

C O N S T I T U T I O N

of the

RIVERSIDE VILLAGE HOME OWNERS' ASSOCIATION

TABLE OF CONTENTS

1	DEFINITIONS.....	1
2	INTERPRETATION	4
3	INTRODUCTION.....	5
4	ESTABLISHMENT OF THE ASSOCIATION.....	5
5	STATUS OF THE ASSOCIATION	5
6	OBJECTS OF THE ASSOCIATION.....	5
7	FINANCIAL YEAR-END	6
8	MEMBERSHIP	6
9	FIRST GENERAL MEETING OF THE ASSOCIATION.....	7
10	ANNUAL GENERAL MEETINGS OF THE ASSOCIATION.....	7
11	SPECIAL GENERAL MEETING	8
12	NOTICE OF GENERAL MEETINGS.....	8
13	QUORUM FOR A GENERAL MEETING	9
14	PROCEDURE FOR THE CONDUCT OF GENERAL MEETINGS	9
15	PROXIES	10
16	VOTES OF MEMBERS	10
17	RESOLUTIONS OF THE ASSOCIATION.....	11
18	RESERVED MATTER	11
19	MINUTES OF MEETINGS OF THE ASSOCIATION	11
20	RIGHTS AND OBLIGATIONS OF MEMBERS.....	12
21	RESTRICTIONS.....	14
22	IMPROVEMENTS	16
23	THE BOARD	16
24	POWERS, FUNCTIONS AND DUTIES OF THE BOARD	18
25	PROCEEDINGS OF THE BOARD.....	21
26	MANAGING AGENT.....	22
27	LEVIES.....	23
28	BREACH	25
29	ACCOUNTS	25
30	BANK ACCOUNT	26
31	AUDIT	26
32	ARBITRATION	26
33	ADDRESSES	27
34	INDEMNITY.....	28
35	NONPROFIT ORGANISATION REQUIREMENTS.....	29
36	AMENDMENT OF CONSTITUTION	29
37	DISSOLUTION OF THE ASSOCIATION	29

38	INVESTMENT OF FUNDS	29
39	RATIFICATION AND CERTIFICATION	30
40	ASSOCIATION'S FAILURE TO MEET AN OBLIGATION	30

ANNEXES

ANNEX 1 – PROXY APPOINTMENT FORM

1 DEFINITIONS

In this Constitution, unless the context indicates otherwise –

- 1.1 **"AFSA"** means the Arbitration Foundation of Southern Africa NPC;
- 1.2 **"Alienate"** means, in relation to any Land Unit, the transfer of any rights in respect of such Land Unit, including to alienate by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency or liquidation, change in shareholding of a company or change in membership interest in a close corporation, irrespective of whether such alienation is subject to a suspensive condition or resolutive condition, and **"Alienation"** shall have a corresponding meaning;
- 1.3 **"Annual General Meeting"** has the meaning ascribed to it in clause 10.1;
- 1.4 **"Association"** means the Riverside Village Home Owners' Association, which is the "owners' association", as defined in section 1 of the By-law, in respect of the Development,
- 1.5 **"Auditor"** means the auditor appointed by the Association, as contemplated under clause 31;
- 1.6 **"Board"** means the board of Trustees of the Association comprising of, collectively, all of the Trustees of the Association at any particular time;
- 1.7 **"Business Day"** means any day other than a Saturday, Sunday, or Public Holiday;
- 1.8 **"Business Hours"** means the hours between 08h30 and 17h00 on a Business Day;
- 1.9 **"By-law"** means the City of Cape Town Municipal Planning By-law, 2015;
- 1.10 **"City"** has the meaning ascribed to it in section 1 of the By-law;
- 1.11 **"Clearance Certificate"** has the meaning ascribed to it in clause 9.7.2;
- 1.12 **"Common Areas"** means the roads and open spaces on the Land as approved by the relevant authorities, and belonging to, leased by or maintained by the Association;
- 1.13 **"Completion Certificate"** has the meaning ascribed to it in clause 22.2.4;
- 1.14 **"Constitution"** means the constitution of the Association, as contemplated under section 62 of the By-law, as set out in this document, as may be amended from time to time in terms of the provisions hereof;

- 1.15 **"Day"** means a calendar day;
- 1.16 **"Deed of Alienation"** has the meaning ascribed to it in section 1 of the Alienation of Land Act number 68 of 1981;
- 1.17 **"Design Manual"** means the architectural and landscape design manual for the Estate, as amended from time to time, governing the Improvements on the Land Units;
- 1.18 **"Developer"** means Red Cliff Property (Pty) Ltd or its successors in title, or part successors in title or nominees and/or permitted assigns;
- 1.19 **"Development"** means the development of residential property on the Land as per the Plan of Subdivision subject to any amendments that the Developer may, at his sole discretion, choose to implement to the Plan of Subdivision, known as Riverside Village;
- 1.20 **"Development Period"** means the period commencing on the date the Association is established, and terminating on the date the last of the Land Units owned by the Developer is transferred from the Developer, or such earlier date on which the Developer notifies the Association in writing that he terminates the Development Period, subject however to the terms and conditions of the Constitution of the Association;
- 1.21 **"EMP"** means the environmental management plans applicable to the Estate, including the Individual House Construction EMP and Operational EMP, as approved by the local authority;
- 1.22 **"Estate"** means Riverside Village residential estate;
- 1.23 **"First General Meeting"** has the meaning ascribed to it in clause 9.1;
- 1.24 **"General Meeting"** means, collectively, any Annual General Meeting, the First General Meeting and any Special General Meeting;
- 1.25 **"Improvement"** means any alteration, addition, construction or building that, under applicable Law, requires the approval of any local authority or other regulatory body;
- 1.26 **"include"** means "include without limitation", and the use of the word "include" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- 1.27 **"Land"** means erven 5427 and 5738 Kommetjie in the City of Cape Town;
- 1.28 **"Land Unit"** means a "land unit", as defined in section 1 of the By-law, created by the Subdivision of the Land;

- 1.29 **"Law"** means any law of general or special application, including the common law, any statute or other enactment or legislative measure of government (including local, provincial, and national government), and further includes any circular, directive, interpretation note, or regulation of a statutory or regulatory body;
- 1.30 **"Managing Agent"** has the meaning ascribed to it in clause 26.1;
- 1.31 **"Member"** means a person who, pursuant to the provisions of clause 8, is a member of the Association,
- 1.32 **"Ordinary Resolution"** means a resolution adopted with the support of more than 50% (fifty percent) of the voting rights exercised on the resolution;
- 1.33 **"Owner"** has the meaning ascribed to it in section 1 of the By-law;
- 1.34 **"person"** means any company, close corporation, juristic person, natural person in personal capacity, natural person in official capacity, partnership, trust, or other entity, whether or not having separate legal personality;
- 1.35 **"Proxy"** has the meaning ascribed to it in clause 15.1;
- 1.36 **"Resident"** means any person occupying a Land Unit;
- 1.37 **"Rules"** means any rules made by the Trustees as contemplated under clause 24;
- 1.38 **"Special General Meeting"** has the meaning ascribed to it in clause 11.1;
- 1.39 **"Special Resolution"** means a resolution adopted with the support of at least 75% (seventy-five percent) of the voting rights exercised on the resolution;
- 1.40 **"Subdivision"** has the meaning ascribed to it in section 1 of the By-law;
- 1.41 **"Trustee"** a person appointed as a trustee of the Association in accordance with the provisions of clause 23;
- 1.42 **"writing"** means legible writing in English, and includes printing, typewriting, lithography, or any other mechanical process, as well as any electronic communication in a manner and a form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost; and
- 1.43 **"year"** means a calendar year.

2 INTERPRETATION

- 2.1 In this Constitution, unless the context indicates otherwise –
- 2.1.1 clause headings and the nomenclature are for convenience only, and are not to be used in its interpretation;
 - 2.1.2 a defined term in title case shall be given its meaning as defined, while the same term appearing in lower case shall be interpreted in accordance with its plain English meaning;
 - 2.1.3 a term defined in a clause or sub-clause shall be given its meaning as so defined in this entire Constitution;
 - 2.1.4 a derivative of a term defined herein or in accordance herewith bears a cognate and/or corresponding meaning;
 - 2.1.5 a stated number of Business Days shall be determined by excluding the first and including the last Business Day;
 - 2.1.6 if the due date for performance of an obligation under this Constitution is a Day which is not a Business Day, then the due date for performance of the relevant obligation shall be the next succeeding Business Day;
 - 2.1.7 if a number is expressed in numerals and in words, and there is a conflict between the two, unless there is a patent error in the expression in words, the latter shall prevail;
 - 2.1.8 an expression which denotes a gender includes the other genders; and a pronoun is to be considered gender-neutral;
 - 2.1.9 an expression which denotes one category of person includes the other categories of person;
 - 2.1.10 an expression which denotes the singular includes the plural and the other way around;
 - 2.1.11 a reference to a clause is a reference to a clause or sub-clause in this Constitution;
 - 2.1.12 a reference to a Party shall include a reference to that Party's successors in title and assigns allowed at Law;
 - 2.1.13 the words "shall", "will", and "must" used in the context of an obligation or restriction imposed on a Party have the same meaning;
 - 2.1.14 the phrase "under this Constitution" means, arising from, in connection with, in terms of, pursuant to, and/or under, this Constitution; and, in respect of any other document or provision, "under" shall bear a cognate and/or corresponding meaning;
 - 2.1.15 a reference to an agreement or document shall be construed as a reference to such agreement or document, as amended, varied, novated, or supplemented from time to time; and
 - 2.1.16 a reference to any Law shall be construed as a reference to that Law as at the Signature Date, and as amended or substituted from time to time.

- 2.2 Unless the context indicates otherwise –
- 2.2.1 any provision conferring a right to or imposing an obligation on a person, and appearing in a definition in clause 1 (Definitions) or elsewhere in this Constitution, shall be given effect to as if it were a substantive provision in the body or operative part of this Constitution;
- 2.2.2 the provisions in this clause 2 (Interpretation) bear only on the interpretation of this Constitution;
- 2.2.3 the provisions in clause 3 (Introduction) are only clarifications, explanations, preambles, recitals, recordals, and/or the documentation of prior events or future intentions, and are not intended to confer rights to or to impose obligations in conflict with any substantive provision in the body or operative part of this Constitution.
- 2.3 This Constitution is to be interpreted in a manner consistent with the By-law, and in the event of an irreconcilable inconsistency between the provisions of the By-law and this Constitution, the provisions of the By-law shall prevail to the extent of such inconsistency.

3 INTRODUCTION

- 3.1 The City, when approving the application for Subdivision of the Land, required the establishment of the Association as a condition of the approval as contemplated in section 61(1) of the By-law.
- 3.2 The Association must, in accordance with the provisions of section 62(1) of the By-law, have a constitution.
- 3.3 This document constitutes the constitution of the Association.

4 ESTABLISHMENT OF THE ASSOCIATION

The Association is hereby established and will come into existence upon the transfer of the first Land Unit.

5 STATUS OF THE ASSOCIATION

The Association -

- 5.1 is a juristic person;
- 5.2 has perpetual succession, is capable of suing and being sued in its own name, and exists independently of its Members and office-bearers;
- 5.3 shall not operate for profit, but for the benefit of the collective mutual interests of the Members.

6 OBJECTS OF THE ASSOCIATION

- 6.1 The primary object of the Association is to act in accordance with the collective mutual interests of the Members.

- 6.2 The ancillary objects of the Association are –
- 6.2.1 to manage and control the promotion, enhancement and protection of the communal interests of the Members in the Estate and to manage, control and regulate the Estate in such a way that its Members may derive the maximum collective benefit therefrom;
 - 6.2.2 the control, administration, management and ownership of private and/or public open space, streets, and road reserves (whether owned, leased or managed by the Association) and other services and amenities arising from the Subdivision of the Land for the benefit of the Members;
 - 6.2.3 the enforcement of conditions of the approval of the Subdivision of the Land or management plan set out in such conditions, as may be the case;
 - 6.2.4 the security of the Members, Residents and other occupants of the Development; and
 - 6.2.5 the ownership, maintenance and/or management of any property and/or structures relating to provision of security to the Members, Residents, and other occupants of the Development.

7 FINANCIAL YEAR-END

The financial year-end of the Association is the end of September of each year.

8 MEMBERSHIP

- 8.1 Every Owner of a Land Unit shall be a Member of the Association with effect from the date upon which the deed conferring ownership on such person is deemed, in terms of the provisions of section 13 of the Deeds Registries Act number 47 of 1937, to be registered, and for so long as such person is an Owner of a Land Unit.
- 8.2 The Developer shall be a Member of the Association for the duration of the Development Period, or beyond the Development Period for as long as the Developer owns a Land Unit in the Estate.
- 8.3 Where any Owner is more than one person, all the registered owners of that Land Unit shall be deemed jointly and severally to be one Member and as such they shall be jointly and severally liable.
- 8.4 Where a Land Unit has been sectionalised, as allowed under the City's planning by-laws, all the registered owners of the sectional title scheme shall be deemed jointly and severally to be one Member and as such they shall be jointly and severally liable.
- 8.5 For the sake of clarity it is recorded that –
 - 8.5.1 no Member may resign from, or otherwise terminate, their membership other than by ceasing to be an Owner of a Land Unit;
 - 8.5.2 no person may be a Member of the Association other than by virtue of being an Owner of a Land Unit; and

9 FIRST GENERAL MEETING OF THE ASSOCIATION

- 9.1 The Developer shall, within 60 (sixty) days of the earlier of –
- 9.1.1 2 (two) years of the transfer of the first Land Unit; or
- 9.1.2 the transfer of 60% of the Land Units,
- convene a general meeting (the “**First General Meeting**”) of the Association.
- 9.2 The notice convening the first general meeting of the Association must be accompanied by –
- 9.2.1 an agenda; and
- 9.2.2 a proxy appointment form substantially in the format of Annex 1.
- 9.3 The agenda for the first general meeting of the Association must include at least the following:
- 9.3.1 Electing the Trustees.
- 9.3.2 A motion to appoint the Auditor.
- 9.3.3 The approval of the Levy.
- 9.4 The Developer shall, within 60 (sixty) days of the First General Meeting of the Association –
- 9.4.1 Notify the City that the First General Meeting of the Association has taken place; and
- 9.4.2 Provide the City with a copy of the minutes of the First General Meeting of the Association.

10 ANNUAL GENERAL MEETINGS OF THE ASSOCIATION

- 10.1 Within one year of the first general meeting of the Association, but not more than 6 (six) months of the end of the financial year-end of the Association, and thereafter annually not more than 6 (six) months of the end of the financial year-end of the Association, the Trustees shall convene the annual general meeting (each an “**Annual General Meeting**”) of the Association.
- 10.2 Every notice convening an Annual General Meeting of the Association must be accompanied by –
- 10.2.1 an agenda;
- 10.2.2 a proxy appointment form substantially in the format of Annex 1;
- 10.2.3 the Chairperson’s Report;
- 10.2.4 the Auditor’s Report; and

- 10.2.5 the Annual Financial Statements of the Association in respect of the preceding financial year.
- 10.3 The agenda for an Annual General Meeting must include at least the following:
 - 10.3.1 The consideration and approval of the minutes of the previous Annual General Meeting.
 - 10.3.2 The consideration of the Chairperson's Report.
 - 10.3.3 The consideration of the Auditor's Report.
 - 10.3.4 A motion for the consideration and approval of the Annual Financial Statements of the Association in respect of the preceding financial year.
 - 10.3.5 Electing the Trustees.
 - 10.3.6 A motion to appoint the Auditor.
 - 10.3.7 A motion to consider and approve the Auditor's remuneration.

11 SPECIAL GENERAL MEETING

- 11.1 The Trustees shall, -
 - 11.1.1 at the instance of Members holding in aggregate not less than 51% (fifty one percent) of the voting rights of the Association; or
 - 11.1.2 at the instance of a majority of the Trustees,

convene a general meeting (each a "**Special General Meeting**") of the Association.
- 11.2 Every notice convening a Special General Meeting of the Association must be accompanied by –
 - 11.2.1 an agenda; and
 - 11.2.2 a proxy appointment form substantially in the format of Annex 1.
- 11.3 The agenda for a Special General Meeting shall set out –
 - 11.3.1 a comprehensive summary of the matter for which the Special General Meeting is convened; and
 - 11.3.2 any motion to be tabled at such Special General Meeting.

12 NOTICE OF GENERAL MEETINGS

- 12.1 Every General Meeting of the Association shall be convened on no less than 14 (fourteen) clear days prior notice of the date of such General Meeting.
- 12.2 Every notice convening a General Meeting shall –
 - 12.2.1 shall be in writing; and

- 12.2.2 state the date, time and place for such meeting.
- 12.3 A General Meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in the aforesaid, be deemed to have been duly called if it is so agreed by all the Members present who are entitled to attend and vote at the General Meeting. Every Member shall be entitled to receive notice of every General Meeting.
- 12.5 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent to Members, or non-receipt of any such notices, notification, or document by any Member, shall not invalidate the proceedings, or any resolutions passed, at any meeting.

13 QUORUM FOR A GENERAL MEETING

- 13.1 A quorum for a General Meeting of the Association shall be 51% (fifty one percent) of the Members entitled to vote at such meeting, present in person or represented by proxy and provided further that for the duration of the Development period the Developer is present in person or by proxy.
- 13.2 No business may be transacted at any General Meeting unless a quorum is present.
- 13.3 If a quorum is not present within 30 (thirty) minutes of the time set out in the notice convening such General Meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time; Provided that if on the day to which such General Meeting is adjourned a quorum is not present within 30 (thirty) minutes of the time appointed for such meeting, those Members present at such adjourned meeting shall constitute a quorum provided that for the duration of the Development Period the Developer is present in person or by proxy.

14 PROCEDURE FOR THE CONDUCT OF GENERAL MEETINGS

- 14.1 The Chairperson shall preside over every General Meeting; provided that if the Chairperson is not present within 15 (fifteen) minutes of a quorum being reached for such General Meeting, the Deputy Chairperson shall act as the Chairperson for the meeting provided further that should the Deputy Chairperson also not be present within 15 minutes of the quorum being reached, the Members present at such General Meeting shall elect from themselves a Member to preside over such General Meeting, who shall thereupon exercise all of the powers and duties of the Chairperson in relation to such meeting.
- 14.2 The Chairperson may, with the consent of a majority of Members present, or if directed to do so by a majority of the Members present, adjourn a meeting from time to time and from place to place; provided that:
- 14.2.1 no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place; and
- 14.2.2 whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as the meeting from which the adjournment took place.

- 14.3 Except as otherwise set forth herein, all General Meetings shall be conducted in accordance with generally accepted practice.
- 14.4 Any General Meeting may be conducted by electronic communication; provided that the electronic communication facility employed ordinarily enables all Members participating at that General Meeting to communicate concurrently with each other, without an intermediary, and to participate effectively in the meeting.

15 PROXIES

- 15.1 A Member may be represented at a General Meeting by a proxy (each, a “**Proxy**”), who need not be a Member.
- 15.2 The Proxy shall be entitled to vote at a general meeting on behalf of that Member.
- 15.3 The instrument appointing a Proxy shall –
- 15.3.1 be substantially in the format of Annex 1;
- 15.3.2 be signed by the Member concerned or his duly authorised agent in writing; provided that –
- 15.3.2.1 where a Member is more than 1 (one) person, any 1 (one) of those persons may sign the instrument appointing a proxy on such Member's behalf;
- 15.3.2.2 where a Member is a juristic person, the same may be signed by a natural person duly authorised by written resolution of such Member, and whose authorisation shall accompany such appointment.
- 15.4 Every instrument appointing a Proxy shall be delivered to the Secretary not less than 24 (twenty four) hours prior to the time appointed for the commencement of the relevant General Meeting, failing which such Proxy appointment shall be deemed invalid.

16 VOTES OF MEMBERS

- 16.1 Subject to clause 16.2, 1 (one) vote shall accrue to every Land Unit, which vote shall be exercisable by the Owner of such Land Unit; provided that where a Land Unit is registered in the name of more than one person, and such persons are unable to agree on how a vote is to be exercised, the person whose name appears first on the title deed in respect of such Land Unit shall be entitled to exercise the relevant vote.
- 16.2 The Developer shall, during the Development Period, have a total number of votes equal to 350 votes and a representative of the Developer shall in person or by proxy be entitled to cast such vote.
- 16.3 An abstention shall not be counted as a vote for or against the resolution under consideration. In the case of an equality of votes, the Chairperson of the general meeting shall be entitled to a casting vote in addition to his deliberate vote.
- 16.4 An abstention shall not be counted as a vote for or against the resolution under consideration. In the case of equality of votes, the Chairperson of the General Meeting shall be entitled to a casting vote in addition to his deliberate vote.

- 16.5 Unless any Member present in person or represented by proxy at a General Meeting shall before the closure of the General 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 a meeting, such declaration by the Chairperson shall be deemed to be true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote recorded provided such entry conforms with the declaration made by the Chairperson of the meeting as a result of any voting at the meeting.
- 16.6 Notwithstanding clause 16.1, if the Owner of any Land Unit is in arrears with payments due to the Association by virtue of the Owner's ownership of the Land Unit, the voting rights accruing to such Land Unit shall not be exercisable until such time as all monies due by such Owner in respect of such Land Unit has been paid in full.

17 RESOLUTIONS OF THE ASSOCIATION

- 17.1 Every resolution of the Members of the Association shall either be an Ordinary Resolution, or a Special Resolution.
- 17.2 A resolution proposed in respect of Reserved Matter shall only be carried by Special Resolution.
- 17.3 Any resolution in respect of any matter other than matters constituting Reserved Matter shall be carried by Ordinary Resolution.
- 17.4 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

18 RESERVED MATTER

- 18.1 A resolution proposed in respect the following matters (each a "**Reserved Matter**") shall only be carried by Special Resolution:
- 18.1.1 The amendment of this Constitution.
- 18.1.2 The dissolution of the Association.
- 18.1.3 Any loan to be incurred by the Association.

19 MINUTES OF MEETINGS OF THE ASSOCIATION

- 19.1 The Trustees shall:
- 19.1.1 ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairperson of the meeting;
- 19.1.2 ensure all such minutes of all meetings of the Association are kept in a minute book.

- 19.2 The Trustees shall keep all minute books of meetings of the Association in perpetuity.
- 19.3 On the written application of any Member, the Trustees shall make all minutes of the proceedings and/or meetings of the Association available for inspection by such Member at the Association's offices. The Association will not be obliged to distribute the minutes electronically.
- 19.4 All resolutions recorded in the minutes of any meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported 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.
- 19.5 Save as otherwise provided in this Constitution, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

20 RIGHTS AND OBLIGATIONS OF MEMBERS

- 20.1 Every Member shall –
- 20.1.1 comply with the provisions of this Constitution;
- 20.1.2 comply with all rules or regulations made by the Association and/or the Trustees;
- 20.1.3 comply with any agreement concluded by the Association to the extent that such agreement imposes, directly or indirectly, any obligation on any Member;
- 20.1.4 comply with any directive given by the Association and/or the Trustees in enforcing this Constitution;
- 20.1.5 procure and enforce compliance by every Resident who occupies a Land Unit owned by such Member with this Constitution;
- 20.1.6 be liable to the Association for any breach of the obligations imposed under this Constitution on, in relation to, or in respect of any Land Unit owned by the Member by any person, including any guest, invitee, tenant, contractor, or agent of such Member.
- 20.2 The rights and obligations of a Member are not transferable, and every Member shall to the best of their ability, further the objects and interests of the Association.
- 20.3 The Members are jointly liable for the expenditure incurred in connection with the Association.
- 20.4 Subject to clause 20.6, no Member shall without the prior written consent of the Association and, to the extent that the Developer is a Member of the Association, the Developer (both of whom shall not unreasonably withhold such consent) –
- 20.4.1 Apply to the relevant Local and other authorities (as the case may be) to Consolidate any Land Units; or
- 20.4.2 Apply to the relevant Local and other authorities (as the case may be) to Subdivide any Land Unit.

- 20.5 The Association and, to the extent that the Developer is a Member of the Association, the Developer may impose such conditions as it deems fit in granting any consent contemplated under clause 20.4.
- 20.6 Notwithstanding clause 20.4, the provisions of clause 20.4 do not apply to, limit, or restrict the rights of the Developer to subdivide any Land Unit, or consolidate any Land Units, of which it is the Owner.
- 20.7 Subject to clause 20.8, no Member shall Alienate any Land Unit unless:
- 20.7.1 The Deed of Alienation contains a provision, or provisions, in terms of which, upon transfer of the Land Unit into the name of the alienee, the alienee –
- 20.7.1.1 is bound by this Constitution;
- 20.7.1.2 becomes a Member of the Association;
- 20.7.2 Such Member obtains a clearance certificate (a "**Clearance Certificate**") from the Association, which Clearance Certificate shall only be issued by the Association if –
- 20.7.2.1 all amounts owing by the Member to the Association have been paid or satisfactorily secured;
- 20.7.2.2 all obligations of the Member in terms of this Constitution have been complied with in full; and
- 20.7.2.3 the fees, as determined by the Association from time to time, in respect of the issuing of the Clearance Certificate has been paid;
- 20.8 Notwithstanding clause 20.7, the provisions of clause 20.7 shall not apply to, limit, or restrict the rights of the Developer to Alienate any Land Unit.
- 20.9 Subject to clause 20.10, no Member shall appoint or otherwise mandate any person to procure a purchaser for any Land Unit other than a person duly accredited by the Association.
- 20.10 Notwithstanding clause 20.9, the provisions of clause 20.9 shall not apply to, limit, or restrict the Developer's right to appoint or mandate any person to procure a purchaser for any Land Unit owned by the Developer.
- 20.11 Every Member shall –
- 20.11.1 maintain its Land Unit in accordance with the Rules;
- 20.11.2 maintain its Land Unit as well as the road verge separating its Land Unit from the road surface, it being recorded that when the Land Unit is located on a block corner there will be at least two road verges for the Owner to maintain.
- 20.12 Should the Member fail to maintain his Land Unit or road verge in accordance with the Rules then the Association will employ third party contractors to do such maintenance and charge the Member for such work carried out, which amount shall immediately be due and payable by the Member to the Association.

- 20.13 Members shall be responsible for the payment of utility services charges such as the supply and use of water, sewer, electricity and other services to their Land Unit, whether such services are supplied and charged by the Local Authority or by the Association.
- 20.14 A Member shall be liable for the acts or omissions of any persons occupying his Land Unit, whether lawfully or unlawfully, including but not limited to lessees, guests, employees, family, invitees, contractors and / or agents.

21 RESTRICTIONS

- 21.1 Subject to the provisions set out hereunder, no Member, save for the Developer, shall –
- 21.1.1 apply for the rezoning of any Land Unit with a view to procuring a variation or amendment or substitution of use rights; or
- 21.1.2 be entitled to use any Land Unit for any purpose other than the permitted use applicable upon establishment of the Development.
- 21.2 No Member, save for the Developer, shall conduct, nor permit to be conducted, any business on any Land Unit other than the uses envisaged herein or use any Land Unit for purposes other than residential purposes unless the Trustees have approved the use to which the Land Unit is to be put in writing and the Local Authority has, to the extent that it may be necessary, granted the necessary approvals authorizing such use in terms of applicable Laws and there has been compliance with the following:
- 21.2.1 any Member desirous of conducting a business on a Land Unit, or desirous of using a Land Unit for purposes other than residential, shall
- 21.2.1.1 during the Development Period, apply to the Developer; and
- 21.2.1.2 after the Development period, apply to the Board,
- for permission to do so. The Developer or the Board (as the case may be) shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the Developer or the Trustees (as the case may be) deem fit;
- 21.2.2 an application contemplated under clause 21.2.1 shall contain at least the following information:
- 21.2.2.1 the type of business;
- 21.2.2.2 the number of full-time and/or part-time staff;
- 21.2.2.3 the times and duration of the business operation, including the number of days per week;
- 21.2.2.4 the projected growth of the business operation;
- 21.2.2.5 whether any alteration to the existing Improvements is proposed;
- 21.2.2.6 in which portion of the Improvements the business activity is to be located;

- 21.2.2.7 the number and type of vehicles which will be regularly involved in the business operation;
- 21.2.2.8 the estimated number of visitors per week resulting from the business operation;
- 21.2.2.9 the estimated number of deliveries necessitated by the business operation;
- 21.2.2.10 what provision is to be made for parking;
- 21.2.2.11 the likely impact of the business operation on neighbouring properties and the neighbourhood in general;
- 21.2.3 the Trustees shall not approve any such application unless they are satisfied that the application complies with the following:
 - 21.2.3.1 the Member will reside permanently on the Land Unit or Unit in respect whereof the application is made;
 - 21.2.3.2 comment has been obtained from the Members who are affected by the application and made available for consideration by the Trustees;
 - 21.2.3.3 adequate provision has been made for parking within the Land Unit and
 - 21.2.3.4 the landscaping of the Land Unit will be suitable for the type of business contemplated and that no parking of vehicles off the Land Unit within the Development will result from the business operation;
 - 21.2.3.5 the granting of the application will not have any significant effect on the density of traffic in the Development;
 - 21.2.3.6 no signage will be erected;
 - 21.2.3.7 the hours of the business operation will be confined to Business Hours;
- 21.2.4 should any Member to whom permission has been granted for the conduct of a business change any aspect of such business then such Member shall submit a new application in accordance with the provisions hereof to continue such business;
- 21.2.5 no Member to whom approval has been granted shall be entitled to erect any sign or advertisement on any Land Unit or on any of the Common Areas in connection with such business save with the approval of the Board;
- 21.2.6 the Board shall not at any time or under any circumstances be entitled to approve the use of any Land Unit for the supply of temporary accommodation for consideration.
- 21.3 No Member shall permit the number of occupants of any Land Unit to exceed 2 (two) persons per bedroom. The word "occupants" shall include but shall not be limited to any person who resides or stays on such Land Unit on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the Member or whether such person pays rental or gives any other form of consideration in respect of such Land Unit or any portion thereof.

- 21.4 Notwithstanding anything to the contrary herein contained, the Developer shall be entitled at all times to establish on the Land a commercial office and to conduct therefrom any business it deems fit.
- 21.5 No Owner nor its executor, curator, trustee, or liquidator, where such Owner ceases to be a Member of the Association, shall have any claim upon or interest in the funds of other assets of the Association. This clause is without prejudice to the rights of the Association to claim from such Owner or its estate any arrears of Levies, Special Levies, subscriptions and/or other sums due from it to the Association at the time of it ceasing to be a Member

22 IMPROVEMENTS

- 22.1 Subject to clause 22.3, no Member shall effect any Improvement to a Land Unit without the prior written consent of –
- 22.1.1 the Board; and
- 22.1.2 to the extent that such consent to effect an Improvement is sought during the Development Period, the Developer.
- 22.2 In granting any such consent the Board and the Developer may impose such conditions as it deems fit, including but not limited to the following:
- 22.2.1 Payment of a scrutiny fee by the Member to the Board or Developer (as the case may be), such fee being paid upon the lodgement of the Member's plans containing the proposed works on the Land Unit with the Board or Developer (as the case may be).
- 22.2.2 Payment of a sidewalk deposit and builder's management fee by the Member to the Board or Developer (as the case may be), such fee being paid once the Board has approved the Members plans and endorsed the same. Said fee is in respect of potential damage caused by the Member, his employees, contractors and associated parties during the construction of the proposed works.
- 22.2.3 Submission of endorsed plans by the Board to the Local Authority and/or other responsible authorities as may be relevant for approval. Any Local Authority or other relevant authority fees are payable by the Member directly to the relevant Local or other relevant authority.
- 22.2.4 A Member shall complete the construction of the proposed work on its Land Unit within 12 (twelve) months from the date that the Member commences any construction on the Land Unit. The commencement of construction means the commencement of any work whatsoever on the Land Unit as certified by the Board, and completion shall have occurred only upon the issue of a Completion Certificate by the Association.
- 22.3 Notwithstanding clause 22.1, the provisions of clause 22.1 do not apply to, limit, or restrict the rights of the Developer to effect any Improvement.

23 THE BOARD

- 23.1 The Board shall comprise of 5 (five) Trustees, provided that the Association may, in General Meeting, increase or decrease the number of Trustees and provided that –

- 23.1.1 the total number of Trustees shall always be an uneven number; and
- 23.1.2 the total number of Trustees shall not be less than 3 (three) persons.
- 23.2 During the Development Period, the Developer shall be entitled to appoint 50% (fifty percent) plus 1 of the Trustees to the Board, one of which Trustees so appointed by the Developer shall act as Chairperson.
- 23.3 Save for the Trustees appointed by the Developer during the Development Period, Trustees shall -
 - 23.3.1 be elected at a General Meeting;
 - 23.3.2 hold office for a period of 2 (two) consecutive years, provided that Trustees shall be eligible for re-election;
 - 23.3.3 be a Member or, in the event that the Member is a juristic person, a natural person nominated by such Member.
- 23.4 After the Development Period, the Trustees shall elect from their number a Chairperson.
- 23.5 The Trustees shall further elect from their number a person to act as –
 - 23.5.1 Deputy Chairperson; and
 - 23.5.2 Secretary.
- 23.6 Every Trustee shall be required to confirm his appointment in writing, which confirmation must expressly include an agreement to be bound by this Constitution.
- 23.7 A Trustee shall be deemed to have vacated his office as such upon:
 - 23.7.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
 - 23.7.2 his making any arrangement or composition with his creditors;
 - 23.7.3 his conviction for any offence involving dishonesty;
 - 23.7.4 his becoming of unsound mind and or being found lunatic;
 - 23.7.5 his resigning from such office in writing;
 - 23.7.6 his death;
 - 23.7.7 his being removed from office by a resolution of Trustees;
 - 23.7.8 his being disentitled to exercise a vote in terms of this Constitution;
 - 23.7.9 his being disqualified to hold office as a director in terms of the Companies Act 71 of 2008.

- 23.8 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 23.7, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustees. Should the office of a Trustee fall vacant prior to the next Annual General Meeting of the Association, the vacancy in question may be filled by the Developer if the vacancy is in respect of a Trustee appointed by the Developer, and otherwise by the remaining Trustees, and the person so appointed shall hold office until the next Annual General Meeting.
- 23.9 A Trustee shall be entitled to be repaid all reasonable and *bona fide* expenditure incurred by them in the performance of their duties as Trustee, but shall not otherwise be entitled to a remuneration, fee or salary in respect of the performance of their duties.
- 23.10 Notwithstanding the provisions of this Constitution, the Trustees may formally resolve to ratify and adopt any unauthorised actions which may have been taken by any Trustee or any representative of the Trustees on behalf of the Association, if the Trustees deem it to be to the benefit of the Association to do so.
- 23.11 Trustees may not make loans on behalf of the Association to Members or to themselves.
- 23.12 A Trustee shall be disqualified from voting in respect of any matter in which he has any interest, save to the extent that such interest is incidental to his being a Member.
- 23.13 Save as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Trustees and all General Meetings of the Association and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Trustees or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a Member's spouse shall be entitled to speak at any meeting.
- 23.14 If the Chairperson vacates the chair during the course of a meeting of the Trustees, or is not present or is, for any other reason, unable to preside at any meeting of Trustees, the Deputy Chairperson shall fulfil the role of Chairperson for that meeting of Trustees.

24 POWERS, FUNCTIONS AND DUTIES OF THE BOARD

- 24.1 Subject to the express provision of this Constitution, the Board shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any Managing Agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by this Constitution required to be exercised or done by the Association in General Meeting subject however to such regulations as may have been made by the Association in General Meeting, provided that no regulation made by the Association in General Meeting shall invalidate any prior act of the Trustees which would have been valid if such regulation had not been made.
- 24.2 Save as specifically provided in this Constitution, the Board shall have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, town planners or any other professional firm or person whatsoever or any employees for any reason deemed necessary by the Board on such terms as the Board shall determine.

- 24.3 The Board shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 24.4 The Board shall have the right to co-opt any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees provided that such co-opted Trustee –
- 24.4.1 shall not be entitled to vote in resolution proposed to the Board; and
- 24.4.2 shall only serve until the next Annual General Meeting.
- 24.5 The Board may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in General Meeting:
- 24.5.1 as to the resolution of disputes generally;
- 24.5.2 for the furtherance and promotion of any of the objects of the Association;
- 24.5.3 for the better management of the affairs of the Association;
- 24.5.4 for the advancement of the interests of Members;
- 24.5.5 for the conduct of Trustees at meetings of Trustees and meetings of the Association;
- 24.5.6 to levy and collect contributions from Members in accordance with clause 27;
- 24.5.7 to levy and recover from Members moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association;
- 24.5.8 to assist it in administering and governing its activities generally including but not limited to the activities set out in clause 24.7; and
- 24.5.9 to impose fines in respect of Members and Residents not complying with this Constitution or any rules imposed by the Association or the Board.
- 24.6 Without in any way limiting the powers granted, the duties and powers of the Board shall further specifically include:
- 24.6.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Land Units in the Development in strict accordance with the provisions of the Design Manual and EMP, which shall be additional to the powers of the Developer for as long as the Developer is a Member. The Trustees shall be entitled to require any Member, who shall be obliged, to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;
- 24.6.2 entering into of agreements with third parties on behalf of the Association for any purposes of the Association;
- 24.6.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;

- 24.6.4 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, water supply, landscaping, maintenance of roads, refuse facilities, removal of refuse, fibre infrastructure, security measures and systems for controlled access to the Estate and suchlike, where applicable;
- 24.6.5 the institution or defence of legal proceedings in the name of the Association and to appoint legal representatives for such purpose;
- 24.6.6 administrating, inspecting and maintaining all individual metered connections;
- 24.6.7 complying with and enforcing all applicable municipal by-laws including any water restrictions imposed on the Association by the Local Authority from time to time.
- 24.7 The Trustees shall further have the power to:
 - 24.7.1 Require that any alterations and or additions to buildings on the Land Units are supervised by the Trustees to ensure that the provisions of this Constitution and the Estate Rules are complied with;
 - 24.7.2 Issue landscape and architectural design guidelines, environmental management plans and contracts and instructions in respect of work carried out on Land Units, and to ensure such documents and instructions are complied with at all times;
 - 24.7.3 appoint committees consisting of such number of their Members or such outsiders, including a Manager, as they deem fit and to delegate to such committee such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Trustees may from time to time deem necessary;
 - 24.7.4 appoint an architectural and landscape review committee whose members shall not be required to be Members of the Association.
 - 24.7.5 Power to make Estate Rules in regard to inter alia:
 - 24.7.5.1 The use and parking of vehicles including trucks, caravans, trailers and boats;
 - 24.7.5.2 The right to prohibit, restrict or control the keeping of any animals by Members it being recorded that such Rules shall never be in conflict with the relevant local Municipal By-Laws;
 - 24.7.5.3 The conduct of any persons within the Estate;
 - 24.7.5.4 The use of services and Common Areas;
 - 24.7.5.5 The maintenance of any buildings and / or landscaping on or of the Land Units;
 - 24.7.5.6 The admission of any person onto the Estate, and the eviction of any persons from the Estate;
 - 24.7.5.7 The maintenance and use of Common Areas;
 - 24.7.5.8 Refuse disposal and waste management;
 - 24.7.5.9 Littering;

- 24.7.5.10 Security; and
- 24.7.5.11 Letting of Land Units and the rights and obligations of tenants (it being recorded that short term letting shall not be prohibited if in accordance with the relevant Municipal By-Laws);

25 PROCEEDINGS OF THE BOARD

- 25.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
- 25.2 Meetings of the Trustees shall be held at least once every 3 (three) months.
- 25.3 The Chairperson shall have the right to convene meetings of Trustees at any time on not less than 14 (fourteen) days written notice to the other Trustees.
- 25.4 A Trustee may, provided he has the support in writing of at least 2 (two) other Trustees, at any time convene a meeting of Trustees by giving to the other Trustees not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 25.5 Any resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.
- 25.6 A quorum for a meeting of the Board shall be 50% (fifty percent) plus one of the total number of Trustees.
- 25.7 No business may be transacted at any meeting of the Board unless a quorum is present.
- 25.8 If a quorum is not present within 30 (thirty) minutes of the time set out in the notice convening such meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time; Provided that if on the day to which such meeting is adjourned a quorum is not present within 30 (thirty) minutes of the time appointed for such meeting, those Trustees present at such adjourned meeting shall constitute a quorum.
- 25.9 Any resolution of the Board shall be carried by simple majority. In the case of an equality of votes, the Chairperson shall have a second or casting vote.
- 25.10 A Trustee may be represented at a meeting of Trustees by a proxy provided such proxy is a Trustee.
- 25.11 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.
- 25.12 The Secretary shall –
 - 25.12.1 take minutes of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairperson of the meeting;

- 25.12.2 ensure such minutes are kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;
- 25.12.3 keep all books of meetings of Trustees in perpetuity; and
- 25.12.4 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.
- 25.13 If at any meeting of the Board the Secretary is not present within 15 (fifteen) minutes of the time appointed for the commencement of such meeting, the Trustees shall appoint one of their number to fulfil the functions of the Secretary in respect of such meeting.
- 25.14 All resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of Trustees shall be of any force or effect or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustees.
- 25.15 Save as otherwise provided in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 25.16 The Trustees may vote upon and pass resolutions by way of email correspondence, subject to the following conditions:
 - 25.16.1 each of the Trustees must be included in all email correspondence relating to any decision to be taken by the Trustees by email;
 - 25.16.2 no decision shall be taken by email if any of the Trustees requires that the matter be decided at a meeting of the Trustees;
 - 25.16.3 the necessary quorum required for a decision to be taken by email will be achieved if a majority of the Trustees vote in favour of the decision by return email to each of the other Trustees;
 - 25.16.4 all resolutions passed by email shall be recorded in the minute book containing the minutes of the meetings of the Trustees and shall be ratified at the following or any subsequent meeting of the Trustees.

26 **MANAGING AGENT**

- 26.1 For the duration of the Development Period, the Developer 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 (the "**Managing Agent**") to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Developer notifies the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.

- 26.2 After the Development Period, the Board shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Trustees notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.
- 26.3 Any fees and/or remuneration payable to the Managing Agent shall be paid by the Board and not the Developer.
- 26.4 The Association shall take out fidelity insurance to the satisfaction of the Board for all monies held by the Managing Agent on behalf of the Association from time to time.
- 26.5 The Developer or the Board (as the case may be) shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Board may, without notice, terminate the contract of the Managing Agent, and the Managing Agent shall have no claim whatsoever against the Developer, Trustees and/or the Association as a result of such cancellation.

27 LEVIES

- 27.1 The Board shall –
- 27.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the Association for the control, management and administration of the Development and for payment of the costs of supplying any services required by the Association and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
- 27.1.2 estimate the amount which will be required by the Association to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;
- 27.1.3 require Members whenever necessary to make contributions to such fund for the purposes of satisfying the expenses, equal as nearly as is reasonably practical to such estimated amount;
- 27.1.4 not increase the levy contributions payable by the Members by 80% (eighty percent) or more from one year to the next without the sanction of a Special Resolution of the Association.
- 27.2 In respect of the period commencing on the date of establishment of the Association, until the election of Trustees at the First General Meeting, the Developer shall fulfil the functions of the Trustees contemplated under clause 27.1.

- 27.3 The Trustees may, from time to time, determine special levies which will become payable by Members with effect from such date as the Trustees shall determine in respect of such expenses referred to in clause 27.1 (which are not included in any estimate made in terms of clause 27.1) and such special levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit.
- 27.4 Any amount due by a Member by way of a levy shall be a debt due by him to the Association payable within such time as determined by the Trustees. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member. No levies paid by a Member shall be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to a Land Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of such Land Unit to pay the levies attributable to that Land Unit. No Member shall be entitled to transfer his Land Unit until the Board has, in terms of a Clearance Certificate, certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association.
- 27.5 In calculating levies, the Board shall take into account the income, if any, earned by the Association.
- 27.6 The decision of the Board in calculating the levies shall be final and binding on all Members.
- 27.7 In calculating the levy payable by any Member, the Trustees shall as far as reasonably possible –
- 27.7.1 assign those costs arising directly out of, or attributable to, a Land Unit itself to the Member owning such Land Unit;
- 27.7.2 assign those costs relating to the Development generally to the Owners of all Land Units equally provided, however, that the Trustees may in any case where they consider it equitable to do so –
- 27.7.2.1 assign to any Land Unit such greater share of the costs and expenses mentioned in this clause 27 as they may consider reasonable in the circumstances, including but limited to an additional levy being charged where 8 or more occupants (occupants having been defined in clause 21.3 above), occupy a Land Unit; and
- 27.7.2.2 assign to any Member any greater or lesser share of the costs and expenses as they may consider to be reasonable in the circumstances.
- 27.8 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association.
- 27.9 All levies, other than special levies which will be payable in accordance with the provisions of clause 27.3, are due and payable monthly in advance on the first day of each and every month free of any deductions or set-off of any nature, commencing from such date as the Board determines.

- 27.10 Members shall be liable for payment of interest on outstanding amounts at the rate of 2% per month or such other rate determined by the Board from time to time but not exceeding the maximum annual rate permitted by Law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.
- 27.11 The Developer shall not be obliged to pay levies in respect of any portion of the Development, and, without detracting from the generality of the afore going, specifically including any Land Unit, for as long as he remains the Owner thereof.

28 BREACH

28.1 If any Member –

28.1.1 fails to pay on due date any amount due by that Member to the Association and remain in default for more than 7 (seven) days after being notified in writing of such default; or commit breach of any other the provisions of this Constitution or rules made thereunder and fail to commence remedying that breach within a period of 7 (seven) days of, or fail to remedy such breach within a reasonable time after, receipt of written notice to that effect; then, and in either such event, the Board shall be entitled, on behalf of the Association, without prejudice to any other rights or remedies which the Board or the Association or any other Member may have in law, including the right to claim damages:

28.1.2.1 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any rules made thereunder, as the case may be; or

28.1.2.2 to remedy the breach on behalf of the Member and to recover from the Member the actual cost incurred by the Association in doing so.

28.2 In the recovery of a debt owed by a Member to the Association, it shall be justifiable for a court to order execution of a judgment or order in respect of such debt against a Member's Land Unit if there is not found sufficient movable property to satisfy such judgment or order.

28.3 A sale in execution of a member's Land Unit pursuant to such an order shall not constitute an infringement of that Member's right to adequate housing or any breach of any of the Member's rights in terms of the Constitution of the Republic of South Africa, given the socio-economic status of the Member enabling him to become a Member.

29 ACCOUNTS

29.1 The Board shall procure that the accounts and books of the Association are kept in good order.

- 29.2 The Association in General Meeting or the Board, may from time to time make reasonable conditions and rules as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and rules, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during Business Hours.
- 29.3 At each Annual General Meeting the Board shall lay before the Association a proper income and expenditure account for the preceding financial year of the Association, or in the case of the first account, for the period since the establishment of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Board and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

30 **BANK ACCOUNT**

- 30.1 The Board or, pending the election of Trustees at the First General Meeting, the Developer, shall procure that a bank account is opened in the name of the Association.
- 30.2 The Board shall procure that all financial affairs of the Association are conducted via such bank account.

31 **AUDIT**

- 31.1 The Association shall procure the appointment of an auditor (the "**Auditor**"), which Auditor shall be a member of the Independent Regulatory Board for Auditors.
- 31.2 The Board shall procure that, at least once a year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

32 **ARBITRATION**

- 32.1 Any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to:
- 32.1.1 any matters arising out of this Constitution; or
- 32.1.2 the rights and duties of any of the parties mentioned in this Constitution; or
- 32.1.3 the interpretation of this Constitution;

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

- 32.2 The parties to the dispute must use their respective reasonable endeavours promptly to agree on the identity of the arbitrator, provided that the individual must be reasonably acceptable to AFSA. However, any Party to the dispute shall be entitled in writing to request AFSA to appoint an individual as the arbitrator.

- 32.3 If a Party duly refers a dispute to arbitration, that arbitration shall –
 - 32.3.1 take place in Cape Town, in English, with only the arbitrator, the Parties, and the legal and other representatives of the Parties present at the arbitration; and
 - 32.3.2 otherwise be finally resolved in accordance with the Commercial Rules of AFSA.
- 32.4 The provisions of this clause 32 constitute an irrevocable consent by every Member to any proceedings under this clause 32, and no Member shall be entitled to withdraw therefrom or claim at any stage in such proceedings that it is not bound by such provisions.
- 32.5 No provision in this clause 32 shall prohibit a party to a dispute from applying for urgent relief to a court of law with jurisdiction over the dispute in question.

33 ADDRESSES

- 33.1 For all purposes under this Constitution, the Association chooses -as its physical addresses for the purpose of serving summons its physical addresses set out in clause 33.2; and
 - 33.1.2 as its addresses for the purpose of serving notices, the email addresses, physical addresses, and/or postal addresses, set out in clause 32.2.
- 33.2 The Association's address particulars:

email address:	
physical address:	
postal address:	
attention:	The Chairperson of the Board of Trustees

- 33.3 For all purposes under this Constitution, every Member chooses as its physical address for the purpose of serving any notice or summons, the Land Unit such Member owns.
- 33.4 A written notice of communication shall –
 - 33.4.1 If delivered by hand to the respective Party's nominated physical address during Business Hours, be deemed to have been received on the date of delivery;
 - 33.4.2 If despatched by email to the respective Party's nominated email address during Business Hours, be deemed to have been received on the date of despatch;
 - 33.4.3 If delivered by hand to the respective Party's physical address outside of Business Hours, be deemed to have been received on the Business Day succeeding the date of delivery;

- 33.4.4 If despatched by email to the respective Party's nominated email address outside of Business Hours, be deemed to have been received on the Business Day succeeding the date of delivery;
- 33.4.5 If despatched by registered mail to the respective Party's nominated physical or postal address, be deemed to have been received on the 5th Business Day after the date of despatch.
- 33.5 Any Member may by prior written notice to the Association change its address particulars, provided that any physical address must be in South Africa and readily accessible for delivery within a reasonable time and at a reasonable cost, and any email address must be in good working order.
- 33.6 The Association may by prior written notice to every Member change its address particulars, provided that any physical address must be in South Africa and readily accessible for delivery within a reasonable time and at a reasonable cost, and any email address must be in good working order.
- 33.7 Any notice given under this Constitution must be in writing.
- 33.8 Notwithstanding anything to the contrary contained in this Constitution, a written notice or communication actually received by a person, including by way of electronic transmission, shall be adequate written notice or communication to such person.

34 INDEMNITY

- 34.1 Every Trustee and the Auditor shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a Trustee, in his capacity as Chairperson, Deputy Chairperson, or Secretary, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 34.2 Every Trustee Member, every servant, agent and employee of the Association, and the Auditor shall be indemnified by the Association against (and it shall be the duty of the Board out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee, his duties as Chairperson, Deputy Chairperson or Secretary. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 34.3 No Trustee shall be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustee, whether in their capacities as Trustee or as Chairperson, Deputy Chairperson, or Secretary, for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Board for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage

occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

35 NONPROFIT ORGANISATION REQUIREMENTS

- 35.1 The Association's income and property are not distributable to the Members or Trustees, except that a Trustee shall be entitled to be repaid all reasonable and *bona fide* expenditure incurred by them in the performance of their duties as Trustee in accordance with clause 23.9.
- 35.2 No Member or Trustee shall have any rights in the property or other assets of the Association solely by virtue of their being Members or Trustees.

36 AMENDMENT OF CONSTITUTION

- 36.1 Subject to clause 36.2, any provision of this Constitution other than clause 37, may be amended by Special Resolution of the Members in General Meeting.
- 36.2 Notwithstanding the provisions of clause 36.1, any amendment of the Constitution that concerns any matter regulated under section 62(1)(a) of the By-law shall only become effective when certified by the City.
- 36.3 Any amendment of this Constitution must be lodged with the City, and the latest version of the Constitution lodged with, and certified by, the City shall be deemed to be the operative version of the Constitution.

37 DISSOLUTION OF THE ASSOCIATION

- 37.1 The Members may, by unanimous resolution of the Members, dissolve the same.
- 37.2 If the organisation is being dissolved, any asset remaining after all its liabilities have been met, must be transferred to another nonprofit organisation having similar objectives.

38 INVESTMENT OF FUNDS

- 38.1 Funds available for investment shall only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act, 1990 (Act No 97 of 1990), and in securities listed on a stock exchange as defined in section 1 of the Stock Exchange Control Act, 1985 (Act No 1 of 1985).
- 38.2 The Association will not knowingly be a party to, nor will it knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would be or would have become payable by any person under the Income Tax Act of 1962 or any other Act administered by the Commissioner for the South African Revenue Service.
- 38.3 The Association shall submit annual Tax Returns of income tax to SARS.

39 RATIFICATION AND CERTIFICATION

- 39.1 This first Trustees of the Association shall, as soon as reasonably possible after their election at the First Annual General Meeting, append their signatures to this Constitution.
- 39.2 The City must, in accordance with the provisions of section 62(2) of the By-law, certify that this Constitution complies with the provisions of section 62(1)(a) of the By-law.
- 39.3 The City is exempt from liability for any damage which may be caused by its certification of an Association's Constitution, its amendment thereof or the loss of a Constitution lodged with the City.

40 ASSOCIATION'S FAILURE TO MEET AN OBLIGATION

- 40.1 If the Association fails to meet any obligations in this Constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.
- 40.2 The City may recover any expenditure in respect of the action contemplated above from the Association or the Members, who are jointly liable.
- 40.3 The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association, for the purposes of recovering the expenditure from its Members.
- 40.4 If the Association ceases to function effectively or carry out its obligations, the City may give the Association a binding instruction to:
- 40.4.1 Hold a meeting and to reconstitute itself; or
- 40.4.2 Dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an association and the removal of relevant provisions in the title deed.
- 40.5 In determining whether to act in terms of the above, the City must have regard to:
- 40.5.1 The purpose of the Association;
- 40.5.2 Who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
- 40.5.3 The costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
- 40.5.4 The impact of the dissolution of the Association on its Members and the community;
- 40.5.5 Any written representations from the Association and its Members.
- 40.6 If the Association is dissolved, the Members must jointly pay the costs of:

- 40.6.1 The transfer to the City of the Association's property which contains the internal engineering services and private open spaces;
- 40.6.2 The upgrading of the internal engineering services to the standards of the City.
- 40.7 In the event that the Association has ceased to function and a Member wishes to transfer a land unit, the Member must obtain the consent of at least 60% (sixty percent) of the Members of the Association, which consent is deemed to be the consent of the Association.

Signed at this day of

As witness:

Signature: Signature:

Name of signatory: Name of signatory:

Designation of signatory:

FIRST TRUSTEE

Signed at this day of

As witness:

Signature: Signature:

Name of signatory: Name of signatory:

Designation of signatory:

FIRST TRUSTEE

Signed at this day of

As witness:

Signature: Signature:

Name of signatory: Name of signatory:

Designation of signatory:

FIRST TRUSTEE
