

**CONSTITUTION OF THE
WELMOED VILLAGE
PROPERTY OWNERS'
ASSOCIATION**

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1. DEFINITIONS

In this Constitution and unless inconsistent with the context the following words and expressions shall have the meanings hereby assigned to them:

- 1.1 **"Dispose"** means to dispose of any portion of land created by subdivision of the Development and includes the disposal of a Unit, whether by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency, or liquidation, irrespective of whether such disposal is subject to a suspensive or resolutive condition and "disposal" shall have a corresponding meaning.
- 1.2 **"Association"** means Welmoed Village Property Owners Association which is bound by the provisions of this Constitution duly constituted in terms of Section 29 of the SMPBL.
- 1.3 **"Architectural Rules"** means, in respect of any particular Erf, the Architectural Rules drawn up by the Developer for and applicable to the Sectional Title Scheme established in terms of that Erf and incorporated in the management rules applicable to each Body Corporate;
- 1.4 **"Auditors"** means the auditors of the Association from time to time;
- 1.5 **"Body Corporate"** means a Body Corporate established for a Sectional Title Scheme in terms of the provisions of the Sectional Titles Act;
- 1.6 **"Building"** every building constructed or to be constructed that comprises a Sectional Title Scheme;
- 1.7 **"Chairman"** means the Chairman for the time being of the Trustees;
- 1.8 **"Common Areas"** mean –
 - 1.8.1 all Erven and Units that are transferred by the Developer to the Association to be held and maintained by the Association for the benefit of the Members, such as security offices, main power supply room, chiller/air conditioning rooms, IT rooms, refuse rooms, etc.; and
 - 1.8.2 all common property, including Private Open Space as per clause 1.31, but, excluding the following common property which is the responsibility of the Bodies Corporate - tiled foyers, lobbies, lift foyers and passageways

within the security areas, external facades, roofs and terraces and further excluding common property which is delineated as exclusive use areas on the sectional plan in respect of an Erf;

- 1.9 **"Common Property"** means such portion of an Erf and such parts of a Building that will be designated as common property on the Sectional Plan in question pursuant to the provisions of the Sectional Titles Act;
- 1.10 **"Common Services"** means all bulk services including services in respect of the provision of water, sewerage, electricity, drainage, telecommunications, refuse removal, fire-fighting, security, fibre connectivity, transport and all such other utilities and amenities serving the Common Areas, Units and Erven;
- 1.11 **"Constitution"** means the constitution of the Association embodied in this document with the annexures hereto, amended as it may be in terms hereof from time to time;
- 1.12 **"Deed of Sale"** an agreement of sale and purchase in terms of which any party has purchased an erf in the development or a Unit in a Sectional Title Scheme;
- 1.13 **"Developer"** means Uniqon Developers Proprietary Limited, registration number 1997/021737/07, or its successor-in-title;
- 1.14 **"Development"** means the Remainder of Portion 28 of the Farm Welmoed Estate Number 468; in the Municipality and Division of Stellenbosch, Western Cape Province upon which the Welmoed Village Residential Estate are being developed;
- 1.15 **"Entity"** means any company, close corporation, other association, or body of whatever nature that has legal personality, and any trust or partnership (only natural persons being excluded);
- 1.16 **"Erf"** means every erf in the Development created by the subdivision of the whole or any portion of the Development and "Erven" means all the erven in the Development and the Remainder collectively;
- 1.17 **"Estate"** means the Welmoed Village Residential Estate developed on the Remainder of Portion 28 of the Farm Welmoed Estate Number 468; in the Municipality and Division of Stellenbosch, Western Cape Province, consisting of different phases including erven and sectional title schemes;
- 1.18 **"Estate Rules"** means the rules established by the Association to provide for

the use and enjoyment of residential dwellings and Units including the common property by and to promote the harmonious co-existence of all Owners and occupiers in the Development, which rules are annexed hereto marked Annexure "A", and which may be amended, substituted, or added to by the Trustees from time to time;

- 1.19 **"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 "B";
- 1.20 **"Fully developed"** means the stage where the development is established and the last erf or unit has been transferred;
- 1.21 **"Improvements"** means any structure of whatever nature constructed or erected or to be constructed or erected on an Erf or the Remainder;
- 1.22 **"Local Authority"** means Stellenbosch Municipality or any Local Authority that may succeed it as the Local Authority which has jurisdiction over the Development from time to time;
- 1.23 **"Managing Agent"** means any person or Entity appointed by the Association as an independent contractor to undertake any of the functions of the Association;
- 1.24 **"Member"** means every person identified in 7.1 below, and "membership" shall have a corresponding meaning;
- 1.25 **"Membership Quota"** means, in respect of each Member, the percentage that the total floor area of all residential sections registered in the name of such Member at the time, as recorded in the participation quota schedule/s applying to the Body Corporate/s in question, constitutes of the total floor area, collectively, of all residential sections reflected on the Sectional Plans that have been registered in respect of Buildings in the Development at the time, as recorded in the participation quota schedules relating to the various Bodies Corporate in question, on the basis that whenever there is an increase in the total number of residential sections in the Development pursuant to the establishment of a further Building/Body Corporate, there shall be a resultant decrease in the Membership Quota of every current Member;
- 1.26 **"Ordinary Member"** means any Member of the Association other than the Developer;

- 1.27 **"Office"** means the administrative office of the Association;
- 1.28 **"Owner"** means the registered owner of an erf and/or unit.
- 1.29 **"POA Levy"** means the Property Owners Association levy raised by the Association and collected directly or by Bodies Corporate from Members on the Association's behalf, and which is to be distinguished from levies raised by the various Bodies Corporate for their own purposes upon their respective members, as more fully set out in clause 12 below;
- 1.30 **"Prime Rate"** means the publicly quoted basic rate of interest per annum at which ABSA Bank lends monies in South African Rand on unsecured overdraft to first class corporate borrowers in general from time to time, on the basis that such interest is compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year factor, irrespective of whether or not the year is a leap year (and which said rate of interest is at times also referred to as the prime commercial overdraft rate of interest), as certified by any officer of ABSA Bank whose appointment and authority it shall not be necessary to prove;
- 1.31 **"Private Open Space"** means all areas 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 attached hereto as Annexure "B";
- 1.32 **"Proxy"** means a person duly appointed by a Member in terms of the provisions of the Constitution to represent him at any meeting or resumption of any meeting which has been postponed;
- 1.33 **"Remainder"** means the remainder of the Development left over from time to time after the subtraction therefrom of portions thereof that are transferred out or in respect of which certificates of registered title have been issued;
- 1.34 **"Residential dwelling"** means building, premises, structure or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person;
- 1.35 **"SANAS"** means the South African National Accreditation System, the official accreditation body for South Africa, headquartered in Pretoria.
- 1.36 **"Section"** means the part of a sectional title scheme which an owner owns;
- 1.37 **"Sectional Plan"** means the sectional plan to be drawn in respect of any Erf and

Building in terms of the provisions of the Sectional Titles Act and approved by the Surveyor General;

- 1.38 **"Sectional Titles Act"** means the Sectional Titles Act No. 95 of 1986, as amended from time to time;
- 1.39 **"Sectional Title Scheme"** means any sectional title scheme established in terms of the Sectional Titles Act on any Erf;
- 1.40 **"SMPBL"** means the Stellenbosch Municipality: By-Law on Municipal Land Use Planning 2023 and includes any superseding legislation;
- 1.41 **"STSMA"** means the Sectional Titles Schemes Management Act No. 8 of 2011 as amended from time to time, and any regulations made and in force thereunder;
- 1.42 **"Sub-divided Development"** means each sub-divided erf within in the Estate with a Sectional Title Scheme and/or Township developed on the erf.
- 1.43 **"Trustees"** means the Board of Trustees for the time being of the Association appointed in terms of this Constitution;
- 1.44 **"Trustee Members"** means the members of the Board of the Trustees from time to time;
- 1.45 **"Unit"** means a section (as defined in the Sectional Titles Act No. 95/1986) in any Sectional Title Scheme on any Erf together with such section's undivided share in the common property of such Sectional Title Scheme;
- 1.46 **"Waste Management Plan"** means the plan prepared in keeping with the Stellenbosch Municipality: By-Law Relating to Integrated Waste Management (2020) and Stellenbosch Municipality Waste Management Guidelines in terms of which all solid waste generated in the Estate will be managed. WMP and Welmoed Village Residential Estate Waste Management Plan have the same meaning.
- 1.47 **"Year"** means a financial year of the Association.

2. INTERPRETATION

In this Constitution:

- 2.1 the clause headings are for convenience and shall be disregarded in construing this Constitution.
- 2.2 unless the context clearly indicates a contrary intention:
 - 2.2.1 the singular shall include the plural and *vice versa*;
 - 2.2.2 a reference to any one gender shall include the other genders; and
 - 2.2.3 a reference to natural persons includes legal persons and *vice versa*.
- 2.3 Words and expressions defined in any clause herein shall, for the purpose of that clause and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in the clause in question.
- 2.4 When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 If any provision of this Constitution is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 2.7 If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 2.8 The annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.

3. COMMENCEMENT DATE

The Association, as contemplated in terms of section 29 of the SMPBL, comes into existence simultaneously with registration of the first transfer of an erf or a unit from

the Developer to an Owner.

4. STATUS

- 4.1 The Welmoed Village Property Owners Association is constituted for the purpose of taking assignment of the functions and powers of the Body Corporate/s of the sectional title schemes comprising the Development and to manage the collective interests common to its members.
- 4.2 Whereas-
- 4.2.1 in accordance with this Constitution all the members of the respective Bodies Corporate of the Sectional Title Scheme/s shall be members of the Welmoed Village Property Owners Association (the "Association") and the functions and powers of the Bodies Corporate are herein assigned to the Association, subject to clause 4.2.3 hereunder; and
- 4.2.2 a condition is imposed by the Developer in terms of Section 11(3)(b) of the Act in respect of the Sectional Title Schemes whereby the transfer of a unit without the consent of the Association is prohibited; and
- 4.2.3 in accordance with regulation 6(4) of the STSMA, the Developer has substituted the whole of the management rules set out in the Regulations to the STSMA with this Constitution and as a result the management rules as set out in the Regulations will not apply to the management of the Estate or the Association except for the rules that cannot be substituted, added to, amended or withdrawn as per regulation 30 of the STSMA as amended ; and
- 4.3 The Association shall:
- 4.3.1 have legal personality, and be capable of suing and being sued in its own name; and
- 4.3.2 not operate for profit for the benefit of the Members.
- 4.4 No Member in his personal capacity 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.

5. OBJECTS

- 5.1 The main objects and powers of the Association are:
 - 5.1.1 The exercise of control over:
 - 5.1.1.1 The maintenance of all dwellings, including the external facades and roof thereof, which maintenance is to be carried out by and at the expense of the Owner;
 - 5.1.1.2 The maintenance of all buildings and/or structures erected or to be erected on the Estate and which maintenance is to be carried out by and at the expense of the Association;
 - 5.1.1.3 The maintenance of all Private Open Spaces and Common Property including the landscaping of same, all facilities and amenities located on Private Areas and common property and which maintenance is to be carried out by and at expense of the Association;
 - 5.1.1.4 The maintenance and upkeep of all private combined services (water, sewers, sewerage pump stations, roads, stormwater and electrical services);

And the following ancillary objects: _

- 5.2 The promotion, advancement and protection of the interests of the Members generally, in all matters affecting the Estate;
- 5.3 The formulation, enforcement, modification, amendment, additions and deletions of Estate Rules and Regulations;
- 5.4 To enter into any agreements including service agreements with the Local Authority for the provision of services, inter alia including the provision of water, electricity and sewerage services to the Association and where required to supply such services to the various Bodies Corporate within the Estate;
- 5.5 to act as a Property Owners Association established in terms of Section 29 of the SMPBL for the Development, and in particular to procure that the matters referred to in last mentioned section are to be adhered to and complied with;
- 5.6 to take transfer of those portions of the Development that are designated by the owner thereof as common areas that are to be owned by the Association for the benefit of its members;
- 5.7 to enter into agreements of servitude in its favour over portions of land within

- the Estate for the benefit of its members;
- 5.8 to administer, manage, oversee, maintain, and control the Common Areas;
 - 5.9 to implement, manage, oversee and control all security aspects of the Estate;
 - 5.10 to enter into agreements for the provision of services, *inter alia* including the provision of water, electricity and sewerage services to the Association and where required to supply such services to the various Bodies Corporate within the Estate;
 - 5.11 to administer and enforce the Waste Management Plan, any Architectural Rules which may be introduced, and the Estate Rules;
 - 5.12 to control the registration of transfer of Erven and Units in the Development and ensure compliance within the Estate with all conditions imposed by the Local Authority when approving the Master Plan in respect of the Estate;
 - 5.13 to enter into mandates with estate agencies to sell and rent properties in the Estate, on the condition that the estate agents undergo basic training with regard to the manner in which the Estate operates and its' rules;
 - 5.14 oversee, maintain, and control the Development, ensure in general that high standards are adhered to and to regulate and control the harmonious development of the Estate;
 - 5.15 to delegate the management of the Association to a third party.
 - 5.16 The Association, through Trustees, shall have all the powers that are necessary to accomplish the fulfilment of the foregoing objects including, but not restricted to, the powers specifically contained in this Constitution.

6. CONTROL OF ASSOCIATION BY DEVELOPER

It is recorded that, having regard to the objects, purpose and aim of the Association set out in clause 5 above, it is considered imperative for the successful execution and implementation of the Development that the Developer should retain effective control of the Association until the whole of the Development has been fully developed. The Developer shall, until such time that the last erf or unit in the Development is sold and transferred, have a veto right with regards to any matter contained in this Constitution and/or the Rules of the Association or with regard to any other matter requiring a vote or decision to be taken in respect of any amendment and/or addition to the Rules or to

the Constitution of the Association.

7. MEMBERSHIP:

7.1 The Members of the Association shall be:

7.1.1 the Developer;

7.1.2 every Owner provided that where an Owner comprises more than one person, such person shall be deemed jointly to be one Member of the Association and shall be jointly and severally liable to comply with their obligations as a Member.

7.2 An Owner of an Erf and/or a Unit shall become a Member of the Association upon registration of transfer of the Erf or Unit into his name.

7.3 When a Member is no longer the registered owner of any Erf or Unit, he shall *ipso facto* cease to be a Member of the Association.

7.4 The rights and obligations of the Members shall rank in accordance with the provisions of this Constitution.

7.5 Anything to the contrary hereinbefore contained or implied notwithstanding, the cessation of his membership shall in no way release a Member from any obligation undertaken by him prior to the cessation of his Membership pursuant to :

7.5.1 any provision of the Constitution of the Association; or

7.5.2 any further or ancillary guarantee, commitment, or obligation which such Member may have undertaken.

7.6 Membership shall be personal to the natural persons or Entities in question and may not be assigned or transferred by them to any other natural person or Entity.

7.7 The Association shall maintain at the Office a register of Members, which shall be open to inspection by Members.

7.8 The Trustees may by regulation provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustees;

- 7.9 The Trustees may by regulation further prescribe appropriate application documentation including inter alia the following:
- 7.9.1 an application to register as a Member of the Association;
 - 7.9.2 consent to transfer a Unit or Erf in favour of such a proposed Member from any existing Member, provided always that this paragraph 7.9.2 will not apply in respect of the transfer or alienation by the Developer of an Erf or Unit in favour of a proposed Member.
 - 7.9.3 an undertaking by a proposed Member to comply with all the obligations imposed on Members in terms of the Constitution, which undertaking must be signed by the proposed Member and deposited with the Association prior to the Association issuing a clearance certificate or;
 - 7.9.4 any other permission required to be given by the Trustees.

8. DEVELOPER'S RIGHTS

- 8.1 The Developer shall, in its absolute discretion, be entitled to apply and submit for the approval of the Local Authority, the layout and/or zoning and/or size and/or boundaries of Erven and/or the extent and position of streets and Common Areas comprising the Development, and/or for any variation of any of the foregoing, and Members shall be bound thereby and shall have no claims of whatever nature against the Developer arising therefrom. Insofar as the consent of a Member is formally required for any of the foregoing, the Developer (represented by any one of its authorised representatives) is irrevocably granted a power of attorney to grant any/all such consents on behalf of Members, as may be required.
- 8.2 In particular it is recorded that the Association does not have the power or capacity in any way to interfere with, object to, restrict or in any way provide an obstacle of any nature to the Developer with the planning, implementation or construction of any part or aspect of the Development or any Improvements thereon.
- 8.3 Notwithstanding any provisions to the contrary set out elsewhere in this Constitution, there will be no restriction on the Developer to develop, transfer, sell, lease, or alienate the whole or any portion of the Development, nor will the Developer be obliged to obtain any consent or clearance of whatsoever nature

from the Association or its Members in respect of the construction of any improvements on any part of the Development.

- 8.4 The Developer, or its successors in title is exempted from payment of levies on any unsold property registered in its favor, which exemption only terminates on the date which all property registered in favor of the Developer are transferred to third parties.
- 8.5 The Developer shall for as long as it remains a Member of the Association, be entitled to appoint a Managing Agent to administer the Association, at a market related fee in terms of a written appointment agreement. Thereafter the managing agent shall be appointed by the Trustees;
- 8.6 The Board of Trustees shall consist of not less than 3 (three) nor more than 5 (five) Trustees. Until the Developer has transferred all property in the development scheme registered in its favor to third parties, the Developer shall be entitled to appoint not less than 3 (three) of the Trustees to serve on the Board of Trustees;
- 8.7 It is recorded that there will be no restriction whatsoever on the ability of the Developer to pass transfer of any Erf or Unit and that accordingly the Developer does not need a clearance certificate from the Association before it will be entitled to dispose of or transfer any Erf or Unit to any person or Entity;
- 8.8 The Developer shall not be liable to compensate the Association in respect of any claims, losses, expenses, or damages suffered by the Association as a result of any act or omission on the part of the Developer in respect of any civil services installation on the Estate or any license or permit obtained by the Developer in respect of the Estate or any part thereof, except where such claims, losses, expenses, or damages was occasioned by the wilful misconduct or gross negligence of the Developer.
- 8.9 The Developer shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use over any Erf, Unit, Building or Common Property in any Sectional Title Scheme in favour of the Association or in favour of any adjoining Erf or any other part of the Development that in the opinion of the Developer is reasonably necessary for the proper functioning of the Development of the whole or any part of the Development. In particular it is recorded that servitudes of right of way may be

registered in favour of the Association for the benefit of its Members over portions of the common property of any Sectional Title Scheme along routes that will be delineated by the Developer on any Sectional Plan or on other servitude diagrams, and specifically a servitude of vehicular right of way over portions of the common property of a Building. The Association accepts and shall be bound by and consents to registration of such reciprocal servitudes between Bodies Corporate and the Association as are provided for herein. The Association shall have the right to allow all its members to move on foot and with vehicles over portions of the common property of any Sectional Title Scheme along routes as are delineated by the Developer in the Master Plan.

9. MEMBERS' RIGHTS AND OBLIGATIONS:

- 9.1 Membership of the Association shall be compulsory for every Owner on the Estate and such membership will commence simultaneously with the transfer of an Erf / Unit into the name of the Owner;
- 9.2 Every Member is obliged to comply with:
 - 9.2.1 the provisions of this Constitution and any regulations passed by the Association in terms hereof;
 - 9.2.2 the provisions of the Waste Management Plan, any Architectural Rules that may be introduced, and the Estate Rules;
 - 9.2.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member in its capacity as a Member;
 - 9.2.4 any directive given by Trustees in enforcing the provisions of this Constitution.
- 9.3 The rights and obligations of a Member are not transferable, and every Member shall to the best of his ability further the objects and interests of the Association.
- 9.4 The Members shall be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein. If a Member consists of more than one person such persons shall be jointly and severally liable in solidum for all obligations of a Member in terms of this Constitution.
- 9.5 When selling an Erf or Unit the Member will have to apply to the Association to

get accreditation for the estate agent of their choice if the estate agent is not already accredited with the Association.

- 9.6 An Ordinary Member shall not sell, dispose of, or give transfer of an Erf or Unit unless:
- 9.6.1 the proposed transferee has irrevocably bound himself to become a Member of the Association and to observe the provisions of the Constitution for the duration of his ownership of the Erf and/or Unit;
 - 9.6.2 the Association acting through the Trustees or the Managing Agent has issued a prior written clearance that all outstanding levies and all amounts of whatever nature owing to the Association by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution; and
 - 9.6.3 the proposed transferee acknowledges that upon the registration of transfer of the Erf and/or Unit into his name, he shall *ipso facto* become a Member of the Association.
 - 9.6.4 the conditions set out in 9.6.1 to 9.6.4 above are incorporated in the relevant Deed of Sale in terms whereof the transferee acquires the Erf or Unit in question.
- 9.7 An Ordinary Member shall not without the prior written consent of the Association, who in granting or refusing such consent shall act in its absolute discretion, apply to the Local Authority or any other relevant authority for the subdivision or rezoning of an Erf or Unit owned by the Member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof. For the avoidance of doubt, it is recorded that this clause 9.7 does not apply to the Developer who does not need the consent of the Association in respect of the aforesaid or any other applications.
- 9.8 A Member is required to ensure that the occupant of his Erf or Unit, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of this Constitution and the Regulations. Without detracting from the foregoing the Member shall remain bounded by this Constitution notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his obligations under this Constitution.

- 9.9 An Ordinary Member may not resign from the Association.
- 9.10 Each Member shall, if he / she / it wishes to lease out any Residential dwelling and/or Unit:
- 9.10.1 Ensure that the estate agent of its choice obtain accreditation from the Association, if he/she/it is not already accredited, and undergo basic training to understand the values, objectives as well as the Rules of the Estate, which training shall form part of the accreditation process administered by the Managing Agents; or
- 9.10.2 enter into a written lease with the tenant –
- 9.10.2.1 in which the tenant is required specifically to acknowledge that he has been apprised of the existence and ambit of the Estate Rules,
- 9.10.2.2 in which the tenant gives an undertaking that he will abide by the Estate Rules,
- 9.10.2.3 in which the tenant is required to report to the Association and register his full details for security reasons prior to the taking of occupation.
- 9.10.3 be responsible to ensure that the tenant does thus register himself with the Association prior to taking occupation; and
- 9.11 The rights and obligations of a Member shall not be transferable and every Member shall –
- 9.11.1 To the best of his ability further the objects and interests of the Association;
- 9.11.2 Observe all the Rules and Regulations made by the Association;
- 9.11.3 Be jointly liable with all the Members for expenditure properly incurred in connection with the Association, insofar as third parties are concerned, 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 or Sectional Title Unit.

10. WASTE MANAGEMENT PLAN, ARCHITECTURAL RULES, AND ESTATE RULES

- 10.1 The Waste Management Plan, any Architectural Rules, and the Estate Rules constitute an integral part of this Constitution. It is recorded that the Waste Management Plan, any Architectural Rules, and the Estate Rules, read together with the conduct rules of every Body Corporate, contain the procedures, requirements, and guidelines to be adhered to by every Owner.
- 10.2 All Improvements shall be of sound construction and shall comply with the provisions of any applicable Architectural Rules that form part of the Rules of the Body Corporate in question.
- 10.3 No construction or erection of any Improvements or alterations to and no renovation of any Building or Unit that is undertaken by any party other than the Developer may commence prior to the due and proper approval of plans for such Improvements, alterations, or renovation by both the Review Committee and, where required, the Local Authority, in accordance with the following provisions:
 - 10.3.1 the Owner shall submit to the Review Committee for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;
 - 10.3.2 the Owner shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the Review Committee;
 - 10.3.3 after the approval of such plans by the Review Committee the plans shall be submitted to the Local Authority for approval.
- 10.4 No plan shall be submitted to the Local Authority unless it bears the endorsement of approval of the Review Committee, clearly dated, certifying that the plan complies with any Architectural Rules.
- 10.5 When effecting the Improvements or alterations or renovations contemplated in 10.3 the Owner shall at all times comply strictly with any Architectural Rules as well as all conditions and standards imposed by the Local Authority insofar as these may be additional to the provisions of any Architectural Rules. No Member shall be entitled to deviate in any manner whatsoever from any plan approved by the Review Committee and the Local Authority unless the prior written approval of both the Review Committee and the Local Authority for such

proposed deviation has been obtained.

- 10.6 No Member shall be entitled to challenge or contest any of the provisions of the Waste Management Plan, any Architectural Rules, or the Estate Rules.
- 10.7 No application for the amendment of the Waste Management Plan shall be made to the Local Authority unless the prior written consent of the Trustees has been obtained thereto.
- 10.8 No amendment of any Architectural Rules by a Body Corporate shall acquire any force or effect unless the prior written consent of Trustees has been obtained thereto.
- 10.9 No Body Corporate shall adopt any conduct rules in terms of section 35(1)(b) of the Sectional Titles Act which are in conflict with any of the Estate Rules unless the prior written consent of Trustees has been obtained thereto.

11. SERVICES

11.1 Water

- 11.1.1 The Association shall supply each Body Corporate, each Unit, and each Erf with water at the cost thereof to the Association over and above the cost of water as in 11.1.6 herein below, which shall include all costs of and incidental to such supply including the cost of installation, maintenance and servicing of pipelines, pumps, metres, equipment, and materials.
- 11.1.2 The Body Corporate and all Owners of Erven, Residential dwellings or Units shall be liable for and shall pay the Association on demand all charges arising from water supplied to or consumed in or on an Erf, Residential dwelling or the Building comprising a Sectional Title Scheme including the common property.
- 11.1.3 The liability of a Body Corporate and the Owners in question for such charges shall be in accordance with separate submeters serving the Sectional Title Scheme, Unit, or Erf in question which the Association shall be entitled to install at the cost of such Body Corporate or Owner, as the case may be.
- 11.1.4 Where water charges are calculated and payable in terms of this clause 11.1, any value added tax levied in respect of the supply of such water

shall be paid by the Body Corporate or Owner in question.

- 11.1.5 The Association will be entitled to charge interest at the Prime Rate plus 3 (three) percentage points on any charges payable by an Owner or Body Corporate in terms of this clause 11.1 which interest will be calculated from the due date on the balance of the charges owing from time to time until it has been paid in full.
- 11.1.6 The Association will charge the Body Corporates or Owners for water at a rate equal or less than the approved Local Authority rate for water and in a category of the bulk water meter account for which the Association is paying to the Local Authority. The rate may vary due to water restriction levels as announced by the Local Authority or when amended tariffs are approved by them.
- 11.1.7 All individual portions in the Estate will be metered and sound regular monthly water balances will be undertaken by the Association.
- 11.1.8 The Association will comply to all Water Services Bylaw conditions, restrictions when applicable and fines associated with the Bylaw.
- 11.1.9 The Association will be responsible for the regular payment of the bulk water account to the Local Authority.
- 11.1.10 If a Body Corporate or an Owner dispute a water meter reading, the meter must be tested at a SANAS registered testbed, after the payment of the testing fee and the new water meter replacement by the Body Corporate or the Owner. If the meter is found to register 2% or more than the actual flow, then the contested account must be adjusted to suit the period in question and retrospectively for a maximum period of one year, if applicable. If the error is less than 2%, all costs are for the complainant's account.
- 11.1.11 The Association will be responsible for any callout fee reported / requested by a Body Corporate or any Owner within the Estate, which fee will be recovered from the Body Corporate or the owner in keeping with the provisions of this clause 11.1.

11.2 Electricity

- 11.2.1 Lighting on Common Areas shall be supplied through separate electricity

supply meters and the cost incurred by the Association in respect thereof shall be recovered from Members as part of the POA Levies.

- 11.2.2 Electricity for consumption by Owners of Units shall be supplied in bulk by Eskom to the Association, and in turn distributed by the Association through prepaid energy meters to individual Owners. Accounts in respect thereof shall be rendered to Owners by the Association as and when required.
- 11.2.3 Electricity for communal lighting on common property not forming part of Common Areas shall be purchased and paid for by the Body Corporate of the Sectional Title Scheme.
- 11.2.4 The Association will be entitled to erect, install, and maintain a photo voltaic (PV) system to service the entire Development on any Erf and building, together with a backup battery system designed and scaled to be able to provide the entire Development with backup during power outages and for peak shaving. Such PV panels may be connected to a battery system that is not located on the same Erf.

11.3 Security, Communications and TV

- 11.3.1 Each Body Corporate or subdivided erven will be responsible for security and will take all steps necessary to provide and maintain adequate security measures for the Development.
- 11.3.2 It is recorded that the Developer is providing a sophisticated security system for the Estate and each Sub-Divided Development and that the owners of Erven and/or Bodies Corporate of each Sub-Divided Development will be obliged to enter into a security agreement with the Developer's nominated service provider and further be obliged to integrate security systems as per clause 11.3.5 below, which security systems as well as the monthly payment of the security services will be for the account of the Bodies corporate.
- 11.3.3 All Bodies Corporate shall co-operate with the Association to integrate and maintain security systems that will integrate the security systems of the Association with those of the various Bodies Corporate, including the security service providers.
- 11.3.4 All Bodies Corporate shall maintain and operate such security systems.

- 11.3.5 All Bodies Corporate shall be obliged to integrate security systems such as access control systems, alarm systems, intercoms and close circuit video / camera systems which are compatible and capable of being integrated with the systems of the Association, and which have been approved by the Association in writing.
 - 11.3.6 It is recorded that the aforesaid provisions are incorporated as being of crucial importance for purposes of a cohesive and effective security system for the Development, and in the best interests of all Bodies Corporate and their Members. All Bodies Corporate and Members shall accordingly be obliged to participate therein.
- 11.4 Maintenance of Common Areas
- 11.4.1 Landscaping and gardening and the on-going maintenance of Common Areas shall be the responsibility of the Association.
 - 11.4.2 Landscaping and gardening and the on-going maintenance of Common Areas in each Erf owned by a Body Corporate shall be the responsibility of the Association.
- 11.5 Maintenance of Buildings
- 11.5.1 If, in the opinion of the Trustees, a Body Corporate or a Member fails to maintain the common property which is its responsibility in keeping with the general standard of the other Sectional Title Schemes in the Development and such Body Corporate fails or refuses to do so despite reasonable notice from the Trustees to undertake such maintenance, the Association shall be entitled, at the cost of such Body Corporate, to undertake such necessary maintenance and the Body Corporate shall, upon demand, be liable for payment of all costs so incurred.
 - 11.5.2 The Association will be entitled to charge interest at the Prime Rate plus 3 (three) percentage points on any amounts payable by a Body Corporate in terms of clause 11.5.1 which interest will be calculated from the due date on the balance of such amounts owing from time to time until it has been paid in full.
- 11.6 Sewerage

- 11.6.1 The Association shall supply each Body Corporate, each Unit, and each Erf with a waste water disposal service at the cost thereof to the Association over and above the cost of such services as in 11.6.6 herein below, which shall include all costs of and incidental to such supply including the cost of installation, maintenance and servicing of pipelines, pumps, equipment, and materials.
- 11.6.2 The Body Corporate and all Owners of Units therein shall be liable for and shall pay the Association on demand all charges arising from the waste water service supplied to in or on an Erf and the Building thereon and the common property comprising a Sectional Title Scheme.
- 11.6.3 The liability of a Body Corporate and the Owners in question for such charges shall be in accordance with the rates and costs levied by the Local Authority serving the Sectional Title Scheme, Unit, or Erf in question which the Association shall be entitled to levy such Body Corporate or Owner, as the case may be.
- 11.6.4 Where waste water services charges are calculated and payable in terms of this clause 11.6, any value added tax levied in respect of the supply of such service shall be paid by the Body Corporate or Owner in question.
- 11.6.5 The Association will be entitled to charge interest at the Prime Rate plus 3 (three) percentage points on any charges payable by an Owner or Body Corporate in terms of this clause 11.6 which interest will be calculated from the due date on the balance of the charges owing from time to time until it has been paid in full.
- 11.6.6 The Association will charge the Body Corporates or Owners for waste water services at a rate equal or less than the approved Local Authority rate for such service which the Association is paying to the Local Authority. The rate may vary when tariffs are approved by the Council of the Local Authority.
- 11.6.7 It is recorded that the Association shall be obliged to enter into a contract with the Developer's nominated provider for the provision of sewerage services if such services are not rendered by the Local Authority at the time of transfer of any Units in the Estate and shall render an account to the Association in respect thereof. The Association will include in its levy account a contribution for sewerage along with e.g., security services, outside lighting, etc. rendered to Bodies Corporate.

11.7 Storm water management

- 11.7.1 The Association shall manage and maintain a storm water management service and system for the Estate.
- 11.7.2 The cost thereof to the Association, which shall include all costs of and incidental to such supply including the cost of installation, maintenance and servicing of pipelines, pumps, equipment, and materials, shall be recouped from the Body Corporates and Owners as provided for herein under clause 12.
- 11.7.3 The conditions of approval of the Estate require provision to be made for an effective rainwater harvesting system for all roof water. The volume of the storage facilities should be based on 0,02m³/m² roof area. In the case of the Estate there is a larger focus on ground water recharge than rainwater harvesting, for which purpose the courtyards have various landscaped areas to which stormwater is discharged, allowing groundwater sources to be recharged.
- 11.7.4 Irrigation for the Estate will take place by means of inter alia borehole water extraction. Management and maintenance of the system is the sole function of the Association, and no Body Corporate or Owner may intervene or disrupt the service.
- 11.7.5 The Association will maintain the storm water network, consisting of inlet structures and manholes by removing sand, silt, and litter on a six monthly basis and at least once before the winter season, to allow for maximum groundwater recharge.
- 11.7.6 Surface run-off structures such as headwalls, canals, pipes, and gabions will be maintained and cleaned on a six monthly basis and at least once before the winter season.

11.8 General

- 11.8.1 The Association shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, security communication, and any other services over any Erf or Building or any other portion of the Development, whosoever is the owner thereof, and shall have the right of access to such premises for the purposes of

installing, replacing, maintaining, and/or repairing such services.

- 11.8.2 The Owners and Bodies Corporate will allow reasonable access to employees or representatives of the Association into the Buildings or Units for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to in 11.8.1 above.
- 11.8.3 Furthermore, and without derogating from the aforesaid all Members will be obliged to provide their co-operation and to allow reasonable access to employees or representatives of the Association to enable them to install, implement and maintain any pipes or other modes of conveyancing of the services referred to in 11.8.1 above.
- 11.8.4 The Developer shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use over any Erf, Unit, Building or common property in any Sectional Title Scheme in favour of the Association or in favour of any adjoining Erf or any other part of the Development that in the opinion of the Developer is reasonably necessary for the proper functioning of the development of the whole or any part of the Development. In particular it is recorded that servitudes of right of way may be registered in favour of the Association for the benefit of its Members over portions of the common property of any Sectional Title Scheme along routes that will be delineated by the Developer on any Sectional Plan or on other servitude diagrams, and specifically a servitude of vehicular right of way over portions of the common property of a Building. The Association accepts and shall be bound by and consents to registration of such reciprocal servitudes between Bodies Corporate and the Association as are provided for herein. The Association shall have the right to allow all its members to move on foot and with vehicles over portions of the common property of any Sectional Title Scheme along routes as are delineated by the Developer in the Master Plan.
- 11.8.5 The Association is obliged to manage the collection and removal of solid waste for all its members by implementation of the Welmoed Village Estate Waste Management Plan. Nothing herein restricts the right of the Association to alter or amend the WMP and allocation subject to

compliance with the Stellenbosch Municipality: By-Law Relating to Integrated Waste Management (2020).

- 11.8.6 The Association is obliged to manage and maintain all access roads, walkways, and parking areas for all its members, amongst others by maintaining road markings, signage, paving, kerbs, and surfaces. Nothing herein restricts the right of the Association to temporarily close any such access roads, walkways, and parking areas for maintenance or special events, following due notice to all Bodies Corporate of such closure, at least 14 (fourteen) days in advance, unless due to an unforeseen occurrence.
- 11.8.7 The Developer shall for as long as it remains a Member of the Association, have the sole right to appoint service providers to assist with management and maintenance of any and / or all services and infrastructure, the collection and removal of solid waste and in general for the implementation of the Welmoed Village Estate Operational and Stormwater Management Plans. Nothing herein restricts the right of the Developer to make such appointments and to advise the Local Authority accordingly. Thereafter the service providers shall be appointed by the Trustees.

12. LEVIES

- 12.1 The Association shall establish and maintain a levy fund for the purposes of meeting all expenses of the Association in respect of:
 - 12.1.1 the control, management, and administration of the Development;
 - 12.1.2 in general, the attainment of its main objects as described in its Constitution;
 - 12.1.3 the maintenance of Common Areas and the costs of services such as electricity, water and sewerage consumed or used on the Common Areas;
 - 12.1.4 the supply of any services rendered by the Association;
 - 12.1.5 payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
 - 12.1.6 the costs of the provision of security to the Development; and

- 12.1.7 in general, the cost of fulfilling any of the obligations of the Association.
- 12.2 The Trustees shall estimate the amount which will be required by the Association to meet the expenses referred to in 12.1 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 a reserve to meet anticipated future expenditure not of an annual nature;
- 12.3 The Association shall be entitled to require Members, in accordance with the procedures set out in 12.4 below, to make contributions to such levy fund (in the form of levies), for the purposes of satisfying the expenses referred to in clause 12.1.
- 12.4 The procedure for raising and collecting POA Levies shall be as follows:
- 12.4.1 The Trustees shall submit the estimated expenditure referred to in 12.2 to the annual general meeting of the Association for consideration. It is recorded that:
- 12.4.1.1 the meeting shall be obliged to approve the following items of expenditure that are charged to the Association by outside third parties:
- 12.4.1.2 all rates and taxes payable by the Association to the Local Authority in respect of the Development;
- 12.4.1.3 the costs of the Developer's nominated provider of security services, including security guards, monitoring and surveillance;
- 12.4.1.4 the fee payable to any managing agent with whom the Association has entered into an agreement or remuneration payable to an estate manager and for a management office.
- 12.4.2 The Association shall have a discretion with regards to approval of the level of services, and the cost thereof, that the Association requires in respect of e.g., cleaning, gardening, general maintenance, etc.
- 12.5 The Association shall have its annual general meeting at least 60 (sixty) days prior to the financial year end of the Association and, subject to 12.4.1.1 above, decide on proposed increases of the POA Levies and the amounts to be charged

to Members in respect thereof.

- 12.6 Each Member shall, as consideration for the maintenance etc. of the Common Areas, Common Property and Common Services and the delivery of services by the Association to and on behalf of all its Members, as contemplated in clause 13 below, be levied with such proportion of the total POA Levies resolved upon in terms of 12.4.2 as equates to the proportion between such Member's Membership Quota and the total Membership Quotas of all Members of the Association;
- 12.7 The Association shall notify the Bodies Corporate at least 45 (forty-five) days prior to their respective annual general meetings of the POA Levies to be charged for the following year;
- 12.8 The Bodies Corporate must notify their members at least 28 (twenty-eight) days before their annual general meetings, in compliance with the Sectional Titles Act, and give them the details of the increases in the POA Levies which have been resolved upon by the Association's annual general meeting and communicated to the Bodies Corporate in terms of clause 12.4. above, and which must be included in the budgets of the Bodies Corporate that are tabled for approval;
- 12.9 At their annual general meetings, the Bodies Corporate shall resolve to impose the following levies on their own members:
 - 12.9.1 the POA Levies imposed by the Association on the members in question, as communicated to the Bodies Corporate in terms of 12.4; and
 - 12.9.2 the Bodies Corporate own levies as determined by its members in the meeting pursuant to the provisions of the Sectional Titles Act.
- 12.10 Each Body Corporate shall be responsible to collect on behalf of the Association the POA Levies pertaining to the members of that Body Corporate.
- 12.11 The Association may, from time to time by a resolution adopted by the Trustees, make special levies upon Members effective from the date of passing of the applicable resolution in respect of such expenses referred to in clause 12.1 which have not been included in the POA levies approved by the Association's annual general meeting in terms of 12.4, and such levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees may determine in its resolution. The decision of the Trustees in

calculating such special levies shall be final and binding on all Members.

- 12.12 Any amount due by a Member by way of a POA Levy shall be a debt due by him to the Association payable on such time or times as determined by the Trustees. The Trustees may determine that a levy is payable annually in advance in respect of the year for which it is calculated or in such monthly instalments as it may determine.
- 12.13 Until such time as a new POA Levy pertaining to a forthcoming year has been determined pursuant to the provisions of this clause 12, every member of the Association shall continue to pay the existing POA Levy currently in force, on account of the new POA Levy yet to be determined.
- 12.14 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.
- 12.15 No levies paid by a Member shall be repayable by the Association upon cessation of the Member's membership.
- 12.16 A Member's successor in title to an Erf or Unit shall be liable, as from the date upon which he becomes a member pursuant to registration of transfer of such Erf or Unit in his name, to pay the levies attributable to that residential property.
- 12.17 A Member shall be obliged to pay interest on any levy not paid on the due date at the Prime Rate plus 3 (three) percentage points per annum calculated on the levies due from time to time from the due date until the date that the arrear levies have been paid in full to the Association.
- 12.18 The Association shall be entitled to require a Member to sign a debit order authority to collect levies directly from an operating bank account.
- 12.19 If any Member fails to make payment on due date of levies and/or other amounts payable by such Member including interest, the Association may give notice to such Member requiring him to remedy such failure within such period as the Association may determine and should he fail timeously to make such payments, the Association may 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 recovering such amounts.

- 12.20 No Member shall (unless otherwise determined by the Trustees) be entitled to any of the privileges of Membership including:
- 12.20.1 his right of access to and use of any of the Common Areas;
 - 12.20.2 his right to vote until he shall have paid every levy and interest thereon and any other amount which may be due and payable by him to the Association.
- 12.21 The Association shall not be entitled to undertake on behalf of its Members any permanent works of major capital nature without the sanction of a resolution of the Members adopted during a general meeting of Members. In this sub-clause "works of a major capital nature" means works that will cost more than R300 000 (three hundred thousand Rand) (excluding Value Added Tax).
- 12.22 The Trustees shall be empowered to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed the rate laid down in terms of the Consumer Protection Act.
- 12.23 No Erf, Unit or Residential dwelling in the scheme shall be capable of being transferred without a certificate first being obtained from the Association confirming that all levies and interest have been paid up to date.
- 12.24 The Developer is exempted from payment of levies on any unsold property registered in its favor, which exemption only terminates on the date which all property registered in favor of the Developer is transferred to third parties.

13. MAINTENANCE AND ADMINISTRATION OF COMMON AREAS, PRIVATE OPEN SPACE, COMMON SERVICES, AND COMMON PROPERTY

- 13.1 The Association shall maintain, repair, and keep in good order and condition all Common Areas and Private Open Spaces where necessary refurbish same.
- 13.2 The Association will provide, administer, and maintain all Common Services.
- 13.3 The Association shall not be obliged to maintain any Common Property which is not part of the Common Areas or Private Open Spaces as defined. Those portions of the Common Property shall be administered and maintained by the Bodies Corporate of the Sectional Title Schemes in question in accordance with the provisions of this Constitution and the Sectional Titles Act.

14. AUTONOMY WITHIN THE DEVELOPMENT

- 14.1 The Development shall be developed as an integrated development, it being the intention that, subject to the provisions of this Constitution:
- 14.1.1 each Erf or Sectional Title Scheme on an Erf will be autonomous;
 - 14.1.1.1 each Sectional Title Scheme established or to be established within the Development will be an autonomous legal Entity with its own Sectional Plan and Body Corporate;
 - 14.1.1.2 every Owner and his guests and authorised occupiers of Units will be entitled to use the Common Areas;
 - 14.1.1.3 each Body Corporate or registered Owner of an Erf will be responsible for the cost of maintaining its common property which is not part of Common Areas or landscaping and will be responsible for payment of all costs and expenses relating thereto, including rates and taxes and other municipal charges.
 - 14.1.2 The Constitution and Rules developed for each Erf or Sectional Title Scheme on an Erf may not be conflicting with this Constitution.

15. THE TRUSTEES

- 15.1 The Trustees of the Association shall be constituted as follows:
- 15.1.1 The Board shall consist of not less than 3 (three) nor more than 5 (five) Trustees. Until the Developer has transferred all property in the development scheme registered in its favor to third parties, the Developer shall be entitled to appoint not less than 3 (three) of the Trustees to serve on the Board.
 - 15.1.2 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
 - 15.1.3 Each Trustee shall continue to hold office until the annual general meeting following his appointment, at which meeting such Trustee shall be deemed to have retired from office but will be eligible for re-election at such meeting.

- 15.1.4 A Trustee shall be deemed to have vacated his office as such upon
- 15.1.4.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate.
 - 15.1.4.2 him making any arrangement or composition with his creditors.
 - 15.1.4.3 his conviction for any offence involving dishonesty.
 - 15.1.4.4 him becoming of unsound mind or being found lunatic.
 - 15.1.4.5 him resigning from such office in writing.
 - 15.1.4.6 his death.
 - 15.1.4.7 him being removed from office by a resolution of Trustees.
 - 15.1.4.8 him being disentitled to exercise a vote in terms of his Constitution.
- 15.2 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 15.1 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 and the person so appointed shall hold office until the next annual general meeting.
- 15.3 The Developer shall appoint the first Chairman who shall hold office until the first annual general meeting provided that such office shall *ipso facto* be vacated by the Trustee who was appointed Chairman upon his ceasing to be a Trustee for any reason.
- 15.4 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 Trustee for any reason. In the event of any vacancy occurring in the aforesaid office the Trustee shall meet as soon as reasonably possible to appoint one of their

number as a replacement in such office.

- 15.5 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.
- 15.6 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 Trustee present at such meeting shall choose another Chairman for such meeting.
- 15.7 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 offices of the first mentioned Chairman.
- 15.8 A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation of any dispute, with the Association, by virtue of any interest he may have therein save with the approval of the remaining Trustees after full disclosure of such interest.
- 15.9 No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by the Chairman and one Trustee, the latter specifically appointed as authorised signatory in terms of the Resolution of Trustees whereby the Trustees bind the Association.
- 15.10 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.
- 15.11 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them in or about the performance of their duties as Trustees and/or 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.
- 15.12 Trustees may not make loans on behalf of the Association to Members or to themselves.

16. FUNCTIONS, POWERS, AND DUTIES OF TRUSTEES

- 16.1 Subject to the express provision 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 Managing Agent, may exercise all such powers of the Association and do all such acts on behalf of the Association which are within the objects of the Association.
- 16.2 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, managing agents, 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.
- 16.3 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 16.4 The Trustees shall have the right to co-opt any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees provided that such co-opted Trustee shall only serve until the next annual general meeting.
- 16.5 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.
- 16.6 The Trustees may make regulations and rules consistent with this Constitution:
- 16.6.1 as to the resolution of disputes generally;
 - 16.6.2 for the furtherance and promotion of any of the objects of the Association;
 - 16.6.3 for the better management of the affairs of the Association;
 - 16.6.4 for the advancement of the interest of Members;
 - 16.6.5 for the conduct of Trustees at meetings of Trustees and meetings of the Association;

- 16.6.6 to levy and collect contributions from Members in accordance with clause 12;
 - 16.6.7 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; and
 - 16.6.8 to assist in administering and governing its activities generally.
- 16.7 Without in any way limiting the powers granted, the duties and powers of Trustees shall further specifically include:
- 16.7.1 the determination of what constitutes appropriate maintenance, repairs, additions to and Improvements of all Erven and Units in the Development in strict accordance with the provisions of the Waste Management Plan. The Trustees shall be entitled to require any Owner, who shall be obliged, to repair or renovate any Building or Unit if in the reasonable opinion of the Trustees such Building or Unit requires essential repairs or has become dilapidated;
 - 16.7.2 the entering into of agreements with third parties on behalf of the Association for any purposes of the Association;
 - 16.7.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;
 - 16.7.4 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, landscaping, maintenance of private roads, refuse facilities and removal of refuse; and
 - 16.7.5 the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose.

17. PROCEEDINGS AT TRUSTEE MEETINGS

- 17.1 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.
- 17.2 Meetings of the Trustees shall be held at least once every 3 (three) months.

- 17.3 The Chairman always has the right to convene meetings of the Trustees.
- 17.4 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 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.
- 17.5 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.
- 17.6 The quorum necessary for the holding of any meeting of Trustees shall:
- 17.6.1 in the circumstances set out in 16.1, consist of 4 (four) persons;
- 17.6.2 in the circumstances set out in 16.2, consist of 4 (four) persons,
- provided that at all times at least one of them must be a representative of the Developer.
- 17.7 If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for 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 be a quorum.
- 17.8 Any resolution of the Trustees shall be carried by a simple majority of all votes cast.
- 17.9 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.
- 17.10 A Trustee may be represented at a meeting of Trustees by a proxy provided such proxy is a Trustee.

- 17.11 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.
- 17.12 The Trustees shall:
- 17.12.1 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;
 - 17.12.2 cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;
 - 17.12.3 keep all books of meetings of Trustees in perpetuity; and
 - 17.12.4 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.
- 17.13 All resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force and effect as therein recorded within 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.
- 17.14 Until such time that the last erf or unit in the Development is sold and transferred, the Developer shall have the right to veto any resolution if the impact of such resolution, in the reasonable opinion of the Developer, should such resolution be carried into effect, would negatively affect the image of the Estate, alter the aesthetic nature of the improvements on the Estate or be prejudicial to the ongoing marketing of the Erven and/or Units to sales of Erven and/or Units.
- 17.15 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.

18. MANAGING AGENT

- 18.1 The Developer shall for as long as it remains a Member of the Association, be entitled to appoint a Managing Agent to administer the Association, at a market related fee in terms of a written appointment agreement. Thereafter the managing agent shall be appointed by the Trustees.
- 18.2 The Trustees shall ensure that there is included in the contract of appointment of a Managing Agent, a provision to the effect that if the Managing Agent 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 Managing Agent shall have no claim whatsoever against the Trustees and/or the Association as a result of such cancellation.
- 18.3 Upon cessation of the Developer's membership of the Association, the Trustees shall have the power, in addition to the powers contained herein, to appoint a Managing Agent in terms of a written contract from time to time, to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time.
- 18.4 Unless the Developer or the Trustees, as the case may be, notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.

19. GENERAL MEETINGS OF THE ASSOCIATION

- 19.1 The Association shall, within 12 (twelve) months of the date of commencement of the Association hold a general meeting as its first annual general meeting. Thereafter, within 3 (three) months of the financial year end of the Association it shall hold second and subsequent annual general meetings.
- 19.2 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.
- 19.3 The Trustees may, whenever they deem fit, convene a general meeting and a special general meeting shall also be convened on a requisition made by not less than 25% (twenty five per centum) of Members for the purposes of adding to, amending, substituting or repealing the provisions hereof or should the

Trustees fail to do so such meetings may be convened by the requisitionists themselves provided that notice thereof be given in terms of clauses 20.1 and 20.2.

20. NOTICE OF MEETINGS

- 20.1 An annual general meeting shall be called by not less than 21 (twenty one) days' notice and a special general meeting by not less than 14 (fourteen) days' notice, as provided in clause 19.3. 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 the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Trustees to such notices from the Association, provided that a special general meeting or an annual general meeting of the Association shall notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is agreed to by not less than 60 % (sixty per centum) of Members having a right to attend and vote at the meeting.
- 20.2 Notice of the annual general meeting and/or a general meeting shall be sent by registered mail, fax, electronic media, or e-mail to Members subject thereto that the sender can produce evidence of the sending of such notice.

21. PROXIES

- 21.1 A Member may be represented at an annual general meeting and/or special general meeting by a Proxy who must be a Member of the Association.
- 21.2 The instruments appointing a Proxy shall be in writing signed by the Members 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 proxy may be signed by any person authorised by resolution of the board of directors of the company or by its secretary and, where a close corporation, by any member of such close corporation and, where an association of persons, by the secretary thereof and, where a trust, by a person duly authorised by the Trustees of such trust.
- 21.3 The instrument appointing a Proxy and the power of attorney (if any) under which it is signed or a notarially certified copy thereof shall be lodged with the Association at least 24 (twenty four) hours before the scheduled time for the

commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.

- 21.4 Notwithstanding the foregoing, the Chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

22. QUORUM

- 22.1 No business shall be transacted at any annual general meeting or special general meeting unless a quorum is present when the meeting proceeds to transact business and when any Resolution is to be passed. The quorum necessary for the holding of any meeting shall be Members having 25 % (twenty five per centum) of the total voting rights allocated in terms of clause 25 to Members entitled to attend and vote thereat.
- 22.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present shall constitute a quorum.

23. AGENDA AT MEETINGS

- 23.1 In addition to any other matters 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:
- 23.1.1 the consideration of the Chairman's report;
 - 23.1.2 the election of Trustees;
 - 23.1.3 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
 - 23.1.4 the consideration of the budget as presented by the Trustees and consideration of levies as currently levied by the ~~Trustees~~;
 - 23.1.5 the confirmation of the appointment of the Auditors or other office bearers;

- 23.1.6 the consideration and approval of the report of the Auditors;
- 23.1.7 any other business pertinent to such meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions.

24. PROCEDURE AT MEETINGS

- 24.1 The Chairman shall preside as such at all meetings provided that if he is not present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Members present at such meetings 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.
- 24.2 The Chairman may, with the consent of any 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 that might have been transacted at the meeting from which the adjournment took place. No notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time, and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as for the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.
- 24.3 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.

25. VOTING

- 25.1 At every annual general meeting or special general meeting of the Association every Member present in person or by proxy and entitled to vote shall, subject to 25.7.1, be allocated 1 (one) vote per residential Erf or Unit that such Member owns. Where a residential Erf or Unit is registered in the name of more than one person or Entity, they shall jointly enjoy 1 (one) vote.
- 25.2 Save as expressly provided for in this Constitution, no person other than a Member duly registered and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership and who is not under suspension, shall be entitled to be

present and to vote on any question either personally or by proxy.

- 25.3 At any annual general meeting or general meeting, a resolution put to the vote at the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereon present in person or by proxy.
- 25.4 Voting on any question of adjournment shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote there at present in person or by proxy.
- 25.5 Every resolution for the addition to, amendment, substitution, or repeal of any provision hereof, 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.
- 25.6 Unless any Member present in person or by proxy at a 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, 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 without a record of the number of votes recorded in favour of or against such motion shall be conclusive evidence of the resolution so recorded if such entry confirms with the declaration made by the Chairman of the meeting as to the result of the voting at the meeting.
- 25.7 A resolution put to the vote of the meeting of Members shall be decided on a show of hands, unless a poll is (before or on the declaration of a result of the show of hands) demanded by the Chairman of the meeting or by the Developer or any other Member and unless a poll is so demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or negatived and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn. In the event of:
- 25.7.1 voting by a show of hands, every Member will have one vote, provided that a proxy or an authorised representative of an Entity shall have only one vote irrespective of the number of Members that he represents; and

- 25.7.2 voting on a poll, every Member, whether personally present or represented by proxy or authorised representative, shall have one vote.
- 25.8 A vote cast under a proxy, power of attorney, or other authority, which has been revoked, shall nevertheless be valid unless:
 - 25.8.1 Written notice of the revocation is received by the Association prior to the meeting concerned; and
 - 25.8.2 The Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 25.9 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.
- 25.10 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.

26. MINUTES OF MEETINGS OF THE ASSOCIATION

- 26.1 The Trustees shall ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall be certified correct by the Chairman of the meeting.
- 26.2 The Trustees shall keep all minute books of meetings of the Association in perpetuity.
- 26.3 On the written application of any Member the Trustees shall make all minutes of the proceedings and/or meetings of the Association available for inspection by such Member.
- 26.4 All resolutions recorded in the minutes of any meetings of the Association 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 Association 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 Association.

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

27. FINANCIAL YEAR END

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

28. ACCOUNTS

- 28.1 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 including;

28.1.1 a record of the assets and liabilities of the Association;

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

28.1.3 a register of Members showing in each case their addresses; and

28.1.4 individual ledger accounts in respect of each Member.

- 28.2 On the application of any Member the Trustees shall make all or any of the books of accounts and records available for inspection by such Member.

- 28.3 The Trustees shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts, or operations to which they relate.

- 28.4 The Trustees may from time to time make reasonable regulations concerning the time (within normal business hours) and manner in which Members shall be allowed to inspect the accounts and books of the Association, or any of them, and the accounts and books of the Association shall be open to inspection accordingly.

- 28.5 At each annual general meeting the Trustees shall lay before the Association

financial statements for the immediately preceding financial year of the Association or, in the case of the first period since the date of commencement of the Association, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

29. DEPOSIT AND INVESTMENT OF FUNDS

- 29.1 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 such moneys shall be withdrawn only for the purpose of payment of the expenses of the Association or investment.
- 29.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the Trustees from time to time.
- 29.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

30. AUDIT

- 30.1 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.
- 30.2 The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards.
- 30.3 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.

31. INDEMNITY

- 31.1 All the Trustees 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 authorised 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.

31.2 A Trustee 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 wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error or judgement 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.

31.3 The Developer shall not be liable to compensate the Association in respect of any claims, losses, expenses, or damages suffered by the Association as a result of any act or omission on the part of the Developer in respect of any civil services installation on the Estate or any license or permit obtained by the Developer in respect of the Estate or any part thereof, except where such claims, losses, expenses, or damages was occasioned by the wilful misconduct or gross negligence of the Developer.

32. DEFAMATION PRIVILEGE

32.1 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 the Trustees 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 of 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.

33. ARBITRATION

33.1 Should any dispute, question or difference arise between Members or between a Member and Trustee or between Member and the Association out of or in regard to:

33.1.1 the interpretation of;

33.1.2 the effect of;

33.1.3 their respective rights or obligations under;

33.1.4 a breach of (but subject to 33.2),

this Constitution, such dispute shall be decided by arbitration in the manner set out in this clause 33.

33.2 Notwithstanding 33.1.4, 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.

33.3 The arbitration referred to in clause 33.1 shall:

33.3.1 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;

33.3.2 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

33.3.3 be held under the provisions of the Arbitration act 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.

33.4 The arbitrator shall be a practicing 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 agreement on such appointment within 7 (seven) day period, appointed by the Chairman of the Cape Bar Council or the successor to that body.

- 33.5 The arbitrator shall in giving his award have regard to the principles contained in this Constitution 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. 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.
- 33.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings;
- 33.6.1 shall be final and binding on each of them;
- 33.6.2 shall be carried into effect immediately; and
- 33.6.3 may at the instance of the parties be made an order of any Court to whose jurisdiction the parties are subject.
- 33.7 Notwithstanding anything to the contrary contained in this clause 33, 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 annexures hereto.

34. DOMICILIUM

- 34.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
- 34.1.1 such address shall be the address of the Chairman or of a resident trustee nominated by the Trustee or the address of any duly appointed Managing Agent; and

- 34.1.2 the Trustees shall give notice to all Members of any change of such address.
- 34.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf or Unit.
- 34.3 It shall be competent to give notice by registered mail, fax, electronic media, or e-mail subject thereto that the Trustees can produce evidence of the sending of such notice.
- 34.4 A Member may by notice in writing to the Trustees alter his *domicilium* provided such new address may not be a post office box or *poste restante* and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.
- 34.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member shall be adequate written notice or communication to such Member notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi*.
- 34.6 Any notice to a Member
- 34.6.1 sent to him by prepaid registered post in a correctly addressed envelope at his *domicilium citandi et executandi* shall be deemed to have been received on the 7th (seventh) day after posting (unless the contrary is proved); or
- 34.6.2 delivered by hand to a responsible person at his *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 34.6.3 sent by electronic media, or e-mail to that registered in the Members' register shall be deemed to have been received on the 1st (first) day after the date of transmission, unless the contrary is proved; or
- 34.6.4 successfully transmitted by telefax to his chosen telefax number shall be deemed to have been received on the 1st (first) day after the date of transmission, unless the contrary is proved.

35. AMENDMENT

- 35.1 No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of:
- 35.1.1 The Local Authority; and
- 35.1.2 The Developer, up and until the development has been fully developed.
- 35.2 Notwithstanding the provisions of clause 35.3, the Developer shall, for as long as any portion of the Development remains undeveloped and until such time that the last erf or unit in the Development is sold and transferred, have the right to amend this Constitution with the prior approval of the Local Authority in terms of clause 35.1, and shall further have the right to veto any proposed amendment of this Constitution if there is a reasonable apprehension that such amendment could detrimentally affect the Developer's ability to complete the Development in accordance with its development plans. Notwithstanding the provisions of this clause 35.2 above, the Developer shall not have the right to vary the provisions relating to qualification for membership of the Association, the proportionate liability of Ordinary Members for the payment of POA Levies or the voting rights of Members.
- 35.3 Subject to the provisions of clauses 35.1 and 35.2 above, every amendment of this Constitution of whatever nature including any addition thereto, deletion therefrom or substitution thereof (but excluding amendments to the Waste Management Plan, any Architectural Rules and the Estate Rules, which are governed by clause 10 above) shall require the approval of at least 75 % (seventy-five per centum) of the total number of votes allocated to Members of the Association as provided for in clause 25 above, which majority shall be expressed at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to comply with the requirements for the convening of a meeting, set out in specific terms the proposed amendment.

36. RISK

- 36.1 Any person using any of the services, land or facilities of the Association does so entirely at his own risk.
- 36.2 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 any person, including but not limited to owners or those in their care, residents or those in their care, workers, relatives or friends of owners or residents and requires them to waive all rights against the Association in this regard.