



CONSTITUTION

OF

THE MASTER HOME OWNERS' ASSOCIATION

OF

SITARI COUNTRY ESTATE

A statutory Body Corporate established in terms of Chapter 6, Part 5, Section 61 of the City of
Cape Town Municipal Planning By-Law, 2015
10 October 2016

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1. ESTABLISHMENT IN TERMS OF STATUTE

The Association is constituted as a legal persona in terms of Chapter 6, Part 5, Section 61 of the MPBL in accordance with the conditions imposed by the Developer and the Local Authority, when approving the development rights pertaining to the Parent Property in terms of Sections 25(1) and 42 of LUPO.

2. DEFINITIONS AND INTERPRETATION

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

21.1 "Access Procedure: mean the procedure to be followed, upon the circumstances as provided for in terms of this Constitution and/or the Governing Rules, which procedure will be determined as part of the Governing Rules;

212 "A&D Guidelines" means the architectural and design guidelines relating to the design and construction requirements prepared for and applicable to the Estate, as contemplated in the Governing Rules, including the Landscape Guidelines, that will be applicable from time to time, which guidelines may be amended from time to time in accordance with the provisions of this Constitution and/or the C&O Manual;

- 213 "AGM" means the Annual General Meeting of the Association held in terms of the provisions of this Constitution;
- 214 "Association" means the ***Sitari Country Estate Master Home Owners Association***, an association not for gain, constituted in terms hereof (also known as SCEMHOA);
- 215 "Auditors" means the Auditors of the Association appointed by the Developer during the Development Period and thereafter by the Board, from time to time;
- 216 "Board" means the Trustees assembled as a Board, at which a quorum is present;
- 217 "Chairperson" means the Chairperson of the Board and the Association, from time to time;
- 218 "Clear Days" means in a computation of days, the exclusion of the first and last day of the period to be calculated;
- 219 "Common Property" means, in relation to a Sectional Title Development, the land included in the scheme and such parts of the building or buildings that are not included in a Section;

21.10 "Communal Property"

means collectively, all Private Roads, Private Open Spaces, and specifically includes any roads, buildings, infrastructure, and facilities which are or will be located on the Parent Property and owned, controlled, and managed by the Association, from time to time, for the benefit of, inter alia, the Association, its Members and the Sub-Members;

21.11 "Constitution"

means the Constitution of the Sitari Country Estate Master Home Owners' Association, set out in this document, and as may be amended, from time to time in terms of the provisions hereof;

21.12 "C&O Manual"

means the Construction and Operational Manual, incorporating the Sitari Country Estate Site Building Regulations, approved by the Developer and the Local Authority, controlling and regulating all construction and operations within the Estate;

21.13 "Developer"

means Sitari Country Estate (Pty) Limited (Reg. No. 2007/033501/07), its respective successors-in-title or assigns;

21.14 "Development"

means development, being conducted on the Parent Property or any portion thereof, indicated as such on the SDP;

- 21.15 "Development Controls" means the Development Controls prescribed by the Developer and the Local Authority, including the zoning rights pertaining to the Parent Property, the Development Plan and the conditions of approval relating to the zoning rights and the subdivision of the Parent Property as may have been issued by any relevant authority;
- 21.16 "Development Period" means the period from the date of establishment of the Association until all the Land Units situated on the Parent Property have been transferred from the Developer and/or improved by the Developer, or, until the Developer notifies the Association in writing that the Development Period has ceased, whichever event occurs first;
- 21.17 "Development Plan" means the Master Plan for the development of the Estate, approved by the Local Authority, attached hereto as Annexure C;
- 21.18 "Development Rights" means all the Development Rights granted to the Developer by all relevant authorities to enable the Developer to develop the Estate, including the Development Controls;
- 21.19 "Dwelling" means the construction of a Building on an Erf suitable for occupation and use for residential purposes by natural persons;

2120	"EA"	means the Environmental Authorization approved in terms of the National Environmental Management Act, 1998, Act Number 107/1998, and the Environmental Impact Assessment Regulations of 2010 on the 10 th of December 2014 under reference Number: 16/3/1/5/A3/9/2104/14 by the Department of Environmental Affairs and Development Planning of the Western Cape Government in the name of and in favour of the Developer;
2121	"EMP"	means the Environmental Management Plan approved by all relevant authorities;
2122	"Erf/Erven"	means any Erf created by the subdivision of the Parent Property, as indicated on the SDP, or any amendments thereto, but excluding the Institutional Erven and Communal Property;
2123	"ESKOM"	means Eskom Holdings SOC Limited, Registration Number: 2002/015527/06;
2124	"Estate"	means the Sitari Country Estate, being the township to be established by the Developer on the Parent Property;
2125	"Estate Manager"	means the Estate Manager appointed by the Developer, during the Development Period and thereafter by the Board, with the functions and duties as may be ascribed to the Estate

Manager by the Developer, during the Development Period, and thereafter, by the Board;

2126 "Financial Year"

means the Financial Year of the Association which shall run from the first day of the month following the first registration of transfer of a Land Unit in favour of an Owner until the last day of February and thereafter from the first day of March in each year until the last day of February in the subsequent year;

2127 "GDP"

means the Gated Development Policy approved by the Local Authority by virtue of Resolution SPPLAN 03/11/07 on the 28th of November 2007;

2128 "General Plan"

means the General Plans in respect of the Parent Property, providing for the subdivisions thereof, approved by the Surveyor General;

2129 "GM"

means a collective reference to the AGM and all SGM's;

2130 "Governing Rules"

means the Governing Rules to govern, amplify and/or implement the provisions of this Constitution, to be drafted and approved by the Developer and implemented by the Association, which Governing Rules will, as far as any Body Corporate is concerned, deemed to be including and M&C Rules;

2131	"H&S Legislation"	means all applicable Health and Safety Legislation and Regulations in terms of the South African legislation and precedent law;
2132	"Institutional Erven"	means any subdivision of the Parent Property zoned for institutional, commercial (excluding the Retail Schemes), retirement village or religious purposes and indicated as such on the SDP or for the use of ESKOM (who will be the registered owner of such a Land Unit);
2133	"Land Unit(s)"	means any subdivided portion of the Parent Property registered or capable of being registered as a separate Erf or Section in the Cape Town Deeds Registry;
2134	"Levy/Levies"	means the Levies imposed, calculated and payable in terms of the provisions of this Constitution and more specifically, but not limited to, Clause 10, but excluding any Special Levies;
2135	"Local Authority"	means the Local Authority having jurisdiction over the Estate, being the City of Cape Town or its successors in title;
2136	"LUPO"	means the Land Use Planning Ordinance 15 of 1985, Western Cape, as amended, and includes any subsequent Planning Legislation;

2137	"M&C Rules'	means the Management and Conduct Rules as provided for in the Sectional Titles Act, approved by the Developer, during the Development Period, and thereafter by the Board, in respect of each Sectional Title Development forming a part of the Estate, as such deemed to be incorporated into the Governing Rules;
2138	"Management Company"	means any person or entity appointed by the Developer, during the Development Period, and thereafter by the Board, as an independent contractor to undertake any or all of the management functions of the Association, any Sub-Association and/or Body Corporate, subject to and in terms of the provisions of this Constitution;
2139	"Member"	means a Member of the Association as provided for in Clause 5 of this Constitution;
2140	"MPBL"	means the City of Cape Town Municipal Planning By-Law, 2015, published in Provincial Gazette Extraordinary 7414 of the 29 th of June 2015, as amended;
2141	"Occupant"	means any person/s occupying an Erf, Section, Dwelling or any improvements or structures thereon;

- 2142 "Office" means the registered office of the Association, being the physical address of the Management Company, from time to time;
- 2143 "Ordinary Resolution" means a resolution taken at any meeting, where a quorum is present, by more than 50% (Fifty) of the Members of the Association present in that meeting, personally or by means of a proxy, and entitled to vote at such a meeting in terms of the provisions of this Constitution;
- 2144 "Owner" means the registered Owner of a Land Unit and as such a member of a Sub-Association or a Body Corporate, as the case may be;
- 2145 "Parent Property" means the land approved for development by the Local Authority, being Erf 1 Sitari, City of Cape Town, Western Cape Province upon which the Estate will be developed by the Developer in terms of and subject to the Development Rights;
- 2146 "Phasing Plan" means the Phasing Plan, indicating the phases in which the Parent Property will be developed by the Developer, attached hereto as Annexure B;

- 2147 "Planning Legislation" means, collectively, the Western Cape Land Use Planning Act, Act Number 3 of 2014, the Western Cape Land Use Regulations, 2015, the MPBL and the Spatial Planning and Land Use Management Act, Act Number 16 of 2013;
- 2148 "Power Lines" means the electrical Power Lines servitudes registered over the Parent Property, including the servitude corridors, which Power Lines are managed and controlled by ESKOM and the Local Authority, as the case may be, and are indicated as such on the Servitude Plan, attached hereto as Annexure D;
- 2149 "Prime Rate" means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (Three Hundred and Sixty Five) day year irrespective of whether or not the year is a leap year, from time to time published by Nedbank Bank Limited as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;

- 21.50 "Private Open Spaces" means all the Private Open Spaces, indicated as such on the SDP, which Private Open Spaces, will be registered in the name of the Association in the Cape Town Deeds Registry and which Private Open Spaces will, as such, become the responsibility of the Association;
- 21.51 "Private Roads" means the Private Roads, indicated as such on the SDP, that will be transferred in favour of the Association in the Cape Town Deeds Registry, and will, as such, become the responsibility of the Association;
- 21.52 "Professional Trustee" means a Professional Trustee, nominated by the Developer during the Development Period, and thereafter by the Board, which Professional Trustee must be nominated and co-opted to the Board for his specific level of skill, expertise, knowledge of the Estate and experience in his field of qualification;
- 21.53 "Purchaser" means any person or entity that enters into an Agreement of Sale with the Developer in respect of a Land Unit during the Development Period and/or during the Restriction Period, whichever date is the latest;
- 21.54 "Public Roads" means the Public Roads indicated as such on the relevant General Plan;

- 2155 "Restriction Period" means a period of 5 (Five) years after the date of registration of transfer of any Land Unit in favour of a Purchaser or a Third Party Purchaser, as the case may be;
- 2156 "Retail Schemes" means Erf Numbers: 557, 556 (Parking), 796, 797, 268 (Parking), 295 (Parking) and 265 (Parking) and 298 (Parking) Sitari, indicated as such on the SDP and the relevant General Plan, which Erven will be developed for retail or office purposes;
- 2157 "SAC" means the constitution of any Sub-Association, approved by the Developer, during the Development Period, and thereafter, the Board, which constitution may never conflict or alter any provisions of this Constitution and the Governing Rules or any of the documents referred or guidelines referred to in this Constitution or the Governing Rules;
- 2158 "SDP" means the subdivision plan approved by the Local Authority in respect of Stage 1 and Stage 2, attached hereto as Annexure A;
- 2159 "Section" means any Section as defined in the Sectional Titles Act;
- 2160 "Sectional Titles Act" means the Sectional Titles Act, Act Number 95/1986, as amended;

- 21.61 "Sectional Title Development" means the development of an Erf in terms of and subject the provisions of the Sectional Titles Act;
- 21.62 "Security Protocol" means the Security protocol, governing all aspects of the security of the Estate, Owners and Occupants, which protocol will be part of and drafted and approved in terms of the Governing Rules;
- 21.63 "Services" means such infrastructural utilities, amenities, internal engineering services structures or improvements to be provided and/or installed on the Parent Property by the Developer, the Association or the Local Authority, as the case may be;
- 21.64 "Special Levy" means any Special Levy/Levies imposed by the Developer, during the Development Period, and thereafter by the Board, over and above the Levies as referred to in Clause 10, but also calculated and payable in terms of the provision of Clause 10;
- 21.65 "Special Resolution" means a resolution passed at a Special GM of which not less than 21 (Twenty One) Clear Days' notice has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it, and passed,

on a show of hands, by not less than 75% (Seventy Five) of the total number of Members or Sub-Members, as the case may be, present at the meeting who, at minimum, form a quorum for a GM;

21.66 "SPM"

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

21.67 "Stage 1"

means the development to be established on a portion of the Parent Property, being the first stage of the Estate, as indicated on the Stage 1 site development plan, attached hereto as Annexure E;

21.68 "Stage 2"

means the development of the Parent Property, excluding Stage 1, as indicated on the Stage 2 site development plan, attached hereto as Annexure F;

21.69 "Sub- Association"

means any Sub-Home Owners Association in respect of any subdivided portion of the Parent Property, which Sub-Association will be a Member of the Association, for the purposes of which the following have been grouped together:

2.1.69.1 Phase 1A: Erf Numbers: 32 – 48; 50 – 78; 92; 130 – 131; 145 – 147; 225; 236 – 238; 244 – 265; 268 – 295; 298 – 318; 353 – 402; 409 – 413; 581 – 588; 667 – 668; 670; 727 – 728; 739 – 748; 763; 796 – 797;

2.1.69.2 Phase 1B: Erf Numbers: 17 – 31; 79 – 91; 93 – 129; 133 – 144; 148 – 151; 158 – 165; 224; 589 – 666; 671 – 675; 682 – 684; 694 – 696; 715; 726; 729 – 730; 735 – 738; 761 – 762;

2.1.69.3 Phase 1C: Erf Numbers: 4 – 16; 152 – 157; 166 – 223; 226 – 235; 239 – 243; 669; 676 – 681; 685 – 693; 697 – 714; 716 – 725; 731 – 734; 760;

2.1.69.4 Phase 1D: Erf Numbers: 319 – 352; 403 – 408; 414 – 580 and 749 – 759;

2.1.69.5 Phase 2A(i): Erf Numbers: 799 – 808; 912 – 914; 916 – 918; 1004 – 1005;

2.1.69.6 Phase 2A(ii): Erf Numbers: 809 – 911; 915; 919 – 1003; 1006 – 1010;

2.1.69.7 Phase 2B(i): Erf Numbers: 1020 – 1029; 1191 – 1193; 1196 – 1198; 1395; 1171;

2.1.69.8 Phase 2B(ii): Erf Numbers: 1030 – 1170; 1172 – 1175;

2.1.69.9 Phase 2C:	Erf Numbers: 1194 – 1195; 1396 – 1400; 1199 – 1394;
2.1.69.10 Phase 2D:	Erf Numbers: 1402 – 1711;
2.1.69.11 Phase 2E:	Erf Numbers: 1176 – 1184;
2.1.69.12 Phase 2F:	Erf Numbers: 1185 – 1186;
2.1.69.13 Phase 2G:	Erf Numbers: 791, 792, 294 and 795.
21.70 “Sub-Members”	means each and every Owner of a Land Unit, from time to time, collectively forming the Sub-Associations and which Sub-Associations have been grouped together as per Clause 2.1.71 of this Constitution;
21.71 “SWMP”	means the approved Stormwater Management Plan, including the Stormwater Maintenance Plan, to be approved by the Local Authority;
21.72 “Third Party Purchaser”	means any person or entity that enters into an Agreement of Sale with a Purchaser of a Land Unit before date of registration of transfer of such a Land Unit in favour of such a Purchaser or with an Owner during the Development Period and/or during the Restriction Period, whichever date is the latest;

- 21.73 "Trademark" means the trademark "Sitari" and all other trademarks owned and/or used by the Association, from time to time, whether registered or unregistered;
- 21.74 "Trustees" means the Trustees, from time to time, of the Association, including the Professional Trustees and the Estate Manager as provided for in terms of the provisions of this Constitution;
- 21.75 "Unanimous Resolution" means a resolution passed unanimously by all the Members, who are present or represented by proxy or by a representative recognized by law at a GM of the Association of which at least 21 (Twenty One) Clear Days' notice, specifying the proposed Unanimous Resolution, has been given, and at which meeting at least 80% (Eighty) of all the Members or Sub-Members are present or represented, or agreed to in writing by all the Members of the Association personally or by proxy or by a representative of any such Member recognized by law;
- 21.76 "Wetland" means the environmentally sensitive areas designated for use as a wetland, indicated as such in the EA and on the SDP, including the canal system and all ponds relating thereto;

21.77 “WUL”

means the Water Use License issued by the Department of Water Affairs, Republic of South Africa, in terms of Chapter 4 of the National Water Act, 1998, Act Number 36 of 1998, under License Number: 19/G22H/CEGI/3370, File Number: 27/2/2/G822/3/4.

22 Any reference to natural persons includes artificial persons and vice versa.

23 Any reference to a gender includes the other genders (including neuter).

24 Any reference to the singular includes the plural and vice versa.

25 The Clause heading in this Constitution have been inserted for convenience only and shall not be taken into account in its interpretation.

26 Words and expressions defined in any sub-Clause shall, for the purpose of the Clause of which that sub-Clause forms part, bear the meaning assigned to such words and expressions in such sub-Clause.

27 No provision of this Constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.

28 This Constitution shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the Association and every Member consent to the jurisdiction of any competent court of the Republic of South Africa, for the purposes of any proceedings instituted in connection with this Constitution.

3. THE MAIN BUSINESS OF THE ASSOCIATION

- 31 The main business of the Association is to manage and control the promotion, enhancement and protection of the Members and the Sub-Members and to manage, control and regulate the Estate to the best advantage of the Members and the Sub-Members.
- 32 In order for the Association to qualify for exemption in respect of the income received by the Association from the Levies and Special Levies or other sources in terms of Section 10(1)(e)(iii) of the Income Tax Act, the following conditions shall apply:
- 321 the main objective of the Association is to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property, Communal Property of the Association, any Sub-Association or Body Corporate, as the case may be, and the collection of Levies and Special Levies for which such Member/Owner is liable;
- 322 the Association is not permitted to distribute its funds to any person other than to a similar association of persons;
- 323 on dissolution, the remaining assets of the Association must be distributed to a similar association of persons, which is also exempt from Income Tax in terms of section 10(1)(e)(iii) of the Income Tax Act.
- 324 funds available for investment may only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, and in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985, (Act No. 1 of 1985);
- 325 the Association may not be a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or

scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner for the South African Revenue Services;

326 must submit annual returns of income together with financial statements to the South African Revenue Services, Cape Town.

4. MAIN OBJECTIVES OF THE ASSOCIATION

4.1 The main objectives of the Association are as follows:

4.1.1 to enforce the provisions of this Constitution;

4.1.2 to oversee, regulate and control the harmonious development of the Estate as a GDP and to ensure and promote the general high standard of the Estate;

4.1.3 to oversee, regulate and control the Association's ownership of private open space, private streets and internal engineering services arising out of any subdivision;

4.1.4 where relevant, oversee, regulate, and control any further development which must form part of the Association and the procedures for incorporating the development of the Estate;

4.1.5 to continuously ensure compliance with the requirements of the GDP;

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

- 4.1.7 to institute, control and pay for measures relating to the security of the Members, Sub-Members and the Estate;
- 4.1.8 to promote, advance, and control the communal interests of Members, Sub-Members and Occupants;
- 4.1.9 to acquire and grant servitudes;
- 4.1.10 to control the nature and position of buildings, structures, installations and equipment relating to the Land Units and to ensure compliance with the A&D Guidelines, the Governing Rules and any other control measures in respect of the Estate required by law or document;
- 4.1.11 to control and ensure compliance with the approved Landscape Plan including the landscaping on Common Property, Communal Property, Private Open Spaces, Private Roads and around verges and entrances;
- 4.1.12 to take action including the imposition of fines, or the institution of proceedings in a Court of Law, as may be deemed fit by the Board, in relation to the non-compliance by any Member/Owner/Occupant of any of the requirements of this Constitution and/or the Governing Rules;
- 4.1.13 to enter into and to implement any contract relating to the EA, the EMP, the Development Controls and the conditions of establishment of the Estate, and to incur any costs in this regard, it being recorded that the Association will be bound by any contracts concluded by the Developer on behalf of the Association and or Management Company, either before or after the date of approval of this Constitution by the Local Authority;
- 4.1.14 to approve the SAC, the Governing Rules and the M&C Rules;

- 4.1.15 to control the aesthetic appearance of the Land Units, including any improvements thereon;
 - 4.1.16 the promotion of environmental awareness and responsibility amongst Members;
 - 4.1.17 to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the Estate;
 - 4.1.18 to maintain the Services, the Private Open Spaces, Private Roads and gardens, at the costs of the Association;
 - 4.1.19 to enforce the applicable conditions of sub-division approval and management plans, listed in the conditions of approval, issued by the Local Authority, attached to this Constitution as Annexure A.
- 42 The Association will implement and enforce all provisions contained in 4.1. which are incorporated in this Constitution. To ensure effective enforcement, the Association shall have the power to:
- 4.2.1. adopt, publish, and enforce rules and regulations consistent with this Constitution and required planning/approval conditions;
 - 4.2.2. monitor compliance by members, occupants, tenants or successors, including use of common property, adherence to design or subdivision conditions, restrictions on transfer, and other obligations;
 - 4.2.3. issue notices of non-compliance, require remedial action, levy administrative or financial penalties (if provided for), suspend privileges (where lawful), and institute legal proceedings where necessary; and

4.2.4. refuse consent for transfer of a land unit when grounds for refusal (as set out herein) exist.

4.3 The Association shall be deemed to have come into existence on the date of the first registration of transfer of a Land Unit from the Developer to an Owner.

4.4 The Association is a legal persona and as such –

4.4.1 its assets, liabilities, rights and obligations shall vest in the Association independently of its Members and/or the Sub-Members;

4.4.2 The Association shall have perpetual succession;

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

4.4.4 its Members shall not, by reason of their membership, be liable for the liabilities and obligations of the Association.

5. MEMBERSHIP OF THE ASSOCIATION

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

5.1.1 the Developer, during the Development Period and;

5.1.2 each of the Sub-Associations established in respect of the Estate situated on any portion of the Parent Property, represented as provided for in Clause 6.2 of this Constitution.

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

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

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

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

56 All Land Units are subject to the following condition imposed by the Local Authority in terms of Section 42 of LUPO:

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

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

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

6. SUB-ASSOCIATIONS/BODY CORPORATES

- 61 The Developer intends to subdivide the Parent Property into various Land Units, which will be developed and will be subject to this Constitution, SAC, the Governing Rules, as the case may be, in accordance with the Development Groups contemplated in Clause 2.1.71, or as may be determined by the Developer during the Development Period.
- 62 All Sub-Associations will be Members of the Association, represented at any meeting of the Association, by the Chairman or a Vice Chairman of the Sub-Association, or a representative nominated by the Trustees of such a Sub-Association.
- 63 Membership of the Sub-Association will comprise the Owners of the various Land Units grouped together as set out in Clause 2.1.71 and as contemplated in the SAC, the Governing Rules and the M&C Rules, as must be approved by the Developer during the Development Period, and thereafter by the Board.
- 64 An Owner will become a member of the relevant Sub-Association and a Sub-Member of the Association upon taking transfer of a Land Unit. An Owner may never resign as a member of the relevant Sub-Association or as a Sub-Member of the Association.
- 65 The terms and conditions of SAC must never be in conflict with this Constitution, the Governing Rules or any of the related documents referred to in this Constitution. In the instance of any conflict, the terms and conditions of the Constitution, the Governing Rules or the related documents will prevail.
- 66 The terms and conditions of SAC and the M&C Rules may not deviate from the definitions of Ordinary Resolution, Special Resolution and/or Unanimous Resolution as provided for in terms of this Constitution. SAC may never require a lesser

approval percentage for any matter provided for in this Constitution and must follow this Constitution as far as resolution requirements are concerned.

- 67 The functions and powers of any Body Corporate must be assigned to the Association, as provided for in Section 6(4) of the Regulations promulgated in terms of the Sectional Titles Schemes Management Act, Act Number 8 of 2011 (the Regulations), and the Association must accept this assignment. For the avoidance of doubt, the Management Rules is contained in Annexure 1 to the Regulations, do not apply to any of the Body Corporates.

7. GENERAL RIGHTS AND OBLIGATIONS OF MEMBERS/OWNERS

- 7.1 Every Member/Owner/Occupant shall comply with:

- 7.1.1 and at all times be bound by and will strictly adhere to the terms, conditions, stipulations, guidelines and obligations contained in the Constitution, SAC, the Governing Rules, the M&C Rules, the Development Controls, the A&D Guidelines, the EMP, the SWMP, the EA, the WUL and the H&S Legislation;
- 7.1.2 all conditions imposed by the Local Authority or any other statutory body relating to Land Units and shall be solely responsible for non-compliance with such conditions;
- 7.1.3 any agreement concluded by the Association, the Board or the Developer insofar as such agreement may directly or indirectly impose rights or obligations on a Member, Owner and/or Occupant;
- 7.1.4 the provisions of the EMP, EA, the WUL, the conditions of establishment of any township(s) within the Estate, any directive issued by the Association or the Local Authority, as the case may be, LUPO and/or the Planning Legislation;

- 7.15 any directive given by the Association, the Board, the Developer or the Management Company in the enforcement of the provisions of this Constitution.
- 72 Save as may be provided for herein, the rights and obligations of a Member and a Sub-Member are not transferable, and every Member and Sub-Member shall:
- 721 to the best of his ability further the objectives and interests of the Association;
- 722 observe all directives made or given pursuant to the provisions of the Constitution, and
- 723 be jointly liable with the other Members and/or Sub-Members for expenditure incurred in connection with the business and objectives of the Association.
- 724 not use any building or other structure constructed within the Estate, or allow any other person to use such building or other structure, for purposes not permitted by this Constitution, the Governing Rules, the M&C Rules or any rules and/or regulations made in terms of this Constitution;
- 725 not apply for the consolidation, subdivision or rezoning of its Land Unit with a view to procuring a variation, amendment or substitution of the Development Controls provided that selected departures or consent uses may be allowed, upon approval thereof by the ARC, the Board and the Local Authority;
- 726 not conduct, or permit to be conducted or change the nature of, any business on a Land Unit, or use, or permit the use of, such Land Unit for purposes other than residential use, excluding the Institutional Erven, the Private Roads, the Private Open Spaces and/or the Communal Property unless the Developer, for the duration of the Development Period, or thereafter, the Board has in writing approved the use to which the Land Unit is to be put, and the Local Authority has, to the extent that it may be necessary, granted approval authorizing such use in

terms of the Planning Legislation and other applicable laws and regulations.

7.3 Membership of the Association shall confer upon a Member, *inter alia*, the following rights, subject to the provisions of this Constitution –

7.3.1 the right to inspect and/or receive copies of the annual financial statements of the Association;

7.3.2 the right to vote at all GM's in accordance with the provisions of this Constitution;

7.3.3 the right to receive notices of, attend and speak at all GM's in accordance with the provisions of this Constitution;

7.3.4 the right to convene a General Meeting of Members (other than an Annual General Meeting), provided that the Members holding between them, in aggregate, not less than one third of the voting rights of the Association collectively, convene such a meeting;

7.3.5 each Member, referring to the Development Groups as contemplated in Clause 2.1.72 of this Constitution, will be entitled to 1 (One) vote at any meeting or GM of the Association, irrespective whether voting is conducted by means of show of hands or by means of a poll.

8. **ALIENATION**

8.1 The Board shall ensure that none of its Sub-Members shall in any manner Alienate or transfer a Land Unit unless:

8.1.1 the proposed transferee, new shareholder of a Company, new Members of a Close Corporation or new trustees of a Trust have irrevocably bound themselves in writing to become ipso facto a Sub-Member and to observe SAC, this Constitution, as well

as any Governing Rules applicable, as the case may be, for the duration of his ownership of any Land Unit;

8.12 the Management Company has given its prior written consent thereto and has issued a clearance certificate that all amounts owing to the Association, Sub-Association or any Body Corporate, as the case may be, by such Owner have been paid and that the Owner is not in breach of this Constitution, SAC, the Development Controls and/or any of the Governing Rules, as the case may be;

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

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

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

9. COMMUNAL PROPERTY

9.1. The Association will take title to the Communal Property (excluding the Common Property), indicated on the SDP, which Communal Property will be transferred to the Association, free of counter value.

9.2. The Association owns the Communal Property, including private open space, private streets, and internal engineering services (not owned by Eskom or the City of Cape Town) arising out of any subdivision.

- 9.3. Where relevant, the Developer will transfer ownership of the Communal Property to the Association at the end of the Development Period, or earlier..
- 9.4. It will be the Association's responsibility to maintain, repair and insure, inter alia, but not limited to, any structures, buildings, roads, lights, the main entrance, the secondary entrance, equipment, all movable and immovable assets of the Association and the Estate Manager's office that is transferred, ceded or handed to or in favour of the Association. Registration of the transfer of the Communal Property will be effected by the Attorneys appointed by the Developer.
- 9.5. The Association acknowledges that neither the Local Authority nor the Developer shall be responsible for, and the Association shall be solely responsible for, the care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Communal Property and any structure or thing erected or contained therein or thereon, including private parking, electricity, telecommunications and any other private services, if applicable, and similarly be responsible for the Services.
- 9.6. The Association shall furthermore comply with all the conditions imposed by the Local Authority relating to the conditions of establishment of the township(s) comprising the Estate, and shall be solely responsible for any non-compliance with such conditions.
- 9.7. The Developer will construct detention and retention ponds on the Parent Property as required by the Local Authority, which ponds will be fenced and secured by the Developer by the construction of a 1,2 to 1,8 meter fence, which construction will be done by the Developer, at its cost, as soon as possible after the design and installation of the Wetland has been approved by the Local Authority as well as all other relevant authorities. Each Owner or Occupant will have no claim against the Developer, the Association, any Sub-Association or the Body Corporate for any damages or loss suffered as a result of the ponds and the fence being constructed by the Developer.

- 9.8. The Board must subscribe to an all risk insurance policy in respect of all the aspects covered under such an insurance policy. The amount of the all risk insurance must be determined by the Board at the AGM. The premiums in respect of the insurance policy will be collected from the Sub-Members by means of the Levies.

10. LEVIES

- 10.1. The Board shall from time to time impose Levies and Special Levies upon the Sub-Members for the purpose of meeting all the expenses in relation to the facilities and Services for or in connection with the Estate, and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Estate, the Association and its affairs. In calculating the amount of the Levies and the Special Levies the Board shall take into account income from other sources if any, earned by the Association. It is recorded that each and every Owner of a Land Unit in the Estate, excluding the Developer, will be liable for the payment of Levies and Special Levies, as may be imposed by the Association or the Body Corporate and/or the Board in terms of this Constitution or the Governing Rules.
- 10.2. Should a Sub-Member/Owner obtain permission from the Developer, during the Development period, and thereafter by the Board, to consolidate two or more Land Units, the Association shall debit the amount of the Levies and Special Levies as per the original number of Land Units, despite the consolidation thereof.
- 10.3. During the Development Period the Developer, shall not be obliged to pay the shortfall between the income derived from Levies and Special Levies paid by Sub-Members in terms of Clause 10.1 and the actual expenditure of the Association in each Financial Year.
- 10.4. During and after the Development Period, the Developer, shall have no liability or obligation to pay or to contribute to any Levies or Special Levies.

- 10.5. An Owner of a Land Unit that has been transferred by the Developer to such Owner, will be liable for payment of 100% (One Hundred) of the Levies and or Special Levies as from date of registration of transfer of such Land Unit in favour of the Owner. The Developer, will however, not be liable for the payment of any Levies or Special Levies in this regard. The Developer will however be liable for the payment of Levies and Special Levies in the instance of occupation of any Dwelling or Section registered in the name of the Developer, from which date the Developer will be liable for the payment of 100% (One Hundred) of the Levies and/or Special Levies, as the case may be, due and payable to the Association in respect of such a Dwelling or Section.
- 10.6. It is recorded that a Sub-Member will be liable, upon the first payment of a 100% (One Hundred) of the Levy payable in respect of any Land Unit, for the payment of a double Levy which will be equal to 2 (Two) months Levies, being payable on the day that such Levy becomes due and payable.
- 10.7. All Levies shall be paid monthly in advance by bank debit order on the first day of each and every month to the bank account of the Association or by any other method as determined by the Management Company, from time to time.
- 10.8. Every Sub-Member, must, during his membership of any Sub-Association or Body Corporate, ensure and is obligated to ensure that the balance on his Levy account in the financial records of the Association, is at all times equal to the amount determined in terms of Clause 10.6 of this Constitution.
- 10.9. No Sub-Member may do an off-set of any amount due by him due the Association, Sub-Association, Body Corporate or the Developer against the amount of Levies held by the Association in terms of Clause 10.6 of this Constitution.
- 10.10. Unless exempted from the payment of Levies or Special Levies, by the Developer during the Development Period, and thereafter by the Board, all Erven will be charged the same Levy at a fixed rate, as determined by the Board from time to

time, subject to the provisions of clause 10.12. Special Levies will be calculated at the same fixed rate per Erf and charged as and when required by the Board.

10.11. All Sections will be internally levied by the Body Corporate and the Body Corporate will be liable for payments of Levies and Special Levies towards the Association and each Section will be charged the following rates:

- 10.11.1. At a fixed rate of approximately 30% (Thirty Percent) of the Levy of an Erf for the financial year ending February 2025;
- 10.11.2. a fixed rate of approximately 35% (Thirty-Five Percent) of the Levy of an Erf for the financial year ending February 2026;
- 10.11.3. a fixed rate of approximately 40% (Forty Percent) of the Levy of an Erf for the financial year ending February 2027;
- 10.11.4. a fixed rate of approximately 45% (Forty-Five Percent) of the Levy of an Erf for the financial year ending February 2028; and
- 10.11.5. a fixed rate of approximately 50% (Fifty Percent) of the Levy of an Erf for the financial year ending February 2029 and for every financial year end thereafter..

10.12. A vacant Erf upon which a sectional title development or such similar building development is to be built will be afforded 2 (Two) years from the transfer date from the Developer to complete a development and will be required to pay Levies:

- 10.12.1. at a rate equal to double the rate applicable to an Erf during the 2 (Two) years of construction; and
- 10.12.2. at a rate equal to the Levy charged to Sections by Body Corporates as recorded in clause 10.11 for all Sections or such similar building units/apartments from the earlier of the expiration of the aforementioned 2 (Two) year period or the date of issuing of an occupation certificate

issued by the Local Authority, whether or not such development is registered as a sectional title scheme.

10.13. The Board may, from time to time, impose Special Levies upon the Sub- Members. In addition to other Levies, in respect of all or portion of such expenses as are mentioned in Clause 10.1 and the amount of such Special Levies and the manner of payment thereof by Sub-Members shall be at the discretion of the Board and be determined by the Board.

10.14. Any amount due by a Sub-Member by way of a Levy or Special Levy shall be a debt due by him to the Association. The obligation of a Sub-Member to pay Levies and Special Levies shall cease upon his ceasing to be a sub-Member of the relevant Sub-Association or the Body Corporate, as the case may be, without prejudice to the Association's right to recover arrear Levies or Special Levies from such a Sub-Member. No Levies or Special Levies paid by a Sub-Member shall under any circumstances be repayable by the Association upon his ceasing to be a Sub-Member. A Sub-Member's successor-in-title shall be liable, as from the date upon which he becomes a Sub-Member, to pay the Levies and Special Levies.

10.15. Save as may be provided for herein, in calculating the Levy or Special Levy payable by each Sub-Member, the Board shall as far as is reasonably practical, and in their sole discretion:

10.15.1. assign those costs arising directly out of or directly attributable to Land Units in a specific Development to the Sub-Member concerned;

10.15.2. assign those costs arising directly out of or directly attributable to Land Unit/s in more than one Development to the Sub-Member/s concerned;

10.15.3. subject to Clauses 10.14.1 and 10.14.2, assign those costs relating to the Estate generally to all the Sub-Members; provided however that the Board may in any case where they consider it equitable so to do, assign to any Sub-Member a greater or lesser share of the costs as the Board consider may be reasonable in the

circumstances.

10.16.No Sub-Member shall be entitled to the privileges of membership of the Association or the relevant Sub-Association of Body Corporate, as the case may be, nor shall such a Sub-Member be entitled to vote meeting of the Association, Sub-Association or Body Corporate, as the case may be, unless and until he shall have paid every Levy, Special Levy and other sum, if any, which may be due and payable to the Association in respect of his membership of any of the legal persona referred to above.

10.17. The Owners of the Institutional Erven will at all times be subject to this Constitution but is exempted from the payment of any Levies or Special Levies.

10.18. Monthly Levy statements will be circulated to the Sub-Members of the Association via e-mail. A Sub-Member will still be liable to effect monthly payments of the Levies and Special Levies irrespective whether the statement was actually received and/or circulated by the Association to such Member.

10.19. The Association may hand-over any debt due to the Association to the Association's Attorneys for collection if the debt is outstanding for more than 7 (Seven) days.

10.20. The Board may, in the instance of any amount due by the Sub-Member in terms of this Clause 10, suspend the applicable service directly linked to the amount in arrears.

10.21. A Sub-Member shall be liable for and shall pay all legal costs, including costs, as between attorney and own client, collection commission, tracing agents fee, interest at the Prime Rate plus 25% (Twenty Five) per annum on all amount due to the Association resulting from Levies, Special Levies or any other cause whatsoever, expenses and charges incurred by the Association, in recovering any arrear Levy or Special Levy or other amounts due and owing to the Association or

the Developer, as the case may be, and also the costs incurred in the enforcement of any of the Governing Rules, the M&C Rules or rules and regulations issued or made by or on behalf of the Association, from time to time.

11. RESPONSIBILITY FOR THE PROVISION OF SERVICES

- 11.1. The responsibility for the provision of the Services, utilities, any other services and amenities of whatever nature as may be provided by or on behalf of the Association for Members, Owners or Occupants within the Estate, shall pass from the Developer to the Association on the date of the registration of transfer of a Land Unit from the Developer to an Owner.
- 11.2. It is recorded that the Association shall be responsible for the provision of the management, maintenance, upkeep and repair, in amongst others, of the Services, the Communal Property, the Common Property, the Wetland and the stormwater.

12. GOVERNING RULES AND CODES OF CONDUCT

- 12.1. Subject to the provisions of this Constitution and to any directives given by the Association in a GM and to any conditions imposed by the Local Authority or the Developer or any other statutory body, the Developer, during the Development Period, and thereafter, the Board may make the Governing Rules, any other form of rules, the M&C Rules and any directives relating to the implementation or amplification of any of the provisions of this Constitution and/or the Governing Rules and may vary or modify the same from time to time, in connection with, inter alia, but not limited to, the following:
- 12.1.1. the installation, operation and maintenance of irrigation in respect of the Communal Property;
- 12.1.2. the determination or control of security measures which will be governed and

managed in terms of the Security Protocol, which protocol will be attached as an Annexure to the Governing Rules;

- 12.1.3. the control of the building operations, as more fully provided for in the A&D Guidelines and the C&O Manual;
- 12.1.4. the control and conduct of persons for the prevention of nuisance of any nature to any Owner/Occupant;
- 12.1.5. the control and conduct of persons using the Communal Property and/or the Common Property, as the case may be;
- 12.1.6. the use of roads, infrastructure, Services, amenities and facilities in the Communal Property and/or the Common Property including the right to charge a reasonable fee for the use of the amenities and facilities;
- 12.1.7. the furtherance and promotion of any of the objectives of the Association, for the better management of the affairs of the Association and for the advancement and protection of the interests of the Members, Owners and Occupants;
- 12.1.8. the management and control of the Estate;
- 12.1.9. the furtherance and promotion of any of the objectives of the Association including the promotion of better management of the affairs of the Association and the advancement of the interests of the Members;
- 12.1.10. the use, occupation and enjoyment of the Communal Property and the Common Property (or any parts thereof);
- 12.1.11. the preservation of the natural environment within the Estate;

- 12.1.12. the pedestrian and vehicular traffic including parking within the Estate;
- 12.1.13. the conduct of any business within the Estate;
- 12.1.14. the conduct of any Owner, Occupant or visitor of the Estate;
- 12.1.15. the nature, content and design of garden and landscaped areas within the Estate as more fully provided for in the Landscape Guidelines and the Landscape Plan incorporated into the Governing Rules;
- 12.1.16. the admission of any person within the Estate, including the conditions upon which persons may enter the Estate, and the eviction of any person who is not entitled to be present within the Estate as will more fully provided for in the Security Protocol;
- 12.1.17. the storage of flammable and other harmful substances as provided for in the H&S Legislation;
- 12.1.18. the enforcement of any rules or directives made in terms of this Constitution and the adjudication of disputes relating to the application and/or interpretation of any of the Governing Rules;
- 12.1.19. the introduction of fines and other penalties that may be payable by any Member/Owner, Occupant or visitor for contravening or failing to comply with any of the provisions of this Constitution, the Governing Rules or any rules, directives or regulations made thereunder, which fines and penalties will be more .provided for in the Governing Rules and in terms of Clause 34 of this Constitution.

12.2. Any rules (including the Governing Rules, M&C Rules) made in terms of this Clause 12 shall be binding upon-

12.2.1. every Owner;

12.2.2. every Occupant within the Estate, *mutatis mutandis*, and every Owner/Occupant shall procure that all its representatives, tenants, members of the household, visitors, invitees and other persons related to that Owner/Occupant comply with the Constitution and the Governing Rules made in terms of this Constitution and every Owner/Occupant acknowledges and agrees that it will be liable for any breach or non-compliance by any of its representatives, tenants, Occupants, family members, visitors, invitees and other persons related to that Owner/Occupant.

13. TRUSTEES

13.1. There shall be a minimum of 3 (Three) and a maximum of 5 (Five) Trustees of the Association, elected or appointed the Members, provided that:

13.1.1. during the Development Period and at the first AGM, the Trustees shall be elected by the Members, provided that the Developer shall be entitled to appoint a percentage of the Trustees in terms of the provisions of Clause 20.2 of this Constitution, and

13.1.2. after the Development Period, all the Trustees shall be elected by the Members.

13.2. A Trustee shall be an individual who represents a Sub-Association, as such being a Member. A Trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.

13.3. The Developer shall appoint the Chairperson during the Development Period and thereafter, the Board shall appoint such a Chairperson.

13.4. A Trustee is required to:

14.2.1 perform the functions of office in good faith, honesty and in a transparent manner, and

14.2.2 at all times act in the best interests of the Association, and in such a way that the credibility and integrity of the Association and/or the Estate is not compromised in any way.

13.5. When nominated, a Trustee shall simultaneously with his nomination, declare in writing to the Board any financial interest he or his immediate family or business associates may have in respect of any contract, deliberations or other transactions with the Association.

13.6. No Sub-Member may be nominated to become a Trustee if his Land Unit or any improvements thereon do not comply with the Constitution, the A&D Guidelines, Governing Rules or any other rules or regulations made or promulgated by the Association, any Sub-Association, Body Corporate or the Board.

13.7. Each Trustee must declare to the Board any gifts, which he or his immediate family might be offered, or receive, from any business and or person involved or endeavouring to become involved, in any contract with financial gain with the Association.

13.8. A Trustee may not, without the permission of the Board, disclose any privileged or confidential information of the Board to any person not authorised or entitled to receive the same.

13.9. A Trustee may not, except through the Chairperson and/or the Board:

13.9.1. interfere In the management or administration of the Estate, unless mandated by the Board;

13.9.2. give or purport to give any instruction to any employee other than the Management Company;

13.9.3. obstruct or attempt to obstruct the Management Company or any of the employees of the Association in the implementation of any decision or resolution of the Board, or

13.9.4. encourage or participate in any conduct which would cause or contribute to maladministration by the Board.

13.10. The Board may at any time and from time to time investigate and make a finding in respect of any alleged breach by a Trustee(s) of any of the provisions of this Constitution or the Governing Rules or any other rules or regulations made or promulgated by the Association or the Board, or establish a special committee to investigate and make appropriate recommendations to the Board in this respect.

13.11. Should the Board find that a Trustee has breached any provision of this Constitution or any of the rules or regulations aforesaid or has been found to be negligent is any of the duties assigned to him in his capacity as a Trustee or has reasonable grounds to suspect that a Trustee was or is involved in any form of theft or fraud regarding any funds of the Association, the Board may:

13.11.1. issue a formal warning to the Trustee concerned;

13.11.2. reprimand the Trustee;

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

simultaneously with the nomination of the relevant Sub-Member prior to his anticipated election.

13.15. The Estate Manager will also, ipso facto serve on the Board as a Trustee and may attend meetings of the Board, provided that the Estate Manager will have no voting rights in his capacity as a Trustee, whatsoever. The Estate Manager must furthermore be qualified to act as a Trustee and his qualification must be endorsed by the Management Company.

14. CHAIRPERSON

14.1. For the duration of the Development Period, the Chairperson shall be appointed by the Developer.

14.2. After the Development period, the Board shall within 14 (Fourteen) days of each AGM, appoint a Chairperson, who shall hold office until the next AGM, provided that the office of Chairperson shall ipso facto be vacated by an officer holding such office upon his ceasing to be an officer for any reason, in which event the Board shall immediately appoint an alternative Chairperson.

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

15. REMOVAL AND ROTATION OF TRUSTEES

15.1. After the Development Period, save as set out in Clause 15.2, each Trustee shall hold office as such from the date of his appointment until the next AGM following his appointment, or, at his discretion, until the second AGM following his appointment at which AGM each Trustee shall be deemed to have retired from office, but shall be eligible for re-election as a Trustee.

15.2. A Trustee shall be deemed to have vacated his office as such:

- 15.2.1. should he become disqualified to act as a director of a company in terms of the Companies Act;
- 15.2.2. should he be removed from office by a resolution of the Board;
- 15.2.3. should his estate be sequestrated whether provisionally or finally;
- 15.2.4. on his conviction of any offence involving dishonesty;
- 15.2.5. on the commission by him of any act of insolvency;
- 15.2.6. should he become of unsound mind or being found to be a lunatic;
- 15.2.7. on his resignation from such office in writing.

15.3. Upon any vacancy occurring in the Board prior to the next AGM, a Sub-Member of the Sub-Association such a Sub-Member represented, shall fill the vacancy in question nominated by the Trustees of the relevant Sub-Association, or by another Trustee nominated by the Developer if this event occurs during the Development Period.

16. TRUSTEES EXPENSES AND REMUNERATION

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

- 16.1. Subject to the provisions of this Constitution and subject to any limitations which may be imposed by the Association in a GM, the Board shall have full powers to perform the functions allocated to them in this Constitution and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised and done by the Association itself with regard thereto.
- 16.2. The Board shall in consultation with the Management Company formulate a budget and a strategic plan and any amendments thereto for each Financial Year of the Association.
- 16.3. The Board must perform a mid-term budget review and may make amendments to the yearly budget if necessitated by relevant circumstances. These amendments need no approval by the AGM.
- 16.4. The Developer, during the Development Period, and thereafter, the Board is empowered to sign, execute and to enter into on behalf of the Association all and any contracts as may be required to give effect to the provisions of this Constitution, including, but subject to the provisions of Clause 17.2, the appointment of a Management Company, and is empowered to delegate the management of the affairs and the business of the Association, whether in whole or in part, to such Management Company.
- 16.5. The Developer, during the Development Period, and thereafter, the Board shall at

all times have the power and right to engage on behalf of the Association the services of Accountants, Auditors, Attorneys, Engineers, Town Planners, or any other professional firm or person or other employees whatsoever, for any reason deemed necessary by the Board, on such terms as the Board may decide.

16.6. The Board shall further have the power:

- 16.6.1. to require that any construction of any sort in the Estate shall be supervised so as to ensure that the provisions of this Constitution, the Governing Rules, the C&O Manual, the A&D Guidelines or any other rules or regulations, are complied with, and that all such construction is performed in a proper and workmanlike manner;
- 16.6.2. to amend the A&D Guidelines and Landscape Guidelines in respect of the Estate and to ensure that same are complied with at all times, and
- 16.6.3. to issue instructions in accordance with the operational EMP, if any, and to ensure that such plan is at all times complied with;
- 16.6.4. must, as and when necessitated by circumstances or required by the Local Authority, make arrangements for the transfer of a Land Unit in the event that the Association ceases to function as provided for in Section 62(1)(a)(ix) of the MPBL.

16.7. The Board shall have the right to vary, cancel or modify their decisions and resolutions from time to time.

16.8. The Board must appoint a Health and Safety Officer to ensure compliance with the H & S Legislation by the Association, the Sub- Associations, Body Corporates, Owners, Occupants and any obligations in terms of the A&D Guidelines and the C & O Manual.

17. PROCEEDINGS OF TRUSTEES

- 17.1. The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 17.2. The quorum necessary for the holding of all Board meetings, after the Development Period, shall be 2 (Two) if there are 3 (Three) Trustees in office or 3 (Three) if there are 4 (Four) of 5 (Five) Trustees in office, present personally, and no meeting shall be held unless such quorum is present at the commencement of and for the duration of the meeting.
- 17.3. Any resolution of the Board shall be taken by Ordinary Resolution. In the case of an equality of votes for or against a resolution, the Chairperson shall have a second casting vote.
- 17.4. The Board shall cause minutes to be kept of every Board meeting, which minutes shall without undue delay after the meeting has closed, be reduced to writing and certified correct by the Chairperson. All minutes of Board meetings shall, after certification, be placed in a Board meeting minute book.
- 17.5. Any resolution signed by all the Trustees shall be valid in all respects as if it has been duly passed at a Board meeting.

18. MANAGEMENT COMPANY

- 18.1. The Developer shall be entitled (but not obliged, and at their own discretion) to manage, or to appoint a Management Company for the Estate, during the Development Period, which appointment shall be valid and binding on the

Association during the Development Period and for a period of 10 (Ten) years after the termination of the Development Period. For the avoidance of doubt, it is recorded that only one Management Company may be appointed for the whole of the Estate irrespective of whether such appointment is made during the Development Period, or thereafter.

- 18.2. During the Development Period, the Developer has the irrevocable power and authority to appoint the Management Company of the Estate during the aforesaid period and to determine the terms and conditions of such appointment.
- 18.3. Subject to the provisions of this Constitution and the terms of its appointment, the Management Company shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Association in a General Meeting, and may exercise all such powers of the Association and do all acts on behalf of the Association itself.
- 18.4. During the Development Period, the Developer will determine the fees or remuneration to be paid by the Association to the Management Company and the other terms and conditions of its appointment, which fees will be agreed upon by the parties to the relevant agreement, provided that fees thus payable must be allowed for in the budget of the Association.
- 18.5. After the Development Period plus the additional period of 10 (Ten) years as provided for in Clause 19.1 of this Constitution, and in the event that an existing Management Company's appointment is terminated, a successor Management Company shall from time to time be appointed by the Association in a GM and the Members shall determine the fees or remuneration to be paid by the Association to such Management Company and all the other terms and conditions of their appointment, it being contemplated that at all times the affairs of the Association will be entrusted in whole or part to a professional Management Company with

appropriate executive powers so as to conform to the requirements of good corporate governance. The Board will, at the final termination date of the agreement regarding the appointment of the Management Company, use best endeavors to negotiate a further extension of the appointment of the Management Company.

19. MEETINGS OF THE ASSOCIATION

19.1. Notwithstanding the provisions hereof, the Developer must convene the first AGM within 60 (Sixty) days of the transfer of 60% (Sixty) of the Land Units arising from the subdivision of the Parent Property or within a period of 2 (two) Years of the transfer of the first Land Units, whichever is the earlier. The Developer must, within 60 (Sixty) days after the first AGM, notify the Local Authority that the meeting was held and provide the Local Authority with a copy of the minutes of the meeting.

19.2. An AGM will only be required during the Development Period upon a 1/3 (one third) aggregate vote of the Members of the Association.

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

19.3.1. a number of votes double to the total number of votes of all the other Members of the Association, and

19.3.2. Appoint a sufficient number of Trustees to ensure that the Developer has majority of such Trustees at all times, and

19.3.3. Act as the Chairperson.

19.4. After the Development Period, the following provisions shall apply:

19.4.1. The Association shall within 6 (Six) months after the end of its Financial Year (at least one AGM per year) hold a GM as its AGM in addition to any

other GM's during that year, and shall specify the meeting as such in the notices of meeting.

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

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

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

20. NOTICES OF MEETINGS

20.1. An AGM shall be called by not less than 21 (Twenty One) Clear Days' notice in writing and any other GM shall be called by not less than 14 (Fourteen) Clear Days' notice in writing. The notice of an AGM shall be accompanied by a copy of the Financial Statements as referred to in Clause 26 and shall be given to all Members and shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting. A meeting called by shorter notice shall be deemed to have been duly called if it so agreed by an Ordinary Resolution of the Members having the right to attend and to vote at the relevant meeting.

20.2. The accidental omission to give notice of any resolution or to transmit any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings of any meeting or any resolution passed at any meeting. Furthermore, the non-receipt of notice of a meeting by any Member entitled to receive such notice shall not invalidate the proceedings at that meeting. It is the responsibility of each member to ensure that he has received all the documents relevant to the GM to be held.

20.3. The AGM shall deal with the consideration of the Management Company's report, the consideration of the annual Financial Statements, the budget for the following year, the election of Trustees, if applicable, the appointment of an Auditor and may deal with any other business included in the notice of meeting.

21. PROXIES

21.1. A Member may be represented at a GM by a proxy, who must himself be a Sub-Member.

21.2. To be effective at a GM or adjourned GM, a proxy together with the original or a notarially certified copy of a power of attorney or other authority under which it is signed must be lodged with the Management Company at least 48 (Fourty Eight) hours before the commencement of the GM or adjourned GM concerned but the Board may from time to time determine that such documents:

22.1.1 are to be lodged at a particular place;

22.1.2 are to be lodged a certain number of hours, not exceeding 48 (Fourty Eight) in all, before the meeting.

21.3. A proxy will be valid for the specific GM it was granted and not for any other meeting, including an adjourned GM

21.4. The instrument appointing a proxy shall be in such form that is acceptable to the Chairperson of the GM or adjourned GM in respect of which it is tendered and the decision of the Chairperson as to what is or is not acceptable will be binding on all the Members.

22. QUORUM

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

23. ADJOURNMENT BY CHAIRPERSON

- 23.1. The Chairperson of a GM may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by Ordinary Resolution. In the event of such an adjournment:
- 23.1.1. No notice needs be given of the adjourned meeting save for an announcement at the original meeting of the date, time and venue of the adjourned meeting, unless the meeting is to be adjourned for 30 (Thirty) days or more in which event notice is to be given in the same manner as for the original meeting;
- 23.1.2. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

24. VOTING RIGHTS OF MEMBERS

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

24.2. At every GM:

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

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

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

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

24.5. Subject to the provision of this Constitution, all resolutions at all GM's shall be passed by Ordinary Resolution.

24.6. If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter, such difficulty or dispute is to be determined by the Chairperson whether or not scrutinizers might have been appointed to count the votes, and his decision shall be final and conclusive.

24.7. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:

24.7.1. written notice of the revocation is received by the Association prior to the meeting concerned, or

24.7.2. the Chairperson agrees to accept written or oral notice of such revocation at the meeting.

24.8. No objection shall be raised to the admissibility of any vote except at the meeting or adjournment meeting at which the vote objected to, is casted and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairperson of the meeting whose decision shall be final and conclusive.

24.9. A declaration made in good faith by the Chairperson of a meeting to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.

24.10. Any resolution which could be passed at a GM, other than a Special Resolution or a resolution to remove a Trustee or Auditor, may be passed without a GM being held if one or more copies of the resolution are signed by or on behalf of a simple majority of all the Members entitled to vote at a GM.

25. ACCOUNTING RECORDS

- 25.1. The Board shall cause such accounting records to be kept as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 25.2. The accounting records shall be kept at the registered Office of the Association or at such other place or places as the Board think fit, and shall be open to inspection by the Board at all reasonable times, during business hours.
- 25.3. The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association shall be open to inspection by Sub-Members and no Sub-Member shall have any right of inspecting any accounting records or documents of the Association except as may be authorized by the Board.
- 25.4. At each GM the Board shall lay before the Association Financial Statements for the immediately preceding Financial Year of the Association or, in the case of the first period after the date of commencement of the Association, made up for that period. Such Financial Statements shall be drawn in accordance with generally accepted accounting practices, and shall be accompanied by such additional reports as may be necessary at the discretion of the Board.
- 25.5. A copy of the Financial Statements which are to be laid before the Members in AGM shall, not less than 21 (Twenty One) days before the date of the meeting, be sent to every Member of the Association.
- 25.6. The Members shall, by way of Ordinary Resolution passed at a GM, nominate the Auditors of the Association and the Secretary of the Association from time to time,

provided that for the duration of the Development Period, the Developer may nominate the Auditors and the Secretary of the Association.

25.7. The Financial Year end of the Association shall be the last day of February of each year.

25.8. The Board shall cause proper books of account and records to be kept so as to fairly explain the transactions and financial position of the Association, which books of account and records shall include –

25.8.1. a record of the assets and liabilities of the Association;

25.8.2. a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occurred;

25.8.3. a register of Sub-Members showing, in each case, their addresses; and

25.8.4. individual ledger accounts in respect of each Sub-Member.

25.9. The Board shall cause all books of account and records to be retained for a period of 5 (Five) years after completion of the transactions, acts or operations to which they relate.

25.10. At least once in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by the Auditors.

25.11. The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards applicable in the Republic of South Africa.

25.12. The Management Company must provide the Board with a monthly trial balance on the second business day of each and every consecutive month. The Board must consider each trial balance and must take appropriate action to manage the financial situation and cash-flow of the Association effectively.

26. SERVICE OF NOTICES

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

26.2. Notice of every GM shall be given:

27.1.1 to every Member of the Association;

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

27.1.3 to any Professional Trustee;

27.1.4 to the Estate Manager.

26.3. No other person shall be entitled to receive a notice of General Meetings.

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

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

- 26.4.2. if posted by prepaid registered post be deemed to have been received by the addressee on the 8th Day following the date of such posting;
- 26.4.3. if transmitted by e-mail be deemed to have been received by the addressee on the day following the date of the e-mail, unless the contrary is proved.
- 26.5. Notwithstanding anything to the contrary contained or implied in this Constitution, a written notice or communication actually received an addressee, including by way of e-mail transmission, shall be adequate written notice or communication to such party.
- 26.6. Any notice by post shall be deemed to have been served at the time when it was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the notice was properly addressed and posted to the last known address of the Member.
- 26.7. The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 26.8. When a given number of days' notice or notice extending over any other period is required to be given, the day on which it is served or deemed to be served and the day for which it is given shall not be counted in such number of days or period.

27. INDEMNITY

- 27.1. The Developer, the Trustees, the Professional Trustees, the Estate Manager, the Auditors, the Management Company and each servant, agent or employee of the Association shall be and they are hereby indemnified by the Association against any liabilities *bona fide* incurred by them in their respective capacities in the proper discharge of any of their duties including, without limitation, the costs of defending any proceedings, civil, criminal or otherwise arising out of the due execution by

them of their duties, and including all costs, losses and expenses, including traveling expenses which they or any of them may incur or becomes liable for by reason of any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.

- 27.2. A Trustee, the Developer, Professional Trustee or the Estate Manager shall not be liable for the act or omission of the Management Company, Auditors or of any of the other Trustees whether in their capacity as such or as Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency of deficiency of any security in or upon which monies of the Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited, or for any loss or damage occasioned by any bona fide error of judgement or oversight on his part, or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties in relation thereto, unless same shall have occurred as a result of mala fides, breach of duty or breach of trust.
- 27.3. The Developer is irrevocably indemnified against any loss or any possible damages or claim for damages that the Association, any Sub-Association, Body Corporate, Member, Owner, or Occupant, guest or visitor of any Owner or Occupant may suffer as a result of any installation of any Service or facility, including all water bodies (fenced or unfenced), the Wetland and the Power Lines on the Estate or any act or conduct by the Developer in the exercising of the Development Rights, whether that such damage was caused by any willful or negligent act of the Developer.
- 27.4. Any person using any of the Services or any other facilities or amenities of the Association within the Estate, does so entirely at his own risk.
- 27.5. The right of admission to the Estate is reserved in favour of the Developer and/or the Association, as the case may be.

28. CONDITIONS IMPOSED BY LOCAL AUTHORITY

- 28.1. During the Development Period, this Constitution may from time to time be amended by the Developer, without the need to be approved by the Association in a GM, so as to comply with the requirements from time to time of the Local Authority in relation to the conditions of establishment for the Estate or any subdivisions thereof, or any other land which may be added to the Estate by the Developer, in his sole discretion.
- 28.2. The Developer and every Owner must at all times, during and after the establishment of the Estate, conform to the Development Controls.

29. DETERMINATION OF DISPUTES

- 29.1. Any disputes arising out of or in connection with this Constitution must be determined in accordance with this Clause 30, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 29.2. On a dispute arising (not moneys or a debt to the Association), the parties who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (Fourteen) days after such notice, either of the parties to the dispute may refer the same to determination in terms of the following provisions of this Clause 30.
- 29.3. If a party exercises his right in terms of Clause 30.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (Ten) years' experience in their field:

- 29.3.1. If the dispute is primarily an accounting or financial matter, a practicing chartered accountant with at least 10 (Ten) years standing;
- 29.3.2. if the dispute is primarily a legal matter or a matter relating to the behavior and or conduct of a Member, a practicing attorney or advocate with at least 10 (Ten) years standing;
- 29.3.3. if the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practicing registered Architect with at least 10 (Ten) years standing;
- 29.3.4. if the dispute primarily relates to the size of form of the Land or the position, height or size of buildings, structures, installations or equipment, a practicing registered Land Surveyor with at least 10 (Ten) years standing.
- 29.4. If the parties are unable to agree on the appointee as provided for in Clause 30.3 within 3 (Three) days of being requested to do so, then the person shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope.
- 29.5. The person appointed as provided for in Clause 30.3 shall in all respects act as an expert and not as an arbitrator.
- 29.6. The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 29.7. The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (Twenty One) days or so soon thereafter as possible.

- 29.8. The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 29.9. The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between "party and party" or as between "attorney and client".
- 29.10. The provisions of this Clause 30 constitutes the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw there from or claim in any such proceedings that they are not bound by such provisions.
- 29.11. The provisions of this Clause 30 shall be deemed to be severable from the remainder of the Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled, amended or declared of no force and effect for any reason.
- 29.12. Notwithstanding anything to the contrary contained in this Constitution the Trustees shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this Constitution and any of its annexure, including any amendments of additions thereto.

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

- 30.1. Notwithstanding anything to the contrary herein contained, during the Development Period, the Developer may without the approval of the Members or any Sub-Members of the Association, amend, substitute and repeal any provision of this Constitution, with the approval of the Local Authority. Any such amendments as contemplated herein will only be communicated by the Developer to the Management Company and the Developer will therefore not be obliged to communicate these changes to the Members.
- 30.2. No provision of this Constitution shall be added to, amended, substituted or repealed without the prior written consent of the Developer for the duration of the Development Period.
- 30.3. Subject to the provisions of Clauses 30.1 and 31.2 above and after the Development Period, any such addition, amendment, substitution or repeal shall require the approval of at least an Unanimous Resolution given at a GM specifically called for such purpose, and the notice of such meeting shall, in addition to complying with the other requirements of this Constitution, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed. Any provision in the best interest of the Estate or the Members of Sub-Members may never be deleted from the Constitution.
- 30.4. Any reference herein to this Constitution shall mean and include a reference to this Constitution as may from time to time be amended in accordance with the provisions of Clauses 29 and/or 31 of this Constitution.
- 30.5. This Constitution and any amendment thereto must be lodged with the City of Cape Town and the version of the Constitution in the City of Cape Town's records is presumed to contain the operative provisions of the content referred to in Section

62(1)(a) of the MPBL.

- 30.6. Any amendment of the Constitution, in terms of Clauses 29 or 31 of this Constitution, will only become effective once certified by the Local Authority in terms of Sections 62 (2) and (4) of the MPBL.
- 30.7. The certified copy of the Constitution is deemed to be the Constitution of the Association.
- 30.8. In terms of Section 62(6) of the MPBL, the Local Authority is exempted from liability for any damage which may be caused by its certification of the Constitution or any amendment thereof or by a loss of the Constitution lodged with the Local Authority.
- 30.9. If the Association fails to meet any financial obligation or if the Association fails to control and manage the Private Open Space, Private Roads and the Communal Areas, the Services or amenities arising from the development of the Estate under the Association's control for the benefit of the Sub-Members, and the Local Authority believes that the Sub-Members are adversely affected by the failure, the Local Authority may take appropriate action to rectify the failure. The Local Authority may recover any expenditure in respect thereof from the Association or the Sub-Members, who are jointly liable. This expenditure will be considered as part of the Levies of Special Levies.
- 30.10. If the Association fails to meet any obligations in this Constitution and the Local Authority believes that the community is adversely affected by the failure, the Local Authority may take appropriate action to rectify the failure. In this instance, the following terms and conditions will prevail:
- 30.10.1. The Local Authority may recover any expenditure in respect of the action contemplated above from the Association, its Members or Sub-Members, who are jointly liable;
- 30.10.2. The amount of any expenditure so recovered will be considered to be

expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members of Sub-Members;

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

31.9.3.1 Hold a meeting and to reconstitute itself, or

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

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

30.11.1.The purpose of the Association;

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

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

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

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

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

- 30.12.1. The transfer to the Local Authority of the Private Roads and Communal Property, including the Services;
- 30.12.2. The upgrading of the internal engineering services and the Services to meet the required standards of the Local Authority.
- 30.13. If the Association ceased to function and an Owner wishes to transfer a Land Unit, the Owner must obtain the consent of at least 60% (Sixty) of the Members of the Association, which consent will be deemed to be the consent of the Association.

31. GENERAL

- 31.1. The Trustees or the Management Company or their employees, agents or contractors shall be entitled and shall have the right to enter any Land Units for the purpose of repairing, maintaining or installing any facilities, Services, equipment or structures relating to the provision of security or any other service to the Estate generally, provided, that they have complied with the Access Procedure.
- 31.2. The Developer may at any time, during the Development Period, in writing, cede delegate and/or assign all or any of its rights or obligations in terms of this Constitution to any transferee of its choice and such transferee shall be entitled to take cession/delegation of all such rights and obligations.
- 31.3. During the Development Period, the Developer may, at any time in writing, abandon in whole or in part, any of its rights which it is entitled to in terms of this Constitution, in which event the abandoned rights of the Developer will cease and vest in SCEMHOA, the Board or the Members, as the case may be.

- 31.4. The centerline of any common boundary wall between of any of the Erven, will be the common boundary between the relevant Erven and must be split 50/50 between the adjacent Erven. The common boundary wall must be constructed by the Owner who first commences with construction of a Dwelling on his Erf and he must be reimbursed 50% (Fifty) of the construction costs of the common boundary wall by Owner who commences afterwards with construction of his Dwelling.
- 31.5. Should a Sub-Member/Owner obtain permission from the Developer, during the Development period, and thereafter by the Board, to consolidate two or more Land Units, no construction of any kind and/or any improvements may be done over the common boundary lines of the original Erven (the original building lines and servitudes as per the U&D Guidelines will apply).

32. AGREEMENTS CONCLUDED ON BEHALF OF THE ASSOCIATION

- 32.1. It is recorded that the Developer will be allowed to enter into agreements and appoint any service provider on behalf of the Association for a period, to be in a discretion of the Developer, which agreements and/or appointments will be automatically effective on the Association and its Members before or after the Development Period, provided that such service provider fulfill all its obligations and all the other terms and conditions of the agreement thus concluded.
- 32.2. The Association may, after the Development Period, enter into agreements with any third party for the provision of facilities or services to or for the Members and/or the Sub-Members and may impose charges in respect of the provision thereof, or may pass on such costs direct to the Members and/or the Sub-Members. Furthermore it is recorded that the Members will be bound by all contracts concluded by the Developer for the leasing or purchase of all equipment or infrastructural assets, or for the provision of security for the Estate, or for the provision of any other service or supplies for the Estate which the Developer may consider necessary in its discretion, even where such

contracts or commitments include the payment of costs or outgoings on an ongoing basis. It is recorded, without limitation, that the Developer intend to conclude contracts, inter alia, but not limited to, for the hire or supply of electronic surveillance, monitoring and detection equipment for security purposes relating to the perimeter of the Estate.

- 32.3. The Developer, during the Development Period, and thereafter, the Board, may appoint only 1 (One) service provider for the provision of any kind of service or product to the Estate, the Members, any Sub-Association, Body Corporate, Owner or Occupant. The Members, Sub-Associations, Body Corporates, Owners and/or Occupants will be bound by such appoint being made. This condition will be binding and of full force and effect on all appointments to be made or agreements to be concluded with such service provider, as may be provided for in the Constitution, or in the discretion of the Developer during the Development Period, and the Board, after the Development Period.
- 32.4. No business of a Property Sales Agent/Agency or Property Letting Agent/Agency, may ever be conducted from any Land Unit, including the Institutional Erven, save for such Agencies appointed by the Developer during the Development Period, which appointments may be binding on the Association for an indefinite period of time, in the sole and absolute discretion of the Developer. The conditions of appointment will be stipulated in the Governing Rules and may only be amended by means of an Unanimous Resolution.

33. BREACH AND PENALTIES

- 33.1. Any Owner or Occupant contravening any of the terms and conditions of this Constitution and/or the Governing Rules, may receive a written warning from the Board or the Management Company, as well as a penalty, the amount to be determined in terms of the Governing Rules by the Board, from time to time, for

each infringement. Should the trespasser be a guest of an Owner or Occupant, the Board reserves the right to act in terms of this rule against such Owner or Occupant, who shall be liable for the behavior of his guest. This reservation does not impinge on any other rights of the Board or any others rights which the Board may have against any such trespasser, Owner or Occupant.

33.2. Each penalty may be levied against the Owners Levy account for each infringement and each Owner will be liable to pay such amount promptly.

33.3. For the enforcement of the Governing Rules or any of the provisions of this Constitution generally, the Board or the Management Company may:

33.3.1. give notice to the Member concerned to remedy any breach within such period as they may determine;

33.3.2. take or cause to be taken such action as they deem fit to remedy the breach of which the Member, Owner or Occupant concerned may be guilty and debit the cost thereof, which shall be a debt due to the Association, to his Levy account, and which shall be payable as part of his Levy on the first day of the following month, and

33.3.3. impose a fine on the Member, Owner or Occupant concerned which amount shall be a debt due to the Association, shall be debited to his Levy account and shall be payable as part of his Levy on the first day of the following month.

33.4. Should the Board or Management Company institute legal proceedings against any Member, Owner or Occupant for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member, Owner or Occupant concerned, calculated as between attorney and own client, including tracing fees and collection commission.

- 33.5. In the event of any breach of the Governing Rules or of any of the provisions of this Constitution by any person residing on a Land Unit of a Sub-Member or his guests, employees, contractors, and sub-contractors or agents, such breach shall be deemed to have been committed by the Sub-Member himself; but without prejudice to the foregoing, the Board or Management Company may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the Sub-Member concerned.
- 33.6. Whenever the Board, Management Company, or the ARC consider that the appearance of any Land Unit or buildings owned by an Owner is such as to be unsightly or injurious to the amenities of the surrounding area or the Estate generally, the Board or the Management Company may serve notice on such Owner to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Owner or a Member fail within a reasonable time, as specified in such notice, to comply therewith, the Board or Management Company or their employees, agents or contractors may enter upon the Land Unit or buildings concerned and take such steps as may be necessary and recover the costs thereof from the Owner concerned, which costs shall be deemed to be a debt owing by that Owner to the Association. The Board or the Management Company shall be obliged in giving such notice to act reasonably. In the event of any dispute, the Owner shall bear the onus of establishing that the Board or the Management Company acted unreasonably.
- 33.7. If an Owner fails to comply with any obligation contained in this Clause 34, the Developer, for the duration of the Development Period, and thereafter, the Board, shall be entitled, but not obliged, in addition to any other rights which they may have or remedies which may be available to them in terms of this Constitution or otherwise in law, to –

- 33.7.1. withhold the issuing of a written consent confirming the transfer of a property as recorded in clause 5.6;
- 33.7.2. impose a daily financial penalty, the amount of which shall be determined from time to time by the Developer or the Board (as the case may be), on notice to the Owner, should the Owner fail to comply with any obligations contained in this Clause 34; and
- 33.7.3. enter upon any Land Unit in order to inspect that Land Unit and any improvements constructed thereon, subject to the provisions of the Access Procedure.
- 34.8. It is specifically recorded that the Owner will be liable and obligated to perform all such work and required actions as recorded in clause 34.7, irrespective of whether his Levies or Special Levies are paid up to date, or not.
- 34.9. An Owner shall not be entitled to vote at any meeting if his Levies or Special Levies or other charges imposed in terms of clause 34.7 have not been paid in full.

34. RIGHTS OF REGISTERED MORTGAGEES

- 34.1. No Loan Agreements may be entered into by SCEMHOA or any Body Corporate unless notification is given and notice by the respective Mortgagees.
- 34.2. No Application may be made to the High Court for the appointment of an Administrator of SCEMHOA or any Body Corporate unless notification is given and notice by the respective Mortgagees.

- 34.3. The Trustees shall cause copies of the schedules, estimate, audit statements and reports to be delivered to the respective Mortgagees, at no cost to the Mortgagee and at least 14 (Fourteen) days before the date of the Annual General Meeting at which they are to be considered.
- 34.4. All Mortgagees must be notified within 30 (Thirty) days from the date of any change to the Management Company together with a copy of the Agreement between SCEMHOA and the former party.
- 34.5. The Board must insure the debtor's book of any Body Corporate against default debtors.
- 34.6. SCEMHOA hereby irrevocably waives, in favour of any Mortgagee, any rights or restrictive conditions registered in the title deed of any Land Unit in its favour, in the instance of foreclosure procedures being instituted by the relevant Mortgagee against any such an Owner.
- 34.7. The Developer must irrevocably waives, in favour of any Mortgagee, any rights to the Restriction Period registered in the title deed of any Land Unit in its favour, in the instance of foreclosure procedures being instituted by the relevant Mortgagee against any such an Owner.

35. RETAIL SCHEMES

The following special provisions will apply to the Retail Schemes:

- 35.1. Each block will forms its own Body Corporate;
- 35.2. The specific Land Units will be liable for the payment of Levies and Special Levies;
- 35.3. The Body Corporates of the Retail Schemes will be members of the relevant Sub-Associations;

35.4. The Restriction Period will not be applicable on Sections comprising the Retail Schemes;

35.5. The provisions of Clause 33.4 of this Constitution will apply;

35.6. The usage of all the Sections comprising the Retail Schemes must be approved by the Developer, in writing, during the Development Period, and thereafter by the Board.