

LE COSTE

ESTATE

CONSTITUTION

OF

THE MASTER HOME OWNERS' ASSOCIATION

OF

LE COSTE ESTATE

A statutory Body Corporate established in terms of Chapter 6, Part 5, Section 61 of the City of
Cape Town Municipal Planning By-Law, 2015

10 October 2016

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1. **ESTABLISHMENT IN TERMS OF STATUTE**

The Association is constituted as a legal persona in accordance with the conditions imposed by the Developer.

2. **DEFINITIONS AND INTERPRETATION**

2.1 In this Constitution the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them:

2.1.1 "Access Procedure" means the procedure to be followed, upon the circumstances as provided for in terms of this Constitution, the Security Protocol and/or the Governing Rules, which procedure will be determined as part of the Governing Rules and be available on the Website;

2.1.2 "A & D Guidelines" means the Architectural and Design Guidelines relating to the design and construction requirements prepared for and applicable to the Land Units, as contemplated in the Governing Rules, that will be applicable from time to time, which guidelines may be amended from time to time in accordance with the provisions of this Constitution, the Landscape Guidelines and the C & O Manual, and which guidelines or any amendment thereto, must be approved by the Developer, during the Development Period, and thereafter by the Board and the ARC, and which guidelines are available on the Website;

- 2.1.3 “AGM” means the Annual General Meeting of the Association held in terms of the provisions of this Constitution;
- 2.1.4 “Alienate” means the Alienation of any Land Unit or a portion thereof whether by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, change in shareholding of a Company, membership in a Close Corporation or control of an inter vivos Trust or the vesting of assets in an inter vivos Trust or Trust mortis causa, irrespective of whether such alienation is subject to a resolute condition or a condition precedent, and “Alienation” shall have a corresponding meaning;
- 2.1.5 “Approval” means the LUPO Approval issued by the Local Authority on the 1st of June 2017, in terms whereof the development of the Parent Property was approved in terms of Sections 17 and 25, read with Section 42, of LUPO under Case Number: 70175921;
- 2.1.6 “ARC” means the Architectural Review Committee established by the Developer during the Development Period, and thereafter by the Board, the functions of which committee are described in Clause 3 below, acting in accordance with the A & D Guidelines, this Constitution, the Development Controls and the Governing Rules with jurisdiction over all the Land Units;

- 2.1.7 "Association" means this Association established in respect of the Parent Property, to be known as the Le Coste Estate Master Home Owners Association, an association not for gain, constituted in terms hereof (also known as "LCEMHOA");
- 2.1.8 "Attenuation Ponds" means Erf Number 41419, as indicated on the General Plans;
- 2.1.9 "Auditors" means the Auditors of the Association appointed by the Developer during the Development Period and thereafter by the Board, from time to time;
- 2.1.10 "Board" means the Trustees assembled as a Board, at which a quorum is present;
- 2.1.11 "Chairperson" means the Chairperson of the Board and the Association, from time to time;
- 2.1.12 "Clear Days" means in a computation of days, the exclusion of the first day and inclusion of the last day of the period to be calculated;
- 2.1.13 "Club House" means Erf Number 41602, as indicated on the General Plans;
- 2.1.14 "CMP" means the Conservation Management Plan, including a Conservation Management Plan in respect of the ECU prepared by Johan Neethling Environmental Services in March 2022, available on the Website;

- 2.1.15 "C & O Manual" means the Construction and Operations Manual, including the Le Coste Estate Site Building Regulations, approved by the Developer during the Development Period, and thereafter by the Board, and the Local Authority, controlling and regulating all construction and operations within the Estate, available on the Website;
- 2.1.16 "Communal Property" means collective reference to the Private Open Spaces, the Utility Zone, Attenuation Ponds, the ECU, the Creche, the Club House, the Mini-Subs, the Stormwater Slithers and the Private Roads;
- 2.1.17 "Conduct Rules" means the Conduct Rules, to be approved by the Developer, during the Development Period, and thereafter by the Board, which Conduct Rules are deemed to be incorporated into the Governing Rules;
- 2.1.18 "Consent Fee" means an amount equal to 25% (Twenty Five Percent) of the Net Profit if the Property is sold by the Purchaser within the Restriction Period;
- 2.1.19 "Constitution" means the Constitution of LCEMHOA, set out in this document, and as may be amended, from time to time in terms of the provisions hereof;
- 2.1.20 "Creche" means Erf Number 41602, as indicated on the General Plans;

- 2.1.21 "Developer" means Sonstraal Investments Proprietary Limited, Registration Number: 2021/764895/07, a Private Company with limited liability duly incorporated in terms of the laws of the Republic of South Africa, its respective successors-in-title or assigns;
- 2.1.22 "Development" means the development, being constructed on the Parent Property or any portion thereof, by the Developer, indicated as such on the MSDP;
- 2.1.23 "Development Controls" means the Development Controls prescribed by the Developer, including the zoning rights pertaining to the Parent Property as provided for, inter alia, but not limited to, the MSDP and the conditions of approval relating to the zoning rights and the subdivision of the Parent Property as may have been issued by any relevant authority, available on the Website;
- 2.1.24 "Development Period" means the period from the date of establishment of the Association until all the Land Units situated on the Parent Property 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;
- 2.1.25 "Development Rights" means all the Development Rights granted to the Developer by all relevant authorities to

enable the Developer to develop the Estate, including, but not limited to, the Approval, the Development Controls and the MSDP;

2.1.26 "Dwelling"

means a Building on an Erf, which will be, upon completion, suitable for occupation and use for residential purposes by natural persons;

2.1.27 "EA"

means the Environmental Authorization Exemption in terms of the National Environmental Management Act, 1998, Act Number 107/1998, and the Environmental Impact Assessment Regulations of 2010, issued on the 26th of October 2016 under Reference Number: 16/3/1/1/A5/40/1095/14, available on the Website;

2.1.28 "ECO"

means the Environmental Control Officer, who will be responsible for the compliance with all the provisions of the EA and the CMP;

2.1.29 "ECU"

means Erf 41842, indicated as such on the relevant GP, zoned for Environmental Conservation Use;

2.1.30 "Erf/Erven"

means any Erf created by the subdivision of the Parent Property, as indicated on the MSDP, or any amendments thereto, zoned for residential purposes and accordingly excluding the Communal Property;

2.1.31 "Estate"

means Le Coste Estate, being the township to be established by the Developer on the Parent Property;

- 2.1.32 "Estate Manager" means the Estate Manager appointed by the Developer, during the Development Period and thereafter by the Board, with the functions and duties as may be ascribed to the Estate Manager by the Developer, during the Development Period, and thereafter, by the Board;
- 2.1.33 "Financial Year" means the Financial Year of the Association which shall run from the first day of the month following the first registration of transfer of a Land Unit in favour of an Owner until the last day of the month of June and thereafter from the first day of July in each year until the last day of June in the subsequent year;
- 2.1.34 "GDP" means the Gated Development Policy approved by the Local Authority in terms of Resolution SPPLAN 03/11/07 on the 28th of November 2007;
- 2.1.35 "General Plans" means the General Plans in respect of the subdivisions and phases of the Parent Property, providing for the subdivision thereof and the development of the Parent Property in 3 Phases, to be approved by the Surveyor General, to be in accordance with the MSDP, under GP Numbers: 1173/2023, 1174/2023 and 1175/2023, available on the Website, which General Plans will each represent a Sub-Associations for the purposes of this Constitution;

- 2.1.36 “GM” means a collective reference to the AGM and all SGM’s;
- 2.1.37 “Governing Rules” means the Governing Rules to govern, amplify and/or implement the provisions of this Constitution, to be drafted and approved by the Developer, during the Development Period, and thereafter by the Board, to be implemented by the Association and to be available on the Website;
- 2.1.38 “GSP” means the Gross Selling Price of a Land Unit in the instance of any Alienation of the Land Unit by the Owner/Sub-Member or any of its successors in title in perpetually, as more fully provided for in this Constitution;
- 2.1.39 “H & S Legislation” means all applicable Health and Safety Legislation and Regulations in terms of the South African legislation and precedent law;
- 2.1.40 “HSO” means the Health and Safety Officer appointed in terms of the H&S Legislation, by the Developer, during the Development Period, and thereafter by the Board;
- 2.1.41 “Landscape Guidelines” means the Landscape Guidelines, including the Landscape Plan applicable on all the Land Units and the Communal Property to be approved by the Developer during the Development Period and thereafter by the Board and the ARC, which Landscape Guidelines are available on the Website;

- 2.1.42 "Land Unit(s)" means any subdivided portion of the Parent Property registered or capable of being registered as a separate Erf in the Cape Town Deeds Registry;
- 2.1.43 "Levy/Levies" means the Levies imposed, calculated and payable in terms of the provisions of this Constitution and more specifically, but not limited to, Clause 10, but excluding any Special Levies;
- 2.1.44 "Local Authority" means the Local Authority having jurisdiction over the Estate, being the City of Cape Town, or its successors in title;
- 2.1.45 "LSC" means the Levy Stabilization Contribution payable by the Owner/Sub-Member to the Association, as determined and more fully provided for in this Constitution;
- 2.1.46 "LUPO" means the Land Use Planning Ordinance No 15/1985, Western Cape;
- 2.1.47 "Management Company" means any person or entity appointed by the Developer, during the Development Period, and thereafter by the Board, as an independent contractor to undertake all the management functions of the Association and/or any Sub-Association, subject to and in terms of the provisions of this Constitution;
- 2.1.48 "Member" means a Member of the Association as provided for in Clause 5 of this Constitution;

- 2.1.49 "Mini-Subs" means Erf Numbers 41417, 41601, 41603, 41653 and 41806, as indicated on the General Plans;
- 2.1.50 "MPBL" means the City of Cape Town Municipal Planning By-Law, 2015, published in Provincial Gazette Extraordinary 7414 of the 29th of June 2015, as amended;
- 2.1.51 "MSDP" means the Master Site Development Plan for the development of the phases comprising the Estate, approved by the Local Authority, under reference number 474/01/03/001 B, available on the Website;
- 2.1.52 "Net Profit:" means the difference between the Total Purchase Price of the Property (including the Building Costs of the Dwelling, if applicable) as provided for in the Agreement of Sale between the Developer and an and the gross Re-Sale Price of the Property;
- 2.1.53 "Occupant" means any person/s occupying an Erf and/or Dwelling or any improvements or structures thereon;
- 2.1.54 "Office" means the registered office of the Association, being the physical address of the Management Company, from time to time;
- 2.1.55 "Ordinary Resolution" means a resolution taken at any meeting, where a quorum is present, by more than 50% (Fifty Percent) of the Members of the Association present in that meeting, personally

or by means of a proxy, and entitled to vote at such a meeting in terms of the provisions of this Constitution;

2.1.56 "Owner"

means the registered Owner of a Land Unit and as such a member of a Sub-Association;

2.1.57 "Parent Property"

means the land approved for Development by the Local Authority, being Erf 40928 Kraaifontein, City of Cape Town, Western Cape Province, upon which the Estate will be developed by the Developer in terms of and subject to the Approval, the MSDP and the Development Rights;

2.1.58 "Planning Legislation"

means, collectively, the Western Cape Land Use Planning Act, Act Number 3 of 2014, the Western Cape Land Use Regulations, 2015, the MPBL and SPLUMA;

2.1.59 "Prime Rate"

means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (Three Hundred and Sixty Five) day year irrespective of whether or not the year is a leap year, from time to time published by Investec Bank Limited as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;

2.1.60 "Private Open Spaces"

means Erf Numbers 41486, 41652 and 41807, indicated as such on the General Plans;

- 2.1.61 "Private Road" means Erf Numbers 41843, 41919 and 41920, indicated as such on the General Plans;
- 2.1.62 "Professional Trustee" means the Professional Trustee nominated by the Developer during the Development Period, and thereafter by the Board, which Professional Trustee must be nominated and co-opted to the Board for his specific level of skill, expertise, knowledge of the Estate and experience in his field of qualification;
- 2.1.63 "Purchaser" means any person or entity that enters into an Agreement of Sale with the Developer in respect of a Land Unit during the Development Period;
- 2.1.64 "Restriction Period" means a period of 2 (Two) years after the date of occupation of a Dwelling by an Owner or Occupant;
- 2.1.65 "SAC" means the constitution of any Sub-Association, approved by the Developer, during the Development Period, and thereafter, the Board, which constitution may never conflict or alter any provisions of this Constitution and the Governing Rules or any of the documents referred or guidelines referred to in this Constitution and/or the Governing Rules;
- 2.1.66 "SARS" means the Commissioner of the South African Revenue Services;
- 2.1.67 "Security Protocol" means the Security protocol, governing all aspects of the security of the Estate, Owners

and Occupants, which protocol will be part of and drafted and approved in terms of the Governing Rules and in accordance with the GDP, and available on the Website;

2.1.68 “Services”

means such infrastructural utilities, amenities, internal engineering services structures or improvements to be provided and/or installed on the Parent Property by the Developer, the Association or the Local Authority, as provided for in the Development Rights, the Approval, the MSDP and the SLA;

2.1.69 “Short-Term Rental”

means the renting of a Land Unit and/or Dwelling, or any portion thereof, for a period of shorter than 3 (Three) consecutive months, for commercial purposes;

2.1.70 “SLA”

means a Service Level Agreement concluded between the Developer and the Local Authority with the purpose of, inter alia, but not limited to, the provision and installation the Services, of water supply, electricity, sanitation, the construction of roads and stormwater drainage and for the payment of Development Contributions by the Developer to the Local Authority;

2.1.71 “Special Levy/ies”

means any Special Levy/Levies imposed by the Developer, during the Development Period, and thereafter by the Board, over and above the Levies as referred to in Clause 10, but also

calculated and payable in terms of the provision of Clause 10;

2.1.72 "Special Resolution"

means a resolution passed at any GM of which not less than 21 (Twenty One) Clear Days' notice has been given, specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than 75% (Seventy Five Percent) of the total number of Members present at the meeting who, must at least, form a quorum for a GM;

2.1.73 "SPLUMA"

means the Spatial Planning and Land Use Management Act, Act Number 16 of 2013, as amended;

2.1.74 "SGM"

means all Special General Meetings held by the Association as provided for and in terms of the provisions of this Constitution;

2.1.75 "Stormwater Slithers"

means Erf Number 42517, indicated as such of the General Plans, situated next to Sarel van Deventer Street;

2.1.76 "Sub-Members"

means each Owner of a Land Unit, from time to time, collectively forming the Sub-Associations and which Sub-Associations have been grouped together as per the General Plans;

2.1.77 "SWMP"

means the approved Stormwater Master Plan, including the Stormwater Maintenance

Plan, in accordance with the Management of Urban Stormwater Impacts Policy, to be approved by the Catchment, Stormwater and River Management Branch of the Local Authority, and incorporated into the design and lay-out of the Attenuation Ponds, available on the Website;

2.1.78 "Third-Party Purchaser"

means any person or entity that enters into an Agreement of Sale with a Purchaser of a Land Unit before date of registration of transfer of such a Land Unit in favour of such a Purchaser or with an Owner, during the Development Period;

2.1.79 "Trustees"

means the Trustees, from time to time, of the Association, including the Professional Trustees, as provided for in terms of the provisions of this Constitution;

2.1.80 "Unanimous Resolution"

means a resolution passed unanimously by all the Members, who are present or represented by proxy or by a representative recognized by law at a GM of the Association of which at least 21 (Twenty One) Clear Days' notice, specifying the proposed Unanimous Resolution, has been given, and at which meeting at least 80% (Eighty) of all the Members are present or represented, or agreed to in writing by all the Members of the Association personally

or by proxy or by a representative of any such Member recognized by law;

2.1.81 “Utility Zone” means Erf Number 41477, indicated as such on the General Plans, to be used as a Utility Zone at the main entrance gate to the Estate;

2.1.82 “Website” means www.lecosteestate.co.za.

- 2.2 Any reference to natural persons includes artificial persons and vice versa.
- 2.3 Any reference to a gender includes the other genders (including neuter).
- 2.4 Any reference to the singular includes the plural and vice versa.
- 2.5 The Clause heading in this Constitution have been inserted for convenience only and shall not be considered in its interpretation.
- 2.6 Words and expressions defined in any sub-clause shall, for the purposes of the Clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in such sub-clause.
- 2.7 No provision of this Constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto consequential to such a party having or being deemed to have structured or drafted such provision.
- 2.8 This Constitution shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the Association and every Member consent to the jurisdiction of any competent court of the Republic of South Africa, for the purposes of any proceedings instituted pertaining to this Constitution.

3. THE MAIN BUSINESS OF THE ASSOCIATION

- 3.1 The Association is established by the Developer in terms of Sections 17 and 25, read with Section 42, of LUPO, as well as Chapter 6, Part 5, Section 61 of the MPBL.

- 3.2 The main business of the Association is to manage and control the promotion, enhancement and protection of the Members and the Sub-Members and to manage, control and regulate the Estate to the best advantage of the Members and the Sub-Members.
- 3.3 For the Association to qualify for exemption in respect of the income received by the Association from the Levies and Special Levies or other sources in terms of Section 10(1)(e)(iii) of the Income Tax Act, the following conditions shall apply:
- 3.3.1 the main objective of the Association is to manage the collective interest common to all its Members and Sub-Members, which includes expenditure applicable to the Communal Property, any Sub-Association, and the collection of Levies and Special Levies for which such Sub-Member/Owner is liable;
 - 3.3.2 the Association is not permitted to distribute its funds to any person other than to a similar association of persons;
 - 3.3.3 on dissolution, the remaining assets of the Association must be distributed to a similar association of persons, which is also exempt from Income Tax in terms of Section 10(1)(e)(iii) of the Income Tax Act;
 - 3.3.4 any amendments to the Constitution must be submitted to SARS;
 - 3.3.5 funds available for investment may only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, and in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985, (Act No. 1 of 1985);
 - 3.3.6 the Association may not be a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or

would become payable by any person under this Act or any other law administered by SARS;

3.3.7 must submit annual returns of income together with financial statements to SARS, on or before the 31st of October of each Financial Year.

4. MAIN OBJECTIVES OF THE ASSOCIATION

4.1 The main objectives of the Association are as follows:

4.1.1 to oversee, regulate and control the harmonious development of the Estate and to ensure and promote the general high standard of the Estate;

4.1.2 to own, control, improve and maintain and to insure where necessary the building, structures, installations and equipment relating to the Communal Property;

4.1.3 to institute, control and pay for measures relating to the security of the Members, Sub-Members and the Estate;

4.1.4 to promote, advance, and control the communal interests of Members, Sub-Members, Owners and Occupants;

4.1.5 to acquire and grant servitudes;

4.1.6 to control the nature and position of buildings, structures, installations and equipment relating to the Land Units and to ensure compliance with the A & D Guidelines, the Governing Rules and any other control measures in respect of the Estate required by law or document;

4.1.7 to control and ensure compliance with the Landscape Guidelines and the landscaping requirements determined by the Developer during the Development Period and thereafter by the Board on the Communal Property, the Private Roads and around verges and entrances;

4.1.8 to instigate action, including the imposition of fines, or the institution of proceedings in a Court of Law, as may be deemed fit by the Board, in relation to the non-compliance by any Member/Sub-Member/Owner/Occupant of any of the

requirements of this Constitution, the Governing Rules and/or the Conduct Rules;

- 4.1.9 to enter into and to implement any contract relating to the EA, CMP, Development Controls, MSDP, SAC, Governing Rules, Conduct Rules, Access Procedure, A & D Guidelines, C & O Manual, Landscape Guidelines, Security Protocol and the General Plans, and to incur any costs in this regard, it being recorded that the Association will be bound by any contracts concluded by the Developer on behalf of the Association and or Management Company, either before or after the date of approval of this Constitution;
- 4.1.10 to approve the SAC, Governing Rules, Conduct Rules, Access Procedure, A & D Guidelines, C & O Manual, Landscape Guidelines, Security Protocol and the General Plans;
- 4.1.11 to control the aesthetic appearance of the Land Units, including the Dwellings, and any improvements thereon;
- 4.1.12 the promotion of environmental awareness and responsibility amongst Members/Sub-Members/Owners and Occupants;
- 4.1.13 to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the Estate;
- 4.1.14 to maintain the Services, the Communal Property, the Private Roads and all relevant landscaping, at the costs of the Association;
- 4.1.15 to enforce the applicable conditions of Development Rights, the Development Controls and the SLA.
- 4.2 The Association shall be deemed to have come into existence on the date of the first registration of transfer of a Land Unit from the Developer to an Owner.
- 4.3 The Association is a legal persona and as such:
 - 4.3.1 its assets, liabilities, rights and obligations shall vest in the Association,

independently of its Members and/or the Sub-Members;

4.3.2 The Association shall have perpetual succession;

4.3.3 all legal proceedings shall be brought by or against the Association, in the name of the Association, and the Board may authorize any person/s to act on behalf of the Association and to sign all such documents and take all such steps as required by any such legal proceedings; and

4.3.4 its Members shall not, consequential to their membership, be liable for the liabilities and obligations of the Association.

5. MEMBERSHIP OF THE ASSOCIATION

5.1 Membership of the Association shall be compulsory for the following:

5.1.1 the Developer, during the Development Period and;

5.1.2 each of the Sub-Associations established in respect of the Estate situated on any portion of the Parent Property, indicated as such on the General Plans, represented by its Chairperson, as provided for in Clause 6.2 of this Constitution.

5.2 The Sub-Associations shall *ipso facto* be and become Members of the Association upon establishment of the requisite Sub-Association concerned and be represented at meetings of the Association by its Chairperson, as provided for in Clause 6.2 of this Constitution.

5.3 The Developer shall be a Member and act as the Chairperson, during the Development Period.

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

5.5 The provisions of this Constitution shall be binding upon all Members and Sub-Members and, insofar as they may be applicable on all Occupants/Owners, whatsoever the nature of such occupation.

- 5.6 All Land Units are subject to the following condition imposed by the Local Authority in terms of the approval of the Development Rights:

“The Property may not be transferred without the written consent of the Association, of which the transferee or his successors in title shall become a Sub-Member”.

Accordingly, no Owner may apply to the Registrar of Deeds, Cape Town, for the registration of, and the Registrar of Deeds, Cape Town, may not register a Land Unit without the consent of the Association, which consent, subject to the provisions contained in Clause 8 of this Constitution, may not be unreasonably withheld.

- 5.7 No Owner ceasing to be a Sub-Member or member of any Sub-Association for any reason shall, (nor shall any such Sub-Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other assets of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Sub-Member any arrear Levies, Special Levies, subscriptions or other sums due by him to the Association at the time of his ceasing to be a Sub-Member.

6. SUB-ASSOCIATIONS

- 6.1 The Developer intends to subdivide the Parent Property into various Land Units, which will be developed and will be subject to this Constitution, SAC, the Governing Rules, the Conduct Rules and the Development Controls, substantially in accordance with the General Plans or as may be determined by the Developer during the Development Period.
- 6.2 All Sub-Associations will be Members of the Association, represented at any meeting of the Association, by the Chairman or the Vice Chairman of the Sub-Association, or a representative nominated by the Trustees of such a Sub-Association.

- 6.3 Membership of the Sub-Associations will comprise the Owners of the various Land Units, grouped together in the General Plans.
- 6.4 An Owner will become a member of the relevant Sub-Association and a Sub-Member of the Association upon taking transfer of a Land Unit. An Owner may never resign as a member of the relevant Sub-Association or as a Sub-Member of the Association.
- 6.5 The terms and conditions of SAC and the Conduct Rules must never contradict this Constitution, the Governing Rules or any of the related documents referred to in this Constitution. In the instance of any conflict, the terms and conditions of the Constitution, the Governing Rules or the related documents will prevail.
- 6.6 The terms and conditions of SAC and the Conduct Rules may not deviate from the definitions of Ordinary Resolution, Special Resolution and/or Unanimous Resolution as provided for this Constitution. The SAC or the Conduct Rules may never require a lesser approval percentage for any matter provided for in this Constitution and must follow this Constitution as far as resolution requirements are concerned.

7. GENERAL RIGHTS AND OBLIGATIONS OF MEMBERS/OWNERS

- 7.1 Every Member/Sub-Member/Owner/Occupant shall always be bound by and will strictly adhere to:
- 7.1.1 the terms, conditions, stipulations, guidelines and obligations contained in the Constitution, the SAC, the Governing Rules, the Conduct Rules, the Development Controls, the A & D Guidelines, the CMP, the SWMP, the EA and the H & S Legislation;
- 7.1.2 all conditions imposed by the Local Authority or any other statutory body relating to Land Units and shall be solely responsible for non-compliance with such conditions;
- 7.1.3 any agreement concluded by the Association, the Board or the Developer insofar

as such agreement may directly or indirectly impose rights or obligations on a Member, Sub-Member, Owner and/or Occupant;

- 7.1.4 the provisions of the CMP, EA, or any directive issued by the Association or the Local Authority and/or issued in terms of the Planning Legislation;
 - 7.1.5 any directive given by the Association, the Board, the Developer (during the Development Period) or the Management Company in the enforcement of the provisions of this Constitution.
- 7.2 Save as may be provided for herein, the rights and obligations of a Member and a Sub-Member are not transferable, and every Member and Sub-Member shall:
- 7.2.1 to the best of his ability further the objectives and interests of the Association, the Sub-Associations;
 - 7.2.2 observe all directives made or given pursuant to the provisions of this Constitution, and
 - 7.2.3 be jointly liable with the other Members and/or Sub-Members for expenditure incurred pertaining to the business and objectives of the Association.
 - 7.2.4 not use any building or other structure constructed within the Estate, or allow any other person to use such building or other structure, for purposes not permitted by this Constitution, the Governing Rules, the Conduct Rules or any rules and/or regulations made in terms of this Constitution;
 - 7.2.5 not apply for the consolidation, subdivision or rezoning of its Land Unit with a view to procuring a variation, amendment or substitution of the Development Controls, provided that selected departures or consent uses may be allowed, upon approval thereof by the ARC, the Developer, during the Development Period, the Board and the Local Authority;
 - 7.2.6 not conduct, or permit to be conducted or change the nature of, any business on a Land Unit, or use, or permit the use of, such Land Unit for purposes other than residential use, excluding the Communal Property and Private Roads, unless the

Developer, for the duration of the Development Period, or thereafter, the Board has in writing approved the use to which the Land Unit is to be put, and the Local Authority has, to the extent that it may be necessary, granted approval authorizing such use in terms of the Planning Legislation and other applicable laws and regulations.

- 7.3 Membership of the Association shall confer upon a Member, *inter alia*, the following rights, subject to the provisions of this Constitution:
- 7.3.1 the right to inspect and/or receive copies of the annual financial statements of the Association;
 - 7.3.2 the right to vote at all GM's in accordance with the provisions of this Constitution;
 - 7.3.3 the right to receive notices of, attend and speak at all GM's in accordance with the provisions of this Constitution;
 - 7.3.4 the right to convene a General Meeting of Members (other than the AGM), provided that the Members holding between them, in aggregate, not less than one third of the voting rights of the Association, collectively, convene such a meeting;
 - 7.3.5 each Member, referring to the Sub-Associations grouped together on the General Plans, will be entitled to 1 (One) vote at any meeting or GM of the Association, irrespective whether voting is conducted by means of show of hands or by means of a poll.
- 7.4 The boundary lines and the construction of all common boundary walls, must be done by each Owner in accordance with the A&D Guidelines and/or the Governing Rules.
- 7.5 All Owners and/or Occupants must at all times allow the Association and/or the Managing Agent and/or any of its employees, contractors and sub-contractors unobstructed access to its Land Unit for the purposes of the installation and/or maintenance of any servitudes, whether registered or unregistered, pertaining to,

including, but not limited to, fiber installations, television equipment, wifi equipment, security cameras, security lights and/or any security installations of whatsoever nature.

- 7.6 An Owner and/or Occupant may not object to the registration and/or vesting if any servitudes, including, but not limited those servitudes, whether registered or unregistered, referred to in Clause 7.5 of this Constitution, which is, in the opinion of the Developer, during the Development Period, and thereafter the Board, required to enhance the objectives of the Association, and is in the sole discretion of the Developer, during the Development Period, and thereafter the Board, required to enhance the effective operation and functioning of the Estate, provided the Association complies with all relevant legislation, from time to time.
- 7.7 No Owner and/or Occupant is entitled to drill any boreholes and/or to dig any well-points on its Land Unit, be reasoning of the fact that these rights vests in the Association.
- 7.8 The Right of Admission in and to the Estate, including, but not limited to, the Communal Property, is strictly reserved, in favour of the Association and will be implemented and exercised as per the provisions of the Security Protocol.

8. ALIENATION

- 8.1 The Board shall ensure that none of its Sub-Members shall in any manner Alienate or transfer a Land Unit unless:
- 8.1.1 the proposed transferee, new shareholder of a Company, new Members of a Close Corporation or new trustees of a Trust have irrevocably bound themselves in writing to become ipso facto a Sub-Member and to observe this Constitution, the SAC, the Conduct Rules as well as any Governing Rules applicable, for the duration of his ownership of any Land Unit;
- 8.1.2 the Management Company has given its prior written consent thereto and has issued a clearance certificate that all amounts owing to the Association and/or Sub-Association, by such Owner have been paid and that the Owner is not in

breach of this Constitution, the SAC, the Conduct Rules, the Development Controls and/or any of the Governing Rules, which Governing Rules provides for more detail requirements that may withhold the issuing of a clearance certificate, including, but not limited to, a visual inspection of the Land Unit by the Estate Manager, the maintenance of the Land Unit to be in good state of repair, including paintwork, any alterations made to or on the Land Unit without prior written approval as required in terms of the A&D Guidelines, ;

8.1.3 the Association has given its prior written consent thereto and has issued a clearance certificate which will only be issued if a clearance fee is paid by the Owner concerned to the Association and all other amounts owing by the Owner have been paid in full to the Developer and/or the Association and/or the Sub-Association.

8.2 The provisions of Clause 8.1 shall apply mutatis mutandis to any Alienation or transfer of an undivided share in any Land Unit.

8.3 Restrictions will be registered against the title deeds of all Land Units to give effect to the terms of this Clause 8. The Members shall however be bound by this clause irrespective whether such restrictions are registered in the Cape Town Deeds Registry against the title deed of any Land Unit, or not.

9. COMMUNAL PROPERTY

9.1 The Association will take title to the Communal Property, indicated on the MSDP, which Communal Property will be transferred to the Association, free of counter value.

9.2 It will be the Association's responsibility to maintain, repair and insure, inter alia, but not limited to, any structures, buildings, roads, lights, the main entrance, any secondary entrance, equipment, all movable and immovable assets of the Association that is transferred, ceded or handed to or in favour of the Association. Registration of the transfer of the Communal Property will be effected by the Attorneys appointed by the Developer, to the Association, free of counter value.

- 9.3 The Association acknowledges that neither the Local Authority nor the Developer shall be responsible for, and the Association shall be solely responsible for, the care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Communal Property and any structure or thing erected or contained therein or thereon, including private parking, electricity, telecommunications and any other private services, if applicable, and similarly be responsible for the Services.
- 9.4 The Association shall furthermore comply with all the conditions imposed by the Local Authority relating to the Development Rights and the Development Controls, and shall be solely responsible for any non-compliance with such conditions.
- 9.5 The Developer will construct the Attenuation Ponds on the Parent Property as required by the Local Authority, which ponds will be fenced and secured by the Developer by means of Wire View Fencing, which construction will be done by the Developer, at its cost and expense. Owners and/or Occupants will have no claim against the Developer, the Association or any Sub-Association for any damages or loss suffered consequential to the Attenuation Ponds and the fence being constructed by the Developer. The Owners/Occupants or any visitor to the Estate, and as such, the general public, will have no access to the Attenuation Ponds beyond the fence erected around the Attenuation Ponds. The Attenuation Ponds will be transferred by the Attorneys appointed by the Developer to the LECMHOA, at the cost and expense of the Developer and free of counter value.
- 9.6 The Board must subscribe to an All Risk Insurance Policy in respect of all the aspects covered under such an Insurance Policy. The amount of the All Risk Insurance Policy must be determined by the Board at the AGM. The premiums in respect of the Insurance Policy will be collected from the Sub-Members by means of the Levies.
- 9.7 The Developer will establish the ECU as required by the Local Authority, which ECU will be fenced and secured by the Developer by means of Wire View Fencing, which construction will be done by the Developer, at its cost and expense. Owners and/or Occupants will have no claim against the Developer, the

Association or any Sub-Association for any damages or loss suffered consequential to the ECU and the fence being constructed by the Developer. The Owners/Occupants or any visitor to the Estate, and as such, the general public, will have limited access to the ECU beyond the fence erected around the ECU, which access will only be allowed upon terms and conditions as provided for on the Governing Rules. The ECU will be transferred by the Attorneys appointed by the Developer to the LECMHOA, at the cost and expense of the Developer and free of counter value.

- 9.8 The Developer will establish the Utility Zone, at the Main Entrance to the Estate, as indicated on the Main Entrance Plan, which plan is incorporated into the A & D Guidelines, as required by the Local Authority, which establishment will be done by the Developer, at its cost and expense. The Utility Zone will be transferred by the Attorneys appointed by the Developer to the LECMHOA, at the cost and expense of the Developer and free of counter value. Access and utilization of the Utility Zone will be as per the provisions contained in the Governing Rules.
- 9.9 The Developer paid the amount of R379 000.00 (Three Hundred and Seventy Nine Thousand Rand) on behalf of the Association as an electrical deposit to the Local Authority and this amount must be repaid by the Association to the Developer within a period of 5 (Five) years after the first Dwelling was completed and occupied.
- 9.10 The maintenance of the external pavements adjacent to Mostert Street, Sarel van Deventer Street and the roundabout, is the responsibility of the Association at its cost and expense.

10. LEVIES

- 10.1 The Developer, during the Development Period, and thereafter the Board, shall from time to time impose Levies and Special Levies upon the Sub-Members for the purposes of meeting all the expenses in relation to the facilities and Services for the Estate, and for the payment of all expenses necessarily or reasonably incurred for the management of the Estate, the Association and its affairs. In calculating the

amount of the Levies and the Special Levies the Developer and/or the Board shall be considered income from other sources if any, earned by the Association. It is recorded that every Owner of a Land Unit in the Estate, excluding the Developer, will be liable for the payment of Levies and Special Levies, as may be imposed by the Developer and/or the Board in terms of this Constitution and/or the Governing Rules.

- 10.2 Should a Sub-Member/Owner obtain permission from the Developer, during the Development Period, and thereafter by the Board, to consolidate two or more Land Units, the Association shall debit the amount of the Levies and Special Levies as per the original number of Land Units, despite the consolidation thereof.
- 10.3 During the Development Period the Developer, shall not be obliged to pay the shortfall between the income derived from Levies and Special Levies paid by Sub-Members in terms of Clause 10.1 and the actual expenditure of the Association in each Financial Year.
- 10.4 During and after the Development Period, the Developer, shall have no liability or obligation to pay or to contribute to any Levies or Special Levies, subject to the provisions of Clause 10.5 of this Constitution.
- 10.5 An Owner of a Land Unit that has been transferred by the Developer to such Owner, will be liable for payment of 100% (One Hundred) of the Levies and or Special Levies as from date of registration of transfer of such Land Unit in favour of the Owner. The Developer, will however, not be liable for the payment of any Levies or Special Levies in this regard. The Developer will however be liable for the payment of Levies and Special Levies in the instance of the occupation of any Dwelling registered in the name of the Developer, from which date the Developer will be liable for the payment of 100% (One Hundred Percent) of the Levies and/or Special Levies, due and payable to the Association in respect of such a Dwelling as from the date of occupation thereof.
- 10.6 It is recorded that a Sub-Member will be liable, upon the first payment of a 100% (One Hundred Percent) of the Levy payable in respect of any Land Unit, for the

payment of a double Levy which will be equal to 2 (Two) months Levies, being payable on the day that such Levy becomes due and payable.

- 10.7 Every Sub-Member, must, during his membership of any Sub-Association, ensure and is obligated to ensure that the balance on his Levy account in the financial records of the Association, is always equal to the amount determined in terms of Clause 10.6 of this Constitution.
- 10.8 No Sub-Member may do an off-set of any amount due by him due the Association, Sub-Association or the Developer against the amount of the Levies held by the Association in terms of Clause 10.6 of this Constitution.
- 10.9 Levies shall be the same amount, in other words, equal Levies, in respect of every Erf, unless exempted from the payment of Levies or Special Levies, by the Developer during the Development Period, and thereafter by the Board.
- 10.10 The Developer, during the Development Period, and thereafter the Board may, from time to time, impose Special Levies upon the Sub-Members. In addition to other Levies, in respect of all or portion of such expenses as are mentioned in Clause 10.1 and the amount of such Special Levies and the manner of payment thereof by Sub-Members shall be at the discretion of the Developer and/or the Board and be determined by the Developer and/or the Board.
- 10.11 Any amount due by a Sub-Member by way of a Levy or Special Levy shall be a debt due by him to the Association. The obligation of a Sub-Member to pay Levies and Special Levies shall cease upon his ceasing to be a member of the relevant Sub-Association, without prejudice to the Association's right to recover arrear Levies or Special Levies from such a Sub-Member. No Levies or Special Levies paid by a Sub-Member shall under any circumstances be repayable by the Association upon his ceasing to be a Sub-Member. A Sub-Member's successor-in-title shall be liable, as from the date upon which he becomes a Sub-Member, to pay the Levies and Special Levies.

- 10.12 Save as may be provided for herein, in calculating the Levy or Special Levy payable by each Sub-Member, the Developer and/or the Board shall as far as is reasonably practical, and in their sole discretion:
- 10.12.1 assign those costs arising directly out of or directly attributable to Land Units in a specific Sub-Association to the Sub-Member concerned;
 - 10.12.2 assign those costs arising directly out of or directly attributable to Land Unit/s in more than one Sub-Association to the Sub-Member/s concerned;
 - 10.12.3 subject to Clauses 10.16.1 and 10.16.2, assign those costs relating to the Estate generally to all the Sub-Members, provided however that the Board may in any case where they consider it equitable so to do, assign to any Sub-Member a greater or lesser share of the costs as the Board consider may be reasonable in the circumstances.
- 10.13 No Sub-Member shall be entitled to the privileges of membership of the Association or the relevant Sub-Association, nor shall such a Sub-Member be entitled to vote meeting of the Association or Sub-Association, unless and until he shall have paid every Levy, Special Levy and other sum, if any, which may be due and payable to the Association in respect of his membership of any of the legal persona referred to above.
- 10.14 Monthly Levy Statements will be circulated by the Management Company to the Sub-Members of the Association via e-mail. A Sub-Member will still be liable to effect monthly payments of the Levies and Special Levies irrespective whether the statement was received and/or circulated by the Management Company to such Member.
- 10.15 The Developer and/or the Board may hand-over any debt due to the Association to its Attorneys for collection if the debt is outstanding for more than 7 (Seven) days.

- 10.16 The Developer and/or the Board and/or the Local Authority may, in the instance of any amount due by the Sub-Member in terms of this Clause 10, suspend the applicable service directly linked to the amount in arrears.
- 10.17 A Sub-Member shall be liable for and shall pay all legal costs, including costs, as between attorney and own client, collection commission, tracing agents fee, interest at the Prime Rate plus 25% (Twenty Five Percent) per annum on all amounts due to the Association, the Local Authority resulting from Levies, Special Levies or any other cause whatsoever, expenses and charges incurred by the Association and/or the Local Authority, in recovering any arrear Levy or Special Levy or other amounts due and owing to the Association, the Local Authority or the Developer, and also the costs incurred in the enforcement of any of the Constitution, the Governing Rules, the Conduct Rules or rules and regulations issued or made by or on behalf of the Association, from time to time.
- 10.18 The Association and/or the Developer shall not be liable for the payment of Service Contributions, Municipal Rates and Consumption Charges to the Local Authority in respect any un-serviced Land Units and undeveloped Phases until these Phases have been serviced, building plans have been approved, buildings have been completed and registration of transfer to the end-user has been registered in the Cape Town Deeds Registry.
- 10.19 The Association and/or the Developer shall not be liable for the payment of contributions in respect of the provision of Private Open Spaces as provided for in the Planning Legislation, consequential to the total extent of Open Space exceeds the requirements in terms of the Planning Legislation.

11. RESPONSIBILITY FOR THE PROVISION OF SERVICES

- 11.1 The responsibility for the provision of the Services, utilities, any other services and amenities of whatever nature as may be provided by or on behalf of the Association to the Members, Sub-Members, Owners or Occupants within the Estate, shall pass from the Developer to the Association on the date of the registration of transfer of a Land Unit from the Developer to an Owner.

- 11.2 It is recorded that the Association shall be responsible for the provision of the management, maintenance, upkeep and repair, in amongst others, of the Services, the Communal Property, the Private Roads and the Attenuation Ponds.
- 11.3 A maintenance period of 12 (Twelve) months in respect of the Services, shall commence when each of the internal engineering services has been completed and certified as such by the Professional Engineer appointed by the Developer.

12. GOVERNING RULES AND CODES OF CONDUCT

12.1 Subject to the provisions of this Constitution and to any directives given by the Association in a GM and to any conditions imposed by the Local Authority or the Developer or any other statutory body, the Developer, during the Development Period, and thereafter, the Board, may make the Governing Rules, any other form of rules, the Conduct Rules and any directives relating to the implementation of amplification of any of the provisions of this Constitution and/or the Governing Rules and/or the Conduct Rules and may vary or modify the same from time to time, in connection with, inter alia, but not limited to, the following:

12.1.1 the installation, operation and maintenance of irrigation in respect of the Communal Property;

12.1.2 the determination or control of security measures by means of the Security Protocol;

12.1.3 the control of the building operations, as more fully provided for in the A & D Guidelines and the C & O Manual;

12.1.4 the control and conduct of persons for the prevention of nuisance of any nature to any Owner/Occupant/Sub-Member;

12.1.5 the control and conduct of persons using the Communal Property;

12.1.6 the use of Private Roads, infrastructure, Services, amenities and facilities in the Communal Property, including the right to charge a reasonable fee for the use of the amenities and facilities;

- 12.1.7 the furtherance and promotion of any of the objectives of the Association, for the better management of the affairs of the Association and for the advancement and protection of the interests of the Members, Sub-Members, Owners and Occupants;
- 12.1.8 the management and control of the Estate;
- 12.1.9 the furtherance and promotion of any of the objectives of the Association including the promotion of better management of the affairs of the Association and the advancement of the interests of the Members and Sub-Members;
- 12.1.10 the use, occupation and enjoyment of the Communal Property (or any parts thereof);
- 12.1.11 the preservation of the natural environment within the Estate;
- 12.1.12 the pedestrian and vehicular traffic including parking within the Estate;
- 12.1.13 the conduct of any business within the Estate;
- 12.1.14 the conduct of any Owner, Occupant or visitor to the Estate;
- 12.1.15 the nature, content and design of garden and landscaped areas within the Estate, as more fully provided for in the Landscape Guidelines;
- 12.1.16 the admission of any person within the Estate, including the conditions upon which persons may enter the Estate, and the eviction of any person who is not entitled to be present within the Estate, as more fully provided for in the Security Protocol;
- 12.1.17 the storage of flammable and other harmful substances as provided for in the H & S Legislation;
- 12.1.18 the enforcement of any rules or directives made in terms of this Constitution and the adjudication of disputes relating to the application and/or interpretation of any of the Governing Rules and/or the Conduct Rules;

- 12.1.19 the introduction of fines and other penalties that may be payable by any Member/Sub-Member/Owner, Occupant or visitor for contravening or failing to comply with any of the provisions of this Constitution, the Governing Rules, the SAC, the Conduct Rules or any rules, directives or regulations made thereunder, which fines and penalties will be more fully provided for in the Governing Rules and in terms of Clause 34 of this Constitution;
 - 12.1.20 the determination and control of security measures which will be governed and managed by the Security Protocol;
 - 12.1.21 the admission of any person within the Estate, including the conditions under which person may enter the Estate and the eviction of any person who is not entitled to be present within the Estate, as more fully provided for in the Security Protocol.
- 12.2 Any rules (including the Governing Rules and the Conduct Rules) made in terms of this Clause 12 shall be binding upon:
- 12.2.1 every Owner/Sub-Member;
 - 12.2.2 every Occupant within the Estate, *mutatis mutandis*, and every Owner/Occupant shall procure that all its representatives, tenants, members of the household, visitors, invitees and other persons related to that Owner/Occupant comply with the Constitution, the SAC, the Conduct Rules and the Governing Rules made in terms of this Constitution and every Owner/Occupant acknowledges and agrees that it will be liable for any breach or non-compliance by any of its representatives, tenants, Occupants, family members, visitors, invitees and other persons related to that Owner/Occupant.

13. TRUSTEES

- 13.1 There shall be a minimum of 3 (Three) and a maximum of 5 (Five) Trustees of the Association, provided that:

- 13.1.1 One Trustee must be a representative of the Developer, during the Development Period;
- 13.1.2 One Trustee must be a representative of the Management Company;
- 13.1.3 Three Trustee must be the Chairpersons of each Sub-Association;
- 13.1.4 A Professional Trustee, as may be required from time to time.
- 13.2 After the Development Period, the Trustee representing the Developer must be replaced one representative elected by the Chairpersons of the Sub-Associations.
- 13.3 A Trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.
- 13.4 The representative of the Developer shall be the Chairperson of the Association during the Development Period and thereafter the Trustee representing the Management Company shall be the Chairperson.
- 13.5 A Trustee is required to:
 - 14.2.1 perform the functions of office in good faith, honesty and in a transparent manner, and
 - 14.2.2 at all times act in the best interests of the Association, and in such a way that the credibility and integrity of the Association and/or the Estate is not compromised in any way.
- 13.6 When nominated, a Trustee shall simultaneously with his nomination, declare in writing to the Board any financial interest he or his immediate family or business associates may have in respect of any contract, deliberations or other transactions with the Association.
- 13.7 No Sub-Member may be nominated to become a Trustee if his Land Unit or any improvements thereon do not comply with the Constitution, the A & D Guidelines, Governing Rules or any other rules or regulations made or promulgated by the Association, any Sub-Association or the Board.

- 13.8 Each Trustee must declare to the Board any gifts, which he or his immediate family might be offered, or receive, from any business and or person involved or endeavoring to become involved, in any contract with financial gain with the Association.
- 13.9 A Trustee may not, without the permission of the Board, disclose any privileged or confidential information of the Board to any person not authorized or entitled to receive the same.
- 13.10 A Trustee may not, except through the Chairperson and/or the Board:
- 13.10.1 interfere in the management or administration of the Estate, unless mandated by the Board;
 - 13.10.2 give or purport to give any instruction to any employee other than the representative of the Management Company;
 - 13.10.3 obstruct or attempt to obstruct the Management Company or any of the employees of the Association in the implementation of any decision or resolution of the Developer and/or the Board, or
 - 13.10.4 encourage or participate in any conduct which would cause or contribute to maladministration by the Developer and/or the Board.
- 13.11 The Developer and/or the Board may at any time and from time to time investigate and make a finding in respect of any alleged breach by a Trustee(s) of any of the provisions of this Constitution or the Governing Rules or any other rules or regulations made or promulgated by the Developer and/or the Board, or establish a special committee to investigate and make appropriate recommendations to the Developer and/or Board in this respect.
- 13.12 Should the Developer and/or the Board find that a Trustee has breached any provision of this Constitution or any of the rules or regulations aforesaid or has been found to be negligent in any of the duties assigned to him in his capacity as a Trustee or has reasonable grounds to suspect that a Trustee was or is involved in

any form of theft or fraud regarding any funds of the Developer and/or the Board may:

- 13.12.1 issue a formal warning to the Trustee concerned;
 - 13.12.2 reprimand the Trustee;
 - 13.12.3 suspend the Trustee;
 - 13.12.4 suspend the Trustee pending the outcome of a forensic audit in the instance of any suspected theft or fraud, or
 - 13.12.5 request the Trustee to resign, or
 - 13.12.6 request the Association to remove the Trustee from the Board.
- 13.13 The Developer will, during the Development Period, communicate minutes of all the meetings held by it and/or decisions taken by the Developer, in its capacity as Chairperson, to each Member and to each Sub-Association. Copies of these minutes will be available for inspection at the Office of the Management Company during office hours. The Developer will, until date of establishment of the Association, circulate regular Newsletters to all concerned parties.
- 13.14 The Developer, during the Development Period, and thereafter, the Board, may appoint further Professional Trustees to serve as Trustees on the Board for a predetermined time-period, as and when the Board determines that the need for such a Professional Trustee has occurred. The Professional Trustee must be familiar with the operation and management of the Estate. The Professional Trustee may attend Board meetings but will only serve in an advisory capacity and will no voting rights whatsoever. The Developer and/or the Board, must agree on the fee structure of the Professional Trustee prior to his appointment and is subject to the allowance for professional fees in the budget of the Association and the availability of such funds.
- 13.15 A Trustee may only be appointed or elected as a Trustee if he has received formal training to enable to act as a Trustee. This qualification must be endorsed by the

Management Company and must be submitted simultaneously with the nomination of the relevant appointee prior to his anticipated election/appointment.

14. CHAIRPERSON

- 14.1 For the duration of the Development Period, the Chairperson shall a representative of the Developer.
- 14.2 After the Development Period, the representative of the Management Company shall be the Chairperson.
- 14.3 Except as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Board and at all GM's, and, in the event of the Chairperson not being present within 15 (Fifteen) minutes of the scheduled meeting time, or in the event of his inability or unwillingness to act, any one of the remaining Trustees shall preside in his stead. Should the Chairperson at any stage be absent at 2 (Two) consecutive meetings, the Board and/or the Management Company may terminate the services of the Chairperson with immediate effect.

15. REMOVAL AND ROTATION OF TRUSTEES

- 15.1 Each Trustee shall hold office as such from the date of his appointment until the next AGM following his appointment, or, at his discretion, until the second AGM following his appointment at which AGM each Trustee shall be deemed to have retired from office, but shall be eligible for re-election as a Trustee, provided the Trustees comprises the persons/appointees as provided for in Clause 13.1 of this Constitution.
- 15.2 A Trustee shall be deemed to have vacated his office as such:
- 15.2.1 should he become disqualified to act as a Director of a Company in terms of the Companies Act;
- 15.2.2 should he be removed from office by a resolution of the Board;
- 15.2.3 on his conviction of any offence involving dishonesty;

15.2.4 on the commission by him of any act of insolvency;

15.2.5 should he become of unsound mind or being found to be a lunatic;

15.2.6 on his resignation from such office in writing.

16. TRUSTEES EXPENSES AND REMUNERATION

The Trustees shall be not entitled to be repaid any costs or expenses incurred by them in or about the performance of their duties as Trustees.

17. POWERS OF THE BOARD

17.1 Subject to the provisions of this Constitution and subject to any limitations which may be imposed by the Association in a GM, the Board shall have full powers to perform the functions allocated to them in this Constitution and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised and done by the Association itself.

17.2 The Board shall in consultation with the Management Company formulate a budget and a strategic plan and any amendments thereto for each Financial Year of the Association.

17.3 The Board must perform a mid-term budget review and may make amendments to the yearly budget if necessitated by relevant circumstances. These amendments need no approval at an AGM.

17.4 The Developer, during the Development Period, and thereafter, the Board, is empowered to sign, execute and to enter into on behalf of the Association all and any contracts as may be required to give effect to the provisions of this Constitution, including, but subject to the provisions of Clause 17.2, the appointment of a Management Company, and is empowered to delegate the management of the affairs and the business of the Association, whether in whole or in part, to such Management Company.

- 17.5 The Developer, during the Development Period, and thereafter, the Board, shall always have the power and right to engage on behalf of the Association the services of Accountants, Auditors, Attorneys, Engineers, Town Planners, or any other professional firm or person or other employees whatsoever, for any reason deemed necessary by the Board, on such terms as the Board may decide.
- 17.6 The Developer, during the Development Period, and thereafter the Board; shall further have the power:
- 17.6.1 to require that any construction of any sort in the Estate shall be supervised to ensure that the provisions of this Constitution, the Governing Rules, the C & O Manual, the A & D Guidelines, the Development Controls or any other rules or regulations, are complied with, and that all such construction is performed in a proper and workmanlike manner;
- 17.6.2 to amend the A & D Guidelines and the Landscape Guidelines in respect of the Estate and to ensure that same are always complied with, and
- 17.6.3 to issue instructions in accordance with the operational CMP, if any, and to ensure that such plan is always complied with;
- 17.7 The Board shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 17.8 The Developer, during the Development Period, and thereafter the Board, must appoint a Health and Safety Officer to ensure compliance with the H & S Legislation by the Association, the Sub- Associations, Owners, Occupants and any obligations in terms of the A & D Guidelines and the C & O Manual.

18. PROCEEDINGS OF TRUSTEES

- 18.1 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.

- 18.2 The quorum necessary for the holding of all Board meetings, during the Development Period, shall be the Trustee representing the Developer and the Trustee representing the Management Company, present personally, and no meeting shall be held unless such quorum is present at the commencement of and for the duration of the meeting.
- 18.3 After the Development Period the Trustees representing the Management Company and at least 2 (Two) Trustees representing the Sub-Associations, present personally shall form a quorum and no meeting shall be held unless such quorum is present at the commencement of and for the duration of the meeting.
- 18.4 Any resolution of the Board shall be taken by Ordinary Resolution. In the case of an equality of votes for or against a resolution, the Chairperson shall have a second casting vote.
- 18.5 The Board shall cause minutes to be kept of every Board meeting, which minutes shall without undue delay after the meeting has closed, be reduced to writing and certified correct by the Chairperson. All minutes of Board meetings shall, after certification, be placed in a Board meeting minute book.
- 18.6 Any resolution signed by all the Trustees shall be valid in all respects as if it has been duly passed at a Board meeting.

19. MANAGEMENT COMPANY

- 19.1 The Developer shall be entitled (but not obliged, and at their own discretion) to manage, or to appoint a Management Company for the Estate, during the Development Period, which appointment shall be valid and binding on the Association during the Development Period and for a period of 10 (Ten) years after the termination of the Development Period. For the avoidance of doubt, it is recorded that only one Management Company may be appointed for the whole of the Estate irrespective of whether such appointment is made during the Development Period, or thereafter.

- 19.2 During the Development Period, the Developer has the irrevocable power and authority to appoint the Management Company for the Estate during the aforesaid period and to determine the terms and conditions of such appointment.
- 19.3 Subject to the provisions of this Constitution and the terms of its appointment, the Management Company shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Association in a GM, and may exercise all such powers of the Association and do all acts on behalf of the Association itself.
- 19.4 During the Development Period, the Developer, and thereafter the Board, will determine the fees or remuneration to be paid by the Association to the Management Company and the other terms and conditions of its appointment, which fees will be agreed upon by the parties to the relevant agreement, provided that the fees thus payable must be allowed for in the budget of the Association.
- 19.5 After the Development Period plus the additional period of 10 (Ten) years as provided for in Clause 19.1 of this Constitution, and in the event that an existing Management Company's appointment is terminated, a successor Management Company shall from time to time be appointed by the Association in a GM and the Members shall determine the fees or remuneration to be paid by the Association to such Management Company and all the other terms and conditions of their appointment, it being contemplated that at all times the affairs of the Association will be entrusted in whole or part to a professional Management Company with appropriate executive powers so as to conform to the requirements of good corporate governance. The Board will, at the final termination date of the agreement regarding the appointment of the Management Company, use best endeavors to negotiate a further extension of the appointment of the Management Company.

20. MEETINGS OF THE ASSOCIATION

- 20.1 Notwithstanding the provisions hereof, the Developer must convene the first AGM within 60 (Sixty) days after the Development Period or within a period of 5 (Five)

years of the transfer of the first Land Units, whichever is the earlier. The Developer must, within 60 (Sixty) days after the first AGM, notify the Local Authority that the meeting was held and provide the Local Authority with a copy of the minutes of the meeting.

20.2 Notwithstanding any of the provisions hereof, the Developer shall, during the Development Period, be entitled at any GM to:

20.2.1 A veto right or casting vote in respect of all decisions to be taken by the Board, the Trustees, the Association and/or any Sub-Association, and

20.2.2 Appoint sufficient numbers of Trustees to ensure that the Developer always has majority of such Trustees, and

20.2.3 Acting as the Chairperson.

20.3 After the Development Period, the following provisions shall apply:

20.3.1 The Association shall within 6 (Six) months after the end of its Financial Year (at least one AGM per year) hold a GM as its AGM in addition to any other GM's during that year, and shall specify the meeting as such in the notices of meeting.

20.3.2 GM's shall be held at such time and place as the Board shall decide from time to time.

20.3.3 All meetings including any AGM and the SGM, shall be called GM's.

20.3.4 The Board may, whenever they deem fit, convene a GM. A GM may also be convened by the Board on a requisition made by the Members.

20.3.5 Each of the Sub-Associations must convene and hold its individual Annual General Meetings at least 1 (One) month prior to the AGM of the Association.

21. NOTICES OF MEETINGS

- 21.1 An AGM shall be called by not less than 21 (Twenty One) Clear Days' notice in writing and any other GM shall be called by not less than 14 (Fourteen) Clear Days' notice in writing. The notice of an AGM shall be accompanied by a copy of the Financial Statements as referred to in Clause 26 and shall be given to all Members and 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. A meeting called by shorter notice shall be deemed to have been duly called if it so agreed by an Ordinary Resolution of the Members having the right to attend and to vote at the relevant meeting.
- 21.2 The accidental omission to give notice of any resolution or to transmit any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings of any meeting or any resolution passed at any meeting. Furthermore, the non-receipt of notice of a meeting by any Member entitled to receive such notice shall not invalidate the proceedings at that meeting. It is the responsibility of each member to ensure that he has received all the documents relevant to the GM to be held.
- 21.3 The AGM shall deal with the consideration of the Management Company's report, the consideration of the annual Financial Statements, the budget for the following year, the election of Trustees, if applicable, the appointment of an Auditor and may deal with any other business included in the notice of meeting.

22. PROXIES

- 22.1 A Member may be represented at a GM by a proxy, who must himself be a Sub-Member.
- 22.2 To be effective at a GM or adjourned GM, a proxy together with the original or a notarially certified copy of a power of attorney or other authority under which it is signed must be lodged with the Management Company at least 48 (Fourty Eight)

hours before the commencement of the GM or adjourned GM concerned but the Board may from time to time determine that such documents:

- 22.1.1 are to be lodged at a specific place;
- 22.1.2 are to be lodged a certain number of hours, not exceeding 48 (Forty Eight) in all, before the meeting.
- 22.3 A proxy will be valid for the specific GM it was granted and not for any other meeting, including an adjourned GM
- 22.4 The instrument appointing a proxy shall be in such form that is acceptable to the Chairperson of the GM or adjourned GM in respect of which it is tendered and the decision of the Chairperson as to what is or is not acceptable will be binding on all the Members.

23. QUORUM

- 23.1 No business shall be transacted at a GM unless a quorum is present both when the GM proceeds to business and when any resolution is to be passed. Save as otherwise provided in this Constitution, 50% (Fifty) of the Members representing formed and active Sub-Associations, other than the Developer present in person, or by proxy, shall constitute a quorum provided that at least 3 (Three) Members are present in person at the commencement of and for the duration of such a GM.
- 23.2 If within 15 (Fifteen) minutes after the time appointed for the commencement of a GM, or within such extended period as the Chairperson may allow, a quorum is not present, the GM shall stand adjourned to the same place at the same time on the same day of the next week or to such other place, time and day as the Chairperson may determine. If a quorum is not present at such adjourned GM, the Members present shall constitute a quorum.

24. ADJOURNMENT BY CHAIRPERSON

24.1 The Chairperson of a GM may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by Ordinary Resolution. In the event of such an adjournment:

24.1.1 No notice needs be given of the adjourned meeting save for an announcement at the original meeting of the date, time and venue of the adjourned meeting, unless the meeting is to be adjourned for 30 (Thirty) days or more in which event notice is to be given in the same manner as for the original meeting;

24.1.2 Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

25. VOTING RIGHTS OF MEMBERS

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

25.2 At every GM:

25.2.1 each Member, present in person or by proxy and entitled to vote, shall have 1 (One) vote;

25.2.2 during the Development Period the Developer shall as Member be entitled to 2 (Two) votes in respect of the number of the other Members.

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

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

- 25.5 Subject to the provision of this Constitution, all resolutions at all GM's shall be passed by Ordinary Resolution.
- 25.6 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter, such difficulty or dispute is to be determined by the Chairperson irrespective whether scrutinizers might have been appointed to count the votes, and his decision shall be final and conclusive.
- 25.7 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
- 25.7.1 written notice of the revocation is received by the Association prior to the meeting concerned, or
- 25.7.2 the Chairperson agrees to accept written or oral notice of such revocation at the meeting.
- 25.8 No objection shall be raised to the admissibility of any vote except at the meeting or adjournment meeting at which the vote objected to, is casted 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 Chairperson of the meeting whose decision shall be final and conclusive.
- 25.9 A declaration made in good faith by the Chairperson of a meeting to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.
- 25.10 Any resolution which could be passed at a GM, other than a Special Resolution or a resolution to remove a Trustee or Auditor, may be passed without a GM being held if one or more copies of the resolution are signed by or on behalf of a simple majority of all the Members entitled to vote at a GM.

26. ACCOUNTING RECORDS

- 26.1 The Board shall cause such accounting records to be kept 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.
- 26.2 The accounting records shall be kept at the registered Office of the Association or at such other place or places as the Board think fit, and shall be open to inspection by the Board at all reasonable times, during business hours.
- 26.3 The Board 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 shall be open to inspection by Sub-Members and no Sub-Member shall have any right of inspecting any accounting records or documents of the Association except as may be authorized by the Board.
- 26.4 At each GM the Board shall lay before the Association Financial Statements for the immediately preceding Financial Year of the Association or, in the case of the first period after the date of commencement of the Association, made up for that period. Such Financial Statements shall be drawn in accordance with generally accepted accounting practices, and shall be accompanied by such additional reports as may be necessary at the discretion of the Board.
- 26.5 A copy of the Financial Statements which are to be laid before the Members in AGM shall, not less than 21 (Twenty One) days before the date of the meeting, be sent to every Member of the Association.
- 26.6 The Members shall, by way of Ordinary Resolution passed at a GM, nominate the Auditors of the Association and the Secretary of the Association from time to time, provided that for the duration of the Development Period, the Developer may nominate the Auditors and the Secretary of the Association.
- 26.7 The Financial Year end of the Association shall be the last day of June of each year.

- 26.8 The Board shall cause proper books of account and records to be kept to fairly explain the transactions and financial position of the Association, which books of account and records shall include:
- 26.8.1 a record of the assets and liabilities of the Association;
 - 26.8.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occurred;
 - 26.8.3 a register of Sub-Members showing, in each case, their addresses; and
 - 26.8.4 individual ledger accounts in respect of each Sub-Member.
- 26.9 The Board shall cause all books of account and records to be retained for a period of 5 (Five) years after completion of the transactions, acts or operations to which they relate.
- 26.10 At least once in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by the Auditors.
- 26.11 The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards applicable in the Republic of South Africa.
- 26.12 The Management Company must provide the Developer and/or the Board with a monthly trial balance on the second business day of every consecutive month. The Developer and/or the Board must consider each trial balance and must take appropriate action to manage the financial situation and cash-flow of the Association effectively.
- 26.13 All amount received by the Association must be deposited in an interest bearing account at a commercial bank for the credit of the Association and, subject to any directive given or restriction imposed at a GM of the Association, such funds may only be withdrawn from the bank account for the purposes of payment of the expenses of the Association from time to time.

26.14 The Board may within any financial period authorize expenditure not included in the budget from reserve funds to address emergencies, provided that such expense does not exceed a maximum of 10% (Ten Percent) of the approved annual budget. In the instance of the expense exceeding the aforementioned percentage, the Board must notify all Owners by means of e-mail and if, after a period of 14 (Fourteen) Days not more than 20% (Twenty Percent) of Owners objected to the request, then authorization will be deemed to be given to the Board to proceed with the expense, failing which the Board must call a SGM to discuss the expense to be incurred.

27. SERVICE OF NOTICES

27.1 Notices may be given by the Association to any Member or Sub-Member either at the address indicated by him, or by sending it by post in a prepaid letter addressed to such Member or Sub-Member at the address (if any) within the Republic of South Africa supplied by him to the Association for the giving of notices to him.

27.2 Notice of every GM shall be given:

27.1.1 to every Member of the Association;

27.1.2 to the accounting officer for the time being of the Association;

27.1.3 to any Professional Trustee.

27.3 No other person shall be entitled to receive a notice of GM's.

27.4 Any notice given in terms of this Constitution shall be in writing and shall:

27.4.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

27.4.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th Day following the date of such posting;

27.4.3 if transmitted by e-mail be deemed to have been received by the addressee on the day following the date of the e-mail, unless the contrary is proved.

- 27.5 Notwithstanding anything to the contrary contained or implied in this Constitution, a written notice or communication received an addressee, including by way of e-mail transmission, shall be adequate written notice or communication to such party.
- 27.6 Any notice by post shall be deemed to have been served at the time when it was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the notice was properly addressed and posted to the last known address of the Member.
- 27.7 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 27.8 When a given number of days' notice or notice extending over any other period is required to be given, the day on which it is served or deemed to be served and the day for which it is given shall not be counted in such number of days or period.

28. INDEMNITY

- 28.1 The Developer, the Board, the Trustees, the Professional Trustees, the Auditors, the Management Company and each servant, agent or employee of the Association shall be and they are hereby indemnified by the Association against any liabilities *bona fide* incurred by them in their respective capacities in the proper discharge of any of their duties including, without limitation, the costs of defending any proceedings, civil, criminal or otherwise arising out of the due execution by them of their duties, and including all costs, losses and expenses, including traveling expenses which they or any of them may incur or becomes liable for by reason of any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.
- 28.2 A Trustee, the Developer or the Professional Trustee shall not be liable for the act or omission of the Management Company, Auditors or of any of the other Trustees whether in their capacity as such or as Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which monies of the Association are invested, or for loss or

damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited, or for any loss or damage occasioned by any bona fide error of judgement or oversight on his part, or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties in relation thereto, unless same shall have occurred as a result of mala fides, breach of duty or breach of trust.

- 28.3 The Developer is irrevocably indemnified against any loss or any possible damages or claim for damages that the Association, any Sub-Association, Member, Owner, or Occupant, guest or visitor of any Owner or Occupant may suffer as a result of any installation of any Service or facility, including all water bodies (fenced or unfenced) on the Estate or any act or conduct by the Developer in the exercising of the Development Rights, whether that such damage was caused by any willful or negligent act of the Developer.
- 28.4 Any person using any of the Services or any other facilities or amenities of the Association within the Estate, does so entirely at his own risk.
- 28.5 The right of admission to the Estate is reserved in favour of the Developer and/or the Association.
- 28.6 Consequential to the Local Authority's refuse removal trucks entering the Estate for the purposes of refuse removal and utilizing the Private Roads, the Developer and the Association irrevocably indemnifies the Local Authority from all damages and/or losses incurred on the Private Roads, road furnishings and curbs, as a result of the Local Authority collecting refuse within the boundaries of the Estate. This indemnification is authorized by the provisions of Clause 33 of this Constitution

29. CONDITIONS IMPOSED BY LOCAL AUTHORITY

- 29.1 During the Development Period, this Constitution may from time to time be amended by the Developer, without the need to be approved by the Association in

a GM, to comply with the requirements from time to time of the Local Authority in relation to the Development Rights.

29.2 The Developer and every Owner must always, during and after the establishment of the Estate, conform to the Development Controls.

30. DETERMINATION OF DISPUTES

30.1 Any disputes arising out of this Constitution must be determined in accordance with this Clause 30, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.

30.2 On a dispute arising (not moneys or a debt to the Association), the parties 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 14 (Fourteen) days after such notice, either of the parties to the dispute may refer the same to determination in terms of the following provisions of this Clause 30.

30.3 If a party exercises his right in terms of Clause 30.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (Ten) years' experience in their field:

30.3.1 If the dispute is primarily an accounting or financial matter, a practicing chartered accountant with at least 10 (Ten) years standing;

30.3.2 if the dispute is primarily a legal matter or a matter relating to the behavior and or conduct of a Member, a practicing attorney or advocate with at least 10 (Ten) years standing;

30.3.3 if the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practicing registered Architect with at least 10 (Ten) years standing;

30.3.4 if the dispute primarily relates to the size of form of the Land or the position, height or size of buildings, structures, installations or equipment, a practicing registered Land Surveyor with at least 10 (Ten) years standing.

- 30.4 If the parties are unable to agree on the appointee as provided for in Clause 30.3 within 3 (Three) days of being requested to do so, then the person shall be nominated by the President for the time being of the Legal Practitioners Council, Western Cape.
- 30.5 The person appointed as provided for in Clause 30.3 shall in all respects act as an expert and not as an arbitrator.
- 30.6 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.
- 30.7 The parties shall use their best endeavors to procure that the decision of the expert shall be given within 21 (Twenty One) days or so soon thereafter as possible.
- 30.8 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.
- 30.9 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".
- 30.10 The provisions of this Clause 30 constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw there from or claim in any such proceedings that they are not bound by such provisions.
- 30.11 The provisions of this Clause 30 shall be deemed to be severable from the remainder of the Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled, amended or declared of no force and effect for any reason.

30.12 Notwithstanding anything to the contrary contained in this Constitution the Trustees shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this Constitution and any of its annexure, including any amendments of additions thereto.

31. AMENDMENT OF CONSTITUTION AND THE RIGHTS AND OBLIGATIONS OF THE LOCAL AUTHORITY

31.1 Notwithstanding anything to the contrary herein contained, during the Development Period, the Developer may without the approval of the Members or any Sub-Members of the Association, amend, substitute and repeal any provision of this Constitution, with the approval of the Local Authority. Any such amendments as contemplated herein will only be communicated by the Developer to the Management Company and the Developer will therefore not be obliged to communicate these changes to the Members.

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

31.3 Subject to the provisions of Clauses 31.1 and 31.2 above and after the Development Period, any such addition, amendment, substitution or repeal shall require the approval of at least an Unanimous Resolution given at a GM specifically called for such purpose, and the notice of such meeting shall, in addition to complying with the other requirements of this Constitution, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed. Any provision in the best interest of the Estate or the Members of Sub-Members may never be deleted from the Constitution.

31.4 Any reference herein to this Constitution shall mean and include a reference to this Constitution as may from time to time be amended in accordance with the provisions of Clauses 29 and/or 31 of this Constitution.

- 31.5 Any amendment of the Constitution, in terms of Clauses 29 or 31 of this Constitution, will only become effective once certified by the Local Authority.
- 31.6 The certified copy of the Constitution is deemed to be the Constitution of the Association.
- 31.7 The Local Authority is exempted from liability for any damage which may be caused by its certification of the Constitution or any amendment thereof or by a loss of the Constitution lodged with the Local Authority.
- 31.8 If the Association fails to meet any financial obligation or if the Association fails to control and manage the Private Open Space, Private Roads and the Communal Areas, the Services or amenities arising from the development of the Estate under the Association's control for the benefit of the Sub-Members, and the Local Authority believes that the Sub-Members are adversely affected by the failure, the Local Authority may take appropriate action to rectify the failure. The Local Authority may recover any expenditure in respect thereof from the Association or the Sub-Members, who are jointly liable. This expenditure will be considered as part of the Levies of Special Levies.
- 31.9 If the Association fails to meet any obligations in this Constitution and the Local Authority believes that the community is adversely affected by the failure, the Local Authority may take appropriate action to rectify the failure. In this instance, the following terms and conditions will prevail:
- 31.9.1 The Local Authority may recover any expenditure in respect of the action contemplated above from the Association, its Members or Sub-Members, who are jointly liable;
- 31.9.2 The amount of any expenditure so recovered will be considered expenditure incurred relating to the Association for the purposes of recovering expenditure incurred relating to the Association from its Members or Sub-Members;

31.9.3 If the Association ceases to function effectively or to carry out its obligations, the Local Authority may give the Association a binding instruction to:

31.9.3.1 Hold a meeting and to reconstitute itself, or

31.9.3.2 Dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of the relevant conditions in the title deeds of the Land Units.

31.10 In determining whether to act in terms of Clause 31.9.3.1 or 31.9.3.2 the Local Authority must have regard to:

31.10.1 The purpose of the Association;

31.10.2 The taking over of the maintenance of the internal engineering services, the Services and other obligations which the Association is responsible for, if at all;

31.10.3 The costs of upgrading the internal engineering services, the Services and other infrastructure of the Estate in general;

31.10.4 The impact of the dissolution on the Members, Sub-Members and the community in general;

31.10.5 Any written representations from the Association, its Members or Sub-Members.

31.11 If the Association is dissolved, the Sub-Members must jointly pay the costs of:

31.11.1 The transfer to the Local Authority of the Private Roads and Communal Property, including the Services;

31.11.2 The upgrading of the internal engineering services and the Services to meet the required standards of the Local Authority.

31.12 If the Association ceased to function and an Owner wishes to transfer a Land Unit, the Owner must obtain the consent of at least 60% (Sixty) of the Members of the Association, which consent will be deemed to be the consent of the Association.

32. GENERAL

32.1 The Trustees or the Management Company or their employees, agents or contractors shall be entitled and shall have the right to enter any Land Units for the purposes of repairing, maintaining or installing any facilities, Services, equipment or structures relating to the provision of security or any other service to the Estate generally, provided, that they have complied with any Access Procedure, if applicable.

32.2 The Developer may at any time, during the Development Period, in writing, cede delegate and/or assign all or any of its rights or obligations in terms of this Constitution to any transferee of its choice and such transferee shall be entitled to take cession/delegation of all such rights and obligations.

32.3 During the Development Period, the Developer may, at any time in writing, abandon in whole or in part, any of its rights which it is entitled to in terms of this Constitution, in which event the abandoned rights of the Developer will cease and vest in the Association, the Board and/or the Members.

32.4 Should a Sub-Member/Owner obtain permission from the Developer, during the Development Period, and thereafter by the Board, to consolidate two or more Land Units, no construction of any kind and/or any improvements may be done over the common boundary lines of the original Erven, the original building lines and servitudes as per the A & D Guidelines will apply.

33. AGREEMENTS CONCLUDED ON BEHALF OF THE ASSOCIATION

33.1 It is recorded that the Developer will be allowed to enter into agreements and appoint any service provider on behalf of the Association for a period, to be in a discretion of the Developer, which agreements and/or appointments will be

automatically effective on the Association and its Members before or after the Development Period, provided that such service provider fulfill all its obligations and all the other terms and conditions of the agreement thus concluded.

- 33.2 The Association may, after the Development Period, conclude agreements with any third party for the provision of facilities or services to or for the Members and/or the Sub-Members and may impose charges in respect of the provision thereof, or may pass on such costs direct to the Members and/or the Sub-Members. Furthermore, it is recorded that the Members will be bound by all contracts concluded by the Developer for the leasing or purchase of all equipment or infrastructural assets, or for the provision of security for the Estate, or for the provision of any other service or supplies for the Estate which the Developer may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or outgoings on an ongoing basis. It is recorded, without limitation, that the Developer intends to conclude contracts, inter alia, but not limited to, for the hire or supply of electronic surveillance, monitoring and detection equipment for security purposes relating to the perimeter of the Estate.
- 33.3 The Developer, during the Development Period, and thereafter, the Board, may appoint only 1 (One) service provider for the provision of any kind of service or product to the Estate, the Members, any Sub-Association, Owner or Occupant. The Members, Sub-Associations, Owners and/or Occupants will be bound by such appoint being made. This condition will be binding and of full force and effect on all appointments to be made or agreements to be concluded with such service provider, as may be provided for in the Constitution, or in the discretion of the Developer during the Development Period, and the Board, after the Development Period.
- 33.4 No business of a Property Sales Agent/Agency or Property Letting Agent/Agency, may ever be conducted from any Land Unit, save for such Agencies appointed by the Developer during the Development Period, which appointments may be binding on the Association for an indefinite period, in the sole and absolute discretion of the Developer. The conditions of appointment will be stipulated in the

Governing Rules and may only be amended by means of a Unanimous Resolution.

34. BREACH AND PENALTIES

- 34.1 Any Owner or Occupant contravening any of the terms and conditions of this Constitution and/or the Governing Rules, may receive a written warning from the Board or the Management Company, as well as a penalty, the amount to be determined in terms of the Governing Rules by the Board, from time to time, for each infringement. Should the trespasser be a guest of an Owner or Occupant, the Board reserves the right to act in terms of this rule against such Owner or Occupant, who shall be liable for the behavior of his guest. This reservation does not impinge on any other rights of the Board or any other rights which the Board may have against any such trespasser, Owner or Occupant.
- 34.2 Each penalty may be levied against the Owners Levy Account for each infringement and each Owner will be liable to pay such amount promptly.
- 34.3 For the enforcement of the Governing Rules or any of the provisions of this Constitution generally, the Board or the Management Company may:
- 34.3.1 give notice to the Sub-Member/Owner/occupant concerned to remedy any breach within such period as they may determine;
 - 34.3.2 take or cause to be taken such action as they deem fit to remedy the breach of which the Sub-Member, Owner or Occupant concerned may be guilty and debit the cost thereof, which shall be a debt due to the Association, to his Levy Account, and which shall be payable as part of his Levy on the first day of the following month, and
 - 34.3.3 impose a fine on the Sub-Member, Owner or Occupant concerned which amount shall be a debt due to the Association, shall be debited to his Levy Account and shall be payable as part of his Levy on the first day of the following month.

- 34.4 Should the Board or Management Company institute legal proceedings against any Sub-Member, Owner or Occupant 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 Sub-Member, Owner or Occupant concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 34.5 In the event of any breach of the Governing Rules or of any of the provisions of this Constitution by any person residing on a Land Unit of a Sub-Member or his guests, employees, contractors, and sub-contractors or agents, such breach shall be deemed to have been committed by the Sub-Member himself; but without prejudice to the foregoing, the Board or Management Company may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the Sub-Member concerned.
- 34.6 Whenever the Board, Management Company or the ARC consider that the appearance of any Land Unit or buildings owned by an Owner is such as to be unsightly or injurious to the amenities of the surrounding area or the Estate generally, the Board or the Management Company may serve notice on such Owner to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Owner or a Member fail within a reasonable time, as specified in such notice, to comply therewith, the Board or Management Company or their employees, agents or contractors may enter upon the Land Unit or buildings concerned and take such steps as may be necessary and recover the costs thereof from the Owner concerned, which costs shall be deemed to be a debt owing by that Owner to the Association. The Board or the Management Company shall be obliged in giving such notice to act reasonably. In the event of any dispute, the Owner shall bear the onus of establishing that the Board or the Management Company acted unreasonably.
- 34.7 If an Owner fails to comply with any obligation contained in this Clause 34, the Developer, for the duration of the Development Period, and thereafter, the Board,

shall be entitled, but not obliged, in addition to any other rights which they may have or remedies which may be available to them in terms of this Constitution or otherwise in law, to:

- 34.7.1 impose a daily financial penalty, the amount of which shall be determined from time to time by the Developer or the Board, on notice to the Owner, should the Owner fail to comply with any obligations contained in this Clause 34; and
- 34.7.2 enter upon any Land Unit to inspect that Land Unit and any improvements constructed thereon, subject to the provisions of any Access Procedure (if applicable), and
- 34.7.3 The Owner will be liable and obligated to perform all such work and required actions, irrespective of whether his Levies or Special Levies are paid up to date, or not.

35. RIGHTS OF REGISTERED MORTGAGEES

- 35.1 No Loan Agreements may be entered into by the Association unless notification is given to the respective Mortgagees.
- 35.2 No Application may be made to the High Court for the appointment of an Administrator of the Association unless notification is given and notice by the respective Mortgagees.
- 35.3 The Trustees shall cause copies of the schedules, estimate, audit statements and reports to be delivered to the respective Mortgagees, at no cost to the Mortgagee and at least 14 (Fourteen) days before the date of the AGM at which they are to be considered.
- 35.4 All Mortgagees must be notified within 30 (Thirty) days from the date of any change to the Management Company together with a copy of the Agreement between the Association and the former party.

- 35.5 The Board must insure the debtor's book of any Sub-Association against default debtors.
- 35.6 The Association hereby irrevocably waives, in favour of any Mortgagee, any rights or restrictive conditions registered in the title deed of any Land Unit in its favour, in the instance of foreclosure procedures being instituted by the relevant Mortgagee against any such an Owner.

36. SUNDRY OBLIGATIONS OF THE DEVELOPER, THE ASSOCIATION AND/OR THE MEMBERS/SUB-MEMBERS

- 36.1 The Developer must comply with all requirements to complete the Estate in a proper and workmanlike manner, inter alia, but not limited to, the conditions of this Constitution, the Approval, the CMP, the Development Controls, the EA, the H&S Legislation, the Landscape Guidelines, the SLA and the SWMP.
- 36.2 The Developer must attend to the cancellation of all restrictive conditions which might affect the Estate adversely, at the cost of the Developer.
- 36.3 The C & O Manual must be adhered to by all relevant parties during the Development Period. The Board may extend the obligations and procedures contained in the C & O Manual after the Development Period.
- 36.4 All common boundary walls between two adjacent Erven must be maintained, to the satisfaction of the Association, by the Owners of the adjacent Erven at the shared cost and expense of the Owners, including, but not limited to, painting, cracks and structural defects. All perimeter boundary walls (on the boundaries of the Estate), must be maintained by the Association at its cost and expense, including, but not limited to, painting, cracks and structural defects, provided the structural problems was not caused by the Owner and/or the Occupant or trees planted by the Owner and/or the Occupant in close proximity to the perimeter boundary walls, in which instance the cost and expense will be for the account of the Owner. The procedure for submitting any claims or reporting any defects will be provided for in the Governing Rules.

- 36.5 The procedure and rules pertaining to the boundary walls between adjacent Erven, will be provided for and subject to the provisions as contained in the A&D Guidelines.
- 36.6 The HSO must be appointed by the Developer during the Development Period, at the cost and expense of the Developer, and thereafter the appointment of the HSO will be in its discretion, which appointment will be at the cost and expense of the Association.
- 36.7 The Mini-Subs must be transferred by the Developer to the Association, free of counter value, at the expense of the Developer. The maintenance and functionality of the Mini-Subs are the sole responsibility of the Association as from the date of completion of the Mini-Subs by the Developer.
- 36.8 The Stormwater Slithers must be transferred by the Developer to the Association, free of counter value, at the cost and expense of the Developer. The maintenance and functionality of the Stormwater Slithers are the sole responsibility of the Association as from the date of completion of the Stormwater Slithers by the Developer.

37. CONSENT IN TERMS OF POPIA

The Sub-Members/Owners, consequential to its membership to the Association, automatically give permission to the Association, the Board, the Developer and the Managing Agent to process their personal information for all purposes related to this Constitution, in accordance with the provisions of POPIA.

38. LEVY STABILIZATION FUND

- 38.1 To curtail the increases of Levies as far as possible, a Levy Stabilization Fund will be established by LECMHOA, as more fully provided for in this Constitution.
- 38.2 In the instance of an Alienation of a Land Unit by the Sub-Member/Owner, or any of its successors in title in perpetuity, the Sub-Member/Owner or its successors in title in perpetuity, must pay the LSC to LECMHOA, on the date of Alienation and/or

date of registration of transfer of the Land Unit in favour of a Third-Party Purchaser.

38.3 No clearance certificate for the Alienation of the Land Unit, as more fully provided for in this Constitution, may be issued by the Association unless payment of the LSC is made or undertaken by the Attorney/s attending to the Alienation of the Land Unit by the Sub-Member/Owner or its successors in title in perpetuity. The Sub-Member/Owner, by its membership to the Association, irrevocably authorizes the Attorney/s attending to the Alienation of the Land Unit on its behalf, to deduct the LSC from the proceeds of the sale due to the Sub-Member/Owner and to pay this amount to LECMHOA on the requisite date of Alienation.

38.4 The LSC shall be an amount equal to:

38.4.1 0,5% (Zero comma Five Percent) of the GSP; or

38.4.2 in the instance of an Alienation (other than a sale) of the Land Unit, the LSC will be 0,5% (Zero comma Five Percent) of the market value of the Land Unit as determined by LECMHOA.

38.5 The LSC must be utilized by LECMHOA for the purposes of the Levy Stabilization Fund, for the benefit and advantage of all the Members and Sub-Members of LECMHOA.

39. RENTING OF DWELLINGS

39.1 No Owner and/or occupant shall be allowed to conduct any business on his Land Unit and/or Dwelling, including, specifically, Short-Term Rental, including any portion of the Dwelling and/or the Land Unit.

39.2 An Owner may rent his Dwelling for domestic purposes, provided the tenant adheres at all times to all the provisions of this Constitution and any subsequent rules of the Estate, same being included in the lease agreement to be concluded between the Owner and the Tenant.

- 39.3 All owners must notify the Management Company of any Dwelling, or any portion thereof, being let and must register the tenants with the Management Company and the security company appointed to enforce the Security Protocol.
- 39.4 No lease agreements for residential purposes for a period shorter than 3 (Three) consecutive months will be allowed without the prior written approval of the Board having been obtained, which approval will not be unreasonable withheld.
- 39.5 Dwellings may not be let for the purposes of, inter alia, but not limited to, a commune of student accommodation, guesthouses, holiday accommodation and/or Air BnB or any similar renting agency.
- 39.6 Any Owner and/or Occupant will be allowed to work from home (the Dwelling), provided that only 1 (One) office and 1 (One) person will be allowed to work from home and provided that the person who works from home is the Owner or Occupant of the Dwelling. No multiple people and/or offices will be allowed to work from home.

40. MANAGEMENT OF CLUB HOUSE

- 40.1 The Club House will be constructed by the Developer as soon as possible after 50% (Fifty Percent) of the Dwellings comprising the Estate, have been occupied by Owners or Occupants.
- 40.2 The Club House will, upon completion (the Transfer Date), be transferred by the Developer in favour of the Association, free from counter value, at the cost and expense of the Association.
- 40.3 The usage, ownership, risk and management of the Club House will, after the Transfer Date, be for the benefit and risk and be under the control of the Association.
- 40.4 The Association only, or its nominated entity, may at any time after the Transfer Date, apply for a Liquor License in respect of the Club House. The liquor license will vest in the Association, will be for the exclusive use of the Club House,

provided that the Club House must at all times adhere to the terms and conditions of the Liquor License and all relevant legislation.

41. MANAGEMENT OF THE CRECHE

41.1 The Creche will, after the Development Period, on a date to be determined by the Developer in its absolute and sole discretion, be constructed by the Developer, and occupation thereof will be given and taken by Association, free from counter value, on the date that the Local Authority issues the Occupation Certificate (the Occupation Date).

41.2 The usage, ownership, risk and management of the Creche will, after the Occupation Date, be for the risk and benefit and under the control of the Association.

42. RESALE OF PROPERTY

42.1 The Owner may not sell the Property within the Restriction Period without the written consent of the Developer, which consent will not be unreasonably withheld.

42.2 The Developer will grant the consent as referred to in Clause 42.1 above, subject to the following conditions:

42.2.1 The Developer will be entitled to Consent Fee, if the Property is sold by the Owner within the Restriction Period, payable to the Developer on date of registration of the requisite transfer by the Attorneys attending to the transfer, and

42.2.2 The Developer will also be entitled to an administration fee, in the amount to be determined by the Developer in its sole and absolute discretion; and

42.2.3 The amount for the purposes of calculation of the Consent Fee, will be the higher of the Gross Selling Price of the Property or the value of the Property, which value will be determined by the Developer.

42.3 The condition in Clause 42.1 above will be registered by the Developer against the

Title Deed of the Property, on the date of registration of transfer of the Property in favour of the Owner in the Cape Town Deeds Registry.

- 42.4 During the Development Period, the Owner shall not be entitled to display any "For Sale" and/or "To Let" signs on the Property or outside the Property without the prior written consent of the LECMHOA having been obtained.
- 42.5 The provisions of this Clause 42 are not applicable in the instance of distressed sales and/or sales in execution where a mortgage bond holder legally attached and sold the Property due to the failure of the Owner to fulfil its obligations towards the relevant mortgage bond holder.
- 42.6 This condition will be applicable on the Owner or any successors in title of the Owner and/or the Owner's nominees, appointees or assigns, limited to the Restriction Period.