

CONSTITUTION

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OCEAN VILLAS HOME OWNERS'

ASSOCIATION

SECTION A. OBJECTIVES, MEMBERSHIP, LEVIES AND CONDUCT RULES

1. ESTABLISHMENT

The OCEAN VILLAS HOME OWNERS' ASSOCIATION is constituted, as a body corporate by the Developer at the instance of the Western Cape Department of Environmental Affairs and Development Planning, in respect of the Development, which association is mainly responsible for the maintenance of communal property as well as the protection and management of the fynbos reserve in the Development. The Association is also responsible for the maintenance of external boundary walls, especially as seen from outside the Development, the private open spaces as well as the security entrance gate.

2. INTERPRETATION

In these presents:

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

2.1.1. "these presents" means this Constitution and regulations and by-laws of the ASSOCIATION from time to time in force;

2.1.2. "the ASSOCIATION " means OCEAN VILLAS HOME OWNERS' ASSOCIATION;

2.1.3. "the Office" means the administrative office of the ASSOCIATION;

2.1.4. "the Development" means the housing development, named the OCEAN VILLAS DEVELOPMENT constructed on the PROPERTY ;

2.1.5. "the PROPERTY " means ERF 1626 YZERFONTEIN as reflected on General Plan No. 2384/2004;

2.1.6. "month" means calendar month;

2.1.7. "year" means calendar year;

2.1.8. "in writing" means, written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

2.1.9. "ERF" means one of the erven in the OCEAN VILLAS DEVELOPMENT erven resulting from the subdivision of the PROPERTY;

2.1.10. "scheme" means the residential erven resulting from the subdivision together with improvements thereon;

2.1.11. "the DEVELOPER" means YZERFONTEIN PROPERTY DEVELOPERS (PTY) LTD (Registration number:2010/005877/07);

- 2.1.12. "MEMBER " means a MEMBER of the ASSOCIATION;
- 2.1.13. "the Trustee Committee" means the Board of Trustees of the ASSOCIATION;
- 2.1.14. "a Trustee" means one of the Trustee Committee;
- 2.1.15. "Chairman" means the Chairman of the Trustee Committee;
- 2.1.16. "Vice-Chairman" means the Vice-Chairman of the Trustee Committee;
- 2.1.17. "Accountants" means the Accountants of the ASSOCIATION;
- 2.1.18. "the Local Authority" means **SWARTLAND MUNICIPALITY**;
- 2.1.19. "Business Day" means weekdays other than Saturdays, Sunday and Public Holidays;
- 2.1.20. "Special Resolution" means a resolution passed at a general meeting of which not less than 21 calendar days' written notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it, and passed by a majority on a show of hands, of not less than three-fourths of the total number of MEMBERS present or represented by proxy at the special general meeting that, at a minimum, form a quorum for a general meeting;
- 2.1.21. "Ordinary Resolution" means a resolution passed at a general meeting of the ASSOCIATION;
- 2.1.22. "MANAGING AGENTS" are the agents as may be duly appointed from time to time for the purpose of managing the Erven in the Development;
- 2.1.23. "PUBLIC AREAS" means the PUBLIC PARKS and PUBLIC ROADS in this DEVELOPMENT, inclusive of all services thereon or thereunder, consisting of **ERF 2141 and ERF 2166 (being the PUBLIC Roads), and ERF 1627 and ERF 2148 and ERF 2156 and ERF 2167 (being the parks) and ERF 2153 and ERF 2154 and ERF 2136 (being the Refuse Collection Points)**;

2.2. Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other gender.

3. PURPOSE DESCRIBING THE MAIN BUSINESS

The main business of the ASSOCIATION is to carry on the promotion, advancement and protection of the owners of Erven and to assume responsibility (including the costs) for the provision, maintenance, management, ect. of all internal facilities and services in and on the DEVELOPMENT.

4. MAIN OBJECT

The main objects of the ASSOCIATION are:

- 4.1.** the control over all buildings, and/or structures erected or be erected on the Erven to insure that the material, finish and architecture of same matches the general appearance of the scheme as well as the maintenance thereof in a neat and tidy condition; and
- 4.2.** the limitations and control over future extensions and to insure that the material, finish and architecture of same matches the general appearance of the scheme;
- 4.3.** executing the protection, care, maintenance and up-keep of the following: all common landscaped spaces; fynbos reserve, PUBLIC parks (if required); irrigation systems; perimeter wall; PUBLIC roads; common paved walkways; all internal services (including internal sewage, stormwater and fresh water installations); and other improvements including common vehicular and pedestrian gates, intercom systems, refuse room.
- 4.4.** the promotion, advancement and protection of the communal and group interests of the MEMBERS generally.
- 4.5.** to acquire the necessary finances from MEMBERS to attain its set objectives including inter alia the payment of municipal levies and taxes in respect of common PROPERTY ;
- 4.6.** the regulation of pets on the Erven.

5. DOMICILIUM CITANDI ET EXECUTANDI

- 5.1.** The TRUSTEES shall from time to time determine the address constitution the domicilium citandi et executandi of the ASSOCIATION , subject to the following:-
 - 5.1.1. Such address shall be the address of the MANAGING AGENTS of the ASSOCIATION ;
 - 5.1.2. The TRUSTEES shall give notice to all MEMBERS of any change of such address.
- 5.2.** The domicilium citandi et executandi of each MEMBER shall be the street address of the ERF registered in his name; provided that he shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the ASSOCIATION at its domicilium.

6. FINANCIAL YEAR END

The financial year end of the ASSOCIATION is the **end of February** of each year.

7. MEMBERSHIP

- 7.1.** Membership of the ASSOCIATION shall be compulsory for every Registered Owner of an ERF.
- 7.2.** Such Membership shall commence simultaneously with the transfer of the ERF into the name of the Transferee.
- 7.3.** Membership of the ASSOCIATION shall be limited to the Registered Owners of the Erven provided that:
- 7.3.1. where any such owner is more than one person, all the registered owners of that ERF shall be deemed jointly and severally to be one MEMBER of the ASSOCIATION ;
 - 7.3.2. where any person is the Registered Owner of more than one ERF , such person shall be regarded to be a MEMBER and shall have the rights and obligations of a MEMBER in respect of each of the Erven registered in the person's name, it being recorded that the provisions of this clause shall also be applicable to the DEVELOPER whilst it is the Registered Owner of a ERF or Erven;
 - 7.3.3. the DEVELOPER alone shall constitute the HOA until 70% (seventy percent) of the ERVEN in the DEVELOPMENT have been sold and transferred.
 - 7.3.4. Corporate bodies or juristic persons which are the registered owners of Erven shall nominate a natural person to represent the owner for all purposes related to this constitution.
- 7.4.** When a MEMBER ceases to be the registered owner of an ERF, he shall ipso facto cease to be a MEMBER of the ASSOCIATION.
- 7.5.** No MEMBER shall not be entitled to:
- 7.5.1. sell or transfer a ERF or portion thereof unless:
 - 7.5.1.1. it is a condition of the sale and transfer of such an ERF that the transferee becomes a MEMBER of the ASSOCIATION and agrees in writing to abide by the rules of the Constitution of the ASSOCIATION and all obligations outlined therein, by signing a copy of such Constitution.
 - 7.5.1.2. it is a condition of the sale and transfer of such an ERF that the registration of transfer of that ERF into the name of that transferee shall ipso facto constitute the transferee as a MEMBER of the ASSOCIATION.

- 7.5.1.3. a Clearance Certificate is issued by the ASSOCIATION certifying that all outstanding levies and liabilities owing to the ASSOCIATION and applicable to that ERF have been fully paid.
- 7.5.2. erect any additional buildings and/or structures of any nature whatsoever, nor to make any alterations, modifications or renovations to such buildings and/or structures ("the proposed work") on his ERF without the written approval of the Trustees, which approval shall only be given -
 - 7.5.2.1. after detailed plans of the proposed work has been submitted to a building committee appointed by the Trustees and the original Architects responsible for the design of the DEVELOPMENT to ensure the aesthetics is maintained or another Architect appointed by the Trustees; and
 - 7.5.2.2. the building committee and the original / appointed Architects or their nominee are satisfied that the proposed work is in accordance with the character and style and the general appearance of the scheme known as the OCEAN VILLAS Development.
 - 7.5.2.3. the MEMBER has made building deposit determined by the Trustees to cover possible damage to the road and pavements; and
 - 7.5.2.4. the MEMBER made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees, building committee, the original / appointed Architects or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature.
- 7.6. The Registered Owner of an ERF may not resign as a MEMBER of the ASSOCIATION.
- 7.7. The Trustee Committee may, by regulation, provide for the issue of a Membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.
- 7.8. The rights and obligations of a MEMBER shall not be transferable and every MEMBER shall:
 - 7.8.1. to the best of his ability further the object and interest of the ASSOCIATION ;
 - 7.8.2. observe all by-laws and regulations made by the ASSOCIATION or the Trustee Committee;
 - 7.8.3. be jointly liable with all the MEMBERS for all expenditure incurred in connection with

the ASSOCIATION pro rata as per quota determined by the Land Surveyor insofar as third parties are concerned;

7.8.4. that the DEVELOPMENT and more particularly the PUBLIC AREAS shall be maintained in good and tidy condition in compliance with standards set from time to time by the TRUSTEES;

7.8.5. 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.

8. LEVIES

8.1. The Trustee Committee shall from time to time, impose levies upon the MEMBERS for the purpose of meeting all the expenses which the ASSOCIATION has incurred, or which the Trustee Committee reasonably anticipates the ASSOCIATION will incur by way of maintenance, repair, improvement and keeping in order and condition of the PUBLIC Areas, access roads over adjoining land, conduits, pipelines, and other areas and structures on adjoining land which is also used by the ASSOCIATION and/or for payment of all rates and other charges payable by the ASSOCIATION in respect of the PUBLIC AREAS and/or, if applicable, for the payment of electricity consumed by street lighting and other lighting on the PUBLIC AREAS and other electricity consumed or used on the PUBLIC AREAS and/or for the services rendered to it and/or for the payment of all expenses necessary or reasonably incurred in connection with the management of the ASSOCIATION, the PUBLIC AREAS and the ASSOCIATION's affairs. In calculating levies the Trustee Committee will take into account income, if any, earned by the ASSOCIATION.

8.2. The Trustees Committee shall estimate the amount which shall be required by the ASSOCIATION to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the MEMBER s, equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.

8.3. The Trustee Committee may, provided 30 (thirty) calendar days' notice is given to the MEMBERS, make special levies upon the MEMBERS in respect of all such expenses as are mentioned in 8.1 (which are not included in any estimate made in terms of 8.2) and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit.

- 8.4.** Any amount due by a MEMBER by way of a 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 to 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 to an ERF shall be liable as from the date upon which he becomes a MEMBER pursuant to the transfer of the ERF, and from then on to pay the levies attributable to that ERF.
- 8.5.** No MEMBER will be allowed to transfer his ERF until the ASSOCIATION has issued a clearance certificate certifying that the MEMBER has at the date of transfer fulfilled all his financial obligations to the ASSOCIATION.
- 8.6.** The total levy payable by MEMBERS shall be borne in equal shares by each MEMBER.
- 8.7.** No MEMBER shall be entitled to any of the privileges of Membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the ASSOCIATION in respect of his Membership thereof.
- 8.8.** The ASSOCIATION shall decide which of the expenses of the Development, not expressly dealt with herein, and are to be paid out of the fund of the ASSOCIATION or directly by its MEMBER s.
- 8.9.** The municipal rates levied on each individual ERF shall be paid directly by each MEMBER except where the ASSOCIATION decides otherwise.

9. REGULATIONS, CONTRACTS, BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS

- 9.1.** The Trustee Committee may from time to time make regulations governing inter alia:
- 9.1.1. the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on Unit Erven, (which regulations may be incorporated in a development manual);
 - 9.1.2. the MEMBER 's rights of use, occupation and enjoyment of the PUBLIC Road and Open Space;
 - 9.1.3. the external appearance of and the maintenance of the PUBLIC Road and Open Space and any buildings or other improvements erected thereon.
 - 9.1.4. make regulations governing the MEMBER S' rights of use, occupation and enjoyment of the PUBLIC ROAD and AREA and the external appearance of and the maintenance

of the PUBLIC AREA and the buildings or other improvements erected thereon;

9.2. The Trustee Committee may from time to time enter into agreement(s) with the Council on any other incidental matters.

9.3. Each MEMBER undertakes to the ASSOCIATION that he shall comply with:

9.3.1. the provisions of this Constitution.

9.3.2. any regulations made in terms of 9.1.

9.3.3. any agreements referred to in 9.2 insofar as those agreements may directly or indirectly impose obligations on him.

9.4. Buildings and Architecture:

The ASSOCIATION shall have the power to:

9.4.1. require that all buildings on Erven in the Development are constructed in accordance with the Design Manual relevant to the Development, as from time to time approved and amended by the Association;

9.4.2. require the approval of all building plans by an Architect appointed by the Trustees for this purpose, prior to the submission of the plans to the Local Authority;

9.4.3. frame and enforce conditions on MEMBERS in order to harmonise the architectural style and design criteria of, and the materials to be used in, all buildings erected or to be erected on the PROPERTY;

9.4.4. do such acts as are necessary to accomplish the purposes expressed or implied herein, which acts shall include, inter alia, the examination and approval or refusal of building plans, whether such be for alterations, renovations, additions, or new constructions;

9.4.5. compel MEMBERS to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such MEMBER in writing to remove or alter within a specified period, anything erected contrary to the requirements laid down pursuant thereto and failing which, to apply to Court for any appropriate order; and

9.4.6. appoint professional advisors, e.g. an architect, to scrutinise all plans to ensure that the necessary architectural controls have been met.

9.5. Construction of Dwellings

9.5.1 MEMBERS are obliged to commence construction of their dwellings on their respective residential erven within 6 months from the first transfer date and to complete construction of such dwellings within 15 months of the date that the MEMBER commences construction. For the purposes of this clause:

9.5.1.1 “the first transfer date” means the date of the registration of the relevant Residential Erf from the Developer into the name of the first purchaser of such Residential Erf. For the sake of clarity it is recorded that any resale of a Residential Erf after the first transfer date, the new purchaser steps into the shoes of the seller in respect of the time period referred to in clause 9.5.1 above;

9.5.1.2 “commence construction”, “commences construction”, “commenced construction” or “commencement of construction” means the commencement of any work of whatsoever nature on the relevant Residential Erf relating to the construction of a dwelling, as certified by the ASSOCIATION whose certificate shall be final and binding on the MEMBER; and

9.5.1.3 “complete construction” means a sufficiently completed dwelling for beneficial occupation, constructed and completed in accordance with the architectural design manual and as certified as completed by the ASSOCIATION, whose certificate shall be final and binding on the Parties.

9.5.2 In the event that a MEMBER should fail to **commence** construction in accordance with the provisions of clause 9.5.1 above, the following shall apply:

9.5.2.1 the MEMBER shall pay a monthly penalty levy to the ASSOCIATION in an amount of the current monthly levy payable by such MEMBER multiplied by 2 (two) in respect of each month or part thereof beyond the 6 (six) months after the first transfer date, which penalty levy shall be multiplied by 2 (two) for each and every subsequent 2 (two) month delay in commencement of construction and be payable to the ASSOCIATION until the date the MEMBER commences construction on the Residential Erf.

9.5.3 In the event that a MEMBER should fail to **complete** construction in accordance with the provisions of clause 9.5.1 above, the following shall apply:

9.5.3.1 the MEMBER shall pay a monthly penalty levy to the ASSOCIATION in an amount of the current monthly levy payable by such MEMBER multiplied by

2 (two) in respect of each month or part thereof beyond the 15 (fifteen) months after the first transfer date, which penalty levy shall be multiplied by 2 (two) for each and every subsequent 2 (two) month delay in completion of construction and be payable to the ASSOCIATION until the date the MEMBER completes construction on the Residential Erf.

10. THE PUBLIC AREAS

10.1. The PUBLIC AREAS shall be constituted from ERF 2141 and ERF 2166 (being the PUBLIC Roads), and ERF 1627 and ERF 2148 and ERF 2156 and ERF 2167 (being the parks) and ERF 2153 and ERF 2154 and ERF 2136 (being the Refuse Collection Points)

10.2. Neither the whole or any portion of the PUBLIC AREAS shall be:-

10.2.1. sold, let, alienated, otherwise disposed of, sub-divided or transferred; or

10.2.2. mortgaged; or

10.2.3. subjected to any rights, whether registered in a Deeds Registry or not, for use, occupation or servitude (save those enjoyed by the MEMBERS in terms hereof);

without the sanction of a SPECIAL RESOLUTION of the ASSOCIATION and the written consent of the Local Authority.

10.3. The ASSOCIATION is hereby specifically empowered to acquire ownership and take transfer of the ERF or ERVEN comprising the PUBLIC AREAS from the DEVELOPER, simultaneously with the separate registration of the first erf.

10.4. The ASSOCIATION shall specifically authorise 1 (one) TRUSTEE who shall sign all documents and perform all acts necessary to acquire ownership of the ERF or ERVEN comprising the PUBLIC AREAS and on behalf of the ASSOCIATION, by means of SPECIAL RESOLUTION.

10.5. The transfer of the ERF or ERVEN comprising the PUBLIC AREA shall be effected by the DEVELOPER'S attorneys, and all costs relating to such transfer shall be borne by the Developer.

10.6. The liability for the provision / maintenance of internal services / facilities and the PUBLIC AREAS will be transferred from the DEVELOPER to the Home Owners' ASSOCIATION on date of registration of the transfer of the first ERF to a Purchaser. The internal services / facilities shall be completed prior to the first transfer to such standard as may be required by the Local Authority to issue a clearance certificate.

10.7. The HOA will be responsible for the maintenance and the upkeep of the PUBLIC AREAS and the civil services (i.e. landscaping, internal road, civil and electrical services) pertaining to the development from the EFFECTIVE DATE.

10.8. The ASSOCIATION is hereby specifically empowered to acquire ownership and take transfer of the PUBLIC AREAS from the DEVELOPER, simultaneously with the separate registration of the first ERF.

10.9. The TRUSTEES may from time to time make regulations governing inter alia:

10.9.1. the MEMBERS' rights of use, occupation and enjoyment of the PUBLIC AREAS;

10.9.2. the external appearance of and the maintenance of the PUBLIC AREAS and the buildings or other improvements erected thereon;

10.9.3. enter into agreement(s) with third parties on behalf of the ASSOCIATION, inter alia, the LOCAL AUTHORITY, governing the matters set out in 17.1 and any other matters incidental thereto.

11. MEMBER'S OBLIGATIONS

11.1. Each MEMBER undertakes to the ASSOCIATION that he shall comply with:

11.1.1. the provisions of this Constitution;

11.1.2. any regulations made in terms of this Constitution;

11.1.3. that every building and/or structure to be erected in the DEVELOPMENT shall be of approved design and of sound construction in accordance with the design manual relevant to the DEVELOPMENT:

11.1.4. any agreements made by the TRUSTEES in terms of this Constitution insofar as those agreements may directly or indirectly impose obligations on him.

11.2. Each MEMBER further undertakes to the ASSOCIATION that he shall comply with, inter alia, the following specific regulations to be issued by the TRUSTEES.

11.2.1. that the DEVELOPMENT shall be developed in accordance with a standard approved by the DEVELOPER, and after the DEVELOPER has ceased to be a MEMBER, by the TRUSTEES:

- 11.2.2. That the DEVELOPMENT and more particularly the PUBLIC AREAS shall be maintained in good and tidy condition in compliance with standards set from time to time by the TRUSTEES:
- 11.2.3. That no building operations shall be commenced in the DEVELOPMENT and no additions or alterations to approved buildings shall be effected until the TRUSTEES, as delegated in accordance with the Design Manual relevant to the DEVELOPMENT, have in writing approved the design and construction plans including material and colour specifications for the erection of any building or structure specifically including a dwelling house, outside buildings, fences or walls:
- 11.2.4. That the TRUSTEES, acting on the advice of an ARCHITECT for OCEAN VILLAS nominated by the owners shall be the judges as to the suitability of the design and/or construction method, material or colours and their decision shall be final.
- 11.2.5. Each REGISTERED OWNER shall be obliged to obtain the approval of the LOCAL AUTHORITY in respect of any buildings and/or structures to be erected on the ERF registered in his name and he shall further be obliged to comply with all conditions and standards imposed by such LOCAL AUTHORITY.
- 11.2.6. In granting any approval in terms hereof the TRUSTEES shall have the right to determine the siting of all buildings and/or structures (including garden/boundary/link walls) to be erected on the ERF and to impose such conditions as the TRUSTEES deem necessary.
- 11.3. If any REGISTERED OWNER, tenant or occupier of an ERF by act or omission commits a breach of any of these conditions and fails to remedy such breach after the TRUSTEES have given the REGISTERED OWNER written notice to make good such breach within a time specified in such notice then:
- 11.3.1. The Trustees shall be entitled to impose a penalty in the form of a fine, in respect of breaches which do not amount to claims for damages in a civil court of law. The penalties shall be laid down and tabled annually at the Annual General Meeting of the Association for adoption by the Members in General Meeting as a table of penalties for the coming year.
- 11.3.2. In appropriate cases, the TRUSTEES and/or the DEVELOPER shall be entitled without further notice to the REGISTERED OWNER to institute proceedings against the REGISTERED OWNER in any Court of competent jurisdiction to obtain redress against the REGISTERED OWNER and without detracting from the generality of the foregoing including obtaining of an interdict against the REGISTERED OWNER.
- 11.3.3. The TRUSTEES (or those employed by the TRUSTEES on behalf of the ASSOCIATION) may enter upon the ERVEN, COMMON PROPERTY and PUBLIC AREA to take such

action as may be required (as determined in the discretion of the TRUSTEES) to remedy the breach and the REGISTERED OWNER concerned shall be liable to the ASSOCIATION for all costs so incurred which costs shall be due and payable upon demand. The foregoing action shall, without detracting from the generality of the foregoing, include obtaining the services of a garden service company.

12. **CESSATION OF MEMBERSHIP**

12.1. No MEMBER ceasing to be a MEMBER of the ASSOCIATION for any reason shall, (nor shall any such MEMBER's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other PROPERTY of the ASSOCIATION, but this clause shall be without prejudice to the rights of the ASSOCIATION to claim from such MEMBER or his estate any arrears of subscriptions or other sums due from him to the ASSOCIATION at the time of his so ceasing to be a MEMBER.

13. **BREACH**

13.1. If any REGISTERED OWNER, tenant or occupier of an ERF by act or omission commits a breach of any of these conditions and fails to remedy such breach after the TRUSTEES have given the REGISTERED OWNER written notice to make good such breach within a time specified in such notice then:

13.1.1. The Trustees shall be entitled to impose a penalty in the form of a fine, in respect of breaches which do not amount to claims for damages in a civil court of law. The penalties shall be laid down and tabled annually at the Annual General Meeting of the ASSOCIATION for adoption by the MEMBERS in General Meeting as a table of penalties for the coming year.

13.1.2. In appropriate cases, the TRUSTEES and/or the DEVELOPER shall be entitled without further notice to the REGISTERED OWNER to institute proceedings against the REGISTERED OWNER in any Court of competent jurisdiction to obtain redress against the REGISTERED OWNER and without detracting from the generality of the foregoing including obtaining of an interdict against the REGISTERED OWNER.

13.1.3. The TRUSTEES (or those employed by the TRUSTEES on behalf of the ASSOCIATION) may enter upon the ERVEN, COMMON PROPERTY and PUBLIC AREA to take such action as may be required (as determined in the discretion of the TRUSTEES) to remedy the breach and the REGISTERED OWNER concerned shall be liable to the ASSOCIATION for all costs so incurred which costs shall be due and payable upon demand. The foregoing action shall, without detracting from the generality of the foregoing, include obtaining the services of a garden service company.

13.2. NOTWITHSTANDING this clause any MEMBER who fails to make payment to the ASSOCIATION on due date of any subscription or other amounts payable by such MEMBER , or who otherwise

breaches or fails in the observance of any of the provisions of THIS CONSTITUTION, may, if so determined by a RESOLUTION passed at a meeting by the majority of the TRUSTEES at the meeting:

13.2.1. be fined by the ASSOCIATION for an amount not exceeding double the sum outstanding: or an amount determined by the Trustees

13.2.2. be ordered to pay to the ASSOCIATION or any MEMBER or other person aggrieved by the breach or failure in question, such sum as the TRUSTEES after suitable enquiries shall deem fit:

13.2.3. be liable for and pay all legal costs including costs as between attorney and client, collection commission, expenses and charges incurred by the ASSOCIATION in recovering arrear levies, or any other amounts due and owing by such MEMBER to the ASSOCIATION.

13.3. The TRUSTEES shall be entitled to charge interest on arrear amounts (including amounts due in terms of this Constitution) at such rate as they may from time to time determine.

13.4. Nothing in the foregoing shall derogate from or in any way diminish the right of the ASSOCIATION represented by an authorised TRUSTEE to institute proceedings in any Court of competent jurisdiction for recovery of any money due by a MEMBER.

14. **DISPUTES**

14.1. Should any MEMBER fail to pay on due date any amount due by that MEMBER in terms of this constitution or any regulation made thereunder and remain in default for more than 7 (seven) days after being notified in writing to do so by the Trustees; or

14.2. Should any MEMBER commit any other breach of any of the provisions of this Constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time;

14.3. Should any dispute arise between the ASSOCIATION and a MEMBER with regard to any party's compliance with the stipulations of this Constitution or the interpretation thereof;

14.4. then and in either such event, the following procedure will be adhered to:

14.4.1. There shall be due consultation between the parties in an attempt to resolve the dispute expeditiously failing which the dispute shall be referred to arbitration, by either of the parties, by way of a notice to the other party in which notice particulars of the dispute are set out.

- 14.4.2. Such arbitration proceedings shall be held in a place on the Development and shall be held in a summary manner and with a view to its being completed within 10 (ten) calendar days after it is demanded, which shall mean that it shall not be necessary to observe or carry out the usual formalities of procedure (e.g. there shall not be any pleadings or discovery) and the strict rules of evidence.
- 14.4.3. The arbitrator for such arbitration proceedings shall:
- 14.4.3.1. if the matter in issue is primarily an accounting matter, be an independent auditor with at least 5 years' experience, agreed upon by the parties and, failing agreement, nominated by the Chairman from time to time; or
 - 14.4.3.2. if the matter in issue is primarily a technical matter, be a suitably qualified person agreed upon by the parties and, failing agreement, nominated by the Chairman from time to time; or
 - 14.4.3.3. any other matter, be a practising advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 5 years' experience, agreed upon by the Parties and, failing agreement, nominated by the Chairman from time to time.
- 14.4.4. The decision of the arbitrator shall be final and binding on the Parties, who shall summarily carry out that decision and either of the parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 14.4.5. The "arbitration" clause in this Agreement shall be severable from the rest of this Agreement and therefore shall remain effective between the Parties after this Agreement has been terminated.
- 14.4.6. No clause in this agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 14.5. Without prejudice to allow any of the rights the Trustees or the ASSOCIATION granted under this Constitution, should any MEMBER fail to pay any amount due by that MEMBER on due date, then such MEMBER shall pay interest thereon at the publicly quoted prime rate of interest charged by the ABSA Bank from time to time plus 5 % calculated from the due date for payment until the actual date of payment of such amount.

SECTION B: ADMINISTRATIVE & PROCEDURAL RULES APPLICABLE TO TRUSTEES

15. TRUSTEE COMMITTEE: REMOVAL AND ROTATION OF TRUSTEE MEMBER S

15.1. There shall be a Board of the Trustees of ASSOCIATION which shall consist of not less than **three (3) and not more than five (5) MEMBERS.**

15.2. Save in the case of the DEVELOPER, every Trustee must be a MEMBER of the ASSOCIATION.

15.3. For as long as the DEVELOPER is a MEMBER, it shall be entitled to nominate and appoint 3 (THREE) of the TRUSTEES.

15.4. Each Trustee shall continue to hold office until the annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, but shall be eligible for re-election to the Trustee Committee at such meeting.

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

15.5.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate.

15.5.2. his making any arrangement or compromise with his creditors.

15.5.3. his conviction for any offence involving dishonesty.

15.5.4. his becoming of unsound mind or being found lunatic.

15.5.5. his resigning from such office in writing delivered to the Secretary.

15.5.6. his death.

15.5.7. his being removed from office by a Special Resolution of the MEMBER s.

provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

15.6. Upon any vacancy occurring on the Trustee Committee prior the next Annual General, the vacancy in question shall be filled by a MEMBER nominated by those remaining for the time being of the Trustee Committee.

16. APPOINTMENT AND ELECTION OF TRUSTEES

16.1. All the initial TRUSTEES shall be appointed by the DEVELOPER and until so appointed the DEVELOPER shall, notwithstanding the other provisions of this Constitution, be the sole TRUSTEE. Until such time as there are 3 members of the association, the DEVELOPER alone may constitute a

quorum of Trustees for purposes of convening and conducting a meeting of trustees; as soon as there are 3 Trustees, a quorum shall be 2 Trustees; as soon as there are 4 or 5 Trustees, a quorum shall consist of 3 Trustees; and as soon as there are 5 Trustees, a quorum shall consist of 4 Trustees. There shall never be more than 5 Trustees.

16.2. Upon termination of the term of office of the TRUSTEES aforesaid, the TRUSTEES shall be:

16.2.1. nominated, and must have accepted nomination, no later than 48 hours ahead of a proposed election meeting;

16.2.2. elected to office, by MEMBERS of the ASSOCIATION present in person or by proxy at the first Annual General Meeting of the ASSOCIATION and at each Annual General Meeting held thereafter.

17. **OFFICE OF TRUSTEES**

17.1. The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.

17.2. The first Chairman, and Vice-Chairman, shall be appointed by the DEVELOPER, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.

17.3. Within seven (7) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the offices of the Chairman or Vice-Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices at a time, the Trustee Committee shall immediately meet to appoint one of their number to replace such office vacated.

17.4. Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of MEMBER s, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or at all meetings of MEMBER s, provided however, that any invitees (that is any MEMBER that is not a trustee) shall not be entitled to vote at any meeting of the Trustee Committee.

17.5. The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.

17.6. Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-

Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees of salary in respect of the performance of such duties.

18. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

18.1. Subject to the express provisions of these presents, the Trustee Committee 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 and, save as may be expressly provided in these presents, may exercise all such powers of the ASSOCIATION , and do all such acts on behalf of the ASSOCIATION as may be exercised and done by the ASSOCIATION in general meeting, subject nevertheless to such regulations as may be prescribed by the ASSOCIATION in general meeting from time to time, provided that no regulation made by the ASSOCIATION in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.

18.2. The Trustee Committee shall have the right to vary, conceal or modify any of its decisions and resolutions from time to time.

18.3. The Trustee Committee shall have the right to co-opt on to the Trustee Committee any MEMBER or MEMBERS chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.

18.4. The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the ASSOCIATION at a general meeting:

18.4.1. As to disputes generally;

18.4.2. for the furtherance and promotion of any of the objects of the ASSOCIATION

18.4.3. for the better management of the affairs of the ASSOCIATION.

18.4.4. for the advancement of the interests of MEMBERS

18.4.5. for the conduct of Trustee Committee meetings and general meetings; and

18.4.6. to assist it in administering and governing its activities generally.

and shall be entitled to cancel, vary or modify any of the same from time to time.

19. INSURANCE

19.1. At the first meeting of the trustees or so soon thereafter as is possible, and annually thereafter, the trustees will take steps to insure any buildings, and improvements to the PUBLIC AREAS, to the full replacement value thereof against –

- 19.1.1. fire, lightning and explosion
 - 19.1.2. riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
 - 19.1.3. storm, tempest and flood;
 - 19.1.4. earthquake;
 - 19.1.5. aircraft and other aerial devices or articles dropped therefrom;
 - 19.1.6. bursting or overflowing of water tank, apparatus or pipes;
 - 19.1.7. impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
 - 19.1.8. housebreaking or any attempt thereat;
 - 19.1.9. loss of occupation or loss of rent in respect of any of the above risks;
 - 19.1.10. such other perils or dangers as the trustees or any owner may deem appropriate
- 19.2. At the first meeting of the trustees or as soon thereafter as possible, the trustees will take all reasonable steps to insure the owners and the trustees and to keep them insured against liability in respect of:
- 19.2.1. death, bodily injury or illness, and
 - 19.2.2. loss of, or damage to the PROPERTY , occurring in connection with the PUBLIC area for a sum of liability as determined with the First General Meeting, which sum may be increased from time to time as directed by the owners in general meeting.

20. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 20.1. The Trustee Committee shall meet at least every 4 (four) months for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution..
- 20.2. The quorum necessary for the holding of any meeting of the Trustee Committee shall a majority of the Trustees in office.
- 20.3. The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five (5) minutes of

the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

- 20.4. A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relation to the keeping of minutes of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Accountants, the ASSOCIATION MEMBERS, the MANAGING AGENT and Local Authority.
- 20.5. All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee 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 Trustee Committee.
- 20.6. Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 20.7. A resolution by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

21. **GENERAL MEETINGS OF THE ASSOCIATION**

- 21.1. The MEMBERS of the ASSOCIATION shall meet once a year, no later than four months after the end of the financial year.
- 21.2. In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matter shall be dealt with at every Annual General Meeting:
- 21.2.1. the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 21.2.2. the consideration of the report of the Accountants;
- 21.2.3. the consideration of the total levy for the calendar year during which such Annual General Meeting takes place; and
- 21.2.4. the consideration and fixing of the remuneration of the Accountants for the financial year of the ASSOCIATION preceding the Annual General Meeting;

- 21.2.5. Chairperson's report
 - 21.2.6. Treasurer's report
 - 21.2.7. Consideration, discussion and adoption of the annual financial statements.
 - 21.2.8. Appointment of Trustees for the coming year
 - 21.2.9. Appointment or resumption of appointment of a managing agent, if deemed necessary (the managing agent shall be appointed by the Developer in the first year of functioning of the Association)
 - 21.2.10. Matters arising out of previous meetings, general matters, and any special proposals.
- 21.3. All general meetings other than Annual General Meetings shall be called Special General Meetings.
- 21.4. The Trustee Committee, may, whenever, they think fit, convene a special general meeting.

22. **NOTICE OF MEETINGS**

- 22.1. The Trustee Committee may if they deem fit and must upon written consent request of at least **25% (twenty five percent)** of the MEMBERS call a special general meeting. If the management fails to call a meeting as requested before a period of 14 (fourteen) days have expired the MEMBERS who submitted the request may convene the meeting themselves.
- 22.2. Except when otherwise stated, at **least 14 (fourteen) days'** notice must be given of all general meetings specifying the place, date and hour of such meeting and in the case of a special meeting the general nature of such meeting to all MEMBERS.

23. **VENUE OF MEETINGS**

- 23.1. General Meetings of the ASSOCIATION shall take place at such place(s) which is accessible to the majority of those members who are most likely to attend or at such venue as shall be determined by the Trustee Committee from time to time.

24. **QUORUM**

- 24.1. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum for the meeting shall be **25% (twenty five percent)** of the total MEMBERS, entitled to vote, of the Association. Each property may be represented by one owner, who shall have a right to vote at meetings. Where properties are owned by more than one person, the owners of that property shall appoint one of their number to act, and any person entitled to vote may appoint a proxy to do so in his or her stead.

24.2. If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of MEMBERS, shall be dissolved, in any other case it shall stand adjourned to the same day in the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the MEMBERS shall be a quorum.

25. **PROCEDURE AT GENERAL MEETINGS**

25.1. The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the MEMBERS present as such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

25.2. The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting the same time on the same day, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the MEMBERS shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

25.3. Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

26. **PROXIES**

26.1. A MEMBER may be represented at a general meeting by a proxy, who need not be a MEMBER of the ASSOCIATION. The instrument appointing a proxy shall be in writing signed by the MEMBER concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a MEMBER is more than one person, any one of those persons, may sign the instrument appointing a proxy on such MEMBER 's behalf, where a MEMBER is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where an ASSOCIATION of persons, by the secretary thereof.

26.2. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date of its execution.

26.3. Should a MEMBER be absent from for a continuous period in excess of four (4) weeks, a proxy must be appointed by such MEMBER prior to his absence in accordance with 23.1 and 23.2, failing which a MEMBER shall not be entitled to vote, at any special general meeting, called during such MEMBER 's absence.

27. VOTING

27.1. At every general meeting, every MEMBER in person or by proxy and entitled to vote shall have one vote for each ERF registered in his name provided that if a ERF is registered in more than one person's name, then they shall jointly have one vote.

27.2. Save as expressly provided for in these presents, 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 or to vote on any question, either personally or by proxy, at any general meeting.

27.3. At any general meeting a resolution put to the vote of the meeting shall be decided by the **majority** present on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

27.4. Notwithstanding the provisions of 28.2 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the MEMBERS present in person or by proxy, and entitled to vote.

27.5. Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

27.6. An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

27.7. Unless any MEMBER present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity for the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms

with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

28. OTHER PROFESSIONAL OFFICERS

28.1. Save as specifically provided in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the ASSOCIATION , the services of Accountants, Accountants, Attorneys, Advocates, Architects, Engineers, any other professional person of firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to any of the provisions of these presents, provided that any expenditure incurred in respect of the above, shall not exceed 5 % (five percent) of the total annual levy for the year in question unless authorised by a Special Resolution.

29. ACCOUNTS

29.1. 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.

29.2. The ASSOCIATION in general meeting of the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the MEMBERS of the accounts and books of the ASSOCIATION, or any of them, and subject to such conditions and regulations, the accounts and books of the ASSOCIATION shall be open to the inspection of MEMBERS at all reasonable times during normal business hours.

29.3. At each Annual General Meeting the Trustee Committee shall lay before the ASSOCIATION a proper income and expenditure account for the immediately preceding financial year of the ASSOCIATION, or in the case of the first account, for the period since the incorporation of the ASSOCIATION, together with the proper balance sheet made up as the last financial year end of the ASSOCIATION. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Accountants or Accounting Officer, and there shall be attached to the notice sent to MEMBERS convening each Annual General Meeting, as set forth in 16 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

30. AUDIT

30.1. Once at least 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 Accountants or Accounting Officers.

31. DEPOSIT AND INVESTMENT OF FUNDS

31.1. The TRUSTEES shall cause all monies received by the ASSOCIATION to be deposited to the credit of an account or accounts with a registered commercial bank or financial Institution in the name of

the ASSOCIATION and, subject to any direction given or restriction imposed at a General Meeting of the ASSOCIATION, such monies shall only be withdrawn for the purpose of payment of the expenses of the ASSOCIATION or investment.

31.2. 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.

31.3. Interest on monies invested shall be used by the ASSOCIATION for any lawful purpose.

32. **SERVICE OF NOTICES**

32.1. A notice shall be in writing and shall be given or served by the ASSOCIATION upon any MEMBER, either personally or by post in a prepaid registered letter, properly addressed to the MEMBER at the address of the ERF owned by him, which address will serve as the domicilium citandi et executandi of such MEMBER.

32.2. No MEMBER shall be entitled to have a notice served on him at any address not within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.

32.3. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

32.4. Any notice which is faxed to the addressee's fax number as stipulated on the first page hereof, shall be presumed until the contrary is proved, to have been received by the addressee on the date of the sending thereof by fax.

32.5. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice, shall not invalidate the proceedings of that meeting.

33. **INDEMNITY**

33.1. All Trustee MEMBERS and the Accountants or Accounting Officers shall be indemnified out of the funds of the ASSOCIATION against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee MEMBER, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.

33.2. Every Trustee MEMBER, every servant, agent and employee of the ASSOCIATION, and the Accountants or Accounting Officer shall be indemnified by the ASSOCIATION against (and it shall be the duty of the Trustee Committee out of the funds of the ASSOCIATION to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons

in the discharge of any of his/their respective duties, including in the case of a Trustee MEMBER , his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the ASSOCIATION shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

33.3. A Trustee MEMBER shall not be liable for the acts, receipts, neglects or defaults of the Accountants or Accounting Officer or of any of the other Trustee MEMBER s, whether in their capacities as Trustee MEMBERS or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the ASSOCIATION through the insufficiency of title to any PROPERTY acquired by the Trustee Committee for or on behalf of the ASSOCIATION , or for the insufficiency of any security in or upon which any of the monies of the ASSOCIATION shall be invested, or for any loss of damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty of breach of trust.

34. **AMENDMENTS TO CONSTITUTION**

34.1. This constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new rules shall be made, save by a special resolution adopted at an Annual General Meeting or Special Meeting of the MEMBERS.

34.2. The provisions hereof shall not be added to, amended or repealed without the prior consent in writing of the COUNCIL or its assigns, which consent shall not be unreasonably withheld.

35. **EFFECTIVE DATE**

35.1. The provisions hereof shall come into force simultaneously with the first passing of the first transfer of an Erf in the Cape Town Deeds Registry.

Accepted onat.....

.....

MEMBER /Owner

Chairman

.....

.....

MEMBER /Owner

Vice-Chairman