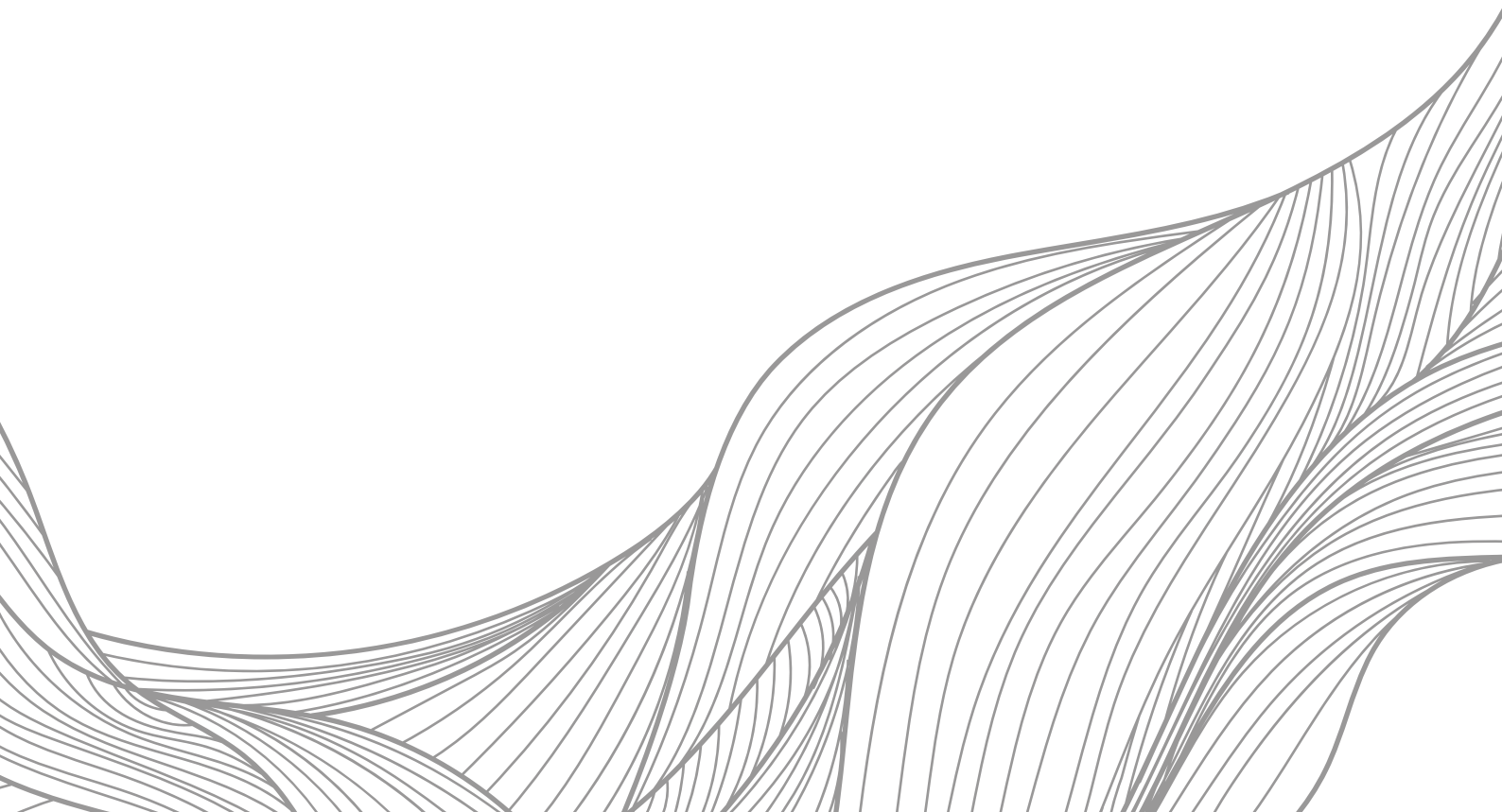




CONSTITUTION OF THE
ZANDDRIFT ESTATE
MASTER PROPERTY
OWNERS' ASSOCIATION



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1. ESTABLISHMENT IN TERMS OF STATUTE

Zanddrift Estate Master Property Owners' Association is constituted, as a legal person, in terms of Section 29 of the Drakenstein Municipal Planning By-Law of 2015, as approved on 13 November 2015 ('the By-Law'), in accordance with the conditions imposed by the **Drakenstein Municipality** and shall come into existence simultaneously with the registration in the Deeds Office of the first of the Land Units (as hereinafter defined).

2. INTERPRETATION

2.1 The following words shall, unless otherwise requires, have the meanings hereinafter assigned to them:

2.1.1 "**AGM**" means the Annual General Meeting of the Association held in terms of the provisions of this Constitution;

2.1.2 "**Alienate**" means the Alienation of any Land Unit, or portion of the Land or part thereof, whether by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, change in shareholding of a Company or membership in a Close Corporation, irrespective of whether such alienation is subject to a resolute condition or a condition precedent, and "**Alienation**" shall have a corresponding meaning;

2.1.3 "**Association**" means **Zanddrift Estate Master Property Owners' Association**, which will come into existence upon the transfer of the first Land Unit arising from the subdivision or part thereof. The Association has, as its members, all the persons, as defined in clause 7 of this Constitution, who are jointly liable for the expenditure incurred in connection with the Association;

2.1.4 "**Auditors**" means the auditors of the Association, appointed by the Developer, during the Development Period, and thereafter by the Board, from time to time;

2.1.5 "**Board**" means the Trustees assembled as a board, at which a quorum is present;

2.1.6 "**Body Corporate**" means in relation to a Sectional Title Scheme, the requisite body corporate established in terms of the Sectional Titles Act and the STSMA;

2.1.7 "**business day**" means weekdays other than Saturdays, Sundays and Public Holidays;

2.1.8 "**Chairman**" means the chairperson of the Trustee Committee;

2.1.9 "**Common Property**" means, in relation to a Sectional Title Scheme, the land included in the Sectional Title Scheme, and such parts of a building or buildings that are not included in a Section, on the approved Sectional Title Plan concerning the relevant Sectional Title Scheme;

2.1.10 "**Communal Property**" means collectively, all private streets, private open spaces and specifically includes any roads, buildings, infrastructure, and facilities which are or will be located on the Land and owned or managed by the Association, from time to time, for the benefit of, *inter alia*, the Association and its Members and Sub-Members;

- 2.1.11 “**completion of the Development**” means the date of transfer of the last building site, Erf and/or Section in the Development from the Developer to the relevant title holder thereof;
- 2.1.12 “**Constitution**” means the Constitution of the Association, as set out in this document and as may be amended from time to time in terms of the provisions hereof;
- 2.1.13 “**Controlling Architect**” means Dennis Moss Partnership;
- 2.1.14 “**Design Guidelines**” means the architectural and design guidelines as detailed in clause 14 of this Constitution;
- 2.1.15 “**Developer**” means the juristic person who is the registered owner of the Land (or any portion thereof) from time to time and who is responsible for the development of the Land (or any portion thereof), until such a time as all the Land Units have been sold and transferred to purchasers;
- 2.1.16 “**Development**” means the development to be constructed upon the Land, comprising out of Sectional Title Schemes, a Lifestyle Estate portion with free standing erven and a retirement portion, as to be determined by the Developer, and collectively known as **Zanddrift Estate**;
- 2.1.17 “**Development Period**” means the period from the date of establishment of the Association until all the Land Units situated on the Land have been transferred from the Developer to a purchaser, or until the Developer notifies the Association in writing that the Development Period has ceased, whichever shall occur first;
- 2.1.18 “**Erven**” means the individual erven which form part of the Estate and created as a result of the subdivision of the Land, excluding the private open spaces and private streets; and any reference to an “**Erf**” shall have the corresponding meaning;
- 2.1.19 “**EMP**” means the Environmental Management Plan approved by all relevant authorities (if applicable);
- 2.1.20 “**Estate**” means a residential lifestyle estate upon a portion of the Land in accordance with the approval obtained from the Local Authority and which forms part of the Development;
- 2.1.21 “**General Plan**” means the General Plan in respect of the Land, providing for the subdivisions thereof, approved by the Surveyor-General;
- 2.1.22 “**GM**” means a collective reference to the AGM’s and all SGM’s;
- 2.1.23 “**in writing**” means written, printed, e-mailed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 2.1.24 “**Land**” means the land approved for the development by the Local Authority, being Portion 2 of the Farm Ronwe Nr. 894, Remainder of Portion 1 of the Farm Lustigan Annex Nr 852 and Remainder of Portion 4 of the Farm Lustigan Annex Nr 852, all situated in the Division Paarl, Western Cape Province;
- 2.1.25 “**Landscape Plan**” means the Landscape Plan approved by the Local Authority;
- 2.1.26 “**Land Unit**” means any subdivided portion of the Land, registered or capable of being registered as an Erf or Section in the Cape Town Deeds Registry;

- 2.1.27 “**levy/levies**” means the levies imposed, calculated and payable in terms of this Constitution and more specifically, but not limited to, clause 12 below, but excluding any Special levies;
- 2.1.28 “**Local Authority**” means the Local Authority having jurisdiction over the Sectional Title Scheme and Estate, being the Drakenstein Municipality, or its successors in title;
- 2.1.29 “**Management Company**” means any person or entity appointed by the Developer, during the Development Period, and thereafter the Board, as an independent contractor to undertake any or all of the management functions of the Association and Sub-Association, subject to and in terms of this Constitution;
- 2.1.30 “**MCR**” means the Management and Conduct Rules as provided for in the Sectional Titles Act and STSMA, approved by the Developer, during the Development Period, and thereafter by the Board, as well as any regulatory body as provided for statutorily, in respect of each Sectional Title Scheme;
- 2.1.31 “**Member**” means a member of the Association, as set out in clause 7 of this Constitution. If a Member consists of more than one person, such persons shall be jointly and severally liable in *solidium* for all obligations of a member in terms of this Constitution;
- 2.1.32 “**month**” means a calendar month;
- 2.1.33 “**MPBL**” means the Drakenstein Municipal Planning By-Law of 2015, published in the Provincial Gazette Extraordinary, as amended;
- 2.1.34 “**Occupant**” means any person(s) occupying an Erf or Section or any improvements or structures thereon;
- 2.1.35 “**Owner**” means the registered owner of a Land Unit and as such a Sub-Member of the Association;
- 2.1.36 “**Planning Legislation**” means, collectively, the Western Cape Land Use Planning Act 3 of 2014, the Western Cape Land Use Regulations, 2015, the MPBL and the Spatial Planning and Land Use Management Act 16 of 2013;
- 2.1.37 “**private open spaces**” means all the private open spaces, indicated as such on the SDP, which will be registered in the name of the Association in the Cape Town Deeds Registry and which private open spaces will, as such, become the responsibility of the Association or relevant Sub-Association, as the case may be;
- 2.1.38 “**private streets**” means the private street, as indicated on the SDP, that will be transferred in favour of the Association or Sub-Association, as the case may be, in the Cape Town Deeds Registry, which will become the responsibility of the Association or the relevant Sub-Association;
- 2.1.39 “**Professional Trustee**” means a professional trustee, nominated by the Developer during the Development Period, and thereafter by the Board, which professional trustee is nominated and co-opted to the Board for his specific level of skill, expertise, knowledge of the Estate or Sectional Title Scheme, and experience in his field of qualification;

- 2.1.40 **“Retirement Village”** means the retirement village erected on a portion of the Land, comprising a sectional title assisted living portion and a freehold erf portion;
- 2.1.41 **“SAC”** means the constitution of any Sub-Association, where applicable, approved by its Members, the Developer (during the Development Period) and, thereafter, the Board, which constitution may never be in conflict of or alter any provisions of this Constitution;
- 2.1.42 **“SDP”** means the Site Development Plan approved by the Local Authority, attached hereto as **Annexure A**, which SDP may from time to time, during the Development Period, be amended by the Developer, subject to the approval thereof by the Local Authority, in which instance, the latest approved SDP will be deemed to be the SDP referred to in this Constitution;
- 2.1.43 **“Section”** means any section which forms part of the Sectional Title Scheme;
- 2.1.44 **“Sectional Titles Act”** means the Sectional Titles Act No 95 of 1986, as amended;
- 2.1.45 **“Sectional Title Scheme”** means the residential sectional title development upon a portion of the Land subject to the provisions of the Sectional Titles Act and STSMA, and which forms part of Development;
- 2.1.46 **“Security Company”** means any person or entity appointed by the Developer, during the Development Period, and thereafter the Board, as an independent contractor to undertake any or all of the security functions of the Association and any Sub-Association, subject to and in terms of this Constitution;
- 2.1.47 **“Services”** means such infrastructural utilities, amenities, structures or improvements to be provided and/or installed on the Land by the Developer, the Association or the Local Authority, as the case may be;
- 2.1.48 **“SGM”** means all Special General Meetings held by the Association as provided for and in terms of the provisions of this Constitution;
- 2.1.49 **“Special levy”** means any special levies imposed by the Developer, during the Development Period, and thereafter by the Board, over and above the levies as referred to in Clause 12 below;
- 2.1.50 **“special resolution”** means a resolution passed at a GM in accordance with the provisions of clause 31 below;
- 2.1.51 **“STSMA”** means the Sectional Titles Schemes Management Act 8 of 2011;
- 2.1.52 **“Sub-Association”** means any sub-homeowners’ association, including a Body Corporate, in respect of any subdivided portion of the Land, who will all be Members of the Association and be bound to this Constitution;
- 2.1.53 **“Sub-Member(s)”** means each and every Owner of a Land Unit, from time to time, collectively forming, and being members of the Sub-Association at any time;
- 2.1.54 **“These presents”** means this Constitution and regulations and by-laws of the Association from time to time in force;
- 2.1.55 **“Trustee Committee”** means the board of Trustees of the Association;

2.1.56 **“Trustee”** means one of the Trustees from the Trustee Committee, including Professional Trustees, as provided for in terms of these presents;

2.1.57 **“Vice-Chairman”** means the vice-chairman of the Trustee Committee;

2.1.58 **“year”** means calendar year;

2.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa; and the words importing any one gender only shall include the other two genders.

2.3 When any number of days is prescribed in this Constitution, it shall be calculated exclusive of the first and inclusive of the last day, unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day that is not a Saturday, Sunday or public holiday.

2.4 If any provision of this Constitution is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of the Constitution.

2.5 If any provision in any definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members, then, in such an event, effect shall be given to it as if it were a substantive provision in the body of the Constitution.

2.6 The annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.

3. MAIN BUSINESS

The main business of the Association is to manage and control the promotion, advancement and protection of the Members and Sub-Members, as well as to manage, control and regulate the Estate, Sectional Title Scheme and Retirement Village to the best advantage and benefit of the Members and Sub-Members.

4. MAIN OBJECTS AND THE STATUS OF THE ASSOCIATION

4.1 The main objects of the Association are:

4.1.1 to oversee, regulate and control the harmonious development of Zanddrift Estate and to ensure and promote the general high standard of the Estate, Sectional Title Scheme and Retirement Village;

4.1.2 to own, control, improve, manage and maintain and to insure, where necessary, the building, structures, installations and equipment relating to the Common Property, the Communal Property, the services and the gardens at the cost and expense of the Association or the relevant Sub-Association, as the case may be, for the benefit of the Members and Sub-Members;

4.1.3 to maintain and keep up the landscaping, where applicable, and communal pool (if constructed) and clubhouse of the Development, once established;

- 4.1.4 to enforce, manage, implement and control all the provisions, terms and conditions of this Constitution;
 - 4.1.5 to institute, control and pay for measures relating to security of the Members, Sub-Members and Occupants;
 - 4.1.6 to promote, advance, and control the communal interests of Members, Sub-Members and Occupants;
 - 4.1.7 to acquire and grant servitudes;
 - 4.1.8 to take action including the imposition of fines, or the institution of proceedings in a court of law, as may be deemed fit by the Board, in relation to non-compliance by any Member, Sub-Member or Occupant of any of the provisions of this Constitution;
 - 4.1.9 to control the aesthetic appearance of the Land Units, including any improvements thereon;
 - 4.1.10 to enforce certain conditions of subdivision approval or management plans listed in the conditions of subdivision and to provide for further development, where relevant, which development must form part of the Association and the procedures for incorporating the Development;
 - 4.1.11 to implement and enforce the EMP;
 - 4.1.12 to control and ensure compliance with the Landscape Plan, including the landscaping on the Common Property, Communal Property and around verges and entrances;
 - 4.1.13 to enter into service agreements and other necessary agreements with the Local Authority or any other authority or supplier of services in connection with the Development;
 - 4.1.14 to promote environmental awareness and responsibility amongst Members, Sub-Members and Occupants;
 - 4.1.15 to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the Development.
- 4.2 The Association shall be deemed to have come into existence on the date of the first registration of transfer of a Land Unit from the Developer to an Owner.
- 4.3 The Association is a legal person and as such:
- 4.3.1 the assets, liabilities, rights and obligations of the Association shall vest in it independently of its Members and Sub-Members;
 - 4.3.2 the Association shall have perpetual succession;
 - 4.3.3 all legal proceedings shall be brought by or against the Association, in the name of the Association, and the Board may authorise any person(s) to act on behalf of the Association and to sign all such documents and take all such steps as may be necessary in connection with any such legal proceedings; and

4.3.4 its Members and Sub-Members shall not, by reason of their membership, be liable for the liabilities and obligations of the Association.

5. SITE DEVELOPMENT PLAN

It is recorded that this Constitution shall be read and interpreted in conjunction with the summary of the development intent, as described in the SDP.

6. FINANCIAL YEAR END

The financial year-end of the Association is the last day of the second month after the coming into existence of the Association or such other month end as determined by the Members at a GM.

7. MEMBERSHIP OF THE ASSOCIATION

7.1. Membership of the Association shall be compulsory for:

7.1.1. the Developer during the Development Period; and

7.1.2. each of the Sub-Associations established in respect of any portion of the Land, which shall include:

7.1.2.1. Zanddrift Sectional Title Body Corporate;

7.1.2.2. Zanddrift Lifestyle Estate HOA;

7.1.2.3. Zanddrift Retirement Village HOA; and

7.1.2.4. And any Sub-Association added to the Development, as a result of any extension of the Development done by the Developer or as a result of any changes to the SDP.

7.2. Although the Developer shall be a Member of the Association, the Developer shall pay no levies in respect of any Land Units registered in his name.

7.3. The Sub-Associations shall *ipso facto* be and become Members of the Association upon establishment of the Sub-Association concerned and be represented at meetings of the Association as provided for in terms of this Constitution.

7.4. A representative of the Developer shall be a Member and the Chairman of the Association during the Development Period.

7.5. A Sub-Association may not at any time resign as a Member of the Association.

7.6. The provisions of this Constitution shall be binding upon all Members and Sub-Members, and, insofar as they may be applicable, to all Occupants.

7.7. No Owner ceasing to be a Sub-Member of any Sub-Association for any reason shall, have any claim upon or interest in the funds or other assets of the Association. This clause shall be without prejudice to the rights of the Association to claim from such Sub-Member any arrears of levies, Special levies, subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Sub-Member.

- 7.8. When a Sub-Member ceases to be the registered owner of a Land Unit, he shall *ipso facto* cease to be a Member of the Association.
- 7.9. No person may apply to the Registrar of Deeds for the registration of, and the Registrar of Deeds may not register, a Land Unit arising from the subdivision without the consent of the Association, which consent may not be unreasonably withheld. A Member shall not be entitled to:
- 7.9.1. sell or transfer a Land Unit unless it has complied with the provisions of clause 9 of these presents;
 - 7.9.2. without the prior written consent of the Association, as contemplated in clause 13 of these presents, and approval of the Local Authority:
 - 7.9.2.1. erect any new buildings and/or structures of any nature whatsoever in respect of the Development;
 - 7.9.2.2. make any changes or alterations to existing structures and/or buildings in respect of the Development; or
 - 7.9.2.3. Use, alter or change its building(s) and/or structures if such use, alteration or changes are in contravention of the existing zoning conditions, the National Building Regulations and/or the National Health Regulations.
- 7.10. The Trustee Committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.

8. SUB-ASSOCIATIONS

- 8.1. The Developer intends to subdivide the Land for purposes of developing various Land Units thereon, which will be subject to this Constitution, SAC and MCR, as the case may be, as determined by the Developer during the Development Period.
- 8.2. All Sub-Associations will be Members of the Association, represented at any meeting of the Association, by the Chairman or vice Chairman of the Sub-Association, or a representative nominated by the Trustees of such Sub-Association.
- 8.3. Membership of the Sub-Association will comprise the Owners of the various Land Units as provided for in the applicable SAC or MCR.
- 8.4. An Owner may never resign as a Member of the relevant Sub-Association or as a Sub-Member of the Association.
- 8.5. The members of a Sub-Association, will have the right to use that portion of the private streets held by the Association, which right of use may never be suspended.
- 8.6. The terms and conditions of SAC and the MCR may never be in conflict with this Constitution. In the event of any conflict, this Constitution will prevail.

9. GENERAL RIGHTS AND OBLIGATIONS OF MEMBERS/SUB-MEMBERS/OWNERS

- 9.1. Every Member/Sub-Member/Occupant shall comply with:

- 9.1.1. and at all times be bound by and will strictly adhere to the terms, conditions stipulations, guidelines and obligations contained in the Constitution, EMP, the Landscape Guidelines, SAC, MCR and all other rules or regulations made or promulgated by the Association, the Board or the Developer;
 - 9.1.2. all conditions imposed by the Local Authority or any other statutory body relating to Land Units and shall be solely responsible for non-compliance with such conditions;
 - 9.1.3. any agreement concluded by the Association, the Board or the Developer insofar as such agreement may directly or indirectly impose rights or obligations on a Member, Sub-Member or Occupant;
 - 9.1.4. any directive given by the Association, the Board, the Developer or the Management Company in the enforcement of the provisions of this Constitution.
- 9.2. Save as may be provided for herein, the rights and obligations of a Member and Sub-Member are not transferable, and every member and Sub-Member shall:
- 9.2.1. to the best of his ability further the objects and interests of the Association;
 - 9.2.2. observe all directives made or given pursuant to the provisions of the Constitution;
 - 9.2.3. be jointly liable with the other Members/Sub-Members for expenditure incurred in connection with the Association;
 - 9.2.4. not use any building or other structure constructed within the Development, or allow any other person to use such building or other structure, for purposes not permitted by this Constitution, MCR, SAC or any rules and/or regulations made in terms of this Constitution;
 - 9.2.5. not apply for the consolidation, subdivision or rezoning of its Land Unit, provided that selected departures or consent uses may be allowed, upon approval thereof by the Developer, for the duration of the Development Period; and thereafter, the Board; as well as the Local Authority;
 - 9.2.6. not conduct, or permit to be conducted or change the nature of, any business on a Land Unit, or use, or permit the use of, such Land Unit for purposes other than residential use, unless the Developer, for the duration of the Development Period, or thereafter, the Board has in writing approved the use to which the Land Unit is to be put, and the Local Authority has, to the extent that it may be necessary, granted approval authorising such use in terms of the Planning Legislation and other applicable laws and regulations.
- 9.3. Membership of the Association shall confer upon a Member, *inter alia*, the following rights, subject to the provisions of this Constitution:
- 9.3.1. the right to inspect and/or receive copies of the annual financial statements of the Association;
 - 9.3.2. the right to vote at all GM's in accordance with the provisions of this Constitution;
 - 9.3.3. the right to receive notices of, attend and speak at all GM's in accordance with the provisions of this Constitution;

- 9.3.4. the right to convene a GM of Members (other than an AGM), provided that the Members holding between them, in aggregate, not less than one third of the voting rights of the Association collectively, convene such a meeting;
- 9.3.5. each Member will be entitled to 1 (one) vote at any meeting or GM of the Association, irrespective whether voting is conducted by means of show of hands or by means of a poll.
- 9.4. Each Member shall ensure that none of its Sub-Members shall let or otherwise part with the occupation of his Land Unit, whether temporarily or otherwise, unless:
 - 9.4.1. the proposed Occupant has agreed to be bound by all the provisions of the Constitution, the SAC, and the MCR, as applicable, and all other rules or regulations made or promulgated by the Association; and
 - 9.4.2. its Sub-Members shall at all times remain bound by the provisions of the Constitution, the SAC and the MCR, as applicable, and will be required to ensure and procure compliance therewith by such Occupant; and
 - 9.4.3. its Sub-Members shall be liable for the acts or omissions of all persons occupying his Land Unit whether lawfully or unlawfully including without limitation guests, employees, invitees, contractors, sub-contractors or agents.
- 9.5. The Sub-Member shall not be entitled to exhibit any signboards, notices, advertising boards, neon signs and nameplates on the interior or exterior of buildings situated on a Land Unit or anywhere within the Development, the Communal Property or the Common Property without the prior written approval of the Board. The Board reserves the right after approval was granted and signboards, notices, advertising boards, neon signs and/or nameplates were erected, to request the removal of such for whatever reason, by giving the Sub-Member 30 (thirty) days' notice.
- 9.6. The Sub-Member shall keep and maintain any signs approved of by the Board in a good and clean condition, and if such signs are electronic, electric or mechanical, in proper working order and condition.
- 9.7. Each Sub-Association or Sub-Member (whichever is applicable) shall be liable for the landscaping of all the road verges and pavements within its borders.
- 9.8. The Member/Sub-Member hereby indemnifies the Association and/or the Developer, as the case may be, against all claims of whatsoever nature which may be made against the Association, as a result of the installation, erection or operation of any signs or advertisements placed by a Member/Sub-Member, whether installed with or without the written approval of the Board, or any defect in any such signs, or in any such installation or erection, or as a result of any failure on the part of the Member/Sub-Member or any of the Member's/Sub-Member's employees, agents, customers or invitees to keep and maintain any such signs in good order and condition, or properly installed or erected.
- 9.9. In addition, each Sub-Member of a Land Unit shall:
 - 9.9.1. ensure the maintenance of its Land Unit, and/or any improvements thereon, in a neat and tidy condition and in a state of good repair;

- 9.9.2. not park, or permit the parking of, any commercial vehicle, boat, caravan, trailer or any vehicle not in good working order on any road, pavement, Communal Property or the Common Property;
- 9.9.3. not do or suffer to be done on any Land Unit anything which, in the opinion of the Developer, for the duration of the Development Period, and thereafter the Board, is noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance, or a source of damage or disturbance to any Owner or Occupant of any other Land Unit;
- 9.9.4. comply with all security procedures and controls imposed by the Association and/or the Board, from time to time;
- 9.9.5. ensure that it and its invitees do not damage or destroy trees, vegetation and landscaping on the Communal Property or the Common Property, and that its planting does not interfere with pedestrian traffic or obscure the vision of motorists;
- 9.9.6. afford employees, agents and representatives of the Developer and the Association full access at all times to do all things reasonably necessary to construct and/or stabilize and/or maintain all Communal Property, Common Property, security cameras, boundary walls and edges;
- 9.9.7. not use any building or other structure constructed within the Development, or allow any other person to use such building or other structure, for purposes not permitted by this Constitution or all rules and/or regulations made in terms of this Constitution;
- 9.9.8. not apply for the subdivision or rezoning of its Land Unit with a view to procuring a variation, amendment or substitution of use rights, provided that selected departures or consent uses may be allowed, upon approval thereof by the Developer, during the Development Period, the Board and the Local Authority;
- 9.9.9. notify and supply the Management Company with the personal information and copies of the Identity Documents of any Occupants, domestic workers, garden workers or gardening services, or any other contractors employed by the Owner of its Land Unit;
- 9.9.10. not permit the number of Occupants of its Land Unit to exceed two persons per bedroom;
- 9.9.11. must ensure that all potential tenants meet the tenant accreditation criteria available from the Association and that the monthly rental payable by the tenant is market related.

10. ALIENATION

- 10.1. The Association shall ensure that none of its Members or Sub-Members shall in any manner Alienate or transfer a Land Unit unless:
 - 10.1.1. the proposed transferee, new shareholder of a Company, new members of a Close Corporation or new Trustees of a Trust have irrevocably bound themselves in writing to become *ipso facto* a Sub-Member of the Association and a member of a Sub-Association and to observe the Constitution, as well as the SAC or MCR applicable, as the case may be, for the duration of his ownership of any Land Unit;
 - 10.1.2. the Association has given its prior written consent thereto and has issued a clearance certificate that all amounts owing to the Association and Sub-Association by such Owner, have

been paid in full and that the Sub-Member/Occupant is not in breach of this Constitution, SAC, and MCR, as the case may be;

10.1.3. the written consent of Combined Developers (Pty) Ltd, which consent will not be unreasonably withheld, has been obtained. This condition is to ensure that the standards and the condition of the Development is upheld and safeguarded as intended by the Developer. The deeds office will not transfer a Land Unit without this consent.

10.1.4. The provisions of clause 10.1 shall apply *mutatis mutandis* to any Alienation or transfer of an undivided share in any Land Unit.

10.2. In the event that the Association has ceased to function and the Member is unable to obtain the consent referred to in clause 10.1.2, the Member must obtain consent from at least 60% (sixty percent) of the Members of the Association, which consent shall be deemed to be consent of the Association.

10.3. Restrictions will be registered against the title deeds of all Land Units in order to give effect to the terms of this clause 10. The Members and Sub-Members shall however be bound by this Clause whether or not such restrictions are registered in the Cape Town Deeds Registry.

10.4. Each Sub-Member shall comply with all conditions imposed by the Local Authority or any other statutory body relating to Land Units and shall be solely responsible for non-compliance with such conditions.

10.5. It is recorded that only the Association and/or Sub-Association and Combined Developers (Pty) Ltd will be entitled to charge any fees or costs in respect of the issuing of the clearance certificate. For the avoidance of doubt it is recorded that the Developer will not be liable for the payment of any such costs or fees in respect of each and every transfer of a Land Unit to be registered for the first time from the Developer to a purchaser.

11. COMMUNAL PROPERTY

11.1. The Association or any relevant Sub-Association will take title to the Communal Property and Common Property, as the case may be, as indicated on the SDP, which Communal Property and/or Common Property will be transferred by the Developer to the Association or any relevant Sub-Association, free of counter value.

11.2. It will be the Association's responsibility to maintain, repair and insure any structures, buildings, roads, excluding the private streets, which will be the responsibility of the Sub-Association that is transferred in favour of the Association. Registration of the transfer of the Communal Property and/or Common Property will be effected by the attorneys appointed by the Developer.

11.3. The Association acknowledges that neither the Local Authority nor the Developer shall be responsible for, and the Association or Sub-Association, as the case may be, shall be solely responsible for, the care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Communal Property and Common Property, and any structure or thing erected or contained therein or thereon, including private parking, electricity, telecommunications and any other private services, if applicable.

11.4. The Developer, during the Development Period, or the Association, Sub-Association and all service providers as approved by the Board or the Developer, during the Development Period, will at all times have free and unencumbered access to all registered servitudes on the Land or any Land Unit.

11.5. The Developer must construct detention and retention ponds on the Land, as required by the Local Authority, which ponds will be handed to the Association upon completion thereof, and from which date it will be the sole liability and responsibility of the Association. Sub-Member and/or Occupants will have no claims against the Developer, the Association, any Sub-Association or the Management Company for any damages or loss suffered as a result of the requisite ponds.

12. LEVIES PAYABLE BY THE MEMBERS

12.1. The Boards shall from time to time impose levies and Special levies upon the Members and/or Sub-Members for the purpose of meeting all the expenses in relation to the facilities and services for or in connection with the Development, and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs. Each and every Sub-Member, excluding any exceptions as provided for in this Constitution, will be liable for the payment of levies and Special levies, as and may be imposed by the Association, Sub-Association, the Developer and/or the Board in terms of this Constitution and/or the SAC and/or the MCR.

12.2. The Association shall recover expenditure incurred in connection with the Association, from its Members. The Trustee Committee shall charge levies upon the Members for the purpose of meeting all expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the private open spaces and private streets including, landscaping, all township services, sewage treatment, the security systems to be installed on the private open spaces and private streets and/or payment of all rates and other charges payable by the Association in respect of the private open spaces and private streets, and/or for the services rendered to it, and/or payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the private open spaces and private streets and the Association's affairs, as applicable.

12.3. In calculating levies the Trustee Committee shall take into account, income, if any, earned by the Association.

12.4. The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency from the preceding year, if any, and shall make a levy, as near as reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.

12.5. The Developer reserves the right to install a fibre optic network in respect of the Development, which will serve and provide the Members with telecommunication and data services within the Development. In the event that the Developer does elect to install the aforesaid fibre optic network, an additional, compulsory monthly levy to be determined by the Developer during the Development Period, or the Board thereafter, shall be charged upon the Sub-Members for which the Sub-Members will receive telecommunication services and internet data. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year. Such compulsory levy will be subject to change at discretion of the Developer or the Board, as applicable, provided that any change shall be reasonable and market related.

12.6. The Trustee Committee may from time to time make Special levies upon the Members in respect of all such expenses which are not included in any estimate made in terms of clause 12.3, and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee deems fit.

- 12.7. Any amount due by a Member by way of a levy, interest, fine or any other amount shall be a debt due by him/her to the Association. The obligation of a Member to pay a levy shall cease upon him/her ceasing to be a Member of the Association, without prejudice of the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon him/her ceasing to be a member. A Member's successor in title to a Land Unit shall be liable as from the date upon which he/she becomes a Member pursuant to the transfer of that Land Unit, to pay the levy attributable to that Land Unit.
- 12.8. Levies are payable to the Owners Association from the date of transfer of the Land Unit into the name of the Purchaser.
- 12.9. Members of the Association shall be entitled to elect to pay levies by means of any of the following methods:
- 12.9.1. the issue of a stop-order against his banking account;
 - 12.9.2. an advance payment of all levies due for the full year; or
 - 12.9.3. electronic bank transfers.
- 12.10. Any Special levies imposed by the Trustees in terms of clause 12.6 may be apportioned between the Members by the Trustees in an apportionment, which the Trustees may regard as reasonable, regard being had of the direct benefits, which the Member(s) may derive from the proposed expenditure for which the Special levies are imposed.
- 12.11. No Member shall be entitled to any of the privileges of membership, unless and until he/she has paid every subscription and other sum (if any), which shall be due and payable to the Association in respect of his/her membership thereof.
- 12.12. Interest will be charged at a rate of prime plus 5% (five percent) per annum on levies not paid on the first day of the month.
- 12.13. Payment of levies and Special levies by the Developer:
- 12.13.1. During the Development Period, any shortfall between the income derived from the levies and the Special levies paid by Sub-Members and the actual expenditure of the Association in each Financial Year that has been paid by the Developer, shall be reimbursed by the Association to the Developer;
 - 12.13.2. During and after the Development Period, the Developer shall have no liability or obligation to pay or to contribute to any levies or Special levies in respect of any Land Units, provided that in the instance of a Land Unit being registered in the name of the Developer and such Land Unit is occupied by any Occupants, then and in that instance the Developer will, as from the date of occupation of such Land Unit, be liable for all levies and Special levies pertaining to such Land Unit.

13. BUILDINGS AND ALTERATIONS

- 13.1. A Member and a Sub-Member, with the exception of the Developer, shall not be entitled to, without prior approval of the Local Authority and the Association:

- 13.1.1. erect any new buildings and/or structures of any nature whatsoever on any property within the Development;
 - 13.1.2. make any changes or alterations to existing buildings and/or structures on any property within the Development, including to the external colour scheme.
- 13.2. The Association shall only give its approval, as contemplated in clause 13.1:
- 13.2.1. after detailed plans of the proposed work has been submitted to the Association and the Sub-Association of which such Sub-Member is a Member;
 - 13.2.2. the Association and the relevant Sub-Association are satisfied that the proposed work is in accordance with the Design Guidelines, for the purposes of which the Trustees or their nominee shall be the sole arbiter and their decision shall be final and binding on the Member;
 - 13.2.3. the Association has approved their detailed plans of the proposed work in writing;
 - 13.2.4. after detailed plans of the proposed work has been submitted to the Local Authority, or any competent person nominated by the Local Authority;
 - 13.2.5. the Local Authority or its nominee(s) are satisfied that the proposed work is in accordance with the Sub-Association's Design Guidelines; and
 - 13.2.6. the Member or Sub-Member, whichever may be applicable, has made payment of any costs, including scrutiny fees referred to in clause 14.1.4 of these presents; which may be incurred in obtaining the approval, as well as a deposit in such amount as the Association may from time to time determine as security for any damage to any of the Common Property or Communal Property, which amount shall be held in trust by the Association until the completion by the Member, Sub-Member and/or its contractors of such work.
- 13.3. Upon completion of all such building and other activities, the Association shall, if it is satisfied that no damage has been effected by the Member, Sub-Member or any of its contractors to the Common Property, Communal Property and/or landscaped areas within the Development and that the work has been constructed in accordance with duly approved plans, release the building deposit to the Member or Sub-Member, excluding any interest thereon, which will accrue to the Association.
- 13.4. In the event that any landscaped area, Common Property and/or Communal Property has been damaged due to such work, the Member or Sub-Member shall within 15 (fifteen) days of having been requested to do so in writing by the Association, rectify the damage to the satisfaction of the Association, failing which, the Association shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the Association as a building deposit shall be utilised to defray the expenses of the independent contractor. If the damage caused exceeds the amount paid as building deposit, the Association shall be entitled to recover the shortfall from the Member or Sub-Member.
- 13.5. The provisions of this clause 13 of the Constitution shall not be interpreted as detracting from the sole and final responsibility of the Local Authority to approve or reject building plans.
- 13.6. The provisions of this clause 13 shall not apply to the Developer, whether before or after the completion of the Development.

14. ARCHITECTURAL AND DESIGN GUIDELINES

14.1. The Association shall be entitled to:

- 14.1.1. frame, implement and enforce conditions on Members in order to harmonise the architectural styles and design criteria of, and the materials and colours to be used in all buildings erected within the Development, including any refurbishments, alterations and additions thereto, subject to these not being in conflict with legislation;
- 14.1.2. do 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 necessary for any construction, renovation and/or alteration within the Development for submission to the Local Authority;
- 14.1.3. appoint such advisors as are necessary to scrutinise the relevant plans referred to herein;
- 14.1.4. impose a scrutiny fee on Members for the services as mentioned herein; and
- 14.1.5. amend, amplify, clarify or add to any of the provisions of the Design Guidelines.

14.2. The provisions of this clause shall not be applicable in relation to any of the works to be undertaken by the Developer prior to the completion of the Development.

14.3. The scrutiny fee that may be imposed on Members, in accordance with clause 14.1.4, are set out below and shall be subject to an annual escalation of 10% (ten percent) and may be reviewed by the Association:

- 14.3.1. For new submissions, a non-refundable submission fee of R8 050.00 (inclusive of VAT) shall be payable to the Controlling Architects;
- 14.3.2. For alterations or additions submissions, after plans have been approved, a non-refundable submission fee of R4 025.00 (inclusive of VAT) shall be payable to the Controlling Architects;
- 14.3.3. For rider plans, a non-refundable submission fee of R4 025.00 (inclusive of VAT) shall be payable to the Association.

15. RESPONSIBILITY FOR THE PROVISION OF SERVICES

15.1. The responsibility for the provisions of the services, utilities and amenities of whatever nature as may be provided by or on behalf of the Association for Members, Sub-Members or Occupants within the Development, excluding such services, utilities and amenities as are situated within the boundaries of a Sub-Association shall pass from the Developer to the Association on the date of the first registration of transfer of a Land Unit from the Developer to a purchaser who purchases a Land Unit from the Developer.

15.2. The Association shall be responsible for the provision of the management, maintenance, upkeep and repair of the Communal Property and the Common Property, as applicable.

15.3. It is recorded that the Association shall be responsible for the maintenance of the communal pool (if constructed) and the clubhouse, as indicated on the SDP.

15.4. The Board is responsible to ensure that the Association employs sufficient employees to fulfil all the obligations of the Association as provided for in this Constitution and to comply with the full responsibility as provided for in these presents.

16. DEALING WITH THE PRIVATE OPEN SPACES AND PRIVATE STREETS

Neither the whole, nor any portion of the private open spaces and private streets shall be:

- 16.1. sold, let, Alienated, otherwise disposed of, subdivided or transferred or mortgaged; or
- 16.2. subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, (save those enjoyed by the Members in terms hereof and the servitudes in favour of the Local Authority as required by the conditions of subdivision referred to in clause 1 above); without the specific prior written consent of the Local Authority and the sanction of a special resolution of the Association (and no Member shall be entitled to unreasonably vote against any such special resolution which may be proposed); or
- 16.3. built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities;

without the sanction of a special resolution of the Association.

17. RESPONSIBILITY FOR THE PRIVATE OPEN SPACES AND PRIVATE STREETS

- 17.1. The Association shall take transfer of the private open spaces and private streets and shall be responsible for the costs of transfer and be responsible for municipal rates and taxes and charges on the property from the formation of the Association until date of registration of transfer. Such transfer is to take place by no later than transfer of the last Land Unit.
- 17.2. The maintenance and upkeep of the landscaping, internal road and civil and electrical services are the responsibility of the Association.
- 17.3. The Association is aware and permits that an internal electrical network is installed in the common road reserve on the sidewalk and that the following conditions with regard to the services servitude will be inserted into the Title Deed of such properties namely:
 - 17.3.1. The Local Authority shall have the right to lay, relay, construct, erect, maintain, repair, renew, inspect, replace or remove such cable, lines, wires, miniature substations, distribution kiosk and allied equipment or appurtenances relating thereto in the road reserve/servitude area as it may in its sole discretion deem necessary for the purpose of the supply of electricity generally.
 - 17.3.2. The Local Authority, which terms shall include its employees, servants, contractors or its agents generally, shall at all times have the right of free and unobstructed access to and the right to be upon the property and any of its private open spaces and private streets at any time in the exercise of its aforementioned rights, and for those purposes shall be entitle to bring onto the property such vehicles, machinery or equipment generally as it may consider necessary, and to store excavated materials on the property on a temporary basis, should the Local Authority deem this to be necessary in exercising the rights conferred upon it in terms of this agreement.
 - 17.3.3. The Local Authority undertakes to take reasonable measures to protect the Owner's buildings, fencing and all other improvements to the property, and as far as reasonably possible, to carry out its operations in such way to minimise any interference with the Owner's normal use of

the property, and wherever reasonably possible, to notify the Owner in advance of any contemplated works or repairs to be undertaken.

- 17.3.4. No buildings, walls or structures of any description shall be erected within or over the road reserve/servitude without the prior written consent of the Local Authority, which consent it shall be entitled to withhold in its sole discretion. No plants with big or invasive root systems shall be planted in the road reserve/servitude area or on the property in such a way as to make possible the invasion of the servitude area by the root systems, without the consent in writing of the Local Authority's electrical engineering or such other official as may from time to time be designated to fulfil his function.
- 17.3.5. No excavation or filling shall be carried out within the road reserve/servitude area without the prior consent of the Local Authority, and the Local Authority shall be entitled to withhold such consent in its own discretion.
- 17.3.6. No stakes, pegs, pins or similar object shall be driven into the road reserve/servitude area.
- 17.3.7. No plant or material shall be stored in the road reserve/servitude area without the consent in writing of the Local Authority, nor shall the Owner do or permit to be done anything on the property or in the servitude area which may destroy, damage or undermine the cables or equipment which the Local Authority may in terms hereof lay or install in the servitude area or bring onto the property. Should the Local Authority incur any costs as a result of the non-compliance by the Owner with the provisions of this paragraph, the Local Authority shall be entitled to recover such costs from the Owner.
- 17.3.8. Nothing herein contained shall have the effect of derogating from any rights or from the protection to which the Local Authority or the Owner may be entitled from time to time by virtue of statute or at common law relative to the electrical installation in the servitude area. Without derogating from the generality of the foregoing, the provisions hereof shall not be construed so as to derogate from such rights or protection as may be afforded to the Local Authority as supplier of electricity (or "undertake") or of the Owner in terms of the Occupational Health and Safety Act No 85 of 1993, the Electricity Act No 41 of 1987, the Municipal Ordinance No 20 of 1974 or any regulations, bylaws or other subsidiary legislation promulgated thereunder.
- 17.3.9. Any damage caused to the services within the road reserve/servitude area by the Owner, his invitees, employees, servants or contractors, and any damage caused to the said services as a result of the failure of the Owner to comply fully with these conditions, shall be made good by the Local Authority at the cost of the Association.

17.4 The maintenance and repairs to the private open spaces and private streets shall be the sole responsibility of the Association, including the maintenance and repairs, to the satisfaction of the Local Authority, of the boundary wall and fence on the perimeter of the Development.

18. LOCAL AUTHORITY

The Association agrees to and acknowledges the following power of duties of the Local Authority:

- 18.1. If, for whatsoever reason, the Association becomes dysfunctional, the Local Authority may take over the duties and obligations of the Association.

18.2. In such an event as contemplated in clause 18.1, the Local Authority may take steps as it deems necessary and appoint a competent person to fulfil the functions of the Association. Any costs in this regard will be for the account of the Members.

18.3. The Local Authority may at all times gain access to the Development in order to maintain the public roads and services.

19. TRUSTEE COMMITTEE

19.1. There shall be a board of Trustees for the Association, which shall include a minimum of 5 (five) Trustees and a maximum of 7 (seven) Trustees, provided that:

19.1.1. There will be at least 1 (one) Trustee from each of the Sub-Associations;

19.1.2. During the Development Period, and at the first AGM, the Developer shall be entitled to elect Trustees and nominate a representative to act as Chairman. Notwithstanding the aforesaid, the Developer shall be entitled to remain the sole Trustee of the Association until completion of the Development and registration of the last Land Unit in the Development to a purchaser; and

19.1.3. After the Development Period, the Trustees shall be elected by the Members at the AGM and the Board shall determine the Chairman.

19.2. A Trustee shall be an individual who represents a Sub-Association, as such being a Member. A Trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.

19.3. In accordance with clause 19.1.2, the Chairman of the Board shall be the Developer or his nominee, who shall hold office until the completion of the Development, whereupon he shall retire, but shall be eligible for re-election.

19.4. A Trustee shall be required to:

19.4.1. perform the functions of office in good faith, honestly and in a transparent manner; and

19.4.2. at all times act in the best interest of the Association, and in such a way that the credibility and integrity of the Association and/or the Estate is not compromised in any way.

19.5. No Sub-Member may be nominated to become a Trustee if his Land Unit or any improvements thereon do not comply with the Constitution or any other rules or regulations made or promulgated by the Association, any Sub-Association or the Board.

19.6. A Trustee may not without the permission of the Board, disclose any privileged or confidential information of the Board to any person not authorised or entitled to receive the same.

19.7. A Trustee may not, except through the chairperson of the Trustees and/or the Board:

19.7.1. interfere in the management or administration of the development, unless mandated by the Board;

19.7.2. give or purport to give any instruction to any employee other than the Management Company;

19.7.3. obstruct or attempt to obstruct the Management Company or any of the office staff in the implementation of any decision or resolution of the Board; or

19.7.4. encourage or participate in any conduct which would cause or contribute to maladministration by the Board.

19.8. Should the Board find that a Trustee has breached any provision of this Constitution, SAC, the MCR or any of the rules or regulations aforesaid, the Board may:

19.8.1. issue a formal warning to the Trustee concerned;

19.8.2. reprimand the Trustee;

19.8.3. suspend the Trustee;

19.8.4. request the Trustee to resign, or

19.8.5. request the Association to remove the Trustee from the Board.

19.9. The Developer, during the Development Period, and thereafter, the Board may appoint a Professional Trustee to serve as a Trustee on the Board for a predetermined period of time, as and when the Board is of the opinion that the need for such a Professional Trustee has occurred. The Professional Trustee must be familiar with the operation and management of the Development. The Professional Trustee may attend Board meetings but will only serve in an advisory capacity and will no voting rights whatsoever. The Developer, or the Board, as the case may be, must agree on the fee structure of the Professional Trustee prior to his appointment and is subject to the allowance for professional fees in the budget of the Association and the availability of such funds.

19.10. During the Development Period, the Developer will be entitled to nominate at least 1 (one) Trustee to serve as a Trustee on the Board of every Sub-Association, irrespective of whether the Developer owns a Land Unit in such a Sub-Association, which Trustee will have all the rights and obligations of a normal elected Trustee of such a Sub-Association. During the Development Period, the Trustee representing the Developer must, at the election of the Developer, serve as chairperson of any relevant Sub-Association.

20. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

20.1. Save as set forth in this clause 21 below, each Trustee shall continue to hold office until the AGM next following his said appointment, at which meeting each Trustee shall be deemed to have retired from office as such, and shall be eligible for re-election to the Trustee Committee at such meeting.

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

20.2.1. his estate being sequestrated (provisionally or finally), or surrendered;

20.2.2. him making any arrangement or compromise with his creditors or committing any act of insolvency;

20.2.3. his conviction for any offence involving dishonesty;

20.2.4. him becoming of unsound mind or being found lunatic;

- 20.2.5. his resignation from such office in writing;
- 20.2.6. him becoming disqualified to act as a director of a company in terms of the Companies Act 71 of 2008;
- 20.2.7. his removal from office by a special resolution of the Members, 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 is no longer a Trustee has been recorded in the minute book of the Trustee Committee.

20.3. Upon any vacancy occurring in the Trustee Committee prior to the next AGM, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee, or by another Trustee nominated by the Developer if such shall occur during the Development Period.

20.4. The Board shall be entitled to co-opt any person chosen by them to act as Trustee, subject always to the exclusive right of appointment and removal by the Developer during the Development Period.

21. OFFICE OF TRUSTEES

21.1. The first Trustees must be appointed at the first GM, and such office bearers shall hold their respective offices until the first AGM following the date of their appointment, provided that any such office shall *ipso facto* be vacated by the Trustee holding such office upon him/her ceasing to be a Trustee for any reason.

21.2. The Developer shall remain the sole Chairman of the Trustees until completion of the Development and the provisions of clause 44 shall apply. Thereafter the Trustees shall be entitled, within 60 (sixty) days of the holding of the AGM, to meet and elect from amongst themselves, a new Chairman and if necessary, a Vice-Chairman, who shall hold their respective offices until the AGM held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall *ipso facto* be vacated by the Trustee holding such office upon him ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office.

21.3. The Chairman shall have a casting, as well as deliberative vote at Trustees meetings, save for where there are only 2 (two) Trustees.

21.4. Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all GM's of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall be entitled to vote at any such meetings.

21.5. The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.

21.6. 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 Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration in respect of the performance of such duties.

22. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 22.1. Subject to the express provisions of these presents, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by these presents required to be exercised or done by the Association in GM, subject nevertheless to such regulations as may be prescribed by the Association in a GM from time to time, provided that no regulation made by the Association in a GM shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 22.2. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 22.3. The Trustee Committee shall have the right to co-opt onto the Trustee Committee any Member(s) chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 22.4. The Trustee Committee may, should it be decided, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as it shall decided from time to time.
- 22.5. The Trustee Committee may make regulations and rules, consistent with this Constitution, or any regulations or rules prescribed in the Association in a GM:
- 22.5.1. as to disputes generally;
 - 22.5.2. for the furtherance and promotion of any of the objects of the Association;
 - 22.5.3. for the better management of the affairs of the Association;
 - 22.5.4. for the advancement of the interests of Members;
 - 22.5.5. for the conduct of Trustee Committee meetings and GMs; and
 - 22.5.6. to assist it in administering and governing its activities generally, and shall be entitled to cancel, vary or modify any of the same from time to time.
- 22.6. The Trustees shall cause all moneys received by the Association to be deposited or credited to an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a GM of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or in investment on behalf of the Association.
- 22.7. Any act performed by the Trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any Trustee, be as valid as if such Trustee had been duly appointed or had duly continued in office.
- 22.8. At the first meeting of the Trustees or so soon thereafter as is possible and annually thereafter, the Trustees shall take steps to insure any buildings and improvements to the private area, to the full replacement value thereof against:
- 22.8.1. Fire, lighting and explosion;

- 22.8.2. Riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
- 22.8.3. Storm, tempest and flood;
- 22.8.4. Earthquake;
- 22.8.5. Aircraft and other aerial devices or articles dropped therefrom;
- 22.8.6. Bursting or overflowing of water tank, apparatus or pipes;
- 22.8.7. Impact with any of the said buildings or improvements by any road vehicle;
- 22.8.8. Housebreaking or any attempted threat;
- 22.8.9. Loss of occupation or loss of rent in respect of any of the above risks; and
- 22.8.10. Such other perils or dangers as the Trustees or any Owner may deem appropriate.

22.9. At the first meeting of the Trustees, or as soon thereafter as is possible, the Trustees shall take all reasonable steps to insure the Owners and the Trustees and to keep them insured against liability in respect of:

- 22.9.1. death, bodily injury or illness; and
- 22.9.2. loss of, or damage to property occurring in connection with the private area, for a sum of liability of not less than R100,00 (one hundred Rand), which sum may be increased from time to time as directed by the Owners in a GM.

22.10. The Trustee Committee shall further have the power:

- 22.10.1. to require that any construction of any sort in the Estate shall be supervised so as to ensure that the provisions of this Constitution, the Building Manual and the MCR, or any other rules or regulations, are complied with, and that all such construction is performed in a proper and workmanlike manner;
- 22.10.2. to issue instructions in accordance with the operational EMP, if any, and to ensure that such plan is at all times complied with.

23. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 23.1. The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 23.2. Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees agreed upon, and have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter.
- 23.3. The quorum necessary for the holding of any meeting of Trustee Committee shall be 50% (fifty percent) of the total number of Trustees.

- 23.4. The Chairman shall preside as such at all meetings of the Trustee Committee, provided that, should at any meeting of the Trustee Committee the Chairman not be present with 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman 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 Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 23.5. A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee minute book to be kept in accordance *mutatis mutandis*, with the provisions of law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee minute book shall be open for inspection at all reasonable times by a Trustee, the Auditors, and the Members.
- 23.6. All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 23.7. Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 23.8. 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 Trustee Committee duly convened.
- 23.9. No document, signed on behalf of the Association shall be valid and binding unless it is signed by a Trustee and the Management Company or 2 (two) Trustees.

24. FIRST, ANNUAL AND GENERAL MEETINGS OF THE ASSOCIATION

- 24.1. The Developer shall, within 60 (sixty) days of the transfer of 60% (sixty percent) or more of the Land Units arising from the subdivision of the Land, or within 2 (two) years of the transfer of the first Land Units, whichever is the earlier, call a meeting of the Members of the Association.
- 24.2. The Developer shall within 60 (sixty) days of the meeting referred to in 23.1 notify the Local Authority that the meeting has taken place and provide the Local Authority with a copy of the minutes of the meeting.
- 24.3. The Trustees of the Association shall, after the first meeting referred to in clause 24.1 and within 6 (six) months after the end of its financial year, arrange an AGM of the Association which is to be held at least once every year thereafter.
- 24.4. All GM's other than AGM's shall be called SGM's.
- 24.5. The Trustee Committee, may, whenever they think fit, convene a SGM.

25. NOTICE OF MEETINGS OF THE ASSOCIATION

25.1. An AGM and a meeting called for the passing of a special resolution, shall be called by 14 (fourteen) days' notice in writing or by email at the least, and a SGM, other than one called for the passing of a special resolution, shall be called by 21 (twenty one) days' notice in writing or by email at the least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special 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 Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a GM of the Association shall, notwithstanding that it is called by shorter notice than the specified in these presents, be deemed to have been duly called if it is so agreed:

25.1.1. in the case of a meeting called as the AGM, by all the Members entitled to attend and vote there at; and

25.1.2. in the case of a SGM, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy five percent) of the total voting rights of all Members.

25.2. 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 these presents, 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.

26. VENUE OF GENERAL MEETINGS

GM's of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time.

27. QUORUM FOR GENERAL MEETINGS

27.1. No business shall be transacted at any GM unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any GM shall be such of the Members entitled to vote, as together for the time being, represent 20% (twenty percent) of the total votes of all Members of the Association entitled to vote, for the time being save that not less than 3 (three) Members must be personally present.

27.2. If within half an hour from the time appointed for the holding of a GM, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and if a quorum is not present within half an hour of the time appointed for the meeting, the Owners present in person or by proxy and who are entitled to vote shall form a quorum.

28. AGENDA AT GENERAL MEETINGS

In addition to any other matters required by these presents to be dealt with at an AGM, the following matters shall be dealt with at every AGM:

28.1. the consideration of the Chairman's report to the Trustee Committee;

28.2. the election of the Trustee Committee;

28.3. 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;

- 28.4. the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 28.5. the consideration of the report of the Auditors;
- 28.6. the consideration of the total levy (as referred to in clause 12) for the calendar year during which such AGM takes place;
- 28.7. the consideration of insurance; and
- 28.8. the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the AGM.

29. PROCEDURE AT GENERAL MEETINGS

- 29.1. The Chairman shall preside as such at all GM's, provided that should he/she not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman 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 Chairman for the meeting, who also thereupon exercise all the powers and duties of Chairman in relation to such meeting. The Management Company may also chair any GM.
- 29.2. The Chairman may, with the consent of any GM 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.
- 29.3. 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.
- 29.4. Except as otherwise set forth in these presents, all GM's shall be conducted in accordance with generally accepted practice.

30. PROXIES

- 30.1. A Member may be represented at a GM by a proxy, who must himself be a Member of the Association.
- 30.2. To be effective at a GM or adjourned GM, a proxy together with the original or a notarially certified copy of a power of attorney or other authority under which it is signed must be lodged with the Association at least 48 (Forty Eight) hours before the commencement of the GM or adjourned GM concerned but the Board may from time to time determine that such documents:
 - 30.2.1. are to be lodged at a particular place;
 - 30.2.2. are to be lodged a certain number of hours, not exceeding 48 (forty eight) in all, before the meeting;

30.2.3. may be lodged at any time before or during the meeting. Notwithstanding the foregoing the chairperson of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

30.3. A proxy will be valid for the specific GM it was granted and not for any other meeting.

30.4. The instrument appointing a proxy shall be in such form that is acceptable to the chairperson of the GM or adjourned GM in respect of which it is tendered and the decision of the chairperson as to what is or is not acceptable will be binding on all the Members.

31. VOTING AT GENERAL MEETINGS

31.1. Only Members shall be entitled to vote on matters raised at GM's.

31.2. At every GM:

31.2.1. each Member, present in person or by proxy and entitled to vote, shall have 1 (one) vote;

31.2.2. during the Development Period the Developer shall as Member be entitled to 150 (one hundred and fifty) additional votes in addition to its one vote.

31.3. Save as provided in this Constitution, no person other than a Sub-Member duly registered and who shall have paid every levy, Special levy and other amount, if any, which may be due and payable to the Association and Sub-Association in respect of or arising out of his membership, and who is not suspended, shall be entitled to be present or to vote on a matter, either personally or by proxy at any GM.

31.4. Voting at GM's shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded by the chairperson. If a poll is demanded it shall be taken in such a manner as the chairperson may direct.

31.5. Subject to the provision of this Constitution, all resolutions shall be passed by Ordinary Resolution.

31.6. If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter, such difficulty or dispute is to be determined by the chairperson whether or not scrutineers might have been appointed to count the votes, and his decision shall be final and conclusive.

31.7. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:

31.7.1. written notice of the revocation is received by the Association prior to the meeting concerned,
or

31.7.2. the chairperson agrees to accept written or oral notice of such revocation at the GM.

31.8. No objection shall be raised to the admissibility of any vote except at the GM or adjournment GM at which the vote objected to is cast and every vote not disallowed at such GM shall be valid for all purposes. Any such objection made in due time shall be referred to the chairperson of the GM whose decision shall be final and conclusive.

31.9. A declaration made in good faith by the chairperson of a GM to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.

31.10. Any resolution which could be passed at GM, other than a special resolution or a resolution to remove a Trustee or Auditor, may be passed without a GM being held if one or more copies of the resolution are signed by or on behalf of a simple majority of all the Members entitled to vote at a GM.

32. SPECIAL RESOLUTION

32.1. A resolution by the Association shall be a special resolution if at a GM of which not less than 14 (fourteen) clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which Members holding in aggregate not less than three-fourths of the total votes of all the Members entitled to vote at the meeting, are present in person or by proxy, and the resolution has been passed on a show of hands, by not less than three-fourths of the number of the Members entitled to vote at the meeting who are present in person or by proxy, or where a poll has been demanded, by not less than three-fourths of the total votes to which the Members present in person or by proxy, are entitled.

32.2. If less than three-fourths of the total votes of all the Members entitled to attend the meeting and vote at the meeting, are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than 14 (fourteen) days and not later than 30 (thirty) days after the date of the meeting and the provisions of clause 29.3 shall apply in respect of such adjournment.

32.3. At the adjourned meeting, the Members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such Member shall be deemed to be a special resolution even if less than one-fourth of the total votes are represented at such adjourned meeting.

33. MANAGEMENT COMPANY

33.1. The Developer shall be entitled (but not obliged, and at their own discretion) to manage or to appoint a Management Company for the Development and the Sub-Associations, during the Development Period, which appointment shall be valid and binding on the Association during the Development Period and for a period of 5 (five) years after the termination of the Development Period. For the avoidance of doubt, it is recorded that only one Management Company may be appointed for the whole of the development, irrespective of whether such appointment is made during the Development Period, or thereafter.

33.2. The Developer has the irrevocable power and authority to appoint the Management Company of the development during the aforesaid period and to determine the terms and conditions of such appointment.

33.3. Subject to the provisions of this Constitution and the terms of its appointment, the Management Company shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Association in a GM, and may exercise all such powers of the Association and do all acts on behalf of the Association itself.

33.4. During the Development Period, the Developer will determine the fees or remuneration to be paid by the Association to the Management Company and the other terms and conditions of its appointment,

which fees will be agreed upon by the parties to the relevant agreement, provided that fees thus payable must be allowed for in the budget of the Association.

- 33.5. After the Development Period and upon the termination of an appointment of the Management Company by the Developer, or in the event that an existing Management Company's appointment is terminated, a successor Management Company shall from time to time be appointed by the Association in a GM and the Members shall determine the fees or remuneration to be paid by the Association to such Management Company and all the other terms and conditions of their appointment, it being contemplated that at all times the affairs of the Association will be entrusted in whole or part to a professional Management Company with appropriate executive powers so as to conform to the requirements of good corporate governance.

34. SECURITY COMPANY

- 34.1. It is recorded that the Developer, during the Development Period and thereafter the Board, will be entitled to appoint a single Security Company during the Development Period on terms and conditions to be determined by the Developer or the Board, as the case may be, in its sole discretion.
- 34.2. The Association and each Sub-Association, as the case may be, may only utilize the services of the single Security Company appointed by the Developer, during the Development Period, and thereafter by the Board, for the whole of the development.
- 34.3. The services of the appointed Security Company, must be utilised by the Management Company.
- 34.4. The Security Company may utilise camera equipment (if applicable) within the development, subject to the condition that the privacy of each Sub-Member/Occupant of a Land Unit, must at all times be respected and honoured as far as possible.
- 34.5. The security services must at all times be rendered by such Security Company at market related prices.
- 34.6. The Association and/or the Developer will not accept any responsibility or liability in respect of any damages caused by the Security Company and/or any of its employees or vehicles utilised.

35. AGREEMENTS WITH THIRD PARTIES AND/OR OTHER PROFESSIONAL OFFICERS

- 35.1. The Developer, during the Development Period and thereafter the Board, may enter into agreement with any third party for the provision of facilities or services to or for the Members and/or the Sub-Members, and may levy charges in respect of the provision thereof, or may pass on such costs direct to the Sub-Members. The Members and Sub-Members will accordingly be bound by all agreements/appointments this done by the Developer and any agreements concluded by the Developer for the leasing or purchase of all equipment or infrastructural assets, or for the provision of security for the development, or for the provision of any other service or supplies for the development which the Developer may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or outgoings on an ongoing basis. It is recorded that, without limitation, the Developer intends to conclude agreements for the maintenance of the landscaping and gardens, the hire or supply of electronic surveillance equipment, electric fencing, telephone and telecommunication services and monitoring.
- 35.2. Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the right to engage on behalf of the Association, the services of accountants, Auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the

Trustee Committee shall decide, subject to any of the provisions of these presents, provided that any expenditure incurred in respect of the above, shall not exceed 5% (five percent) of the total annual levy for the year in question, unless authorised by a special resolution.

36. ACCOUNTS

- 36.1. The Association or the Trustee Committee, may from time to time make reasonable condition and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 36.2. The Trustee Committee shall cause proper accounting records to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the activities of the Association.
- 36.3. At each AGM, the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors if appointed.
- 36.4. The accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors at least once a year.
- 36.5. The Trustee Committee shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by Members or Sub-Members not being Trustees. No one other than a Trustee shall have any right of inspecting any accounting records or documents of the Association, except as authorised by the Trustee Committee.

37. SERVICE OF NOTICE

- 37.1. Notices may be given by the Association to any Member or Sub-Member either at the address indicated by him, or by sending it by post in a prepaid letter addressed to such Member or Sub-Member at the address (if any) within the Republic of South Africa supplied by him to the Association for the giving of notices to him.
- 37.2. Notice of every GM shall be given:
 - 37.2.1. to every Member of the Association;
 - 37.2.2. to the accounting officer for the time being of the Association;
 - 37.2.3. to any Professional Trustee;
- 37.3. Any notice by post shall be deemed to have been served at the time when it was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the notice was properly addressed and posted to the last known address of the Member.

- 37.4. The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 37.5. When a given number of days' notice or notice extending over any other period is required to be given, the day on which it is served or deemed to be served and the day for which it is given shall not be counted in such number of days or period.

38. INDEMNITY

- 38.1. The Developer, the Trustees, the Professional Trustees, the Auditors and the Management Company, and each servant, agent or employee of the Association shall be and they are hereby indemnified by the Association against any liabilities *bona fide* incurred by them in their respective capacities in the proper discharge of any of their duties including, without limitation, the costs of defending any proceedings, civil, criminal or otherwise arising out of the due execution by them of their duties, and including all costs, losses and expenses, including traveling expenses which they or any of them may incur or becomes liable for by reason of any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.
- 38.2. A Trustee, the Developer or Professional Trustee shall not be liable for the act or omission of the Management Company, Auditors or of any of the other Trustees whether in their capacity as such or as chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which monies of the Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited, or for any loss or damage occasioned by any *bona fide* error of judgement or oversight on his part, or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties in relation thereto, unless same shall have occurred as a result of *mala fides*, breach of duty or breach of trust.
- 38.3. The Developer and the Management Company is hereby irrevocably indemnified against any loss or any possible damages or claim for damages that the Association, any Sub-Association, Member, Sub-Member, and/or Occupant of any Land Unit may suffer as a result of any installation of any service or facility, including but not limited to the swimming pool (if applicable), play equipment, gym equipment, irrigation dam, within the development or any act or conduct by the Developer in the exercising of the development rights, whether that such damage was caused by any wilful or negligent act of the Developer.
- 38.4. Any person using any of the services, Common Property, Communal Property, communal swimming pool (if applicable), clubhouse, or any other facilities of the Association within the development, does so entirely at his own risk.
- 38.5. The right of admission to the development is, during the Development Period, reserved in favour of the Developer and the Association and thereafter in favour of the Association.

39. BREACH

- 39.1. Should any Member:
- 39.1.1. fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation made there under and remain in default for more than 7 (seven) days after being notified in writing to do so by the Trustees or Management Company; or

- 39.1.2. commit any breach of any of the provisions of this Constitution or regulation made there under and fail to remedy that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Trustees or Management Company;

The Trustees shall have the right:

- 39.1.3. to institute legal proceedings on behalf of the Association against such Member for the payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made there under, as the case may be; or

- 39.1.4. to suspend all or any services to the Land Unit owned by that Member; and/or

- 39.1.5. to impose a penalty fine of an amount deemed to be reasonable by the Trustees for payment by the Member. Any penalty amount payable by an Owner and/or Occupant to the Association in terms of the MCR shall be deemed an additional levy in respect of such Member's Land Unit.

- 39.2. Should the Trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation made there under, then without prejudice to any other rights which the Trustees or the Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Association, including attorney/client charges, administration, tracing fees and collection commission.

- 39.3. Without prejudice to all or any of the rights the Trustees or the Association granted under this Constitution, should any Member fail to pay any amount due by that Member on the due date, then such Member shall pay interest thereon calculated at the prime interest rate plus 5% (five percent) per annum, calculated from the due date for payment until the actual date of payment of such amount.

40. ARBITRATION

- 40.1. Provided that no resolution can be reached within 14 (fourteen) days of an aggrieved party giving the other party notice thereof, any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to:

- 40.1.1. any matter arising out of this Constitution; or

- 40.1.2. the rights and duties of any of the parties mentioned in this Constitution; or

- 40.1.3. the interpretation of this Constitution;

may be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

- 40.2. Arbitration shall be held in Cape Town 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 demanded.

- 40.3. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of arbitration in such amount and form as the arbitrator may determine, failing which, the arbitration shall not be proceeded with.

- 40.4. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

40.4.1. primarily an accounting matter – an independent accountant;

40.4.2. primarily a legal matter – a practicing counsel or attorney of not less than 10 (ten) years' standing;

40.4.3. any other matter – an independent and suitably qualified person appointed by the Auditors; as may be agreed upon between the parties to the dispute.

40.5. If agreement cannot be reached on whether the question in dispute falls under clauses 40.4.1, 40.4.2 or upon a particular arbitrator in terms of clause 40.4.3, within 3 (three) business days after the arbitration has been demanded, then:

40.5.1. the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 40.4.1, 40.4.2 or 40.4.3; or

40.5.2. the President for the time being of the Law Society of the Cape of Good Hope 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.

40.6. The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

40.7. The decision of the arbitrator shall be final and binding and may be made an order of the High Court of South Africa, Cape Town or its successor/s upon the application of any party to the arbitration.

40.8. Notwithstanding anything to the contrary contained in clauses 40.1 to 40.7 inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

41. AMENDMENTS OF THE CONSTITUTION

41.1. This Constitution, or any part thereof, shall not be repealed or amended save by a special resolution adopted at an AGM or a SGM of the Members and subject further to the prior written consent of the Local Authority being obtained for such amendment.

41.2. The Constitution of the Association and any amendment thereof must be lodged with the Local Authority and the latest copy duly lodged with the Local Authority, which the Local Authority has certified, is presumed to contain the operative provisions of the Constitution.

41.3. The Local Authority is exempt from liability for any damage which may be caused by its certification of a Constitution of an owners' association or an amendment thereof or by the loss of a Constitution lodged with the Local Authority.

42. STATUTORY AND GENERAL

42.1. An Owner:

- 42.1.1. shall not use his Erf or permit to be used, in such a manner or for such purpose as shall be injurious to the reputation of the development;
- 42.1.2. shall not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any licence, relating to or affecting the occupation of the Land Unit, or the carrying on of business on the property, or so contravene or permit the contravention of the conditions of title applicable to his Land Unit or any other Land Unit;
- 42.1.3. shall not make alterations which are likely to impair the use and enjoyment of other Erven or the private open spaces and private streets;
- 42.1.4. shall not do anything to his Land Unit which is likely to prejudice the harmonious appearance of the development;
- 42.1.5. shall not use any private open spaces and private streets or portion thereof for any purpose other than intended in terms of its zoning and by resolution of the Association;
- 42.1.6. shall be bound by the architectural and the Design Guidelines for any erections or additions to any structure, including the covering and enclosure of patios.
- 42.2. No Member will be entitled to demolish, paint or change or in any way decorate or add to any part or portion of any fence that the Developer may construct on the perimeter of the development.
- 42.3. The Trustee Committee will be the only persons entitled to perform any of the actions referred to in 42.2 above in respect of such fence.
- 42.4. No alteration or addition or change to the colour scheme may be made to any building or structure on the Land Unit without the consent of all the Members of the Association.
- 42.5. The provisions of these rules and of the MCR, and the duties of the Owner in relation to the use and occupation of Sections and Common Property shall be binding on the Owner of any Erf and any lessees or other Occupant of any such property and it shall be the duty of the Owner to ensure compliance with the rules by his lessee or Occupant, including employees, guests and any Member of his family, his lessee or his Occupant.
- 42.6. If any Owner fails to repair or maintain his Land Unit in a state of good repair (which shall include keeping the Land Unit in a tidy condition) and any such failure persists for a period of 30 (thirty) days after the giving of written notice by the Trustees or the Management Company on their behalf, to repair or maintain, the Association shall be entitled to remedy the Owner's failure and to recover the reasonable costs of doing so from such Owner; in addition to any penalties which may be imposed upon such Owner.
- 42.7. The Trustees or the Management Company or their employees, agents or contractors shall be entitled and shall have the right to enter any Land Unit for the purpose of repairing, maintaining or installing any facilities, services, equipment or structures relating to the provision of security or any other service to the development generally.
- 42.8. The Developer, during the Development Period, and thereafter, the Board, may appoint only 1 (one) service provider for the provision of any kind of service or product to the development, the Members, the Sub-Members, any Sub-Association or Occupant. The Members, Sub-Associations, Sub-Members and/or Occupants will be bound by such appointment being made. This condition will be binding and of full force and effect on all appointments to be made or agreements to be concluded with such

service provider, as may be provided for in the Constitution, or in the discretion of the Developer during the Development Period, and the Board, after the Development Period.

42.9 All the Land Units are subject to the servitudes as mentioned in the Title Deed of the Land, the approved General Plan in respect of each phase of the development and all servitudes as may be imposed by the Local Authority and/or during the Development Period, by the Developer. All of the above servitudes include the unrestricted right of access over any Land Unit in favour of the holder of any servitude.

43 EFFECTIVE DATE

This Constitution shall come into force when the first Land Unit in the development is registered in the Deeds Office.

44 STATUS OF DEVELOPER

Until such time as the completion of the development, the following provisions shall apply in addition to the conditions in these presents:

44.7 The Developer shall be entitled:

44.7.1 to remain the sole Trustee/Chairman of the Association until completion of the development, but reserves the right to also nominate and appoint a pro rata proportion of the Trustees to the Board, such proportion being the same proportion as exists between the total number of all the Erven and the total number of all the Erven of which the Developer is the registered Owner at the relevant time, subject to the provision that until completion of the development has been achieved, the Developer shall always be entitled to appoint at least one Trustee to the Board;

44.7.2 at a meeting of the Members, the Developer shall hold a number of votes equal to the number of properties owned at the time of voting plus an amount of votes equal to 50% (fifty percent) of the Erven sold, whether such vote is by show of hands or poll. At a meeting of the Trustees, the Developer (as the Chairman of the Trustees) will have an amount of votes equal to the total number of Trustees appointed, whether such vote is by poll or show of hands;

44.7.3 to require that the Trustee Committee enforces the rights granted to it in terms of these presents against any Member or Sub-Member who, in the opinion of the Developer, is not complying with his obligations as a Member or Sub-Member, and in particular, within restricting the finality of the a foregoing, has failed to maintain all building and other improvements on its property by giving such Member or Sub-Member written notice in which his failure to comply with the particular provisions of these presents is detailed and calling upon him to remedy such failure within a prescribed period of not more than 30 (thirty) days; failing which, the Developer shall be entitled at the sole cost of that Member or Sub-Member to carry out all such work as may be required to maintain such building and other improvement on its property;

44.7.4 to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the development including the private open spaces and private streets, the private road area and/or the exterior walls (if any) of the development, subject to the regulations and by-laws of Local Authority pertaining to signage from time to time;

44.7.5 to further develop land adjacent to the development, during and after the Development Period. In this instance, the Constitution must be amended by the Developer, with the approval of the Local Authority, to provide for the addition of land to the development. The Local Authority may prescribe conditions pertaining to the incorporation of the additional land. It is recorded that the Owners or Occupants of the additional land, will *ipso facto* become Sub-Members of the Association and will be subject to all the rights and obligations of a Sub-Member, as provided for in this Constitution, including, but not limited to, the payment of levies. The details of the additional land must be announced to the current Members at a GM. No Member or Sub-Member will have the right to vote or object to the requisite addition of additional land to the development, provided that the Developer confirm to the conditions imposed by the Local Authority or any other relevant authority.

44.7.6 to amend this Constitution during the Development Period, without the need to be approved by the Association in GM, so as to comply with the requirements from time to time of the Local Authority in relation to the conditions of establishment for the development or any subdivisions thereof, or any other land which may be added to the development by the Developer, in its sole discretion. Any such amendments will only be communicated by the Developer to the Management Company and the Developer will not be obliged to communicate these changes to the Members;

44.7.7 to scrutinise, approve and submit all building plans to the relevant authority to obtain the relevant approvals until the completion of the development;

44.7.8 to cede and assign all or any of its rights or obligations in terms of the Constitution, in writing, to any transferee of its choice and such transferee shall be entitled to take transfer of all such rights and obligations;

44.7.9 to abandon, in whole or in part, any of its rights, at any time; provided that it is done in writing.

44.8 Neither the Trustee Committee nor any Member of the Association shall prevent or hinder in any way the Developer from:

44.8.1 gaining access to and egress from the development;

44.8.2 continuing any building operations at the development; and/or

44.8.3 marketing and selling any of its unsold Land Units, including the advertisement of the sale of such Land Units on the private open spaces and private streets and/or at the development.

44.9 Upon the completion of the development, the rights of the Developer in terms of the provisions of this clause 44 shall immediately terminate *ipso facto* and no longer be of any force and effect.

44.10 In the event of a dispute as to whether or not the development has been completed as envisaged herein, the decision of the architect appointed by the Developer for the development shall be final and binding.

44.11 No provision of this Constitution shall be added to, amended, substituted or repealed without the prior written consent of the Developer for the duration of the Development Period.

45 STATUS OF THE ASSOCIATION

The Association shall be an association:

- 45.7 within legal personality, capable of suing and being sued in its own name as has perpetual succession;
- 45.8 none of whose members in their personal capacity shall have any right, title or in the funds or assets of the association, which shall vest in and be controlled by the Trustee Committee in terms hereof; and
- 45.9 not for profit, but for benefit of the Owners and Occupants of properties in the development.

46 RIGHTS OF REGISTERED MORTGAGEES

- 46.7 No application may be made to the High Court for the appointment of an Administrator of the Association, unless notification is given and notice by the respective mortgagees.
- 46.8 The Trustee Committee shall cause copies of the schedules, estimates, audit statements and reports to be delivered to the respective mortgagees and at least 14 (fourteen) days before the date of the AGM at which they are to be considered.
- 46.9 All mortgagees must be notified within 30 (thirty) days from the date of any change to the Management Company, together with a copy of the agreement between the Association and the Management Company
- 46.10 The Association hereby irrevocably waives, in favour of any mortgagee, any rights or restrictive conditions registered in the title deed of any Land Unit in its favour, in the instance of foreclosure procedures being instituted by the relevant mortgagee against any such Sub-Member.

ANNEXURE A – SITE DEVELOPMENT PLAN