



BURGUNDY
— ESTATE —
2006

CONSTITUTION OF
THE MASTER HOMEOWNERS' ASSOCIATION
OF
BURGUNDY ESTATE

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1. Definitions and interpretation

1.1 In this constitution the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them;

1.1.1 “**ALIENATE**” means alienate any erf, sectional title unit or commercial enterprise or part thereof whether by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, change in shareholding of a company or membership in a close corporation irrespective of whether such alienation is subject to a suspensive or resolutive condition, and alienation shall have a corresponding meaning;

1.1.2 “**ARCHITECT**” means an architect appointed by the ASSOCIATION or the DEVELOPER, to scrutinize all plans on behalf of the ASSOCIATION;

1.1.3 “**ARCHITECTURAL REVIEW COMMITTEE**” means that committee established by the DEVELOPER during the DEVELOPMENT PERIOD and whose functions are described in clause 11;

1.1.4 “**ASSOCIATION**” means the BURGUNDY ESTATE MASTER HOMEOWNERS’ ASSOCIATION, an association not for gain, constituted in terms hereof;

1.1.5 “**AUDITORS**” means the auditors of the ASSOCIATION being Haumann & Rogers auditors, or such auditors as may be appointed by the DEVELOPER during the DEVELOPMENT PERIOD and thereafter by the BOARD from time to time;

1.1.6 “**THE BOARD**” means the TRUSTEES assembled as a board of which a quorum is present;

1.1.7 “**COMMERCIAL SITES**” means those individual commercial developments that will take place on the portions of the LAND which is zoned for the commercial use and which development will each be subject to their own body corporates or homeowners’ association, which body corporates or homeowners’ associations will be MEMBERS;

1.1.8 “**COMMON PROPERTY**” means the LAND, excluding all of the COMMERCIAL SITES, GROUP HOUSING SITES, SECTIONAL TITLE SITES and SINGLE RESIDENTIAL ERVEN;

- 1.1.9 **“DEVELOPER”** means VISIGRO INVESTMENTS (PTY) LTD Registration Number: 2004/009558/07 or its respective successors-in-title or assigns, but does not include its successors- in-title in respect of transfer of the LAND;
- 1.1.10 **“DEVELOPMENT PERIOD”** means the period from the date of establishment of the ASSOCIATION until all the COMMERCIAL SITES, GROUP HOUSING SITES, SECTIONS TITLE SITES and SINGLE RESIDENTIAL ERVEN have been transferred from the DEVELOPER and improved or until the DEVELOPER notifies the ASSOCIATION in writing that the DEVELOPMENT PERIOD has ceased, whichever shall first occur;
- 1.1.11 **“ERF”, “ERVEN” or “SECTIONAL TITLE UNIT”** means any residential erf or sectional title unit in the ESTATE including any of those within any of the COMMERCIAL SITES, GROUP HOUSING SITES, SECTIONAL TITLE SITES and SINGLE RESIDENTIAL ERVEN;
- 1.1.12 **“ESTATE”** means burgundy estate, being the township to be established on the LAND;
- 1.1.13 **“FINANCIAL YEAR”** mean the financial year of the ASSOCIATION which shall run from the date of establishment of the ASSOCIATION until the last day of February next and thereafter from the first day of March in each year until the last day of February in the subsequent year;
- 1.1.14 **“GROUP HOUSING SITES”** means those individual own title residential erven developments that will take place on the portion of the LAND which is zoned for that purpose and each of which developments will be subject to their own homeowners ‘ associations and which homeowners’ association will be MEMBERS;
- 1.1.15 **“LEVY”** means the levies referred to in 7;
- 1.1.16 **“LAND”** means the land approved for the development by the City of Cape Town being Erf 1 Burgundy Estate, situated in the City of Cape Town Division, Western Cape Province, upon which the ESTATE is to be developed by the DEVELOPER;
- 1.1.17 **“LOCAL AUTHORITY”** means the local authority having jurisdiction over the ESTATE being the City of Cape Town;

- 1.1.18 “**MANAGER**” means Marite Property Managing Agents CC or such other Manager as may be appointed by the DEVELOPER during the DEVELOPMENT PERIOD to undertake all or any of the functions of the ASSOCIATION from time to time;
- 1.1.19 “**MEMBER**” means a member of the ASSOCIATION as set out in clause 4;
- 1.1.20 “**SECTIONAL TITLE SITES**” means those individual sectional title developments that will take on the portions of the LAND which is zoned for that purpose, which developments will each be subject to their own body corporates and which body corporates will be MEMBERS;
- 1.1.21 “**SINGLE RESIDENTIAL ERVEN SITES**” means those individual single residential erven that will be developed on the portions of the LAND which is zoned for that purpose and which is grouped together as follows:

1.1.22.1 **Group 1:**

Pocket number	Erf number
A1	75
A2	76
A3	77
A4	78
A5	79
A6	80
A7	54
A8	23
A9	22
A10	19
A27	38
A28	39
A29	40
A30	41
A31	42
A32	43
A33	44
A34	45
A35	46
A36	47
A37	48
A38	49
A39	50

A40	51
A41	52
A42	53

1.1.22.2 **Group 2:**

Pocket number	Erf number
A11	20
A12	21
A13	24
A14	25
A15	26
A16	27
A17	28
A18	29
A19	30
A20	31
A21	32
A22	33
A23	34
A24	35
A25	36
A26	37
A43	55
A44	56
A45	57
A46	58
A47	59
A48	60
A49	61
A50	62
A51	63
A52	64
A53	65
A54	66
A55	67
A56	68
A57	69
A58	70
A59	71
A60	72
A61	73
A62	74

1.1.22.3

Group 3:

Pocket number	Erf number
A63	88
A64	87
A65	86
A66	85
A67	92
A68	91
A69	90
A70	89
A71	96
A72	95
A73	94
A74	93
A75	100
A76	99
A77	98
A78	97
A79	104
A80	103
A81	102
A82	101
A83	108
A84	107
A85	106
A86	105
A87	112
A88	111
A89	110
A90	109
A91	116
A92	115
A93	114
A94	113

1.122.4

Group 4:

Pocket number	Erf number
A100	123
A101	124
A102	125
A103	126
A104	127
A105	128
A106	129
A107	130
A108	131

A109	132
A110	133
A111	138
A112	137
A113	136
A114	135
A115	134
A95	118
A96	119
A97	120
A98	121
A99	122

1.1.22.5

Group 5:

Erf number
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283

1.1.22.6

Group 6:

Erf number
228
229
230
231
232
233
234
235
236
237
237
238
239
240
241
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Group 1, 2, 3, 4, 5 and 6 will each be subject to their own homeowners associations which homeowners associations will be MEMBERS;

1.1.23 **“SITES”** means the COMMERCIAL SITES, GROUP HOUSING SITES, SECTIONAL TITLE SITES AND SINGLE RESIDENTIAL ERVEN SITES;

1.1.24 **“SUB-ASSOCIATION”** means the home owners’ association or body corporate which is a MEMBER;

1.1.25 **“TRUSTEES”** means the trustees from time to time of the ASSOCIATION;

1.2 Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa, words importing any one gender shall include the other genders and any reference to a person shall include a company incorporated or registered as such under any law, any body of persons corporate or unincorporated and any trust whether testamentary or *inter vivos*.

1.3 The headings to the clauses in this constitution are for reference purposes only and shall not be taken into account in the interpretation of those clauses.

1.4 If a member consists of more than one person, they shall be jointly and severally be liable *in solidum* of all such members' obligations in terms of this constitution.

2 INCORPORATION OF ASSOCIATION

2.1 The ASSOCIATION is hereby established as a voluntary association no for gain, with effect from the date of registration of transfer of the first of any of the SITES, upon and subject to the provisions of this constitution, and as an entity separate and distinct from its MEMBERS, with the capacity to acquire rights or incur obligations in its own name and to own property separately and independently of its MEMBERS.

2.2 The ASSOCIATION will be constituted in terms of section 29 of the Land Use Planning Ordinance, No 15 of 1985, as amended, in accordance with the conditions imposed by the City of Cape Town when approving same in terms of section 25(1) and 42 of said Ordinance of the Land.

3 OBJECTS

3.1 The objects of the association are as follows:

3.1.1 To oversee, regulate and control the harmonious development of the ESTATE and to insure and promote the general high standard of the development.

3.1.2 To own, control, improve and maintain the COMMON PROPERTY and enforce the environmental management plan that may be implemented.

- 3.1.3 To own, control, improve and maintain and insure where necessary the building, structures, installations and equipment relating to the COMMON PROPERTY.
- 3.1.4 To institute, control and pay for measures relating to security.
- 3.1.5 To promote, advance and control the communal interests of owners and residents.
- 3.1.6 To acquire and grant servitudes.
- 3.1.7 To control the nature and position of buildings, structures, installations and equipment relating to the erven or sectional title units and to ensure the compliance with the approved urban design guidelines and controls for the ESTATE.
- 3.1.8 To control and ensure compliance with the approved landscaping on common green spaces and around verges and entrances.
- 3.1.9 To take action including the imposition of fines or the institution of the proceedings in a court of law, as may be deemed fit by the trustees, in relation to the non-compliance by any member of any the requirements of this constitution or the estate rules.
- 3.1.10 To enter into and to implement any contract relating to the environmental impact assessment, the environmental management plan and the conditions of establishment of the township within the estate, and to incur any costs in this regard, it being recorded that the association will be bound by any contracts concluded by the developer and for the association and or manager in this respect.
- 3.1.11 To approve all other constitutions in the ESTATE development and recommend approval to the City of Cape Town.
- 3.1.12 To maintain the storm water system of the ESTATE.
- 3.2** In order to qualify for exemption in respect of the levy income in terms of section 10(1)(e)(iii) of the Income Tax Act the following conditions shall apply:
 - 3.2.1 The main object of the ASSOCIATION is to manage the collective interest common to all its MEMBERS, which includes expenditure applicable to the common property of

such MEMBER and the collection of levies for which such MEMBER is liable.;

- 3.2.2 The ASSOCIATION is not permitted to distribute its funds to any person other than to a similar association person;
- 3.2.3 On dissolution the remaining assets must be distributed to a similar association of persons which is also exempt from income tax in terms of section 10(1)(e)(iii) of the act;
- 3.2.4 Any amendments to the constitution must be submitted to the commissioner for the South Africa revenue service;
- 3.2.5 Funds available for investment may only be invested with registered financial institutions as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984, and in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985, (Act No1 of 1985)
- 3.2.6 The ASSOCIATION is or was not knowingly a party to, or does not knowingly permit or has knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner;
- 3.2.7 Annual returns of income together with financial statements to be submitted to the Receiver of Revenue.

4 MEMBERSHIP

- 4.1 The DEVELOPER intends sub-dividing the LAND into various GROUP HOUSING SITES, SECTIONAL TITLE SITES, SINGLE RESIDENTIAL ERVEN SITES and COMMERCIAL SITES (collectively referred to as "the SITES").
- 4.2 Each of the developments and accordingly each of the properties situated upon any of the SITES will be subject to its OWN SUB-ASSOCIATION.
- 4.3 Membership of the association shall be limited to the following:
 - 4.3.1 The DEVELOPER
 - 4.3.2 Each of the SUB-ASSOCIATIONS established in the respect of a development situated on any of the SITES;
 - 4.3.3 A developer or any other person or entity who takes transfer of any of the SITES (or any portion thereof) from the DEVELOPER from the date of registration of transfer in the deeds office until such time as a SUB-ASSOCIATION has

been established in respect of a development situated on any of the SITES.

- 4.4** The SUB-ASSOCIATIONS shall *ipso facto* be and become MEMBERS of the ASSOCIATION and be represented by the chairperson or one of the trustees of each SUB-ASSOCIATION upon establishment of the SUB-ASSOCIATION concerned.
- 4.5** The DEVELOPER shall be chairperson and MEMBER of the ASSOCIATION during the DEVELOPMENT PERIOD.
- 4.6** A SUB-ASSOCIATION or such entity as referred to in clause 4.3.3 may not at any time resign as a MEMBER of the ASSOCIATION.
- 4.7** The DEVELOPER may at any time in writing, cede and assign all or any of its rights or obligations in terms of this constitution to any transferee of its choice and such transferee shall be entitled to take transfer of all such rights and obligations.
- 4.8** The DEVELOPER may, at any time in writing, abandon in whole or in part, any of its rights.
- 4.9** The DEVELOPER shall cease to be a MEMBER at the end of the DEVELOPMENT PERIOD.
- 4.10** Every MEMBER shall comply with:
 - 4.10.1 The provisions of this constitutions, the estate rules and all other rules or regulations made or promulgated by the ASSOCIATION or the TRUSTEES:
 - 4.10.2 Any agreement concluded by the ASSOCIATION or the TRUSTEES or the DEVELOPER insofar as such agreement may directly or indirectly impose rights or obligations on a MEMBER.
 - 4.10.3 The provisions of any environmental management plan and conditions of establishment of any township(s) within the estate and any directive issued by the association in this regard, and
 - 4.10.4 Any directive given by the ASSOCIATION, the TRUSTEES, the DEVELOPER or the MANAGER in the enforcement of the provisions of this constitution.
- 4.11** The rights and obligations of a member are not transferable, and every member shall:
 - 4.11.1 To the best of his ability further the objects and interests of the ASSOCIATION;
 - 4.11.2 Observe all directives made or given pursuant to the provisions of the constitution, and

4.11.3 Is jointly liable with the other MEMBERS for expenditure incurred in the connection with the ASSOCIATION.

4.12 The MEMBER shall ensure that none of its members shall let or otherwise part with the occupation of his ERF or SECTIONAL TITLE UNIT, whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by all the provisions of the SUB-ASSOCIATION. Its members shall at all times remain bound by the provisions of the SUB-ASSOCIATION and will require ensuring and procuring compliance therewith by such occupier. Its members shall be liable for the acts or omissions of all persons occupying his erf or sectional title unit whether lawfully or unlawfully including without limitation guests, employees, invitees, contactors, sub-contractors or agents.

5 ALIENATION

5.1 The member shall ensure that none of its members shall in any manner alienate or transfer an ERF or SECTIONAL TITLE UNIT unless:

5.1.1 The proposed transferee, new shareholder of a company or new members of a close corporation has irrevocably bound himself to become a member of the SUB-ASSOCIATION and to observe its constitution for the duration of his ownership of the ERF or SECTIONAL TITLE UNIT;

5.1.2 The manager has given his prior written consent thereto and has issued a clearance that all amounts owing to the SUB-ASSOCIATION by such member have been paid and that the member is not in breach of its constitution; and

5.1.3 The proposed transferee acknowledges in writing that upon the registration of transfer of the ERF or SECTIONAL TITLE UNIT into his name, he shall *ipso facto* come a member, subject always to the provisions of the SUB-ASSOCIATIONS constitution.

5.1.4 A written consent to transfer is issued by the association prior to transfer of any ERF, ERVEN or SECTIONAL TITLE UNIT. Before a written consent to transfer is issued by the ASSOCIATION, an inspection and clearance fee, as determined by the TRUSTEES from time to time, will be payable by the owner of the ERF, ERVEN or SECTIONAL TITLE UNIT to the ASSOCIATION upon demand by the ASSOCIATION or the MANAGER, prior to the transfer of any such ERF, ERVEN or SECTIONAL TITLE UNIT by the owner. A written consent to transfer may be refused if any amount is owed by the member to the ASSOCIATION or the DEVELOPER for any cause whatsoever.

5.2 The provisions of 5.1 shall apply *mutatis mutandis* to any alienation or transfer of the undivided share in an ERF or SECTIONAL TITLE UNIT.

- 5.3 Restrictions will be registered against the title deeds of all ERVEN or SECTIONAL TITLE UNITS in order to give effect to the terms of this clause 5.
- 5.4 The MEMBERS shall be bound by this clause whether or not such restrictions are registered.
- 5.5 Each MEMBER shall comply with all conditions imposed by the local authority or any other statutory body relating to an ERF or SECTIONAL TITLE UNIT and shall be solely responsible for non-compliance with such conditions.

6 COMMON PROPERTY AND CONDITIONS OF ESTABLISHMENT OF TOWNSHIP

- 6.1 The ASSOCIATION shall take title to the COMMON PROPERTY and it will be transferred to the ASSOCIATION free of charge. It will be the ASSOCIATION'S responsibility to maintain, repair and insure any structural buildings, roads, lights etc. that is transferred. This transfer will be stated in a transfer document that will be formalised by Honey Attorneys (Cape Town) Inc. once the DEVELOPER'S work has been completed.
- 6.2 The ASSOCAITION acknowledges that neither the local authority nor the DEVELOPER shall be responsible for, the care, repair, the maintenance, cleaning, upkeep, improvements and proper control of the COMMON PROPERTY and any structure or thing erected or contained therein or thereon, including private roads electricity, telecommunications and any other private services, if applicable and parking.
- 6.3 The ASSOCIATION shall furthermore comply with all the conditions imposed by the local authority relating to the conditions of establishment of the township(s) comprising the ESTATE, and shall be solely responsible for any non-compliance with such conditions.

7 LEVIES

- 7.1 The TRUSTEES shall from time to time impose levies upon the MEMBERS for the purpose of meeting all the expenses in relation to the facilities and service for or in connection with the ESTATE, and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the ASSOCIATION and its affairs. In calculating the amount of the levies the TRUSTEES shall take into account income from other sources if any, earned by the ASSOCIATION.
- 7.2 All levies shall be paid monthly in advance by bank debit order on the first day of each and every month to the bank account of the ASSOCIATION or by any other method as determined by the MANAGER from time to time.

- 7.3** Levies shall be allocated pro rata amongst the MEMBERS, the amount of which shall be calculated with reference to the actual or anticipated, as the case may be, number of ERVEN or SECTIONAL TITLE UNITS established or to be established by the MEMBER on the specific SITE within the ESTATE.
- 7.4** Should the purchaser consolidate two or more stands, the ASSOCIATION shall debit the number of levies as per the original stands, despite the consolidation having taken place.
- 7.5** During the DEVELOPMENT PERIOD the DEVELOPER shall pay the shortfall between the income derived from levies paid by MEMBERS in terms of **7.3** and actual expenditure of the ASSOCIATION in each financial year, but shall not otherwise be liable to pay or contribute to any levies or special levies.
- 7.6** Except as provided in **7.5** above, during and after the DEVELOPMENT PERIOD the DEVELOPER shall have no liability or obligation to pay or contribute to any levies or special levies.
- 7.7** The TRUSTEES may, from time to time, impose special levies upon the MEMBERS. In addition to other levies, in respect of all or portion of such expenses as are mentioned in **7.1** and the amount of such levies and the manner of payment thereof by MEMBERS shall be at the discretion of the TRUSTEES.
- 7.8** Any amount due by a MEMBER by the way of a levy or special levy shall be a debt due by him to the ASSOCIATION. The obligation of a MEMBER to pay a levy shall cease upon his ceasing to be a MEMBER of the ASSOCIATION, without prejudice the ASSOCIATION'S right to recover arrear levies. No levies paid by a MEMBER shall under any circumstances be repayable by the ASSOCIATION upon his ceasing to be a MEMBER. A MEMBER'S successor-in-title shall be liable, as from the date upon which he becomes a MEMBER to pay the levies attributable. No MEMBER shall be entitled or permitted to consent to the transfer an ERF or SECTIONAL TITLE UNIT until the applicable SUB-ASSOCIATION has certified that the MEMBER has at the date of transfer paid all amounts owing by him to the ASSOCIATION.
- 7.9** Save for **7.4** above, in calculating the levy payable by each MEMBER, the TRUSTEES shall as far as is reasonably practical, and in their sole discretion:
- 7.9.1** Assign those costs arising directly out of or directly attributable to ERVEN or SECTIONAL TITLE UNITS in more than one development to the MEMBERS concerned;
- 7.9.2** Assign those costs arising directly out of or directly attributable to ERVEN or SECTIONAL TITLE UNITS in a specific development to the MEMBERS concerned; and

- 7.9.3 Subject to **7.9.1** and **7.9.2** assign those costs relating to the ESTATE generally to all the MEMBERS;
- 7.9.4 Provided however that the TRUSTEES may in any case where they consider it equitable so to do, assign to any MEMBER a greater or lesser share of the costs as the TRUSTEES consider may be reasonable in the circumstances.
- 7.10** No MEMBER shall be entitled to the privileges of membership unless and until he shall have paid every levy and/or other sum, which may be due and payable to the ASSOCIATION in respect of his membership. Access cards may be invalidated until all the arrears have been paid, at the discretion of the MANAGER.
- 7.11** The ASSOCIATION may hand over any debt due to the ASSOCIATION to the ASSOCIATION'S attorneys for collection of the debt if it is outstanding for more than thirty days and the debts due to the ASSOCIATION may be published in the ASSOCIATION'S newsletter.
- 7.12** Monthly statements shall be circulated to the MEMBERS of the ASSOCIATION.

8 COSTS

A MEMBER shall be liable for and shall pay all legal costs, including costs, as between attorney and own client, collection commission, tracing agents fee, interest at prime plus 25% (twenty five per cent) per annum, expenses and charges incurred by the ASSOCIATION, as also the costs incurred in the enforcement of any of the estate rules or other rules or regulations issued or made by or on behalf of the ASSOCIATION from time to time.

9 RESPONSIBILITY FOR THE PROVISION OF SERVICES

- 9.1** The responsibility for the provision of services, namely facilities, utilities, services and amenities of whatever nature as may be provided by or on behalf of the ASSOCIATION for owners or residents of ERVEN or SECTIONAL TITLE UNITS within the ESTATE, excluding such facilities, utilities, services and amenities as are situated within the boundaries of a SUB-ASSOCIATION, shall pass from the DEVELOPER to the ASSOCIATION on the date of the first registration of transfer of an ERF or SECTIONAL TITLE UNIT from the DEVELOPER to an owner.
- 9.2** It is recorded that the ASSOCIATION shall be responsible for the provision of the management, maintenance, upkeep and repair of the COMMON PROPERTY and storm water.

- 9.3** It is recorder that:
- 9.3.1 All open storm water channels and detention ponds on private open spaces, as well as the piped connection lines between these channels and detention ponds, will be for maintenance of the ASSOCIATION.
 - 9.3.2 Clause 9.3.1 shall include the embankments of the ponds and channels and care must be taken to prevent erosion.
 - 9.3.3 The City of Cape Town will be responsible for the piped storm water system in the roads, as taken over by City officials.
 - 9.3.4 Where blockages occur in the piped system for which the City of Cape Town is responsible, due to un-stabilized embankments or ill management of the ponds and channels, cost incurred will be for the account of the ASSOCIATION.
- 9.4** Maintenance of the guard house situated within the water servitude on COMMON PROPERTY Private Open Space Erf 157 forms part of the ASSOCIATION'S responsibilities described in clause **9.2**. Construction of the guard house within the servitude area was made subject to certain conditions with regard to the specifications of the diverted water pipes on both sides of the guard house. Should the new pipe in the chamber fail, any direct and consequential damage will be to the account of the ASSOCIATION or its insurer. These conditions are embodied in a letter dated 12 June 2008 by the City of Cape Town's Director (Water and Sanitation) addressed to Messrs Element Consulting Engineers and provides that the three pipelines, namely Asbestos Cement, Ductile Iron and Glass- Reinforced pipe materials and all of 600mm diameter shall on both sides of the proposed guard house, for a distance of 10m on either side be replaced with new ductile iron pipes of similar diameter/pressure/wall thickness specifications. Suitable Range adaptors shall be used to obtain watertight from Asbestos Cement and Glass-Reinforced to that of ductile iron pipe material.

10 **ESTATE RULES**

- 10.1** Subject to the provisions of this constitution and to any directions given by the ASSOCIATION in general meeting and to any conditions imposed by the local authority or the DEVELOPER or any other statutory body, the TRUSTEES may make rules, codes of conduct and may vary or modify the same from time to time, in connection with:
- 10.1.1 The installation, operation and maintenance of irrigation in the common area adjacent to any ERF or SECTIONAL TITLE UNIT by the MEMBER concerned;
 - 10.1.2 The determination or control of security measures;
 - 10.1.3 The control of the building operations and the conduct of builders and contractors;

- 10.1.4 The control and conduct of persons for the prevention of nuisance of any nature to any resident;
 - 10.1.5 The control and conduct of persons using the common areas;
 - 10.1.6 The use of roads, infrastructure, services amenities and facilities in the common areas including the right to charge a reasonable fee for the use of amenities and facilities;
 - 10.1.7 The furtherance and promotion of any of the objects of the ASSOCIATION and for the better management of the affairs of the ASSOCIATION and for the advancement and protection of the interests of the MEMBERS and residents.
- 10.2** For the enforcement of any rules or any of the provisions of this constitution, generally the TRUSTEES or the MANAGER may:
- 10.2.1 Give notice to the MEMBER concerned to remedy any breach within such period as they may determine;
 - 10.2.2 Take or cause to be taken such action as they deem fit to remedy the breach of which the MEMBER concerned may be guilty and debit the cost thereof, which shall be a debt due to the ASSOCIATION, to his levy account, and which shall be payable as part of his levy on the first day of the following month, and
 - 10.2.3 Impose a fine on the MEMBER concerned which amount shall be a debt due to the ASSOCIATION, shall be debited to his levy account and shall be payable as part of his levy on the first day of the following month.
- 10.3** Should the TRUSTEES or MANAGER institute legal proceedings against any MEMBER or resident for the enforcement of any of the rights of the ASSOCIATION in terms hereof, the ASSOCIATION shall be entitled to recover all legal costs so incurred from the MEMBER concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 10.4** In the event of any breach of the rules or of any of the provisions of this constitution by any person residing on a ERF or SECTIONAL TITLE UNIT of a member of a SUB-ASSOCIATION or his guests, employees, contractors, and sub-contractors or agents, such breach shall be deemed to have been committed by the member himself; but without prejudice to the foregoing, the trustees or manager may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the member concerned.

11. APPROVAL OF PLANS

11.1 During the DEVELOPMENT PERIOD, no construction or erection of any new improvements which falls outside of those improvements already approved in the terms of the initial site development plan including any additions or alterations to any existing structures on a SITE may commence before approval of the plans for such improvements by the ARCHITECTURAL REVIEW COMMITTEE to be established and appointed by the developer and appointed by the DEVELOPER:

11.2.1 A full set of the proposed building plans indicating both construction and design details shall be submitted to the ARCHITECTURAL REVIEW COMMITTEE for consideration and approval;

11.1.2 The MEMBER concerned shall submit the building plans to the local authority for approval after it was approved by the ARCHITECTURAL REVIEW COMMITTEE;

11.1.3 The ARCHITECTURAL REVIEW COMMITTEE shall certify that the building plans comply with the development plan, the building and landscaping guidelines and all other relevant conditions;

11.1.4 Having obtained the approval of the ARCHITECTURAL REVIEW COMMITTEE, the MEMBER concerned shall comply with all conditions and standards imposed by the local authority or other statutory body insofar as these may be additional to the requirements of the ASSOCIATION, and

11.1.5 The ASSOCIATION may impose a scrutiny fee, which if imposed will be paid by the MEMBER concerned, as well as any additional scrutiny fees should any amendment of further plans be required or submitted.

11.2 After the DEVELOPMENT PERIOD the SUB-CONTRACTORS shall insure that their MEMBERS comply with the approved urban guidelines and controls for the ESTATE.

12 TRUSTEES

12.1 There shall be a maximum of five trustees of the association, provided that;

12.1.1 During the DEVELOPMENT PERIOD all the TRUSTEES shall be appointed or removed and replaced as the case may be, by the DEVELOPER, and

12.1.2 After the DEVELOPMENT PERIOD all the TRUSTEES shall be appointed by the MEMBERS.

- 12.2** There shall be a maximum of five TRUSTEES of the ASSOCIATION, provided that;
- 12.2.1 A TRUSTEE shall be an individual who shall not necessarily be a MEMBER. A TRUSTEE, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this constitution.
- 12.2.2 The TRUSTEES shall appoint one of their members to act as the chairman for such a term as they deem fit, but not for longer than such person's tenure as a trustee.
- 12.2.3 The chairman of the TRUSTEES shall act as the chairman of the annual general meeting and other general meetings of the ASSOCIATION. Should he not be able to do so for any reason, the TRUSTEES shall appoint any other person who is a member to act as chairman of the meeting concerned.
- 12.3** A TRUSTEE is required to;
- 12.3.1 Perform the functions of office in good faith, honesty and in a transparent manner, and
- 12.3.2 At all times in the best interests of the ASSOCIATION, in such a way that the credibility and integrity of the ASSOCIATION is not compromising in any way.
- 12.4** When elected, a TRUSTEE shall will within 60(sixty) days after election, declare in writing to the board any financial interest he or his immediate family or business associates may have in respect of any contract, deliberations or other transactions with the ASSOCIATION.
- 12.5** Each TRUSTEE will also declare in writing to the board those respects in which, from time to time, his ERF or SECTIONAL TITLE UNIT or any improvements thereon do not comply with the estate rules and all other rules or regulations made or promulgated by the ASSOCIATIONS, any SUB-ASSOCIATION or the BOARD.
- 12.6** Each TRUSTEE must declare to the board any gifts which he or his immediate family might be offered or receive, from any business and or person involved or endeavouring to become involved, in any contract with financial gain with the ASSOCIATION.
- 12.7** A TRUSTEE may not without permission of the board, disclose any privileged or confidential information of the board to any person not authorised or entitled to receive the same.
- 12.8** A TRUSTEE may not, except through the chairman of the TRUSTEE's and or the BOARD:
- 12.8.1 Interfere in the management or administration of the ESTATE, unless mandated by the BOARD;

- 12.8.2 Give or purport to give any instruction to any employee other than the MANAGER;
 - 12.8.3 Obstruct or attempt to obstruct the MANAGER or any of the ESTATE office staff in the implementation of any decision or resolution of the BOARD, or
 - 12.8.4 Encourage or participate in any conduct which would cause or contribute to maladministration by the BOARD.
- 12.9** The BOARD may at any time and from time to time investigate and make a finding in respect of any alleged breach by a TRUSTEE(s) of any of the provisions of this constitution, or of the estate rules or any other rules or regulations made or promulgated by the ASSOCIATION or the BOARD, or establish a special committee to investigate and make appropriate recommendations to the BOARD on this respect.
- 12.10** Should the BOARD find that any TRUSTEE has breached any provision of this constitution or any of the rules or regulations aforesaid, the BOARD may;
- 12.10.1 Issue a formal warning to the TRUSTEE concerned;
 - 12.10.2 Reprimand the TRUSTEE;
 - 12.10.3 Suspend the TRUSTEE;
 - 12.10.4 Request the TRUSTEE to resign, or
 - 12.10.5 Request the ASSOCIATION to remove the TRUSTEE from the BOARD.

13 REMOVAL AND ROTATION OF TRUSTEES

- 13.1** Save as set out in 13.2, each TRUSTEE shall hold office as such from the date of his appointment until the next annual general meeting following his appointment, or, at his discretion, until the second annual general meeting following his appointment at which annual general meeting each TRUSTEE shall be deemed to have retired from office, but shall be eligible for re-election as a TRUSTEE.
- 13.2** A TRUSTEE shall be deemed to have vacated his office as such:
- 13.2.1 Should he become disqualified to act as a director of a company in terms of the Act;
 - 13.2.2 Should he be removed from office by a resolution of the TRUSTEES;
 - 13.2.3 In the event of his being a member of any SUB-ASSOCIATION, or representing any MEMBER, should he become disentitled to exercise a vote in terms of 7.10;

- 13.2.4 Should his estate be sequestrated whether provisionally or finally;
- 13.2.5 On his conviction of any offence involving any dishonesty;
- 13.2.6 On the commission by him of any act of insolvency;
- 13.2.7 Should he become of unsound mind or being found to be a lunatic;
- 13.2.8 On resigning from such office in writing.
- 13.3** Upon any vacancy occurring in the TRUSTEES prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those TRUSTEES remaining, or by another TRUSTEE nominated by the DEVELOPER if such shall occur during the DEVELOPMENT PERIOD.
- 13.4** The TRUSTEES shall be entitled to co-opt any person chosen by them to act as a TRUSTEE, subject always to the exclusive right of appointment and removal by the DEVELOPER during the DEVELOPMENT PERIOD.

14 TRUSTEES EXPENSES AND REMUNERATION

- 14.1** The TRUSTEES shall be entitled to be repaid all reasonable *bona fide* expenses incurred by them in or about the performance of their duties as trustees.
- 14.2** The TRUSTEES shall be entitled to remuneration in respect of the performance of their duties as determined by the ASSOCIATION in general meeting.

15 POWER OF TRUSTEES

- 15.1** Subject to the provisions of this constitution and subject to any limitations which may be imposed by the ASSOCIATION in general meeting, the TRUSTEES shall have full powers to perform the functions allocated to them in this constitution and may exercise all such powers of the ASSOCIATION and do all acts on behalf of the ASSOCIATION as may be exercised and done by the ASSOCIATION itself with regard hereto.
- 15.2** The TRUSTEES shall in consultation with the MANAGER formulate a budget and a strategic plan and any amendments thereto for each financial year of the ASSOCIATION.
- 15.3** The TRUSTEES are empowered to sign, execute and to enter into on behalf of the ASSOCIATION all and any contracts as may be required to give effect to the provisions of this constitution, including subject always to the provisions of 17.2, the appointment of a manager, and are empowered to delegate the management of the affairs and the business of the association whether in the whole or in part to such manager.

- 15.4** Furthermore, the TRUSTEES shall at all times have the power and right to engage on behalf of the ASSOCIATION the services of accountants, auditors, attorneys, architects, engineers, 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 may decide.
- 15.5** The TRUSTEES shall further have the power;
- 15.5.1 To require that any construction of any sort in the estate shall be supervised so as to ensure that the provisions of this constitution and the state rules, or any other rules or regulations, are complied with, and that all such construction is performed in a proper and workmanlike manner.
- 15.5.2 To issue building and landscaping guidelines in respect of the ESTATE and to ensure that the same are complied with at all times, and
- 15.5.3 To issue instructions in accordance with the operational environmental management plan, if any, and to ensure that such plan is at all times complied with.
- 15.6** The TRUSTEES shall have the right to vary, cancel or modify their decisions and resolutions from time to time.

16 PROCEEDINGS OF TRUSTEES

- 16.1** The TRUSTEES may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of the constitution.
- 16.2** The quorum necessary for the holding of all meetings of the TRUSTEES shall be two TRUSTEES present personally, and no meeting shall be held unless such quorum is present at the commencement of and for the duration of the meeting.
- 16.3** Any resolution of the TRUSTEES shall be carried by a simple majority of all votes cast. In the case of an equality of votes for or against a resolution, the chairman of the TRUSTEES shall have a second casting vote.
- 16.4** The TRUSTEES shall cause minutes to be kept of every TRUSTEES meeting, which minutes shall without due delay after the meeting has closed, be reduced to writing and certified correct by the chairman, All minutes of TRUSTEES meetings shall, after certification, be placed in a TRUSTEES minute book.
- 16.5** Any resolution signed by all the TRUSTEES shall be valid in all respects as if it had been duly passed at a meeting of the TRUSTEES.

17 MANAGER

- 17.1** During the DEVELOPMENT PERIOD a MANAGER shall be appointed by the DEVELOPER and the DEVELOPER shall, at its absolute discretion, determine the fees or remuneration to be paid by the ASSOCIATION to the MANAGER and the other terms and conditions of his appointment. This appointment may extend beyond the DEVELOPMENT PERIOD provided that the DEVELOPER shall endeavour to procure in making such appointment, if so required by the ASSOCIATION, in general meeting, and subject to the requirements of law, be terminated on a reasonable notice after the end of the DEVELOPMENT PERIOD.
- 17.2** After the DEVELOPMENT PERIOD in the event that an existing MANAGER'S appointment is terminated in terms of 17.1, successor managers shall from time to time be appointed by the association in general meeting and the MEMBERS shall determine the fees or remuneration to be paid by the ASSOCIATION to such MEMBERS and all the other terms and conditions of their appointment, it being contemplated that at all times the affairs of the ASSOCIATION will be entrusted in whole or part to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.

18 POWERS OF THE MANAGER

- 18.1** Subject to provisions of this constitution and the terms of his appointment, the MANAGER shall have full power to manage and control the business and affairs of the ASSOCIATION or such portion thereof as may be determined by the ASSOCIATION in general meeting, and may exercise all such powers of the ASSOCIATION and do all acts on behalf of the ASSOCIATION itself.

19 GENERAL MEETING OF THE ASSOCIATION

- 19.1** The ASSOCIATION shall within 6 months after the end of its financial year hold a general meeting as its annual meeting in addition to any other general meetings during that year, and shall specify the meeting as such in the notices of meeting.
- 19.2** General meetings shall be held at such time and place as the TRUSTEES shall declare from time to time.
- 19.3** All meetings including annual general meetings shall be called general meetings.
- 19.4** The TRUSTEES may, whenever they deem fit, convene in a general meeting. A general meeting may also be convened by the TRUSTEES on a requisition made by the MEMBERS in terms of the Act or should the TRUSTEES not do so, may be convened by the requisition as provided for and subject to the provisions of the Act.

20 NOTICES OF MEETINGS

- 20.1** An annual general meeting shall be called by not less than 21 clear days' notice in writing and any other general meeting shall be called by not less than 14 clear days' notice in writing. The notice of an annual general meeting shall be accompanied by a copy of the financial statements as referred to in 25.4 and 25.5 and shall be given to all MEMBERS and shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place, the day and the hour of the meeting. A meeting called by shorter notices shall be deemed to have been duly called if it is so agreed by the majority of the members having the right to attend and to vote at the meeting.
- 20.2** The accidental omission to give notice of any resolution or to transmit any document required to be given or sent in terms of this constitution, shall not invalidate the proceedings of any meeting or any resolution passed at any meeting. Furthermore, the non-receipt of notice of a meeting by any person entitled to receive such notice shall not invalidate the proceedings at that meeting.
- 20.3** The annual general meeting shall deal with the consideration of the managers' report, the consideration of the annual financial statements, the election of trustees, if applicable, the appointment of an auditor and may deal with any other business included in the notice of meeting.

21 PROXIES

- 21.1** A MEMBER may be represented at a general meeting by a proxy, who must himself be a MEMBER of the ASSOCIATION.
- 21.2** To be effective at a general meeting or adjourned general meeting, a proxy together with the original or notarial certified copy of a power of attorney or other authority under which it is signed must be lodged with the ASSOCIATION at least 48 hours in advance before the commencement of the general meeting or adjourned general meeting concerned but the trustees may from time to time determine that such documents;
- 21.2.1 Are to be lodged at a particular place;
- 21.2.2 Are to be lodged a certain number of hours, not exceeding 48 hours in all, before the meeting, or
- 21.2.3 May be lodged at any time before or during the meeting.
Notwithstanding the foregoing the chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.
- 21.3** A proxy will be valid for a indefinite period in relation to the meeting for which it is given, unless it is stated on the proxy that it is only to be valid for a shorter period.

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

21.5 A proxy shall be valid for any adjournment of the meeting to which it relates unless otherwise indicated on the proxy.

22 QUORUM

22.1 No business shall be transacted at any general meeting unless a quorum is present both when the general meeting proceeds to business and when any resolution is to be passed. Save as otherwise provided in this constitution 5% (five per cent) of the MEMBERS other than the DEVELOPER present in person, or by proxy, shall constitute a quorum provided that at least three members are present in person at the commencement of and for the duration of such general meeting.

22.2 If within fifteen minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairman may allow, a quorum is not presented, and the general meeting shall be dissolved if it was convened on requisition. In all other cases the general meeting shall stand adjourned to the same place at the same time on the same day of the next week or such other place, time and day as the chairman may determine. If quorum is not present as such adjourned general meeting, the members present shall constitute a quorum.

23 ADJOURNMENT BY CHAIRPERSON WITH CONSENT OF MEETING

23.1 The chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of such adjournment by simple majority of all votes cast at the meeting,. In the event of such an adjournment;

23.1.1 No notice need be given of the adjourned meeting save for an announcement at the original meeting of date, time and venue of the adjourned meeting, unless the meeting is to be adjourned for thirty days or more in which event notice is to be given in the same manner as for the original meeting;

23.1.2 Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

24 VOTING RIGHTS OF MEMBERS

- 24.1** Notwithstanding anything to the contrary herein contained, during the DEVELOPMENT PERIOD the DEVELOPER may without approval of the MEMBERS of the ASSOCIATION, amend, substitute and repeal any provision of this constitution with the approval of the local authority.
- 24.2** Only MEMBERS shall be entitled to vote on matters raised at general meetings.
- 24.3** At every general meeting;
- 24.3.1 Each MEMBER, present in person or by proxy and entitled to vote, shall have one vote;
- 24.3.2 During the DEVELOPMENT PERIOD the DEVELOPER shall as MEMBER be entitled to 150 (one hundred and fifty) additional votes in addition to its one vote.
- 24.4** Save as provided in this constitution no person other than a MEMBER duly registered and who shall have paid every levy and other amount, if any, which may be due and payable to the ASSOCIATION in respect of or arising out of his membership, and who is not suspended, shall be entitled to be present or to vote on a matter, either personally or by proxy at any general meeting.
- 24.5** Voting at general meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded by the chairman. If a poll is demanded it shall be taken in such a manner as the chairman may direct.
- 24.6** Subject to provision of this constitution, all resolutions shall be passed by simple majority vote.
- 24.7** 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 scrutinizers might have been appointed to count the votes, and his decision shall be final and conclusive.
- 24.8** A vote cast under proxy, power of attorney or other authority which has been revoked shall nevertheless be valid unless;
- 24.8.1 Written notice of the revocation is received by the ASSOCIATION prior to the meeting concerned, or

24.8.2 The chairman agrees to accept written or oral notice of such revocation at the meeting.

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

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

24.11 Any resolution which could be passed at a general meeting, other than a special resolution or a resolution to remove a trustee or auditor, may be passed without a general meeting being held if one or more copies of the resolution are signed by or on the behalf of a simple majority of all the MEMBERS entitled to vote at a general meeting.

25 ACCOUNTING RECORDS

25.1 The TRUSTEES shall cause such accounting records to be kept as are necessary fairly to present the state of affairs and business of the ASSOCIATION and to explain the transactions and financial position of the trade or business of the ASSOCIATION.

25.2 The accounting records shall be kept at the registered office of the ASSOCIATION or at such other place or places as the TRUSTEES think fit, and shall be open to inspection by the trustees' at all reasonable times during business hours.

25.3 The TRUSTEES shall from time to time determine whether or to what extent and at what times and places and under what conditions or regulations the accounting records of the ASSOCIATION shall be open to inspection by MEMBERS not being TRUSTEES and no MEMBER, not being a TRUSTEE, shall have the right to inspecting any accounting records or documents of the ASSOCIATION except as may be authorised by the TRUSTEES.

25.4 At each 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 after the date of the commencement of the ASSOCIATION, made up for that period. Such financial statements shall be drawn in accordance with generally accepted accounting practices, and shall be accompanied by such addition reports as be deemed necessary at the discretion of the TRUSTEES.

25.5 A copy of the financial statements which are to be laid before the ASSOCIATES in annual general meeting shall, no less than 21 (twenty one) days before the date of the meeting, be sent to every MEMBER of

the ASSOCIATION, provided that this clause shall not require that a copy of those documents be sent to any person of whose address the ASSOCIATION is unaware.

25.6 An auditor shall be appointed by the ASSOCIATION by the TRUSTEES, and such appointment shall be subject to review on an annual basis at each annual general meeting of the ASSOCIATION.

26 SERVICES OF NOTICES

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

26.2 Notice of every general meeting shall be given:

26.2.1 To every MEMBER of the ASSOCIATION;

26.2.2 To the accounting officer for the time being of the ASSOCIATION;

26.2.3 To any TRUSTEE not a MEMBER of the ASSOCIATION;

26.3 No other person shall be entitled to receive a notice of general meetings.

26.4 Any notice by post shall be deemed to have been served at the time when it was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the notice was properly addressed and posted to the last known address of the MEMBER.

26.5 The signature to any notice given by the ASSOCIATION may be written or printed, or partly written and partly printed.

26.6 When a given number of days' notice or notice extended over any other period is required to be given, the day on which it is served or deemed to be served and the day for which it is given shall not be counted in such number of days or period.

27 INDEMNITY

27.1 The TRUSTEES, auditors and each MANAGER, servant agent or employee of the ASSOCIATION shall be and they are hereby indemnified by the ASSOCIATION against liabilities bona fide incurred by them in their respective capacities in the proper discharge of any of their duties including, without limitation, the cost of defending any proceedings, civil, criminal or otherwise arising out of the due execution by them of their duties, and including all costs, losses and expenses, including traveling expenses, which they or any of them may occur or become liable for by any reason of any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.

27.2 A TRUSTEE shall not be liable for the act or omission of the MANAGER. Auditors or of any of the other TRUSTEES whether in their capacity as such 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 monies of the ASSOCIATION are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited, or for any loss or damage occasioned by any *bona fide* error of judgement or oversight on his part, or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties in relation thereto, unless same shall have occurred as a result of *mala fides*, breach of duty or breach of trust.

28 **CONDITIONS IMPOSED BY LOCAL AUTHORITY**

During the DEVELOPMENT PERIOD, this constitution may from time to time be amended, without the need to be approved by the ASSOCIATION in general meeting, so as to comply with the requirements from time to time of the local authority in relation to the conditions of the establishment for the ESTATE or any subdivisions thereof, or any land which may be added to the ESTATE by the DEVELOPER.

29 **GENERAL**

29.1 Whenever they consider that the appearance of any land or buildings owned by a MEMBER or a member of a SUB-ASSOCIATION is such as to be unsightly or injurious to the amenities of the surrounding area or the development generally, the TRUSTEES or the MANAGER may serve notice on such MEMBER to take such steps as may be specified in the notice to eliminate such unsightly or injurious conditions. Should the MEMBER or a member of a SUB-ASSOCIATION fail within a reasonable time, as specified in such notice, to comply therewith, the TRUSTEES or MANAGER or their employees, agents or contractors may enter upon the land or buildings concerned and take such steps as may be necessary and recover the costs thereof from the MEMBER or a member of a SUB-ASSOCIATION concerned, which costs shall be deemed to be a debt owing by that MEMBER or a member of a SUB-ASSOCIATION to the ASSOCIATION. The TRUSTEES or the MANAGER shall be obliged in giving such notice to act reasonably. In the event of any dispute, the MEMBER shall bear the onus of establishing that the TRUSTEES or the MANAGER acted unreasonably.

29.2 The ASSOCIATION may enter into agreement with any third party for the provision of facilities or services to or for the MEMBERS, and may levy charges in respect of the provision thereof, or may pass on such costs direct to the MEMBERS. Furthermore it is recorded that the members will be bound by all contracts concluded by the DEVELOPER for the leasing or purchase of all equipment or infrastructural assets, or

for the provision of security for the ESTATE, or for the provision of any other service or supplies for the ESTATE which the DEVELOPER may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or outgoings on an outgoing basis. It is recorded, without limitation that the DEVELOPER intends to conclude contracts for the hire or supply of electronic surveillance, monitoring and detection equipment for security purposes relating to the perimeter of the ESTATE.

- 29.3** The TRUSTEES or the MANAGER or their employees, agents or contractors shall be entitled and have the right to enter any ERF or SECTIONAL TITLE UNIT for the purpose of repairing, maintaining or installing any facilities, services, equipment or structures relating to the provision of security or any other service to the ESTATE generally.
- 29.4** The provisions of this constitution shall be binding upon all members and, insofar as they may be applicable to all persons occupying any ERF, SECTIONAL TITLE UNIT through or under any MEMBER, whatsoever the nature of such occupation.
- 29.5** No MEMBER ceasing to be a MEMBER of the ASSOCIATION for any reason, and neither shall such MEMBERS executors, curators, trustees or liquidators, shall have any claim upon or interest in the right to the funds or any land or other asset of the ASSOCIATION.
- 29.6** The ASSOCIATION may claim from any MEMBER or his estate all arrear levies and interest or other sums due from his to the ASSOCIATION at the time of his ceasing to be a MEMBER for any reason.
- 29.7** Any person using any of the services, land or facilities of the ASSOCIATION within the ESTATE does so entirely at his own risk.

30 DISPUTES

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

- 30.3.1 If the dispute is primarily an accounting or financial matter, a practising chartered accountant;
- 30.3.2 If the dispute is primarily a legal matter or a matter relating to the behaviour and or conduct of a member, a practising attorney or advocate;
- 30.3.3 If the dispute primarily relates to the size or form of the land or the position, height or size of buildings, structures, installations or equipment, a practising land surveyor;
- 30.3.4 If the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practising architect.
- 30.4** If the parties are unable to agree on the appointee as provided for in clause 30.3 within 3 (three) days of being requested to do so, then the person shall be nominated by the president for the time being of the Law Society of the Cape of Good Hope.
- 30.5** The person appointed as provided for in clause 30.3 shall in all respects act as an expert and not as an arbitrator.
- 30.6** The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 30.7** The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty one) days or so thereafter as possible.
- 30.8** The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 30.9** The costs of and incidental to any such proceedings, including the fees of the expert shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between "party and party" or as between "attorney and client".
- 30.10** The provisions of this clause 30 constitutes the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw there from or claim in any such proceedings that they are not bound by such provisions.
- 30.11** The provisions of this clause 30 shall be deemed to be severable from the remainder of the constitution and shall remain binding and effective as between the parties notwithstanding that this constitution may otherwise be cancelled, amended, or declared of no force and effect for any reason.
- 30.12** Notwithstanding anything to the contrary contained in this constitution the TRUSTEES shall be entitled to institute legal proceedings of whatsoever nature on behalf of the ASSOCIATION by way of

application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this constitution and any of its annexure, including any amendments or additions thereto.

31 AMENDMENT OF CONSTITUTION

- 31.1** During the DEVELOPMENT PERIOD the DEVELOPER may without the approval of the MEMBERS of the association, amend, substitute and repeal any provision of this constitution with the approval of the local authority.
- 31.2** No provision of this constitution shall be added to, amended, substituted or repealed without prior written consent of the DEVELOPER for the duration of the DEVELOPMENT PERIOD.
- 31.3** Subject to the provisions of 31.1 and 31.2 above, any such addition, amendment, substitution or repeal shall require the approval of at least 51% (fifty one per cent) of the total number of votes of members of the association given at a general meeting specifically called for such purpose, and the notice of such meeting shall, in addition to complying with the other requirements of this constitution, set out in specific terms the proposed additions, amendment, substitution or matter to be repealed.
- 31.4** Any reference herein to this constitution shall; mean and include a reference to this constitution as may from time to time be amended in accordance with the provisions of this clause 31.