



HOME OWNERS' ASSOCIATION
CONSTITUTION

1. ESTABLISHMENT BY THE DEVELOPER

The Mentoor Mountain Estate Home Owners Association is constituted as an Owners Association established for the purpose of the promotion, advancement and protection of the registered owners of erven in the development and shall come into existence simultaneously with the registration of the first erven (as hereinafter defined) in the Deeds Office.

2. INTERPRETATION

2.1 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

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| 2.1.1 “Association” | means the Mentoor Mountain Estate Homeowners’ Association; |
| 2.1.2 “business day” | means weekdays other than Saturdays, Sundays and public holidays; |
| 2.1.3 “chairman” | means the chairman of the Trustee Board; |
| 2.1.4 “common area” | means private roads, visitors parking areas, private open spaces, and any other amenities within the development; |
| 2.1.5 “Municipality” | means the Stellenbosch Municipality or its successor/s; |
| 2.1.6 “the Developer” | means MAM Ontwikkelaars CC, Registration Number: 2006/212744/23 or any third party to whom the Directors of the Developer may in future cede the rights conferred upon it in this constitution; |
| 2.1.7 “Controlling Architect” | means Red Atlantic Architecture or such other architect that may be appointed by the Trustee Board; |
| 2.1.8 “member” | means a member of the Association as defined in this document; |

2.1.9 “person”	with regard to membership of the Association, shall include a company, club, partnership, trustees of a trust, or other association of persons entitled in law to hold title of immovable property;
2.1.10 “auditors”	means the auditors of the Association;
2.1.11 “banker”	means the Association’s chosen banker;
2.1.12 “owner”	means any registered owner of an erf within the development;
2.1.13 “Trustee Board”	means the Board of Trustees of the Association;
2.1.14 “trustee”	means one Member of the Trustee Board;
2.1.15 “vice-chairman”	means the vice-chairman of the Trustee Board;
2.1.16 “year”	means a period of 12 calendar months calculated from 1 January each and every calendar year.
2.1.17 “month”	means calendar month;
2.1.18 “office”	means the registered address of the Association as determined by the Trustee Board;
2.1.19 “Ordinance”	means the Land Use Planning Ordinance No. 15 of 1985 and includes any statutory amendment or re-enactment thereof;
2.1.20 “this constitution”	means this constitution and regulations and by-laws of the Association from time to time in force;
2.1.21 “special resolution”	means a resolution passed at a special general meeting in accordance with the provisions of clause 28 below;
2.1.22 “the prime rate”	means the prime bank overdraft rate of interest charged by the banker or its successor(s) from time to time and more commonly known as its prime rate (in case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the Members);
2.1.23 “Architectural Design & Landscaping Guidelines”	means the design manual to control all aspects of the design of all buildings, improvements and landscaping within the development as approved by the Developer and appointed Architect and as amended from time to time in terms of the constitution;

- 2.1.24 “development” means the residential development on Remainder of Portion 23 of the Farm Johannesburg Number 1202.
- 2.1.25 “development period” means the period commencing on the date of establishment of the Association and terminating on the date upon which the developer has sold and transferred to a third party the last of the erven within the development owned by the developer;
- 2.1.26 “completion of the scheme” means the date of transfer of the last building site in the development to the Purchaser thereof;
- 2.1.27 “services” means inter alia, the roads and road system, verges, parking bays, water supply, sewerage pipes, electricity cables, stormwater, and all other municipal services within the common area and erven and includes the communication systems, street lighting, boundary wall and main entrance gate;
- 2.1.28 Words importing the singular number shall include the plural number and words importing the masculine and feminine genders shall include the neuter gender and the converse shall also apply.
- 2.1.29 The head notes to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

3. PURPOSE AND ESTABLISHMENT OF THE ASSOCIATION

- 3.1 The main business of the Association is to carry on the promotion, maintenance, advancement and protection of the common areas in the Estate as well as the collective interests of the registered owners of the erven and retain the value of the land assets.
- 3.2 The Association will be established on the transfer of the first erf from the developer to a transferee.

4. OBJECTS OF THE ASSOCIATION

The objects of the Association shall be the following:

- 4.1 the control over aspects of the design of buildings, improvements and landscaping within the development so as to ensure that they are in line with the objectives of the Architectural & Landscape Design Guidelines, as determined by the Developer and Controlling Architect, and as approved by Stellenbosch Municipality;
- 4.2 the ownership, maintenance, control and management of the common areas within the development;
- 4.3 the maintenance and improvement (if necessary) of security;
- 4.4 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development;
- 4.5 to enter into service agreements and other necessary agreements with the local authority or any other authority or supplier of services in connection with the development;

- 4.6 the management and maintenance of internal services, where applicable, and where it falls outside the responsibility and liability of the Municipality;
- 4.7 to generally do all such things as may be necessary or requisite to give effect to and implement the objects of the Association and to do all such things ancillary or incidental to the objects.

5. STATUS OF THE ASSOCIATION

- 5.1 The Association shall have legal personality and shall be capable of suing and being sued in its own name.
- 5.2 The Association shall not be for profit, but for the benefit of its members.
- 5.3 No member in his personal capacity shall have any right, title or interest in or to the assets of the Association, which shall vest in the Association.

6. FINANCIAL YEAR END

The financial year end of the Association is the end of February of each year.

7. MEMBERSHIP OF THE ASSOCIATION

- 7.1 Membership of the Association shall be compulsory for every registered owner of an erf.
- 7.2 Such membership shall commence simultaneously with the transfer of the erf into the name of the transferee.
- 7.3 Membership of the Association shall be limited to the registered owners of the erven provided that:
- 7.3.1 a person who is entitled to obtain a certificate of registered title to any such erf shall be deemed to be the registered owner thereof;
- 7.3.2 where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one member of the Association and nominate one owner to represent them and vote at meetings of the Association.
- 7.4 When a member ceases to be the registered owner of an erf, he shall *ipso facto* cease to be a member of the Association.
- 7.5 A member shall not be entitled to:
- 7.5.1 sell or transfer an erf unless it is a condition of the sale and transfer that:
- 7.5.1.1 the transferee agrees in writing to become a member of the Association and to be bound by the provisions of this constitution and that such condition is contained in the Title Deed;
- 7.5.1.2 the registration of transfer of that erf into the name of that transferee shall *ipso facto* constitute the transferee as a member of the Association;
- 7.5.1.3 he first obtains the written consent of the Association, which consent shall be given, provided the transferee of such portion agrees in writing to become a member of the Association and to be bound by the constitution of the Association and provided further that the Member has paid all levies and any other amounts owing by such member in terms of the constitution as at the date of registration of transfer of the portion to the

transferee and is not in breach of any of its obligations in terms of this Constitution and/or any Rules of the Association.

7.5.2 without the prior written approval of the Trustee Board to:

7.5.2.1 erect any new buildings and/or structures of any nature whatsoever on his erf;

7.5.2.2 make any changes or alternations to existing buildings and/or structures on his erf, including changes to the external colour scheme.

7.5.3 A title deed condition applicable to the property will be imposed in a form acceptable to the Registrar of Deeds, Cape Town, in terms of which the Member, and the Member's successors in title, shall be a Member of the Association and bound by its constitution, and in terms of which the property shall not be transferred without the written consent of the Association.

7.6 The approval of the trustees as contemplated in clause 7.5.2 shall only be given: -

7.6.1 After detailed plans of the proposed work have been submitted to the Trustee Board, or any person nominated by the Trustee Board (who may be an architect, registered with the South African Council of Architects or the Institute of South African Architects); and

7.6.2 The Trustee Board or their nominee are satisfied that the proposed work is in accordance with the Architectural & Landscape Design Guidelines for the purpose of which the Trustee Board or their nominee shall be the sole arbiter and their decision shall be final and binding on the Member; and

7.6.3 The Member has paid to the Trustee Board or appointed Managing Agent, a deposit or deposits in such amounts as the Trustee Board may from time to time determine as a building deposit and building inspection fee, which amounts shall be held in trust by the Trustee Board or appointed Managing Agent, subject to the provisions of clause 11 below;

7.6.4 The foregoing shall not be interpreted as detracting from the final responsibility of the Council to approve plans in terms of the applicable legislation.

7.7 The registered owner of an erf may not resign as a member of the Association and shall remain a member for as long as such owner is the registered owner of any erf in the development.

7.8 The rights and obligations of a member shall not be transferrable and every member shall:

7.8.1 to the best of his ability further the objects and interests of the Association;

7.8.2 observe all by-laws and regulations made by the Association or the Trustee Board;

provided that nothing contained in this constitution shall prevent a member from ceding his rights in terms of this constitution as security to the mortgagee of that member's erf.

7.9 No member ceasing to be a member of the Association for any reason shall, (nor shall any such member, executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall not detract from the Association's right to claim from such member or his estate any or other sums due from him to the Association at the time of his so ceasing to be a member.

8. LEVIES PAYABLE BY THE MEMBERS

- 8.1 Members are jointly liable for the expenditure incurred in connection with the Association, provided such expenditure has been pre-approved by the members in accordance with this Constitution and any applicable rules.
- 8.2 The Trustee Board shall from time to time, impose levies upon the members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Board reasonably anticipates the Association will be put by way of the following:-
- 8.2.1 where applicable, the maintenance, repair, improvement and keeping in order and condition of the common areas including, specifically landscaping, estate services, sewage treatment, and retention dams within the development to which the development is entitled;
- 8.2.2 for payment of all rates and other charges payable by the Association in respect of the common areas;
- 8.2.3 for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management and objects of the Association and its affairs;
- 8.2.4 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development, including security and security systems, personnel and staff, if and when applicable.
- 8.2.5 employees and staff employed by the Association
- 8.2.6 all levies and charges payable in terms of the Community Scheme Ombud Service Act 9 of 2011 (“the CSOSA”)
- The Trustee Board shall take into account, income, if any, earned by the Association in determining the monthly levy payable by members.
- 8.3 The Trustee Board or its duly appointed agent shall prepare a budget of the estimated amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall determine a levy upon the member’s equal as nearly as is reasonably practical to such estimated amount.
- 8.4 The Trustee Board may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly installments due in advance on the first day of each and every succeeding month of such year. The estimates for the next year shall be submitted to the members at the annual meeting preceding the next year, for consideration.
- 8.5 The Trustee Board may from time to time impose special levies upon the members in respect of all such expenses as are mentioned in this clause 8 (which are not included in any estimate made in terms of clause 8.3) and such levies may be determined in the sum or by such installments and at such time or times as the trustees committee shall think fit.
- 8.6 Without prejudice to any other rights of the Association, should a member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association’s bankers from time to time plus 3% (three percent), calculated from the due date of payment until the actual date of payment of such amount, both days inclusive.

- 8.7 The obligation of a member to pay levies to the Association shall cease upon such member ceasing to be a member of the Association, without prejudice to the Association's right to recover arrear levies.
- 8.8 No levies paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member.
- 8.9 A member's successor in title to an erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf, to pay the levy attributable to that erf.
- 8.10 Members of the Association shall be entitled to pay levies by means of any of the following methods:
- 8.10.1 the issue of a monthly debit order against his banking account; or
- 8.10.2a monthly EFT transfer
- by no later than the date specified by the trustees or their duly authorized Agents.
- 8.11 Any special levies imposed by the trustees in terms of clause 8.5 may be apportioned between the members by the trustees in a manner, which the trustees may regard as reasonable, regard being had of the direct benefits, which the member(s) may derive from the proposed expenditure for which the special levies are imposed.
- 8.12 No member shall be entitled to any of the privileges of membership, such as voting, unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 8.13 The Developer shall not be obliged to pay a levy on any undeveloped Erf registered in the name of the Developer.
- 8.14 The first transferee of a plot and/or his successors in title shall, within a period of 2 years after the registration of the property in the name of the first transferee, complete all building operations in respect of the dwelling house on the property. The date of first registration from the Developer will be the date from which such period will be calculated irrespective of whether the property has been transferred subsequently. If the member fails to comply with the provisions of this clause 8.14, the member will pay the association a levy equal to double the normal levy per month from time to time for each month which elapses between the date 2 years from the date of transfer of the property in the name of the first Transferee to the date of compliance with clause 8.14 by him. This will increase to three times the normal levy after 6 (six) years of non-compliance, until the date of completion of the house.
- 8.15 The member accepts that clause 8.14 is reasonable and necessary in order to ensure that building work on the Development is finished within a reasonable time.

9. BUILDINGS, ALTERATIONS AND BUILDING MANUAL

- 9.1 The Association shall be entitled to:
- 9.1.1 having regard to the Architectural & Landscape Design Guidelines, implement and enforce conditions on members in order to harmonize the architectural styles and design criteria of and the materials and colors to be used in all buildings erected within the scheme including any refurbishment, alteration or additions thereto;

- 9.1.2 Do such acts as are necessary to accomplish the purposes expressed or implied herein which acts shall include, *inter alia*, the examination and endorsement of the relevant building plans as necessary for any construction, renovation and/or alterations within the development;
- 9.1.3 Appoint such advisors as are necessary to scrutinize the relevant plans referred to herein.
- 9.1.4 Impose a scrutiny fee on members for the services as mentioned herein;
- 9.1.5 The provisions of this clause shall not be applicable in relation to any of the works to be undertaken by the Developer prior to the completion of the scheme.
- 9.2 No site occupation of any portion within the development shall be permitted until written acknowledgement of the Architectural & Landscape Design Guidelines has been received from the registered owner hereof.
- 9.3 Second dwelling units may not be erected in the Development, and this restriction may be included in the title deed of any unit;
- 9.4 All new dwellings must be plastered and painted with earthy colors and fitted with non-reflective windows.
- 9.5 Buildings should be constructed with fire-resistant materials.
- 9.6 In the planning and construction of new buildings, consideration shall be given to the following conservation measures: rainwater harvesting, grey water recycling and similar enhancements, such as low flow shower heads, dual flush and water-wise gardens;
- 9.7 All buildings will conform to SANS Building Regulations from time to time.

10. ARCHITECTURAL DESIGN AND LANDSCAPING GUIDELINES

- 10.1 All buildings and other structures erected on any erf shall materially comply with the provisions of the Architectural & Landscape Design Guidelines. In the event of there being a dispute as to compliance, the matter shall be referred to the controlling architect for a final and binding decision on all parties, which shall be communicated to all parties within 7 (Seven) calendar days of any submission being made to the controlling architect.
- 10.2 The Architectural & Landscape Design Guidelines may be amended, amplified, clarified or added to by the Trustee Board, in liaison with the controlling architect, which shall be approved and passed by way of a special resolution as provided for in condition 28 below.
- 10.3 The Trustee Board shall by written notice inform all members of any amendment or addition to the Architectural & Landscape Design Guidelines, once the special resolution has been passed.

11. DEPOSIT FOR DAMAGE AND BUILDING INSPECTION FEE

- 11.1 Each member shall, when submitting to the trustees for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements on his erf in terms of clause 7.5.2 pay to the Trustee Board or its nominated Managing Agent, a deposit in an amount to be determined from time to time by the Trustee Board which amount shall be retained by the Trustee Board or its nominated Managing Agent in trust until completion by the member and/or its contractors of such work. A Member shall furthermore pay a non-refundable building inspection fee to the Association, which amount will be determined from time to time by the Trustee Board. Such member will also contribute an amount as may be

decided by the Trustee Board, to the levy fund of the Association, specifically to be used for the maintenance of services in the Development;

- 11.2 Upon completion of all such building and other activities, the Trustee Board shall, if they are satisfied that no damage has been effected by the Member or any of its contractors to the common areas and/or landscaped areas within the development and that the work has been constructed in accordance with duly approved plans, release the building deposit to the member, excluding any interest thereon which will accrue to the Association.
- 11.3 In the event of any landscaped area and/or the common areas having damaged due to such work, the member shall within 7 calendar days of having been requested to do so in writing by the Trustee Board or its nominated Managing Agent, rectify the damage to the satisfaction of the Trustee Board, failing which, the Trustee Board shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the trustees as a building deposit shall be utilized to defray the expenses of the independent contractor. If, however, the damage deposit is not sufficient to cover the cost of such repairs, the Trustee Board shall be entitled to recover the shortfall from the member.
- 11.4 The Developer shall not be required to pay any deposit required in terms of the provisions of clause 11.1, 11.2 and 11.3 hereof prior to the completion of the development.

12. DEALING WITH THE COMMON AREA

Neither the whole nor any portion of the common area shall be:

- 12.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 12.2 mortgaged or encumbered in any manner whatsoever; or
- 12.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, (save those enjoyed by the members in terms hereof); and the servitudes to the council required in to the conditions of subdivisions.
- 12.4 build upon, improved or enhanced in value by the construction of buildings, erections facilities or amenities

without a special resolution of the Association (and no member shall be entitled to unreasonably vote against any such special resolution which may be proposed).

13. RESPONSIBILITY FOR THE COMMON AREA AND SERVICES

- 13.1 It is placed on record that the development is not private in nature, and the Municipality will be responsible for the maintenance of the common areas, services to all houses, maintenance of the roads, streetlights, and all other services normally provided by the Municipality or other Local Authorities.

13.2 Water:

- 13.2.1 Each erf shall have a municipal water supply for household use and shall be obliged to pay the municipality for such water consumed.
- 13.2.2 All water consumed in respect of the common area shall be paid for by the Association, out of its funds or levies collected.

13.3 Rates and Taxes:

Each owner of an erf shall pay such rates and taxes as are levied in respect of his erf to the relevant local authority.

- 13.4 The Trustee Board may decide to take over certain responsibilities of the Municipality as contemplated in condition 13.1 if it would be to the benefit of the Association and its Members, in which case the levies will be amended accordingly to make provision for this.

14. CONTRACTS AND REGULATIONS

- 14.1 The Trustee Board may from time to time:-

14.1.1 make rules and regulations governing *inter alia*:

14.1.1.1 rights of use and enjoyment of the common areas;

14.1.1.2 The external appearance of and the maintenance of the common areas and the buildings or other improvements erected thereon;

14.1.1.3 The erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on the portions;

14.1.2 Enter into agreement(s) with the local authorities governing the matters set out in clause 14.1.1 and any other incidental matters;

14.1.3 Enter into any other agreements for the purpose of achieving the objects of the Association, including (but not limited to) agreements with security organizations to provide security to the whole or any part of the development.

- 14.2 Each member undertakes to the Association to comply with:-

14.2.1 the provisions of this constitution;

14.2.2 any rules and regulations made in terms of clause 14.1.1 above;

14.2.3 any agreements referred to in clause 14.1.1.2 and 14.1.1.3 above, insofar as those agreement may directly or indirectly impose obligations on such member.

- 14.3 All officials, employees and contractors employed by the Association, local authority and/or any public service company shall, at all times, have reasonable access to the portions and common areas for purposes of constructing, inspecting and/or maintaining all services and/or traversing any property;

- 14.4 It will be the obligation of every member to put measures in place in all habitable buildings to ensure that the indoor air quality is not affected by emissions from normal agricultural activities.

15. BREACH OF THIS CONSTITUTION:

- 15.1 Should any member:-

15.1.1 fail to pay on due date any amount due by that member in terms of this constitution or any rule or regulation made there under and remain in default for more than 7 calendar days after being notified in writing to do so by the Trustee Board or appointed Managing Agent;
or

- 15.1.2 commit any other breach of any of the provisions of this constitution or any regulation made there under and fail to commence remedying that breach within a period of 7 calendar days after the receipt of written notice to that effect by the Trustee Board or appointed Managing Agent and complete the remedying of such breach within a reasonable time;
- then and in either such event the Trustee Board or appointed Managing Agent shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustee Board or the Association or any other member may have in law, including the right to claim damages:-
- 15.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his or her obligations in terms of this constitution or any rules and regulation made in terms of this constitution, as the case may be; and/or
- 15.1.4 suspend all or any services to the erven by that member; and/or
- 15.1.5 in case of clause 15.1.2 above, to remedy such breach and immediately recover the total cost incurred by the Trustee Board or the Association in so doing from such member.
- 15.2 Should the Trustee Board of the Association institute any legal proceedings against any member pursuant to a breach by that member of this constitution or any rules or regulations made there under, then without prejudice to any other rights which the Trustee Board or the Association or any other member may have in law, the Trustee Board or its appointed Managing Agent shall be entitled to recover from such member all legal costs incurred by the Trustee Board, or the Association, including attorneys/client charges, tracing fees and collection commission.
- 15.3 Without prejudice to all or any of the rights the Trustee Board or the Association granted under this constitution, should any member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at the publicly quoted prime interest rate charged by the Association's bankers from time to time plus 3% (three percent), calculated from the due date of payment until the actual date of payment of such amount, both dates inclusive.
- 15.4 The Trustee Board or its appointed Managing Agent may extent the 7 calendar day period referred to in condition 15.1.1 and 15.1.2 to rectify the breach by a member, if deemed reasonable and necessary in the circumstances.

16. TRUSTEE BOARD

- 16.1 There shall be a Trustee Board of the Association which shall consist of not less than 3 (three) and not more than 6 (six) members;
- 16.2 The majority of trustees must be members of the Association or an authorized representative of the member where the member is not a natural person. The Association may vote an independent person in as a trustee, if required or deemed necessary by the members of the Association.
- 16.3 During the development period, the Developer shall be entitled to appoint trustees as set out in clause 36 below.
- 16.4 At any meeting of the Trustee Board, the trustees present at the meeting shall each have 1 vote, save that during the development period, the trustee appointed by the Developer shall have the votes determined in terms of clause 36.
- 16.5 Until the first trustees of the Association are appointed, the Developer shall carry out all the functions and duties of the trustees in term of this constitution.

17. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 17.1 Save as set forth in clause 18 below, each trustee shall continue to hold office until the annual general meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, and shall be eligible for re-election to the Trustee Board at such meeting.
- 17.2 a trustee shall be deemed to have vacated his or her office as such upon:–
- 17.2.1 his or her estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 17.2.2 his or her making any arrangement or compromise with his creditors;
 - 17.2.3 his or her conviction for any offence involving dishonesty;
 - 17.2.4 his or her becoming of unsound mind or being found lunatic;
 - 17.2.5 his or her resigning from such office in writing delivered to the secretary;
 - 17.2.6 his or her death;
 - 17.2.7 his or her being removed from office by a resolution of the majority of the trustees, subject to clause 17.3 below;
- provided that anything done in the capacity of a trustee in good faith, by a person who ceases to be a trustee, shall be valid until the fact that he is no longer a trustee has been recorded in the minute book of the Trustee Board.
- 17.3 Where any trustee vacates or is deemed to have vacated his or her office as such, then the remaining members will appoint a new trustee by majority vote.

18. OFFICE OF TRUSTEES

- 18.1 The trustees shall appoint from amongst themselves, a chairman and vice-chairman.
- 18.2 The first chairman and vice-chairman shall be appointed by the Developer, until the expiration of a period of 12 months after the registration of transfer of the first of the erven in the development to the purchaser thereof, and such office bearers shall hold their respective offices until the end of each year, provided that any such office shall *ipso facto* be vacated by the trustee holding such office upon his or her ceasing to be a trustee for any reason.
- 18.3 Within 7 calendar days of the holding of such annual general meeting, the Trustee Board shall meet and shall elect from its own number the chairman and vice-chairman, who shall hold their respective offices until the end of the following year, provided that the office of the chairman or vice-chairman shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason. No one trustee shall be appointed to more than one of the aforesaid offices. In event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Board shall immediately meet to appoint one of their number as a replacement in such office.
- 18.4 Save as otherwise provided in this constitution, the chairman shall preside at all meetings of the Trustee Board, and all general meetings of Members, and shall perform all duties incidental to the office of chairman and such other duties as may be prescribed by the Trustee Board or of Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.

- 18.5 The vice-chairman shall assume the powers and duties of the chairman in the absence of the chairman, or his inability or refusal to act as chairman, and shall perform such other duties as may from time to time be assigned to him by the chairman or the Trustee Board.
- 18.6 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as trustees and/or chairman, vice-chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

19. FUNCTIONS AND POWERS OF THE TRUSTEE BOARD

- 19.1 Subject to the express provisions of this constitution, the Trustee Board shall manage and control the affairs of the Association. The Trustee Board shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not specifically by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meetings from time to time, provided that no regulation made by the Association in general meetings shall invalidate any prior act of the Trustee Board which would have been valid if such regulation had not been made.
- 19.2 The Trustee Board shall have the right, from time to time, to vary, cancel or modify any of its decisions and resolutions.
- 19.3 The Trustee Board shall have the right to co-opt onto the Trustee Board any person or persons chosen by it. Any co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees, but no co-opted trustee shall have any vote at any meeting of the Trustee Board.
- 19.4 The Trustee Board may, should it be decided, investigate any suspected or alleged breach by any Member or trustee of this constitution in such reasonable manner as it shall decide from time to time.
- 19.5 The Trustee Board may make regulations, rules and by-laws not inconsistent with this constitution or any regulations, rules or by-laws prescribed in the Association in general meeting:—
- 19.5.1 for the furtherance and promotion of any of the objects of the Association;
 - 19.5.2 for the better management of the affairs of the Association;
 - 19.5.3 as to disputes generally;
 - 19.5.4 for the advancement of the interests of Members;
 - 19.5.5 for the conduct of Trustee Board meetings and general meetings; and
 - 19.5.6 to assist it in administering and governing its activities generally, and shall be entitled to cancel, vary or modify any of the same from time to time.
- 19.6 Conduct Rules:
- 19.6.1 The Trustee Board may make such conduct rules, including rules to control access and egress and building operations, as it may deem necessary for the promotion of safe and harmonious community-living in the Estate and for the control, management, administration, use and enjoyment of the common property of the Association.
- 19.6.2 The conduct rules made by the Association, and any addition thereto, or substitution, amendment or repeal thereof, may not be in conflict or irreconcilable with any provision of this constitution. In the event of any such conflict or irreconcilability, the provision of the constitution shall prevail.

19.7 Penalties:

19.7.1 The Trustees may from time to time determine the penalties to be imposed for the breach of a provision of this constitution or the conduct rules, including the amount of an initial and subsequent fine.

19.7.2 Any fine imposed on, or cost of the remedying of a breach of the provisions of this constitution or the conduct rules claimed from, a member may, if it is not paid within the time specified in the written notice to the offender of the imposition of the fine or the claim, be added to the monthly levy payable by that member in terms of clause 8 and claimed as if it were part of such levy.

19.7.3 Any fine imposed on, or cost of the remedying of a breach of the provisions of this constitution or the conduct rules claimed from a person who is not a member, may, if it is not paid within the time specified in the written notice to the offender of the imposition of the fine or the claim, be claimed through due process of law.

19.8 The Trustee Board shall be responsible for enforcing compliance with the Architectural & Landscape Design Guidelines.

19.9 The Trustee Board shall be responsible for commenting to the Municipality on whether building plans comply with the relevant architectural guidelines.

20. PROCEEDINGS OF THE TRUSTEE BOARD

20.1 The Trustee Board may meet together to deal with business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this constitution.

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

20.3 The quorum necessary for the holding of any meeting of the Trustee Board shall be a majority of trustees.

20.4 The chairman shall preside as such at all meetings of the Trustee Board, provided that should at any meeting of the Trustee Board the chairman not be present within 5 minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 5 minutes of the time appointed for the holding of such meeting, 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.

20.5 A trustee shall take minutes of every Trustee Board meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the chairman of the meeting. All minutes of Trustee Board meetings shall after certification as aforesaid be placed in a Trustee Board minute book to be kept in accordance mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Board minute book shall be open for inspection at all reasonable time by a trustee, the auditors, and the Members.

20.6 All competent resolutions recorded in the minutes of any Trustee Board meeting shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Board shall be of any force or effect, or shall be binding upon the Members of any of the trustees, unless such resolution is competent within the powers of the Trustee Board.

- 20.7 Save as otherwise provided in this constitution, the proceedings at any trustee meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.
- 20.8 A resolution passed by the majority of trustees and signed by 2 (two) trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Board duly convened.
- 20.9 No document, referred to in clause 7.5 and clause 7.6 signed on behalf of the Association, shall be valid and binding unless it is signed by a trustee and the managing agent or 2 (two) trustees.

21. GENERAL MEETINGS OF THE ASSOCIATION

- 21.1 The Association shall within 4 (four) months after the end of the financial year of the Association hold a general meeting as its annual general meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices in terms of clause 22.1 below calling it; provided that the first meeting of the Association shall be called not later than once 80% of the erven have been sold or within 4 (four) months after the first transfer of an erf (whichever occurs first).
- 21.2 General meetings and annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Board shall decide from time to time.
- 21.3 All general meetings other than annual general meetings shall be called special general meetings.
- 21.4 The Trustee Board may, whenever they think fit, convene a special general meeting for any purpose.

22. NOTICE OF MEETINGS OF THE ASSOCIATION

- 22.1 Members' meetings shall be called by not less than 21 (twenty one) days' notice in writing. The notice shall specify the place, the day and the time of the meeting and shall be accompanied by an agenda.
- 22.2 Notwithstanding the above, a members' meeting called by a shorter notice shall be deemed to have been duly called if it is so agreed by three-quarters of the members entitled to attend and vote thereat.
- 22.3 The accidental omission to give notice of a meeting or the non-receipt of any notice correctly addressed to any member or other person entitled to receive the same shall not invalidate the proceedings at, or any resolution passed at any members' meeting.
- 22.4 Any member may place an item on the agenda of a forthcoming members' meeting by giving written notice of the agenda item to the Trustee Board at least 7 (seven) days before the date of the meeting. The Trustee Board must as soon as possible give written notice to all members of any agenda items so submitted.
- 22.5 Only items on the agenda of a members' meeting may be raised at the meeting.

23. QUORUM FOR GENERAL MEETINGS

- 23.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 23.2 The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represents 33% (thirty three percent) of the total

votes of all Members of the Association entitled to vote for the time being, save that not less than 4 (four) Members must be personally present.

- 23.3 If within 30 minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum provided there are a minimum of 4 (four) Members present.

24. AGENDA AT GENERAL MEETINGS

- 24.1 In addition to any other matters required by this constitution to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:
- 24.2 The consideration of the chairman's report to the Trustee Board;
- 24.3 the election of the Trustee Board;
- 24.4 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 24.5 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
- 24.6 the consideration of the report of the auditors;
- 24.7 the consideration of the total levy (as referred to in clause 8) for the calendar year during which such annual general meeting takes place; and
- 24.8 the confirmation of the appointment of the auditors and the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the meeting.

25. PROCEDURE AT GENERAL MEETINGS

- 25.1 The chairman shall preside as such at all general meetings provided that should he not be present within 5 minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman not be present within 5 minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, 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. The Managing Agent may also chair any general meeting.
- 25.2 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.
- 25.3 Whenever a meeting is adjourned for 7 calendar days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting.
- 25.4 Except as otherwise set forth in this constitution, all general meetings shall be conducted in accordance with generally accepted practice.

26. PROXIES FOR GENERAL MEETINGS

- 26.1 A Member may be represented at a general meeting by a proxy who need not be a Member of the Association.
- 26.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the chairman of the board of directors of the company or by its secretary, and where an association of persons, or a body corporate, by the chairman thereof.
- 26.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof, shall be deposited at the office of the Trustee Board or appointed Managing Agent, at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution.
- 26.4 A vote cast in good faith in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Board at least one hour before the time fixed for the holding of the meeting.
- 26.5 Should a Member be absent from the recorded domicilium address which the trustees may have for such Member for a continuous period in excess of 30 calendar days, a proxy must be appointed by such Member prior to his absence in accordance with clauses 26.1 and 26.3 above, failing which, a Member shall not be entitled to vote at any special general meeting called during such Member's absence.

27. VOTING AT GENERAL MEETINGS

- 27.1 At every general meeting, each Member in person or by proxy and entitled to vote shall have one (1) vote for each portion registered in his name, provided that if a portion is registered in more than one person's name, then they shall jointly have one (1) vote.
- 27.2 Save as expressly provided for in this constitutions, no person other than a Member duly registered, and who shall have paid every levy and other amount (if any) which shall be due and payable to the Association in respect of or arising out of the Membership of such Member, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy at any general meeting.
- 27.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any Member entitled to vote at such meeting.
- 27.4 Notwithstanding the provisions of clause 27.3 above, voting on the election of a chairman of a general meeting (if necessary) or on 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, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or any of the Members in terms of clause 27.5 below;
- 27.5 When a poll is demanded, regard shall be had in computing the majority on the poll to the number of votes cast for and against the resolution.

- 27.6 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.
- 27.7 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, 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, whether on a show of hands or on a poll, the chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 27.8 Unless any Member present in person or by proxy at a general meeting shall before 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.

28. SPECIAL RESOLUTION

- 28.1 A resolution by the Association shall be a special resolution if at a general meeting of which not less than 21 clear calendar 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 Members holding in aggregate not less than 33% of the total votes of all the Members entitled to vote thereat, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than 75% of the number of Members of the Association entitled to vote 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% of the total votes, to which the Members present in person or by proxy are entitled.
- 28.2 If less than 33% of the total votes of all the Members entitled to attend the meeting and to vote there at are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than 14 calendar days and not later than 30 calendar days after the date of the meeting and the provisions of clause 25.3 shall apply in respect of such adjournment.
- 28.3 At the adjourned meeting, the Members who are present in person or by proxy and are entitled to vote, may deal with the business for which the original meeting was convened and a resolution passed by not less than 75% of such Members shall be deemed to be a special resolution, even if less than 33% of the total votes are represented at such adjourned meeting, save that no less than 4 (four) members must be personally present.

29. OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this constitution, the Trustee Board shall at all times have the rights to engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employee(s) whatsoever, for any reasons thought necessary by the Trustee Board and on such terms as the Trustee Board shall decide, subject to any of the provisions of this constitution, provided that any expenditure incurred in respect of the above, shall not exceed 5% of the total annual levy for the year in question, unless authorised by a special resolution.

30. ACCOUNTS OF THE ASSOCIATION

- 30.1 The Association in general meeting or the Trustee Board, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 30.2 At each annual general meeting the Trustee Board shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Board and the auditors if appointed, and there shall be attached to the notice sent to Members convening each annual general meeting, as set forth in clause 22.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.
- 30.3 The accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the auditors at least once a year, if so required by the trustees or the majority of the Members.

31. SERVICE OF NOTICES

- 31.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the portion owner by such Member or by e-mail to the last-known email address of such owner.
- 31.2 No Member shall be entitled to have a notice served on such Member at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 31.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted. In case of any notice sent by e-mail it shall be deemed to have been received on the first working day following the date of transmission;
- 31.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by any person entitled to receive notice, shall not invalidate the proceedings of that meeting.

32. INDEMNITY

- 32.1 All trustee Members shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a trustee Member, in his or her capacity as chairman or vice-chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person(s) by the court.
- 32.2 Every trustee Member, every servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the Trustee Board to pay out of the funds of the Association) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge or any of their respective duties, including in the case of a trustee Member, his or her duties as chairman or vice-chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person

against all losses of whatsoever nature incurred, arising out of any bona fide act, deed or letter done or written by such person jointly or severally in connection with the discharge of his or her duties, provided that any such act, deed or letter has been done or written in good faith.

- 32.3 A trustee Member shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustee Members, whether in their capacities as trustee Members or as chairman or vice-chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Board for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his or her office(s) or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

33. ARBITRATION

- 33.1 Any dispute, question or difference arising at any time between Members or between Members and trustees out of or in regard to: –

33.1.1 any matters arising out of this constitution; or

33.1.2 the rights and duties of any of the parties mentioned in this constitution; or

33.1.3 the interpretation of this constitution;

shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

- 33.2 Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act no. 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 business days after it has been demanded.

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

33.3.1 primarily an accounting matter – an independent accountant;

33.3.2 primarily a legal matter – a practising counsel or attorney of not less than 10 years standing;

33.3.3 any other matter – an independent and suitably qualified person appointed by the auditors as may be agreed upon between the parties to the dispute and, failing agreement, the arbitrator shall be appointed in terms of clause 33.4 below.

- 33.4 If agreement cannot be reached on whether the question in dispute falls under clauses 33.3.1, 33.3.2 or 33.3.3 above, or upon a particular arbitrator in terms of clause 30.3.3, within 3 business days after the arbitration has been demanded, then: –

33.4.1 the President for the time being of the Cape Law Society or its successor(s) shall determine whether the question in dispute falls under clauses 33.3.1, 33.3.2 or 33.3.3 above; or

33.4.2 the President for the time being of the Cape Law Society shall nominate the arbitrator in terms of clause within 7 business days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the 21 business days referred to in clause 33.2 above.

- 33.5 The arbitrator shall make his award within 7 calendar days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this constitution. The arbitrator may determine that the cost of the arbitration may be paid, either by one or other of the disputing parties or by the Association, as he in his sole discretion may deem fit.

- 33.6 The decision of the arbitrator shall be final and binding and may be made an order of the High Court of South Africa (Western Cape Division, Cape Town) or its successor(s) upon the application of any party to the arbitration.
- 33.7 Notwithstanding anything to the contrary contained in clauses 33.1 to 33.7 inclusive, 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 these provisions.

34. AMENDMENTS TO CONSTITUTION

- 34.1 This constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a special resolution adopted at an annual general meeting or a general meeting of the Members.
- 34.2 No amendment of the Constitution may be inconsistent with or in contravention of any current legislation.

35. EFFECTIVE DATE

This constitution shall come into effect when the first erf is transferred from the developer to the transferee thereof.

36. STATUS OF DEVELOPER

Until such time as the completion of the development, the following provisions shall apply in addition to the conditions in these presents:

- 36.1 the Developer shall be entitled:–
- 36.1.1 to nominate and appoint a pro rata proportion of the trustees of the board of trustees, such proportion being the same proportion as exists between the total number of all the portions and the total number of all the portions of which the Developer is the registered owner at the relevant time subject to the provision that until completion of the development has been achieved, the Developer shall always be entitled to appoint at least one trustee to the board of trustees: Provided that the Developer shall until the second annual general meeting of the Association, be entitled to nominate the majority of the Trustees;
 - 36.1.2 to a number of votes equal to the number of unsold portions at any time at any meeting of Members of the Trustee Board;
 - 36.1.3 to require that the Trustee Board enforce the rights granted to it in terms of these presents against any Member who in the opinion of the Developer is not complying with his obligations as a Member, and in particular, without restricting the generality of the afore going, has failed to maintain all buildings and other improvements on its portion by giving such Member written notice in which his failure to comply with the particular provisions of this constitution is detailed and calling upon him to remedy such failure within a prescribed period of 7 calendar days (or such period as the Trustee Board and Developer may decide to be reasonable in the circumstances), failing which, the Developer shall be entitled at the sole cost of that Member to carry out all such work as may be required to maintain such building and other improvements on his portion;
 - 36.1.4 to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the development, including the common areas, the road area and/or the exterior walls (if any) of the development, subject to the regulations and by-laws of the Municipality appertaining to signage from time to time;

- 36.1.5 to scrutinize, approve and submit all building plans to the relevant authority to obtain the relevant approvals until the completion of the scheme.
- 36.2 neither the Trustee Board, nor any Member of the Association, shall prevent or hinder in any way the Developer from:
- 36.2.1 gaining access to and egress from the development;
- 36.2.2 continuing any building or services operations at the development; and/or
- 36.2.3 marketing and selling any of its unsold portions, including the advertisement of the sale of such portions on the common areas and/or at the development.
- 36.3 the Developer shall not be required to obtain from the Association the consents referred to in clause 7.5.1.3 and 7.5.2 prior to completion of the scheme;
- 36.4 upon the completion of the scheme, the rights of the Developer in terms of the provisions of this clause 36 shall immediately terminate *ipso facto* and no longer be of any force and effect;
- 36.5 in the event of a dispute as to whether or not the development has been completed as envisaged herein, the decision of the architect appointed by the Developer for the scheme shall be final and binding.
- 36.6 the Developer shall pay no levies on any erven registered in his name.

37. MANAGING AGENT

The Trustee Board shall be entitled to appoint a managing agent from time to time to control, manage and administer the common property and to exercise such power and duties as may be entrusted to the managing agent, including, but not limited, to the power to collect levies, appoint a supervisor and take action against members who disobey the constitution and rules of the Association.

38. BINDING NATURE OF CONSTITUTION AND CONDUCT RULES

- 38.1 The provisions of this constitution and of the conduct rules shall be binding on all members and also on all other persons who, for whatever purpose, enter the Estate.
- 38.2 It shall be the duty of a member to ensure compliance with the provisions of this constitution and the conduct rules by her or his lessee or any other occupant of her or his dwelling, including the employee, worker, guest and any member of the family of the member concerned or of her or his lessee or the other occupant of her or his dwelling.

39. EXISTING HOUSES AND OWNERS

- 39,1 It is recorded that there are 2 erven in the Development that are occupied by 2 original families of the original Farm on which the development is situated. These erven will be transferred into the names of the original owners simultaneously with the first transfers in the Development, and the said original owners will be excluded from payment of any levies until the day that they cease to be an owner. This exclusion relates only to the first Transferees and owners of the properties and consequently their successors in title of the plots, irrespective of the reason (*causa*) for the transfer, will be liable for payment of levies to the Association from the date that they become entitled to the property. The registration of transfer of the erven in the Deeds Office is not a prerequisite for their liability towards payment of the levies, and the successor in title of the original Transferee will

become liable when the original Transferee cease to be an owner, whether by death, sale or any other reason.

39.2 The exemption of the owners in condition 39.1 above from payment of levies will not exempt them from being bound by the terms and conditions of this Constitution and the Rules of the Home Owners Association and they will become members of the Association once the erven are transferred into their names.

40. **BOUNDARY WALL**

The Developer will build a boundary wall around the estate once approved by the Municipality. The boundary wall will indicate the boundary of the Estate and should not be deemed to be a security wall as this is not a security Estate. The owner of each erven will at his own cost be responsible for the maintenance of the boundary wall situated on or adjacent to his erf.