

CONSTITUTION OF THE LA VERITAS HOME OWNERS' ASSOCIATION

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1. DEFINITIONS

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

- 1.1 'Alienate' shall mean to divest of ownership of an Erf, or part thereof, or share therein, by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency, liquidation, prescription, expropriation or otherwise and 'Alienation' shall have a corresponding meaning.
- 1.2 'Annexures' shall mean the annexures to the Constitution, as may be prepared and amended from time to time, that apply to the La Veritas Home Owner`s Association that are incorporated into the Constitution including the Rules the regulate conduct on the estate and the annexures set out therein as follows:
 - 1.2.1 the Security Policy contained in Annexure A; and
 - 1.2.2 the Contractors` Code of Conduct contained in Annexure B-;
 - 1.2.3 the Building Guidelines and Regulations as contained in Annexure C; and
 - 1.2.4 the Rules of the Disciplinary Committee contained in Annexure D.
- 1.3 'Architect/s' shall mean the architect/s of the Association from time to time.
- 1.4 'Association' shall mean the La Veritas Home Owners' Association.
- 1.5 'Auditors' shall mean the auditors of the Association from time to time.
- 1.6 'Budget' shall mean the estimate of income and expenditure of the Association in respect of a financial year.
- 1.7 'Business Day' shall mean a weekday other than a Saturday, Sunday or a Public Holiday officially recognised in the Republic of South Africa.
- 1.8 'Chairperson' shall mean the chairperson of the Association and of the Trustees from time to time.
- 1.9 'City' shall mean the municipality of the City of Cape Town as defined in the City's Planning By-Law and its successors in title.
- 1.10 'City's Planning By-Law' shall mean the City of Cape Town Municipal Planning By-Law, 2015 as may be amended from time to time.
- 1.11 'Common Property' shall mean Erf 38523 Bellville, comprising the private road and private open space in the Development, inclusive of all Services thereon or thereunder.

- 1.12 'Constitution' shall mean this Constitution of the Association, including the Annexures thereto, as may be amended from time to time.
- 1.13 'Design Guidelines' shall mean the architectural and landscaping guidelines of the Association referred to in clause 10 of the Constitution and contained in Annexure A hereto, and as may be amended from time to time.
- 1.14 'Developer' shall mean Ikal Development Trust (Registration No. T3596/94).
- 1.15 'Development' shall mean the Development known as La Veritas Estate resulting from the subdivisions of Erf 38420 Bellville to comprise Erven 38429 to 38523 Bellville as reflected on General Plan S.G. No. 2027/2000, and as subsequently amended to comprise Erven 38429 to 38451, 38453 to 38473, 38475 to 38523 Bellville, and Erf 38528 Bellville and Erf 39125 Bellville.
- 1.16 'Development Management Scheme' shall mean the Development Management Scheme as contemplated in the City's Planning By-Law from time to time.
- 1.17 'Disciplinary Committee' shall mean a committee formed by the Trustees and Members to consider any member violation of the Constitution.
- 1.18 'Electronic Communication' shall have the meaning set out in section 1 of the Electronic Communications and Transactions Act.
- 1.19 'Electronic Communications and Transactions Act' shall mean the Electronic Communications and Transactions Act, No. 25 of 2002, as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.
- 1.20 'Erven' shall mean the Erven in the Development, but excluding the Common Property and 'Erf' shall mean any one of them.
- 1.21 'Financial Institution' shall mean a registered financial institution as defined in section 1 of the Financial Institutions (Protection of Funds) Act.
- 1.22 'Financial Institutions (Protection of Funds) Act' shall mean the Financial Institutions (Protection of Funds) Act, No. 28 of 2001, as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.
- 1.23 'Improvements' shall mean any buildings or structures constructed or to be constructed on an Erf, including any alterations, additions or attachments to any existing buildings and/or structures on an Erf, and changes to external finishes, material and/or the colour scheme: provided that the a foregoing shall not give rise to any right or expectation to erect any building

or structure that is not in accordance with the approvals, the Design Guidelines and/or the plans that have been duly approved in accordance with the requirements of the Constitution.

- 1.24 'Income Tax Act, shall mean the Income Tax Act, No. 58 of 1962 as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.
- 1.25 'Internal Engineering Service' shall mean the system for the provision of water, electricity, gas, roads or storm water drainage, or collection and removal of solid waste or sewerage, within the Development operated by the Association, but excluding any internal engineering service which may be the responsibility of the City.
- 1.26 'Invitees' shall mean the family members, guests, visitors, workers, contractors, agents, service providers, or other invitees of Members or Lessees, present in the Development.
- 1.27 'In writing' shall mean written, printed or lithographed or partly one and partly the other, and other modes of representing or producing words in visible form, including Electronic Communication.
- 1.28 'Juristic person' shall mean a company, close corporation, trust or other legal or juristic person.
- 1.29 'Lessee' shall mean the lessee and/or other occupant in respect of a Property in the Development, including the Invitees of the Lessee or other occupant.
- 1.30 'Levies' shall mean the contributions payable by the Members to the Association in terms of clause 13 of the Constitution, including annual levies (ordinary levies) and special levies.
- 1.31 'Local Authority' shall mean the local authority having jurisdiction over the Development which, at date of approval of the Development, was the City of Cape Town Municipality at Tygerberg.
- 1.32 'Managing Agent' shall mean any person or juristic person appointed by the Association as an independent contractor to undertake any of the administrative functions of the Association.
- 1.33 'Member' shall mean a member of the Association, meaning every registered owner of an Erf. If an owner consists of more than 1 (one) person such persons shall jointly constitute one Member and shall be jointly and severally liable in solidum for all obligations in terms of this Constitution. In the event of a Company, Close Corporation, Club or Trust, (being the registered owner of the erf), the entity shall be the member that may be represented by an individual who is a director, member or trustee of the entity, and duly authorised to act as such.
- 1.34 'Ordinary Resolution' shall mean a resolution passed at a general meeting of the Association, whether on a show of hands or on a poll, by an ordinary majority of the total votes represented

at such meeting by the Members present in person or by proxy.

- 1.35 'Owner' shall mean the registered owner of an Erf.
- 1.36 'Prime Rate' shall mean the prime bank overdraft rate of interest charged by the Association's bank from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the Members).
- 1.37 'Property' shall mean an Erf together with the Improvements thereon, generically referred to in respect of an Owner.
- 1.38 'Regulatory measure' shall mean the Regulatory measures (regulations) that the Trustees may make from time to time referred to in clause 11 of the Constitution and contained as an annexure (Annexure A) hereto.
- 1.39 'Rules' shall mean the Rules, including Conduct Rules, the Trustees may make from time to time referred to in clause 11 of the Constitution and contained in Annexure A hereto.
- 1.40 'Reserve Account' shall mean an investment account that is managed by the Trustees of the Association to provide for future financial expenses that the Association will be responsible for.
- 1.41 'Services' shall mean the Internal Engineering Service, the main electrical infrastructure, the main security perimeter wall and security infrastructure, and the other Services located within the Common Property or to be rendered in respect of the Association.
- 1.42 'Trustees' shall mean the trustees of the Association collectively from time to time and includes alternate and co-opted Trustees and 'Trustee' shall mean one of them.

2. INTERPRETATION

- 2.1 In the interpretation of the Constitution, unless the context otherwise indicates:

- 2.1.1 the clause headings are for convenience of reference and shall be disregarded in construing the Constitution;
- 2.1.2 words importing the singular number shall include the plural and the converse shall also apply;
- 2.1.3 a reference to any one gender shall include the other genders;

- 2.1.4 a reference to natural persons shall include juristic persons and the converse shall also apply; and
 - 2.1.5 a reference to 'person' shall include 'juristic person';
 - 2.1.6 words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part of, and in subsequent clauses, bear the meaning assigned to such words and expressions in such sub-clause;
 - 2.1.7 when any number of days is prescribed in the Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
 - 2.1.8 where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail;
 - 2.1.9 the Annexures to the Constitution shall be deemed to be incorporated in and form part of the Constitution.
- 2.2 If any provision of the Constitution is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of the Constitution.
- 2.3 If any provision in a definition in the Constitution is a substantive provision conferring rights or imposing obligations on any of the Members then, notwithstanding that it is only in the definition clause of the Constitution, effect shall be given to it as if it were a substantive provision in the body of the Constitution.
- 2.4 If any provision in the Design Guidelines, the Rules or Regulations is in conflict with any provision of the Constitution, the relevant provision of the Constitution shall prevail.

3. ESTABLISHMENT OF THE ASSOCIATION

- 3.1 The La Veritas Home Owners' Association was constituted as a body corporate in terms of section 29 of the Land Use Planning Ordinance, No. 15 of 1985 (as amended) in accordance with the conditions imposed by the Local Authority when approving the subdivisions of Erf 38420 Bellville in terms of sections 25(1) and 42 of the said Ordinance. The Association came into existence upon the transfer of the first Erf arising from the subdivision during November 2000. The first annual general meeting of the Association was duly held in terms of the previous Constitution of the Association.

3.2 This Constitution replaces the previous Constitution of the Association.

3.3 The Association shall be deemed to be an owners' association established in terms of the City's Planning By-Law. The Association shall provide the City with the minutes of the first annual general meeting of the Association held after the City's Planning By-Law took effect.

4. STATUS OF THE ASSOCIATION

4.1 The Association is a juristic person, has perpetual succession and is capable of suing and being sued.

4.2 The Association is established as a non-profit making institution for the purposes and objects set out in the Constitution. The Association shall not be for profit, but for the collective benefit and mutual interests of its Members.

4.3 No part of the income of the Association may be paid or refunded to any Member, except to settle any debt to such Member that the Association may have. No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees on behalf of the Members according to the objects of the Association.

4.4 The Association has the right to acquire, hold, lease and alienate property, both movable and immovable.

4.5 The sole object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Property of the Development and the collection of Levies for which such Members are liable.

4.6 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.

4.7 On dissolution the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act.

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

4.9 The Association is not or was not knowingly a party to, or does not knowingly permit or has not

knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.

4.10 The Association shall submit annual returns of income tax together with financial statements to the South African Revenue Services or similar relevant government departments as required.

4.11 Any amendments to clause 4 of the Constitution must be submitted to the Commissioner for the South African Revenue Services for scrutiny and or further action as the Commissioner may direct.

5. OBJECTS OF THE ASSOCIATION

The objects of the Association are to:

- 5.1 act in accordance with the collective mutual interests of the Members;
- 5.2 control, administer and manage the Common Property, Services and amenities in respect of the Development and the buildings on land under the Association's control for the benefit of all the Members;
- 5.3 take ownership of the Common Property and Internal Engineering Services as may be required;
- 5.4 enforce certain conditions of subdivision approval or management plans listed in the conditions, as may be applicable;
- 5.5 manage, repair, maintain, and improve and, where applicable, to insure the Common Property and all property and facilities belonging to the Association or falling under its control;
- 5.6 manage, repair, maintain, including renewal or upgrading where necessary, the Services serving the Development and the provision and installation of further Services to the Development as may be necessary;
- 5.7 control and maintain the main security perimeter wall in respect of the Development, but excluding the painting of the portions of the security perimeter wall facing private Properties and generally provide a secure environment for the Members by implementing, controlling and enhancing security systems in respect of the Development;

- 5.8 provide for:
- 5.8.1 the establishment of the Association upon the transfer of the first Erf arising from the subdivision or part thereof;
 - 5.8.2 the Association to be a juristic person, to have perpetual succession to be capable of suing and of being sued;
 - 5.8.3 Membership of the Association by the owners of Erven in the Development who shall be jointly liable for the expenditure incurred in connection with the Association;
 - 5.8.4 the recovery of expenditure incurred in connection with the Association from its Members;
 - 5.8.5 where relevant, any further development which must form part of the Association and the procedures for incorporating the development;
 - 5.8.6 the regulation of annual general meetings of the Members;
 - 5.8.7 the prohibition of the transfer of an Erf unless the consent of the Association has been obtained and the grounds upon which such consent may be refused;
 - 5.8.8 arrangements for the transfer of an Erf in the event that the Association ceases to function;
 - 5.8.9 the Association's implementation and enforcement of the provisions of clauses 5.8.1 to 5.8.8 of the Constitution;
- 5.9 administer and enforce compliance with the provisions of the Constitution;
- 5.10 provide for the control, administration and management of Design Guidelines for Improvements and landscaping in respect of Erven;
- 5.11 monitor and control improvements and landscaping within the Development;
- 5.12 provide for Rules and policies to control the use and enjoyment of the Common Property and to ensure good standards of conduct by persons in respect of the Development;
- 5.13 enter into agreements as may be necessary to provide amenities and Services for the benefit of the Members and to enter into any agreements in pursuance of the objects of the Association;

- 5.14 establish a fund for expenses of the Association, including provision for a reserve account to provide for future expenses and contingencies and to determine and collect Levies for the purpose of the said fund from the Members;
- 5.15 control the Alienation, transfer, letting and use of Erven within the Development;
- 5.16 take action as deemed necessary by the Trustees in relation to the non-compliance by any Member or Lessee with any provisions of the Constitution and to impose penalties upon Members in respect of contraventions;
- 5.17 promote, advance and protect the interest of Members generally in regard to the Development;
- 5.18 generally do all such things as may be necessary or requisite to give effect to and implement and enforce the objects of the Association and to do all such things ancillary or incidental to the objects;

6. FUNCTIONS AND POWERS OF THE ASSOCIATION

- 6.1 The Association shall exercise the powers and perform the functions as set out in the Constitution and such ancillary functions as may be necessary in pursuit of its objects.
- 6.2 The functions of the Association shall include to:
 - 6.2.1 establish a levy fund of the Association sufficient in the opinion of the Association to meet the expenditure of the Association;
 - 6.2.2 raise and determine levies payable by the Members as contributions to the levy fund;
 - 6.2.3 establish a reserve account of the Association that is sufficient in the opinion of the Association to meet the future expenditure of the Association;
 - 6.2.4 raise and determine reserve account contributions to be included in the Levies payable by the Members as contributions to the reserve account fund;
 - 6.2.5 open and operate an account or accounts with registered South African commercial banks and Financial Institutions;
 - 6.2.6 take up insurance for the Association as may be required including, but not limited to:
 - 6.2.6.1 insure the buildings, improvements, amenities and Services in respect of the Common Property against such risks as the Association may determine;

- 6.2.6.2 take up public liability insurance in respect of the Common Property and Services;
 - 6.2.6.3 procure a fidelity guarantee; and
 - 6.2.6.4 insure the payment of Levies due by the Members to the Association;
- 6.2.7 pay the premiums on any policy of insurance affected by it;
- 6.2.8 repair and maintain the Common Property and Services; and
- 6.2.9 comply with any notice or order by any competent authority requiring any repair to, or work in respect of, the Common Property and/or Services and to ensure compliance with any law relating to the Common Property and/or Services.
- 6.3 The powers of the Association shall include the power to:
 - 6.3.1 purchase, hire, or otherwise acquire movable property and to insure, sell, let, or otherwise dispose of movable property;
 - 6.3.2 control and maintain the Common Property and to establish on the Common Property such Services, improvements, amenities, lawns or gardens as may be required and to register servitudes;
 - 6.3.3 apply for licenses and other rights enabling the Association to deal with its property in any lawful manner;
 - 6.3.4 add to, amend, repeal or substitute the provisions of the Constitution and the Annexures hereto from time to time, based on any requirement or need that may arise in future in order to address the purposes of the Association in accordance with the provisions of clause 44 the Constitution;
 - 6.3.5 sell and cede any obligation due to the Association, including but not limited to claims for levies, contributions, charges, penalties and fees, and to agree to the terms of such transactions;
 - 6.3.6 donate moneys subject to such donation being to the benefit of the Association .
 - 6.3.7 invest surplus moneys of the levy and reserve account fund;
 - 6.3.8 employ, dismiss and remunerate employees and professional advisors and to

establish and contribute to pension-, provident-, medical aid and other similar funds for the benefit of its employees;

- 6.3.9 appoint such agents or contractors as it deems fit;
- 6.3.10 sue and be sued in the name of the Association and to obtain the services of attorneys and advocates or any other professional person for the aforementioned purpose;
- 6.3.11 enter into agreements for the supply of Services, equipment or property to the Development;
- 6.3.12 enter into any agreement necessary to achieve the objects of the Association or to further the interest of the Association;
- 6.3.13 recover by legal process any levies or moneys due by Members or former Members to the Association;
- 6.3.14 impose upon Members penalties in respect of contraventions of the provisions of the Constitution and to recover such reasonable penalties (that are commensurate with the violation) from its Members or former Members by legal process; and
- 6.3.15 do all things necessary or required to achieve the objects of the Association, and to further and promote the interests of Members and to implement and enforce the powers conferred on the Association in terms of the Constitution.

7. MEMBERSHIP OF THE ASSOCIATION

- 7.1 The Association shall have as its Members every registered owner of an Erf in the Development. Membership of the Association shall be automatic and compulsory for every registered owner of an Erf and such membership shall commence simultaneously with registration of transfer of such Erf into the name of the transferee in the Deeds Office. When a Member ceases to be the registered owner of an erf, he shall automatically cease to be a Member of the Association.
- 7.2 In the event of co-ownership of an Erf, all the co-owners of the Erf shall be deemed jointly and severally to be one Member of the Association.
- 7.3 Where any person is the registered owner of more than one erf, such person shall be regarded as a Member, and shall have the rights and obligations of a Member, in respect of each Erf

registered in such person's name.

8. OBLIGATIONS OF MEMBERS

8.1 Every Member is obliged to comply with:

8.1.1 the provisions of the Constitution, the Design Guidelines and the Rules;

8.1.2 Any directive given or resolution passed by the Association and/or the Trustees in implementing or enforcing the provisions of the Constitution.

8.1.3 Any regulation passed by the Association or the Trustees in enforcing the provisions of the Constitution.

8.2 A Member may not resign from the Association.

8.3 Members shall be jointly liable for reasonable expenditure incurred in connection with the Association according to the provisions of the Constitution. The Association shall recover expenditure incurred in connection with the Association from its Members in the form of levies in accordance with the provisions of the Constitution.

8.4 A Member shall not be entitled to alienate his Erf or apply to the Registrar of Deeds, Cape Town, for the registration of transfer of his Erf, without the prior written consent of the Trustees having been obtained, which consent may, subject to the conditions contained in clause 8.6, not unreasonably be withheld.

8.5 The Association may refuse such written consent in terms of clause 8.4 above if:

8.5.1 the levies and other amounts due to the Association in respect of the Erf have not been paid or payment thereof has not been secured to the satisfaction of the Trustees, or

8.5.2 the Member is substantially in breach of provision of the Constitution to an extent reasonably justifying the withholding of such consent, or

8.5.3 the Member has constructed a building or development that exceeds the maximum Floor Space approved by the City or which is not in compliance with the Development Management Scheme.

8.6 The written consent referred to in clause 8.5 above may be signed by the Chairperson or by a Trustee or by the Managing Agent duly authorised thereto. The Trustees may determine a

reasonable fee to be charged for the issuing of the written consent.

- 8.7 No Member shall apply to the City for the rezoning, subdivision, consent, use, departure or any other amendment of any condition of approval relating to his Property in terms of any law governing development rights or use rights with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Property for any purpose other than the permitted use applicable upon establishment of the Development without the prior written consent of the Trustees and the City and subject to compliance with the conditions imposed by the Trustees and the City.
- 8.8 The Constitution and the duties of a Member in relation to the use, occupation and enjoyment of his Property and the use and enjoyment of the Common Property shall be binding on all Members and Lessees. It shall be the duty of a Member to ensure compliance with the provisions of the Constitution by his Invitees and the Lessees of his Property. Members shall ensure that their lease agreements incorporate provisions to the effect that the Lessee shall be obliged to comply with the provisions of the Constitution, and that a breach of the provisions of the Constitution by the Lessee shall constitute a breach of the lease agreement, which will entitle the Owner (lessor) to terminate the lease agreement by written notice.
- 8.9 All Lessees and invitees shall be obliged to comply with the provisions of the Constitution, notwithstanding any provision to the contrary contained in, or the absence of provisions, in any lease or any grant of rights of occupancy.
- 8.10 Occupation and use of a Property in the Development shall, at all times, be in compliance with the Development Management Scheme. No Member or Lessee shall use any Property or building or allow any other person to use such Property or building for any purpose not permitted by the Development Management Scheme. No building may be occupied which has not been approved of by the Trustees as being complete and compliant with the provisions of the Design Guidelines. No business may be conducted from a Property in the Development, necessitating employees, clients and/or customers entering the Development.
- 8.11 No Member shall permit the number of occupants in respect of his Property to exceed two (2) persons per bedroom in the building. 'Occupant' shall include but shall not be limited to any person who resides or stays in such building on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the Member or Lessee and irrespective of whether such person pays rental or other remuneration to the Member or Lessee.
- 8.12 In the event of a lessee or invitee of a member causing damage to common property, the member concerned shall cooperate with the Association in any form of action taken by the Association in order to recover any damages which the Association may have suffered as a result thereof.

8.13 A Member shall:

- 8.13.1 maintain his Erf and Improvements in a state of good repair and in a clean and neat condition, in compliance with the Design Guidelines;
- 8.13.2 establish and maintain a garden in respect of his Erf according to a standard acceptable to the Trustees and shall maintain the road verge bordering his Erf in a clean and neat condition;
- 8.13.3 maintain the boundary walls in respect of his Erf inclusive of regular painting thereof, and including the painting of the portions of the security perimeter wall in respect of the Development facing his Erf.

8.14 If a Member fails to maintain his Erf and improvements, garden, or road verge bordering his erf, or the external and boundary walling in respect of his Erf in terms of clause 8.13 above and any such failure persists, a process will be initiated to remedy the violation as set out in the Disciplinary Policy of the Association that is incorporated into this Constitution. Costs incurred by the Association in relation to such process shall be due and payable by the Member upon demand and, failing which, the costs may be added to the Member's levy statement and the costs may be recovered from the Member in the same manner as applies to arrear levies, together with interest at the rate applicable to levies.

8.15 Every Member shall:

- 8.15.1 ensure that the existing colour scheme conforms to the colour standards set by the Trustees in respect of his Property and any change thereof must be approved in terms of clause 9 of this Constitution;
- 8.15.2 adhere strictly to the terms of servitudes in respect of his Property, if applicable;
- 8.15.3 permit access to any Services or to the security perimeter by persons authorised in writing by the Association; and
- 8.15.4 not erect any Improvement or structure over the Services.

8.16 A Member, lessee, invitee or any other person shall not cause any form of disturbance or nuisance on or in any property forming part of the estate and any such conduct shall be subject the disciplinary powers invested in the Association.

8.17 A Member shall not erect or permit the erection of any advertising boards on any Erf without the written approval of the Trustees. A Member shall not during the construction of

Improvements, permit the erection of more than one (1) advertising board on an Erf and such permitted board shall not have a surface area exceeding 1 (one) square metre and shall be removed immediately upon conclusion of the building contract for the Improvements.

- 8.18 A Member shall procure adequate insurance in respect of the improvements to his Erf, and, if requested by the Trustees, shall furnish proof of such insurance to them. In the event of the total- or partial destruction of an improvement, the Member must, within a reasonable time period, reinstate the Improvements in accordance with the Design Guidelines and in accordance with building plans to be approved by the Trustees.

9. IMPROVEMENTS AND LANDSCAPING BY MEMBERS

- 9.1 No Member may commence with the construction of an improvement in respect of his Erf or of any other item included in the Design Guidelines without the written approval of the Trustees, and without the approval of the building plans in respect of the Improvements by the Trustees, the Van Riebeeckshof Home Owners' Association and by the City.

- 9.2 Subject to clause 9.3 below, the Trustees will only approve the building plans in respect of improvements if they are satisfied that the proposed improvements comply with the Design Guidelines for the purpose of which the Trustees shall be the sole arbitrator and their decision shall be final and binding on the Member. The Trustees may submit the building plans to an Architect appointed by them for his scrutiny and advice.

- 9.3 To obtain the written approval of the Trustees in terms of clause 9.1 above a Member shall:

9.3.1 apply to the Trustees in writing;

9.3.2 where applicable, submit building plans, and such additional documents as may be required, to the Trustees for examination and approval; and

9.3.3 pay a reasonable scrutiny fee and any further charges payable to the Architect and other costs incurred by the Trustees.

- 9.4 No Member shall submit any building plans to the City without prior approval of the building plans by the Trustees and the Van Riebeeckshof Home Owners' Association which approvals shall be evidenced by their respective stamps.

- 9.5 Once the Trustees have approved the building plans, the Member shall submit the building plans to the City for approval.

- 9.6 Having obtained the approval of the City, the Member shall:
- 9.6.1 pay the building deposit as required by the Trustees from time to time; and
 - 9.6.2 comply with all terms, conditions and changes required by the Trustees and the conditions and standards imposed by the City insofar as these may be additional to the requirements of the Design Guidelines read with the building plans.
- 9.7 Any dispute relating to the Design Guidelines and/or proposed improvements may be referred to the Association's Disciplinary Committee (constituted as set out in Annexure D hereto) which shall be supplemented by a member with legal qualifications (if necessary). The Disciplinary Committee will consult an independent architect agreed to by the parties to the dispute who shall act as an expert. The Disciplinary Committee is authorised to act as an arbitrating body to resolve the dispute. The decision of the Disciplinary Committee will be binding on the parties to the dispute.
- 9.8 In the event of any Improvements being erected in contravention of the building plans or the Design Guidelines, the Trustees shall be entitled to do whatever is necessary to rectify the contravention, that shall include the right to obtain a Court Order rectifying such contravention in which event the Member shall be liable to pay the costs occasioned by such legal action on a scale of Attorney and own client.
- 9.9 No Member or Lessee shall erect any fence or wall or any other structure on an Erf or remove same without the prior written consent of the Trustees.
- 9.10 All landscaping and Improvements shall be of approved design and sound construction and shall comply with the provisions of the Design Guidelines.
- 9.11 Each Member shall, when applying to the Trustees for their approval in terms of clause 9.1 above, pay a building deposit to the Association, in the amount determined by the Trustees from time to time, which amount shall be retained by the Association until completion of construction to the satisfaction of the Trustees.
- 9.12 Upon completion of construction, the Trustees shall, if they are satisfied that no damage has been caused by the Member or his contractors to the Common Property, and that the Improvements were constructed in accordance with the approved building plans, release the building deposit to the Member, excluding any interest thereon which will accrue to the Association.
- 9.13 In the event of Improvements not complying with the building plans and/or damages having been caused to the Common Property, the Trustees shall by written notice inform the Member that the building deposit shall be retained until the Improvements have been rectified and/or the

damages have been repaired to their satisfaction and/or that the building deposit will be utilised by the Association to repair the damages.

10. DESIGN GUIDELINES

10.1 The Trustees may amend the Design Guidelines from time to time subject to the directions given or restrictions imposed by the Members at a general meeting of the Association.

10.2 The Design Guidelines may include provisions governing:

10.2.1 the architectural design and standard of Improvements, and aesthetic requirements, and the material to be used, in respect of Improvements;

10.2.2 the relationship of Improvements to adjacent Common Property;

10.2.3 the maintenance of Improvements;

10.2.4 building activities within the Development; and

10.2.5 landscaping within the Development.

10.3 Having regard to the contents of the Design Guidelines, the Trustees shall, have the power to:

10.3.1 administer the Design Guidelines;

10.3.2 perform such acts as are necessary to accomplish the purposes expressed or implied in the Constitution, including but not limited to:

10.3.2.1 the examination and approval of building plans for the construction of Improvements; and

10.3.2.2 the evaluation of landscaping proposals;

10.3.3 appoint an Architect and such advisors as may be necessary with such powers and duties as may be delegated by the Trustees;

10.3.4 impose a scrutiny fee on the Members as may be required by the Architect to scrutinise the building plans and such other further charges as may be necessary to consult with professionals; and

10.3.5 require a building deposit from the Members.

10.4 Subject to the directions given or restrictions imposed by the Members at general meetings, the Design Guidelines may be added to, amended, substituted, or repealed from time to time by a resolution of the Trustees, provided that:

10.4.1 the Design Guidelines shall not introduce more restrictive development rules or land uses than provided in the Development Management Scheme;

10.4.2 in the event of the provisions of the Design Guidelines being amended or added to and such amendment or addition materially affects any further development of Erven the Trustees shall by written notice inform all Members of the amendment to the Design Guidelines; and

10.4.3 the amended Design Guidelines shall be lodged with the City.

11. RULES

11.1 The Trustees may formulate and issue and amend Rules from time to time, subject to the directions given or restrictions imposed by the Members at general meetings of the Association.

11.2 The Rules (including) Conduct Rules and policies governing:

11.2.1 the use and enjoyment of Properties, and restrictions on the use and enjoyment thereof;

11.2.2 the use and enjoyment of the Common Property and amenities of the Development, and restrictions on the use and enjoyment thereof;

11.2.3 the conduct of persons generally within the Development, and to prevent a nuisance to owners and lessees;

11.2.4 requirements and conditions relating to the keeping of pets on Properties;

11.2.5 the appearance of improvements and landscaping;

11.2.6 the letting of Properties;

11.2.7 the security measures applicable to the Development;

11.2.8 the control of traffic and parking in the Development;

11.2.9 refuse disposal and prohibiting littering;

and generally any other provisions in furtherance and promotion of the objects of the Association or which would be to the benefit of the Association and the Members.

11.3 The Trustees may formulate and issue and amend the Regulations from time to time, subject to the directions given or restrictions imposed by the Members at general meetings of the Association. The Members shall be bound by the Regulations.

11.4 Regulations may be formulated, issued and amended from time to time for the following purposes:

11.4.1 as to the resolution of disputes generally;

11.4.2 for the furtherance and promotion of the objects of the Association and for the better management of the affairs of the Association;

11.4.3 for setting out processes and procedures relating to conducting disciplinary processes against members who transgress the conduct rules and regulatory measures formulated in terms of the Constitution;

11.4.4 for the advancement of the interests of Members;

11.4.5 for the conduct of Trustees at meetings of the Trustees and general meetings of the Association; and

11.4.6 to assist it in administering and governing its activities generally.

12. LEVY FUND AND BUDGET

12.1 The Trustees shall establish and maintain a levy fund for the purpose of meeting all expenses of the Association for the control, management and administration of the common property and the services and amenities in respect of the Development and for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association and its affairs.

12.2 The Trustees shall estimate the amount which will be required by the Association to meet its expenses during each financial year. Any deficiency incurred during the preceding financial year, and an estimate of an amount to be held in reserve to meet anticipated future expenditure

not of an annual nature, shall be taken into consideration in determination of the levy.

- 12.3 The Trustees shall at least one (1) month before the end of each financial year, prepare and finalise the budget of the Association for the ensuing financial year. The budget and the levy proposed for the next financial year shall be tabled at the annual general meeting for the consideration of the Members.
- 12.4 The trustees shall maintain a reserve account to provide for foreseeable future financial expenses that the Association will be responsible for. The level of such a reserve account will be directed by the members at the Annual General Meeting . Trustees will take such a provision to build up the reserve account into account when determining the levy for the next financial year.

13. DETERMINATION OF LEVIES

- 13.1 Before the end of each financial year, the Trustees shall determine the annual levies due by the Members for the ensuing financial year by apportioning the budget to Members as annual levies equally in respect of every erf in the Development. The annual levy may include a contribution to the Reserve Account to cover foreseeable future expenses that the Association will be responsible for. The Trustees shall, by making a resolution to such effect, determine the annual levies due by the Members.
- 13.2 The annual levies determined in terms of clause 13.1 shall become effective or due from the date of passing of the Trustees' resolution. The annual levies shall be paid in equal monthly instalments over a period of twelve (12) months, monthly in advance, on or before the 1st (first) day of every succeeding month of the financial year. If any Member defaults in the payment of any monthly instalment, the balance of the annual levy due by the Member in respect of the financial year shall become immediately payable.
- 13.3 Notwithstanding the general principles applicable to the apportionment of the Levies as stipulated in clause 13.1, the Trustees shall be entitled to recover a contribution from a Member toward water and sewerage, in accordance with his water meter reading and toward refuse disposal, in accordance with the apportionment made by the City.
- 13.4 Where payment of any debt due by a Member is made by way of cheque or debit order, and such cheque is referred to drawer for any reason whatsoever, and/or if such debit order is unpaid for any reason whatsoever, the Trustees shall be entitled, in their sole discretion, to levy reasonable administration charge in respect of each such occurrence in an amount to be determined by the Trustees from time to time.
- 13.5 The Trustees may, from time to time, impose special levies upon Members in respect of all

expenses, which have not been included in the budget, provided they shall first obtain the authorisation of the Members by ordinary resolution. Special levies shall become due from the date of passing of the Trustees' resolution and shall be apportioned to Members in accordance with clause 13.1 above. Special levies shall be payable in one sum or in such instalments and at such time or times as the Trustees shall determine.

- 13.6 Upon taking transfer of an erf, the new Member shall become liable to the Association for the payment of the Levies in respect of the erf. No Member shall be entitled to transfer his erf until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association, or has made provision for such payment to the satisfaction of the Trustees.
- 13.7 Liability for the payment of Levies to the Association shall vest in the owners of erven. Where any erf is owned by more than one person, all the registered owners of that erf shall be jointly and severally liable for the due performance of any obligation to the Association.
- 13.8 If a Member fails to pay his levies in full to the Association on the due date, the Association may institute an action for the recovery thereof in any competent court.
- 13.9 Members shall be liable for payment of interest on arrear levies and outstanding amounts at the prime rate plus six percent (6%). Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment, both days inclusive.
- 13.10 A Member shall be liable for and shall pay all costs, including all legal costs on the scale as between attorney and own client together with collection commission, advocates' fees, administrative costs and all other expenses and charges, incurred by the Association in obtaining recovery of arrear levies, penalties, damage or other amounts due to the Association, or in enforcing compliance with the provisions of the Constitution. Such costs and expenses may be added to the owner's levy account and recovered in the same manner as applies to arrear Levies, together with interest at the rate applicable to levies.
- 13.11 All moneys received from a Member towards his levy account, shall be apportioned firstly towards interest, then towards legal- and other administrative costs, and then towards levies or other service charges.

14. THE TRUSTEES OF THE ASSOCIATION

- 14.1 The Trustees shall be elected at each annual general meeting of the Association by Ordinary Resolution. The Association may from time to time determine the number of Trustees at the annual general meeting, provided that there shall be at least three (3) Trustees.

- 14.2 A Trustee shall be an individual and needs to be a Member of the Association, and may include duly authorised representatives of Members who are juristic persons.
- 14.3 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of the Constitution and shall at all times act in good faith in the interest of the Association.
- 14.4 Subject to the provisions of clause 14.5, each Trustee shall continue to hold office until the next annual general meeting of the Association following his appointment, at which meeting each Trustee shall be deemed to have retired from office as such but will be eligible for re-election.
- 14.5 A Member shall not be eligible for election as a Trustee, and a Trustee shall be deemed to have vacated his office as such upon:
- 14.5.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
 - 14.5.2 his making any arrangement or compromise with his creditors;
 - 14.5.3 his conviction for any offence involving dishonesty;
 - 14.5.4 his becoming of unsound mind or being found mentally handicapped;
 - 14.5.5 his resigning from such office in writing;
 - 14.5.6 his death;
 - 14.5.7 him not meeting the requirements of being director of a company in terms of the Companies Act
 - 14.5.8 him being removed from office by an Ordinary Resolution of the Members; or
 - 14.5.9 him being in arrears with his Levies or any other amounts due to the Association for one (1) month, or more, or having materially transgressed the provisions of the Constitution or Rules.
- 14.6 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 14.5, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the minutes of the meeting of the Trustees.

- 14.7 Should the office of a Trustee fall vacant prior to an annual general meeting, the vacancy in question may be filled by the remaining Trustees. The person so appointed shall hold office until the next annual general meeting following his appointment.
- 14.8 Within seven (7) days of the holding of each annual general meeting of the Association, the Trustees shall meet and shall elect from their own number the Chairperson who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairperson shall automatically be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the office of Chairperson, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 14.9 Save as otherwise provided in the Constitution, the Chairperson shall preside at all meetings of the Trustees and at all general meetings of the Association and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by a resolution of the Trustees or by an ordinary resolution of the Members.
- 14.10 The Chairperson may allow or refuse to allow guests to speak at any meetings of the Trustees and general meetings of the Association. A Member or the duly authorized representative of a Member or the spouse of a Member (who is also a Member) must be allowed to speak at any general meeting of the Association, subject to the discretion of the Chairperson as regard to time constraints and the order of the meeting.
- 14.11 Members and duly authorized representatives (i.e. Directors, Members or Trustees) of Members that are juristic persons may attend Trustees' meetings and may speak on any matter on the agenda, but they are not entitled to propose any motion or to vote; provided that such persons are not entitled to attend those parts of Trustee meetings that deal with —
- 14.11.1 discussions of contraventions of the Constitution; or
- 14.11.2 any other matters in respect of which the Trustees resolve that the presence of any such persons would unreasonably interfere with the interests of the Association or any person's privacy.

15. FUNCTIONS, POWERS AND DUTIES OF THE TRUSTEES

- 15.1 The functions, powers and duties of the Association shall, subject to the provisions of the Constitution and to any directions given or restrictions imposed by ordinary resolution at general meetings, be performed and exercised by the Trustees.

- 15.2 Without detracting from the scope of the additional duties specified in the Constitution, the Trustees shall perform the functions referred to in clause 6.2 of the Constitution.
- 15.3 The Trustees shall do all things reasonably necessary for the control, management and administration of the Development in terms of the powers conferred upon the Association by clause 6.3 of the Constitution.
- 15.4 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 15.5 All Trustees must disclose any conflict of interest that they may have in relation to the Association.
- 15.6 The Trustees shall have the right to co-opt any member as a Trustee. A co-opted Trustee shall enjoy all the powers and be subject to all the obligations of the Trustees provided that such co-opted Trustee shall only serve until the next annual general meeting.
- 15.7 The Trustees shall do all things reasonably necessary for the enforcement of the Constitution. The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Lessee of the Constitution in such reasonable manner as they shall decide from time to time.
- 15.8 Without in any way limiting the powers granted the powers of the Trustees shall include:
- 15.8.1 to appoint for and on behalf of the Association, such agents and employees as they deem fit in connection with the control, management and administration of the Development and common property and the exercise and performance of any of the powers and duties of the Association;
 - 15.8.2 the determination of what constitutes appropriate standards for residential living, in compliance with the Rules;
 - 15.8.3 the determination of what constitutes appropriate standards for Improvements and landscaping in compliance with the Design Guidelines;
 - 15.8.4 to require any Member, who shall be obliged, to repaint or renovate his property if in the reasonable opinion of the Trustees such property requires essential repairs or have become dilapidated;
 - 15.8.5 entering into agreements with third parties on behalf of the Association for any purpose of the Association;

- 15.8.6 form a disciplinary committee from the existing trustees and members to conduct disciplinary hearings of members in relation to violations relating to any provision of the Constitution or Rules and regulations with the power to prescribe the process that should be followed to resolve a dispute with a member including the power to impose a fine for such a transgression.
 - 15.8.7 regulate relations between members themselves, between members and the Association;
 - 15.8.8 delegate to one or more Trustees such of their powers and duties as they deem fit and at any time to revoke such delegation;
 - 15.8.9 form committees for the performance of designated tasks on behalf of the Trustees;
 - 15.8.10 institute, conduct, defend, compound or abandon any legal proceedings by or against the Association or otherwise concerning the affairs of the Association and agree to time and terms for payment or satisfaction of any debts due or of any claims or demands made by or against the Association;
 - 15.8.11 impose, upon members, penalties for contraventions by members or their Invitees or lessee or the invitees of the lessee of any provision contained in the Constitution and to recover, by legal action or otherwise, such penalties from its members or former members; and
 - 15.8.12 generally do all acts and deeds as might be required necessary, conducive, ancillary or incidental to the attainment or furtherance of the objects and powers of the Association.
- 15.9 Each Trustee shall stand in a fiduciary relationship to the Association. A Trustee shall be disqualified from voting at a meeting of the Trustees in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute with the Association by virtue of any interest he may have therein.
- 15.10 No agreement concluded on behalf of the Association shall be valid and binding unless it is signed by one (1) Trustee specifically appointed as authorised signatory in terms of a resolution of the Trustees.
- 15.11 Trustees shall be entitled to be repaid all reasonable expenses incurred by them in or about the performance of their duties as Trustees and/or as Chairperson, as the case may be, in good faith. Unless otherwise determined by an ordinary resolution, Trustees shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties. No Trustee shall be capable of being employed by the Association in such Trustee's professional capacity.

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

16. PROCEEDINGS OF THE TRUSTEES

- 16.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of the Constitution.
- 16.2 Meetings of the Trustees shall be held at least once every three (3) months, whenever reasonably required.
- 16.3 The Chairperson may at any time call a Trustee meeting by giving all other Trustees not less than seven (7) days' written notice of the time and place of the meeting and by setting out an agenda for the meeting, provided that:
- 16.3.1 in cases of urgency, such shorter notice as is reasonable in the circumstances may be given; and
- 16.3.2 notice need not be given to any Trustee who is absent from the Republic of South Africa.
- 16.4 A Trustee may, provided that he has the support in writing of one (1) other Trustee, at any time call a Trustee meeting by giving all other Trustees not less than seven (7) days' written notice of the time and place of the meeting and by setting out an agenda for the meeting, provided that:
- 16.4.1 in cases of urgency, such shorter notice as is reasonable in the circumstances may be given; and
- 16.4.2 notice need not be given to any Trustee who is absent from the Republic of South Africa.
- 16.5 It is sufficient if the notice is transmitted electronically directly to the Trustees in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 16.6 The quorum necessary for the holding of any meeting of the Trustees shall be fifty percent (51%) of the Trustees present personally, with a minimum of two (2) Trustees. If no quorum is present within fifteen (15) minutes after the time for commencement of the Trustee meeting, then it shall stand adjourned for the same time and place on the following business day and, if at such adjourned meeting of the Trustees, a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the Trustees then present, with a minimum of two (2)

Trustees, shall be a quorum.

- 16.7 Any resolution of the Trustees shall be carried by an ordinary majority of all votes cast and each Trustee shall have one (1) vote. In the case of an equality of votes for and against a resolution, the Chairperson shall have a second or casting vote.
- 16.8 The Chairperson shall preside as such at all meetings of the Trustees provided that, should at any meeting of the Trustees, the Chairperson not be present within fifteen (15) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 16.9 The Trustees shall:
- 16.9.1 ensure that minutes are taken of every meeting of the Trustees, although not necessarily word for word, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall after being approved by the Trustees be certified as correct by the Chairperson of the meeting;
- 16.9.2 cause the minutes of meetings of the Trustees to be kept in perpetuity; and
- 16.9.3 on the written application of a Member, the Trustees shall make minutes of their proceedings available for inspection by or on behalf of the applicant, during reasonable hours on business days and/or furnish them with the copies as may be required, against payment of the requisite reasonable charges to defray incurred expenses.
- 16.10 All resolutions recorded in the minutes of any meeting of the Trustees shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of the Trustees shall be of any force or effect or shall be binding upon the Members or any of the Trustees, unless such resolution is competent within the powers of the Trustees.
- 16.11 Save as otherwise provided in the Constitution, the proceedings at any meeting of the Trustees shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 16.12 A resolution signed by all the Trustees present for the time being in the Republic of South Africa shall be valid in all respects as if it had been duly passed at a meeting of the Trustees duly convened.
- 16.13 A Trustee may be represented at a meeting of Trustees by a proxy provided such proxy is a

Trustee.

- 16.14 The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall be deposited with the Chairperson at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.

17. MANAGING AGENT

- 17.1 The Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies due to the Association.
- 17.2 The Trustees shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of conduct which at common law would justify the termination of a contract between master and servant and mandator and mandatee, the Trustees may, without notice, cancel such contract of employment or mandate and the Managing Agent shall have no claim whatsoever the Trustees and/or the Association as a result of such cancellation.

18. GENERAL MEETINGS OF THE ASSOCIATION

- 18.1 The first general meeting of the Association was duly held in accordance with the original Constitution of the Association. The Association shall each year within 6 (six) months of each financial year-end of the Association hold an annual general meeting. Such annual general meetings shall be held on such date and at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.
- 18.2 All general meetings other than annual general meetings shall be called general meetings.
- 18.3 The Trustees may, whenever they deem fit, convene a special general meeting. A special general meeting shall also be convened on a request made by the Members representing not less than twenty five percent (25%) of the votes. Should the Trustees fail to convene a special general meeting by written notice within fourteen (14) days of such request, the Members may convene the general meeting themselves with at least fourteen (14) days' written notice to all Members in terms of clause 19 of this Constitution.

19. NOTICE OF GENERAL MEETINGS

- 19.1 An annual general meeting or special general meeting of the Association shall be called by not less than fourteen (14) days' written notice to all Members and Trustees. The notice shall specify the place, day, hour and business of the meeting.
- 19.2 A general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in the Constitution, be deemed to have been duly called if it is agreed to by the Members holding not less than sixty percent (60%) of the votes.
- 19.3 The accidental omission to give notice of any meeting or any resolution or to present any document required to be given or sent in terms of the Constitution, shall not invalidate the proceedings at, or any resolution passed at, any meeting.
- 19.4 The non-receipt of a notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at, or any resolution passed at, any meeting.

20. PROXIES AT GENERAL MEETINGS

- 20.1 A Member may be represented at a general meeting by a proxy, who must be a Member of the Association.
- 20.2 A Member is restricted to representing no more than two Members by proxies.
- 20.3 The instrument appointing a proxy shall be in writing signed by the Member concerned or his appointed agent, duly authorised in writing, but need not be in any particular form, provided that:
- 20.3.1 where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf;
- 20.3.2 where a Member is a company, the proxy may be signed by a director of such company, duly authorised thereto by a resolution of the directors of the company;
- 20.3.3 where a Member is a close corporation, the proxy may be signed by a member of such close corporation, duly authorised thereto by a resolution of the members of the close corporation;
- 20.3.4 where a Member is a trust, the proxy may be signed by a Trustee of such trust, duly authorised thereto by a resolution of the Trustees of the trust;

- 20.3.5 where a Member is an association of persons or a club, the proxy may be signed by a committee member or the secretary, duly authorised thereto by a resolution of the committee of the association or the committee of the club.
- 20.4 The instrument appointing a proxy and the power of attorney or other authority under which it is signed (if any) shall be deposited at the *domicile* address of the Association, either by hand or by post, or shall be transmitted by facsimile or by electronic mail to the fax number or e-mail address of the Association, or shall be handed to the Chairperson at any time before the time appointed for the commencement of the general meeting. The authorising resolution referred to in clause 20.2 above shall not be required to be submitted to the Association. Notwithstanding the foregoing, the Chairperson of the meeting may agree to accept a proxy tendered at any time during the general meeting.
- 20.5 The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.

21. QUORUM AT GENERAL MEETINGS

- 21.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any meeting shall be the number of Members holding at least twenty percent (20%) of the votes of the Members.
- 21.2 If, within thirty (30) minutes after the time appointed for the commencement of the general meeting, a quorum is not present, the meeting, if convened on the requisition of the Members, shall be dissolved. In all other cases the general meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present in person or by proxy shall constitute a quorum.

22. AGENDA AT ANNUAL GENERAL MEETINGS

The following matters shall be dealt with at every annual general meeting:

- 22.1 the approval of the minutes of the previous annual general meeting of the Association;
- 22.2 the consideration of the Chairperson's report;
- 22.3 the determination of the number of Trustees and the election of Trustees;

- 22.4 the consideration of the financial statements of the Association for the preceding financial year;
- 22.5 the consideration of the budget, approved by the Trustees and the annual levies or ordinary levies payable, as determined by the Trustees;
- 22.6 the appointment of the Auditors;
- 22.7 the consideration of any ordinary resolution proposed for adoption by a Member, and the voting upon any such ordinary resolutions, provided that prior notice shall be given of the ordinary resolutions in as far as may be possible;
- 22.8 the giving of directions to or the imposing of restrictions on the Trustees; and
- 22.9 any other business pertinent to such meeting.

23. PROCEDURE AT GENERAL MEETINGS

- 23.1 The Chairperson shall preside as such at all general meetings provided that should he not be present within fifteen (15) minutes after the time appointed for the holding thereof, then the Members present at such meetings shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 23.2 The Chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. No notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for thirty (30) days or more, in which event notice is to be given in the same manner as for the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.
- 23.3 Save as otherwise provided in the Constitution, the proceedings at any general meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

24. VOTING AT GENERAL MEETINGS

- 24.1 Subject to clause 24.6 below, at every general meeting, every Member present in person or by proxy and entitled to vote shall on a show of hands and on a poll have one (1) vote per erf registered in his name, provided that where an erf is registered in more than one person's name, they shall jointly have one (1) vote and the vote shall be exercised by one person only.
- 24.2 At any general meeting, an ordinary resolution put to the vote at the meeting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands, a poll is demanded by any Member. If a poll is demanded, it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the ordinary resolution of the meeting at which the poll was demanded.
- 24.3 No vote may be exercised in respect of an Erf, where the Member is in arrears with his Levies or any other amounts due to the Association for more than two (2) months and the Member concerned or the duly authorised representative of the Member that is a juristic person shall not be entitled to be appointed as a Trustee.
- 24.4 At any general meeting, an ordinary resolution put to the vote at the meeting shall be decided on an ordinary majority of votes represented by Members entitled to vote thereon present in person or by proxy in accordance with the value of votes recorded in clause 24.1 above.
- 24.5 Voting on any question of adjournment shall be decided by an ordinary resolution on a show of hands.
- 24.6 Unless any Member present in person or by proxy at the meeting shall, before closure of the meeting, have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting and the meeting shall be deemed to have been validly constituted and conducted and an entry in the minutes of the Association to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the resolution so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

25. MINUTES OF GENERAL MEETINGS

- 25.1 The Trustees shall ensure that minutes are taken of every general meeting of the Association, although not necessarily word for word, which minutes shall be reduced to writing without

undue delay after the general meeting has closed and shall after having been approved by the Members at the following general meeting, be certified as correct by the Chairperson of the meeting.

- 25.2 The Trustees shall keep all minutes of general meetings of the Association in perpetuity.
- 25.3 On the written application of a Member, the Trustees shall make the minutes of general meetings available for inspection by or on behalf of the applicant during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of the requisite reasonable charges to defray incurred expenses.
- 25.4 All resolutions recorded in the minutes of any general meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of the Association 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 Association.

26. FINANCIAL YEAR OF THE ASSOCIATION

Unless otherwise decided at a general meeting or by the Trustees, the financial year of the Association shall run from the first day of March in each year to the last day of February of the following year.

27. BOOKS OF ACCOUNT AND FINANCIAL STATEMENTS

- 27.1 The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association.
- 27.2 At each annual general meeting the Trustees shall lay before the meeting financial statements for the immediately preceding financial year of the Association. The financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees. Copies of the financial statements and reports shall be attached to the notice convening each annual general meeting.
- 27.3 The Trustees shall cause all books of account and records to be retained for a period of seven (7) years after completion of the transactions, acts or operations to which they relate.
- 27.4 On the written application of a Member, the Trustees shall make all or any of the financial

statements, books of account and records available for inspection by or on behalf of the applicant during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of the requisite reasonable charges to defray charges incurred.

28. DEPOSIT AND INVESTMENT OF FUNDS

28.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered South African commercial bank in the name of the Association. Subject to any directions given or restrictions imposed by the Members at general meetings of the Association, moneys shall only be withdrawn from the bank account for the purpose of payment of the expenses of the Association or for investment purposes.

28.2 The Trustees shall have the ability to invest no more than 50% of the Reserve Account created in terms of clause 12.4 in a conservative equity investment fund in a Collective Investment Scheme in terms of the Collective Investment Schemes Act. The balance should be invested in a fixed interest bearing account in a Bank or Money Market account in a Collective Investment Scheme in terms of the Collective Investment Schemes Act.

28.3 The Trustees may authorise a Managing Agent to administer and operate the accounts referred to in clause 28.1 above, subject to such conditions and restrictions as they may impose.

28.4 Any funds not immediately required for disbursements may be invested in a savings account, money market account or similar account with any registered South African commercial bank or with a Financial Institution approved by the Trustees from time to time.

28.5 The Association shall use interest on moneys invested for any lawful purpose in the interest of the Association.

29. AUDIT

29.1 Once at least in respect of every financial year, the accounts of the Association shall be examined and the correctness of the financial statements be ascertained by the Auditors.

29.2 The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards in terms of the Auditing Profession Act, No. 26 of 2005.

30. INDEMNITY OF THE TRUSTEES

30.1 All the Trustees shall be indemnified by the Association against any liabilities incurred by them in good faith in their capacities as such, as well as for all costs, losses and expenses (including

travelling expenses) which they may incur or become liable for, by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.

30.2 A Trustee shall not be liable for the acts, or omissions, of the Auditors or of any of the other Trustees or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited, or for any loss or damage occasioned by any 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 or in relation thereto, unless occurring as a result of lack of good faith, breach of duty or breach of trust.

30.3 The indemnity referred to in this clause 30 shall not apply in favour of the Managing Agent.

31. DEFAMATION PRIVILEGE

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

32. EXCLUSION OF LIABILITY

32.1 Any Member or other person present in the Development or on the Common Property or using any of the amenities or services of the Association does so entirely at their own risk.

32.2 No Member or other person shall have any claim against the Association, the Trustees, the Managing Agent, or any agents, employees or contractors of the Association, of whatsoever nature arising from such use of the Association's amenities. Any claim of a Member or any other person shall be limited to the amount actually recovered by the Association from the receipt of proceeds of any general public indemnity liability insurance, if any. If and to the

extent that the Association does not have any such public indemnity liability insurance, no such person shall have any claim against the Association.

32.3 The Association, the Trustees, the Managing Agent or any of the agents, employees or contractors of the Association shall not be liable for any loss (including consequential loss), injury, loss of life or damage to person or property of any nature whatsoever which any Member or other person whosoever may sustain:

32.3.1 by reason of any defect in or state of disrepair of the Common Property, or any amenities, facilities, services or property of the Association, or any part thereof, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein, notwithstanding that such effect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Trustees, the Managing Agent, or any of the agents, employees or contractors of the Association; or

32.3.2 directly or indirectly, in or about the Development (including, without limiting the generality of the foregoing, the Common Property and any property of the Association, whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire water leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other Services to the Development (irrespective of the cause thereof), or be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Trustees, the Managing Agent, or any of the Association's agent's, employees or contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.

32.4 The Members undertake in favour of the Association, as soon as practical, to notify their Lessee and their Invitees, of the provisions of this clause 32, and to take all such steps required and/or necessary to ensure that such persons agree hereto in writing in such form as the Trustees may from time to time determine so as to enable the Association to accept the benefits hereof at any time without notice to such person.

32.5 Every Member individually hereby fully and completely indemnifies and holds harmless the Association against all claims of whatsoever nature and howsoever arising which may be brought against the Association by the Member, the Lessee of his Property or any Invitee of the Member or Lessee, or any other person present within the Development at the invitation of or under the control of the Member concerned, notwithstanding the nature of such claim.

32.6 The Association shall not be liable for any costs of suit in any legal proceedings instituted against it in any court or arbitration forum or other tribunal by any Member. The exclusion herein contained will not apply if the proceedings in question are founded on any conduct of the

Association or its representatives or employees which is alleged by the claimant, and found by the court, arbitrator or tribunal, as the case may be to be mala fide or wilfully wrongful or based on gross negligence.

- 32.7 The Association shall not be liable for any damage suffered by a Member or Lessee or any other person present in the Development by reason of power surges.

33. CONDITION IN FAVOUR OF LOCAL AUTHORITY

It is recorded that the following condition is imposed by the Local Authority when approving the Development namely:

if the refuse is to be privately removed, proof in writing must be submitted by the Developer/Home Owners' Association and if the Local Authority is required to carry out refuse removal, the Home Owners' Association will first be required to adhere to all standards set by the Local Authority in this regard.

34. COMMON PROPERTY

- 34.1 The Association has obtained ownership of the common property. The Trustees shall control and manage the common property and the Services, common landscaping, irrigation and amenities in respect of the common property.

- 34.2 The Trustees shall maintain the common property in a state of good and serviceable repair.

- 34.3 The Trustees may subject to the directions given or restrictions imposed on the Trustees by ordinary resolution at a general meeting of the Association:

34.3.1 construct improvements on the common property, or remove improvements;

34.3.2 repair, maintain, upgrade and provide Services in respect of the common property; and

34.3.3 enter into agreements with service providers or other persons in respect of the common property.

- 34.4 Neither the whole nor any portion of the common property shall be sold, alienated or otherwise disposed of, subdivided, mortgaged, or subjected to any servitudes or other rights to be registered in the Deeds Registry, save as specified in the conditions of establishment, without the sanction of a special resolution and subject to the approval of the City.

- 34.5 The Trustees shall control the access to and use of the common property and the facilities and Services of the Association. Owners and Lessee shall comply with the Rules and the reasonable conditions imposed from time to time by the Trustees relating to the use and enjoyment of the common property and the facilities and services of the Association.

35. INSURANCE

- 35.1 The Trustees shall insure the buildings, improvements, amenities and Services in respect of the Common Property to the full replacement value of such items, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the Trustees are most beneficial to the Members, against such risks determined by the Trustees or as may be directed by an Ordinary Resolution.
- 35.2 The Trustees shall procure, at the cost of the Association, general public indemnity liability insurance in respect of the Common Property and Services in such amounts and on such terms as the Trustees may from time to time determine or as may be directed by the Members in general meeting.
- 35.3 When entering into agreement with services providers relating to funds of the Association the Trustees must ensure that such a services provider provides proof of fidelity insurance to ensure that the Association shall be refunded for any loss of money belonging to the Association or for which it is responsible, should such loss be sustained as a result of any act of fraud or dishonesty committed by any insured person being any person contracted or employed by the Association.
- 35.4 The Trustees may insure against the risk of the non-payment by Members of Levies due to the Association.
- 35.5 The Members may by an Ordinary Resolution direct the Trustees to insure against such other risks as they may determine.

36. SERVICES

- 36.1 The Association shall obtain ownership of the Internal Engineering Services. The Association shall maintain and where necessary upgrade the Services in respect of the Development subject to the conditions imposed by the City. The Association shall repair and maintain the main security perimeter wall in respect of the Development.
- 36.2 The Association controls and maintains the main security perimeter wall in respect of the Development, but excluding the painting of the portions of the security perimeter wall facing private Properties which shall be the responsibility of the Owners of the Properties concerned

to paint.

37. DOMICILIUM OF THE ASSOCIATION AND OF MEMBERS

37.2 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:

37.2.1 such address shall be the address of the Chairperson, or the address of a Trustee residing within the Development, or shall be the address of any duly appointed Managing Agent;

37.2.2 the Trustees shall give notice to all Members of any change of such address.

37.3 The *domicilium citandi et executandi* of a Member shall be the street address of the Member's Erf.

37.4 A Member may by written notice to the Association alter his *domicilium*, provided that such new address may not be a post office box or *post restante* and provided that such address shall be situated within the Republic of South Africa and shall not be effective until fourteen (14) days after receipt of such notice by the Association.

38. DELIVERY AND ELECTRONIC TRANSMISSION OF NOTICES

38.1 A notice by the Association to any Member in terms of the Constitution shall be in writing and shall be delivered to the Member, either by hand or by prepaid post properly addressed to the Member at his *domicilium citandi et executandi*. It shall be competent to transmit the notice to a Member by telefax or electronic communication (e-mail) where the telefax number or e-mail address of the Member is recorded with the Association.

38.2 Any notice to a Member:

38.2.1 if delivered by prepaid post in a correctly addressed envelope to his *domicilium citandi et executandi*, shall be deemed to have been received on the 5th day after the date when the notice was posted; or

38.2.2 if delivered by hand to the Member, or to a responsible person at the *domicilium citandi et executandi* of the Member, shall be deemed to have been received on the day of delivery; or

38.2.3 if successfully transmitted by telefax to the recorded telefax number of the Member, shall be deemed to have been received on the first (1st) Business Day after the date of transmission; or

38.2.4 sent by e-mail to the recorded e-mail address of the Member, shall be deemed to have been received on the first (1st) Business Day after the date of transmission.

38.3 Notwithstanding anything to the contrary herein contained, a written notice actually received by a Member shall be regarded as adequate written notice to such Member notwithstanding that it was not delivered in accordance with clause 38.1 above.

39. BREACH OF THE CONSTITUTION

39.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings against Members who are in breach of any of the provisions of the Constitution.

39.2 If a Member commits a breach of a provision of the Constitution by failing to pay on due date any Levies, penalties or any other amounts payable by him to the Association and remains in default for more than thirty (30) days, the Trustees may, on behalf of the Association, institute legal proceedings against such Member in any court of competent jurisdiction for payment of such overdue Levies, penalties or other amounts.

39.3 Save for clause 39.2 above, if a Member commits any other breach of any provision of the Constitution and fails to commence to remedy that breach within a period of fourteen (14) days' after the receipt of written notice to that effect by the Trustees, and to complete the remedying of such breach within a reasonable time or as may be specified in the notice, then the Trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees, or the Association, or any other Member, may have in terms of the Constitution, or in law, including the right to claim damages, to:

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

39.3.2 institute legal proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary, and/or

39.3.3 institute proceedings with a competent Ombud for such relief as the Trustees may consider necessary.

39.4 In the event that the Trustees institute proceedings against a Member in terms of the

aforegoing provisions, the Trustees shall be entitled to recover from such Member all legal costs incurred by the them, including attorney and own client charges, tracing fees and collection commission.

40. IMPOSITION OF PENALTIES

40.1 If the conduct of a Member or Lessee or the Invitees of a Member or Lessee constitute/s a nuisance in the opinion of the Trustees or a contravention of a provision of the Constitution, the Trustees shall by written notice inform the Member of the nuisance or contravention and warn the Member that if he, or the Lessee of his Property or the Invitees of the Member or Lessee fails to remedy the contravention, or persist in, or repeats such conduct or contravention, a penalty will be imposed on the Member.

40.2 If, notwithstanding the written notice in terms of clause 40.1 above, the Member or Lessee fails to remedy the contravention or persist in or repeats such conduct or contravention, the Trustees may, constitute a disciplinary committee that will be empowered to impose a reasonable penalty on the Member.

40.3 The penalty imposed in terms of clause 40.2 above, shall become due on the date of the written notice and must be paid within thirty (30) days of the date of the written notice. Should the penalty remain unpaid, it shall be added to the Member's levy statement and shall be recovered from the Member in the same manner as applies to arrear Levies, together with interest at the rate applicable to arrear levies.

40.4 The Trustees shall, from time to time, determine the amounts of penalties in respect of the various contraventions and in respect of first and successive contraventions, subject to the directions given or restrictions imposed by the Members at general meetings of the Association.

40.5 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Member shall be deemed to be guilty of a separate contravention for every twenty four (24) hours or part thereof during which such contravention continues and shall be liable for a penalty in respect of each such separate contravention.

40.6 A Member may within thirty (30) days of the date of the written notice in terms of clause 40.2 submit an objection with a motivation against the penalty imposed to the Trustees.

40.7 Upon receipt of the objection, the Trustees may:

40.7.1 withdraw or reduce the penalty; or

40.7.2 schedule a meeting of the Trustees for the purpose of considering the objection and invite the Member to attend.

40.8 At the said meeting of the Trustees referred to in clause 40.7.2 above, the Member shall have the right to:

40.8.1 present his case;

40.8.2 present any evidence, including the calling of witnesses to substantiate his case;

40.8.3 cross-examine any person called as a witness in support of the charge;

40.8.4 have access to documents produced in evidence; and

40.8.5 produce mitigating factors.

40.9 The failure of the Member charged to attend the meeting of the Trustees referred to in clause 40.7.2 shall not render the proceedings at the meeting void. Should the Member or his representative not attend the meeting of the Trustees without providing a reasonable request for postponement, the Trustees may in their sole discretion continue with the meeting of the Trustees and consider the objection in the absence of the Member.

40.10 Upon the conclusion of the meeting of the Trustees, the Trustees shall deliberate the evidence, and if so resolved, they may:

40.10.1 uphold the penalty; or

40.10.2 withdraw or reduce the penalty.

41. ARBITRATION

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

41.1.1 the interpretation of;

41.1.2 the effect of;

41.1.3 their respective rights or obligations under;

41.1.4 a breach of (save for non-payment of Levies or any other amount due by a Member in terms of the Constitution),

the Constitution, such dispute shall be decided by arbitration in the manner set out in this clause 41.

41.2 The arbitration referred to in clause 41.1 shall:

41.2.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and

41.2.2 commence as soon as is reasonably possible after it is demanded and with a view to it being concluded within thirty (30) days after it is demanded; and

41.2.3 be held in accordance with the provisions of the Arbitration Act, No. 41 of 1965 (as amended from time to time) except insofar as the provisions of this clause 41 shall apply.

41.3 The arbitrator shall be a practising senior advocate or attorney of not less than ten (10) years standing appointed by agreement between the parties to the arbitration within seven (7) Business Days of being called upon to make such appointment and, failing such agreement within the period, be appointed by the President of the Cape Bar Council or the President of the Cape Law Society, as the case may be.

41.4 The arbitrator shall in giving his award have regard to the principles contained in the Constitution and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within ten (10) business days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

41.5 The decision of the arbitrator made at such arbitration proceedings:

41.5.1 shall be final and binding on the parties to the arbitration;

41.5.2 shall be carried into effect immediately; and

41.5.3 may upon application by a party or by the Association be made an order of any Court that has jurisdiction over the parties or property.

41.6 The above remedies subsist without prejudice to the right of any party to institute an action or launch an application in a court of competent jurisdiction or to institute proceedings in terms of

the Community Schemes Ombud Service Act, No. 9 of 2011, when such service becomes operative.

- 41.7 The above remedies subsist without prejudice to the right of any party to refer any matter in dispute to the Members for their decision.

42. FAILURE OF ASSOCIATION TO MEET ITS OBLIGATIONS

- 42.1 If the Association fails to meet an obligation in this Constitution and in section 61(5)(d) or section 62(1)(a)(ii) of the City's Planning By-Law and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure. The City may recover any expenditure in respect of the action contemplated above from the Association or the Members, who shall be jointly liable. The amount of any expenditure so recovered shall be considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.

- 42.2 If the Association ceases to function effectively or to carry out its obligations, the City may in terms of section 63(4) of the City's Planning By-Law give the Association a binding instruction to:

42.2.1 hold a meeting and to reconstitute itself; or

42.2.2 dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deeds.

- 42.3 In determining whether to act in terms of clause 42.2.1 or 42.2.2 above, the City must have regard to:

42.3.1 the purpose of the Association;

42.3.2 who will take over the maintenance of Internal Engineering Services and other which the Association is responsible for, if at all;

42.3.3 the costs of upgrading the Internal Engineering Services and other infrastructure if the City is to take over the infrastructure;

42.3.4 the impact of the dissolution of the Association on its Members and the community;

42.3.5 any written representations from the Association and its Members.

42.4 If the Association is dissolved, the Members must jointly pay the costs of:

42.4.1 the transfer to the City of the Association's property, including the Common Property and Internal Engineering Services;

42.4.2 the upgrading of the Internal Engineering Services to the standards of the City.

42.5 In the event that the Association has ceased to function and an owner wishes to transfer an Erf in that event, the owner must obtain the consent of at least sixty percent (60%) of the Members of the Association, which consent is deemed to be the consent of the Association, unless the Owner has been duly authorised in terms of clause 43.1 of the Constitution.

43. WINDING UP OF ASSOCIATION

43.1 The Association may be wound up by an order of the Western Cape High Court or by a resolution passed at a general meeting of the Association, by ninety five percent (95%) of the total votes represented at such meeting by the Members present in person or by proxy and provided that:

43.1.1 the aforesaid resolution shall include arrangements for the transfer of Erven and Common Property, in the event that the Association ceases to function; and

43.1.2 the City consents thereto in writing.

43.2 In the event of such winding up, it shall be the duty of the Trustees to comply with the conditions imposed in terms of the resolution, by the City and/or the Western Cape High Court, as the case may be.

43.3 If the Association is dissolved, the Members must jointly pay the costs of:

43.3.1 the transfer to the City of the Association's property, including the Common Property and Internal Engineering Services;

43.3.2 the upgrading of the Internal Engineering Services to the standards of the City.

44. AMENDMENT OF THE CONSTITUTION AND ANNEXURES

44.1 The provisions of the Constitution may be added to, amended, substituted, or repealed from

time to time by an ordinary resolution of at least 51% of the Members passed at a general meeting called for the specific purpose. The notice of such meeting or the annexure to such notice shall specify the proposed addition, amendment, or substitution of a provision of the Constitution, or the provision of the Constitution to be repealed.

- 44.2 The Constitution and any amendment thereof must be lodged with the City and the latest copy duly lodged with the City, and which the City has certified in terms of section 62(2) or 62(4) of the City's Planning By-Law, shall be presumed to contain the operative provisions of the Constitution.
- 44.3 The City is exempt from liability for any damage which may be caused by its certification of the Constitution or an amendment thereof or by the loss of a Constitution of the Association lodged with the City.
- 44.4 The Design Guidelines may be compiled, added to, amended, substituted or repealed from time to time by a resolution of the Trustees, subject to the provisions of clause 11 hereof. Any amendments to the Design Guidelines shall be lodged with the City.
- 44.5 The Rules and processes to be followed by a Disciplinary Committee may be compiled, added to, amended, substituted or repealed from time to time by a resolution of the Trustees.
- 44.6 The Regulations may be compiled, added to, amended, substituted or repealed from time to time by a resolution of the Trustees.

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