



ESTATE OWNERS' ASSOCIATION CONSTITUTION

An association established in terms of the Section 29 of the
Stellenbosch Municipality Land Use Planning by Laws

PREFACE

This is the constitution of *King's View Estate Owner's Association* (the "association") for the development known as KING'S VIEW ESTATE, comprising of the subdivided Portion 2 and 3 of Farm 372 Stellenbosch.

The development comprises of an approved residential component of free-standing single residential Erven.

The Association has as its members all owners of erven.

The main objects of the association are:

- the control over the residential development arising from the subdivision of Portion 2 and 3 of Farm 372 Stellenbosch, to ensure that high standards of finishes are maintained; and
- to put arrangements in place aimed at ensuring the sustainable harmonious living together of people residing in a security estate.

This constitution has been perceived in eleven parts.

- **Part 1** (Definitions and Interpretation) attaches specific meanings to words used in the constitution. It also sets out the rules that apply when interpreting the provisions thereof.
- **Part 2** (The Association) contains provisions relating to the name, legal status, main objects and purpose, powers and duties and so forth of the association.
- **Part 3** (The Trustees) sets out the requirements for appointment of trustees, the functioning of a committee of trustees (the "committee") and related matters.
- **Part 4** (The Members) confirms the compulsory nature of membership of the association, the rights and obligations of members and introduces restrictions on the use and resale of erven.
- **Part 5** (Meetings) contains all the provisions relating to meetings of the association and the committee, such as the venue for and notice required of meetings, procedure and voting at meetings and minutes to be kept. It sets out how group decisions shall be reached.
- **Part 6** (Financial Affairs) provides inter alia for accounting records to be kept of the association's affairs, fair and reasonable levies payable by members as contributions towards the cost of the upkeep of the internal services, security services, and so forth as well as audit and income tax arrangements.

- **Part 7** (Development Management) places restrictions of development within the management area and inter alia provides for architectural guidelines to be complied with. It requires the committee's prior approval of building plans.
- **Part 8** (Enforcement and Dispute Resolution) empowers the association to enforce the provisions of the constitution and rules made in terms thereof. It also provides for an effective dispute resolution mechanism in respect of disputes, questions or differences arising between members and the trustees.
- **Part 9** (Developer's Powers, Duties & Exemptions) entrenches provisions to protect the developer's substantial financial investment in the development in ensuring the success of the development. It also sets out the developer's powers and duties and exemptions from certain provisions of the constitution.
- **Part 10** (Winding-Up) places a limitation on the distribution of profits, in the event of the association being wound-up at a future date and prescribes how remaining assets will have to be distributed.
- **Part 11** contains the appendices to which reference are made in the constitution.

KING'S VIEW ESTATE OWNERS' ASSOCIATION

CERTIFICATE OF APPROVAL

This is to certify that the Constitution of the King's View Estate Owners' Association was this day approved by me on behalf of the Municipality of Stellenbosch in terms of section 29(3) of the Stellenbosch Municipality Land Use Planning By Law

SIGNED AT STELLENBOSCH on this the day of 2019.

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PART 1: DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In the Constitution, unless the context indicates the contrary, the following words have the meaning assigned to them below:

“alienate” means to divest of ownership of any erf or part thereof, and includes alienation by way of sale, exchange, donation, deed, intestate or testate succession, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and further includes the granting of a registrable right of occupation, habitation or usufruct and **“alienation”** shall have a corresponding meaning;

“architectural guidelines” means the guidelines and rules as contemplated in clause 35.1, as amended from time to time by the committee, setting out guidelines and requirements for the design and materials to be used in constructing buildings within the development, in order to promote the aesthetic integrity, harmony and character of the development, to conserve the environment and/or to secure compliance with applicable by-laws and regulations, and which initial architectural guidelines have been prepared by the developer and are attached to this constitution as Appendix ‘A2’;

“association” means the King's View Estate Owners' Association;

“auditors” means the auditors of the association from time to time;

“basic levy” means the minimum levy payable by a member as determined in terms of clause 32;

“By Law” means the Stellenbosch Municipal Land Use Planning By-Law as published in the Provincial Gazette Extraordinary No 7512 dated 20th October 2015 enacted in terms of the Spatial Planning and Land Use Act No 16 of 2013 and the Western Cape Land Use Planning Act No 3 of 2014

“conditions of approval” means the conditions which the municipality may impose under section 66 of the By Law when granting development approvals in respect of the land and the development;

“chairperson” means the chairperson at a meeting of the association or the committee, as the case may be, elected as such in terms of the constitution;

“committee” means the committee of trustees of the association elected in terms of clause 12 of this constitution;

“common areas” means the private internal roads and the private open spaces within the development (including private road reserves, all buildings, structures and other

facilities, amenities, landscaping and improvements situated or made on the common areas), but excluding the erven;

“compliance agent” means the association, committee or management agent or anyone acting with their approval to enforce compliance with the provisions of this constitution, the architectural guidelines or the rules in terms of Part 8 of this constitution;

“constitution” means the constitution of the association, as contained herein;

“developer” means K2016078362 (SOUTH AFRICA) (Proprietary) Limited, a private company duly incorporated in accordance with the Company Laws of the Republic of South Africa (Registration No 2016/078362/07/07) of or nominee and its successors-in-title;

“development” means the secure residential development on the land to be known as King's View Estate, comprising of 49 free hold, single title residential erven, common areas, internal roads, security gate, refuse yard and security fencing, in terms of a subdivision of the land approved by the municipality and in accordance with the conditions of approval, as reflected in the layout plan attached as Appendix 'A1';

“development period” means that period commencing on date that this constitution comes into force, and ending when the developer has effected transfer of the last erf owned by it or when the developer chooses to end this period by written notice to the association, whichever event occurs first in time, but in any event before the date falling 4 (four) years after the date that this constitution comes into force;

“erf or erven” means an individual erf or erven (improved or unimproved), situated within the management area, in terms of a general plan registered over the land;

“land” means Portion 2 and Portion 3 of the Farm 372 in the Municipality and Division of Stellenbosch, Province of the Western Cape;

“landscaping plan” means the landscaping plans approved by the competent authority for the development;

“levy” means a levy made upon a member and due to the association in terms of this constitution;

“levy stabilisation fund” means the stabilisation fund as contemplated in clause 9(1)(f);

“management area” means the physical area of the development, including all erven and common areas contained therein, which area falls under the management jurisdiction of the association in terms of this constitution;

“managing agent” means, and includes any third party to whom this company may cede and assign its rights and obligations incidental to its appointment as managing

agent or such other person as may from time to time be appointed to that position in terms hereof;

“member” means a member of the association as described in clause 6 and includes, for purposes of voting at meetings, the duly authorised representative of such a member;

“municipality” means the Municipality of Stellenbosch;

“occupant” means any person lawfully occupying an erf within the management area by virtue of an agreement concluded with the owner thereof;

“offence” means an act or omission as described in clause 38.2;

“offender” means for purposes of clause 38 the owner that has allegedly failed to comply with the provisions of the constitution, the architectural guideline, the rules, or a notice, directive or written warning issued in terms hereof; and for purposes of vicarious liability of the owner for acts or omissions on the part of such owner's family members, tenants, occupants, invitees, visitors, agents, employees, contractors or the like, the owner shall be treated in terms of this constitution as having committed the act or omission himself;

“office bearer” means every chairperson, vice-chairperson, trustee and the managing agent;

“owner”, means the person in whose name ownership of an erf situated in the management area is registered;

“person” includes a company, close corporation, trust, partnership or other association of persons entitled to hold title to immovable property;

“prime rate” means the publicly quoted prime interest rate (per centum, per annum, compounded monthly) from time to time published by the association's bankers as certified by any manager of the association's bankers, whose appointment and designation need not to be proved. Furthermore a certificate issued by such manager shall constitute *prima facie* proof of such rate;

“private open space” means all areas generally designated as private open space on the municipality's approved subdivision plan of the development, including all roads, pavements, gardens, retention dam and other open areas for common usage;

“proxy” means a natural person appointed by a member in terms of this constitution and entitled to vote, representing such a member at any meeting contemplated herein;

“rules” means rules made or adopted in terms of clause 14;

“special levy” means a special levy payable by a member as determined in terms of clause 32;

“special resolution” means a resolution passed at a special general meeting of the association 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, by poll, by members together holding not less than 75% (seventy five percent) of the total voting rights of members, present or represented at that meeting;

“stabilisation levy” means a levy calculated in accordance with clause 32 and made each time an erf is sold, excluding the original or first time sale by the developer;

“trustee” means a person appointed or elected as a member to the committee in terms hereof;

“vice chairperson” means the vice chairperson at a meeting of the association or the committee, as the case may be, elected as such in terms of hereof and presiding at a meeting of the association or committee, as the case may be, during the chairperson's absence, inability or refusal to act; and performing such other duties as may from time to time be assigned to him by the general meeting or chairperson.

2. INTERPRETATION

2.1 This constitution shall be interpreted in a manner that is consistent with and best serves the objectives of the association; provided that, to the extent of any conflict between:

- the rules and the constitution, the constitution shall prevail;
- the architectural guidelines and the rules, the architectural guidelines shall prevail;

only to the extent of such conflict.

2.2 In this constitution, unless the context otherwise requires:

- any words importing the singular shall include the plural number and vice versa; and words importing one gender shall include the other two genders; and
- any reference to *writing*, *serve*, *send* and similar expressions must be interpreted in a technology neutral manner to allow for such action or activity to be performed by electronic means.

2.3 Unless there is something in the subject matter or the context which is inconsistent therewith, any reference in this constitution to legislation shall be construed as a reference to such legislation as amended or re-enacted from time to time.

- 2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, whether or not a party, then notwithstanding that such provision appears only in the definition clause, effect shall be given thereto as if it were a substantive provision contained in the body of this constitution.
- 2.5 When any number of days is prescribed in this constitution, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or a proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

PART 2: THE ASSOCIATION

3. NAME AND DOMICILIUM OF THE ASSOCIATION

- 3.1 The name of the association is *King's View Estate Owners' Association*.
- 3.2 The association appoints the address of the managing agent from time to time as the address at which legal process and other notices intended for the association may be served and where proxies may be deposited.
- 3.3 The committee shall notify all members in writing of such address and of any change thereof.

4. CONSTITUTION OF THE ASSOCIATION

- 4.1 This constitution has as its prime objects:
- the control over dwellings and other buildings within the management area and the maintenance of services and amenities provided within the development; and
 - to put arrangements in place aimed at ensuring the sustainable harmonious living together of people residing in the management area.
- 4.2 This constitution *inter alia* describes the powers, functions and duties of the association, the committee, office-bearers and members and is binding on the committee, the trustees, all other office-bearers of the association and on the members.
- (a) Conduct inconsistent with this constitution is invalid and obligations imposed by it must be fulfilled by all concerned.
- (b) No resolution or purported resolution of the association or committee shall be of any force or effect, or shall be binding upon the association, the members or the committee, unless such resolution is competent within the powers of the association or committee.

4.3 This constitution, or any part thereof, shall not be repealed or amended, save by a special resolution of the members and subject to compliance with clause 33.6 and further subject thereto that:

- (a) whilst the developer is a member of the association, the developer approves any such amendment of the constitution or the adoption or amendment of the rules;
- (b) the amendment of the constitution will only take effect once the municipality's written approval thereof has been obtained.

5. ESTABLISHMENT OF THE ASSOCIATION

5.1 The association is established in terms of section 29 of the By Law in accordance with the conditions of approval.

5.2 The provisions of this constitution shall come into force on the date of certification of approval of this constitution on behalf of the municipality.

5.3 The association shall come into existence on the date that transfer of ownership of the first erf in the management area from the developer to an owner, is registered.

6. MEMBERSHIP OF THE ASSOCIATION

6.1 The association shall, subject to clause 17.1, have as its members the owners of erven in the management area, arising from the subdivision of the land.

6.2 In the event that an erf arising from the subdivision of the land is further subdivided, the owners of an erf created by such subdivision shall be a member of this association.

7. LEGAL STATUS OF THE ASSOCIATION

7.1 The association is an association with legal personality and has perpetual succession. It is a distinct and separate legal entity and its assets, liabilities, rights and obligations vest in it independently of its members.

7.2 None of the members or the trustees in their personal capacities has any right, title, interest to or in property, funds or assets of the association. Subject to the provisions of the By Law and this constitution, the members will not by reason of their membership be liable for the liabilities and obligations of the association.

7.3 The association is capable of suing and being sued in its own name. All actions, suits, proceedings at law or any arbitration shall be brought by or against the association in the name of the association. The trustees may authorise any person or persons to act on behalf of the association and to sign all such

documents and to take all such steps as may be necessary in connection with such proceedings.

- 7.4 The association may not conduct any business for profit or gain but is an association for the benefit of its members. It must use its funds solely for the objects for which it has been established.
- 7.5 The association has the right to acquire, hold, lease and alienate property, both movable and immovable, and has the capacity to acquire rights and obligations and to incur expenses.

8. MAIN OBJECT AND PURPOSE OF THE ASSOCIATION

8.1 The main object and purpose of the association are:

- (a) the control over and maintenance of dwellings, buildings, services and amenities arising from the subdivision in terms of which the development was created, to ensure that high standards of finishes are maintained;
- (b) to promote, advance and protect the welfare and benefit of its members generally with respect to their ownership, use and enjoyment of the land and improvements within the management area so as to ensure the sustainable harmonious living together of people residing in a safe and congenial living environment; and
- (c) to take ownership of and control the common areas.

8.2 Subject to the provisions of clause 8.3 the objects of the association *inter alia* include to:

- (a) establish, maintain and enforce aesthetic standards within the management area by exercising control over dwellings and other buildings in accordance with the architectural guidelines, more particularly as regards the external appearance of all dwellings and structures to be erected within the management area with the specific purpose that the members derive the maximum collective benefit;
- (b) maintain, repair, improve and replace services and amenities provided within the development, arising out of the subdivision of the land and including the common areas;
- (c) provide and maintain a secure environment for the members of the association by way of the appointment of security staff and the implementation of effective security measures, including ingress and egress control for the management area for the benefit of members and occupants;

- (d) establish, maintain and enforce good conduct standards of members and occupants within the management area for the general benefit of all members in accordance with the rules;
- (e) take transfer of the common areas and private roads, security gate and refuse yard control the use of and improve and undertake the upkeep and maintenance of the common areas and all services, amenities and landscaping thereon and all other assets under its control, including but not limited to the maintenance of all perimeter walling, street lighting, fences entrance gates, refuse and storage areas, trees, detention ponds and dams within the management area;
- (f) take responsibility for and manage solid waste procedures and the recycling of materials;
- (g) insure all assets under its control; and
- (h) determine, raise and collect levies and special levies from the members as provided for herein to fund the carrying out of its objects.

8.3 The association shall not have any responsibility in respect of services and amenities provided and maintained or to be provided and maintained by the municipality.

9. POWERS AND DUTIES OF ASSOCIATION

- 9.1 Without limiting the generality of the powers specifically referred to, but subject to this constitution and specifically clause 41.1, the association:
- (a) has the power to make rules or, in general meeting, to direct the committee to make rules not inconsistent with this constitution for the furtherance and promotion of any of the objects of the association, for the better management of the affairs of the association, for the advancement of the interest of members and to assist it in administering and governing the activities of the association generally; and may vary or modify the rules which it or the committee has made;
 - (b) is responsible for the implementation and enforcement of this constitution and the rules and for all administration and management required in respect thereof and to this end has the power to impose and recover fines and penalties;
 - (c) may open and close a bank account in the name of the association with a registered financial institution;
 - (d) may institute and defend legal actions in the name of the association;

- (e) must determine and collect levies to defray the expenses of the association;
- (f) must establish a fund into which all basic and special levies must be paid and must establish a separate fund into which all stabilisation levies must be paid;
- (g) may enter into contracts for the furtherance of the main objects and purposes of the association; provided that no contract concluded on behalf of the association shall be valid and binding unless it is signed by the chairperson of the committee;
- (i) has the power to deal with all matters set out in the conditions of approval; and
- (j) may do anything necessary or desirable for or incidental, supplementary or ancillary to achieve the objects set out above.

9.2 The association must fulfil general management and administrative functions in respect of the management area, including *inter alia*:

- (a) the appointment of the managing agent and monitoring of the agreement with the managing agent; and/ or employ a manager if it deems preferable;
- (b) the control over dwellings, buildings and the maintenance of services and amenities;
- (c) the provision of security services;
- (d) the maintenance, upkeep and improvement of all common areas;
- (e) the payment of all:
 - (i) rates, taxes and other proprietary charges payable in respect of common areas;
 - (ii) costs of insurance of all the buildings situated in the common areas, which insurance shall be put in place for such replacement values as the association may determine;
 - (iii) costs of water and electricity consumed on common areas;
- (f) the staffing and management of administration and security facilities;
- (g) the general management of all accounts, finances and other administrative requirements relating to the levies and affairs of the association; and

- (h) the performance of the further functions and delivery of the further services as provided for in this constitution.
- 9.3 The association is the legal entity responsible for the overall management and maintenance of common areas and shall:
 - (a) properly maintain the common areas, all assets and facilities of the association and ensure that the environmental, architectural, building and social standards are maintained within the management area; and
 - (b) comply with and enforce compliance with *inter alia* the provisions of this constitution, the architectural guidelines and any environmental, stormwater, landscape, tree protection and other management plans, as may be adopted and amended with the approval of the municipality from time to time.
- 9.4 The association may, in general meeting, itself make rules in regard to any matter referred to in clause 14.5 and may also vary or modify the rules which it or the committee has made.
- 9.5 The association shall be responsible for the costs of street lighting in the management area.

10. MANAGEMENT OF THE ASSOCIATION

- 10.1 The affairs of the association will be managed and controlled by the committee, assisted by the managing agent, unless otherwise stipulated in this constitution.
- 10.2 The developer shall appoint a managing agent on behalf of the association as the association's first managing agent to undertake, as an independent contractor, any of the functions of the association and to oversee the implementation of decisions of the association and the committee. Such appointment shall be for a minimum period of 5 (five) years, subject to earlier termination of appointment in the circumstances described in clause 10.4.
- 10.3 The committee shall, subject to the provisions of clause 10.2 and 10.4, appoint a managing agent to undertake any of the functions of and to exercise such powers and duties as may be entrusted to the managing agent by the committee from time to time (including the power to collect levies), and to oversee the implementation of decisions of the association and the committee; provided that it may re-appoint the managing agent initially appointed by the developer.
- 10.4 The committee shall ensure that there is included in the contract of such employment provisions to the effect that:

- (a) in the event that the managing agent is in breach of any provision of the management agreement, the committee may by written notice cancel such management agreement and that the managing agent shall have no claim whatsoever against the committee and/ or the association as a result of such cancellation;
 - (b) if the managing agent is guilty of conduct which at common law would justify the termination of a contract between master and servant the committee may, without notice, cancel such contract of appointment; and
 - (c) it is made for a period of 1 (one) year only; provided that, such appointment shall automatically be renewed from year to year unless the committee notifies the managing agent to the contrary by giving the managing agent 3 (three) months' notice in writing.
- 10.5 The committee shall provide reasonable assistance to the managing agent for the latter to successfully implement and offer the specific services which the managing agent is to render to the association and its members as provided for herein. The committee shall on a regular basis meet with representatives of the managing agent to co-ordinate the rendering of the relevant services by the latter.
- 10.6 The committee shall at all times have the right to engage on behalf of the association the services of accountants, auditors, attorneys, advocates, architects, engineers, managing agents, any professional person or firm or any other employees whatsoever for any reason deemed necessary by the committee for carrying out the objects of the association or in connection therewith, subject to the following:
- (a) the right to engage the services of others shall include the right to dismiss them or terminate their services or contracts;
 - (b) the engagement of such persons or firms shall be on such terms as the committee shall decide.
- 10.7 The engagement of such persons or firms as contemplated in clause 10.6 shall be on such terms as the committee shall decide; provided that any expenditure incurred in respect of the above, shall not exceed 30% (thirty per centum) of the total annual basic levy for the year in question unless authorised by a special resolution.

11. INDEMNITY AND EXCLUSION OF LIABILITY

- 11.1 Every owner, occupant or resident in the management area, any member of their families, their employees, agents, contractors, servants, guests or any other such persons whomsoever using any of the services, common areas or recreational facilities of the association does so entirely at own risk, and none

of them shall have any claim against the association, the trustees or the managing agent of whatsoever nature arising from such use.

- 11.2 The association and the office bearers shall not be liable for any loss (including consequential loss), injury, loss of life or damage to person or property of any nature whatsoever which any owner, occupant or resident in the management area, any member of their families, or their employees, agents, contractors, servants, guests, visitors or any other such persons whomsoever may sustain:
- (a) by reason of any defect in or state of disrepair of the common area, any communal residential buildings in the management area, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein or thereon, notwithstanding that such defect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether grossly negligent or otherwise) of the association, the trustees, the managing agent or any of their agents, employees or contractors; or
 - (b) directly or indirectly, in the management area whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire, water leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other services to or within the development (irrespective of the cause thereof), or be due to or occasioned wholly or in part by any act or omission (excluding gross negligence) of the association, the trustees, the managing agent or any of their agents, employees or contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.
- 11.3 Every owner and occupant individually hereby indemnifies and holds harmless the association against all claims of whatsoever nature which may be brought against the association by that owner, his occupant, tenant or any member of their families, their employees, agents, contractors, servants, visitors, guests or any other such persons whomsoever within the development, whatsoever the nature of such claim and howsoever arising, including gross negligence.
- 11.4 If any legal proceedings are instituted against the association in any court, arbitration forum or similar tribunal by any member, occupant, or by any person who has acquired the contractual right to become a member or occupant, the court shall be requested not to award costs against the association even if such legal proceedings are successfully concluded against the association, if the court is of the opinion that the association acted reasonably out of concern for or in the best interest of the members generally and had made due efforts to use other means reasonably available for obtaining the relief sought.
- 11.5 Insofar as the provision of clause 11.4 affects proceedings instituted by any prospective member or occupant, it shall be effective with retrospective effect to the date of the institution of the legal proceedings if that person becomes a member or occupant at any time before any award of costs against the

association in favour of that person has been satisfied and shall for that purpose, and to the extent necessary, be deemed to be a waiver of rights by the person concerned upon assumption of ownership.

- 11.6 Subject to clause 13.4 all trustees, the chairperson, vice-chairperson and compliance agent shall be indemnified from the funds of the association against any liabilities *bona fide* incurred by them and all losses of whatsoever nature incurred arising out of any *bona fide* act by them, jointly or severally, in connection with the discharge of their respective duties, including *inter alia* prosecuting or defending any legal proceedings in which the association is involved, in which relief is granted by the Court to any other party to the proceedings.
- 11.7 It shall be the duty of the committee out of the funds of the association to pay all costs, losses and expenses (including travelling expenses) as contemplated in clause 11.6 which the trustees, the chairperson, vice-chairperson and compliance agent (as the case may be) may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person in the discharge of any of his respective duties.
- 11.8 An office bearer shall not be liable for any:
- (a) acts, receipts, neglects or defaults of the auditors or of any of the other trustees, whether in their capacities as trustees or as a chairperson or vice-chairperson;
 - (b) loss or expense sustained or incurred by the association through the insufficiency of any security in or upon which any of the monies of the association shall be invested;
 - (c) loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited;
 - (d) any loss or damage occasioned by any error of judgment or oversight on his part;
 - (e) other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office or in relation thereto, unless the same shall happen through lack of *bona fides* or breach of duty or breach of trust.

PART 3: THE TRUSTEES

12. APPOINTMENT OF COMMITTEE

- 12.1 There shall be a committee of trustees of the association which shall comprise of not less than 4 (four) and not more than 6 (six) members elected by the members as provided for herein, subject to the provisions of clauses 13 and 41.
- 12.2 The first election of trustees shall take place at the first general annual meeting of the association.
- 12.3 Nominations by members for the election of member trustees at any annual general meeting shall be given in writing and:
- (a) shall be signed by the members proposing and seconding the nomination and by the member so nominated; and
 - (b) must be received at the address of the managing agent at least 7 (seven) days before the date of such annual general meeting.
- 12.4 Upon any vacancy occurring on the committee before the next annual general meeting, the vacancy in question shall be filled by a person nominated by the remaining member trustees.
- 12.5 Trustees that retire from office as set forth in clause 16, shall be eligible for re-election to the committee at an annual general meeting.
- 12.6 Within 7 (seven) days of the holding of an annual general meeting, the committee shall meet and shall elect from its own number the chairperson and vice-chairperson, who shall hold their respective offices until the annual general meeting held next after their said appointment; provided that:
- (a) the office of the chairperson or vice-chairperson shall *ipso facto* be vacated by the trustee holding such office upon his or her ceasing to be a trustee for any reason; and
 - (b) in the event of a vacancy occurring in any of the aforesaid offices at any time, the trustees shall immediately meet to appoint 1 (one) of their number as a replacement in such office.
- 12.7 In the event of any vacancy occurring in the office of chairperson and vice-chairperson at any time, the committee shall immediately meet to appoint one of their number as a replacement in such office.

13. QUALIFICATION FOR ELECTION AND FIDUCIARY POSITION

- 13.1 Every trustee need not be a member of the association. A spouse or representative of a member may be elected as a trustee; provided that the member concerned is eligible for election.
- 13.2 A member will only be eligible for election to the committee if all amounts due to the association for 30 (thirty) days or more have been paid in full and if he has been duly proposed and seconded by members.
- 13.3 Each member trustee shall stand in a fiduciary relationship to the association. Without prejudice to the generality of the expression 'fiduciary relationship', this implies that a member trustee -
- 13.3.1 shall in relation to the association act honestly and in good faith, and in particular-
- (a) shall exercise such powers as he may have to manage or represent the association in the interests of and for the benefit of the association; and
 - (b) shall not act without or exceed the powers aforesaid; and
- 13.3.2 shall avoid any material conflict between his own interests and those of the association, and in particular-
- (a) shall not derive any personal economic benefit to which he is not entitled by reason of his office as trustee of the association, from the association or from any other person in circumstances in which that benefit is obtained in conflict with the interests of the association;
 - (b) shall notify every other trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he may have in any contract of the association.
- 13.4 A trustee of the association whose *mala fide* or grossly negligent act or omission has breached any duty arising from his fiduciary relationship, shall be liable to the association for-
- 13.4.1 any loss suffered as a result thereof by the association; or
- 13.4.2 any economic benefit derived by the trustee by reason thereof.
- 13.5 Where a trustee fails to comply with the provisions of clause 13.3 and it becomes known to the association that the trustee has an interest referred to in that subsection in any contract of the association, the contract in question shall, at

the option of the association, be voidable: Provided that where the association chooses not to be bound, a court may on application by any interested person, if the court is of the opinion that in the circumstances it is fair to order that such contract shall nevertheless be binding on the parties, give an order to that effect, and may make any further order in respect thereof which it may deem fit.

- 13.6 Except as regards his duty referred to in clause 13.3, any particular conduct of a trustee shall not constitute a breach of a duty arising from his fiduciary relationship to the association, if such conduct was preceded or followed by special resolution approval where such members were or are cognizant of all the material facts.

14. POWERS, DUTIES AND FUNCTIONS OF COMMITTEE

- 14.1 Subject to the express provisions of this constitution the committee shall manage and control the business and affairs of the association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly otherwise provided herein, may exercise all such powers of the association, and do all such acts on behalf of the association, as may be exercised and done by the association by ordinary resolution in general meeting.
- 14.2 The funds and assets of the association shall vest in and be controlled by the trustees on behalf of the members, according to the objectives of the association.
- 14.3 The committee shall have the right to co-opt onto the committee any member chosen by it, subject thereto that such member is not disqualified for appointment in terms of clause 13.2. A co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees.
- 14.4 The committee may from time to time on its own accord or, when directed to do so in a general meeting of the association, make rules not inconsistent with this constitution for the furtherance and promotion of any of the objects of the association, for the better management of the affairs of the association, for the advancement of the interest of members and to assist it in administering and governing the activities of the association generally.
- 14.5 Subject to any restriction imposed or direction given at a general meeting such rules may include (but shall not be limited) to rules governing:
- (a) aesthetical control over and maintenance of the exterior and interior of dwellings and other structures in accordance with the architectural guidelines as well as landscaping within the management area;

- (b) the general conduct of members, including rules governing the manner and method of use and enjoyment of dwellings and the common areas and facilities by members, occupants, tenants and visitors;
- (c) the provision, allocation and utilisation of private parking areas within the management area for owners, occupants, tenants and their guests or visitors and the introduction of traffic calming measures;
- (d) the introduction and maintenance of security facilities; security control measures, the admission of any person within the management area and the eviction of any person not entitled to be present therein;
- (e) the right to prohibit, restrict or control the keeping of animals which the committee believes is or may cause a nuisance or a hazard or is or may unduly interfere with someone else's peaceful use and enjoyment of his property or right of occupation;
- (f) the enforcement of the constitution and rules made in terms thereof;
- (g) the conduct of committee and general meetings;
- (h) the preservation of the natural environment;
- (i) the storage of flammable and other harmful substances;
- (j) the making of levies and collection of contributions from members;
- (k) the imposition of fines and other penalties that may be payable and enforced against members;
- (l) as to the resolution of disputes generally;
- (m) procedures (which are in keeping with the solid waste requirements and policies of the municipality) for the sorting, collection and removal of recyclable and non-recyclable materials, and procedures for monitoring and record-keeping measures to ensure that these waste management procedures are adhered to by members; and
- (n) generally such other matters as may be necessary for harmonious living in the management area and beneficial use and enjoyment of the common areas.

14.6 Without in any way limiting the powers granted, the powers and duties of the committee shall further specifically include the determination for what constitutes appropriate standards for residential living, maintenance, repairs, additions to and improvements of all dwellings in the management area in accordance with the provisions of the architectural guidelines.

- 14.7 All rules made by the committee in terms of this constitution shall be reasonable and shall apply equally to all owners.
- 14.8 The committee shall be entitled to cancel, vary or modify any of its decisions, resolutions and the rules from time to time; provided that such power is subject to all restrictions and compliance with all procedural requirements as may in law exist.

15. REMUNERATION OF TRUSTEES

- 15.1 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as trustees and/or chairperson, vice-chairperson, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.
- 15.2 A proper record shall be kept of all payments made in terms of clause 15.1 and shall be tabled at the annual general meeting of the association.

16. REMOVAL AND RETIREMENT OF TRUSTEES

- 16.1 A trustee shall be deemed to have vacated his office as such upon:
- (a) him ceasing to be the owner of an erf, in the event that his membership was obtained purely on the ground that he has become such an owner;
 - (b) his estate being sequestrated, whether provisionally or finally; his surrendering his estate; or his making any compromise with his creditors;
 - (c) his conviction for any offence involving dishonesty;
 - (d) his becoming of unsound mind or being found lunatic;
 - (e) his resigning from such office in writing delivered to the managing agent;
 - (f) his death;
 - (g) his removal from office by a special resolution of the members; or
 - (i) him failing to attend three consecutive meetings of the committee.
- 16.2 A trustee shall serve for a three year term, unless he vacates or is removed from office earlier as provided for herein; provided further that:
- (a) at the second annual general meeting following upon the election of the first trustees, 1 (one) trustee shall vacate office;

- (b) at every general meeting thereafter 1 (one) trustee shall vacate office; and
 - (c) if no trustees are elected to replace trustees that are required to vacate office in terms of sub-clause (a) or (b), the trustees that otherwise would have been required to vacate office may serve for a further term in office.
- 16.3 The trustees to retire as contemplated in clause 16.2(a) and (b) shall be chosen by lot, unless the trustees are able to reach agreement amongst themselves as to who will retire.
- (a) Thereafter the trustees to retire in any year shall be those who have been longest serving in office since the last election, but as between persons who became trustees on the same day, those who retire shall, unless they otherwise agreed among themselves, be determined by lot.
 - (b) The trustee to fill a casual vacancy shall be subject to retirement at the same time as if he had become a trustee on the day on which the trustee in whose stead he was appointed, was elected as a trustee.
- 16.4 If any casual vacancies occur in the committee, the remaining trustees may continue to act in terms hereof; provided that if and for so long as their number is reduced below the required quorum, the remaining trustees may only act:
- (a) to increase the number of trustees to the required minimum in terms of clause 12.1; or
 - (b) summon a general meeting for that purpose;
- provided that if no trustee is able or willing to act in this fashion, then any member may convene a general meeting for that purpose.
- 16.5 Anything done in the capacity of a trustee in good faith, by a person who ceases to be a trustee, shall be valid until the fact that he is no longer a trustee has been recorded in the minute book of the committee.

PART 4: THE MEMBERS

17. MEMBERSHIP COMPULSORY

- 17.1 Membership of the association shall be compulsory for every person or entity as described in clause 6 and shall commence simultaneously with registration of transfer of ownership of an erf into the name of the transferee.

- 17.2 Membership of the association shall be limited to the registered owners of the erven provided that:
- (a) a person who is entitled to obtain a certificate of registered title to any such erf shall be deemed to be the registered owner thereof; and
 - (b) where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one member of the association.
- 17.3 The committee shall cause a register to be kept of all members, reflecting their respective addresses nominated in terms of clause 18.2.
- 17.4 The committee may by resolution provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the committee.

18. RIGHTS AND OBLIGATIONS OF MEMBERS

- 18.1 The constitution is binding on members and every member is obliged, to the best of his ability to further the objects and interests of the association and:
- (a) to observe and comply with:
 - the provisions of this constitution, the rules, all security procedures and any agreement concluded by the association insofar as such agreement may directly or indirectly impose obligations on a member;
 - any reasonable written notice, warning and directive given from time to time by the compliance agent in enforcing the provisions of this constitution and the rules;
 - (b) to cause his or their family members, guests, visitors, employees, contractors, occupants or tenants to be aware of and to strictly comply with the rules and ensure that they do not damage or destroy any tree, vegetation and landscaping on common areas.
- 18.2 Each member shall forthwith nominate by written notice delivered to the managing agent:
- (a) a physical address within the Republic of South Africa at which legal process and notices intended for the member may be served; and
 - (b) a postal address, a facsimile number and/ or an email address at which he will receive notices and other communications from the association;

and may similarly withdraw an earlier nomination made by him and make a fresh nomination in terms hereof.

- 18.3 A member shall not be entitled to alienate or transfer an erf unless:
- (a) it is a condition of the alienation and transfer that the transferee becomes a member of the association and that the registration of transfer of that erf into the name of that transferee, shall *ipso facto* constitute the transferee as a member of the association;
 - (b) the alienating member first obtains a clearance certificate signed by the managing agent (to be given provided the member has complied with all his or her obligations in terms of this constitution);
 - (c) the transferee of such erf agrees in writing to abide by the terms of the constitution of the association; and
 - (d) the proposed alienation takes place on terms and conditions (not relating to price) as prescribed by the association and the managing agent.
- 18.4 The rights and obligations of a member shall not be transferable; provided that nothing contained in this constitution shall prevent a member from ceding his or her rights in terms of this constitution as security to the mortgagee of that member's erf.

19. CESSATION OF MEMBERSHIP

- 19.1 No member as contemplated in clause 6 may resign as a member of the association; provided that a member shall *ipso facto* cease to be a member when he ceases to be the registered owner of an erf.
- 19.2 A member ceasing to be a member of the association for any reason and his executor, curator, trustee or liquidator shall not 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 member or his estate any arrears of subscriptions or other sums due by him to the association at the time of his so ceasing to be a member.

PART 5: MEETINGS

20. GENERAL MEETINGS OF ASSOCIATION

- 20.1 The association shall before 30th June in each calendar year, hold a general meeting as its annual general meeting, in addition to any other general meetings, during that year, the first meeting to be scheduled in accordance with the developer's determination made in terms of clause 41.4, and shall specify the meeting as such in the notice as contemplated in clause 24.

- 20.2 Such annual general meeting shall, subject to the provisions of this constitution, be held at such time and place as the committee shall decide from time to time.
- 20.3 In addition to any other matters required in terms of this constitution to be dealt with at an annual general meeting, the following matters shall be dealt with at every such meeting:
- (a) the confirmation of the minutes of the preceding annual general meeting and special general meetings (if any);
 - (b) consideration of the chairperson's annual report to the association;
 - (c) the election of the members as trustees to serve on the committee;
 - (d) consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
 - (e) consideration of the financial statements of the association for the last financial year of the association preceding the date of such meeting;
 - (f) consideration of the report of the auditors and the appointment or re-appointment of auditors;
 - (g) submission, for information, of a schedule of insurance values/covers;
 - (h) presentation, for information purposes only, of a reconciliation by the managing agent reflecting the total of the monthly levies received during the last financial year of the association, as well as expenses funded from such receipts;
 - (i) a budget prepared by the managing agent of the total monthly levies to be payable during the ensuing financial year, as well as the proposed expenditure thereof; and
 - (j) consideration of the total basic levy proposed by the committee or managing agent for the ensuing financial year for the purpose of meeting all the expenses which the association has incurred, or which the committee and/ or managing agent reasonably anticipates the association will incur.

21. SPECIAL MEETINGS OF ASSOCIATION

- 21.1 All general meetings other than annual general meetings shall be called special general meetings.

21.2 The committee may, whenever deemed fit, convene a special general meeting.

21.3 A special general meeting shall be called by the managing agent within 30 (thirty) days of receipt by the managing agent of a requisition signed by not less than 15 (fifteen) members of the association. Such requisition shall state the business to be considered, the detailed reasons for the resolution sought and the wording of any such resolution to be voted upon.

22. MEETINGS OF THE COMMITTEE

22.1 The trustees may meet for the dispatch of business, adjourn and otherwise regulate the committee meetings as they deem fit, subject to the provisions of this constitution.

22.2 Meetings of the committee shall be held at least every quarter, provided that if all the trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the committee need be held for that quarter.

22.3 The chairperson of the committee always has the right to convene meetings thereof in a manner as may be decided by the committee from time to time; and a trustee may, provided he has the support in writing of 2 (two) other trustees, at any time convene a meeting of the committee.

22.4 Save as otherwise provided for herein, the proceedings at any committee meeting shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide.

22.5 A written resolution signed by all the trustees shall be as valid and effectual in all respects as if it had been duly passed at a meeting of the committee duly called and constituted. Such a resolution may consist of one or more documents signed by a trustee or trustees. The trustees shall deliver such written resolution to the managing agent without delay to be recorded in the association's minute book and shall be deemed to have been adopted on the day that it was signed by the last trustee who is entitled to sign.

23. VENUE AND TIME OF MEETINGS

23.1 The annual general meeting and all special general meetings shall be held at such place and time as the committee shall decide from time to time; provided that it shall be held in or within a radius of 30 (thirty) kilometres from the management area.

23.2 The meetings of the committee shall be held at such place and time as the convenor of the meeting shall decide from time to time.

24. NOTICE OF MEETINGS

- 24.1 An annual general meeting and a special general meeting, shall be called by at least 30 (thirty) days' written notice to all trustees and all members entitled to receive notice of such meeting; provided that a general meeting of the association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed by the members entitled to attend and vote at the meeting concerned and being a majority together holding not less than 80% (eighty percent) of the total voting rights of all members.
- 24.2 In each case, the notice required in terms of clause 24.1 shall:
- (a) be exclusive of the day on which it is given; specify the place, the day and the hour of the meeting; and call for nominations for trustees (where applicable);
 - (b) invite written representations regarding any business pertinent to such meeting, including any resolution proposed for adoption by such meeting, to be submitted to the managing agent not less than 14 (fourteen) days before the date scheduled for the annual general meeting;
 - (c) in the case of special business, in addition to any other requirements contained herein, specify the general nature of that business and the reason for it;
 - (d) in the case of a special resolution, specify the terms and effect of the resolution and the reasons for it; and
 - (e) shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the committee to such persons as are in terms of the constitution entitled to receive such notices from the association.
- 24.3 A meeting of the committee shall be called by 14 (fourteen) days' notice in writing at the least, exclusive of the day on which such notice is given, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 24.4 A notice of a meeting shall be in writing and shall be given or served by the association upon each member or the trustees (as the case may be), either personally, by email, facsimile or by post in a prepaid registered letter, properly addressed to the member's address nominated in terms of clause 18.2; provided that if a member fails to promptly make such a nomination when being requested to do so by the managing agent, such failure shall be

regarded as a waiver by the member of his right to receive notice in terms of this constitution.

- 24.5 No member or trustee shall be entitled to have a notice served on him or her at any address not within the Republic of South Africa.
- 24.6 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted to the member's nominated address, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 24.7 Any notice transmitted by email or facsimile to a member's nominated number or address, shall be deemed to have been served at the time of transmission of the facsimile or email.
- 24.8 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this constitution, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

25. QUORUM FOR MEETINGS

- 25.1 No business shall be transacted at any general meeting or committee meeting unless a quorum is present when the meeting proceeds to business.
- 25.2 The quorum necessary for the holding of any general meeting shall, subject to the provisions of clause 25.4, be such of the members entitled to vote, as together for the time being, represent 30% (thirty percent) of the total votes of all members of the association entitled to vote, for the time being; provided that the members representing at least 20% (twenty percent) of the occupied erven must be personally present.
- 25.3 The quorum necessary for the holding of any meeting of the committee shall be 3 (three) trustees.
- 25.4 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the chairperson of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

26. PROCEDURE AT MEETINGS

- 26.1 Voting on the election of a chairperson and vice-chairperson of a general meeting (if necessary) shall be decided by poll.
- 26.2 Save as otherwise provided herein, the chairperson shall preside at all general meetings of the association and the committee, and:
- (a) shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by a general meeting;
 - (b) may allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings;
 - (c) may give reasonable directives to maintain order at meetings and, if a member fails to comply with any such directive, such member shall be compelled to leave the venue where the meeting is held if so required by the chairperson;
 - (d) may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.
- 26.3 Except as otherwise set forth in this constitution:
- (a) all general meetings shall be conducted in accordance with generally accepted practice;
 - (b) the proceedings at any meetings shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide.
- 26.4 Whenever a meeting is adjourned for 10 (ten) days or more, notice of the adjourned meeting shall be given in writing. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

27. VOTING AT MEETINGS

- 27.1 A member may not be present or vote at any meeting, either personally or by proxy, unless he has paid every levy and other sum (if any) which shall be due and payable to the association for more than 30 (thirty) days in respect of or arising out of his membership.

- 27.2 A member trustee shall be disqualified from voting in respect of any contract, litigation or dispute (whether actual or proposed) with the association, by virtue of any interest that he may have therein and shall recuse himself from the room in which the committee meeting is held when the item dealing with such contract, litigation or dispute comes up for discussion.
- 27.3 At any general meeting a resolution put to the vote of the meeting shall be decided by poll.
- 27.4 The managing agent shall be responsible to prepare a sufficient supply of ballot papers for purposes of casting votes in respect of matters put to the vote at general meetings.
- (a) The managing agent shall personalise each ballot paper by writing the name of the member concerned and the erf number on the ballot paper.
- (b) The managing agent shall be responsible for handing out ballot papers only to members or their proxies (as the case may be), entitled to vote.
- 27.5 A member may be represented at a general meeting by a proxy, who need not be a member of the association.
- (a) Any person appointed as proxy may not act as proxy for more than 3 (three) members.
- (b) The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form; provided that, if the member appointing a proxy wishes to instruct the proxy how to vote, he shall include his instructions in the written instrument of appointment; provided further that, in the event of the written instrument of appointment not containing any instructions, the proxy may vote as he thinks fit.
- (c) If a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such member's behalf and, in the event that more than one co-owner has each signed such an instrument appointing different persons, and uncertainty exists as to which proxy is entitled to represent the co-owners, the proxy who is in age the senior shall be regarded as having been duly authorised by the co-owners.
- (d) If a member is a company, any director of that company may represent that company at the general meeting without the need to submit a written proxy; provided however that in the event that more than one director of that company attends the general meeting and uncertainty exists as to which director is empowered to represent the company, only the director that is able to produce an instrument appointing him as proxy, signed by the chairperson of the board of directors of the

company (alternatively by its secretary), shall be regarded as having been duly authorised to represent that company.

- (e) If a member is a trust, any trustee of that trust may represent that trust at the general meeting without the need to submit a written proxy; provided however that in the event that more than one trustee of that trust attends the general meeting and uncertainty exists as to which trustee is empowered to represent the trust, only the trustee that is able to produce an instrument appointing him as proxy, signed by the chairperson of the board of trustees of the trust, shall be regarded as having been duly authorised to represent that trust.
- (f) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited with the managing agent at least 2 (two) working days before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid if received late or after the expiration of 12 (twelve) months from the date of its execution.
- (g) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy; provided that no intimation in writing of the death or revocation shall have been received by the committee at least 1 (one) hour before the time fixed for the holding of the meeting.

27.7 Unless any member present in person or by proxy at a general meeting and entitled to vote shall, before closure of the meeting, have objected to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting or to the propriety of validity of the procedure at such meeting:

- (a) such declaration by the chairperson shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted; and
- (b) an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms to the declaration made by the chairperson of the meeting as to the result of any voting at the meeting.

27.8 At any committee meeting, a resolution put to the vote of the meeting shall be decided on a show of hands.

27.9 The members in general meeting and the committee shall respectively have the right to vary, cancel or modify any of their earlier decisions and resolutions; provided that such power is subject to all restrictions and compliance with all procedural requirements as may in law exist.

28. ORDINARY AND SPECIAL RESOLUTION

28.1 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded shall be deemed not to have been proposed.

28.2 Save as otherwise provided herein, an ordinary resolution (that is a resolution other than a special resolution) and the amendment of an ordinary resolution of the association in general meeting and of the committee and all questions arising at any meeting, shall be carried on a simple majority of members present in person or by proxy, and entitled to vote, together holding not less than 51% (fifty one percent) of the total voting rights of members; and:

(a) an abstention shall not be counted as a vote for or against the resolution in question; and

(b) in the event that co-owners have been unable to agree amongst themselves as to whom shall cast the vote on their behalf, such failure to agree shall be regarded as an abstention for purposes hereof.

28.3 If deadlock is reached on any matter being voted upon, the chairperson shall have a casting vote in addition to his deliberative vote.

28.4 A special resolution shall be required for:

(a) any amendment to this constitution;

(b) material changes to the management area of, intended use of or construction of any improvements on the common areas; and

(c) the sale, letting, alienation, or other disposal of, subdivision, transfer, mortgage or other encumbrance or substantial alteration of the common areas.

29. MINUTES OF MEETINGS

29.1 The trustees shall cause minutes to be kept of every general meeting of the association and of every committee meeting, although not necessarily *verbatim*, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the chairperson of the meeting.

- 29.2 All minutes of meetings shall after certification as aforesaid be placed in a minute book to be kept by the managing agent substantially in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies.
- 29.3 The minute book shall be open for inspection at the office of the managing agent at all reasonable times by the trustee, the auditors and the members.
- 29.4 All competent resolutions recorded in the minutes of a meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the general meeting or committee meeting shall be of any force or effect, or shall be binding upon the members or any of the trustees unless such resolution is competent within the powers of the general meeting or of the committee.

PART 6: FINANCIAL AFFAIRS

30. FINANCIAL YEAR AND AUDIT

- 30.1 The financial year end of the association is the last day of June of each year.
- 30.2 The committee shall cause such accounting records:
- (a) to be kept at the office of the managing agent or at such other place as the trustees deem fit, and such records shall at all reasonable times during normal business hours be open to inspection by the trustees; and
 - (b) to be retained for a period of 6 (six) years after completion of the transaction, act or operation to which they relate.
- 30.3 At least once in every financial 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.
- 30.4 The duties of the auditors shall be regulated in accordance with generally accepted accounting practices and applicable professional standards.

31. ACCOUNTING RECORDS

- 31.1 The trustees shall cause proper accounting records of the association to be kept at the office of the managing agent or at such other place as the trustees deem fit, and such records shall at all reasonable times during normal business hours be open to inspection by the trustees.

- 31.2 The association in general meeting or the committee, may from time to time make reasonable conditions and rules as to the time and manner of the inspection by the members of the accounts and books of the association, or any of them, and subject to such conditions and rules, the accounts and books of the association shall be open to the inspection of members at all reasonable times during normal business hours.
- 31.3 At each annual general meeting the committee shall lay before the association a proper income and expenditure account for the immediately preceding year of the association, or in the case of the first account, for the period since the incorporation of the association, together with a proper balance sheet made up as at the last financial year end of the association.
- 31.4 Every such balance sheet shall be accompanied by proper and extensive reports of the committee and the auditors, and there shall be attached to the notice sent to members convening each annual general meeting copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

32. LEVIES PAYABLE BY MEMBERS

- 32.1 This constitution provides for three types of levies payable by members, namely:
- (a) **basic levies** for the purpose of meeting all the expenses which the association has incurred, or which the trustees reasonably anticipate the association will incur, including but not limited to expenses relating to maintenance, repairs, cleaning, upkeep, renewal, upgrading or improvement of services or common areas, landscaping, provision of security and proper control, insurance, statutory rates, taxes and charges, legal and consultants costs and administrative expenses, the furtherance of the objectives of the association generally, to provide reserves for future expenditure and to comply with the association's obligations in terms hereof;
 - (b) **special levies** to cover any expense or additional expense of the association which, in the sole discretion of the committee, is directly attributable to or increased by the specific use to which any erf, facility or service within the management area is put, to such an extent as to reasonably justify in the opinion of the committee a greater contribution to the relevant expenses than a basic levy; and/or to fund expenses incurred or to be incurred by the association in furtherance of its main business; and
 - (c) **stabilisation levies** based on the open market valuations of rights to erven which are alienated, for purposes of accumulating a capital reserve fund which will only be used to meet the capital expenditure requirements (including the necessary expenditure in relation to the maintenance of capital infrastructure) and not operating expenses of

the association; provided that, at budget time, the annual general meeting may by special resolution make stipulations that a specified percentage of the basic levy increase be subsidised from the stabilisation levy fund.

BASIC LEVIES

- 32.2 The developer shall fix an initial basic levy that shall be due and payable by all members as from date that the association comes into existence until such time as the committee has determined and allocated basic levies as provided for below.
- 32.3 The committee shall, for purposes of determining basic levies, not less than 30 (thirty) days prior to the end of each financial year, prepare and serve upon every member in accordance with clause 24.4, a common budget in reasonable detail of the association's estimated income from proposed basic levies, the projected expenditure in meeting the association's objects for the next financial year and any amounts proposed to be held in reserve in respect of provisions for future maintenance, repairs and capital expenditure. If the committee fails to comply with the time period specified for serving such budget upon members, the association may by special resolution condone the failure of the committee to comply with such time period.
- 32.4 All inputs received from members in respect of the budget before date of the meeting at which the budget will serve, must be taken into consideration by the committee before approving such budget (with or without amendment).
- 32.5 The committee must apportion the budget to the members as basic annual levies.
- (a) The committee's allocation of basic annual levies shall be final and binding on all the members, unless the allocation thereof can be shown to be manifestly incorrect; and
- (b) The basic levy approved by the committee shall remain applicable until such time as the committee introduces a new basic levy.
- 32.6 The developer will not be required to pay any basic or special levies; provided that during the development period, the developer will be responsible for the shortfall on the basic levy budget in accordance with clause 43.1 (a) after all income has been taken into account.
- 32.7 Liability for payment of basic levies to the association shall vest in the individual member concerned.
- 32.8 Basic levies are payable monthly although a member may elect to pay the basic levy for a longer period in advance. Upon taking transfer of an erf the

new owner becomes liable for payment of the basic levies in respect of the unpaid portion of basic levies for the financial year concerned, excluding arrears.

- 32.9 The basic levies shall be payable by members in equal monthly instalments in advance by bank debit order on or before the first day of each and every month into the bank account of the association or by any other means as determined by the committee from time to time.

SPECIAL LEVIES

- 32.10 Any special levy as contemplated in clause 32.1 (b) made and collectable from a member disproportionately or individually, will be levied separately for the account of the member concerned and will be a debt due and payable to the association.

(a) Such special levies shall be apportioned between the members concerned by the committee in an apportionment which the trustees may regard as reasonable, regard being had of the direct benefits which the member(s) may derive from the use of the erf, facility or service or the expense or additional expense contemplated in clause 32.1(b) for which the special levies are imposed and shall be due and payable on the date fixed by the committee.

(b) In the absence of any specific apportionment by the committee special levies (other than to cover emergency expenses) shall be paid by the members concerned equally.

- 32.11 The committee may from time to time impose special levies upon the members or call upon them to make special contributions (in one sum or by such instalments and at such times as the committee shall deem fit) in respect of any expenses or projected expenses reasonably incurred or to be incurred by the association in the furtherance of its main business, not covered by basic levies.

- 32.12 Special levies made in terms of clauses 32.10 and 32.1 (b) shall become due and payable on the date that the committee resolves to impose the special levy and shall be payable by members in one sum or such instalments as the trustees may deem fit.

STABILISATION LEVIES

- 32.13 Every owner of an erf within the management area shall, subject to the further provisions of this clause, be liable to pay the association a stabilisation levy equal to 0.5% (zero comma five percent) of the full open market value of his erf when his erf is sold, alienated, transferred or otherwise disposed of to any person. For purposes hereof:

- (a) any form of disposal or transfer of a shareholder's or members interest in a company or close corporation or beneficial interest in another entity holding ownership of a erf (whether in part or in full) and any alienation of a registrable right of occupation, habitation or usufruct over an erf shall be subject to the stabilisation levy;
- (b) "*full open market value*" means the price at which the erf, shareholder's or member's interest or beneficial interest (as the case may be) is sold, alienated, transferred or otherwise disposed of; provided that where in the opinion of the committee any such transaction is not at arm's-length or amounts to a donation, "*full open market value*" shall mean the actual market value thereof as determined by the auditors;
- (c) the auditors shall make the determination as contemplated in clause 32.13(b) on due consideration of the then prevailing property market conditions and the prices at which similar erven were sold during the 12 (twelve) month period prior to the alienation of the erf being valued; and
- (d) the obligation to pay the stabilisation levy shall be deemed to have accrued prior to transfer of ownership of an erf and accordingly transfer shall be without prejudice to the association's right to recover such stabilisation levy, and interest thereon, after transfer of the erf from the transferor.

32.14 The stabilisation levy shall be payable upon the happening of any of the following events:

- (a) registration of transfer of ownership of an erf in favour of a transferee;
- (b) disposal or transfer of a shareholder's or members interest in a company or close corporation or beneficial interest in another entity holding ownership of a erf;
- (c) registration of a right of occupation, habitation or usufruct over an erf;

provided that such a levy will not be payable in respect of:

- the first transfer of an erf by the developer;
- the transfer of an erf (or interest therein) from a deceased estate to the surviving spouse;

provided further that in the event of a stabilisation levy having to be paid from a deceased estate, the executor of such deceased estate may make written application to the association for consent to delay the payment of such levy until such time as the deceased's estate has been wound-up, which consent may not be unreasonably withheld.

- 32.16 The levy stabilisation fund shall be used exclusively to meet the capital expenditure requirements (including the necessary expenditure in relation to maintenance, upgrade of the communal facilities and capital infrastructure) and thus to contain escalation in the basic levies payable by members, but not for operating expenses of the association, unless a special resolution adopted in a general meeting of the association so directs.
- 32.17 The committee shall be entitled to charge interest on arrear amounts at such rate as it may decide from time to time.

33. INCOME TAX

- 33.1 A primary object of the association is to manage the collective interest common to all its members, which includes expenditure applicable to the common areas, security measures and development control and the collection of levies for which such members are liable.
- 33.2 The income and property of the association whence-so-ever derived from shall, be applied solely towards the promotion of its main objects and, subject to clause 15, no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever, to a member or trustee.
- 33.3 The association may not knowingly be a party to or knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under legislation administered by the Commissioner for the South African Revenue Services.
- 33.4 The association shall submit annual returns of income tax together with financial statements to the relevant department(s) of the South African Revenue Services.
- 33.5 The association is, subject to clause 33.2, not permitted to distribute its funds to any person other than to a similar association of persons and may not make loans or advances to members or trustees. The distributing of funds to a similar association or person may only take place upon authority of a special resolution.
- 33.6 Any amendments to the constitution must forthwith be submitted to the Commissioner for the South African Revenue Services.
- 33.7 The committee must cause all funds of the association not immediately required for monthly disbursements and available for investment to be deposited to the credit of an account with a registered financial institution in the name of the association and, subject to any directive given or restriction

imposed at a general meeting of the association, such monies shall only be withdrawn for the purpose of payment of the expenses of the association or re-investment. Interest on moneys invested shall be used by the association for any lawful purpose in the interest of the association.

PART 7: DEVELOPMENT MANAGEMENT

34. RESTRICTIONS ON DEVELOPMENT

- 34.1 No owner of an erf within the management area may:
- (a) build on his erf, effect any improvement to existing buildings or erect any structure thereon without having obtained the prior written approval of the committee;
 - (b) develop, construct, alter and/ or renovate buildings or structures other than strictly in accordance with the architectural guidelines; or
 - (c) consolidate, subdivide or rezone an erf without the prior written approval of the committee.
- 34.2 All buildings and structures shall be built in a good, proper and workmanlike manner and all erven and improvements thereon shall be kept and maintained in a neat and tidy condition to the satisfaction of the managing agent.
- 34.3 Each owner of an erf within the management area shall be bound by and comply with the conditions for services servitudes which the municipality may impose when approving of the development.

35. ARCHITECTURAL GUIDELINES

- 35.1 The association shall be entitled to:
- (a) frame, implement and enforce architectural guidelines and rules on members in order to harmonise the architectural styles and design criteria of and the materials and colours to be used in all improvements erected within the management area including any refurbishment, alterations or additions thereto;
 - (b) perform such acts as are necessary to accomplish the purposes expressed or implied herein which acts shall include, *inter alia*, the preparation or amendment of architectural guidelines which will form part of the rules, the examination and endorsement of the relevant building plans as necessary for any construction, renovation and/ or alterations within the management area;

- (c) appoint such advisors and a review committee as are necessary to scrutinise and consider the building plans referred to herein; and
 - (d) charge a reasonable scrutiny fee which will have to be paid by every member lodging a plan for approval.
- 35.2 The amount of the scrutiny fee charged in terms of clause 35.1(d) must be commensurate with the extent of the construction to be undertaken in accordance with the plans.
- 35.3 The initial architectural guidelines have been prepared by the developer and are attached to this constitution as Appendix 'A2'.

36. SUBMISSION OF BUILDING PLANS

- 36.1 A member who intends to undertake work as described in clause 34.1 shall apply to the committee for the necessary approval and simultaneously submit detailed plans of the proposed works to the committee or any person nominated by the committee (who may be an architect, registered with the South African Council for the Architectural Profession or the South African Institute of Architects).
- 36.2 If the committee or its nominees is satisfied that:
- (a) the proposed works is appropriate and in conformity with the architectural guidelines and general appearance of the other existing and approved structures erected or to be erected within the management area;
 - (b) the member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the committee or its nominee (such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature); and
 - (c) the member has paid to the committee a builders' deposit as required in terms hereof,
- it shall grant the required written approval of the building plans concerned.
- 36.3 The sub-paragraphs above shall not be interpreted as detracting from the sole and final responsibility of the municipality to approve or refuse approval of the building plans concerned.
- 36.4 Members and owners shall commence with the physical construction of a dwelling on their erf in accordance with the Architectural Guidelines within 3 (three) years of the date of first transfer of the erf from the developer (which transfer may have been taken by a predecessor in title of the owner or member), and will complete the dwelling within 2 (two) years from date of

commencement of such construction activities. In the event the owner or member fails to commence with the construction of the dwelling and/or fails to complete the dwelling within the prescribed time periods then a penalty shall become payable to the association in an amount equal to 3 (three) times the basic monthly levy applicable from time to time for each completed month of non-compliance.

37. BUILDERS RULES AND DEPOSITS

- 37.1 Builders shall comply with King`s View Estate Contractors Rules a copy of which is attached to this constitution which rules may be amended or amplified by the committee from time to time. Members will ensure that the said Builders Rules will be incorporated in all building contracts concluded with any building contractor
- 37.2 A builder's deposit equal to 2.5% (two comma five percent) of the cost of the proposed building as estimated by the committee shall be payable as a "builders' deposit", before a member other than the developer may commence with any building work within the management area.
- 37.3 The committee shall hold such builder's deposit in trust, until the member has completed the approved building works or improvements to the committee's satisfaction and shall invest such deposit in an interest bearing bank account pending completion of such works.
- 37.4 Such deposit shall bear interest from time to time at a rate to be determined by the committee. The deposit (and interest) may be retained by the committee as "rouwkoop" or as a genuine pre-estimate of liquidated damages in the event that the owner or builder breaches any of the provisions of the constitution or rules and may be applied by the managing agent to ensure compliance by the owner and his contractor of their obligations in terms of the constitution and the rules.
- 37.5 The committee shall be entitled to charge a reasonable fee as may be approved by it from time to time, for the removal of building rubble and for supervision of building operations being undertaken within the management area.
- 37.6 Upon completion of the building works concerned, the committee shall, after deduction of all such costs, charges, fees and other amounts that the association may claim or recover in terms of this constitution, release the building deposit to the member concerned if satisfied that:
- (a) no damage has been effected by the member or his contractor to the common areas or any of the landscaped areas within the management area; and

- (b) that the building works have been constructed in accordance with duly approved plans.

PART 8: ENFORCEMENT AND DISPUTE RESOLUTION

38. ENFORCEMENT

38.1 Each owner is vicariously liable for acts or omissions on the part of his family members, tenants, occupants, invitees, visitors, agents, employees, contractors or the like within the management area, whether or not such conduct was prohibited by any understanding, undertaking or contract between the owner and such person; provided that nothing herein contained shall prejudice the right of the compliance agent to take or cause to be taken such steps as provided for below against the person actually committing the breach, as the compliance agent may in its sole discretion deem fit.

38.2 Any person within the management area who:

- (a) contravenes or fails to comply with any provision of this constitution, the architectural guidelines or the rules or any written warning, notice or directive made, given, imposed or issued in terms hereof;
- (b) threatens, resists, hinders or obstructs, or uses foul, abusive or insulting language towards or at the compliance agent, a trustee or an employee or contractor of the association in the exercise of his powers or performance of his duties or functions;

shall be guilty of a punishable offence; and any person who continues to commit an offence after notice has been served on him to cease committing such offence or after he has been penalised for such offence, shall be guilty of a continuing offence.

38.3 The committee may (should it so decide) and the managing agent shall (on its own accord or if so instructed by the committee) investigate any suspected or alleged breach by any offender of this constitution, the architectural guidelines or the rules made in terms thereof, in such reasonable manner as it shall decide from time to time, and take appropriate steps to remedy such breach.

38.4 This constitution provides for different types of action that the compliance agent may in his sole discretion take in the event of an offender committing an offence, having regard to the seriousness of the offence and the prevailing circumstances at the time of committing the offence. The compliance agent may, if he is of the opinion that the conduct of the owner or any other person for whose acts or omissions he is vicariously liable constitutes an offence:

- (a) issue a written notice and warning to an offender calling upon the latter to refrain from specified action or ensuring that those for whose actions

he is held vicariously liable, forthwith discontinue such conduct, failing which a fine may be imposed on him; and/or

- (b) issue a written directive to the offender, calling upon the offender to take specified remedial action; and/or
- (c) impose a penalty and/or implement procedures to impose penalties in terms of this constitution (e.g. require the offender to appear before the committee); and/or
- (d) give effect to the terms of such written notices and directives at the offender's cost; and/or
- (e) institute legal proceedings against the offender and/or any other person which the compliance agent believes may be held answerable by a court of law for such person's conduct within the management area; and/or
- (f) recover all costs reasonably incurred in the above regard from the owner and/or such other persons contemplated above and recover damages; and/or
- (g) refuse a contractor and/or other offenders access to the management area.

38.5 Any written warning, notice or directive issued or given in terms of clause 38.4 shall:

- (a) adequately describe the particular conduct which allegedly constitutes an offence;
- (b) clearly state the clause number of the constitution, the paragraph number of the architectural guideline or the rule number that has allegedly been contravened;
- (c) stipulate the steps which must be taken to remedy the situation, when such steps should commence and a reasonable period (not exceeding one month) for it to be completed.

38.6 The committee shall annually determine as a guideline the amount of the initial and subsequent penalties to be imposed in respect of various offences (including continuous offences, in respect of which a stipulated fine for each day on which such offence continues, shall be payable); provided that the compliance agent may, if in his opinion special circumstances warrant it, impose a penalty for a lower or higher figure.

38.7 If the compliance agent by written notice requires the offender (and in the event that the offender is not an owner, the owner concerned) to appear before the committee:

- (a) the notice requiring the offender's appearance before the committee must be delivered or transmitted to the owner concerned at least 7 (seven) days before the meeting is to be held, must inform him that a meeting will be held at a date, time and venue specified in such notice and for the purpose of conducting a hearing into an alleged offence (the particulars of which must be specified); and inviting him to attend such meeting;
- (b) the committee may conduct a hearing into the matter, must give the offender (if he is in attendance) a reasonable opportunity to present his case, orally or by way of submission in writing, but except insofar as he may be permitted by the chairperson, he may not participate in the affairs and/or voting at the meeting;
- (c) the committee may make findings of fact as to whether or not an offence has been committed, decide *inter alia* whether the offender should be penalised for the offence and, if so, whether special circumstances warrant a deviation from the guideline referred to in clause 38.6.

38.8 In the event that a penalty is imposed on an owner in respect of building work undertaken by him or on his behalf, such penalty shall be deducted from the builders deposit (if available) and in the event that there is no builder's deposit or that it is insufficient, building work may not be proceeded with until such time as the penalty imposed has been paid in full and the builder's deposit has been restored to the required level.

38.9 If the owner concerned fails to fully comply with the requirements stipulated in a directive as contemplated above, then and in such event the compliance agent shall be entitled, without prejudice to any other rights or remedies which the association may have in law or in terms of this constitution to take such action as may reasonably be required to remedy such breach, in which event it shall be deemed that the owner concerned has consented to the association's appointed contractor to enter upon that owner's property and to undertake the necessary work and the such owner shall be liable to the association for all costs so incurred, which costs shall be due and payable upon demand.

38.10 If any building or structure is erected in contravention of the constitution or the architectural guidelines, the association shall be entitled to demolish such building or structure and claim all costs associated therewith from the owner of the erf on which the building or structure was erected. Such owner shall be liable for all costs and other expenses that the association may incur in this regard (including but not limited to legal costs incurred to obtain an appropriate court order and the cost of demolition).

38.11 In the event that any landscaped areas have been damaged due to an owner's building activities, the owner concerned shall, within 14 (fourteen) days

of having been requested to do so in writing by the managing agent, have the damage repaired to the satisfaction of the managing agent, failing which the managing agent shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the committee as a building deposit shall then be utilised to defray the expenses of the independent contractor. Should the damage caused by the owner or his contractor be such that the deposit is not sufficient to cover the costs of the repairs thereof, the claim of the committee against the owner shall not be limited to the amount of the said deposit.

38.12 The committee or, if authorised thereto by the committee, the managing agent may institute legal proceedings in a court of competent jurisdiction against an offender for performance of his obligations in terms of this constitution or to obtain compliance with any rules and guidelines made hereunder, or against an owner and/or member who fails to pay on due date any amount due by him in terms of this constitution or any rules made hereunder and remain in default for more than 7 (seven) days after being notified in writing to do so by the managing agent.

(a) Such action shall be instituted in the name of the association and the managing agent may for this purpose appoint such attorneys and counsel as it may deem fit.

(b) A letter signed by the chairperson of the committee confirming the authority of the managing agent to institute legal proceedings shall be sufficient proof of such authority to institute the legal proceedings concerned.

(c) Should the managing agent institute any legal proceedings against any owner pursuant to a breach by the latter of this constitution or any rules made hereunder or for failure to pay levies or any other amounts due in terms hereof, then without prejudice to any other rights which the association may have, the managing agent shall be entitled on behalf of the association to recover from such owner all legal costs (i.e. on an attorney-client scale), collection commission, expenses and other charges (administrative or otherwise) incurred by the association relating to the recovery of arrear levies or any other arrear amounts due to it, or in enforcing compliance with this constitution or the rules, with interest at the standard rate of interest.

38.13 Each owner and member is deemed, by virtue of his ownership and/or membership, to have consented to the jurisdiction of the Magistrate's Court in the event of any dispute or matter arising out of or relating to any aspect of such ownership or membership or any offence which he has committed or for which he is vicariously liable, notwithstanding the fact that the amount in dispute may exceed the jurisdiction of such Court. Such consent shall not derogate from the right of any person to approach the appropriate Division of the High Court of South Africa, for the necessary relief.

38.14 In the event that anyone employed by an owner repeatedly fails to comply with a written directive issued by the managing agent requiring compliance with the constitution or the rules, the managing agent shall be entitled to refuse the person concerned access to the management area and may take such other steps as may be authorised in terms hereof or in terms of the rules.

38.15 No extension of time or indulgence which the association may grant anyone shall be deemed in any way to affect, prejudice or derogate from the rights of the association in any respect under this clause 38, nor shall it in any way be regarded as a waiver of any rights hereunder.

39. DISPUTE RESOLUTION

39.1 For the purposes of this constitution, the term "dispute" will be interpreted in its widest sense and shall include any dispute or difference in connection with or in respect of the existence of the association or the constitution, the carrying into effect of this constitution, the interpretation or application of the provisions of this constitution, the respective rights and obligations of the developer and members in terms of and arising out of this constitution, including also (but not limited in any manner whatsoever) the right to claim payment of any amounts payable in accordance with the provisions of this constitution, the determination of any amounts payable, and to claim payment of recoveries.

39.2 On a dispute arising, the party wishing to have the dispute determined must notify the other party thereof in writing. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute for determination in accordance with the further provisions of this clause.

39.3 Subject to the provisions of clause 39.2 any dispute, question or difference arising at any time between an owner or member (on the one side) and the trustees (on the other side) out of or in regard to:

- (a) any matters arising out of this constitution or a breach thereof;
- (b) the rights and duties of any of the parties mentioned in this constitution;
- (c) the manner in which the trustees calculate or allocate the levy amongst members;
- (d) the valuation procured by the committee for purposes of clause 32.13;
- (e) the accuracy of any vote count at a meeting of the association;
- (f) the interpretation of this constitution: or

- (g) an alleged breach of the constitution or rules (*save for non-payment of levies or any other amount due by members in terms of the constitution*);

shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question; provided, however:

- that in respect of any claim arising from non-payment of levies or any other amount due by an owner or member to the association in terms of this constitution, the association and committee shall continue to enjoy common law rights and shall not be precluded from instituting proceedings in any court of competent jurisdiction;
- notwithstanding anything to the contrary hereinbefore contained, the committee shall be entitled to institute legal proceedings on behalf of the association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of the provisions of this constitution, the rules or architectural guidelines, or for an order of an urgent nature;
- that disputes relating to fines and penalties imposed shall not be subject to arbitration.

39.4 Arbitration shall be held in the Stellenbosch area informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 it being intended that if possible it shall be held and concluded within 30 (thirty) days after it has been demanded.

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

- (a) primarily an accounting matter – an independent accountant;
- (b) primarily a legal matter – a practising counsel or attorney of not less than 10 (ten) years standing;
- (c) any other matter – an independent and suitably qualified person appointed by the Auditors;

as may be agreed upon between the parties to the dispute.

39.6 If agreement cannot be reached on whether the question in dispute falls under sub-clauses 39.5 (a), (b) or (c) or upon a particular arbitrator in terms of clause 39.5, within 3 (three) days after the arbitration has been demanded, then:

- (a) the President for the time being of the Law Society of the Cape shall determine under which sub-clause the question in dispute falls; or

- (b) the President for the time being of the Law Society of the Cape shall nominate the arbitrator in terms of this clause within 7 (seven) business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 30 (thirty) days referred to above.
- 39.7 The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this constitution.
- 39.8 The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the association as he in his sole discretion may deem fit.
- 39.9 The decision of the arbitrator shall be final and binding and may be made an Order of the Western Cape High Court upon the application of any party to the arbitration.

PART 9: DEVELOPER'S POWERS, DUTIES AND EXEMPTIONS

40. ENTRENCHED PROVISIONS

- 40.1 The development requires a substantial financial investment on the part of the developer and the developer shall during the development period be exposed to all the risks involved in ventures of this nature. The developer therefore has a continuing and permanent interest in ensuring that certain provisions are entrenched for purposes of ensuring the success of the development. Accordingly, notwithstanding anything to the contrary herein contained, none of the following provisions may be deleted, amended or varied in any way during the development period without the prior written consent of the developer:
- (a) No member shall be entitled to object to the subdivision and/or development of any part of the development during the development period; provided that such subdivision and/ or development proposal is not inconsistent with the development plan approved by the municipality for the development.
 - (b) No erf shall be subdivided or rezoned, and no erven shall be consolidated, during the development period without the prior written consent of the developer and, after termination of the development period, without the prior written consent of the association.
 - (c) No levies may be imposed during the development period without the prior written approval of the developer.

- (d) The developer may during the development period assign parts of the common areas for the purposes of parking of vehicles.
- (e) The provisions of this clause 40.1 and clauses 41, 42 and 43.

41. DEVELOPER'S POWERS & DUTIES

- 41.1 The developer shall, during the development period, be empowered to perform and have all the powers, functions and duties of the association and committee in terms of this constitution.
- 41.2 The developer is hereby authorised to open a banking account with a registered financial institution of the developer's choice in the name of the association.
- 41.3 The developer is empowered to make rules as contemplated in clause 14.4, which rules shall remain in place until repealed, replaced or amended by the association or committee in terms hereof.
- 41.4 The association shall within the time period stipulated in the conditions of approval and at the date, venue and time determined by the developer hold its first annual general meeting, provided that such date of first annual general meeting shall not be later than 60 (sixty) days from the end of the development period.
- 41.5 The developer shall for the duration of the development period enjoy unrestricted rights with regard to the marketing of the development and, in particular, the right to erect signage within the management area and to perform all activities normally associated with development and building operations in a reasonable manner.
- 41.6 It is recorded that the water from the existing borehole on the common area shall be utilized for use on all common areas within the development and that the developer shall provide at its costs an electrical pump for extraction purposes in this regard. The developer shall, where applicable and free of consideration, transfer ownership of the common areas to the association. Upon registration of such transfer the risk in and of the common areas shall pass to the association and the association shall become responsible for the maintenance and upkeep thereof and for any improvements thereon as well as for the rates and taxes and all charges attaching thereto.
- 41.7 The developer may appoint the association's first managing agent for a period of 5 (five) years, subject to incorporating conditions in the contract of employment as contemplated in clause 10.4 and provided that the 1 (one) year restriction shall not apply in respect of an appointment made by the developer. The developer shall notify the managing agent in writing of the appointment made in terms hereof.

41.9 During the period that the developer performs the powers, functions and duties of the committee and association as aforesaid, the developer's decision as to the levies payable and the allocation thereof to members shall be final and binding on all the members, unless the calculation or allocation thereof can be shown to be manifestly unjust or incorrect.

41.10 During the development period:

- the developer may register servitudes within the management area in favour of any statutory authority, the developer and/or the association, whether across common areas or erf held under full title, in order to comply with conditions of approval or where required for purposes of the development;
- all levies and expenditure of the association will be set by the developer;
- the developer will make all new rules or amend existing rules.

42. TRANSITION FROM DEVELOPER TO ASSOCIATION

The responsibility for the day-to-day management of the association's affairs shall, subject to such restrictions as may be contained in this constitution, automatically be transferred from the developer to the association on date that the first trustees are elected to serve on the committee; provided that if the facilities on the common areas transferred are incomplete at the date of transfer, the developer shall retain responsibility for the completion thereof, which it shall undertake as soon as practically possible.

43. EXEMPTIONS

43.1 Notwithstanding anything to the contrary herein contained the developer shall not:

- (a) be liable to contribute towards or pay any basic or special levies payable by members in terms of this constitution in respect of unsold erven; provided however that during the development period the developer shall pay the shortfall between the income derived from levies paid by other owners in terms of this constitution and all income from other sources; and the actual expenditure of the association in accordance with the association's approved budget;
- (b) be required to submit building plans for scrutiny, obtain building plan approval or approval to commence with any form of building work within the management area as otherwise required in terms of this constitution; provided, however, that the developer shall be obliged to ensure that the plans of all buildings within the management area proposed by the developer comply with the architectural guidelines;

(c) be required to pay any scrutiny fee or builder's deposit as contemplated in clauses 35.1 (d) and 37.

43.2 Notwithstanding anything to the contrary herein contained, the developer shall until the first trustees have been appointed to the committee be empowered to:

(a) sell, let, alienate, transfer or dispose of and to subdivide, mortgage or otherwise encumber the common areas;

(b) amend the approved township layout of the development; and

(c) amend the rules and architectural guidelines.

43.3 In the event of a conflict between the provisions contained in Part 9 of this constitution and any other provisions therein contained, the provisions of this Part shall prevail.

PART 10: WINDING-UP

44. LIMITATION ON DISTRIBUTION OF PROFITS

Notwithstanding anything to the contrary contained in this constitution, the association shall not be permitted to distribute any of its profits or gains to any person and shall utilise its funds solely for the advancement of the objects for which it has been established.

45. DISSOLUTION

Subject to Section 30 of the By Law, on dissolution of the association the remaining assets of the association must be distributed to a similar associations of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act, 1962.

PART 11: APPENDICES

- A1 Locality Plan of the Development and Management Area
- A2 Architectural Guidelines