parking bay or any other utility area;
- 2.1.12 "**special resolution**" means a resolution:
- 2.1.12.1 passed by at least 75% of the number of members of the Association who are present or represented at a duly constituted general meeting; or
- 2.1.12.2 agreed to in writing by at least 75% of all members of the Association.
- 2.2 where consent or approval of the Association is required for any act by a member, such consent or approval shall be in writing and duly authorised by the Board of Trustees, and shall be given prior to the member taking action;
- 2.3 reference to "this constitution" collectively means this constitution, the development rules and all rules of the Association from time to time enforced.

3. PURPOSE DESCRIBING MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of the common interests of the members of the Association from time to time and the control and maintenance of the common areas.

4. MAIN OBJECTIVES

The main objectives of the Association are:

4.1 the control over and maintenance of:

4.1.1 all common amenities, services and facilities within the development;

4.1.2 all common areas and private roads;

4.1.3 all services, common landscaping, irrigation and amenities on the common areas and;

4.1.4 all other common areas, amenities, services and/or facilities designated as such by the Board of Trustees from time to time;

4.2 the control over the compliance and enforcement of the development rules;

4.3 the promotion, advancement and protection of the common interests of the members generally;

4.4 to take title to the common areas simultaneously with the first separate registration of an erf or sectional title unit;

4.5 to enter into services agreements with Council or any other authority or supplier of services in regard to the supply of common amenities, services and facilities within the development; and

4.6 to perform and exercise all of the functions and powers of the Negester Estate Onrus River sectional title scheme, which functions and powers have been assigned to and accepted by the Association in accordance with item (4) of Regulation 6 under the Sectional Titles Schemes Management Act, 2011.

5. FINANCIAL YEAR-END

The financial year-end of the Association is the last day of February each year or such other date as the members may decide from time to time.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership of the Association shall be compulsory for every registered owner of a single residential erf and every registered owner of a sectional title unit within the development.
- 6.2 Such membership shall commence simultaneously with the registration of such single residential erf or sectional title unit into the name of the transferee in the deeds office.
- 6.3 An owner/member may be younger than 50 years of age or be a legal entity, however at least one person who will be permanently occupying a property on a single residential erf or sectional title unit in the development must be over the age of 50 years.
- 6.4 When a member ceases to be the registered owner of a single residential erf or sectional title unit, he or she shall automatically cease to be a member of the Association.
- 6.5 The rights and obligations of a member shall not be transferable, and every member shall:
 - 6.5.1 to the best of such member's ability further the objects and interests of the Association; and
 - 6.5.2 observe all rules and development rules made by the Association or the Board of Trustees from time to time.
- 6.6 A member shall not be entitled to sell or transfer a single residential erf or a sectional title unit, unless such member first obtains a Clearance Certificate of the Association, which consent shall only be given after:
 - 6.6.1 such member has:
 - 6.6.1.1 paid all levies, penalties and/or any other amounts owing by him or her to the Association as at the date of transfer or cession (as the case may be) in respect of such single residential erf or sectional title unit;
 - 6.6.1.2 has complied with all such member's obligations in terms of this constitution; and
 - 6.6.2 the purchaser, transferee or cessionary (as the case may be) of such single residential erf or sectional title unit:
 - 6.6.2.1 agrees in writing to become a member of the Association;

6.6.2.2 agrees in writing to abide by the provisions of this constitution; and

6.6.2.3 has paid to the Association the joining levy in terms of clause 7.7.

6.7 No member ceasing to be a member of the Association for any reason shall have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such member or his or her estate any arrears of subscriptions or other sums due from him or her to the Association at the time of him or her so ceasing to be a member.

6.8 A member must repair and maintain all buildings and/or structures of any nature whatsoever situated on his or her single residential erf or in a sectional title unit in the development in a state of good repair in accordance to and as prescribed by the Development Rules. This maintenance will include the painting of the outside of all buildings and/or structures of any nature whatsoever.

6.9 If despite written demand by the Board of Trustees, a member refuses or fails to repair or maintain all buildings and/or structures of any nature whatsoever situated on his or her single residential erf or in a sectional title unit as required in terms of this subclause, the Board of Trustees must remedy the member's failure, by obtaining an independent expert's opinion relating to the necessary repairs or maintenance and remedy accordingly and recover the reasonable cost of doing so from that member; provided that in the case of an emergency, no demand or notice need be given to the member concerned.

6.10 If a member disagrees with the Board of Trustees' demand to repair or maintain any buildings and/or structures of any nature whatsoever situated on his or her single residential erf or in a sectional title unit, such a member may refer the dispute for arbitration in terms of clause 29.1 below.

7. LEVIES PAYABLE BY THE MEMBERS

7.1 The Board of Trustees shall from time to time, impose levies upon the members for the purpose of meeting all the expenses which the Association has incurred, or to which the Board of Trustees reasonably anticipates the Association will be put to by way of:

7.1.1 maintenance, repair, improvement and keeping in good order the condition of the common areas including, specifically landscaping, all township services, sewage

reticulation, security systems, and maintenance of infrastructure within the development; and/or

- 7.1.2 payment of all rates and other charges payable by the Association in respect of the common areas, if any, and/or for services rendered to it, and/or
 - 7.1.3 payment of all expenses necessary or reasonably incurred in connection with common amenities, services and facilities within the development, and/or
 - 7.1.4 payment of all other expenses necessary or reasonably incurred in connection with the management and control of the Association and the common areas.
- 7.2 The Board of Trustees shall estimate the amount which shall be required by the Association to meet the expenses during each financial year, together with such estimated deficit (if any) as shall result from the preceding year, and shall impose a levy upon the members equal as nearly as is reasonably practical to such estimated amount. The Board of Trustees may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 7.3 Every such levy shall be made payable by the members in equal monthly instalments due in advance on the first day of each and every succeeding month of such financial year.
- 7.4 The Board of Trustees may from time to time impose special levies, to a maximum of one month's levy of an erf or sectional title unit for that specific year in which the special levy is to be imposed, upon the members in respect of all such expenses as are mentioned in clause 7.1 (which are not included in any estimate made in terms of clause 7.2), and such levies may be made in the sum or by such instalments and at such time or times as the Board of Trustees shall think fit.
- 7.5 Any amount due by a member by way of a levy shall be a debt due by such member to the Association. The obligation of a member to pay a levy shall cease upon such member ceasing to be a member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a member shall under any circumstances be repayable by the Association upon such member ceasing to be a member.
- 7.6 No member shall be entitled to any of the privileges of membership including voting at any meeting unless and until such member shall have paid every levy, penalty and/or other amounts

(if any) which shall be due and payable to the Association by such member.

- 7.7 Upon any member selling or transferring his or her single residential erf or sectional title unit, the purchaser, transferee or cessionary (as the case may be) of such single residential erf or sectional title unit shall be required to pay to the Association, a joining levy equal to 1% of the purchase price (exclusive of VAT, if any) at which the selling member sold his or her single residential erf or sectional title unit, or such other percentage of the purchase price as may be resolved by the members from time to time by special resolution. This clause will not be applicable if a property is acquired by way of an inheritance or the dissolving of any kind of trust.
- 7.8 The joining levy payable by the purchaser, transferee or cessionary (as the case may be) of a single residential erf or sectional title unit in terms of clause 7.7 shall become due and payable upon registration of transfer of the selling member's single residential erf or sectional title unit into the name of the purchaser concerned and shall be held in the Association's reserve funds to meet anticipated future expenditure not of an annual nature.
- 7.9 The Board of Trustees may within any financial year authorise expenditure not budgeted for from the Association's reserve funds, on condition that such expenditure does not exceed a maximum of 15% of the Association's approved income for such financial year; provided that:
- 7.9.1 no such unbudgeted expenditure may be incurred until all members of the Association are given at least 7 (seven) calendar days written notice of the intention to incur such expenditure; and
- 7.9.2 if during this 7 (seven) calendar day notice period more than 35 members object in writing to the request, the Board of Trustees may not incur the unbudgeted expenditure, unless it is approved by a special resolution adopted at a general meeting.

8. RESPONSIBILITY FOR THE COMMON AREAS

The Association acknowledges that the Council shall not be responsible for, and the Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and property control of the common areas, all services therein and any structure or thing erected on or contained therein.

9. DEVELOPMENT RULES

- 9.1 All buildings and other structures within the development shall be subject to and comply with the provisions of the development rules.
- 9.2 A member shall not, without the prior written approval of the Board of Trustees and without ensuring strict compliance the development rules, be entitled to:
 - 9.2.1 erect any new buildings and/or structures of any nature whatsoever on any single residential erf or in a sectional title unit in the development;
 - 9.2.2 make any changes or alterations to existing buildings and/or structures on any single residential erf or in a sectional title unit in the development, including changes to the external colour scheme.
- 9.3 The approval of the Board of Trustees as contemplated in clause 9.2 above shall only be given:
 - 9.3.1 after detailed plans of the proposed work have been submitted to the Board of Trustees or any other competent person/s as nominated by the Board of Trustees from time to time;
 - 9.3.2 the Board of Trustees or their nominee/s are satisfied that the proposed work is in accordance with the development rules;
 - 9.3.3 the member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Board of Trustees or their nominee/s; and
 - 9.3.4 the member has paid to the Board of Trustees a deposit in such amount as the Board of Trustees may from time to time determine in their sole discretion, as security for any damage to any of the common areas, which amount shall be held in trust by the Board of Trustees subject to the provisions of clause 10 below.

- 9.4 The provisions of clause 9.3 shall not be interpreted as detracting from the sole and final responsibility of the Council to approve or reject building plans.
- 9.5 Subject to the restrictions imposed or directions given at a general meeting of the Association, and subject to the written approval by the Council, the Board of Trustees may from time to time amend, amplify, substitute or add to the provisions of the development rules. Any such amendment, amplification, substitution or addition shall be subject to a resolution passed by the trustees holding not less than 75% of the total voting rights of the trustees.
- 9.6 In the event of any of the provisions of the development rules being amended, amplified, substituted or added to, the Board of Trustees shall immediately give written notice of such amendment, amplification, substitution or addition to all members.

10. DEPOSIT FOR DAMAGES

- 10.1 Each member shall, when submitting to the Board of Trustees for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements in the development in terms of clause 9.3.1 above, pay to the Board of Trustees a deposit in an amount, to be determined from time to time by the Board of Trustees, which amount shall be retained by the Board of Trustees in trust until completion by the member and/or its contractors of such work, the interest on which deposit shall accrue to the member.
- 10.2 Upon completion of all such building and other activities, the Board of Trustees shall, if they are satisfied that no damage has been caused by the member or any of its contractors to the common areas and/or landscaped areas within the development and that the work has been constructed in accordance with duly approved plans and the development rules, release the building deposit to the member, excluding any interest thereon which will accrue to the member.
- 10.3 In the event of any landscaped area and/or the common areas having damage due to such work, the member shall within 15 (fifteen) days of having been requested to do so in writing by the Board of Trustees, rectify the damage to the satisfaction of the Board of Trustees, failing which, the Board of Trustees shall be entitled to appoint an independent contractor or contractors to

repair the damage and the amount paid to the Board of Trustees as a building deposit shall be utilised to pay all costs of such repair. If the amount paid to the Board of Trustees of the Association as a building deposit is not sufficient to cover the cost of such repairs, the Board of Trustees shall be entitled to recover the shortfall from the member.

10.4 The Board of Trustees shall be entitled to:

10.4.1 perform such acts as are necessary to accomplish the purposes expressed or implied herein, which acts shall include, inter alia, the examination and endorsement of the relevant building plans as are necessary for any construction, renovation and/or alterations within the development; and

10.4.2 appoint such professionals as are necessary to scrutinize the relevant plans referred to herein and impose a scrutiny fee on members for the services of such professionals.

11. HOUSE RULES

11.1 Subject to any restrictions imposed or directions given at a general meeting of the Association and subject to the conditions imposed by the Council in approving the rezoning and subdivision of the land, the Board of Trustees may (but shall not be obliged to) from time to time:

11.1.1 make, amend, amplify, substitute or add rules governing, inter alia:

11.1.1.1 the management and control of the development;

11.1.1.2 the use, occupation and enjoyment of the common areas;

11.1.1.3 the external appearance and the maintenance of the common areas and the buildings or other improvements erected thereon;

11.1.1.4 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on the common areas;

11.1.1.5 the furtherance and promotion of any of the objects of the Association;

- 11.1.1.6 the advancement and protection of the interests of members;
 - 11.1.1.7 the conduct of Board of Trustees meetings and general meetings; and
 - 11.1.1.8 the Association's activities generally.
 - 11.1.2 enter into agreement/s with the Council or any other authority or supplier of services governing the matters set out in clause 11.1.1 and any other incidental matters.
- 11.2 Any amendment, amplification, substitution or addition to the rules shall be subject to a resolution passed by the trustees holding not less than 75% of the total voting rights of the trustees. In the event of any of the provisions of the rules being amended, amplified, substituted or added to, the Board of Trustees shall immediately give written notice of such amendment, amplification, substitution or addition to all members.
- 11.3 Each member undertakes to the Association that such member will comply, and will procure compliance by his or her occupiers, visitors, guests and employees, with:
 - 11.3.1 the provisions of this constitution;
 - 11.3.2 the development rules referred to in clause 9;
 - 11.3.3 any rules made in terms of clause 11.1.1 above; and
 - 11.3.4 any agreement/s referred to in clause 11.1.2 insofar as those agreements may directly or indirectly impose obligations on such member.
- 11.4 In the event of any breach by a person of the household of, or guest or employee of a member, such breach shall be deemed to have been committed by the member, but without prejudice to the foregoing, the Board of Trustees may take or cause to be taken such steps against the person actually committing the breach, as the Board of Trustees may in its sole discretion deem fit.

12. BREACH

- 12.1 Should any member:
 - 12.1.1 fail to pay on due date any amount due by that member in terms of this constitution or any rules made thereunder and remain in default for more than 7 (seven) days after being notified in writing to do so by the Board of Trustees; or

12.1.2 commit any other breach of any of the provisions of this constitution or the development rules or any rules made thereunder and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Board of Trustees and complete the remedying of such breach within a reasonable time;

then and in either such event, the Board of Trustees shall be entitled (but not obliged) on behalf of the Association, without prejudice to any other rights or remedies which the Board of Trustees or the Association or any other member may have in law, including the right to claim damages:

12.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of that member's obligations in terms of this constitution, as the case may be; or

12.1.4 in the case of clause 12.1.2 above, to remedy such breach and immediately recover the total cost incurred by the Board of Trustees or the Association in so doing from such member.

12.2 Notwithstanding anything to the contrary contained in this constitution, the Board of Trustees may in the name of the Association enforce any provisions of the constitution (including any rules and/or development rules made hereunder) by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as the Board of Trustees may deem fit.

12.3 Without prejudice to all or any of the rights the Board of Trustees or the Association granted under this constitution, should any member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at the prime rate plus 4% calculated from the due date for payment until the actual date of payment of such amount.

12.4 Should the Board of Trustees institute any legal proceedings against any member pursuant to a breach by that member of this constitution, and an order of costs is made in such proceedings in favour of the Board of Trustees, then without prejudice to any other rights which the Board of Trustees or the Association or any other member may have in law, the Board of Trustees shall be entitled to recover from such member all legal costs incurred by the Board of Trustees or the Association, including attorney/client charges, tracing fees and collection commission.

13. BOARD OF TRUSTEES

- 13.1 There shall be a Board of Trustees of the Association which shall consist of not less than 3 (three) and not more than 7 (seven) members.
- 13.2 A trustee need not be a member or the legally recognised representative of a member who is a juristic person; provided that the majority of the trustees must be members or the legally recognised representatives of a member who is a juristic person.

14. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 14.1 Each trustee shall continue to hold office until the next annual general meeting following his or her said appointment, at which meeting each trustee shall be deemed to have retired from office as such and shall be eligible for reappointment to the Board of Trustees at such meeting. There shall be no limitation on the number of consecutive or non-consecutive terms which a duly elected member may serve on the Board of Trustees.

- 14.2 A trustee shall be deemed to have vacated his or her office as such upon:

14.2.1 being an unrehabilitated insolvent;

14.2.2 being removed from an office of trust on the grounds of misconduct involving dishonesty, or has been convicted, in South Africa or elsewhere, and imprisoned without the option of a fine;

14.2.3 his or her conviction for any civil or criminal offence;

14.2.4 his or her becoming of unsound mind;

14.2.5 his or her resigning from such office in writing;

14.2.6 his or her death;

14.2.7 his or her being removed from office by an ordinary resolution of the members;

14.2.8 having disposed of his or her single residential erf or sectional title unit in the development;

provided that anything done in the capacity of a trustee in good faith, by a person who ceases to be a trustee, shall be valid until the fact that he or she is no longer a trustee has been recorded in the minute book of the Board of Trustees.

- 14.3 Upon any vacancy occurring on the Board of Trustees prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board of Trustees.

15. OFFICE OF THE BOARD OF TRUSTEES

- 15.1 The trustees shall appoint from amongst themselves, a chairperson and vice-chairperson.
- 15.2 Within 14 (fourteen) days of the holding of an annual general meeting, the Board of Trustees shall meet and shall elect from its own number the chairperson and the vice-chairperson, who shall hold their respective offices until the next annual general meeting held after their said appointment; provided that the office of the chairperson or vice-chairperson shall automatically be vacated by the trustee holding such office upon his or her ceasing to be a trustee for any reason. In the event of any vacancy occurring in any of the offices of the chairperson or the vice-chairperson at any time, the Board of Trustees shall meet to appoint one of their number as a replacement in such office.
- 15.3 Save as otherwise provided in this constitution, the chairperson shall preside at all meetings of the Board of Trustees, and all general meetings of members, and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the Board of Trustees or members, and to allow or refuse to permit invitees to speak at any such meetings; provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 15.4 The vice-chairperson shall assume the powers and duties of the chairperson in the absence of the chairperson, or his or her inability or refusal to act as chairperson.
- 15.5 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as trustees and/or chairperson, vice-chairperson, 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.

16. FUNCTIONS AND POWERS OF THE BOARD OF TRUSTEES

- 16.1 Subject to the express provisions of this constitution, the Board of Trustees:

- 16.1.1 shall manage and control the business and affairs of the Association;
- 16.1.2 shall have full powers in the management and direction of such business and affairs;
- 16.1.3 save as may be expressly provided in this constitution, may exercise all such powers of the Association; and
- 16.1.4 shall 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 nevertheless to any directions given to or restrictions imposed on the trustees by the members of the Association in a general meeting from time to time; provided that no directions given to or restrictions imposed on the trustees by the members of the Association in general meeting shall invalidate any prior act of the Board of Trustees which would have been valid if such direction or restriction had not been given or imposed.

- 16.2 The Board of Trustees shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 16.3 The Board of Trustees shall have the right to co-opt onto the Board of Trustees any member or members chosen by it. A co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees.
- 16.4 The Board of Trustees shall have the power to appoint subcommittees to manage and/or regulate various aspects or facets of the Association's and/or Board of Trustees' functions and powers; provided that:
 - 16.4.1 the members of such subcommittees need not be members of the Association;
 - 16.4.2 each subcommittee shall consist of not less than 3 (three) and no more than 10 (ten) committee members;
 - 16.4.3 each subcommittee member shall continue to hold office until the next annual general meeting following his or her appointment, at which time each subcommittee member shall be deemed to have resigned from office as such and shall be eligible for reappointment to such subcommittee by the incoming Board of Trustees;
 - 16.4.4 the Board of Trustees shall at all times exercise an oversight function over the subcommittees; and

- 16.4.5 that the rules governing the office and proceedings of the Board of Trustees prescribed in terms of this constitution shall, where applicable, apply equally to all subcommittees.

17. PROCEEDINGS OF THE BOARD OF TRUSTEES

- 17.1 The Board of Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this constitution.
- 17.2 Meetings of the Board of Trustees shall be held at least 6 (six) times during a 12- (twelve-)month period; provided that if all the trustees shall in writing have waived the above requirement in respect of a particular 12 (twelve) months, then no meeting of the Board of Trustees need be held for that period.
- 17.3 The quorum necessary for the holding of any meeting of the Board of Trustees shall be 3 (three) trustees.
- 17.4 The chairperson shall preside as such at all meetings of the Board of Trustees; provided that should at any meeting of the Board of Trustees the chairperson not be present within 5 (five) minutes after the time appointed for the holding thereof, then the vice-chairperson shall act as chairperson at such meeting; provided further that should the vice-chairperson also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those present of the trustees shall vote to appoint a chairperson for the meeting, who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.
- 17.5 Minutes shall be taken at every Board of Trustees meeting, although not necessarily verbatim. These minutes shall be reduced to writing without undue delay after the meeting and shall then be certified correct by the chairperson of the meeting. All minutes of Board of Trustees meetings shall after certification as aforesaid be placed in a Board of Trustees minute book. The Board of Trustees minute book shall be open for inspection at all reasonable times by a trustee, the auditors, and the members.
- 17.6 All competent resolutions recorded in the minutes of any Board of Trustees meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Board 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 Board of Trustees.

- 17.7 Save as otherwise provided in this constitution, the proceedings at any Board of Trustees meeting shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide.
- 17.8 A resolution signed by all the trustees shall be valid in all respects as if it had been duly passed at a meeting of the Board of Trustees duly convened.

18. GENERAL MEETINGS OF THE ASSOCIATION

- 18.1 The Association shall within 6 (six) calendar months after each financial year of the Association, hold a general meeting as its annual general meeting, in addition to any other general meetings, during such financial year, and shall specify the meeting as such in the notices in terms of clause 19.1 below.
- 18.2 All general meetings other than annual general meetings shall be called special general meetings.
- 18.3 The Board of Trustees may, whenever they think fit, convene a special general meeting and must do so if more than 25% of the members deliver to the Association a written and signed request for a special general meeting.
- 18.4 General meetings of the Association shall take place at such place/s as shall be determined by the Board of Trustees from time to time.

19. NOTICE OF MEETINGS OF THE ASSOCIATION

- 19.1 An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than 21 (twenty-one) calendar days' notice in writing at the least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by not less than 14 (fourteen) calendar days' notice in writing. In each case, the notice shall be exclusive of the day on which it is dispatched and inclusive of the day of the meeting, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this constitution, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner (if any) as may be prescribed by the Board of Trustees to such persons as are under this constitution entitled to receive such notices from the Association.

- 19.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this constitution, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

20. QUORUM FOR GENERAL MEETINGS

- 20.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 20.2 The quorum necessary for the holding of any general meeting shall be such of the members entitled to vote in person or by proxy, as together for the time being, representing at least 51% of the total votes of all members of the Association entitled to vote, for the time being save that not less than 4 (four) members must be personally present.
- 20.3 If within 30 (thirty) minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, shall stand adjourned for another 30 (thirty) minutes, and if at such adjourned meeting a quorum is not present, the members present shall be a quorum.

21. AGENDA AT GENERAL MEETINGS

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

- 21.1 the consideration of the chairperson's report to members;
- 21.2 the consideration of the nominations received, before the start of the Annual General meeting;
- 21.3 the consideration of the annual financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
- 21.4 the consideration of the report of the auditors;
- 21.5 the consideration and fixing of the remuneration of the accounting officer for the financial year of the Association following the annual general meeting;

- 21.6 the consideration and noting of the budget and the total levy approved by the Board of Trustees for the calendar year during which such annual general meeting takes place;
- 21.7 the consideration and ratification and/or amendment of the amounts of the "initial" and "subsequent" penalties as determined by the disciplinary subcommittee in terms of clause 28.6;
- 21.8 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions; and
- 21.9 the consideration of any directions given to or restrictions imposed on the trustees for the year following the annual general meeting.

22. PROCEDURE AT GENERAL MEETINGS

- 22.1 The chairperson shall preside as such at all general meetings; provided that should he or she not be present within 5 (five) minutes after the time appointed for the holding thereof, then the vice-chairperson shall act as chairperson at such meeting; provided further that should the vice-chairperson also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall vote to appoint a chairperson for the meeting, who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.
- 22.2 The chairperson may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.
- 22.3 Whenever a meeting is adjourned for 10 (ten) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

23. PROXIES FOR GENERAL MEETINGS

- 23.1 A member may be represented at a general meeting by a proxy, who need not be a member of the Association.

- 23.2 The instrument appointing a proxy shall be in writing signed by the member concerned or such member's duly authorised agent in writing but need not be in any particular form.
- 23.3 The instrument appointing a proxy, and in the case of a member who is a juristic person the power of attorney or other authority under which it is signed, shall be deposited at the office of the Association at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote.
- 23.4 No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.

24. VOTING AT GENERAL MEETINGS

- 24.1 At every general meeting, every member in person or by proxy and entitled to vote shall have 1 (one) vote per single residential erf and/or sectional title unit owned by such member; provided that if a single residential erf or sectional title unit is registered in the name of more than one person, then they shall jointly exercise such rights in respect thereof.
- 24.2 Save as expressly provided for in this constitution, no person other than a member duly registered, and who shall have paid every levy, penalty and/or any other amount (if any) which shall be due and payable to the Association in respect of or arising out of his or her membership, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 24.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairperson of the result of the show of hands, a poll is demanded by any member entitled to vote at such meeting.
- 24.4 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question.

25. ACCOUNTS

- 25.1 The accounts and books of the Association shall be open to the inspection of members at all reasonable times during normal business hours.

- 25.2 At each annual general meeting the Board of Trustees shall lay before the Association financial statements for the immediately preceding financial year of the Association.
- 25.3 Such financial statements shall be accompanied by reports of the Board of Trustees and the accounting officer and shall be attached to the notice sent to members convening each annual general meeting.
- 25.4 The accounting review of the Association's annual financial statements must be carried out by an independent accounting officer, who may not serve as such for a period longer than 10 (ten) consecutive financial years, after which the accounting officer will only be eligible for reappointment as such after the expiry of at least 5 (five) financial years.

26. SERVICE OF NOTICES

- 26.1 A notice shall be in writing and shall be given or served by the Association upon any member, either personally or by electronic mail or by post in a prepaid registered letter, properly addressed to the member at the address of the single residential erf or sectional title unit owned by such member. It is the responsibility of the member to ensure that his or her electronic mail address in the Association's database is correct and up to date, as this is the preferred way to give and serve any notice.
- 26.2 No member shall be entitled to have a notice served on him or her at any physical or postal address not within the Republic of South Africa, but any member may require the Association, by notice, to record a physical or postal address within the Republic of South Africa which shall be deemed to be his or her address for the purpose of notices served either personally or by prepaid registered post.
- 26.3 The Board of Trustees must, from time to time, determine the address that is the Association's domicilium citandi et executandi; provided that such service address must be a physical address within the magisterial district in which the Association is located. The Board of Trustees may designate a fax, email or other address as an alternate service address of the Association.
- 26.4 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

27. INDEMNITY

- 27.1 All trustee members shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a trustee member, in his or her capacity as chairperson or vice-chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.
- 27.2 Every trustee member, every servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the Board of Trustees out of the funds of the Association to pay) all costs, losses and expenses (including traveling expenses) which such person/s may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person/s in the discharge of any of his or their respective duties, including in the case of a trustee member, his or her duties as chairperson or vice-chairperson.
- 27.3 Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him or her jointly or severally in connection with the discharge of his or her duties; provided that any such act, deed or letter has been done or written in good faith.
- 27.4 A trustee member shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustee members, whether in their capacities as trustee members or as chairperson or vice-chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Board of Trustees for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his or her office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.
- 27.5 No member shall have any claim of any nature whatsoever against the Association for any loss, damage or injury which such member may directly or indirectly suffer (even if such loss, damage or injury is caused through the negligence of the

Association, the Board of Trustees, or any of the Associations employees or appointees) by reason of any latent or patent defects on the development (including the common areas), or fire on the development, or theft from the development, or by reason of any building, improvement or other structure within the development being in a defective condition or state of disrepair or any particular repair not being effected by the Association timeously or at all, by any person whatsoever, or for any purpose whatsoever, or arising from any other cause whatsoever, and each member is advised to take the necessary steps to insure his or her interest.

28. INTERNAL DISPUTE RESOLUTION PROCEDURE

28.1 The trustees shall be required to appoint a disciplinary subcommittee, as provided for in terms of clause 16.4 above, to manage and regulate the association's internal dispute resolution procedure and the imposition of penalties as provided for hereunder.

28.2 If the conduct or default of a member (or his or her tenant, occupier, guest, visitor, employee or contractor) contravenes, breaches, disobeys or disregards any provision of this constitution, the development rules or any rule made by the trustees from time to time in terms of clause 11 above, the disciplinary subcommittee may give the member written notice:

28.2.1 specifying the alleged conduct;

28.2.2 identifying the provision of this constitution, the development rules or the rule allegedly contravened; and

28.2.3 notifying the member that if the offender persists in such conduct or contravention, a penalty or penalties will be imposed on the member.

28.3 If the offender nevertheless persists in the conduct complained of, the disciplinary subcommittee may convene a disciplinary subcommittee meeting to discuss and deal with the matter as set out below.

28.4 A written notice of such meeting must be sent to the member at least 7 (seven) days before the meeting is held:

28.4.1 informing the member of the purpose of the meeting;

28.4.2 providing the member with details of the alleged conduct;

- 28.4.3 identifying the provision of this constitution, the development rules or the rule allegedly contravened; and
- inviting the member to attend the meeting to make representations; provided that the member may not participate in the decision-making or voting at the meeting.
- 28.5 After the member has been given the opportunity to present his or her case, the disciplinary subcommittee may, if agreed by at least 75% of the disciplinary subcommittee members present at the duly constituted meeting, impose an "initial penalty" for the first offence and a "subsequent penalty" for every identical offence thereafter, without derogating the rights in law of the disciplinary subcommittee and/or Board of Trustees to take further action. Should the member not attend the meeting without providing a reasonable request for postponement, the disciplinary subcommittee may continue with the meeting and impose an initial penalty or subsequent penalty in the member's absence. The reasons for the disciplinary subcommittee's decision to impose an initial penalty or subsequent penalty must be provided to the member in writing within 7 (seven) days following the meeting.
- 28.6 The members of the Association shall, at every annual general meeting, consider and ratify or amend the amounts of the "initial" and "subsequent" penalties as determined by the disciplinary subcommittee from time to time.
- 28.7 Any amount due by a member by way of an "initial penalty" and/or "subsequent penalty" imposed in terms hereof shall be a debt due by him or her to the Association.
- 28.8 Any penalty imposed in terms hereof, if it is not paid within 14 (fourteen) days after the member has been notified of the imposition thereof, may be added to the monthly levy which the member is obliged to pay to the Association.
- 28.9 No member shall be entitled to any of the privileges of membership, including the use of the communal facilities, services and amenities and voting at any meeting, unless the member shall have paid every "initial penalty" and/or "subsequent penalty" imposed in terms hereof.
- 28.10 The decision of the disciplinary subcommittee to impose an "initial penalty" and/or "subsequent penalty" in terms hereof shall be binding but not final and the member who is dissatisfied by the decision of the disciplinary subcommittee may appeal to the Board of Trustees.

- 28.11 A request for appeal must be lodged with the Board of Trustees within 30 (thirty) days after the date of delivery of the decision of the disciplinary subcommittee.
- 28.12 Upon receipt of a request for appeal a written notice, in which the relevant member is informed of the appeal meeting and invited to attend, must be sent by the Board of Trustees to the member at least 7 (seven) days before the appeal meeting is held. At the appeal meeting the member must be given the opportunity to make representations, but except as may be permitted by the chairperson of the Board of Trustees, he or she may not participate in the decision-making or voting at the appeal meeting.
- 28.13 After the member has been given the opportunity to present his or her appeal, the Board of Trustees may, if agreed by at least 75% of the Board of Trustees members present at the duly constituted appeal meeting, either:
- 28.13.1 confirm the decision of the disciplinary subcommittee;
 - 28.13.2 dismiss the decision of the disciplinary subcommittee; or
 - 28.13.3 substitute the decision of the disciplinary subcommittee.
- 28.14 The decision of the Board of Trustees in terms of clause 28.13 shall be final and binding but shall not restrict the rights of the member who is dissatisfied by the decision to follow the external dispute resolution procedure outlined in clause 29 below.

29. EXTERNAL DISPUTE RESOLUTION PROCEDURE

- 29.1 Any dispute, question or difference arising at any time between members or between members and the Board of Trustees out of or in regard to:
- 29.1.1 a decision of the Board of Trustees in terms of clause 28.13 above; or
 - 29.1.2 any matters arising out of this constitution; or
 - 29.1.3 the rights and duties of any of the parties mentioned in this constitution; or
 - 29.1.4 the interpretation of this constitution;
- may be referred to arbitration in terms of the procedure set out below; provided that no provisions contained in this constitution, shall in any way limit the rights of an aggrieved party to refer any dispute to the Community Schemes Ombud Service in terms

of section 38 of the Community Schemes Ombud Services Act, 2011.

- 29.2 If the parties decide that the dispute may be submitted to and decided by arbitration they shall be required to agree thereto in writing.
- 29.3 Arbitration shall be held in Hermanus informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty-one) business days after it has been agreed to.
- 29.4 Save as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is:
 - 29.4.1 primarily an accounting matter – an independent accounting professional;
 - 29.4.2 primarily a legal matter – a practicing counsel or attorney of not less than 10 (ten) years standing; and
 - 29.4.3 any other matter – an independent and suitably qualified professional person as may be agreed upon between the parties to the dispute.
- 29.5 If agreement cannot be reached upon a particular arbitrator in terms of clause 29.4 above within 3 (three) days after the arbitration has been demanded, then the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall nominate the arbitrator within 7 (seven) business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (twenty-one) business days referred to in clause 29.3 above.
- 29.6 The arbitrator shall make his or her award within 7 (seven) days after completion of the arbitration and shall in giving his or her award, have regard to the principles laid down in terms of this constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he or she in his or her sole discretion may deem fit.
- 29.7 The decision of the arbitrator shall be final and binding and may be made an order of the High Court upon the application of any party to the arbitration.

30. AMENDMENTS TO CONSTITUTION

- 30.1 This constitution, or any part thereof, shall not be repealed or amended, save by a special resolution adopted at an annual general meeting or a general meeting of the members.
- 30.2 Any amendment that affects Council or a provision referred to in section 31(3) of the By-law must be approved by Council in terms of section 31(4) of the By-law.

31. EFFECTIVE DATE

- 31.1 The members agree, accept and acknowledge that, despite the fact that:
- 31.1.1 any amendment that affects Council or a provision referred to in section 31(3) of the By-law must be approved by Council in terms of section 31(4) of the By-law; and
- 31.1.2 the schedule referred to in section 11(3)(b) of the Sectional Titles Act in respect of the body corporate and the respective title deeds of every sectional title unit must be amended to replace the incorrect recordal of the "*Twee Fonteine Retirement Village Homeowners' Association*" with the correct recordal of "*Negester Estate Onrus River Homeowners' Association*";

this constitution shall come into force and effect and shall be binding on all members from the date of the approval hereof, by a special resolution adopted at an annual general meeting or a general meeting of the members.

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