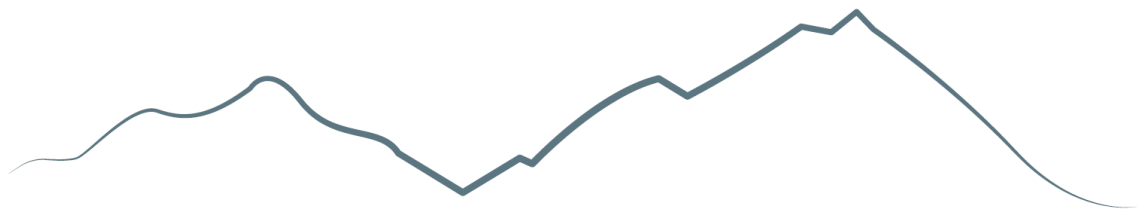


KLIPHEUWEL LIFESTYLE ESTATE

**HOME OWNER'S ASSOCIATION
CONSTITUTION**



KLIPHEUWEL
- E S T A T E -

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1. **DEFINITIONS**

1.1 In this Constitution and unless the context indicates otherwise the following words and expressions shall have the following meanings:

1.1.1	Alienate	means Alienate any Erf or or part thereof and includes by way of sale, exchange, donation, deed, testate and intestate succession, cession, assignment, court order, insolvency or liquidation, irrespective of whether such Alienation is subject to a suspensive or resolutive condition and "Alienation" shall have a corresponding meaning;
1.1.2	Annual General Meeting / AGM	means the Annual General Meeting of the Association;
1.1.3	Architectural Guidelines (Building Design Manual)	means the Architectural, Environmental and Development Guidelines embodied hereto in respect of the development approved by the Developer or/and the Association as it may be amended from time to time;
1.1.4	Association	means the Klipheuwel Lifestyle Estate Home Owners Association;
1.1.5	Auditors	means any auditor appointed from time to time by the Association;
1.1.6	Authorised Representative	means a Person duly authorised in terms of this Constitution to act as representative of a Member at any General Meeting of the Association and shall include any person authorised to act as the representative of any natural person, body corporate, company or an association of persons as the case may be;
1.1.7	Board	means the Board of Trustees of the Association;
1.1.8	Building Rules	refers to the Architectural Guidelines and Building Rules contained in the Building Design Manual;
1.1.9	Building / Building Activity	means the construction, additions, or demolition in respect of a dwelling, but does not include general maintenance (i.e. painting, glazing or repairs to plumbing or electric reticulation);
1.1.10	Chairman	means the Chairman for the time being of the Board of trustees appointed in terms of paragraph 13.6 below;
1.1.11	Clearance Certificate/s	means the certificate of clearance to be issued by the Association or the Managing Agent which certifies that no monies are due in respect of an Erf;
1.1.12	Common Property	means: a) the land registered in the name of the Association, including but not limited, to all amenities and fixtures thereto;

		b) any portion of the Estate, excluding the Erven or any portion of the Estate which is not subject to any exclusive right of use by a member, which areas include inter alia pavements, roads, open spaces and the like;
1.1.13	Companies Act	means the Companies Act No 71 of 2008 and any amendment or modification thereof or substitution thereof from time to time;
1.1.14	Constitution	means the Constitution of the Association (with all annexures thereto) approved by the relevant local authority in terms of the Land Use Planning By-Law for the Municipality of Mossel Bay, and any amendments thereto effected in terms of this Constitution;
1.1.15	Contractor	means an accredited building contractor in terms of the Constitution read with the Building Design Manual, employed by an Owner of a Land Unit for the construction of Improvements;
1.1.16	Contractor's Conduct Agreement	means the agreement to be entered into by the Contractor prior to the commencement of improvements as prescribed in terms of this Constitution read with the Building Design Manual;
1.1.17	Council	means the Municipality of Mossel Bay and its successor/s in title;
1.1.18	CSOS Act	means the Community Scheme Ombud Services Act No 9 of 2011 and any amendment or modification thereof or substitution thereof from time to time;
1.1.19	Design Review Committee	means, until the development period has lapsed, the Developer acting alone, and after such period a committee of at least two persons appointed by the trustees;
1.1.20	Developer	means Klipheuwel Lifestyle Estate (Pty) Ltd and includes its successor in title or assigns;
1.1.21	Developer trustee	means a trustee appointed by the Developer;
1.1.22	Development / Development area	means the land comprising of Erf 1412 Little Brak River situated in the Municipality and Division of Mossel Bay, Province Western Cape and such adjoining land as may be acquired by the Developer for the purposes of incorporation into the Development;
1.1.23	Development period	means the period from the establishment of the Association until completion of the whole proposed Development and transfer of all erven have been transferred from the Developer and/or improved by the Developer, or, until the Developer notifies the Association in writing that the Development Period has ceased, whichever event occurs first, but

		limited to a maximum period of 10 (TEN) years;
1.1.24	Estate	means the Housing Development on the Property;
1.1.25	erf	means any erf, portion or subdivision of the Development area and includes all improvements thereon;
1.1.26	Estate Manager	means a person appointed in terms of clause 29 of this Constitution to control, pow and administer the Development;
1.1.27	facilities	means all and any facilities or amenities of whatsoever nature which may be provided within the Development area and forming part of the Common Property;
1.1.28	financial year	means the financial year of the Association which shall run from the first day of March in each year until the last day of February in the subsequent year;
1.1.29	Levy / Levies	means all contributions levied from time to time by the Trustees upon Members for the purpose of meeting all the expenses which the Association has incurred or which the Trustees reasonably will incur in the attainment of its objectives and the pursuit of its business and includes the Stabilization Levy;
1.1.30	Levy Stabilization Fund	means the fund established by the Association for the collection and administration of the Stabilization Levy amounts received by the Association;
1.1.31	Local Authority	means the Mossel Bay Municipality, having jurisdiction over the Estate;
1.1.32	managing agent	means a person or persons appointed by the Developer or Trustees to fulfil any function of the Trustees on their behalf;
1.1.33	member	means a member of the Association;
1.1.34	Member Trustee	means a trustee appointed by the members;
1.1.35	minutes	means the minutes of a general meeting or a trustees' meeting, as the case may be;
1.1.36	Occupational Health and Safety Act	means the Occupational Health and Safety Act, 1993 (Act No 85 of 1993) and any amendment or modification thereof or substitution thereof from time to time;
1.1.37	Ordinary Resolution	means a Resolution of Members adopted with the support of 50% plus 1 of the voting rights exercised on the Resolution;
1.1.38	Penalty	means the amount that will be debited by the Association against a Member, upon the transgression by such Member, or any member of his or her household or his tenants or his contractors, visitors, agents

		and/or employees or a Resident of a Rule of the Association and as set in the penalty schedule annexed to the Rules of the Association and as updated by the Trustees from time to time;
1.1.39	person	means a natural person, juristic person and includes a close corporation, company, trust or an association of persons, as the case may be;
1.1.40	Registered Owner	means a Registered Owner of an erf as registered in the relevant Deeds Office;
1.1.41	Resident(s)	means a Person in occupation of a Dwelling within the Estate on a temporary or permanent basis by agreement or with consent from the Member of the relevant Dwelling or through his affiliation or association with such Member;
1.1.42	Road(s)	means the Internal Road Erven in the Development and which are registered or are to be registered in the name of the Association or which are the responsibility of the Association;
1.1.43	Rules	means the Rules by virtue of which Members are to participate in and comply with in order to achieve the objectives of the Association as are prescribed and adopted by the Board of Trustees of the Association and which Rules may from time to time be amended, supplemented or repealed. Rules include the Conduct Rules for Owners and Residents, Architectural Guidelines and Building Rules (Building Design Manual), and the Building Regulations, Contractors'- and Aesthetic Rules;
1.1.44	services	means such utilities and amenities as may be provided by or on behalf of the Association for the Registered Owners and residents within the Development and/or the Development area;
1.1.45	sign	includes the reproduction of a Signature by lithography, printing, or any kind of stamp or any other mechanical process and "Signature" has the corresponding meaning;
1.1.46	Special Resolution	means a Resolution adopted by Members of the Association with the support of at least 75% (seventy five percent) of the voting rights exercised on the Resolution;
1.1.47	Stabilization Levy	means the amount determined by the Association and payable by a new Member (save a Member who purchases by way of a Sale in Execution), to the Association, prior to, or on registration of transfer of the Property, into the name of the new Member

		and shall for purposes hereof and until changed by the Trustees be an amount of R10 000.00 (ten thousand Rand), subject to an annual adjustment based on the Consumer Price Index (CPI).
1.1.48	Trustees	means the Trustees of the Association consisting of the Developer trustee/s and Member Trustee/s;

2. **INTERPRETATION**

In this Constitution:

- 2.1 the clause headings are for convenience and shall be disregarded in construing this Constitution.
- 2.2 unless the context clearly indicates a contrary intention
 - 2.2.1 the singular shall include the plural and vice versa;
 - 2.2.2 a reference to any one gender shall include the other genders; and
 - 2.2.3 a reference to natural persons includes legal persons and vice versa.
- 2.3 words and expressions defined in any clause herein shall, for the purpose of that clause and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in the clause in question.
- 2.4 When any number of days is prescribed in this 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.
- 2.5 where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 If any provision of this Constitution is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 2.7 if any provision in a definition in this 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 this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 2.8 the annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.
- 2.9 All references to the provisions of the Companies Act are in respect of procedural and accounting matters of the Association only and should be read with any changes required by the context.

3. **COMMENCEMENT DATE AND STATUS**

- 3.1 The Association will be established as a legal persona in accordance with the Land Use Planning By-Law for the Municipality of Mossel Bay, with the registration of the first transfer of an erf or unit in the Development to a third party other than the Association
- 3.2 The Association is a common law association with members, as defined in this Constitution.
- 3.3 The Association is governed by the provisions of this Constitution.
- 3.4 The Powers of the Association are set out in clause 4 of this Constitution and, except to the extent necessary implied by the stated Objects, the purposes and powers of the Association are not subject to any restriction, limitation or qualification.
- 3.5 Pursuant to its Constitution the Association shall:
 - 3.5.1 be a legal entity and exist independently of its members.
 - 3.5.2 enjoy perpetual succession.
 - 3.5.3 be capable of being sued or to sue with reference to any agreement entered into by the Association, any damage caused to any property of the Association or any matter arising from this Constitution;
 - 3.5.4 not operate for profit but for the benefit of the members;
 - 3.5.5 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.

4. **OBJECTS AND RESPONSIBILITIES OF THE ASSOCIATION**

- 4.1 It is recorded that the Development of the whole Development is of a homogenous nature and that notwithstanding the fact that members hold title to their erven and/or units individually the Association, through its Trustees, shall have all the powers that are necessary to accomplish the fulfilment of all objectives of the Association, including, but not limited to the powers specifically contained in this Constitution.
- 4.2 The Association shall have the following objectives:

The main objective of the Association is to promote, protect and advance the communal interest of all the Members, occupants and other users of any of the Erven comprising the Estate and to manage and control the Common Property, as are more fully defined in this Constitution.

These objectives shall be to:

 - 4.2.1 act as a Home Owners Association established in terms of the Land Use Planning By-Law for the Municipality of Mossel Bay, for the

Development which is being developed on the Development area, and in particular to procure that the matters referred to in the said By-Law be adhered to and complied with;

- 4.2.2 take transfer of those portions of the Common Property that are to be owned by the Association for the benefit of its members;
- 4.2.3 enter into agreements of servitude for the benefit of its members or any adjacent property development;
- 4.2.4 manage, oversee and control all security aspects of the Development;
- 4.2.5 enter into agreements for the provision of any services with any competent authority or any other third party, *inter alia* including the provision of access to the Development, water, electricity and sewerage services to the Association and where required to supply such services to the various members of the Association;
- 4.2.6 administer and enforce the Building Design Manual, and the Estate Rules;
- 4.2.7 control the registration of transfer of erven and units in the Development and ensure compliance within the Development with all conditions imposed by the Local Authority when approving the rezoning and / or subdivision of the property/ies comprising the development area;
- 4.2.8 exercise all functions, powers, rights and duties of the Association in accordance with this Constitution;
- 4.2.9 control the registration of transfer of erven in the Development and ensure compliance within the Development with all conditions imposed by any competent authority when approving the rezoning and / or subdivision of the property / properties comprising the Development area;
- 4.2.10 control the aesthetic appearance of land and dwellings;
- 4.2.11 control traffic and impose such penalties (fines) as determined by the Board of Trustees from time to time, relating to the transgression by Members or Residents of the Rules applicable to traffic control measures;
- 4.2.12 implement security measures for the controlled access and exit to and from the Association;
- 4.2.13 control and/or limit and/or grant access to and from the Estate;
- 4.2.14 regulate, manage, administer and control the rights, obligations and communal interests of its Members as well as the communal advancement of all its Members on an equitable basis;
- 4.2.15 install and maintain gate houses and maintain the security access points;
- 4.2.16 erect and install as well as maintain a perimeter fence or wall;

- 4.2.17 maintain the private roads, streetlights and sidewalks and communal open spaces;
- 4.2.18 control the domestic and garden refuse removal;
- 4.2.19 operate and maintain the electrical reticulation facilities installed (if any);
- 4.2.20 maintain attenuation dams and to maintain the storm water reticulation system and drainage (if any);
- 4.2.21 attend to the upkeep, cleaning and development of all common areas and infrastructure;
- 4.2.22 provide gardening services of all common areas;
- 4.2.23 attend to all administrative and statutory services;
- 4.2.24 maintain all fixed assets of the Association;
- 4.2.25 enforce any Title Deed Conditions in favour of the Association;
- 4.2.26 collect Levies and other contributions raised for funding of the Association for the attainment of the objectives of the Association;
- 4.3 The Association shall be responsible to ensure compliance, implementation, and enforcement, in respect of the Development, of any condition imposed by any authority in terms of the Land Use Planning By-Law for the Municipality of Mossel Bay, the National Environmental Laws Amendment Act 14/2009, the National Environmental Management Act 107/1998 or any other planning- or environmental law, including any Environmental Management Plan approved in respect of the Development.
- 4.4 Without limiting the generality of 4.2.1 to 4.2.26, the Association shall have the following powers and functions:-
 - 4.4.1 The responsibility to maintain, repair, improve and keep in good order and condition the Common Property and the responsibility for the payment of all rates and taxes, all services charges and other taxes and/or levies charged and payable to the Council or any authority in respect of the Common Property and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, and the Association's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Association or the pursuit of its business.
 - 4.4.2 The right to impose levies upon the members of the Association for the purpose of meeting all the expenses that the Association has incurred or to which the Trustees reasonably anticipate the Association will incur in the attainment of the objects of the Association or the pursuit of its business.
 - 4.4.3 To ensure that all provisions of this Constitution are complied with by all members/parties bound thereby.

- 4.4.4 To promote, advance and protect the Development and the interests of the Association and all members.
- 4.5 The Association may exercise the powers conferred upon it by this Constitution for the fulfilment of its objectives and such powers shall include the following ancillary powers:
 - 4.5.1 to establish and maintain an administrative fund which is reasonably sufficient to cover the estimated annual operating costs-
 - 4.5.1.1 for the repair, maintenance, management and administration of the Common Property (including reasonable provision for future maintenance and repairs);
 - 4.5.1.2 for the payment of rates and taxes and other local municipality charges for the supply of electricity, gas, water, fuel and sanitary or other services to the Estate;
 - 4.5.1.3 for the payment of any insurance premiums relating to the Estate or Common Property; and
 - 4.5.1.4 for the discharge of any duty or fulfilment of any other obligation of the Association.
 - 4.5.2 to establish and maintain a reserve fund and Levy Stabilization Fund in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of the Common Property;
 - 4.5.3 to require the Members, whenever necessary, to make contributions to the administrative and/or reserve fund and/or Levy Stabilization Fund;
 - 4.5.4 to raise special levies upon the Members to provide for funding concerning financial needs of the Association not provided for in the administrative and/or reserve fund and/or Levy Stabilization Fund budgets;
 - 4.5.5 to open and operate an account or accounts with any registered bank or any other financial institution;
 - 4.5.6 to insure the Common Property, any improvements thereof and any moveable property owned by the Association and keep it or them insured to the replacement value thereof against fire and such other risks as may be prescribed or as may be directed by Members in General Meeting;
 - 4.5.7 to insure against such other risks as the Members may by Special Resolution determine;
 - 4.5.8 to pay the premiums on any policy of insurance effected by it;
 - 4.5.9 to properly maintain the Common Property and to keep it in a state of good and serviceable repair;

- 4.5.10 to comply with any notice or order by any competent authority requiring any repairs to or work in respect of the relevant land or building;
- 4.5.11 to comply with any reasonable request for the names and addresses of the persons who are the Trustees of the Association, or who are Members of the Association;
- 4.5.12 to ensure compliance with any law relating to the Common Property or to any improvement of Erven or Common Property in the Estate;
- 4.5.13 to maintain the plant, machinery, fixtures and fittings used in connection with the Common Property and to keep them in a state of good and serviceable repair;
- 4.5.14 subject to the rights of the Local Authority concerned, to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the Common Property;
- 4.5.15 in general, to control, manage and administer the Estate for the benefit of all Members.
- 4.5.16 to appoint such agents, contractors, service providers and employees as it may deem fit for the management and operation and/or execution of any of the powers which the Association may itself exercise;
- 4.5.17 when essential for the proper fulfilment of its duties, to purchase or otherwise acquire, take transfer or mortgage, sell, give transfer of, or hire or let immovable property;
- 4.5.18 to purchase, hire or otherwise acquire movable assets for the use of Members for their enjoyment or protection, or in connection with the enjoyment or protection of the Common Property;
- 4.5.19 where practicable, to establish and maintain on the Common Property suitable lawns and gardens and recreation facilities;
- 4.5.20 to borrow monies required by it in the performance of its functions or the exercise of its powers; provided Members have authorised such borrowing by Special Resolution;
- 4.5.21 to secure the repayment of monies borrowed by it and the payment of interest thereon, by negotiable instrument or the hypothecation of unpaid contributions (whether levied or not), or by mortgaging any immovable property vested in it;
- 4.5.22 to invest any money of the administrative- and/or reserve fund with one of the 5 (five) major commercial banks;
- 4.5.23 to enter into an agreement with the Local Authority or any other person or body for the supply to the Estate, electric current, gas, water, fuel and sanitary and other services;
- 4.5.24 to manage and operate facilities within the Estate for the benefit of the Members of the Association, or to enter into an agreement with a third party for the operation and management of such facilities and to require

from Members to pay an additional levy for such facilities or for specific services rendered to the Member; and

in general, to do all things reasonably necessary for obtaining the objectives of the Association and the enforcement of this Constitution and any Rules made by the Trustees in terms of this Constitution.

- 4.6 The responsibility for the management and control of the Common Property shall be transferred from the Developer to the Association upon completion of the infrastructure services to the satisfaction of the Council and when transfer of such responsibility is tendered to the Association by the Developer. The Developer will however remain obliged and responsible to complete the Development programme in accordance with the conditions of approval imposed by the relevant authorities.
- 4.7 Upon dissolution (if ever) of the HOA its net assets must be distributed in the manner determined in accordance with Item 1(4) (b) of Schedule 2 of the Companies Act, 2008 (Act. No. 71 of 2008) which distribution must take into account any amount owing by any Member to the HOA.
- 4.8 The Association shall be responsible and liable to ensure compliance with, implementation and enforcement of any approval and condition imposed by any competent authority in respect of the Development imposed in terms of the Municipal Land Use Planning Ordinance, 1985 (Ord. No. 15 of 1985), the Land Use Planning By Law for the Mossel Bay Municipality, the Environment Conservation Act, 1989 (Act No. 73 of 1989), the National Environmental Management Act, 1998 (Act No. 107 of 1998) or any other planning - or environmental law, including any Environmental Management Plan approved in respect of the Development as well as any responsibility imposed by the Local Authority in terms of the services agreement entered into between The Developer and the Local Authority. The Association herewith indemnifies the Developer or any Successor in Title against any liability and/or responsibility imposed on the Developer or any Successor in Title by virtue of any official approval or condition or other responsibility referred to in terms of this clause;

5. **MEMBERSHIP OF THE ASSOCIATION**

- 5.1 Membership of the Association shall be compulsory for every Registered Owner of an erf or unit in the Development area.
- 5.2 Membership shall commence simultaneously with registration of transfer of an erf or unit into the name of the transferee.
- 5.3 Membership of the Association shall be limited to the Registered Owners of erven or units in the Development provided that:
 - 5.3.1 the Developer shall be deemed to be a member of the Association during the development period;
 - 5.3.2 where any such Registered Owner is more than one person, all the Registered Owners of the erf or unit shall be deemed jointly and severally to be one member of the Association and shall nominate one of them to represent them and to vote at meetings of the Association
 - 5.3.3 when a member ceases to be the Registered Owner of an erf or a unit, he shall *ipso facto* cease to be a member of the Association, save for

the Developer who shall remain a member of the Association during the development period.

- 5.4 The rights and obligations of the members shall rank in accordance with the provisions of this Constitution.
- 5.5 Anything to the contrary herein before contained or implied notwithstanding, the cessation of his membership shall in no way release a member from any obligation undertaken by him prior to the cessation of his membership pursuant to:
 - 5.5.1 any provision of the Constitution of the Association; or
 - 5.5.2 any further or ancillary guarantee, commitment or obligation, which such member may have undertaken.
 - 5.5.3 Membership shall be personal to the person in question and may not be assigned or transferred by them to any other natural person or entity.
 - 5.5.4 The Association shall maintain at their office a register of members, which shall be open to inspection by members.
 - 5.5.5 The Trustees may by regulation provide for the issue of a membership certificate, which certificate shall be in such form as may be described by the Trustees;
- 5.6 The Trustees may by regulation further prescribe appropriate application documentation including *inter alia* the following:
 - 5.6.1 an application to register as a member of the Association;
 - 5.6.2 an undertaking by a proposed member to comply with all the obligations imposed on members in terms of the Constitution, which undertaking must be signed by the proposed member and deposited with the Association prior to the Association issuing a clearance certificate or consent to transfer a unit or erf in favour of such a proposed member from any existing member, provided always that this paragraph will not apply in respect of the transfer or Alienation by the Developer of an erf or unit in favour of a proposed member.
- 5.7 The Registered Owner of an erf or a unit shall not be entitled to resign as a member of the Association.
- 5.8 Every member is obliged to comply with:
 - 5.8.1 the provisions of this Constitution and any Rules or regulations passed by the Association In terms hereof;
 - 5.8.2 the provisions of the design guidelines and the Estate Rules;
 - 5.8.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a member in its capacity as a member;
 - 5.8.4 any directive given by the Trustees in enforcing the provisions of this Constitution;
 - 5.8.5 all relevant provisions of the Health and Safety Act and any other legislation applicable and enforceable;

- 5.8.6 The rights and obligations of a member are not transferable and every member shall to the best of his ability further the objects and interests of the Association.
- 5.8.7 The members shall be jointly liable for expenditure incurred in connection with the Association. If a member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations of a member in terms of this Constitution.
- 5.8.8 A member shall not sell, Alienate or give transfer of an erf or Unit unless:
 - 5.8.8.1 the proposed transferee has irrevocably bound himself to become a member of the Association and to observe the provisions of the Constitution for the duration of his ownership of the erf and/or unit;
 - 5.8.8.2 the Association acting through the Trustees or the Estate Manager has issued a prior written clearance that all outstanding levies and all amounts of whatever nature owing to the Association by such member have been paid and that the member is not in breach of any of the provisions of this Constitution including any management or conduct rule and the provisions contained herein; and
 - 5.8.8.3 the proposed transferee acknowledges that upon the registration of transfer of the erf and/or unit into his name, he shall *ipso facto* become a member of the Association.
 - 5.8.8.4 the conditions set out above are incorporated in the relevant Deed of Sale in terms whereof the transferee acquires the erf or unit in question.
 - 5.8.8.5 For the avoidance of doubt it is recorded that the provisions of this clause do not apply to the Developer, that there will be no restriction whatsoever on the ability of the Developer to pass transfer of any erf or unit and that accordingly the Developer does not need a clearance certificate from the Association before it will be entitled to Alienate or transfer any erf or unit to any person or entity.
 - 5.8.8.6 the member of the Association has complied with all provisions contained in this Constitution and any annexure thereto or any rule or regulation made in terms of this Constitution relating to the architectural and development guidelines of the Development and with all rules and regulations in relation to the approval and compliance with approved building plans.
- 5.8.9 An ordinary member shall not without the prior written consent of the Association, who in granting or refusing such consent shall act in its absolute discretion, apply to the local authority or any other relevant authority for the subdivision or rezoning of an erf or unit owned by the

member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof. For the avoidance of doubt it is recorded that, during the Development Period, this clause does not apply to the Developer who does not need the consent of the Association in respect of the aforesaid or any other applications.

- 5.8.10 A member is required to ensure that the occupant of his erf or unit, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of this Constitution and the regulations. Without detracting from the foregoing, the member shall remain bound by this Constitution notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his obligations under this Constitution.
- 5.8.11 To ensure compliance with Clause 5.8.10 each member shall, if it leases out any property enter into a written lease with the tenant in which the tenant is required to accept compliance with the Estate Rules, and to give an undertaking that he will abide by the Estate Rules, and in which the tenant is required to report to the Association and register his full details for security reasons prior to the taking of occupation.
- 5.8.12 No member shall be permitted to conduct a guesthouse, "bed-and-breakfast" establishment or any other form of accommodation facility from a residence situated on any erf. Furthermore any leases for a period of less than 3 (three) months shall not be permitted without the consent of the Association.

6. **LEVIES**

- 6.1 The Association shall establish and maintain a levy fund and a Levy Stabilization Fund for the purposes of meeting all expenses of the Association in respect of:
 - 6.1.1 the control, management and administration of the Development;
 - 6.1.2 in general the attainment of its main objects as described in its Constitution;
 - 6.1.3 the maintenance of Common Property and the costs of services such as electricity, water and sewerage consumed or used on the Common Property;
 - 6.1.4 the supply of any services rendered by the Association;
 - 6.1.5 payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
 - 6.1.6 payment of levies to the CSOS;
 - 6.1.7 payment of adequate insurance over the communal property;
 - 6.1.8 the costs of the provision of security to the **Development**; and
 - 6.1.9 in general the cost of fulfilling any of the obligations of the Association;
 - 6.1.10 to act as bulk supplier to the Development in respect of the services referred to in 9 below.
- 6.2 The Trustees shall estimate the amount which will be required by the Association to meet the expenses referred to in 6.1 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;
- 6.3 The Association shall be entitled to require members, in accordance with the procedures set out in 6.4 below, to make contributions to such levy fund (in the form of levies), for the purposes of satisfying the expenses referred to in clause 6.1.
- 6.4 The procedure for raising and collecting levies shall be as follows:
- 6.4.1 The Trustees shall submit the estimated expenditure referred to in 6.2 to the Annual General Meeting of the Association for consideration in accordance with the practice directives of the Community Schemes Ombud Service Act. It is recorded that:
- 6.4.1.1 the meeting shall be obliged to approve the following items of expenditure that are charged to the Association by outside third parties:
- 6.4.1.1.1 all rates and taxes payable by the Association to the local authority in respect of the Common Property, as well as any service charges payable, including those for bulk services, by the Association to the local authority in respect of the Development.
- 6.4.1.1.2 the costs of the Developer's nominated provider of security services, including security guards, monitoring and surveillance;
- 6.4.1.1.3 the fee payable to any Estate Manager with whom the Association has entered into an agreement.
- 6.4.1.1.4 any levies payable to the CSOS in terms of the CSOS Act.
- 6.4.2 The Association shall have a discretion in regard to approval of the level of services, and the cost thereof that the Association requires in respect of e.g. cleaning, gardening, general maintenance, etc.
- 6.4.3 The Association shall have its Annual General Meeting within 6 (six) months after the financial year-end of the Association and, subject to 6.4.1 above, decide on proposed increases of the levies and the amounts to be charged to members in respect thereof.
- 6.5 The Association may, from time to time by a resolution adopted by the Trustees, make special levies upon members effective from the date of passing of the applicable resolution in respect of such expenses referred to in clause 6.1 which have not been included in the levies approved by the Annual General Meeting in terms of 6.4, and such levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees may determine in its resolution. The decision of the Trustees in calculating such special levies shall be final and binding on all members.
- 6.6 Any amount due by a member by way of a levy shall be a debt due by him to the Association payable on such time or times as determined by the Trustees. The Trustees may determine that a levy is payable annually in advance in respect of the year for which it is calculated or in such monthly instalments as it may determine.
- 6.7 Until such time as a new levy pertaining to a forthcoming year has been determined pursuant to the provisions of this clause 6, every member of the Association shall continue to pay the existing levy currently in force, on account of the new levy yet to be determined.
- 6.8 The obligation of a Member to pay a Levy and interest shall end upon him ceasing to be a Member without prejudice to the Association's right to recover arrear Levies and

- interest and penalties, fines and other amounts due to the Association up to the date upon which he ceases to be a member.
- 6.9 No levies paid by a member shall be repayable by the Association upon cessation of the member's membership.
- 6.10 A member's successor in title to an erf or unit shall be liable, as from the date upon which he becomes a member pursuant to registration of transfer of such erf or unit in his name, to pay the levies attributable to that erf or unit.
- 6.11 The Trustees may from time to time determine a charge to be levied upon Members in arrears, as an administration charge payable to the Association. Any administration charges so levied shall from time to time be subject to review by the Members in General Meeting.
- 6.12 A member shall be obliged to pay interest on any levy not paid on the due date at the Prime Rate plus 3 percentage points per annum calculated on the levies due from time to time from the due date until the date that the arrear levies have been paid in full to the Association.
- 6.13 All payments made by a Member and received by the Association, shall be allocated firstly towards interest, then legal costs, then to any other Levies (special-or dedicated) in arrear and thereafter towards capital due on the general Levy. The Board reserves the right to allocate payments to the debt oldest in time.
- 6.14 Should a Member fail to effect payment of contributions levied in terms of this Constitution on due date, the full outstanding balance remaining unpaid for the financial year shall become due and payable immediately (despite any resolution in respect of levies being payable in monthly instalments) without notice and/or demand but the Board, at their sole election and discretion, may agree to a repayment arrangement with the Member concerned and subject to such conditions as the Board may impose.
- 6.15 The Association shall be entitled to require a member to sign a debit order authority to allow the Association or its authorised agent to collect levies directly from an operating bank account.
- 6.16 If any member fails to make payment on due date of levies and/or other amounts payable by such member including interest, the Association may give notice to such member requiring him to remedy such failure within such period as the Association may determine and should he fail timeously to make such payments, the Association may disconnect and / or discontinue any services to the property of such member and furthermore may institute legal proceedings against such member without further notice and such member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in recovering such amounts.
- 6.17 No member shall (unless otherwise determined by the Trustees) be entitled to any of the privileges of membership including:
- 6.17.1 his right of access to and use of any of the facilities on the Common Property;
- 6.17.2 his right to vote until he shall have paid every levy and interest thereon and any other amount which may be due and payable by him to the Association.
- 6.18 The Association shall not be entitled to undertake on behalf of its members any permanent works of major capital nature without the sanction of a resolution of the members adopted during a general meeting of members. In this sub-clause "works of a major capital nature" means works that will cost more than R50 000 (fifty thousand Rand) (excluding Value Added Tax).
- 6.19 In calculating the levy payable by each member, the Trustees shall apportion the costs relating to the Common Property equally among all owners of erven. All members shall pay an equal share of these costs, and the Trustees shall not vary this apportionment by assigning a greater or lesser share of the costs to any member under any circumstances.

- 6.20 The Association may come to agreement with the Developer for the repayment by the Association to the Developer of ongoing costs or expenses incurred by the Developer for the provision of services to the units/owners.
- 6.22 Should any dispute arise at any time between the members and the Trustees in regard to the determination or calculation of the levies, the decision of the Auditors for the time being of the Association (acting as experts and not as arbitrators) in regard to such dispute shall be final and binding on the members and the Trustees.
- 6.23 In the event of any dispute arising in regard to the determination or calculation of any levy, every member shall until the determination of such dispute continue to pay the levies determined by the Trustees.
- 6.24 Notwithstanding anything contained in this clause, the Developer shall not be required to pay levies to the Association in respect of serviced erven that remains unsold.

7. **ENTRENCHED PROVISIONS**

- 7.1 The Developer, during the Development period and thereafter the Association have a continuing and permanent interest to ensure that certain basic provisions are entrenched to ensure the success of the Development. Accordingly, none of the following provisions of clauses 7.1.1 to 7.1.9 (both inclusive) may be deleted or varied in any way in terms of this Constitution, without the prior written consent of the Developer during the Development period and thereafter the Association:
 - 7.1.1 the Developer during the Development period and thereafter the Association may register, in their entire and sole discretion and where necessary, services servitudes, including those referred to in clause 9 below, in favour of the local authority, the Developer, the Association, and/or any adjacent property development over any separate erf in the Development or any other part of the Development;
 - 7.1.2 the Developer shall be entitled to incorporate adjacent immovable property into the Development area and the Developer shall be entitled to develop the said property as it may deem fit, in which event all persons who become owners of erven or units in such Development shall be entitled to or subject to as the case may be to the benefits, rights or obligations of members of the Association;
 - 7.1.3 no member shall be entitled to object to the subdivision and/or Development of any part of the Development area provided that such subdivision and/or development is not inconsistent with the development plan approved by the relevant authorities for that part of the Development area, nor shall they be entitled to object to any such new development.
 - 7.1.4 No member shall be entitled to object to the reinstatement of the developments rights contained in the approvals from the Municipality of Mossel Bay, C9465486 (item) (dated 14 March 2023);
 - 7.1.5 ownership of an erf or unit does not confer any right, including that of access, in respect of property owned by the Developer, including any right of way or access across such property;

- 7.1.6 the members acknowledge and agree that the Developer, its successor/s in title and its employees have certain rights, including rights of access across the Common Property;
- 7.1.7 all Building Contractors and architects must be approved by the Developer (and after the development period by the Association) before construction of any building or dwelling commences;
- 7.1.8 all estate agents marketing and / or selling property in the Estate must be approved by the Developer and after the development period by the Association before such estate agents commences any marketing or sales initiatives at the Estate.
- 7.1.9 The prospective owner (Purchaser) is required to pay the Developer a construction deposit in the amount specified in the Agreement of Sale, within 60 days from the Signature Date of the Agreement of sale, which amount shall be held in trust by the Conveyancer. This deposit shall secure the Developer's responsibilities related to preparing, amending and having the Building Plans approved for dwelling house to be constructed on the Property, as well as any other costs the Developer may incur under the Building Contract. The Developer is not obligated to begin any work until the Purchaser has made this payment. If the Purchaser fails to make timeous payment, it will be considered a breach of the Building Contract which could lead to its termination. It's noted that the Developer shall factor this payment (or any unused portion) into the final Building Contract Price as outlined in the Building Contract.
- 7.1.10 The Registered Owner shall commence building a Dwelling House on the Property within 30 (thirty) days of the Transfer Date, in accordance with the Building Contract. Additionally, the construction shall be concluded within 8 (eight) months from its commencement, in accordance with the approved building plans and specifications. Should the Registered Owner fail to comply with these provisions, the Association shall be entitled to impose a Penalty on such owner for non-compliance, which Penalty shall not exceed the amount of R50 000.00 (Fifty Thousand Rand) excluding VAT, if applicable.

8. RESPONSIBILITY FOR PAYMENT OF RATES, TAXES AND SERVICES

8.1 RATES AND TAXES:

- 8.1.1 The Association shall be responsible to pay all rates and taxes in respect of the Common Property to the Council;
- 8.1.2 All members as owners of erven, shall be responsible to pay rates and taxes in respect of their property to the Council.

8.2 SERVICES:

- 8.2.1 The responsibility for payment of services and the method of service supplies shall be as regulated in clause 9 below.

- 8.2.2 The supply of services to the Development shall be subject to all such terms and conditions as imposed by the Association.

9. **SERVICES**

9.1 **WATER SUPPLY:**

- 9.1.1 Water will be supplied to the Development by the Council. The Association shall however operate and distribute the water supply to the individual erven and levy the charges therefor. The responsibility of the Municipality shall be upstream of the Bulk metering Unit.
- 9.1.2 The Developer shall install the infrastructure for the water supply to the boundary of each erf in the Development. The Association will be responsible for the cost of maintenance and servicing of pipelines, pumps, meters, equipment and materials in respect of the internal potable water supply system up to the boundary of each erf.
- 9.1.3 The members of the Association, shall be liable for and shall pay to the Association, on demand, all charges arising from water supplied to or consumed in or on an erf or unit and the Building thereon.
- 9.1.4 The liability of members of the Association for such charges shall be in accordance with separate sub meters serving the erven of members, as the case may be which the ASSOCIATION shall be entitled to install at the cost of such member, as the case may be.
- 9.1.5 Where water charges are calculated and payable in terms of this clause 9, any value-added tax levied in respect of the supply of such water shall be paid by the member in question.

9.2 **ELECTRICITY:**

- 9.2.1 The Council shall supply electricity to the Development. The Association shall however operate and distribute the electricity supply to the individual erven and levy the charges therefor. The responsibility of the Municipality shall be upstream of the Bulk metering Unit.
- 9.2.2 The entire electricity network and lighting network and light fittings after the bulk metering shall be installed by the Developer. The upkeep, operation and maintenance maintained shall be the responsibility of the Association.

- 9.2.3 The liability of members of the ASSOCIATION for such charges shall be in accordance with separate sub meters serving the erven of members, which the ASSOCIATION shall be entitled to install at the cost of such member, as the case may be.
- 9.2.4 Where electricity charges are calculated and payable in terms of this clause, any value-added tax levied in respect of the supply of such electricity shall be paid by the member in question.
- 9.2.5 Lighting on the Common Property shall be supplied through separate electricity supply meters and the cost incurred by the Association in respect thereof shall be recovered from members as part of the levies imposed by the Association.

9.3 **INTERNET SERVICES**

- 9.3.1 The Developer, alternatively the Association, shall appoint an internet service provider to install and provide internet services to the Development and all erven within the Development.
- 9.3.2 Each member of the Association shall be obliged to install any necessary equipment required for such internet service and shall further be responsible for payment of the monthly subscription fees as determined by the Association from time to time.

9.4 **GENERAL**

- 9.4.1 Each member of the Association shall from date of transfer be responsible for any connection charges to the infrastructure of the Development, including the costs of any metering device and the maintenance and replacement of any such device;
- 9.4.2 The Association shall be entitled to call for deposits in respect of any connection to be undertaken by it, the interest on which deposits shall be for the credit of the Association.
- 9.4.3 The Developer during the Development period and thereafter the Association shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, security communication, and any other services over any erf or building or any other portion of the Development, whosoever is the owner thereof, and

shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.

9.4.4 The members of the Association will allow reasonable access to employees or representatives of the Developer or the Association (as the case may be) into the buildings, units or erven for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above.

9.4.5 Without limiting the generality of the provisions of 9.4.3, every member shall allow gas mains, electricity, telephone, internet and television cables and/or wires, and main and/or other waterpipes and the sewerage and drainage, including stormwater, of any other land unit or units to be conveyed across the relevant land unit, and surface installations such as mini-substations, metre kiosks and service pillars to be installed thereon, if considered necessary by the Association and/or the Developer (during the Development period) and in such a manner and position as may from time to time be reasonably required. This shall include the right of access to the land unit at any reasonable time for the purposes of constructing, altering, removing or inspecting any works connected with the above.

9.4.6 Without limiting the generality of the provisions of clause 7.1.1 the Developer during the Development period and thereafter the Association shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The members accept and shall be bound by and consents to the registration of the servitudes referred to in this clause and clause 7.1.1.

10. **ARCHITECTURAL GUIDELINES (BUILDING DESIGN MANUAL)**

10.1 The Architectural Guidelines contained in the Building Design Manual constitute an integral part of this Constitution. It is recorded that the Architectural Guidelines contain the procedures, requirements and guidelines to be adhered to by every member who wishes to effect construction, improvements or alterations to or undertake any renovation of any erf or unit. The Architectural

- Guidelines that will be in force and effect are those contained in the Building Design Manual;
- 10.2 All improvements shall be of sound construction and shall comply with the provisions of the Architectural Guidelines contained in this Constitution and the Building Design Manual;
- 10.3 No construction or erection of any improvements or alterations to and no renovation of any erf or unit that is undertaken by any party other than the Developer or any landscaping on any property may commence prior to the due and proper approval of plans for such construction, improvements, alterations or renovation by both the Design Review Committee and, where required, the local authority, in accordance with the following provisions:
- 10.3.1 the member shall submit to the Design Review Committee for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;
- 10.3.2 the member shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the Design Review Committee;
- 10.3.3 after the approval of such plans by the Design Review Committee the plans shall be submitted to the local authority for approval. No plan shall be submitted to the local authority unless it bears the endorsement of approval of the Design Review Committee, clearly dated, certifying that the plan complies with the Architectural Guidelines.
- 10.3.4 any construction, improvements, alteration, renovation, demolition or removal done in terms of this clause shall be done to municipal standards and to municipal building regulations.
- 10.4 When effecting the construction, improvements or alterations or renovations contemplated herein the member shall at all times comply strictly with the Architectural Guidelines, as well as all conditions and standards imposed by the local authority insofar as these may be additional to the provisions of the Architectural Guidelines. No member shall be entitled to deviate in any manner whatsoever from any plan approved by the Design Review Committee and the local authority unless the prior written approval of both the Design Review Committee and the local authority for such proposed deviation has been obtained.
- 10.5 Any communal portion of a supporting wall, roof, pipe, gutter, fencing or other structure or object on such unit shall be maintained by the owner of the erf.
- 10.6 Each portion of such supporting wall, roof, pipe, gutter, fencing or other structure or other object on such erf shall likewise be maintained by the owner of the erf.
- 10.7 Access to such erf or unit shall be allowed for the purpose of maintenance, cleaning, renovations, repair, renewal, alteration of and in addition to such wall, roof, pipe, gutter, fencing or other structure or object and nothing shall be done which may prevent access to or hinder such access.
- 10.8 Should the Association resolve to approve any such alterations and or additions, they shall be of such a nature as to be applicable to all erf or unit owners and all erf or unit owners shall be permitted without exception to affect similar alterations and additions.
- 10.9 A plan shall be provided showing the proposed location of the alterations and / or additions in relation to all erf within the direct vicinity of the erf. (This does not imply that all erf owners should necessarily also affect such additions and alterations. The said plan is required only to enable an evaluation to be made of the total effect of a proposal on the aesthetic appearance of the scheme).
- 10.10 No member shall be entitled to challenge or contest any of the provisions of the Building Design Manual. No application for the amendment of the Building Design Manual shall be made to the local authority unless prior written consent

of the Developer in the developing phase and thereafter the Design Review Committee has been obtained thereto.

- 10.11 The Trustees may amend or otherwise authorise a deviation from the Building Design Manual from time to time on a recommendation by the Design Review Committee, but during the Development period the Developer's consent will be required.

11. **ESTATE RULES**

- 11.1 The Estate Rules of the Association constitute an integral part of this Constitution.
- 11.2 The Estate Rules in force on establishment of the Association shall be those contained in the Conduct Rules for Owner / Residents. The aforesaid Rules shall constitute framework Rules for the Estate Rules to be developed as provided herein and after the Association has commenced.
- 11.3 Subject to this Constitution and to any restriction imposed or direction given at a general meeting of the Association and subject to any condition imposed by the local authority, the Trustees may from time to time make Estate Rules, and vary or modify these Rules, in regard to:
- 11.3.1 the code of conduct applicable to all builders, contractors (including sub-contractors) and suppliers within the Development or any building, construction or any other work carried on within the Development
 - 11.3.2 the preservation of the natural environment, vegetation and fauna within the Development including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any erven;
 - 11.3.3 the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
 - 11.3.4 the conduct of any persons within the Development and the use of his property for the prevention of nuisance of any nature to any member;
 - 11.3.5 the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;
 - 11.3.6 the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping within the Development;
 - 11.3.7 the control of the number of occupants or residents permitted on any one erf or unit;
 - 11.3.8 the admission of any person within the Development, and the eviction of any person not entitled to be thereon;
 - 11.3.9 any activity which may be harmful in terms of the Occupational Health and Safety Act, e.g. the storage of inflammable and other harmful substances;
 - 11.3.10 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents within the Development.
- 11.4 For the enforcement of any of the Rules made by the Trustees in terms of clause 11, or of any of the provisions of this Constitution generally, the Trustees may:
- 11.4.1 give notice to the member concerned requiring him to remedy such breach within such period as the Trustees may determine; and/or
 - 11.4.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned,

- which amount shall be deemed to be a debt owing by the member concerned to the Association; and/or
- 11.4.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 11.5 Should the Trustees institute any legal proceedings against any member or resident within the Development for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 11.6 In the event of any breach of the Rules by the members or any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 11.7 If any member disputes the fact that he has committed a breach of any of the provisions of the Rules made by the Trustees in terms of clause 11 or any provisions of this Constitution, a committee of three (3) Trustees appointed by the Chairman shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the Chairman may direct.
- 11.8 Notwithstanding anything to the contrary herein contained, the Trustees may in the name of the Association enforce the provisions of any Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.
- 11.9 The Association may in a general meeting itself make any Rules in regard to any matter and may also vary or modify any rule made by it or by the Trustees from time to time.
- 11.10 Rules made by the Association are effective as from date of publication thereof to the Members until ratified, amended, supplemented or repealed at the next General Meeting following such publication.
- 11.11 If any Rules are repealed at a General Meeting, those Rules are nevertheless effective and enforceable between the date of its publication and the date of its repeal.
- 11.12 Any Rules published by the Board shall become final if approved and ratified, with or without amendment, at the General Meeting following its publication.
- 11.13 All Rules shall be reasonable and shall apply equally to all owners of erven or units put to substantially the same use.

12. **CONDITIONS IMPOSED BY THE LOCAL AUTHORITY**

- 12.1 The following conditions have been imposed by the LOCAL AUTHORITY by virtue of the final subdivisional and rezoning approval dated 14 MARCH 2023 and subsequent correspondence, namely:
- 12.1.1 That all residential units (single residential and group housing) is limited to be a single storey;
- 12.1.2 *Buffer area along N2*: That the 5.5 meter and 2.5 meter buffer area be planted with indigenous vegetation as well as fencing around the Development be constructed to the satisfaction of Director Infrastructure Services and Director Planning & Economic Development before any building plans for the residential properties can be submitted.
- 12.1.3 *Public Road Portion*: That the public road portion be surveyed and registered in the name of the relevant Provincial Roads Authority at the cost of the owner/developer before any other property in the Development may be transferred.

12.1.4 *Homeowner's Association*: That a Homeowner's Association be established and shall be responsible for maintenance of the internal streets, internal service network and the private open space.

13. **TRUSTEES**

- 13.1 The Trustees of the Association shall for the development period be divided into two classes, namely Developer Trustees and Member Trustees. Upon expiry of the Development period there shall only be Member Trustees.
- 13.2 There shall be not more than five (5) Trustees of the Association of whom, during the Development period:
 - 13.2.1 two (2) shall be Member Trustees appointed by the members; and
 - 13.2.2 the remaining Trustees shall be Developer Trustees appointed by the Developer.
- 13.3 Provided that the Developer shall during the Development period be one of the aforesaid Trustees.
- 13.4 After termination or expiration of the Development period all the Trustees shall be appointed by the members.
- 13.5 The Trustees shall appoint one of their number to act as Chairman for such term as they think fit, but not for longer than such person's tenure as a trustee. During the Development period, the Chairman shall be one of the Developer Trustees, unless the Developer otherwise agrees in writing.
- 13.6 Notwithstanding anything contained in this Constitution to the contrary the Developer shall have the right to attend the first meeting of the Association and on behalf of and to the exclusion of all members of the Association to vote at the meeting on their behalf in respect of the appointment of Trustees and other matters incidental to the establishment of the Association.

14. **REMOVAL AND ROTATION OF TRUSTEES**

- 14.1 Save as set out in this clause below, each trustee, except for the Developer Trustees who shall not be required to rotate on an annual basis, shall continue to hold office as such from the date of his appointment to office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Trustees at such meeting.
- 14.2 Nominations for election of Trustees (excluding Developer Trustees during the Development Period) must be delivered to the Association in writing or to any other person acting on behalf of the Association (including a Board member or duly appointed Managing Agent) at any time before commencement of the proceedings or meeting at which the nomination is to be considered. A person nominated must accept his nomination in writing. The nomination form must contain the minimum particulars as prescribed by the Trustees from time to time and must be signed by the nominator and nominee and may be signed in counterparts.
- 14.3 Upon any vacancy occurring in the Board of Trustees prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated and appointed by Developer (during the Development Period) and by the Chairperson of the Board of Trustees for the time being (subsequent to the Development Period) and, in his absence or inability, the Vice-Chairperson.
- 14.4 Trustees should be a Member, a spouse of a Member, a life partner of a Member or a duly Authorised Representative of a Member, where the Member is a Company, Close Corporation or Trust (legal entity).

- 14.5 Within 7 (seven) days of the holding of each Annual General Meeting, the Board of Trustees shall meet and shall elect from their own numbers (subject to the terms stipulated herein) the Chairperson and the Vice-Chairperson, who shall hold their respective offices until the Annual General Meeting held next after their said appointments, provided that the office of the Chairperson or Vice-Chairperson shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.
- 14.6 A person must satisfy the following eligibility requirements and qualifications and he must therefore:
- 14.6.1 be a paid-up Member, or a representative of a paid-up Member where the Member is a legal entity, and/or the spouse of a paid-up Member, of the Association at the time of appointment as Trustee;
 - 14.6.2 not be in breach of any of his obligations as a Member of the Association, as stipulated in this Constitution or the Rules;
 - 14.6.3 not be disqualified from acting as Trustee of the Association;
 - 14.6.4 not be a nominee or representative of a Member, where the Member is a legal entity and such legal entity is in breach of any of its obligations in terms of this Constitution or the Rules;
 - 14.6.5 not be an employee of the Association and/or the Managing Agent (if appointed) or a Member/Trustee of the Managing Agent or any of its employees, unless he is also a Member of the Association.
- 14.7 A trustee shall be deemed to have vacated his office as such upon:
- 14.7.1 his having become disqualified to act as a director in terms of the provisions of the Companies Act;
 - 14.7.2 his Estate being sequestrated, whether provisionally or finally;
 - 14.7.3 the commission by him of any act of insolvency;
 - 14.7.4 his conviction for any offence involving dishonesty or any other serious criminal offence;
 - 14.7.5 his becoming of unsound mind or being found lunatic;
 - 14.7.6 his resigning from such office in writing;
 - 14.7.7 A Trustee shall not be entitled to appoint an alternate to function in his stead for any purpose nor by proxy or otherwise appoint any other person to fulfil his functions and duties.
 - 14.7.8 A Trustee may not delegate or sub-delegate any of his obligations, save as approved by the Board.
- 14.8 Provided that anything done in the capacity of a trustee in good faith by a person who ceases to be a trustee, shall be valid until the fact that he is no longer a trustee has been recorded in the minute book of the Association.
- 14.9 Upon any vacancy occurring in the Trustees prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustees. Whilst Developer Trustees are in office the remaining Developer Trustees shall nominate a person to fill any such vacancy in their number.
- 14.10 The Developer may remove and replace any Developer trustee at any time upon written notice to the remaining Trustees.

15. **TRUSTEES EXPENSES AND REMUNERATION**

- 15.1 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees as may be approved by the Board of Trustees.

- 15.2 Trustees shall be entitled to remuneration in respect of the performance of their duties as determined by the Association at a general meeting of the Association.

16. **POWERS OF TRUSTEES**

- 16.1 Subject to the express provisions of this Constitution, the Trustees 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, 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 Rules as may have been made by the Association in general meeting or as may be made by the Trustees from time to time.
- 16.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, Auditors, attorneys, architects, engineers, town planners, Estate Manager or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 16.3 The Trustees may appoint a Health and Safety Officer to ensure compliance with the Health and Safety Act by the Association, Bodies Corporate, Members, Occupants and visitors.
- 16.4 The Trustees shall, after the Development period, further have the power:
- 16.4.1 to require that any construction of any nature within the Development shall be supervised to ensure that the provisions of this Constitution and the Rules are complied with and that all such construction is performed in a proper and workmanlike manner;
- 16.4.2 to issue Architectural Guidelines from time to time and to ensure that such manual is complied with at all times;
- 16.5 The Trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 16.6 The Trustees shall be entitled to appoint committees consisting of such number of their members and such outsiders, including an Estate Manager or managing agent, as they deem fit and to delegate to such committees 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.
- 16.7 The Trustees shall appoint an architectural Design Review Committee to exercise the powers set out above which may, but shall not necessarily, consist of the following persons:
- 16.7.1 a practising professional architect duly qualified to practice as such for his own account in the Republic of South Africa;
- 16.7.2 one or more Trustees.
- 16.8 Members of the architectural Design Review Committee shall not be required to be members of the Association.
- 16.9 For the duration of the Development period the Developer will be the sole member of the Design Review Committee.

17. **PROCEEDINGS OF TRUSTEES**

- 17.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution, which meetings may also include virtual or online meetings or video conferencing, but only if circumstances necessitate it.

- 17.2 The quorum necessary for the holding of all meetings of the Trustees shall be three (3) Trustees present personally, provided that during the Development period at least one (1) Developer trustee and one (1) Member Trustee shall be present at all meetings of Trustees to form a quorum. If no quorum is present within fifteen (15) minutes after the time for commencement of the meeting then it shall stand adjourned for seven (7) days, or if that is not a business day, then to the next business day thereafter, and those Trustees present at the adjourned meeting shall constitute a quorum.
- 17.3 At any meeting of the Trustees, each Member Trustee shall have one (1) vote and each Developer trustee shall have one (1) vote: Provided that during the Development period the Developer shall be entitled to three times the total number of votes of all the other Trustees.
- 17.4 Any resolution of the Trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the Chairman of the Trustees shall have a second or casting vote.
- 17.5 The Trustees shall cause minutes to be kept of every Trustees' meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the Chairman. All minutes of Trustees' meetings shall, after certification, be placed in a trustee's minute book to be kept in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies. The Trustees' minute book shall be open for inspection at all reasonable times by any trustee, the Auditors and the members.
- 17.6 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustees.

18. **GENERAL MEETINGS OF THE ASSOCIATION**

- 18.1 The Association shall within 6 (six) months after the end of the financial year hold a general meeting as its Annual General Meeting in addition to any other general meetings during that year.
- 18.2 Such Annual General Meeting shall be held at such time and place as the Trustees shall decide from time to time, which may also include virtual or online meetings, or video conferencing, but only if circumstances necessitate it.
- 18.3 All meetings of the members other than Annual General Meetings shall be called general meetings.
- 18.4 The Trustees may, whenever they think fit, convene a general meeting. A general meeting may also be convened by the Trustees on a requisition made in terms of section 61 of the Companies Act, or should the Trustees not do so, may be convened by the requisitionist as provided for by and subject to the provisions of that section.

19. **NOTICES OF MEETINGS**

- 19.1 An Annual General Meeting and a meeting called for the passing of a Special Resolution shall be called by not less than twenty-one (21) clear days' notice in writing and any other general meeting shall be called by not less than fourteen (14) clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under this Constitution, entitled to receive such notices from the Association: provided that a meeting of the Association shall notwithstanding the fact that it is called by shorter notice than that specified in this clause, be deemed to have been duly called if it is so agreed by not less

than fifty one percent (51%) of the members having a right to attend and vote at the meeting.

- 19.2 The Annual General Meeting shall deal with the consideration of the annual financial statements, the election of Trustees, the noting of the levy for the financial year during which such Annual General Meeting takes place, the appointment of an auditor and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

20. **PROXIES**

- 20.1 A member may be represented at a general meeting by a proxy, who must be a member of the Association or a director, member, partner or trustee of that member, save for the Developer whose proxy need not necessarily be a member.
- 20.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the Association at least twenty four (24) hours before the commencement of the meeting or adjourned meeting concerned but the Trustees may from time to time determine that such documents:
- 20.2.1 are to be lodged at a particular place; or
- 20.2.2 are to be lodged a certain number of hours, not exceeding forty eight (48) in all, before the meeting; or
- 20.2.3 may be lodged at any time before or during the meeting.
- Notwithstanding the foregoing the Chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.
- 20.3 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period. The instrument appointing a proxy shall be in the form as prescribed by the Association. A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

21. **QUORUM**

- 21.1 No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, ten percent (10%) of all members entitled to vote at such General Meeting present in person or by proxy shall constitute a quorum, provided that at least three (3) members are present in person at such meeting and provided that during the Development period, at least one (1) representative of the Developer is present at such meeting.
- 21.2 If within fifteen (15) minutes after the time appointed for the commencement of a general meeting or within such extended period as the Chairman of the Board or, in his absence, the deputy Chairman, may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time on the same day of the next week (or if that day is not a business day, the first business day following that non-business day) or to such other place, time and day as the Board may determine. If a quorum is not present at such adjourned meeting, the members present shall constitute a quorum.

22. **ADJOURNMENT BY CHAIRMAN WITH CONSENT OF MEETING**

- 22.1 The Chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by majority vote. In the event of such an adjournment:

- 22.1.1 no notice need 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);
- 22.1.2 only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

23. **VOTING RIGHTS OF MEMBERS**

- 23.1 Members shall be entitled to vote only on the matters raised at every general meeting.
- 23.2 At every general meeting:
 - 23.2.1 each member, present in person or by proxy and entitled to vote, shall have one vote for each erf or unit registered in his name;
 - 23.2.2 if an erf or unit is registered in the name of more than one (1) person, then all such co-owners shall jointly have only one vote;
 - 23.2.3 during the Development period, the Developer shall be entitled to a casting vote;
 - 23.2.4 if a Member is a juristic person, such Member shall be represented by such representative as the Member may determine provided that the Chairperson may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairperson as to his right to represent the Member;
 - 23.2.5 Save as expressly provided for in this Constitution, no person other than a member and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting.
- 23.3 Voting shall be on a show of hands, unless the Chairperson of the meeting otherwise directs, or unless a poll is demanded. If a poll is duly demanded it shall be taken in such manner as the Chairman of the meeting may direct either at once or after an interval or adjournment.
- 23.4 An Ordinary Resolution (that is a Resolution other than a Special Resolution) or the amendment of an Ordinary Resolution, shall be carried on a simple majority of all the votes cast thereon, by Members present in person or by proxy and entitled to vote at the meeting, and an abstention shall not be counted as a vote for or against the Resolution in question. In the case of an equality of votes for and against any Resolution, the Resolution shall be deemed to have been defeated.
- 23.5 If a poll is duly demanded, it shall be taken in such manner as the Chairman of the meeting may direct either at once or after an interval or adjournment.
- 23.6 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by the Chairman whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 23.7 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
 - 23.7.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
 - 23.7.2 the Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 23.8 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every

vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting whose decision shall be final and conclusive.

- 23.9 A declaration made in good faith by the Chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed, as the case may be.
- 23.10 Any resolution which could be passed at a general meeting (other than a Special Resolution or a resolution to remove a trustee or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.
- 23.11 Unless a Member present in person or by proxy at a General Meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the Minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.
- 23.12 A declaration made in good faith by the Chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed, as the case may be.

24. **ACCOUNTING RECORDS**

- 24.1 The Trustees shall cause such accounting records as are prescribed by section 28 of the Companies Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 24.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Trustees think fit, and shall always be open to inspection by the Trustees.
- 24.3 The Trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by members not being Trustees, and no member (not being a trustee) shall have any right of inspecting any accounting records or documents of the Association except as conferred by the Companies Act or authorised by the Trustees.
- 24.4 Notwithstanding the provisions of clause 24.3 and any conditions or regulations made by the Trustees, such conditions or regulations may not negate or diminish any mandatory protection of any record required by or in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), subject to its provisions.

- 24.5 The Trustees shall from time to time cause to be prepared and laid before the Association in general meeting such financial statements as are referred to in sections 29 and 30 of the Companies Act.
- 24.6 A copy of the annual financial statements which are to be laid before the Association in Annual General Meeting shall, not less than twenty one (21) days before the date of the meeting, be sent to every member of the Association: provided that this clause shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

25. **SERVICE OF NOTICES**

- 25.1 The Association may give notices to any member either personally, or by sending it by post in a prepaid letter addressed to such member at his registered address or at the address (if any) within the Republic of South Africa supplied by him to the Association for the giving of notices to him, or by e-mail or other electronic delivery.
- 25.2 Notice of every general meeting shall be given:
 - 25.2.1 to every member of the Association;
 - 25.2.2 to the Auditors for the time being of the Association;
 provided that no other person shall be entitled to receive a notice of general meetings.
- 25.3 The omission to give notice of a general meeting or of a meeting of Trustees to or the non-receipt of, or delay in transmission through the post of, any such notice by or to any Member or Trustee, as the case may be, shall not invalidate any Resolution passed at any such meeting.
- 25.4 The address of the Association constituting its *domicilium citandi et executandi*, shall be the address of the appointed Managing Agent from time to time (if appointed), alternatively the address as recorded by the Members in General Meeting at each Annual General Meeting.
- 25.5 The *domicilium citandi et executandi* of each Member shall be the address of the Erf registered in his name: Provided that such Member shall be entitled to change the said *domicilium* but that any new domicile selected shall be situated in the Republic of South Africa, and that the change shall only be effective upon receipt of written notice thereof by the Association.
- 25.6 For all purposes arising out of this Constitution including the giving of notices and the serving of legal processes, each member chooses as his *domicilium citandi et executandi*, the Erf registered in his name. Each member shall upon becoming a Member be obliged to furnish the Association with his electronic mail address or physical residential address which shall, for purposes of notification, be deemed to constitute his domicile address.
- 25.7 For any notice or document to be delivered or published for any purpose contemplated in this Constitution or the Rules of the Association, may be delivered:
 - 25.7.1 by electronic mail, if the addressee has an address for receiving electronic mail; or
 - 25.7.2 by registered post to the addressee's *domicilium citandi et executandi* or last known address; or
 - 25.7.3 by hand to the addressee or to any representative authorised in writing by the addressee to accept service; or
 - 25.7.4 by leaving the notice at the addressee's place of residence or business with a person who is apparently at least 16 years old and in charge of the premises at the time; or

- 25.7.5 by leaving the notice at the addressee's place of employment with a person who is apparently at least 16 years old and apparently in authority.
- 25.8 A notice will be deemed to have been delivered if:
 - 25.8.1 by electronic mail – on the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time;
 - 25.8.2 by registered post – on the 3rd (third) day following the day on which the notice or document was posted, as recorded by the Post Office, unless there is conclusive evidence that it was delivered on a different day;
 - 25.8.3 by hand – on the date and at the time recorded on a receipt for the delivery;
 - 25.8.4 by leaving the notice at the place of residence or business of the addressee – on the date and at the time recorded on a receipt for the delivery;
 - 25.8.5 by leaving the notice at the addressee's place of employment – on the date and at the time recorded on a receipt for the delivery.
- 25.9 Any notice to be given by a Member to the Association shall be delivered to the Association by delivery of such notice to the *domicilium citandi et executandi* of the Association, as recorded at every Annual General Meeting or via email to the office of the Managing Agent, if appointed.
- 25.10 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 25.11 When a given number of days' notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.

26. **INDEMNITY**

- 26.1 All Trustees and the Auditors shall be indemnified against any liabilities *bona fide* incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a court.
- 26.2 Every trustee, servant, agent and employee of the Association, and the Auditors, shall be indemnified by the Association against (and it shall be the duty of the Trustees 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.

27. **GENERAL**

- 27.1 Whenever the Trustees consider that the appearance of any erf or unit or building in the Development vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the Development generally, they may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the member fail within a reasonable time, to be specified in such notice, to comply therewith, the Trustees may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing to the Association.

- 27.2 The Trustees shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the Trustees acted unreasonably.
- 27.3 Any member as Registered Owner of an erf zoned for residential purposes shall construct and complete the construction of a dwelling house thereon within three (3) years after registration of transfer of the erf into his name, unless an extension is allowed by the Developer or Association.
- 27.4 The Association may enter into agreements with any third party for the provision of facilities and services to or for the members and may levy charges in respect of the provision thereof, or may pass on such costs direct to the members.
- 27.5 Any person using any of the services, land or facilities of the Association does so entirely at his own risk.
- 27.6 The Association may at its pleasure permit the members subject to the provisions of this Constitution to use the open space and roads, and shall do so unless by Special Resolution taken at an extraordinary general meeting called for the purposes, it is otherwise resolved for good reason.
- 27.7 The Association may from time to time and whenever they deem it necessary, limit, restrict, or suspend such use in relation to any part or such roads and open space for good reason.
- 27.8 No member shall operate or conduct a time share scheme as contemplated in the Time Share Control Act No. 71 of 1983 in respect of any unit(s) owned by him save where such scheme arises from co-ownership or syndication involving not more than 2 (two) members per bedroom per unit.
- 27.9 The Association shall subscribe to an all risk insurance policy in respect of all aspects covered under such an insurance policy. The amount required must be determined at the AGM, which amount forms part of the annual budget.

28. **DISPUTES**

- 28.1 Any dispute arising out of or in connection with this Constitution must be determined in terms of this clause, except when an interdict is sought for urgent relief, which may be obtained from a court of competent jurisdiction.
- 28.2 On a dispute arising, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within fourteen (14) days of such notice, either of the parties may refer the dispute to determination in terms of this clause.
- 28.3 If a party exercises his right in terms of this clause to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of ten (10) years experience in their field:
 - 28.3.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
 - 28.3.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
 - 28.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
 - 28.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer;
 - 28.3.5 if the dispute relates to any other matter, such other independent and suitably qualified person.
- 28.4 If the parties are unable to agree either on the person referred to in this clause or on the classification of the dispute within a period of seven (7) days of either party having given notice to the other, proposing an appointee or alternative

- appointees, then the person in question shall be nominated by the President for the time being of the Legal Practice Council or its successor/s.
- 28.5 Any person agreed upon and nominated as aforesaid ("the expert"), shall in all respects act as an expert and not as an arbitrator.
 - 28.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
 - 28.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within twenty one (21) days or so soon thereafter as possible, after it has been demanded.
 - 28.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
 - 28.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between party and party or as between attorney and client.
 - 28.10 The provisions of this clause constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.
 - 28.11 Should all above remedies to resolve the dispute be unsuccessful the parties may approach the CSOS Ombud in order to obtain the relief as set out in the CSOS Act,
 - 28.12 The provisions of this clause shall be deemed to be severable from the rest of this Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled or declared of no force and effect for any reason.

29. **ESTATE MANAGER**

- 29.1 The Developer shall for the duration of the Development period and thereafter the Trustees be entitled to appoint an Estate Manager to control, manage and administer the development and the Common Property and to exercise such powers and duties as may be entrusted to the Estate Manager, including the right to collect levies, if they find it necessary.
- 29.2 The terms and conditions of the appointment of the Estate Manager shall be in the discretion of the Developer or the Trustees as the case may be.

30. **APPOINTMENT, POWERS AND DUTIES OF A MANAGING AGENT**

- 30.1 The Trustees may from time to time and shall, if required by the Members of the Association in a General Meeting, appoint in terms of a written contract, a Managing Agent to control, manage and administer the Estate and the obligations to any public or Local Authority by the Association on behalf of the Members, and to exercise such power to collect Levies and to appoint a supervisor or caretaker.
- 30.2 The appointment of a Managing Agent shall be in writing.
- 30.3 The Trustees shall ensure that there is included in the contract of appointment of any Managing Agent, a provision to the effect that if he 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 Trustees may, without notice, cancel such contract of appointment, and that the Managing Agent shall have no claim whatsoever against the Association or any of the Members as a result of such cancellation.
- 30.4 The contract with the Managing Agent shall further provide for the appointment to be revoked, and such Managing Agent shall cease to hold office, if:

- 30.4.1 where the Managing Agent is a juristic person, an order is made for its provisional or final liquidation or, where the Managing Agent is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the Managing Agent is a Company, it is placed under business rescue; or
- 30.4.2 the Managing Agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the Managing Agent is a Company or a Close Corporation, any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty; or
- 30.4.3 a Board Resolution of the Association is passed to that effect; provided that in such event the Managing Agent so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.
- 30.5 The Managing Agent shall keep full records of his administration and shall report to the Association of all matters which in its opinion detrimentally affect the value or amenity of the Property and any of the Erven.
- 30.6 The Trustees shall give reasonable prior notice to the Managing Agent of all meetings of the Trustees and he may with the consent of the Trustees be present at such meetings.
- 30.7 The Trustees shall from time to time furnish the Managing Agent with copies of all Minutes of the Trustees and of the Members, unless the Managing Agent has prepared such Minutes.

31. **COSTS**

- 31.1 A Member shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear Levies, penalties, fines, interest or any other arrear amounts due and owing by such Owner to the Association and which amounts shall become due and payable upon written demand thereto, subject only to any taxation and/or dispute.
- 31.2 The above includes enforcing compliance with the provisions of this Constitution and/or any Rules issued by the Association from time to time.

32. **MINUTES OF MEETINGS OF THE ASSOCIATION AND TRUSTEES**

- 32.1 The Trustees shall:
 - 32.1.1 ensure that Minutes are taken of every meeting of the Association or of the 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;
 - 32.1.2 cause such Minutes to be kept of all such meetings of the Association in a minute book of meetings of the Association or Trustees kept for the purpose.
- 32.2 The Trustees shall keep all minute books of meetings of the Association and of Trustees in perpetuity.
- 32.3 On the Written application of any Member or any Trustee, the Trustees shall make all Minutes of the proceedings and/or meetings of the Association or Trustees available for inspection at the Association's offices by such Member, or provide the Trustee or Member with a complete and accurate copy of such minute(s) requested by the Trustee or Member. The Association will not be obliged to distribute the Minutes electronically.
- 32.4 All Resolutions recorded in the Minutes of any meetings of the Association or 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 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 or Trustees.
- 32.5 Save as otherwise provided in this Constitution, the proceedings at any meeting of the Association or of Trustees shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

33. **FINANCIAL YEAR-END**

The Financial Year-end of the Association is the last day of February of each year.

34. **OWN RISK**

Any person using any of the services, land or facilities of the Association does so entirely at his own risk.

35. **AMENDMENT**

- 35.1 No amendment of whatever nature to this Constitution shall be effected without the prior written notice to the local authority;
- 35.2 During the Development period, any proposed amendments to this Constitution shall require the prior written approval of the Developer. The Developer shall have the right to reject any amendment if it is reasonably apprehended that such amendment could adversely affect the Developer's ability to complete the Development in accordance with the approved Development plans.
- 35.3 Subject to the provisions of the clause above, every amendment of this Constitution of whatever nature including any addition thereto, deletion therefrom or substitution thereof shall require the approval of at least 75% (seventy-five per centum) of the total number of votes allocated to members of the Association which majority shall be expressed at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to comply with the requirements for the convening of a meeting, set out in specific terms the proposed amendment.
- 35.4 Notwithstanding the provisions of this clause, the developer shall have the right during the Development Period to make reasonable amendments to the Constitution by simply giving written notice of such amendments to all members.

I, the undersigned, _____, as duly Authorised Representative of _____ hereby accept on behalf of the Developer the terms and conditions of this Constitution and all annexures thereto.

THUS DONE AND SIGNED AT ON THIS DAY OF

AS WITNESSES:

1. _____

2. _____

I/We, the undersigned, hereby declare that I/we have perused the above Constitution, together with all annexures thereto and that I/we understand and accept the contents thereof and declare ourselves to be bound thereby.

THUS DONE AND SIGNED AT ON THIS DAY OF

AS WITNESSES:

1. _____

2. _____