



LE PARC

RESIDENTIAL
ESTATE

— *paarl* —

CONSTITUTION

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CONSTITUTION

OF

LE PARC RESIDENTIAL ESTATE

MASTER HOME OWNERS' ASSOCIATION

1 RECORDAL

- 1.1 The Developer is in the process of developing the Land as described herein for residential and associated purposes and whereas such land will form the Development and be administered by a Master Home Owners' Association and, where applicable, also through one or more Sub-Scheme Associations and/or Body Corporates, subject to the provisions of the Land Use Planning Ordinance, 1985.
- 1.2 This document shall from the Establishment Date serve as the Constitution of the said Master Home Owners' Association.

2 DEFINITIONS

- 2.1 In this Constitution and unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them:
- 2.1.1 **“Accredited Estate Agent”** means the on-site estate sales and letting agency, and any other agents working in association with such agency, all of whom are to be duly registered with the Estate Agents Affairs Board, as approved and listed exclusively by the Developer, during the Development Period, and thereafter, by the Association in terms of the criteria and conditions of this Constitution, as well as the Rules and any specific policy document that may be issued by the Trustee on behalf of the Association in such regard;
- 2.1.2 **“Alienate”** means in relation to any Erf or Unit, the transfer by a Member, of any rights in respect thereof and, without derogating from the generality of the foregoing, includes alienation by means of the sale, exchange, donation, deed, intestate or testate succession, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolutive condition and **“alienation”** shall have a corresponding meaning which term shall, however, shall in the context of this Constitution, not be interpreted so as to include the act of mortgaging an Erf or a Unit.
- 2.1.3 **“Apartment Member”** means a Member that is an Owner of a Unit, relating to an Erf within the Development upon which as Sectional Title Scheme has been registered and as such also member of the particular Body Corporate and who will be represented at the Association by a representative of such Sectional Title Scheme for such scheme.

- 2.1.4 “**Architect**” means the architects as appointed by the Developer during the Development Period from time to time and thereafter as appointed by the Trustees from time to time;
- 2.1.5 “**Association**” means the LE PARC RESIDENTIAL ESTATE MASTER HOME OWNERS’ ASSOCIATION (MHOA) which is bound by the provisions of this Constitution;
- 2.1.6 “**Auditors**” mean the Auditors of the Association as appointed by the Developer during the Development Period from time to time and thereafter as appointed by the Trustees from time to time;
- 2.1.7 “**Business Day**” means any day other than a Saturday, Sunday or official public holiday in South Africa;
- 2.1.8 “**Body Corporate**” means a Body Corporate of any Sectional Title Scheme established in relation to an Erf falling within the Development;
- 2.1.9 “**Body Corporate Trustee**” means a Trustee appointed by a Body Corporate to serve as a trustee of the Association in terms of this Constitution;
- 2.1.10 “**Constitution**” means this document with the annexures thereto, imposed in terms of Section 29 of LUPO, as may be amended from time to time;
- 2.1.11 “**Chairman**” means the Chairman of the Trustees;
- 2.1.12 “**Common Property**” means:
- 2.1.12.1 in the case of an Erf on which a Sectional Title Scheme is developed, common property as defined in the Sectional Titles Legislation, which is not subject to an exclusive use by a member in terms of that Sectional Title Scheme;
- 2.1.12.2 the land registered in the name of the Association, or land vested in the Association by law, including Private Open Spaces;
- 2.1.12.3 any portion of the Development which is not owed by or subject to an exclusive right in favour of a Member.
- 2.1.13 “**Completed Occupied Residence**” means a Unit, or an Erf upon which a dwelling has been constructed, and for which Unit or Erf a certificate of occupation has been issued by the Local Authority.

- 2.1.14 “**Deeds Registries Act**” means the Deeds Registries Act No. 47 of 1937, as amended from time to time;
- 2.1.15 “**Developer**” means Le Parc Residential Estate (Proprietary) Limited (Registration Number 2000/013425/07), a duly registered South African private company, or its nominees or its successor or successors in respect of the whole or any part of the Development;
- 2.1.16 “**Development**” means the Land which is to be subdivided into Erven and Units in accordance with approval obtained from the Local Authority, generally in accordance with the preliminary Estate Site Plan and includes any and all extensions of the Development as approved by the Local Authority upon application by the Developer to be named LE PARC RESIDENTIAL ESTATE;
- 2.1.17 “**Development Period**” means the period commencing on the sale of the first Erf in the Development and enduring until all Erven and Units in the Development have been transferred from the Developer, alternatively on the date on which the Developer notifies the Association in writing that it terminates the Development Period;
- 2.1.18 “**Determined Value**” means with regards to the sale of an Erf or a Unit by a Member, other than the Developer, a certificate of the value thereof, that has been issued by the Accredited Agent for such Erf or Unit at the request of Trustees. In determining such value, the Accredited Agent shall base its valuation exclusively on the statistics of sales of similar erven or units with the Development for a period of at least the prior six months, as well as the present prices of similar Erven or Units as being offered for sale by the Developer as well as by the consideration of price growth indexes for residential properties as published are by housing economists of at least two commercial banks.
- 2.1.19 “**Exit Levy**” means a one-time levy payable to the Association, which was introduced for the benefit of Members, to deter speculative acquisitions within the development. Such levy will, subject to the exceptions hereunder, be payable by any Member, other than the Developer, on the sale of an Erf or Unit where the financial consideration payable by the purchaser is lower than the Determined Value for that property. Such levy will be equal to 50% (Fifty Percent) of the difference between Determined Value and the sale consideration and will be payable upon registration of transfer of ownership of the property into the name of the transferee. Should commission be payable on a particular sale, the

consideration payable, is to be reduced by the amount of the commission before the calculation of the Exit Levy is made. The Exit Levy shall, however, not be payable in all of the following situations:

- 2.1.19.1 In the instance of a sale of an Erf or Unit that is the Primary Residence of that Member; and
 - 2.1.19.2 If the transaction is a Distressed Sale, a sale by an executor in a deceased estate, or a sale by a liquidator or trustee in terms of the Insolvency Act (24 OF 1936) or by a Business Rescue Practitioner in terms of the Companies Act (71 of 2008); and
 - 2.1.19.3 Where such Erf, or Unit, was not acquired by the Member from the Developer or, if it was so acquired, that the date of the specific transaction is more than 2 (two) years after the date upon which such Erf or Unit was acquired from the Developer.
- 2.1.20 **“Distressed Sale”** means any of the following -
- 2.1.20.1 a sale in execution where a bank or financial institution as mortgage bond holder in respect of an Erf and/or Unit legally attaches and sells such Erf and/or Unit due to failure by the Owner to fulfil its obligations towards such mortgage bond holder;
 - 2.1.20.2 a sale by a Member where a bank or financial institution as mortgage bond holder in respect of an Erf and/or Unit assists the Member with the sale of such Erf and/or Unit in accordance with the requirements of the relevant mortgage bond holder’s formal programmes to assist distressed customers to sell their immovable properties in instances of failure to fulfil its obligations towards the relevant mortgage bond holder; and/or
 - 2.1.20.3 where a bank or financial institution as mortgage bond holder in respect of an Erf and/or Unit legally attached an Erf and/or Unit due to failure by the Owner to fulfil its obligations towards the said mortgage bond holder and took transfer of the said Erf and/or Unit and thereafter sold such Erf and/or Unit.
- 2.1.21 **“Erf”/ “Erven”** mean unless otherwise indicated, every Erf or all Erven in the Development and on which is to be established, *inter alia*, but not limited to, residential dwellings or Sectional Title Schemes and includes immovable property transferred or to be transferred in accordance with the provisions hereof to the Association;

- 2.1.22 “**Establishment Date**” means the date of registration of transfer of the first Erf within the Development from the Developer to an Owner;
- 2.1.23 “**Estate Manager**” means any person(s) or body(ies) appointed by the Association in accordance with the provisions of this Constitution, either as an employee or as an independent contractor, to undertake the management of the Development and the affairs of the Association or Trustees and as more fully set out in clause 22 below;
- 2.1.24 “**Estate Site Plan**” means the draft plan depicting the Development, which plan is subject to re-layout, renumbering and approval by the Surveyor-General and annexed hereto as **Annexure A**;
- 2.1.25 “**Guide**” means the architectural and landscaping guidelines prepared for and applicable to the Development, a copy of which is annexed hereto as **Annexure B** and includes all/any amendments made thereto from time to time as stipulated in clause 15 of this Constitution;
- 2.1.26 “**Improvements**” mean any structure of whatever nature constructed or erected or to be constructed or erected on an Erf;
- 2.1.27 “**Income Tax Act**” means the Income Tax Act, No. 58 of 1962, as amended from time to time;
- 2.1.28 “**Land**” means Erf 35936 Paarl, in the Drakenstein Municipality, Paarl Division, Western Cape Province and held by Deed of Transfer No. T15607/2016;
- 2.1.29 “**Leviable Property**” means any Erf or Unit, that has been registered in the name of a Member, other than the Developer, but, however, includes a Completed Occupied Residence.
- 2.1.30 “**Local Authority**” means the Local Authority having jurisdiction over the Development which, at date of approval of the Development, is the Drakenstein Municipality;
- 2.1.31 “**LUPO**” means the Land Use Planning Ordinance, 1985 and includes any substituted legislation and/or amendments;
- 2.1.32 “**Member/s**” means all Owners of Erven or Units within the Development including Full Members, Apartment Members, and Sub-Scheme Members, as are categorised in accordance with clause 5 of this Constitution including the Developer in its capacity as such, during the Development Period;

- 2.1.33 “**Ombud Service Act**” means the Community Schemes Ombud Service Act, 9 of 2011;
- 2.1.34 “**Ombud Service**” means the Community Schemes Ombud Service established in terms of the Ombud Service Act.
- 2.1.35 “**Owner**” means the registered Owner of an Erf or a Unit, or a share thereof, who is, in terms of the Deeds Registries Act, reflected in the records of the Deeds Registry concerned as the registered owner of such Erf or Unit;
- 2.1.36 “**Primary Residence**” means in relation to an Erf or a Unit within the Development that would, at the time of the sale or alienation thereof by the owner thereof, be determined to be the primary residence of such owner in terms of paragraph 44 of the Eighth Schedule to the Income Tax Act No. 58 of 1961;
- 2.1.37 “**Private Open Spaces**” means all Erven in the Development which are identified as private roads, private open spaces, lakes, waterways and pathways and indicated as such on the Estate Site Plan;
- 2.1.38 “**Resolution**” means a resolution passed at any meeting of the Association and/or the Trustees by an ordinary majority of the total votes represented at such meeting by Members present in person or by proxy;
- 2.1.39 “**Rules**” mean such rules as are made by the Association and/or the Trustees from time to time in terms of the provisions of this Constitution;
- 2.1.40 “**Sectional Titles Legislation**” means the Sectional Titles Act No. 95 of 1986 and the Sectional Title Schemes Management Act No 8 of 2011, as amended from time to time;
- 2.1.41 “**Sectional Title Scheme**” means any scheme established in accordance with the Sectional Titles Legislation;
- 2.1.42 “**Sectional Title Trustee**” means a Trustee appointed by a Body Corporate to serve as a trustee of the Association in accordance with this Constitution;
- 2.1.43 “**Structural Related Expenditures**” means all cost and expenditure of the Association relating to the maintenance, upkeep, insurance, replacement or redevelopment of the essential infrastructure and assets of the Association, other than such cost and expenditure related to infrastructure or assets that relates to securing the Estate.

- 2.1.44 “**Sub-Scheme**” means each sub-development/extension in the Development, in respect of which a separate Sub-Scheme Association is to be established, subject to and in terms hereof;
- 2.1.45 “**Sub-Scheme Association**” means every homeowners’ association established for a Sub-Scheme established in relation to an Erf within the Development in compliance with this Constitution;
- 2.1.46 “**Sub-Scheme Association Trustee**” means a Trustee appointed by a Sub-Scheme Association to serve as a trustee of the Association in terms of this Constitution;
- 2.1.47 “**Sub-Scheme Member**” means a Member that is an Owner of an Erf relating to which a “Sub-Scheme Association” has been established as a result of an extension of the Development and who is represented at the Association by a Sub-Scheme Association Trustee;
- 2.1.48 “**Trustees**” means the Trustees of the Association, collectively from time to time and includes alternate and co-opted Trustees; and
- 2.1.49 “**Unit/s**” means a unit as defined in the Sectional Titles Legislation.
- 2.2 In this Constitution:
- 2.2.1 any reference to an enactment is to that enactment as at the Establishment Date and as amended or re-enacted from time to time thereafter;
- 2.2.2 any reference in this Constitution to a “**clause**” by number refers to a corresponding provision of this Constitution;
- 2.2.3 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Member, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Constitution;
- 2.2.4 references to “**days**” (other than a reference to a Business Day), “**months**” or “**years**” in this Constitution shall be construed as calendar days, months or years, as the case may be.
- 2.2.5 when any number of days is prescribed in this Constitution, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a

Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding Business Day;

- 2.2.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.2.7 expressions defined in this Constitution shall bear the same meanings in the schedules or annexures to this Constitution which do not themselves contain their own conflicting definitions;
- 2.2.8 where any term is defined within the context of any particular clause in this Constitution, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Constitution, notwithstanding that that term has not been defined in this interpretation clause;
- 2.2.9 any reference in this Constitution to a Member shall include a reference to that Member's assigns expressly permitted under this Constitution and, if such Member is liquidated or sequestrated, be applicable also to and binding upon that Member's liquidator or trustee, as the case may be;
- 2.2.10 the words “**shall**” and “**will**” and “**must**” used in the context of any obligation or restriction imposed on a Member in this Constitution shall have the same meaning;
- 2.2.11 the words “**include**”, “**including**” and “**in particular**” shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word(s);
- 2.2.12 the words “**other**” and “**otherwise**” shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible;
- 2.2.13 the use of any expression in this Constitution covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Members are subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 2.2.14 any reference to “**law**” means any law (including statutory, common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order, other legislative measure, directive, requirement, request or guideline (whether or not having the force of law but, if not having the force of law, is generally

complied with by the persons to whom it is addressed or applied) of any government, supranational, local government, statutory or regulatory or self-regulatory or similar body or authority or court and the common law, as amended, replaced, re-enacted, restated or reinterpreted from time to time;

2.2.15 where this Constitution requires a Member to use its “**reasonable endeavours**” in relation to an action or omission, that Member shall do all such things as are reasonably necessary or desirable so as to achieve that action or omission and, to the extent that the action or omission is frustrated, hindered or otherwise difficult to attain, the Members shall, to the extent that it is commercially reasonable to do so, consult and co-operate with each other and continue to take action so as to achieve that action or omission, provided that any actions or omissions required to be undertaken shall not be such as to result in a breach of a fiduciary duty or contravention of any law;

2.2.16 the rule of construction that a contract shall be interpreted against the person responsible for the drafting or preparation of the contract, shall not apply.

3 STATUS OF MHOA

3.1 The Association will be established the Establishment Date, and this Constitution, as may be amended from time to time, is binding upon the Member/s.

3.2 The Association shall be designated as the **Le Parc Residential Estate Master Home Owners’ Association** and shall, subject to the provisions of this Constitution, be responsible for the control, administration and management of the Development for the benefit of all Members.

3.3 The Association shall have perpetual succession and shall be capable of suing and being sued in its corporate name in respect of:

3.3.1 any contract made by it;

3.3.2 any damage to the Private Open Space or other property of the Association;

3.3.3 any matter in connection with the land or Improvements for which the Association is liable;

3.3.4 any matter arising out of the exercise of its powers or the performance or non-performance of its duties;

3.3.5 any claim by or against the Developer in respect of the Development and the Local Authority, provided that such action is authorised by a Resolution at a general meeting of the Association.

3.4 It is recorded that the Association has been established as a non-profit making institution for the purposes and objectives set out in this Constitution.

3.5 No Owner in his personal capacity, nor any Body Corporate or any Sub-Scheme Association, shall have any right, title or interest to or in the funds or assets of the Association, which shall vest in and be controlled by the Trustees on behalf of its Members, according to the objects of the Association and in terms of this Constitution.

4 OBJECTIVES

4.1 The Association shall serve as a Master Home Owners' Association with the following objectives:

4.1.1 to ensure compliance with the conditions for the subdivision of the Land imposed by the Local Authority when approving the Development and more specifically:

4.1.1.1 to oversee, maintain and control the Development;

4.1.1.2 ensure the general high standard of the Development;

4.1.1.3 generally, to carry on, promote advance and protect the communal interest of Members, and in particular in so promoting such communal interest to provide, promote and maintain essential community services, amenities and activities of the Development.

4.1.2 the regulation and control of harmonious development of the Development;

4.1.3 to promote high standard of Improvements in the Development;

4.1.4 to direct the implementation of a security protocol, as well as other policies for implementation by the Estate Manager to ensure that all services as are provided by, and amenities belonging to the Association, shall be for and to the benefit of and available in a fair and equitable manner to all Members and all residents of housing units within the Estate;

4.1.5 to enforce compliance by Members of their obligations in terms of this Constitution, the Guide, and any Rules created in terms thereof;

- 4.1.6 To co-operate with the Local Authority in its endeavour to ensure compliance with any municipal legal requirements, including the conditions of establishment and rezoning imposed by the Local Authority;
- 4.1.7 to maintain all Common Property and improvements thereof, services infrastructure, facilities, installations and other common assets of the Association according to the standards envisaged by the Trustees, and where necessary, to repair and replace such services, facilities, installations and other assets.
- 4.1.8 to register the Scheme with the Ombud Service and to on a continual basis ensure that payment is made of the prescribed levy payable by the scheme in terms of section 59 of the Ombud Act in the amount calculated as prescribed by such Act and the regulations thereunder and to with such Service the annual return in the prescribed form in compliance with section 39 of the Ombud Act;
- 4.1.9 in general:
- 4.1.9.1 to ensure the maintenance and promotion of harmony in the physical and social environment of the Development;
- 4.1.9.2 to promote and encourage Owners to maintain at all times the external appearances of their properties in a clean and tidy condition and to maintain high standards in this regard so as to ensure that the appearance of their properties is both aesthetically pleasing and desirable when viewed from the outside and further to take steps to enforce the maintenance of such standards were deemed necessary in the opinion of the Trustees;
- 4.1.9.3 to protect and promote the interests of the Association, all Sub-Scheme Associations, Sectional Title Schemes, and all Members, as far as the Development is concerned;
- 4.1.9.4 to control the transfer of Erven in the Development and ensure compliance with any conditions that may be imposed by the Local Authority as well as those conditions imposed by the Developer in the agreement of sale between the Developer and the first Owner of an Erf or Unit;
- 4.1.9.5 to take transfer of, maintain and insure, where necessary, all services infrastructure, the roads, the Private Open Space and Improvements thereupon in the development and control the usage thereof and of the facilities belonging to the Association or falling under its control;

4.1.9.6 to impose and administer the Rules for the management of the Development, as introduced by the Developer, and amend or replace such rules, from time to time, and introduce, where practical, a security protocol, as well usage policy documents relating to the utilisation of amenities in the Estate, for implementation by the Estate Manager, as the Trustees may deem necessary.

4.1.10 the Association shall have the power to perform such acts as are necessary and reasonably required to accomplish the fulfilment of the foregoing objects including, but not restricted, to powers specifically contained in this Constitution.

5 MEMBERSHIP

Membership of the Association shall consist of Full Members, Apartment Members, and Sub-Scheme Members:

5.1 Full Membership will apply to:

5.1.1 the Developer for the Development Period;

5.1.2 every Owner, who is neither an Apartment Member nor a Sub-Scheme Member, upon registration of transfer of an Erf into his name, provided that where such ownership is vested more than 1 (one) person, such person shall be deemed jointly to be 1 (one) Member of the Association and shall be jointly and severally responsible for the obligation of such membership;

5.1.3 in respect of an Erf on which a Sectional Title Scheme is established, the Body Corporate of that Sectional Title Scheme.

5.1.4 In respect of an Erf on which a Sub-Scheme is established, the Sub-Scheme Association of that Sub-Scheme.

5.2 Apartment Membership will apply every Owner a Unit within the Development upon registration of transfer of such a Unit into his name, provided that where such ownership is vested more than 1 (one) person, such persons shall be deemed jointly to be 1 (one) Member of the Sectional Title Scheme and shall be jointly and severally responsible for the obligation of such membership;

5.3 Sub-Scheme Membership will apply to every Owner an Erf within a Sub-Scheme upon registration of transfer of such Erf into his name, provided that where such ownership is vested more than 1 (one) person, such persons shall be deemed jointly to be 1 (one) Member of the Sub-Scheme Association and shall be jointly and severally responsible for the obligation of such membership;

5.4 The Developer shall cease to be a Member of this Association at the end of the Development Period.

6 FUNCTIONS

6.1 The functions to be performed by the Association shall include:

- 6.1.1 the establishment of a fund to defray the expenses of the Association relating to maintenance, repairs, renewal, upgrading, twenty four hour manned security service, insurance, landscaping, statutory rates, taxes and charges and administrative expenses, including all costs associated with the functioning of the office of Estate Manager, as well as the payment of prescribed levies to the Ombud Service and a reasonable provision for future expenses relating to maintenance, repairs, renewal and upgrading of the infrastructure services, assets and amenities, when and where necessary;
- 6.1.2 to determine and collect contributions from Members as levies, as more fully set out in this Constitution, in order to maintain the fund of the Association;
- 6.1.3 to properly maintain the Private Open Space and all assets of the Association;
- 6.1.4 to ensure compliance with the provisions of this Constitution, the constitutions of any Sub-Scheme Association and the rules of any Body Corporate (only if the latter functions are contractually delegated to the Association), the Guide and Rules established in terms hereof.
- 6.1.5 To ensure that high environmental, building and social standards are maintained within the Development.
- 6.1.6 Such other functions and duties as may be referred to elsewhere in this Constitution.
- 6.1.7 Such ancillary functions as may be necessary to achieve the objects as stipulated in clause 4 above and to perform the functions referred to herein.
- 6.1.8 To register with and fully comply with statutory obligations as an Association in terms of the Ombud Service Act.
- 6.1.9 In general, to control, manage and administer the Development for the benefit of all Members and Owner's.

7 ESTABLISHMENT OF SUB-SCHEME ASSOCIATIONS – BODIES CORPORATE

- 7.1 Upon establishment of any:
- 7.1.1 Sub-Scheme Association, a copy of the constitution or rules of such Sub-Scheme Association shall be furnished to the Association for approval. No amendment to such constitution or rules may be effected without the written approval of the Association.
- 7.1.2 Sectional Title Scheme, a copy of the application in terms of section 10(5) (a) of the Sectional Title Schemes Management Act 8 of 2011 is be furnished to the Association for approval prior to lodgement thereof for approval with the office of Ombud Services. Once the Ombud has issued a certificate in terms of section 10 (5) (c) a copy thereof must be lodged with the Trustees. No further amendment to the management or conduct rules may be effected without the written approval of the Association.
- 7.2 This Constitution shall be binding upon all Sub-Scheme Associations, Sectional Tile Schemes and the members thereof.

8 RELATIONSHIP WITH LOCAL AUTHORITY

- 8.1 The Association shall ensure the maintenance, upkeep, upgrading and installation, where required, of common services serving the Development, including but not limited to, the electrical, sewerage and drinking water reticulation, storm water systems and refuse collection to a central point, or as otherwise determined by the Trustees subject, however, to the technical approval of the appropriate department of the Local Authority controlling such services.
- 8.2 A Member shall, without compensation, allow electricity, telephone/telecommunication, television and internet cables/optical fibre cables and/or wires and main and/or other water pipes and the sewerage and drainage, including storm water, of any Erf to be conveyed across his Erf and/or Unit if considered necessary by the Association and/or Developer in such manner and position as may from time to time be reasonably required; this shall include the right of access to such Erf and/or Unit at any reasonable time for the purpose of constructing, altering, removing or inspection of any works connected with the above.
- 8.3 This Constitution shall not be amended without the written consent of the Local Authority and any amendment hereof shall be effective as from the date of such consent.

8.4 The Association may, for the benefit of the Members, from time to time negotiate and reach an agreement with the Local Authority, or any other competent authorities, regarding rates and taxes, the provision of services and the costs thereof.

9 DOMICILIUM OF ASSOCIATION & MEMBERS / NOTICES TO MEMBERS

9.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:

9.1.1 such address shall be the address of the office of the Estate Manager;

9.1.2 the Trustees shall give notice to all Members of any change of such address.

9.2 The *domicilium citandi et executandi* of every Member (except for the, Developer, whose such service address, shall be that of the office of the Estate Manager, for the Development Period) shall be his or her residence within the Estate, unless the Member has notified the office of the Estate Manager in writing, of another physical address within the Republic of South Africa, which shall serve such purpose.

9.3 Any notice that is to be given by the Trustees to a Member in terms of the Constitution, the Rules or the Guide, may be sent by the office of the Estate Manager, on behalf of the trustees, by email to the email address provided by the Member to the Developer, or the Developer's appointed conveyancer, when taking transfer of the Erf or Unit. A Member shall be entitled to change such email address, at which it prefers to receive notices, by informing the office of the Estate Manager accordingly. Such notice of change of email address will only be regarded as having been duly noted by the office of the Estate Manager when the Member has received an acknowledgement of the change of email address at such new address from the office of Estate Manager. Members are to note that the Electronic Communications and Transactions (Act 25 of 2002) will regulate notices sent and received by email. Should a member not have access to an email address for whatever reason it shall be obliged to inform the office of the Estate Manager accordingly and arrange for an acceptable alternative method for receiving notices in terms of this Constitution.

9.4 All invoices for payment of levies to the Association in terms of this Constitution, will be sent by the office of the Estate Manager, on behalf of the Trustees to Members at their appointed email addressed.

9.5 The Association shall through the office of the Estate Manager establish a website under the web address www.leparc.co.za for the purpose of providing useful information to

Members which service shall, other than containing links from which copies of the latest version of the founding documents of the Association, such as the Constitution, the Rules and the Guide, as well as the various policy documents pertaining to items such as security services and usage of amenities can be obtained, but also features a notice board facility where notices of meetings and import notices to Members and residents of the Estate, will be posted by the office of the Estate Manager.

10 TERMINATION

- 10.1 The Association shall continue for an indefinite period subject to the condition that it may be wound up at any time and dissolved by a unanimous resolution of the Trustees then in office.
- 10.2 Upon termination of the Association, the remaining assets of the Association must be transferred to any institution, board or body which is exempt from the payment of income tax in terms of Section 10(1)(e)(i)(cc) of the Income Tax Act, which has as its sole or principal object the managing of the collective interest common to all its members.

11 PHASES

- 11.1 The Developer intends to develop and market the Development in phases as the Developer deems fit and for the Development Period it shall enjoy unrestricted rights with regards to marketing of the Development and, in particular, the right to erect signage within and outside the Estate.
- 11.2 The Developer shall during the Development Period, in its absolute discretion, be entitled to apply for and subject to approval of the Local Authority, vary the layout and/or zoning and/or size and/or boundaries of Erven and/or Units and/or the extent and position of streets comprising the Development and Members shall be bound thereby and shall have no claim of whatsoever nature against the Developer arising therefrom, provided that the Developer shall not be entitled to change an Erf or Unit which has already been sold by the Developer in any other way than provided for in the deed of sale in respect of such Erf or Unit. Insofar as consent of a Member is required for any of the foregoing, the Developer is irrevocably granted a power of attorney to grant any/all such consents on behalf of the Members, as may be required.
- 11.3 The Developer shall in its absolute discretion have the right to undertake further single residential phases either as part of the Association or to have it established as a separate Sub-Scheme under the Association.

12 MEMBERS AND OWNERS' RIGHTS AND OBLIGATIONS

- 12.1 Every Member is obliged to comply with:
- 12.1.1 the provisions of this Constitution, its annexures, and all the Rules;
 - 12.1.2 the provisions of the Guide annexed hereto;
 - 12.1.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member; and
 - 12.1.4 any directive given from time to time by the Association and/or the Trustees in enforcing the provisions of this Constitution including the security protocol and other policy documents relating to the usage of amenities within the Estate.
- 12.2 Every Member shall to the best of his ability, further the objects and interests of the Association.
- 12.3 A Member shall neither subdivide his Erf or Unit nor consolidate it, without the written consent of the Developer for the Development Period, and thereafter, of the Trustees.
- 12.4 Each Member shall:
- 12.4.1 maintain his Erf and/or Unit in accordance with the Guide and the Rules respectively;
 - 12.4.2 maintain in a neat and tidy condition and in a state of good repair all Improvements on his Erf or his Unit, as the case may be;
 - 12.4.3 comply with all security procedures and directives contained in the Rules and implemented by and issued from time to time by the Trustees;
 - 12.4.4 tolerate access to irrigation pipe lines on his Erf or the Common Property by owners of these lines;
 - 12.4.5 not do or suffer to be done on any Erf and/or Unit anything which, in the opinion of the Trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any Member, or occupier of any Erf and/or Unit in the Development;
 - 12.4.6 not erect any structure over any part of the sewerage system and/or any electricity, telephone/telecommunication, television and internet/optical fibre cables installed.

- 12.5 Each Full Member, other than the Developer, shall pay the monthly levy to the Association in accordance with this Constitution.
- 12.6 The Developer shall, however, at all times be obliged to pay the monthly levy relating to each Completed Occupied Residence, as held in ownership by the Developer, provided that such residence must actually be occupied by a paying occupant for a period longer than 30 (thirty) days.
- 12.7 Each Apartment Member or Sub-Scheme Member shall pay the levy as imposed by respectively by the Body Corporate or Sub-Scheme Association of which his Unit or Erf, as the case may be, forms a part.

13 RESTRICTIONS ON USAGE

- 13.1 Subject to the provisions set out hereunder no Member shall apply for the rezoning of his Erf and/or Unit (as the case may be) with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf and/or Unit for any purpose other than the permitted use applicable upon establishment of the Development.
- 13.2 No Member shall conduct any business on an Erf and/or Unit (as the case may be) other than the uses envisaged here-in or use his Erf and/or Unit for purposes other than residential purposes unless the Trustees have approved the use to which the Erf and/or Unit is to be put in writing and the Local Authority has, to the extent that it may be necessary, granted the necessary approvals authorising such use in terms of applicable laws and regulations and there has been compliance with the following:
- 13.2.1 any Member wishing to conduct a business on his Erf and/or Unit or who wishes to use his Erf and/or Unit for purposes other than residential, shall, during the Development Period, apply in writing to the Developer for permission to do so and thereafter to the Trustees for permission to do so. The Developer or Trustees (as the case may be) shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the Developer or the Trustees (as the case may be) deem necessary;
- 13.2.2 an application in terms of the foregoing shall contain a full description of the proposed business or usage, including but not limited to:
- 13.2.2.1 the type of business;
- 13.2.2.2 the number of full-time and/or part-time staff;

- 13.2.2.3 the times and duration of the business operation, including the number of days per week;
- 13.2.2.4 the projected growth of the business operation;
- 13.2.2.5 whether any alteration to the existing Improvements is proposed;
- 13.2.2.6 in which portion of the Improvements the business activity is to be located;
- 13.2.2.7 the number and type of vehicles which will be regularly involved in the business operation;
- 13.2.2.8 the estimated number of visitors per week resulting from the business operation;
- 13.2.2.9 the estimated number of deliveries necessitated by the business operation;
- 13.2.2.10 what provision is to be made for parking;
- 13.2.2.11 the likely impact of the business operation on neighbouring properties and the neighbourhood in general;
- 13.2.3 the Trustees shall not approve any such application unless they are satisfied that the application complies with the following:
 - 13.2.3.1 the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of neighbours;
 - 13.2.3.2 the number of employees involved in the running of the business operation will not exceed 2 (two);
 - 13.2.3.3 the Member will reside permanently on the Erf or Unit in respect whereof the application is made;
 - 13.2.3.4 comment has been obtained from the Members who are affected by the application and made available for consideration by the Trustees;
 - 13.2.3.5 adequate provision has been made for parking;
 - 13.2.3.6 the granting of the application will not have any significant effect on the density of traffic in the Development
 - 13.2.3.7 non-residents will not be afforded uncontrolled access into the Development;

- 13.2.3.8 no signage will be erected;
- 13.2.3.9 the hours of the business operation will be confined between 08:00 and 18:00 on weekdays and no business will be conducted on Saturdays, Sundays and proclaimed public holidays;
- 13.2.4 should any Member to whom permission has been granted for the conduct of a business change any aspect of such business then such Member shall submit a new application in accordance with the provisions hereof to continue such business;
- 13.2.5 no Member to whom approval has been granted shall be entitled to erect any sign or advertisement on his Erf and/or Unit or on any of the Common Property or Private Open Spaces in connection with such business save with the written approval of the Association;
- 13.3 No Member shall be entitled to without the prior written consent of the Association:
- 13.3.1 at any time operate a guest house on his Erf and/or Unit, provided that this prohibition shall not apply to any guest houses operated by the Developer or his successors in title from time to time where the necessary zoning approval has been obtained in respect of such guest houses; and/or
- 13.3.2 let his residence for a period less than 30 days.
- 13.4 Notwithstanding anything else herein contained, the Developer shall be entitled to have commercial offices on the Development from which it can conduct its business activities and shall be entitled to do all things reasonably necessary to lawfully establish such offices on the Development.

14 ALIENATION AND OCCUPATION

- 14.1 A Member shall not be entitled to Alienate or transfer an Erf and/or Unit (as the case may be) without the written consent of the Trustees which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this Constitution.
- 14.2 Such consent shall be withheld if:
- 14.2.1 the Member in question is indebted to the Association in respect of a levy contributions as per clause 32 of this Constitution or any other amounts which the Association may in terms of this Constitution, including a fee, as may be charged by the office of the Estate Manager for issuing the consent as sought, be entitled to

claim from him, i.e. if the Association has not issued a clearance that all amounts owing to the Association by such Member have been paid;

14.2.2 an Exit Levy is payable relating to a particular transaction, unless the Member has issued a guarantee, that is acceptable to the Trustees, for the payment of the Exit Levy upon registration of transfer of the particular transaction for which the consent to alienation is sought.

14.2.3 the Member is, as owner of the property being alienated, also a member of a Body Corporate, or of a Sub-Scheme, and is indebted to such Body Corporate, or Sub-Scheme, in respect of any amounts which the Body Corporate or Sub-Scheme may be entitled to claim from him;

14.2.4 The proposed transferee has not agreed in writing, in the format prescribed by the office of the Estate Manager, to become a Member of the Association and to observe the Constitution for the duration of his ownership of the Erf or Unit;

14.2.5 the proposed transferee does not acknowledge that, he shall upon receiving transfer of the Erf or Unit, ipso facto, become a Member of the Association;

14.2.6 in those cases where an Erf and/or Unit is owned jointly and subject to an arrangement whereby the co-owners are entitled to occupy the Erf and/or Unit at particular times during the year, the Association is not satisfied that the transferee of an undivided share in the Erf and/or Unit is aware of such arrangements and has bound himself thereby;

14.3 No Member shall let or otherwise part with occupation of his Erf and/or Unit without the consent of the Association, which consent shall only be withheld if the Association is not satisfied that the provisions of the Rules, and any other by-rules or regulations made in terms of this Constitution, have been complied with and/or is not satisfied that the occupier of the Erf and/or Unit has in writing agreed to be bound by same.

14.4 To ensure that every Owner and future Owner is, or will, be legally bound by this Constitution the Developer will have, or has, as the case may be, the following condition of title inserted in each title deed:

“This property may not be transferred without the prior written consent of the LE PARC RESIDENTIAL ESTATE MASTER HOME OWNERS’ ASSOCIATION”

or such other wording with similar intent as the Registrar of Deeds may accept in its exclusive discretion.

15 GUIDE

- 15.1 The Guide constitutes an integral part of this Constitution and for the Development Period the Guide may be amended, substituted, added to or repealed at the instance of the Developer and thereafter by the Trustees.
- 15.2 All landscaping, plants and all Improvements shall be of approved design and of sound construction and shall comply with the provisions of the Guide.
- 15.3 No construction or erection of or addition to, improvements on an Erf, Sectional Title Scheme, and/or within a Unit may commence prior to the approval of plans for such Improvements and, in this regard:
- 15.3.1 a full set of proposed building plans which indicate both construction and design details shall be submitted to the Architect;
- 15.3.2 thereafter, the approved plans shall be submitted to the Local Authority for approval;
- 15.3.3 having obtained the approval of the Local Authority, the Member shall comply with all terms, conditions and changes required by the Architect, conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Guide read with the plans;
- 15.3.4 A scrutiny fee shall be payable to the Architect by each Member seeking approval in terms of this clause 15, which fee shall be determined by the Trustees from time to time.
- 15.4 Approval of building plans will not be granted by the Local Authority without the prior written approval thereof by the Architect which approval shall be evidenced by an endorsement by the Architect on the plans as submitted.
- 15.5 In order to ensure that prospective purchasers or tenants are fully and correctly advised of their rights and obligations relative to the Development, Members who wish to re-sell or let their properties, are obliged to appoint an Accredited Estate Agent, it being recorded, however, that the provisions of this particular clause will not apply in the case of a Distressed Sale.

16 BREACH

- 16.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions contained in this clause including, but not limited to, an application in terms of the Ombud Service Act.
- 16.2 If any Member fails in the observance of any of the provisions of this Constitution with regard to Improvements and/or the provisions of the Guide and/or fails to comply with any rules or regulations made in terms thereof, the Trustees may on behalf of and in the name of the Association serve notice on such Member, calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:
- 16.2.1 enter upon the Erf and/or Unit (as the case may be) to take such action as may be reasonably required to remedy the breach and the owner concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand; and/or
- 16.2.2 call upon such Member in writing to remove or alter within a specified period any portion of the Improvements or any addition erected contrary to the provisions of this Constitution read with the Guide and, failing which, the matter shall be referred to a special meeting of the Association convened to afford Members the opportunity to give directions to the Trustees. The Resolution of the Association at such meeting shall be binding upon such defaulting Member and shall be implemented by the Trustees; and/or
- 16.2.3 institute proceedings with the Ombud Service or in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.
- 16.3 If any Member fails to make payment on due date of a levy contribution as contained in clause 32 of this Constitution and/or any other amounts payable by such Member, the Trustees may give notice to such Member requiring him to remedy such breach within such period as the Trustees may determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association

in obtaining recovery, including interest and any arrear amounts at a rate to be determined by the Trustees from time to time.

- 16.4 Nothing in the foregoing shall derogate from or in any way diminish the right of the Association to institute proceedings with the Ombud Service or in any court of competent jurisdiction for recovery of any money due by any Member arising from any cause of action whatsoever or for any other relief.
- 16.5 In the event of any breach of this Constitution by the members of any Owner's household or his invitees or lessees, such breach shall be deemed to have been committed by the Owner himself but, without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Owner.

17 THE TRUSTEES AND MANAGEMENT

THE OFFICE AND QUALIFICATIONS

- 17.1 The Trustees of the Association shall comprise 2 (two) Trustees ("**Full Member Trustees**") appointed by the Full Members, and 1 (one) Sub-Scheme Association Trustee and 1 (one) Sectional Title Trustee, for each Sub-Scheme Association, or Body Corporate, within the Estate. During the Development Period, the Developer shall have the right to appoint as many Trustees ("**Developer Trustees**") as would ensure that the number Trustees appointed by the Developer is superior in number to the other Trustees, by at least one. After the Development Period the Association may increase or decrease the number of Trustees in accordance with the terms of this Constitution.
- 17.2 A Trustee shall be an individual but need not himself be a Member, provided that the majority of Full Member Trustees shall be Full Members.
- 17.3 For the Period from the Establishment Date until the first general meeting of the Association the Developer shall appoint all Trustees.
- 17.4 Subject to the provisions of clause 17.5, each Full Member Trustee shall continue to hold office until the annual general meeting of the Association following his appointment, at which meeting each Full Member Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The Developer shall, by written notice to the Trustees, be entitled to remove any Developer Trustee appointed by the Developer and upon such removal or upon any Developer Trustee ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.

- 17.5 A Trustee shall be deemed to have vacated his office as such upon:
- 17.5.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
 - 17.5.2 his making any arrangement or composition with his creditors;
 - 17.5.3 his conviction for any offence involving dishonesty;
 - 17.5.4 his becoming of unsound mind and or being found lunatic;
 - 17.5.5 resigning from such office in writing;
 - 17.5.6 his death;
 - 17.5.7 being removed from office by resolution of the Trustees;
 - 17.5.8 being disentitled to exercise a vote in terms of this Constitution provided he/she is a Full Member Trustee;
 - 17.5.9 being disqualified to hold office as a director in terms of the Companies Act, as aforesaid.
- 17.6 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 17.5, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the minute book of the Trustees. Should the office of a Trustee fall vacant prior to the next annual general meeting of the Association, the vacancy in question may be filled by the Developer if the vacancy is in respect of a Developer Trustee and by the remaining Full Member Trustees if the vacancy is in respect of a Full Member Trustee and by the relevant Sub-Scheme Association or Body Corporate whose representative has vacated office if the vacancy is in respect of a Sub-Scheme Association or Body Corporate and the person so appointed shall hold office until the next annual general meeting.
- 17.7 The first Chairman shall be appointed by the Developer and such appointee shall hold office until the first annual general meeting of the Association provided that such office shall *ipso facto* be vacated by the Trustee who was appointed Chairman upon him ceasing to be a Trustee for any reason.
- 17.8 Within 7 (seven) days of the holding of each annual general meeting of the Association the Trustees shall meet and shall elect from their own number the Chairman who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairman shall *ipso facto* be vacated by the Trustee holding such office upon

his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the aforesaid office, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.

- 17.9 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees and all general meetings of the Association and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a Member's spouse shall be entitled to speak at any meeting.
- 17.10 If the Chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such meeting shall choose another Chairman for such meeting.
- 17.11 If any Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.
- 17.12 A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the Association, by virtue of any interest he may have therein.
- 17.13 No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by the Chairman and 1 (one) Trustee, the latter specifically appointed as authorised signatory in terms of a resolution of Trustees whereby the Trustees bind the Association.
- 17.14 Notwithstanding the provisions of this Constitution, the Trustees may formally resolve to ratify and adopt any unauthorised actions which may have been taken by any Trustee or any representative of the Trustees on behalf of the Association, if the Trustees deem it to be to the benefit of the Association to do so.
- 17.15 Trustees shall be not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 17.16 Trustees may not make loans on behalf of the Association to Members or to themselves.

FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

- 17.17 Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the

management and direction of such business and affairs, including the right of appointment and dismissal of any Estate Manager, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association.

- 17.18 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, Estate Manager/s, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 17.19 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 17.20 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution in such reasonable manner as they shall decide from time to time.
- 17.21 The Trustees may make regulations and rules not inconsistent with this Constitution or any further regulations or rules prescribed by the Association in general meeting:
- 17.21.1 as to the resolution of disputes generally without limiting the right of the Association or any Member to utilise the dispute resolution mechanism available to them in terms of chapter 3 of the Ombud Service Act;
 - 17.21.2 for the furtherance and promotion of any of the objects of the Association;
 - 17.21.3 for the better management of the affairs of the Association;
 - 17.21.4 for the advancement of the interests of Members;
 - 17.21.5 for the conduct at meetings;
 - 17.21.6 to levy and collect contributions from Members in accordance with the provisions of this Constitution;
 - 17.21.7 to levy and recover from Members, moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association;
 - 17.21.8 to assist it in administering and governing its activities generally.

- 17.22 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
- 17.22.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven and Sectional Title Schemes within the Development in accordance with the provisions of the Guide. The Trustees shall be entitled to require any Owner or member of a Sub-Scheme Association, who shall be obliged, to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;
 - 17.22.2 the making of, entering into and carrying out of agreements with third parties on behalf of the Association for any purposes of the Association;
 - 17.22.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons including the Estate Manager in terms of clause 22;
 - 17.22.4 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as sewage, electricity supply, landscaping, maintenance of private roads, refuge facilities, removal of refuse and suchlike, where applicable;
 - 17.22.5 the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose.

18 FINANCIAL YEAR END

- 18.1 The financial year-end of the Association is the last day of February of each year.

19 BOOKS OF ACCOUNT

- 19.1 The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association.
- 19.2 The Trustees shall ensure that in keeping books of account a system is employed that properly differentiates between, and records as such, those costs and expenditure, that constitute Structural Related Expenditures, in accordance with clause 32.6 of this Constitution, and those that do not.
- 19.3 The Trustees 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.

- 19.4 The Association in annual general meeting or the Trustees may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by Members of the accounts and books of the Association, or any of them, and subsequent to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 19.5 At each annual general meeting the Trustees shall lay before the Association financial statements for the immediately preceding financial year of the Association. Such financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

20 DEPOSIT AND INVESTMENT OF FUNDS

- 20.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- 20.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any registered bank approved by the Trustees from time to time.
- 20.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.
- 20.4 The Association shall not be allowed to distribute any of its funds to any person other than to a similar organization. The definition and context of the word “distribute” in this clause to be limited and defined as determined by the definition of the word “distribution” as set out in the interpretation clause of the Companies Act, as aforesaid.

21 AUDIT

- 21.1 Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.
- 21.2 The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards.

21.3 The Association shall establish an audit committee in order to ensure good corporate governance. The committee will consist of two members to be elected at an annual general meeting. It is noted that the committee will report directly to the members.

22 THE ESTATE MANAGER

22.1 For the duration of the Development Period, the Developer shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, an Estate Manager, who is to be a full time employee of the Association and paid by the Association, to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Estate Manager, including the power to collect levies, provided that an Estate Manager shall be appointed for a year at a time, and unless the Developer notifies the Estate Manager to the contrary, such appointment will be automatically renewed from year to year.

22.2 After termination of the Development Period, the Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, an Estate Manager to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Estate Manager, including the power to collect levies, provided that an Estate Manager shall be appointed for a year at a time, and unless the Trustees notify the Estate Manager to the contrary, such appointment will be automatically renewed from year to year.

22.3 Subject to clause 22.5, the Association shall take out fidelity insurance to the satisfaction of the Trustees for all monies held by the Estate Manager on behalf of the Association from time to time.

22.4 The Developer or the Trustees (as the case may be) shall ensure that there is included in the contract of appointment of an Estate Manager a provision to the effect that if the Estate Manager is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Estate Manager shall have no claim whatsoever against the Developer, Trustees and/or the Association as a result of such cancellation.

22.5 Notwithstanding anything contained in this Constitution it is recorded that no person appointed as Estate Manager shall be entitled to receive any funds from Members in any bank account other than that of the Association, whether as levies or otherwise, unless such Manager has duly complied with all requirements in that regard as contained the Ombud Service Act and the Regulations thereunder, also read with the regulations of the Estate Agents Affairs Board.

23 TRUSTEE MEETINGS AND RESOLUTIONS

- 23.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
- 23.2 Meetings of the Trustees shall be held at least once every 4 (four) months.
- 23.3 The Chairman always has the right to convene meetings of Trustees, in a manner as may be decided by the Trustees from time to time.
- 23.4 A Trustee may, provided he has the support in writing of 2 (two) other Trustees, at any time convene a meeting of Trustees by giving to the other Trustees not less than 14 (fourteen) days written notice, via the office of the Estate Manager, of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 23.5 A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.
- 23.6 The quorum necessary for the holding of any meeting of Trustees shall be 5 (five) Trustees present personally provided that each Sub-Scheme Association and Body Corporate shall be represented by at least 1 (one) trustee. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting, it shall stand adjourned to the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Trustees then present shall constitute a quorum for purposes of such meeting.
- 23.7 Any resolution of the Trustees, other than a special resolution, shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against such resolution, the Chairman shall have a second and casting vote.
- 23.8 The Chairman shall preside as such at all meetings of Trustees provided that, should at any meeting of Trustees, the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 23.9 A Trustee may be represented at a meeting of Trustees by a proxy, provided such proxy is a Trustee.

- 23.10 The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall be deposited with the Chairman at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.
- 23.11 The Trustees shall:
- 23.11.1 ensure that minutes are taken of every meeting of Trustees, although not necessarily *verbatim*, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;
 - 23.11.2 cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;
 - 23.11.3 keep all books of meetings of Trustees in accordance with the relevant statutory requirements;
 - 23.11.4 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.
- 23.12 All Resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force and effect as therein recorded with effect from the passing of such Resolutions and until varied or rescinded, but no Resolution or purported Resolution of Trustees shall be of any force or effect or shall be binding upon the Members or any of the Trustees unless such Resolution is competent within the powers of the Trustees.
- 23.13 Save as otherwise provided in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

24 ANNUAL GENERAL MEETINGS

- 24.1 The Association shall, within 12 (twelve) months of the date of establishment of the Association hold a general meeting as its first annual general meeting. Thereafter, within 6 (six) months of each financial year-end of the Association it shall hold subsequent annual general meetings, in addition to any other general meetings during that year and shall specify the nature of the meeting in the notice calling it.
- 24.2 Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.

- 24.3 All general meetings, other than annual general meetings shall be called extraordinary general meetings.
- 24.4 The Trustees may, whenever they deem it necessary, convene an extraordinary general meeting. An extraordinary general meeting may also be convened upon request by Full Members representing no less than 10% (ten per cent) of the voting rights of all Full Members, all supporting substantially the same purpose in writing and signed by the them.
- 24.5 The extraordinary general meetings shall be held at such time and place, as the Trustees shall decide from time to time.

25 NOTICES OF MEETINGS

- 25.1 An annual general meeting shall be called by not less than 21 (twenty-one) days' notice to all Trustees and all Full Members, and an extraordinary general meeting by not less than 14 (fourteen) days' notice to all Trustees and Full Members. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business, and in the case of a special Resolution the terms and effect of the Resolution and the reasons for it shall be given in the manner, as may be prescribed by the Trustees, to such persons as are, under this Constitution, entitled to receive such notices from the Association;
- 25.2 The accidental omission to give notice of a meeting or of any Resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive same, shall not invalidate the proceedings at or any Resolution passes at any meeting.
- 25.3 Apartment Members and Sub-Scheme Members shall not be entitled to notice of general or extraordinary meetings.

26 QUORUM

- 26.1 No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be 25% (twenty-five per cent) of the total of all Full Members entitled to vote at such meeting, present in person or by proxy, provided that, for the duration of the Development Period the Developer is present in person or by proxy.

- 26.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time or at such place as the Chairman of the meeting shall appoint.
- 26.3 If within 30 (thirty) minutes from the time appointed for the holding of the adjourned meeting a quorum is not present, the Full Members present shall constitute a quorum for purposes of such meeting, provided that for the duration of the Development Period the Developer is present in person or by proxy.

27 AGENDA AT ANNUAL GENERAL MEETINGS

- 27.1 In addition to any other matters required by legislation or by this Constitution to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:
- 27.1.1 the consideration of the Chairman's report;
 - 27.1.2 the announcement of the appointment of the new Full Member Trustees;
 - 27.1.3 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
 - 27.1.4 the consideration and confirmation of the budget as presented by the Trustees;
 - 27.1.5 the confirmation of the appointment of the Auditors or other office bearers;
 - 27.1.6 any other business pertinent to such meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions.

28 PROCEDURE AT MEETINGS

- 28.1 The Chairman shall preside as such at all meetings provided that should he not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Trustees present at such meeting shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 28.2 The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 7 (seven) days or more, notice of the

adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

28.3 Save as otherwise provided in this Constitution, the proceedings at any meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

29 VOTING

29.1 At every general meeting:

29.1.1 the Developer, during the Development Period, shall have 500 votes in addition to the votes it commands in respect of each "Leviable Property" owned by it;

29.1.2 every Full Member, excluding Bodies Corporate or Sub-Scheme Association, present in person or by proxy is entitled to 1 (one) vote for each Leviable Property he holds. If registered in the name of more than 1 (one) person then all such co-owners shall jointly have 1 (one) vote;

29.1.3 Apartment Members and Sub-Scheme Members shall neither possess any votes, nor be entitled to attend any general meeting but will be represented by their representative bodies in terms of clause 29.1.4.

29.1.4 The representative of each Body Corporate as well as of each Sub-Scheme Association, as Full Members, shall have a total number of votes equal to the number of Leviable Properties in the particular Sectional Title Scheme or Sub-Scheme, which votes shall be exercised at general meetings by such representative appointed by the relevant Body Corporate, or Sub-Scheme, from time to time for such purpose;

29.1.5 if a Member is a juristic person, such Member shall be represented by such representative as the Member may determine provided that the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member.

29.2 Unless the Chairman of the meeting otherwise directs, all voting shall be in writing, by way of a secret poll, which shall be taken during the course of the meeting in such manner as the Chairman of the meeting may direct.

29.3 Notwithstanding the provisions of clause 29.2 above, after the Development Period, voting on the election of a Chairman of a general meeting (if necessary) or any question

of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.

- 29.4 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 29.5 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, by Full Members present in person or by proxy and entitled to vote at the meeting, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 29.6 A vote cast under a proxy, power of attorney, or other authority, which has been revoked, shall nevertheless be valid unless:
- 29.6.1 written notice of the revocation is received by the Association prior to the meeting concerned; and
- 29.6.2 the Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 29.7 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting whose decision shall be final and conclusive.
- 29.8 If any difficulty or dispute arises regarding the admission or rejection of a vote, or regarding any other matter, such difficulty or dispute is to be determined by the Chairman, whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 29.9 Unless any Member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion

has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

- 29.10 Any resolution which could be passed at a general meeting (other than a special resolution) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the Full Members entitled to vote.

30 SPECIAL RESOLUTIONS

- 30.1 Any special resolutions or an amendment of a special resolution, shall be caused at a general meeting of which not less than 15 (fifteen) Business 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 at which Full Members, holding in the aggregate not less than 25% (twenty five percent) of the total votes of all the full Members, are present in person or by proxy.

- 30.2 The resolution has been passed on a show of hands by not less than 75% (seventy five percent) of the number of Full Members entitled to vote, including the Developer during the Development Period, on a show of hands at the meeting who are present in person or by proxy, or where a poll has been demanded, by not less than 75% (seventy five percent) of the total votes to which the Full Members present, including the Developer during the Development Period, in person or by proxy are entitled.

- 30.3 Special resolutions are required for the following matters:

- 30.3.1 no Erven forming Private Open Spaces shall be (i) sold; or (ii) mortgaged; or (iii) subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation and servitude, save as specified in the said conditions of establishment, and save as such rights as are for the benefit of this Association and its Members in terms hereof, without the sanction of a special resolution of the Association;

- 30.3.2 the Association may, in its discretion, permit the Members, subject to the provisions of this Constitution, to use the Private Open Spaces and shall do so unless by special resolution taken at an extraordinary general meeting called for the purpose, it is otherwise resolved for good reason;

- 30.3.3 amending this Constitution;

- 30.3.4 ratifying actions by the Association or the Trustees in excess of their authority in terms of this Constitution;
- 30.3.5 disposing of all or a greater part of the assets of the Association;
- 30.3.6 increasing the levy contributions as per clause 32 of this Constitution and payable by the Members by 80% (eighty percent) or more from one year to the next; and
- 30.3.7 winding-up or dissolving the Association.

31 MINUTES OF GENERAL MEETINGS

31.1 The Trustees shall:

- 31.1.1 ensure that minutes are taken of every general meeting, although not necessarily *verbatim*, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;
- 31.1.2 cause such minutes to be kept of all such meetings of the Trustees in a minute book of meetings of Trustees, and in a general minute book in respect of the general meetings;
- 31.1.3 keep all minutes of general meetings in perpetuity;
- 31.1.4 on the written application of any Owner, make all minutes of the proceedings available for inspection by such Owner.

31.2 All Resolutions recorded in the minutes of any meeting shall be valid and of full force and effect as therein recorded with effect from the passing of such Resolutions and until varied or rescinded, but no Resolution or purported Resolution shall be of any force or effect, or shall be binding upon the Members, Trustees or Owners, unless such Resolution is competent within the powers of the Trustees.

32 BUDGET AND LEVIES

32.1 The Trustees shall:

- 32.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the Association for the control, management and administration of the Development and for payment of the costs of supplying any services required by the Association and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association;

- 32.1.2 estimate the amount which will be required by the Association to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature, including all expenses relating to the Members Association/s administered by the Association;
- 32.1.3 require Members whenever necessary to make contributions to such fund for the purposes of satisfying the expenses referred to in clauses 31.1.1 and 32.1.2, equal as nearly as is reasonably practical to such estimated amount;
- 32.2 The Trustees may, from time to time, determine special levies which will become payable by Members with effect from such date as the Trustees shall determine in respect of such expenses referred to in clause 32.1 (which are not included in any estimate made in terms of clause 32.1.2) and such special levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit.
- 32.3 Any amount due by a Member by way of a levy shall be a debt due by him to the Association payable within such time as determined by the Trustees. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member. No levies paid by a Member shall be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to an Erf and/or Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of such Erf and/or Unit to pay the levies attributable to that Erf and/or Unit. No Member shall be entitled to transfer his Erf and/or Unit until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association.
- 32.4 In calculating levies, the Trustees shall take into account the income, if any, earned by the Association, including any Exit Levies and penalties received during the previous financial year.
- 32.5 The decision of the Trustees in calculating the levies shall be final and binding on all Members.
- 32.6 In calculating the levy payable by Full Members, the Trustees shall as far as reasonably possible –
- 32.6.1 assign all costs and expenditure of the Association that do not constitute Structural Related Expenditures equally amongst all Full Members (either owning a Leviable Property in their own names, or Bodies Corporate, or Sub-Scheme Associations,

relating to all Leviale Property in such schemes) provided, however, that the Trustees may in any case where they consider it equitable to do assign to any class of Membership a greater or lesser share of the costs and expenses as they may consider to be reasonable in the circumstances;

32.6.2 assign a realistic and equitable proportion of those costs attributable generally or specifically to Structural Related Expenditures to Full Members. Bodies Corporate and Sub-Scheme Associations shall, however, in such regard, be required to contribute a substantially lesser pro-rata portion to the Members Association Levy for such costs and expenditure than would be required from the other Full Members, since the former will exclusively be responsible for similar expenditures relating to those particular Sectional Title- or Sub-Schemes.

32.6.3 all costs assigned by the Trustees to a particular Body Corporate ("**Sectional Title Scheme Levy**") or Sub-Scheme Association ("**Sub-Scheme Levy**") will payable by such Body Corporate or Sub-Scheme Association which shall, in respect of such Sectional Title Scheme Levy or Sub-Scheme Levy, be responsible for collecting such pro-rata amounts from each owner of a Leviale Property in the particular Sectional Title Scheme or Sub-Scheme, which Apartment Members and Sub-Scheme Members are to be jointly and severally liable with the particular Body Corporate or Sub-Scheme, to which they belong, to the Association for payment of each such pro-rata portion of the specific Sectional Title Scheme, or Sub- Scheme Levy.

32.7 The Association may come to an agreement with the Developer for the repayment by the Association to the Developer of ongoing costs or expenses incurred by the Developer for the provision of services and the facilities on behalf of the Association within the Development.

32.8 No Member shall be entitled to any of the privileges of membership unless and until he, or his Body Corporate, or Sub-Scheme Association, in the case of Apartment Members or Sub-Scheme Members, as the case may be, shall have paid every levy and other sum (if any) which shall be due and payable to the Association or to the Sub-Scheme Association of which he is a member (as the case may be).

32.9 All levies, other than special levies which will be payable in accordance with the provisions of clause 32.2, are due and payable monthly in advance on the first day of each and every month, free of any deductions or set-off of any nature, commencing

from such date as the Trustees will determine. Levies payable for the first month after the Member has become an Owner, will be payable for 2 (two) months, one of which will be an advance payment.

32.10 Members shall be liable for payment of interest on outstanding amounts at a rate determined by the Trustees from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.

32.11 The Developer shall during the Development Period not be obliged to pay levies in respect of any portion of the Development, and, without detracting from the generality of the foregoing, specifically including any Erf or Unit, except as may be otherwise contemplated in this constitution.

32.12 During the Development Period, the Developer shall be liable to pay to the Association any shortfall between the levies paid to the Association by its Members and the Association's operational expenses (the "**operating losses**"). The operating losses (if any) will be calculated retrospectively by the Auditors at the end of each financial year of the Association and will be payable by the Developer to the Association within 30 (thirty) days from date of demand for payment by the Trustees.

32.13 Levy income will be exempt from tax in terms of the provisions of Section 10(1)(e) of the Income Tax Act No 58 of 1962, as amended, provided that -

32.13.1 the sole object of the Association is to manage the collective interest common to all its Members, which includes expenditure applicable to the Private Open Spaces and/or Common Property and the collection of levies for which Members are liable; and

32.13.2 the Association is not permitted to distribute its funds to any person other than to a similar association of persons.

33 **ERVEN FORMING PART OF THE PRIVATE OPEN SPACES**

33.1 Neither the whole nor any portion of the Erven designated as Private Open Spaces shall be sold, let, Alienated, otherwise disposed of, sub-divided or transferred except in the circumstances laid down in the conditions of establishment of the Development.

33.2 No such Erven shall be:

- 33.2.1 mortgaged; or
- 33.2.2 subjected to any rights, whether registered in terms of the Deeds Registries Act or not, of use, occupation and servitude, save as specified in the said conditions of establishment, and save in respect of such rights as are enjoyed by the Members in terms hereof, without the sanction of a special resolution of the Association.
- 33.3 Nothing contained in this Constitution shall prevent the Developer from erecting, at its own cost, such buildings, or making such other improvements upon the said Erven as may be permitted in terms of the town planning scheme of the Development from time to time.

34 CO-OWNERS, BODIES CORPORATE & SUB-SCHEME ASSOCIATIONS

- 34.1 Where any Erf and/or Unit is owned by more than 1 (one) person or in the event of a Body Corporate or Sub-Scheme Association being a Member, the co-owners, Body Corporate or Sub-Scheme Association concerned shall elect one of their number as a liaison officer and shall notify the Association of the name and address of such liaison officer. Any notices which may be required to be given in respect of such Erf or Sectional Title Scheme, regarding the appearance or maintenance or repair thereof or the appearance or maintenance or repair of any Unit shall be given to the liaison officer and served upon such liaison officer and shall be deemed for purposes of this Constitution to have been served upon the Member concerned.
- 34.2 In the event of the co-owners failing to elect a liaison officer as aforesaid, service of notice upon any one of the co-owners shall be deemed to be service upon all the co-owners.

35 INDEMNITY

- 35.1 All the Trustees and the Estate Manager are indemnified by the Association against any liabilities *bona fide* incurred by them in their capacities as such and in the case of the Chairman in his capacity as Chairman, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorized contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.
- 35.2 A Trustee and the Estate Manager shall not be liable for the acts, or omission of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as

Chairman or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgment or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of mala fides, breach of duty or breach of trust.

36 DEFAMATION PRIVILEGE

Every Member of the Association and every Trustee shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee, to have waived as against every other Member, the Chairman, every other Trustee, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the Association, or the Trustees, or any sub-committee, all claims and rights of action which such Member or Trustee might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee, or any reference to such Member or Trustee, made at any meeting of Trustees, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false.

37 RISK

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

37.2 It is recorded that the Development incorporates an active construction site, and that presence anywhere in the Development exposes one to damages caused by construction machinery, falling trees, and other activities normally associated with building construction. The Association hereby draws the attention of owners and residents to these possible dangers. The Association shall not be held liable for any damage to property or bodily injury, accidentally or negligently caused to owners, residents or those in their care, and requires them to waive all rights against the Association in this regard.

38 AMENDMENT OF CONSTITUTION

38.1 No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of:

- 38.1.1 the Local Authority, and
- 38.1.2 the Developer, for the Development Period, in respect of any amendment that may affect the developer's rights
- 38.2 Subject to the provisions of clause 38.1 such amendment, substitution, or repeal shall require the passing of a special resolution adopted at an annual general meeting or general meeting of the Members, subject thereto that during the Development Period, the Developer shall be entitled to add, amend, substitute, or repeal this Constitution in its sole discretion, subject to prior consent of the Local Authority.

39 IMPOSITION OF PENALTIES

- 39.1 If the conduct of a Member, an occupier or their visitors, constitutes a nuisance in the opinion of the Trustees, or if a Member or occupier contravenes, breaches, disobeys or disregards this Constitution, its annexures, or any Rules, the Trustees may furnish the Member and occupier (if applicable) with a written notice which may in the discretion of the Trustees be delivered by hand or by e-mail. In the notice the particular conduct which constitutes a nuisance must be adequately described or the clause or rule that has allegedly been contravened must be clearly indicated, and the Member must be warned that if he or his occupier or visitor persists in such conduct or contravention, a penalty will be imposed on him.
- 39.2 If the Member, occupier or visitor nevertheless persists in that particular conduct or in the contravention of that particular clause or rule, the Trustees may convene a meeting of Trustees to discuss the matter and to impose a penalty in accordance with the Rules.
- 39.3 A written notice by which he is informed of the purpose of the meeting and invited to attend, must be sent to the Member and occupier (if applicable) at least 7 (seven) days before the meeting is held. At the meeting the Member and occupier (if applicable) must be given the opportunity to present his case, orally or by way of a submission in writing, but except in so far as may be permitted by the Chairperson, he may not participate in the affairs of or voting at the meeting.
- 39.4 After the Member or occupier has been given the opportunity to present his or her case, the Trustees may by way of a special resolution impose upon the Member, an initial penalty for the first offence and a subsequent penalty for every identical offence thereafter.
- 39.5 Any penalty imposed in terms of 39.4 may, if it is not paid within 14 (fourteen) days after the Member has been notified of the imposition of the penalty, be added to the

contribution which a Member is obliged to pay in terms of clause 32 and claimed by the Association as part of the monthly levy payable by the Member.

39.6 The Trustees may, from time to time, determine the amount of the initial and subsequent penalties.

39.7 Notwithstanding the provision of clauses 39.1 to 39.6 above, in suitable circumstances the Trustees may apply to the Ombud Service or to a Court having jurisdiction, for an order or interdict if an Member or occupier contravenes, breaches, disobeys or disregards this Constitution, its annexures, or any rules or regulations passed by the Association or the Trustees.

40 ARBITRATION

40.1 Should any dispute, question or difference arise between Members or between a Member and Trustees out of or in regard to:

40.1.1 the interpretation of;

40.1.2 the effect of;

40.1.3 their respective rights or obligations under;

40.1.4 a breach of (save for non-payment of levies or any other amount due by a Member in terms of this Constitution), this Constitution, such dispute shall, subject to the rights of the affected parties to seek relief in terms of Chapter 3 of the Ombud Services Act, be decided by arbitration in the manner set out in this clause 40.

40.2 In respect of any claim arising from non-payment of levies or any other amount due by a Member to the Association in terms of this Constitution, the Association and Trustees shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

40.3 The arbitration referred to in clause 40.1 shall:

40.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and

40.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and

- 40.3.3 be held under the provisions of the Arbitration Act, No. 42 of 1965 of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 40.4 The arbitrator shall be a practising senior counsel or attorney of not less than 5 (five) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the President of the Cape Law Society.
- 40.5 The arbitrator shall in giving his award have regard to the principles contained in this Constitution, the Rules and the Guide, and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision.
- 40.6 The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 40.7 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 40.7.1 shall be final and binding on each of them; and
- 40.7.2 shall be carried into effect immediately; and
- 40.7.3 may be made an order of any Court to whose jurisdiction the parties are subject.
- 40.8 Notwithstanding anything to the contrary contained in this clause 40, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, including the Rules and the Guide.

ANNEXURE A – DEVELOPMENT SITE PLAN

ANNEXURE B – LANDSCAPING AND ARCHITECTURAL GUIDELINES