

CONSTITUTION

OF

LYNNWOOD ESTATE

HOME OWNERS' ASSOCIATION

*(accepted on and effective from *)*

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1. **PRELIMINARY**

1.1. **PREAMBLE**

Whereas Western Oasis Property Development Proprietary Limited is at present developing certain land hereinafter described for residential purposes and whereas such land will comprise a township to be administered by the LYNNWOOD Estate Home Owners' Association subject to the provisions of the Land Use Planning Ordinance No 95 of 1986;

Now therefore this document shall henceforth serve as the Constitution of the LYNNWOOD Estate Home Owners' Association.

1.2. **ESTABLISHMENT**

It is recorded that the Association was established on the date of registration of transfer of the first Erf in the Township from the Developer to an Owner, and this Constitution, as may be amended from time to time, is binding upon the Developer and all Members.

1.3. **DEFINITIONS**

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

Architect means such architect as may be appointed by the Developer from time to time.

Architectural Guidelines means the architectural design and building rules formulated from time to time by the Trustees of the Association to ensure uniformity of architectural style, design and standard of finishes within the Township.

Alienate means to alienate any Erf or part thereof and includes alienation by way of sale, exchange, donation, deed, intestate or testate succession, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolute condition and "alienation" shall have a corresponding meaning.

Association means the LYNNWOOD ESTATE HOME OWNERS' ASSOCIATION (LEHOA).

Auditors means the Auditors of the Association.

Chairman means the chairman of the Trustee Committee.

Common Property means all areas designated as common property on the Development Layout Plan (Annexure A to this Constitution), including all roads, pavements,

	fencing, gardens, and other facilities and open areas.
Conduct Rules means	such rules as the Trustee Committee may make from time to time in regard to the use by Members, members of their households, their guests, employees and tenants, of the common property and facilities in the Township and other relevant matters.
Constitution means	this document with the annexures hereto, drawn in terms of Section 29 of Ordinance No. 15 of 1985, as may be amended from time to time.
Developer means	Western Oasis Property Development Proprietary Limited (Registration No 2000/019584/07), a duly registered South African Private company.
Developer Trustee means	a Trustee appointed by the Developer.
Development Period means	the period up until the date on which 80% of the total number of Erven comprising the Township, as determined by the Development Layout Plan (Annexure A to this Constitution), have been transferred by the Developer to an Owner.
Erf means	every Erf in the Township which in terms of the subdivision of the Township enjoys single residential use rights.
Estate means	the entire estate to be known as LYNNWOOD Estate, developed or to be developed on Portion 45 of the farm "Ganse Vallel" No 444, situate at Plettenberg Bay.
Improvements means	any structure of whatever nature constructed or erected or to be constructed or erected on an Erf.
Levy means	the levy due to the Association by a Member, referred to in clause 3 hereof.
Local Authority means	the Local Authority having jurisdiction over the Township which, at date of approval of the Township is the Bitou Local Municipality.
LUPO means	the Land Use Planning Ordinance No 15/1985 (as amended) and includes any substituted legislation.
Managing Agent means	any person or body appointed by the Association as an independent contractor to undertake any of the functions of the Association.

Member means	every registered owner of an erf in the Township, and the Developer, until the date on which all Erven comprising the Township, as determined by the approved Development Layout Plan (Annexure A to this Constitution), as may be amended from time to time, have been transferred by the Developer.
Member Trustee means	a person appointed to the Trustee Committee by the Members.
Owner means	the registered owner of an Erf in the Township.
Township means	the entire Township to be known as LYNNWOOD Estate, developed or to be developed on Portion 45 of the Farm "Ganse Vallei" No 444, situated at Plettenberg Bay.
Trustees mean	the Developer Trustees and the Member Trustees collectively.
Trustee Committee means	the committee of trustees appointed in terms of clause 4 to manage and administer the business and affairs of the Association.
Resolution means	a resolution passed at an annual general meeting or any other meeting of the Association by an ordinary majority of the votes of Members entitled to vote at such meeting.

1.4. INTERPRETATION

- 1.4.1. The clause headings are for convenience and shall be disregarded in construing this Constitution.
- 1.4.2. Unless the context clearly indicates a contrary intention:
- 1.4.2.1. the singular shall include the plural and vice versa; and
- 1.4.2.2. a reference to any one gender shall include the other genders; and
- 1.4.2.3. a reference to natural persons includes legal persons and vice versa.
- 1.4.3. Words and expressions defined in any sub-clause shall, for the purpose of this clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
- 1.4.4. When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

- 1.4.5. Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 1.4.6. If any provision of this Constitution is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 1.4.7. If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members, then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 1.4.8. The annexures to this Constitution are deemed to be incorporated in the form part of this Constitution.

1.5. **OBJECTS**

- 1.5.1. To manage, administer and maintain the Township for the mutual benefit, use and enjoyment of all Members of the Association, in such a manner as to ensure that Members derive the maximum collective benefit therefrom, according to prevailing standards in the Estate.
- 1.5.2. To establish a fund for expenses of the Association, including a provision for future expenses.
- 1.5.3. To determine and collect levies for the purposes of the said fund from Members.
- 1.5.4. To enforce Members' obligations in terms of this Constitution, any Conduct Rules created in terms thereof, the Estate Rules, and the Architectural Guidelines.
- 1.5.5. To ensure compliance with the legal requirements of the Local Authority, including the conditions of establishment and rezoning imposed by any competent authority.
- 1.5.6. To maintain all common land, services, facilities, installations and other common assets in the Township according to the prevailing standards in the Estate, and where necessary, to repair and replace such services, facilities, installations and other assets.
- 1.5.7. In general:
 - 1.5.7.1. to ensure the maintenance and promotion of harmony in the physical and social environment of the Township.
 - 1.5.7.2. to promote and encourage Members to maintain at all times the external appearances of their properties in a clean and tidy condition and to maintain high standards in this regard so as to ensure that the appearance of their properties are both aesthetically pleasing and desirable when viewed from the outside and further to take steps to enforce the maintenance of such standards where deemed necessary in the opinion of the Trustees.

- 1.5.8. To control the transfer of Erven in the Township and the conditions imposed by the Local Authority and conditions imposed by the Developer in the Agreement of Sale between the Developer and any Owner of an Erf.
- 1.5.9. To take transfer of, maintain and insure, where necessary, the roads and common Areas falling within the Township, and improvements thereupon and control the usage thereof and of the facilities belonging to the Association or falling under its control.
- 1.5.10. To create suitable Conduct Rules for the Township.

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

2. STATUS, FUNCTIONS AND MEMBERSHIP

2.1. STATUS

- 2.1.1. The Association shall be designated as the LYNNWOOD Estate Home Owners' Association and shall, subject to the provisions of this Constitution, be responsible for the control, administration and management of the Township for the benefit of all Members.
- 2.1.2. The Association shall have perpetual succession and shall be capable of suing and being sued in its corporate name in respect of :
 - 2.1.2.1. any contract made by it;
 - 2.1.2.2. any damage to the Common Area falling within the Township or other property of the Association;
 - 2.1.2.3. any matter in connection with the land or improvements for which the Association is liable;
 - 2.1.2.4. any matter arising out of the exercise of its powers or the performance or non-performance of its duties;
 - 2.1.2.5. any claim by or against the Developer in respect of the Development, provided that such action is authorised by a majority of 75% of the Trustees.
- 2.1.3. It is recorded that the Association has been established as a non-profit making institution for the purposes and objectives set out in this Constitution.
- 2.1.4. No member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in the Association and be controlled by the Trustee Committee on behalf of its Members.

2.2. MEMBERSHIP

- 2.2.1. Upon establishment of the Association the Members shall consist of the Developer and every registered owner of an Erf.

- 2.2.2. A person reflected in the records of the Deeds Office concerned as the registered owner of any Erf in the Township shall be deemed to be the registered Owner of such Erf.
- 2.2.3. Where any Erf is owned by more than one person, all the registered Owners of that Erf shall together be deemed to be one Member and have the rights and obligations of one Member of the Association.
- 2.2.4. When a person becomes the registered Owner of an Erf within the Township, he shall *ipso facto* become a Member of the Association, and when he ceases to be the registered Owner of any Erf in the Township, he shall *ipso facto* cease to be a Member of the Association.
- 2.2.5. A Member may not alienate an Erf registered in the Member's name unless the deed of sale provides that:
 - 2.2.5.1. the sale is subject to the consent of the Association; and
 - 2.2.5.2. the transferee will become a Member of the Association upon the registration of the Erf in the transferee's name.
- 2.2.6. A Member must forthwith notify the Association when an Erf is to be alienated and must apply in writing to the Trustee Committee for consent. The Trustee Committee must give the consent without delay if:
 - 2.2.6.1. the Member has paid all amounts due by the Member to the Association; and
 - 2.2.6.2. the purchaser of the Erf has agreed in writing to comply with this Constitution.
- 2.2.7. The registered Owner of an Erf may not resign as Member of the Association.
- 2.2.8. The Developer shall cease to be a Member upon transfer of the last Erf to another Owner.

2.3. **FUNCTIONS**

- 2.3.1. The functions to be performed by the Association shall include:
 - 2.3.1.1. the establishment of a fund to defray the expenses of the Association relating to security, insurance, landscaping, statutory rates, taxes and charges and administrative expenses, including reasonable provision for future expenses resulting from maintenance, repairs, renewal and upgrading when necessary;
 - 2.3.1.2. to determine and collect contributions from Members in order to maintain the funds of the Association;
 - 2.3.1.3. to properly maintain the Common Property falling within the Township and all assets of the Association;
 - 2.3.1.4. to ensure compliance with the provisions of this Constitution, any law, ordinance or by-law relating to the Township, the Architectural Guidelines and any Conduct Rules made in terms hereof, by all Members and occupiers;

- 2.3.1.5. to obtain insurance policies on behalf of the Association, as may be considered necessary by the Trustees.
- 2.3.2. To ensure that high environmental, building and social standards are maintained within the Township.
- 2.3.3. Such further functions as are delegated to the Trustees in terms of clause 4.2 hereof.
- 2.3.4. In general to control, manage and administer the Township for the benefit of all Members.

2.4. **DOMICILIUM**

- 2.4.1. The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
 - 2.4.1.1. such address shall be the address of the chairman or of a resident Trustee nominated by the Trustees or the address of any duly appointed Managing Agent;
 - 2.4.1.2. the Trustees shall give notice to all Members of any change of such address.

3. **BUDGET AND LEVIES**

3.1. **THE BUDGET AND DETERMINATION OF LEVIES**

- 3.1.1. The Trustees must, as soon as possible after the end of each financial year, prepare a budget of income and expenditure for the next financial year in respect of the Common Areas falling within the Township, assets of the Association and all administrative and other expenses relating thereto for which the Association is responsible, and an amount proposed to be held in reserve in respect of future maintenance, repairs or capital expenditure. Provision should be made for at least the following:
 - 3.1.1.1. expenses in respect of security
 - 3.1.1.2. maintenance expenses
 - 3.1.1.3. insurance premiums, if applicable
 - 3.1.1.4. landscaping expenses
 - 3.1.1.5. expenses and charges in respect of services in respect of Common Property falling within the Township
 - 3.1.1.6. statutory rates, taxes and charges
 - 3.1.1.7. administrative expenses
 - 3.1.1.8. future maintenance and repairs or capital expenditure.

- 3.1.2. In compiling the budget as required in clause 3.1 –
 - 3.1.2.1. Expenses relating to the entire Township for which the Association is responsible, shall be taken into account.
 - 3.1.2.2. Liability for payment of the above levies to the Association shall vest in the Members. The authority and function to collect levies from Members may be delegated by the Association to a Managing Agent in terms of an agreement or agreements reached between the Association and such Managing Agent.
- 3.1.3. The Trustee Committee may from time to time, when necessary, make special levies upon the Members in respect of all expenses which have not been included in the budget referred to in clause 3.1.
 - 3.1.3.1. The Trustee Committee must inform Members in writing of a special levy, and give reasons therefor.
 - 3.1.3.2. The Trustee Committee may not commit itself to expenditure for which it intends to raise a special levy until 21 (twenty one) days after posting notices of the levy to Members. If, before this period has expired, a general meeting is called by Members in terms of clause 5.3 to discuss the levy, the Trustee Committee may not commit itself to the expenditure unless the expenditure and the levy have been approved at the general meeting.
- 3.1.4. Clause 3.1.3.2 does not apply where, in the opinion of the Trustee Committee, the situation is of such an urgent nature that a delay might seriously harm the interests of the Association or its Members.
- 3.1.5. Special levies may be made payable in one sum or in such instalments as the Trustees may determine in their own discretion.

3.2. **COLLECTION OF LEVIES**

- 3.2.1. Immediately upon approval of the budget at the annual general meeting, the Trustee committee shall calculate the contribution payable by each Member, which contributions shall be payable as monthly levies, as from the date of the annual general meeting. The Trustees must give written notification in this regard to the Members within 14 (fourteen) days.
- 3.2.2. No Owner shall enjoy the privileges of usage of the Common Areas, facilities or membership unless he/she shall have paid every levy, or other sum (if any) which may be due and payable to the Association in terms of this Constitution.
- 3.2.3. All levies are due and payable on the first day of each month.
- 3.2.4. If a Member fails to pay its levies to the Association on due date, the Association may institute an action for the recovery thereof in any competent court.
- 3.2.5. Where any Erf is owned by more than one person, all the registered Owners of the Erf shall be jointly and severally liable for the due performance of any obligation to the Association.

- 3.2.6. A Member shall be liable for all legal costs, including attorney and client costs, collection commission, expenses and other charges incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due to it, or enforcing compliance with this Constitution.
- 3.2.7. The Association shall be entitled to charge interest on any arrear amounts at such a rate as the Trustees may from time to time determine. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.

4. THE TRUSTEES AND MANAGEMENT

4.1. THE OFFICE AND QUALIFICATIONS

- 4.1.1. The affairs of the Association shall be managed and controlled by a Trustee Committee consisting of 5 (five) Trustees.
- 4.1.2. For the duration of the Development period the Trustee Committee shall comprise of 2 (two) Member Trustees representing the Members, and 3 (three) Developer Trustees. Upon the Development period coming to an end, the Association may call a general meeting to appoint 3 (three) Member Trustees to replace the Developer Trustees.
- 4.1.3. A Trustee shall be an individual but need not himself be a Member provided that the majority of Member Trustees shall be Members.
- 4.1.4. A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- 4.1.5. The Developer shall appoint the first Developer Trustees upon formation of the Association.
- 4.1.6. The Trustee Committee must, not later than 2 (two) calendar months before each annual general meeting, by notice in writing to Members, call for nominations for Trustee Members.
- 4.1.7. A nomination for a Trustee Member must be:
- 4.1.7.1. in writing;
 - 4.1.7.2. proposed by at least 3 (three) Members;
 - 4.1.7.3. accepted by the nominee; and
 - 4.1.7.4. delivered to the offices of the Association not later than 48 (forty eight) hours before the annual general meeting.
- 4.1.8. Subject to the provisions of clause 4.1.9, each Member Trustee shall continue to hold office until the annual general meeting of the Association following his appointment, at which meeting each Member Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The developer shall, by

written notice to the Trustees, be entitled to remove any Developer Trustee appointed by the Developer and upon such removal or upon any Developer Trustee ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.

- 4.1.9. A Trustee shall be deemed to have vacated his office as such upon:
 - 4.1.9.1. his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
 - 4.1.9.2. his conviction for any offence involving dishonesty;
 - 4.1.9.3. his becoming of unsound mind and being found lunatic;
 - 4.1.9.4. within 14 (fourteen) days of receipt of written notice of resignation given to the other Trustees by the relevant Trustee;
 - 4.1.9.5. his death;
 - 4.1.9.6. his being removed from office by a resolution of Trustees;
 - 4.1.9.7. his being disentitled to exercise a vote in terms of this Constitution provided he is a Member Trustee and provided he has remained in default after having been duly notified in writing to comply with the relevant provision or requirement.
 - 4.1.9.8. Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 4.1.9, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustees. Should the office of a Trustee fall vacant prior to the next annual general meeting of the Association, the vacancy in question may be filled by the Developer if the vacancy is in respect of a Developer Trustee and by the remaining Member Trustees if the vacancy is in respect of a Member Trustee and the person so appointed shall hold office until the next annual general meeting.
 - 4.1.9.9. The first chairman shall be appointed by the Developer and shall hold office until the first annual general meeting provided that such office shall *ipso facto* be vacated by the Trustee who was appointed chairman upon his ceasing to be a Trustee for any reason.
 - 4.1.9.10. Within 7 (seven) days of the holding of each annual general meeting of the Association the Trustees shall meet and shall elect from their own number the chairman who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairman shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the aforesaid office, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
 - 4.1.9.11. Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees and all annual general meetings of the Association and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by Members and shall allow or refuse to permit

guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings.

- 4.1.9.12. If the chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such meeting shall choose another Chairman for such meeting.
- 4.1.9.13. If any Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.
- 4.1.9.14. A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the Association, by virtue of any interest he may have therein.
- 4.1.9.15. No contract concluded on behalf of the trustees shall be valid and binding unless it is signed by the Chairman and one Trustee, the latter specifically appointed as authorised signatory in terms of the Resolution of Trustees whereby the Trustees bind the Association.
- 4.1.9.16. Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them in or about the performance of their duties as Trustees and/or Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 4.1.9.17. Trustees may not make loans on behalf of the Association to Members or to themselves.

4.2. **FUNCTIONS, POWERS AND DUTIES OF TRUSTEES**

- 4.2.1. Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any Managing Agent, 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.
- 4.2.2. Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 4.2.3. The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 4.2.4. The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution in such reasonable manner as they shall decide from time to time.

- 4.2.5. The Trustees may make regulations and rules not inconsistent with this Constitution or any further regulations or rules prescribed by the Association in general meeting:
- 4.2.5.1. as to the resolution of disputes generally;
 - 4.2.5.2. for the furtherance and promotion of any of the objects of the Association;
 - 4.2.5.3. for the better management of the affairs of the Association;
 - 4.2.5.4. for the advancement of the interests of Members;
 - 4.2.5.5. for the conduct of Trustees at meetings of Trustees and meetings of the Association;
 - 4.2.5.6. to levy and collect contributions from Members in accordance with clause 3;
 - 4.2.5.7. to levy and recover from Members moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association;
 - 4.2.5.8. to assist it in administering and governing its activities generally.
- 4.2.6. Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
- 4.2.6.1. the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven in the Township in strict accordance with the provisions of the Architectural Guidelines. The Trustees shall be entitled to require any Member, who shall be obliged, to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;
 - 4.2.6.2. the making of, entering into and carrying out of agreements with third parties on behalf of the Association for any purposes of the Association;
 - 4.2.6.3. the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;
 - 4.2.6.4. the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, refuse removal, electricity supply, landscaping, maintenance of private roads and suchlike, where applicable;
 - 4.2.6.5. the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose.
- 4.3. **MEETINGS AND RESOLUTIONS OF TRUSTEE COMMITTEE**
- 4.3.1. The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
 - 4.3.2. Meetings of the Trustees shall be held at least once every 6 (six) months.

- 4.3.3. The Chairman always has the right to convene meetings of Trustees.
- 4.3.4. A Trustee may, provided he has the support in writing of 2 (two) other Trustees, at any time convene a meeting of Trustees by giving to the other Trustees not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 4.3.5. A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.
- 4.3.6. The quorum necessary for the holding of any meeting of Trustees shall be 3 (three) Trustees present personally provided that, for as long as the developer is a Member, no less than 2 (two) Trustees present are Developer Trustees. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum.
- 4.3.7. Any Resolution of the Trustees shall be carried by a simple majority of all votes cast.
- 4.3.8. Unless any Trustee present shall, before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the proprietary or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes book of Trustees' meetings 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 Resolution 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.
- 4.3.9. The Chairman shall preside as such at all meetings of Trustees provided that, should any meeting of Trustees the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 4.3.10. The Trustees shall:
- 4.3.10.1. ensure that minutes are taken of every meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;
- 4.3.10.2. cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees, and in a general minute book in respect of all general meetings;
- 4.3.10.3. keep all books of meetings of Trustees in perpetuity;
- 4.3.10.4. on the written application of any Member, make all minutes of proceedings available for inspection by such Member.

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

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

4.4. **FINANCIAL YEAR END**

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

4.5. **BOOKS OF ACCOUNT**

4.5.1. The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association including:

4.5.1.1. a record of the assets and liabilities of the Association;

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

4.5.1.3. a register of Members, showing in each case their addresses;

4.5.1.4. individual ledger accounts in respect of every Member.

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

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

4.5.4. The Association in annual general meeting or the Trustees may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by Members of the accounts and books of the Association, or any of them, and subsequent to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

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

4.6. DEPOSIT AND INVESTMENT OF FUNDS

- 4.6.1. The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- 4.6.2. Any funds not immediately required for disbursements may be invested in a savings, money market or similar account with any financial institution or any other registered deposit receiving institution approved by the Trustees from time to time.
- 4.6.3. Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

4.7. AUDIT

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

4.8. MANAGING AGENT

- 4.8.1. The Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control manage and administer the Township and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Trustees notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.
- 4.8.2. The Trustees shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Trustees and/or the Association as a result of such cancellation.

5. MEETINGS

5.1. ANNUAL GENERAL MEETINGS

- 5.1.1. The Association shall, within 12 (twelve) months of the date of establishment of the Association hold a general meeting as its first annual general meeting. Thereafter,

within 3 (three) months of each financial year end of the Association it shall hold subsequent annual general meetings.

5.1.2. Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.

5.1.3. An annual general meeting shall be attended by at least 3 (three) Trustees. Members shall be entitled to attend an annual general meeting and shall, subject to the discipline exercised by the Chairman, be allowed to speak.

5.2. **AGENDA AT ANNUAL GENERAL MEETINGS**

In addition to any other matters required by legislation or by this Constitution to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:

5.2.1. the consideration of the Chairman's report;

5.2.2. the election of the new Member Trustees, and announcement of Developer Trustees, if applicable;

5.2.3. the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;

5.2.4. the consideration and approval, with or without amendment, of the budget as presented by the Trustees;

5.2.5. any other business pertinent to such meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions.

5.3. **SPECIAL GENERAL MEETINGS**

5.3.1. All general meetings other than annual general meetings are special general meetings.

5.3.2. The Trustee Committee may at any time convene a special general meeting.

5.3.3. The Trustee Committee must convene a special general meeting if requested to do so in writing by at least 10 (ten) Members.

5.4. **NOTICE**

5.4.1. A general meeting shall be called by not less than 21 (twenty one) days' notice as provided in clause 5.4.2. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Trustees to such persons as are, under this Constitution, entitled to receive such notices from the Association.

5.4.2. Notice of a general meeting may be sent by post to the Members' chosen *domicilium citandi et executandi* or transmitted by telefax or electronic mail.

5.4.3. The non-receipt of notice of a general meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

5.5. **QUORUM**

5.5.1. No business shall be transacted at any general meeting unless a quorum of Members is present (or represented by proxy) when the meeting proceeds to business. The quorum necessary for the holding of any meeting shall be 25% (twenty five per centum) in number of the Members.

5.5.2. If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present shall constitute a quorum.

5.6. **PROXIES**

5.6.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The document appointing a proxy must be signed by the Member or by a person duly authorised to sign on behalf of the Member.

5.6.2. The document appointing a proxy and, if applicable, the Power of Attorney or other authority under which it was signed, or a certified copy thereof, must be deposited at the offices of the Association at least 24 (twenty four) hours before the time fixed for the meeting. All such documents must be available for inspection by any person at the meeting concerned.

5.6.3. A document appointing a proxy is not valid for more than 6 (six) months, and it may be cancelled at any time by the Member who has appointed the proxy, by giving notice to this effect to the Trustee Committee.

5.7. **PROCEDURE AT GENERAL MEETINGS**

5.7.1. The Chairman shall preside as such at all meetings provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Trustees present at such meeting shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

5.7.2. The Chairman may, with the consent of any meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place. No notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as the original meeting. No business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place.

5.8. **VOTING**

At every annual general meeting:

- 5.8.1. every Member present, including the Developer, in person or by proxy and entitled to vote, has one vote for each Erf registered in the Member's name;
- 5.8.2. if an Erf is registered in the names of more than one person, they jointly have one vote and shall decide on a nominee to cast the vote;
- 5.8.3. the Developer shall have 30 (thirty) votes, in addition to the votes conferred upon it in terms of clause 5.8.1 above, provided however that this provision shall apply during the Development period only;
- 5.8.4. unless the Chairman of the meeting otherwise directs, all voting shall be on a show of hands of the Members present in person or by proxy and entitled to vote;
- 5.8.5. any resolution shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question;
- 5.8.6. the Chairman may cast a deciding vote when there is an equality of votes on any question;
- 5.8.7. no person other than a Member duly registered, and who has 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 shall be entitled to vote on any question, either personally or by proxy, at any general meeting;
- 5.8.8. unless any Member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure, 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. An entry in the minutes to the effect that any resolution has been adopted or rejected, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman as to the result of any voting at the meeting.

6. **MEMBERS AND OWNERS' RIGHTS AND OBLIGATIONS**

6.1. **GENERAL**

- 6.1.1. Every Member is obliged to comply with:
 - 6.1.1.1. the provisions of this Constitution, the Estate Rules, and all rules or regulations passed by the Association or the Trustees;
 - 6.1.1.2. the provisions of the Architectural Guidelines;

- 6.1.1.3. any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member;
- 6.1.1.4. any directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution.
- 6.1.2. Every Member shall, to the best of his/her ability, further the objects and interest of the Association.
- 6.1.3. A Member shall not consolidate an Erf with one or more erven without the written consent of the Developer for as long as the Developer is a Member and, thereafter, of the Trustees.

6.2. **DOMICILIUM**

- 6.2.1. The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf.
- 6.2.2. It shall be competent to give any notice to a Member by telefax or electronic email where the Member's telefax number or email address is recorded with the Trustees.
- 6.2.3. A Member may by notice in writing to the Trustees alter his *domicilium* provided such new address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.

6.3. **USAGE (RESTRICTIONS)**

- 6.3.1. No member shall apply for the rezoning of his Erf with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf for any purpose other than the permitted use applicable upon establishment of the Township. In particular, no Member shall be allowed to use his Erf for the supply of temporary accommodation for consideration and/or letting out on a short term basis, i.e. for periods shorter than one month.
- 6.3.2. No Member shall conduct any business on an Erf or use it for purposes other than residential purposes unless the Trustees have, subject to clause 6.3.1, in writing, approved the used to which the Erf is to be put; and the Local Authority has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations and there has been compliance with the following:
 - 6.3.2.1. any Member wishing to conduct a business on his Erf or how wishes to use his Erf for purposes other than residential, shall apply in writing to the Trustees for permission to do so. The Trustees shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the Trustees deem necessary;
 - 6.3.2.2. an application in terms of the foregoing shall contain a full description of the proposed business or usage, including but not limited to:
 - 6.3.2.2.1. the type of business;

- 6.3.2.2.2. the number of full time and/or part time staff;
- 6.3.2.2.3. the times and duration of the business operation, including the number of days per week;
- 6.3.2.2.4. the projected growth of the business operation;
- 6.3.2.2.5. whether any alteration to the existing Improvements is proposed;
- 6.3.2.2.6. on which portion of the Improvements the business activity is to be located;
- 6.3.2.2.7. the number and type of vehicles which will be regularly involved in the business operation;
- 6.3.2.2.8. the estimated number of visitors per week resulting from the business operation;
- 6.3.2.2.9. the estimated number of deliveries necessitated by the business operation;
- 6.3.2.2.10. what provision is to be made for parking;
- 6.3.2.2.11. the likely impact of the business operation on neighbouring properties and the neighbourhood in general.
- 6.3.3. The Trustees shall not approve any such application unless they are satisfied that the application complies with the following:
 - 6.3.3.1. the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of neighbours;
 - 6.3.3.2. the number of employees involved in the running of the business operation will not exceed 2 (two);
 - 6.3.3.3. the Member will reside permanently on the Erf in respect whereof the application is made;
 - 6.3.3.4. Members who are affected by the application are in agreement therewith;
 - 6.3.3.5. adequate provision has been made for parking within the Erf and the landscaping of the Erf will be suitable for the type of business contemplated and that no parking of vehicles off the Erf within the Township will result from the business operation;
 - 6.3.3.6. the granting of the application will not have any significant effect on the density of traffic in the Township;
 - 6.3.3.7. non-residents will not be afforded uncontrolled access into the Township;
 - 6.3.3.8. no signage will be erected;
 - 6.3.3.9. the hours of the business operation will be confined between 08h00 and 18h00 on weekdays and no business will be conducted on Saturdays, Sundays and proclaimed public holidays.

- 6.3.4. Should any Member to whom permission has been granted for the conduct of a business change any aspect of such business then such Member shall submit a fresh application in accordance with the provisions hereof to continue such business.
- 6.3.5. No Member to whom approval has been granted shall be entitled to erect any sign or advertisement on his Erf or on any of the common areas in the Township in connection with such business save with the approval of the Association.
- 6.3.6. The Trustees shall not at any time or under any circumstances be entitled to approve the use of an Erf for the supply of temporary accommodation for consideration.
- 6.3.7. No person shall be entitled to conduct a guest house or similar establishment on any portion of the Township.
- 6.3.8. No Member shall permit the number of occupants of his Erf to exceed 2 (two) persons per bedroom. The word "occupants" shall include but shall not be limited to any person who resides or stays on such Erf on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the Member or whether such person pays rental or gives any other form of consideration in respect of such Erf or any portion thereof.

6.4. **ARCHITECTURAL AND LANDSCAPING GUIDE**

- 6.4.1. The Architectural Guide (Annexure B to this Constitution), constitutes an integral part of this Constitution and, until conclusion of the Development Period, the Architectural Guide may be amended, substituted, added to or repealed only at the instance of the Developer, and thereafter by means of a Trustee Resolution.
- 6.4.2. All landscaping, plants and all Improvements shall be of approved design and of sound construction and shall comply with the provisions of the Architectural Guide.
- 6.4.3. No construction or erection of Improvements on an Erf may commence prior to the approval of plans for such Improvements and, in this regard:
 - 6.4.3.1. a full set of proposed building plans which indicate both construction and design details shall be submitted to the Architect;
 - 6.4.3.2. thereafter the plans, as approved by the Architect and the Developer, shall be submitted to the Local Authority for approval;
 - 6.4.3.3. having obtained the approval of the Local Authority, the Member shall comply with all conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Architectural Guide read with the plans;
 - 6.4.3.4. an initial scrutiny fee payable to the Architect shall be paid by the Owner. Should any amended and/or further plans be submitted, an additional scrutiny fee shall be payable by the Owner.
- 6.4.4. Approval of building plans will not be granted by the Local Authority without the prior written approval of the Architect and the Developer thereto, which approval shall be evidenced by an endorsement by the Architect and the Developer.

6.5. **BREACH**

6.5.1. The Trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause 6.5.

6.5.2. If any Member fails in the observance of any of the provisions of this Constitution with regard to Improvements and/or the provisions of the Architectural Guidelines and/or fails to comply with any rules or regulations made in terms thereof, the Trustees may on behalf of and in the name of the Association serve notice on such Member, calling upon him/her to remedy such breach within a time specified in such notice and, failing timeous compliance:

6.5.2.1. enter upon the Erf to take such action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand;

and/or

6.5.2.2. call upon such Member in writing to remove or alter within a specified period any portion of the Improvements or any addition erected contrary to the provisions of this Constitution read with the Architectural Guidelines and, failing which, the matter shall be referred to a special general meeting of the Association convened to afford Members the opportunity to give directions to the Trustees. The Resolution of the Association at such meeting shall be binding upon such defaulting Member and shall be implemented by the Trustees;

and/or

6.5.2.3. institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.

6.5.3. If any Member fails to make payment on due date of levies or other amounts payable by such Member, the Trustees may give notice to such Member requiring him to remedy such breach within such period as the Trustees may determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in obtaining recovery, including interest on any arrear amounts at a rate to be determined by the Trustees from time to time.

6.5.4. Nothing in the foregoing shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any Member arising from any cause of action whatsoever or for any other relief.

6.5.5. In the event of any breach of this Constitution by the members of any Member's household or his invitees or lessees, such breach shall be deemed to have been committed by the Owner himself but, without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person actually

committing the breach as they may in their discretion deem fit, with or without proceedings against the Member.

7. RELATIONSHIPS WITH DEVELOPER

7.1. PHASED DEVELOPMENT

7.1.1. The Developer intends to develop and market the Township in phases as the Developer deems fit and, for as long as the Developer is a Member of the Association, the Developer shall enjoy unrestricted rights with regard to the marketing of the Township and, in particular, the right to erect signage within the Township, and to perform all activities normally associated with development and building operations.

7.1.2. The Developer shall, in its absolute discretion, be entitled to apply for and subject to approval by the Local Authority, vary the layout and/or zoning and/or size and/or boundaries of Erven and/or the extent and position of streets comprising the Township and Members shall be bound thereby and shall have no claim of whatever nature against the Developer arising therefrom. Insofar as the consent of a Member is required for any of the foregoing, the Developer (represented by any one of its Directors) is irrevocably granted a power of attorney to grant any/all such consents on behalf of Members, as may be required.

7.2. TRANSFER OF LAND

The Developer shall, free of consideration, transfer to the Association the Common Areas falling within the Township and private roads demarcated as such on the approved surveyor's diagrams in respect of the township from time to time. Upon registration of transfer to the Association, the risk in such Common Areas and private open roads passes to the Association and the Association becomes responsible for the maintenance and upkeep thereof as well as for the rates and taxes and all charges attaching thereto.

8. RELATIONSHIP WITH LOCAL AUTHORITY

8.1. GENERAL

8.1.1. An Owner shall, without compensation, allow electricity, telephone and television cables and/or wires and main and/or other water pipes and the sewerage and drainage, including storm water, of any Erf to be conveyed across his Erf if considered necessary by the Association and/or Developer in such manner and position as may from time to time be reasonably required; this shall include the right of access to such Erf at any reasonable time for the purpose of constructing, altering, removing or inspection of any works connected with the above.

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

9. **GENERAL**

9.1. **INDEMNITY**

9.1.1. All the Trustees are indemnified by the Association against any liabilities *bona fide* incurred by them in their capacities as such and in the case of the Chairman in his capacity as Chairman, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.

9.1.2. A Trustee shall not be liable for the acts, or omission of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairman or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgment or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of *mala fides*, breach of duty or breach of trust.

9.2. **DEFAMATION PRIVILEGE**

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

9.3. **RISK**

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

9.4. **AMENDMENT OF CONSTITUTION**

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

9.4.1.1. Developer, until such time as the Development Period has come to an end; and

9.4.1.2. the Local Authority.

9.4.2. Subject to the provisions of clause 9.4.1, such addition, amendment, substitution, or repeal shall require the approval of at least 60% (sixty per centum) of the total number of votes of Members of the Association given at a special general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirement for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.

9.5. **ARBITRATION**

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

9.5.1.1. the interpretation of;

9.5.1.2. the effect of;

9.5.1.3. their respective rights or obligations under;

9.5.1.4. a breach of (save for non-payment of levies or any other amount due by a Member in terms of this Constitution),

this Constitution, such dispute shall be decided by arbitration in the manner set out in this clause 9.5.

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

9.5.3. The arbitration referred to in clause 9.5.1 shall:

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

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

9.5.3.3. be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.

9.5.4. The arbitrator shall be a practising senior counsel or attorney of not less than 10 (ten) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the President of the Cape Town Bar.

- 9.5.5. The arbitrator shall in giving his award have regard to the principles contained in this Constitution and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of law need not be observed or be taken into account by him in arriving at his decision.
- 9.5.6. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties, or by the Association, or by more than one of these parties in a proportion, as he in his sole discretion may deem fit.
- 9.5.7. Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 9.5.7.1. shall be final and binding on each of them; and
- 9.5.7.2. shall be carried into effect immediately; and
- 9.5.7.3. may be made an order of court to whose jurisdiction the parties are subject.
- 9.5.8. Notwithstanding anything to the contrary contained in this clause 9.5, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for the purpose of restraining or interdicting breaches of any of the provisions of this Constitution, including the Architectural Guidelines.

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