



**CONSTITUTION
OF THE MASTER
HOME OWNERS' ASSOCIATION OF
BELLADONNA ESTATE**





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1. ESTABLISHMENT IN TERMS OF STATUTE

The Association is constituted, as a body corporate, in terms of Section 29 of LUPO in accordance with the conditions imposed by the Developer of the Land and by the Local Authority, when approving the same in terms of Sections 25(1) and 42 of the said ordinance.

2. DEFINITIONS AND INTERPRETATION

2.1. In this Constitution the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them;

- 2.1.1 "Alienate" means the Alienation of any Land Unit, or portion of the Land, or part thereof whether by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, change in shareholding of a company or Membership in a close corporation, irrespective of whether such alienation is subject to a resolutive condition or a condition precedent, and alienation shall have a corresponding meaning;
- 2.1.2 "Architect" means an Architect appointed by the Developer, during the Development Period, and thereafter by the Association, for the purpose of scrutinising all plans on behalf of the Association;
- 2.1.3 "Architectural Guidelines" means the guidelines relating to the design and construction requirements prepared for and applicable to the Development counter, as contemplated in Clause 13, and including any Landscaping guidelines that may be applicable, from time to time and, which guidelines may be amended from time to time;
- 2.1.4 "Architectural Review Committee" means the committee established by the Developer during the Development Period and whose functions are described in Clause 13 of this Constitution;
- 2.1.5 "Association" means the Belladonna Master Home Owners' Association, an Association not for gain, constituted in terms hereof;
- 2.1.6 "Auditors" means the Auditors of the Association, being such Auditors as may be appointed by the Developer during the Development Period and thereafter by the Board, from time to time;



- 2.1.7 "Body Corporate" means any Body Corporate established in respect of any Land Unit, in terms of Section 36 of the Sectional Titles Act, that does not form part of a Sub-Association;
- 2.1.8 "Board" means the Trustees assembled as a Board at which a quorum is present;
- 2.1.9 "Chairperson" means the Chairperson of the Board, from time to time;
- 2.1.10 "Clear Days" means in a computation of days, the exclusion of the first and last day of the period to be calculated;
- 2.1.11 "CLO" means a generally acknowledged and accepted Community Leader which Community Leader may not be an Owner or Occupant, may be of either gender, will be appointed by the Developer during the Development Period as a Trustee and, will be appointed by The Developer as the Chairman for the first year after termination of the Development Period, and thereafter elected on a yearly basis by the Members, as the Chairman;
- 2.1.12 "Common Property" means all Public Roads and Public Open Spaces owned and managed by the Local Authority, which areas will be considered to be Common Property only for the purpose of keeping the roads and all landscaping on such areas neat and tidy, in the instance of the Local Authority failing to fulfill its obligations in this regard;
- 2.1.13 "Conduct Rules" means the Conduct Rules, initially approved by the Developer during the Development Period, and thereafter, by the Members of the Association at the Annual General Meeting;
- 2.1.14 "Constitution" means the Constitution of the Bella Donna Master Home Owners Association set out in this document;
- 2.1.15 "Developed Land" means those Land Units which have been:-
- transferred by the Developer to a Purchaser/ Owner; or
 - transferred by the Developer to the Association, a Body Corporate in terms of the Sectional Titles Act, or a Sub-Association;
- 2.1.16 "Developer" means Corporate Aone Trade and Invest 8 (Pty) Ltd (Reg. No. 2008/005234/07) or its respective



successors-in-title or assigns,

2.1.17 "Development"

means any sectional title or single title or residential development being concluded on the Land or any portion of the Land, indicated on the SDP and conducted by the Developer, its nominated entity and/or is successors in title;

2.1.18 "Development Group"

means a reference to all the phases of the Development including, all sectional title developments, single residential title developments, commercial, retail and or institutional zoned Land Units, as is listed in Clause 2.1.47 of this Constitution;

2.1.19 "Development Period"

means the period from the date of establishment of the Association until all the Land Units situated on the Land have been transferred from the Developer and/or improved, or, until the Developer notifies the Association in writing that the Development Period has ceased, whichever shall occur first;

2.1.20 "Development Scheme"

means any Portion of the Land being developed as a Sectional Title Development in terms of the Sectional Titles Act and/or a Single Residential Title Development and/or any Development in respect of Land that is zoned for the purposes of institutional, retail or commercial use and which is subject to its own Constitution and/or Management and Conduct Rules, as the case may be;

2.1.21 "Dwelling"

means the construction of a Building on a Land Unit, suitable for occupation and use by natural persons;

2.1.22 "EMP"

means the Environmental Management Plan approved or to be approved by the Local Authority;

2.1.23 "EIA"

means the Environmental Impact Assessment approve by the Local Authority;

2.1.24 "Estate"

means the Bella Donna Estate, being the Township to be established on the Land;

2.1.25 "Family"

means the head of a household, being an adult, his/or her spouse as well as any natural descendants of the head of the household and his/her spouse;



- 2.1.26 "Financial year" means the Financial Year of the Association which shall run from the date of establishment of the Association until the last day of February next and thereafter from the first day of March in each year until the last day of February in the subsequent year;
- 2.1.27 "Levy" means the Levies referred to in Clause 10;
- 2.1.28 "Local Authority" means the Local Authority having jurisdiction over the Development, being the City of Cape Town;
- 2.1.29 "Land" means the Land approved for Development by the Local Authority, being Erven 17974 & 17975, Blue Downs, Stellenbosch RD, Western Cape Province, upon the Development is to be developed by the Developer;
- 2.1.30 "Landscaping Guidelines" means the Landscaping Guidelines approved by the Architect, the Developer and the Local Authority;
- 2.1.31 "Landscaping Plan" means the Landscaping Plan approved the Local Authority;
- 2.1.32 "Land Unit(s)" means any portion of the Land, or a Section as defined in the Sectional Titles Act, situated on the Land, registered or capable of being registered in the Cape Town Deeds Registry, and includes, but is not limited to, an "erf" (howsoever zoned) or "sectional title Units";
- 2.1.33 "LUPO" means the Land Use Planning Ordinance, No 15 of 1985, as amended, Western Cape;
- 2.1.34 "Management Company" means such Management Company as may be appointed by the Developer for a Period of 5 (Five) years after the Development Period, with the purpose to undertake all or any of the functions of the Association, from time to time;
- 2.1.35 "Member" means a Member of the Association as set out in Clause 6;
- 2.1.36 "Occupant" means any person/s occupying a Land Unit or any improvement or structure thereon;
- 2.1.37 "Office" means the registered Office of the Association, being the physical address of the Management Company, from time to time;



- 2.1.38 "Owner" means the registered Owner of a Land Unit and as such a Member of a Sub-Association or Body Corporate, as the case may be;
- 2.1.39 "Private Open Space" means Erf 29615, indicated as such on the SDP, attached to this Constitution, which Private Open Space, will be registered in the name of the Association in the Cape Town Deeds Registry and which Private Open Space will, as such, become the responsibility of the Association;
- 2.1.40 "Public Roads / Public Space" means the Public Roads and Public Space indicated as such on the General Plan, approved by the Surveyor General in respect of the Land;
- 2.1.41 "Purchaser" means any personal entity that enters into an Agreement of Sale with the Developer in respect of a Land Unit;
- 2.1.42 "Restriction Date" means 3 (Three) years after date of registration of transfer of any Land Unit in favour of a Purchaser;
- 2.1.43 "SAC" means the Constitution of any Sub-Association, as approved by the Association and the Local Authority;
- 2.1.44 "SDP" means the Site Development Plan approved by the Local Authority;
- 2.1.45 "Security Company" means such Security Company as may be appointed by the Developer for a Period of 5 (Five) years after the Development Period, with the purpose to undertake all security functions of the Association, any Sub-Association, Body Corporate, Owner or Occupant, from time to time;
- 2.1.46 "Participation Quota" means in relation to a Land Unit, a percentage expressed in four decimals;
- 2.1.47 "Special Resolution" means a resolution passed at a special General Meeting of which not less than 21 Clear Days' notice has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than three-fourths of the total number of Members present at the meeting who, at minimum, form a quorum for a General Meeting;
- 2.1.48 "Sub-Association" means any Home Owners' Association established



in respect of a Development Scheme situated or to be situated on a Land Unit, or any portion of the Land, which Sub-Association will be a Member of the Association, for the purposes of which the Sub-Associations have been grouped together according to the group layout plan and group list attached to this constitution, marked Annexure A;

2.1.49 "Third Parties Purchaser"

means any person or entity that enters into an Agreement of Sale with a Purchaser or Owner of a Land Unit before date of registration of such Land Unit in favour of Owner and/or during the Development Period and/or before the Restriction date, which ever date is the latest;

2.1.50 "Trustees"

means the Trustees from time to time of the Association;

- 2.2. any reference to natural persons includes artificial persons and vice versa;
- 2.3. any reference to a gender includes the other genders (including neuter);
- 2.4. any reference to the singular includes the plural and vice versa;
- 2.5. The Clause heading in this Constitution have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.6. Words and expressions defined in any sub-Clause shall, for the purpose of the Clause of which that sub-Clause forms part, bear the meaning assigned to such words and expressions in such sub-Clause.
- 2.7. No provision of this Constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.
- 2.8. This Constitution shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the Association and every Member hereby consents to the jurisdiction of any competent court of the Republic of South Africa, for the purposes of any proceedings instituted in connection with this Constitution.

3. PURPOSE DESCRIBING THE MAIN BUSINESS

- 3.1. The main business of the Association is to carry on the promotion, advancement and protection of the Members as well as to manage, control and regulate the Development.
- 3.2. In order to qualify for exemption in respect of the Levy income in terms of Section 10(1)(e)(iii) of the Income Tax Act, the following conditions shall apply:-



- 3.2.1 the main object of the Association is to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property of such Member and the collection of Levies for which such Member/Owner is liable;
- 3.2.2 the Association is not permitted to distribute its funds to any person other than to a similar Association of persons;
- 3.2.3. on dissolution, the remaining assets of the Association, must be distributed to a similar Association of persons, which is also exempt from Income Tax in terms of section 10(1)(e)(iii) of the Income Tax Act;
- 3.2.4. any amendments to the Constitution must be submitted to the Commissioner for the South African Revenue Service;
- 3.2.5. funds available for investment may only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, and in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985, (Act No. 1 of 1985);
- 3.2.6. the Association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or Levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner;
- 3.2.7. annual returns of income together with financial statements be submitted to the South African Revenue Services, Cape Town.

4. MAIN OBJECTS OF THE ASSOCIATION

- 4.1. The objects of the Association are as follows:
 - 4.1.1. to oversee, regulate and control the harmonious development of the Estate and to ensure and promote the general high standard of the Estate;
 - 4.1.2. to own the Private Open Space and to enforce the EMP that may be implemented;
 - 4.1.3. to own, control, improve and maintain and to insure where necessary the building, structures, installations and equipment relating to the Private Open Space;
 - 4.1.4. to institute, control and pay for measures relating to security;
 - 4.1.5. to promote, advance, and control the communal interests of Owners, Members and Occupants;
 - 4.1.6. to acquire and grant servitudes;



- 4.1.7. to control the nature and position of buildings, structures, installations and equipment relating to the Land Units Units and to ensure compliance with the approved Architectural Guidelines and control measures in respect of the Development;
 - 4.1.8. to control and ensure compliance with the approved Landscaping Plan including Landscaping on common green spaces, Public Open Apaces and around verges and entrances;
 - 4.1.9. to take action including the imposition of fines, or the institution of proceedings in a court of law, as may be deemed fit by the Board, in relation to the non-compliance by any Member/Owner of any of the requirements of this Constitution or the Conduct Rules;
 - 4.1.10. to enter into and to implement any contract relating to the EIA, the EMP and the conditions of establishment of the township within the Development, and to incur any costs in this regard, it being recorded that the Association will be bound by any contracts concluded by the Developer and for the Association and or Management Company in this respect;
 - 4.1.11. to approve all other Constitutions of the Sub-Associations and/or the Management and Conduct Rules, as the case may be, and recommend approval thereof to the Local Authority;
 - 4.1.12. to control the aesthetic appearance of the Land Units;
 - 4.1.13. The control over the compliance and enforcement of the Architectural Guidelines;
 - 4.1.14. The promotion of environmental awareness and responsibility amongst Members;
 - 4.1.15. to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the Development.
 - 4.1.16. Maintain the stormwater system of the Development fully and to comply with the requirements of the Occupational Health and Safety Act and to enforce the compliance of each Body Corporate or Sub-Association to the relevant Act as far as it may be applicable on the Development or the Management thereof.
- 4.2 The Association shall be deemed to have come into existence on the earlier of the following dates:-
- 4.2.1 the date of the first registration of transfer of a Land Unit from the Developer to an Owner, or
 - 4.2.2 the date on which the Developer establishes the Association, as and when it may deem fit.
- 4.3 The Association is a legal persona and as such –
- 4.3.1 its assets, liabilities, rights and obligations shall vest in it independently of its Members;



- 4.3.2 it shall have perpetual succession;
 - 4.3.3 all legal proceedings shall be brought by or against the Association, in the name of the Association, and the Board may authorise any person/s to act on behalf of the Association and to sign all such documents and take all such steps as may be necessary in connection with any such legal proceedings; and
 - 4.3.4 its Members shall not, by reason of their Membership, be liable for the liabilities and obligations of the Association.
- 4.4 The Association will, at all times, only have jurisdiction over the Developed Land, unless the Developer, in its own discretion, decides to the contrary.

5. SUB-ASSOCIATIONS

- 5.1. The Developer intends sub-dividing the Land into various Land Units, which will be developed and will be subject to its own Constitution, Management and/or Conduct Rules, as the case may be, in accordance with the Development Groups contemplated in Clause 2.1.48 and as determined by the Developer during the Development Period.
- 5.2. All Sub-Associations will be Members of the Association, represented at any meeting of the Association, by the Chairman or Vice- Chairman of the Sub-Association or a representative nominated by the Trustees of such a Sub-Association.
- 5.3. Membership of the Sub-Associations will comprise the various Land Units grouped together as set out in Clause 2.1.48 and as contemplated in the template Constitution for Sub-Associations, the Management Rules and the Conduct Rules, as may be approved by the Developer during the Development Period and thereafter at the Board.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1. Membership of the Association shall be compulsory for the following:
 - 6.1.1 the Developer during the Development Period;
 - 6.1.2 the Purchaser of a Land Unit, from the date of registration of a Transfer of the Land Unit in the Cape Town Deeds Registry until such time as a Sub-Associations has been established in respect of a Specific Land Unit, and
 - 6.1.3 each of the Sub-Associations established in respect the Land situated on any portion of the Land and, represented by its Chairman or Vice Chairman
- 6.2. The Sub-Associations shall ipso facto be and become Members of the Association upon establishment of the Sub-Association concerned and be represented at meetings of the Association by the Chairperson or the Vice Chairperson, or of the Trustees of each Sub-Association.



6.3. The Developer shall be a Member and the Chairperson of the Association during the Development Period.

It is specifically reported that each Member and Owner will be subject to the terms and conditions and rules provided for in this Constitution.

6.4. A Sub-Association may not at any time resign as a Member of the Association.

6.5. It is specifically reported that each Member and Owner will be subject to the terms and conditions and rules provided for in this Constitution.

7. **RIGHTS AND OBLIGATIONS OF MEMBERS**

7.1. Every Member/Owner shall comply with:

7.1.1 the provisions of this Constitution, SAC, the Management and/or Conduct Rules and all other rules or regulations made or promulgated by the Association or the Board;

7.1.2 any agreement concluded by the Association or the Board or the Developer insofar as such agreement may directly or indirectly impose rights or obligations on a Member/Owner;

7.1.3 the provisions of any EMP and conditions of establishment of any township(s) within the Development and any directive issued by the Association in this regard, and

7.1.4 any directive given by the Association, the Board, the Developer or the Management Company in the enforcement of the provisions of this Constitution.

7.2. Save as may be provided for herein, the rights and obligations of a Member/Owner are not transferable, and every Member/Owner shall:

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

7.2.2 observe all directives made or given pursuant to the provisions of the Constitution, and

7.2.3 be jointly liable with the other Members/Owners for expenditure incurred in connection with the Association.

7.3. The Member shall ensure that none of its Owners shall let or otherwise part with the occupation of his Land Unit, whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by all the provisions of the Constitution, Management Rules and/or Conduct Rules of the Sub-Association or Body Corporate, the Conduct Rules of the Association and all of the rules or regulations made or promulgated by the Association. Its Owners shall at all times remain bound by the provisions of the Sub-Association and will be required to ensure and procure compliance therewith by such occupier. Owners shall be liable for the acts or omissions of all persons occupying his Land Unit whether lawfully or unlawfully including without limitation guests, employees, invitees, contractors, sub-contractors or agents.



- 7.4. The Member/ Owner shall not be entitled to exhibit any signboards, notices, advertising Boards, neon signs and nameplates on the interior or exterior of buildings situated on a Land Unit or anywhere within the Development on Common Property without the prior written approval of the Board.
- 7.5. The Member/ Owner shall keep and maintain any signs approved of by the Association in a good and clean condition, and if such signs are electronic, electric or mechanical, in proper working order and condition.
- 7.6. The Member/Owner hereby indemnifies the Association against all claims of whatsoever nature which may be made against the Association, as a result of the installation, erection or operation of any signs or advertisements placed by the Owner, whether installed with or without the written approval of the Association, or any defect in any such signs, or in any such installation or erection, or as a result of any failure on the part of the Member/Owner or any of the Member's/Owner's employees, agents, customers or invitees to keep and maintain any such signs in good order and condition, or properly installed or erected.
- 7.7. In addition, each Member/Owner of a Land Unit shall –
 - 7.7.1 ensure the maintenance of its Land Unit in a neat and tidy condition and in a state of good repair
 - 7.7.2 not park, or permit the parking of, any commercial vehicle, boat, caravan, trailer or any vehicle not in good working order on any road, pavement, parking area within the Development or other Common Area, and if such vehicle/boat/caravan/trailer is to be parked on that Owner's Land Unit, it shall not be visible from any street;
 - 7.7.3 not do or suffer to be done on any Land Unit anything which, in the opinion of the Developer, for the duration of the Development Period, and thereafter, the Board, is noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance, or a source of damage or disturbance to any Owner, tenant or occupier of any other Land Unit;
 - 7.7.4 not erect or permit the erection of any advertising Boards on any Land Unit or on any Common Property, without the written approval of the Developer, for the duration of the Development Period, and thereafter, the Board;
 - 7.7.5 not permit the number of occupants of its Dwelling (as the case may be) to exceed a Family;
 - 7.7.6 comply with all security procedures and controls imposed by the Association and/or the Board, from time to time;
 - 7.7.7 ensure that it and its invitees do not damage or destroy trees, vegetation and Landscaping on the Common Property, and that planting on its Land Unit does not interfere with pedestrian traffic or obscure the vision of motorists;
 - 7.7.8 afford employees, agents and representatives of the Developer and the Association full access at all times to do all things reasonably necessary to construct and/or stabilise and/or maintain all Common Property, edges and, if applicable;



- 7.7.9 not use any building or other structure constructed within the Development, or allow any other person to use such building or other structure, for purposes not permitted by this Constitution or all rules and/or regulations made in terms of this Constitution;
 - 7.7.10 not let or otherwise part with occupation of its Land Unit (or any parts thereof), whether temporarily or otherwise, unless that Owner ensures that the proposed occupier agrees to be bound by the relevant provisions of this Constitution and all rules and/or regulations made in terms of this Constitution;
 - 7.7.11 not consolidate a Land Unit with one or more other Land Units, without the prior written consent of the Developer, for the duration of the Development Period, and thereafter, the Board;
 - 7.7.12 not apply for the subdivision or rezoning of its Land Unit with a view to procuring a variation, amendment or substitution of use rights;
 - 7.7.13 not conduct, or permit to be conducted or change the nature of, any business on a Land Unit, or use, or permit the use of, such Land Unit for purposes other than residential use, unless the Developer, for the duration of the Development Period, or thereafter, the Board has in writing approved the use to which the Land Unit is to be put, and any Local Authority has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations;
 - 7.7.14 notify and supply the Managing Agent with the personal information and copies of the Identity Documents of any Occupants of its Land Unit;
 - 7.7.15 notify and supply the Managing Agent with the personal information and copy of Identity Document and proof of address of any domestic worker, garden worker or gardening service employed by the Owner;
 - 7.7.16 Not erect, construct or allow the construction of any structure, including but not limited to, wendy houses, carports, any wooden structure or animal cage or any kind of shelter, upon any Land Unit without the approval thereof by the ARC.
- 7.8. Membership of the Association shall confer upon a Member/Owner, inter *alia*, the following rights, subject to the provisions of this Constitution –
- 7.8.1 the right to inspect and/or receive copies of the annual financial statements of the Association;
 - 7.8.2 the right to vote at all General Meetings of Members in accordance with the provisions of this Constitution;
 - 7.8.3 the right to receive notices of, attend and speak at all General Meetings of Members in accordance with the provisions of this Constitution; and
 - 7.8.4 the right to convene a General Meeting of Members [other than an Annual General Meeting), provided that the Members holding between them, in aggregate, not less than one third of the voting rights of the Association collectively so decide.



7.8.5 each Member, referring to the Development Groups as contemplated in Clause 2.1.46 of this Constitution, will be entitled to 1 (one) vote at any meeting of the Association, irrespective whether voting is conducted by means of show of hands or by means of a poll.

8. **ALIENATION**

8.1. The Member shall ensure that none of its Owners shall in any manner Alienate or transfer a Land Unit unless:

8.1.1. the proposed transferee, new shareholder of a Company or new Members of a Close Corporation has irrevocably bound themselves to become Members of the Association, any Sub-Association or the Body Corporate and to observe its Constitution, SAC as well as any Management and/or Conduct Rules applicable, as the case may be, for the duration of his Ownership of any Land Unit;

8.1.2 the Management Company has given its prior written consent thereto and has issued a clearance certificate that all amounts owing to the Association, the Sub-Association or the Body Corporate, as the case may be, by such Owner have been paid and that the Owner is not in breach of this Constitution, SAC, and/or any of the Management and/or Conduct Rules of any Body Corporate, as the case may be;

8.1.3 the Association has given its prior written consent thereto and has issued a clearance certificate which will only be issued if a clearance fee is paid by the Owner concerned to the Association and all other amounts owing by the Owner have been paid in full to the Developer and/or the Association and/or Sub-Association, as the case may be;

8.1.4 the proposed transferee acknowledges in writing that upon the registration of transfer of the Land Units into his name he will ipso facto become a Member of the Association, the Sub-Association and/or the Body Corporate, as the case may be, always subject to the provisions of this Constitution, SAC and any applicable Management and/or Conduct Rules.

8.2. The provisions of Clause 8.1 shall apply mutatis mutandis to any alienation or transfer of an undivided share in any Land Unit.

8.3. Restrictions will be registered against the title deeds of all Land Units in order to give effect to the terms of this Clause 8. The Owners of Land Units shall however be bound by this Clause whether or not such restrictions are registered.

8.4. Each Member/Owner shall comply with all conditions imposed by the Local Authority or any other statutory body relating to Land Units and shall be solely responsible for non-compliance with such conditions.



- 8.5. It is recorded that a written consent to transfer or clearance certificate is required by any Member of the Association/Owner of a Land Unit prior to transfer of any Land Unit. Before a written consent to transfer is issued by the Association, an inspection and clearance fee, as determined by the Board from time to time, will be payable by the Owner of the Land Unit to the Association upon demand by the Association or the Management Company, prior to transfer of any such Land Unit by the Owner. A written consent to transfer may be refused if any amount is owing by a Member/Owner to the Association or the Sub-Association, or the Developer, as the case may be, from any cause whatsoever.
- 8.6 It is recorded that only the Association will be entitled to charge marked related fees or costs in respect of the issuing of the clearance certificate and that no costs or fees may be charged by any Sub-Association or Body Corporate. For the avoidance of doubt it is recorded that the Developer will not be liable for the payment of any such costs or fees in respect of each and every transfer of a Land Unit to be registered for the first time from the Developer to an Owner/Purchaser or third party Purchaser.
- 8.7 The Association will only be entitled to charge one fee in respect of the issuing of the clearance certificate, irrespective of the number of Land Units indicated on such consent

9. **COMMON PROPERTY**

- 9.1. The Local Authority shall take title to the Common Property, excluding the common property of any Sectional Title Scheme established in terms of the Sectional Titles Act, and it will be transferred to the Local Authority, free of charge.
- 9.2. It is recorded that the Local Authority will be responsible for the maintenance of the Common Property but, for the avoidance of doubt, it is recorded that the Association, or the Sub-Association, as the case may be, may keep the Public Roads and all Landscaping neat and tidy if same is neglected by the Local Authority. In this regard the Association, and/or the Sub-Association, will institute Levies in respect of any such functions to be performed by the Association.
- 9.3. The Association acknowledges that the Local Authority shall be responsible for the care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Common Property and any structure or thing erected or contained therein or thereon, including public roads, public parking, electricity, telecommunications and any other public services, if applicable.
- 9.4. The Association shall furthermore comply with all the conditions imposed by the Local Authority relating to the conditions of establishment of the township(s) comprising the Development, and shall be solely responsible for any non-compliance with such conditions.
- 9.5 The Developer, during the Development Period, or the Association, Sub-Association, Body Corporate and all service providers as approved by The Board or the Developer, during the Development Period, , will at all times have free and unencumbered access to all registered servitudes on the Land or any Land Unit.



10. LEVIES

- 10.1. The Board shall from time to time impose Levies upon the Members/Owners for the purpose of meeting all the expenses in relation to the facilities and services for or in connection with the Development, and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs. In calculating the amount of the Levies the Board shall take into account income from other sources if any, earned by the Association. It is recorded that each and every Owner of a Land Unit in the Development will be liable for the payment of Levies, as and may be imposed by the Association, Sub-Association or the Body Corporate, and/or the Trustees in terms of this Constitution, excluding the Developer.
- 10.2. The levy imposed by the Association will be utilized in the respect of, *inter alia*, the following expenses, but will not be limited thereto: fees payable to the Management Company, the fees of the CLO, fees payable in respect of the Security Services and any Landscaping fees.
- 10.3. Levies shall be calculated *pro rata* amongst the Members, the amount of which shall be allocated with reference to the actual or anticipated, as the case may be, number of erven or Sectional Title Units established or to be established by a Member on a specific Land Unit within the Estate. It is recorded that the Levies will be calculated on the following formulas:
 - 10.3.1 All single residential properties, commercial, retail and institutional properties will be calculated upon the square meterage of the improvements on such a Land Unit, and.
 - 10.3.2 All Sectional Title Units will be internally levied by the Body Corporate and the Body Corporate will be liable for payments of Levies towards the Association at a fixed rate to be determined by The Board, from time to time.
- 10.4. Should a Purchaser consolidate two or more Land Units, the Association shall debit the amount of the Levies as per the original Land Units, despite the consolidation having taken place.
- 10.5. During the Development Period the Developer shall not be obliged to pay the shortfall between the income derived from Levies paid by Members in terms of Clause 10.3 and the actual expenditure of the Association in each Financial Year, but shall not otherwise be liable to pay or contribute to any Levies or special Levies.
 - 10.5.1 In the instance of the Developer contributing at any stage any shortfall between the income derived from the Levies paid by the Members and the actual expenditure of the Association, such contribution by the Developer will be considered to be a loan account by the Developer in favour of the Association and will as such be reflected in the Financial Statements of the Association. The Association will be obliged to reimburse the Developer in respect of such contribution, as soon as the Association is in a cash positive situation, either on a monthly or yearly basis, but, in all events, the loan account plus interest thereon calculated at the Prime Overdraft rate of Absa bank, must be repaid by the Association to the Developer before the termination of the Development Period.
- 10.6. Except as provided in Clause 10.5 above, during and after the Development Period the Developer shall have no liability or obligation to pay or to contribute to any Levies or special Levies.



- 10.7 The Developer will not be liable for the payment of any Levies in respect of any Land Units that is registered in the name of the Developer or its nominated entity and which Land Unit is unoccupied. Upon occupation of such a Land Unit, the Developer will become liable for 100% of the Levies payable to the Association.
- 10.8 The Board may, from time to time, impose special Levies upon the Members, in addition to other Levies, in respect of all or a portion of such expenses as are mentioned in Clause 10.1 and the amount of such Levies and the manner of payment thereof by Members shall be at the discretion of the Board. The Board may impose such a special Levy on any Member of Sub-Association, at the discretion of the Board. It is recorded that no Member or Sub-Association will be entitled to impose any special Levy and all such Levies must be imposed by the Association after approval thereof by the Board.
- 10.9 Any amount due by a Member by way of a Levy or special Levy shall be a debt due by him to the Association. The obligation of a Member to pay a Levy shall cease upon his ceasing to be a Member of the Association, the Sub-Association or the Body Corporate, 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 shall be liable, as from the date upon which he becomes a Member to pay the Levies attributable. No Member shall be entitled or permitted to consent to the transfer of a Land Unit until the applicable Sub-Association has certified that the Member has at the date of transfer paid all amounts owing by him to the Association and the Developer as contemplated in Clause 8.
- 10.10 Save as may be provided for herein, in calculating the Levy payable by each Member, the Trustees shall as far as is reasonably practical, and in their sole discretion:
- 10.10.1 assign those costs arising directly out of or directly attributable to Land Units in a specific Development to the Member concerned;
 - 10.10.2 assign those costs arising directly out of or directly attributable to Land Unit/s in more than one Development to the Member/s concerned; and
 - 10.10.3 subject to Clauses 10.10.1 and 10.10.2 assign those costs relating to the Estate generally to all the Members;
- provided however that the Trustees may in any case where they consider it equitable so to do, assign to any Member a greater or lesser share of the costs as the Trustees consider may be reasonable in the circumstances.
- 10.11 No Member shall be entitled to the privileges of Membership unless and until he shall have paid every Levy and other sum, if any, which may be due and payable to the Association in respect of his Membership.
- 10.12 The Association may hand-over any debt due to the Association to the Association's Attorneys for collection if the debt is outstanding for more than 30 (Thirty) days and the debts due to the Association may be published in the Association's newsletter.



- 10.13 Monthly Levy statements will be circulated to the Members of the Association via email or other acceptable means. A Member will still be liable to effect monthly payments of the Levies irrespective whether the statement was actually received and/or circulated by the Association to such Member.
- 10.14 A Member shall be liable for and shall pay all legal costs, including costs, as between attorney and own client, collection, commission, tracing agents fee, interest at prime plus 25% (Twenty Five percent) per annum, expenses and charges incurred by the Association, in recovering any arrear Levy or other amounts due and owing to the Association, as also the costs incurred in the enforcement of any of the Estate Rules or other rules or regulations issued or made by or on behalf of the Association from time to time.
- 10.15 Owners will be liable for the payment of a market related fee in the instance of the Owners electing to link the GSM System to a Rapid Response facility provided by the mandated Security Company.
- 10.16 It is hereby recorded that the function of the Security Company appointed by the Developer will be the patrol of all Public Roads and the Security Company will not be obliged to perform any of its obligations to any Owners, Occupants or in respect of any Land Unit.
- 10.17 The Developer, during the Development period, and thereafter the Board, will only appoint one Security Company in respect of the providing of security services in respect of the Estate and each Owner is obliged to utilize the services of the Security Company only.
- 10.18 The Developer and thereafter the Board will appoint one Management Company who will attend to the management of all the affairs of the Association, all Sub-Associations and Bodies Corporate.
- 10.19 The Developer during the Development period and thereafter the Board, will appoint one landscaping contractor in respect of all the landscaping functions to be performed by the Association. The Sub-Associations and Bodies Corporate will be bound by such an appointment.
- 10.20 It is hereby recorded that all levies amounts will be paid by each Owner into the bank account of the Association and that no Sub-Association will be entitled to receive any funds from any Owner without the prior written consent of the Association. In this regard, the Association will provide each Sub-Association with monthly statements of account, which accounts may be circulated by the relevant Sub-Association to each Owner, which is a member of such Sub-Association. It is recorded that each Owner will be liable for the payment of the monthly Levies irrespective of the whether the Owner has received a monthly Levy account from the Association or the relevant Sub-Association.
- 10.21 It is hereby recorded that all levies amounts will be paid by each Owner of a Land Unit in a Sectional Title Scheme into the bank account of the Relevant Body Corporate. The Body Corporate will then transfer such amounts to the Association that is due to the Association as per the approved budget of the Association. In this regard, the Association will provide each Body Corporate with monthly statements of account, if necessary and requested by the relevant Body Corporate.



11. RESPONSIBILITY FOR THE PROVISION OF SERVICES

- 11.1. The responsibility for the provision of services, namely facilities, utilities, services and amenities of whatever nature as may be provided by or on behalf of the Association for Members, Owners or Occupants of Land Units within the Development, excluding such facilities, utilities, services and amenities as are situated within the boundaries of a Sub-Association, shall pass from the Developer to the Association on the date of the first registration of transfer of a Land Units from the Developer to an Owner.
- 11.2. It is recorded that the Association will be liable for the cutting of any lawn or grass in front of any Dwelling constructed upon a Land Unit (the street front) provided that the Association may cease such function in the instance of any Owner being in arrears with his monthly Levy payments.
- 11.3 The Trustees is responsible to ensure that the Association employed sufficient employees to fulfill all the obligations of the Association as provided for in this Constitution and to comply with the full responsibility as provided for in this Constitution by the Association towards the Members and/or the Local Authority.

12. CONDUCT RULES

- 12.1. Subject to the provisions of this Constitution and to any directives given by the Association in a General Meeting and to any conditions imposed by the Local Authority or the Developer or any other statutory body, the Board may make Conduct Rules and may vary or modify the same from time to time, in connection with:
 - 12.1.1. the installation, operation and maintenance of irrigation in the Common Property adjacent to any Land Units by the Owner concerned;
 - 12.1.2 the determination or control of security measures;
 - 12.1.3 the control of the building operations and the conduct of builders and contractors;
 - 12.1.4 the control and conduct of persons for the prevention of nuisance of any nature to any resident;
 - 12.1.5 the control and conduct of persons using the Common Property;
 - 12.1.6 the use of roads, infrastructure, services amenities and facilities in the Common Property including the right to charge a reasonable fee for the use of the amenities and facilities;
 - 12.1.7 the furtherance and promotion of any of the objects of the Association and for the better management of the affairs of the Association and for the advancement and protection of the interests of the Members and Owners/Occupants.
- 12.2 For the enforcement of any rules or any of the provisions of this Constitution generally the Board or the Management Company may:



- 12.2.1 give notice to the Member/Owner concerned to remedy any breach within such period as they may determine;
 - 12.2.2 take or cause to be taken such action as they deem fit to remedy the breach of which the Member/Owner concerned may be guilty and debit the cost thereof, which shall be a debt due to the Association, to his Levy account, and which shall be payable as part of his Levy on the first day of the following month, and
 - 12.2.3 impose a fine on the Member/Owner concerned which amount shall be a debt due to the Association, shall be debited to his Levy account and shall be payable as part of his Levy on the first day of the following month.
- 12.3. Should the Board or Management Company institute legal proceedings against any Member/Owner or resident for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 12.4. In the event of any breach of the rules or of any of the provisions of this Constitution by any person residing on a Land Unit or a Member of a Sub-Association or his guests, employees, contractors, and sub-contractors or agents, such breach shall be deemed to have been committed by the Member himself; but without prejudice to the foregoing, the Board or Management Company may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the Member/Owner concerned.
- 12.5. Subject to any restrictions imposed or directions given at a General Meeting of Members, the Board may [but shall not be obliged to) from time to time, make rules, and amend or modify those rules, in relation to, *inter alia*, the following –
- 12.5.1 the management and control of the Development;
 - 12.5.2 the furtherance and promotion of any of the objects of the Association including the promotion of better management of the affairs of the Association and the advancement of the interests of the Members;
 - 12.5.3 the use, occupation and enjoyment of the Common Property (or any parts thereof);
 - 12.5.4 the preservation of the natural environment within the Development;
 - 12.5.5 the pedestrian and vehicular traffic including parking within the Development;
 - 12.5.6 the carrying out of any business within the Development;
 - 12.5.7 the conduct of any Owner, tenant, resident or visitor of the Development;
 - 12.5.8 the nature, content and design of garden and Landscaped areas within the Development;
 - 12.5.9 the admission of any person within the Development, including the conditions upon



which persons may enter the Development, and the eviction of any person who is not entitled to be present within the Development;

12.5.10 the storage of flammable and other harmful substances;

12.5.11 the enforcement of any rules made in terms of this Constitution and the adjudication of disputes relating to the application and/or interpretation of any rules;

12.5.12 the introduction of fines and other penalties that may be payable by any Member/Owner, tenant, resident or visitor for contravening or failing to comply with any of the provisions of this Constitution or any rules and regulations made thereunder.

12.5.13 Any rules made in terms of this Clause 12 shall be binding upon-

12.5.13.1 every Member/Owner;

12.5.13.2 every resident within the Development, *mutatis mutandis*, and every Member/Owner shall procure that all its representatives, tenants, Members of the household, visitors, invitees and other persons related to that Member comply with any rules made in terms of this Constitution and every Owner acknowledges and agrees that it will be liable for any breach or non-compliance by any of its representatives, tenants, family Members, visitors, invitees and other persons related to that Member.

13. APPROVAL OF PLANS FOR BUILDINGS AND STRUCTURES

13.1 During the Development Period, no construction or erection of any new improvements which falls outside of those improvements already approved in terms of the initial Site Development Plan including any additions or alterations to any existing structures on a Land Unit may commence before the approval of the plans for such improvements by the Architectural Review Committee to be established and appointed by the Developer:

13.1.1 a full set of the proposed building plans, supporting plans and information as required in terms of the Architectural Guidelines, indicating both construction and design details shall be submitted to the Architectural Review Committee for consideration and approval;

13.1.2 the Owner concerned shall submit the building plans to the Local Authority for approval after it was approved by the Architectural Review Committee;

13.1.3 the Architectural Review Committee shall certify that the building plans comply with the Site Development Plan, the building and Landscaping Guidelines and all other relevant conditions;

13.1.4 having obtained the approval of the Architectural Review Committee, the Member/Owner concerned shall comply with all conditions and standards imposed by the Local Authority or other statutory body insofar as these may be additional to the requirements of the Association, and



- 13.1.5 the Association may impose a scrutiny fee, which if imposed will be paid by the Owner concerned, as well as any additional scrutiny fees should any amended or further plans be required or submitted.
- 13.2 After the Development Period, the Sub-Associations as well as any Body Corporate shall ensure that their Owners comply with the approved urban Architectural Guidelines and other controls for the Development.
- 13.3 Whenever they consider that the appearance of any Land Unit or building owned by an Owner or a Member of a Sub-Association is such as to be unsightly or injurious to the amenities of the surrounding area or the Development generally, the Board or the Management Company may serve notice on such Owner to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Owner or a Member of a Sub-Association fail within a reasonable time, as specified in such notice, to comply therewith, the Board or Management Company or their employees, agents or contractors may enter upon the Land Unit or buildings concerned and take such steps as may be necessary and recover the costs thereof from the Owner or a Member of a Sub-Association concerned, which costs shall be deemed to be a debt owing by that Owner or a Member of a Sub-Association to the Association. The Board or the Management Company shall be obliged in giving such notice to act reasonably. In the event of any dispute, the Owner shall bear the onus of establishing that the Board or the Management Company acted unreasonably.
- 13.4 For the purposes of maintaining the high standard of the appearance and design of the Development and of ensuring *an* attractive and harmonious appearance of the Development, the Developer may make Architectural Guidelines as well as Landscaping Guidelines relating to the appearance, design and construction requirements applicable to the Development. The Architectural Guidelines shall constitute an integral part of this Constitution and may be amended from time to time by the Developer, for the duration of the Development Period, and thereafter, by the Board.
- 13.5 All Improvements on the Developed Land shall comply with the provisions of the Architectural Guidelines.
- 13.6 No construction, erection or alteration of, or addition to, any Improvements on the Developed Land ("Works") may commence or be carried out without the prior written approval of the plans and specifications in respect of the Works by the Developer, for the duration of the Development Period, and thereafter, by the Board. In this regard, a full set of proposed plans and specifications in respect of the Works prepared in accordance with the Architectural Guidelines shall, for the duration of the Development Period, be submitted to the Developer, and thereafter, to the Board.
- 13.7 For the duration of the Development Period, the Developer shall, in its sole and absolute discretion, determine whether the plans and specifications in respect of the Works comply with the Architectural Guidelines, and its determination in this regard shall be final and binding upon the Member concerned. On expiration of the Development Period, such determination shall be made by the Board, in its sole and absolute discretion.



- 13.8 The Developer, for the duration of the Development Period, and thereafter, the Board, shall be entitled to withhold any approval contemplated by this Clause 14, subject to compliance with such modifications or amendments to the plans and specifications in respect of the Works and/or such other conditions as the Developer or the Board (as the case may be) may request or impose in their sole discretion.
- 13.9 Any approval granted by the Developer or the Board (as the case may be) shall be in writing and be signed by the Developer or the Board (as the case may be}. Before giving such approval, the Developer or the Board (as the case may be) may require the following to be lodged with them –
- 13.9.1 such descriptions, drawings and/or plans as may be necessary to enable them to consider the matter;
 - 13.9.2 details of construction materials to be used; and
 - 13.9.3 any other documentation as they may require.
 - 13.9.4 No approval shall be granted unless all contractors being appointed to carry out the Works (or any parts thereof) have waived their respective lien in respect of the Works or the relevant Land Unit (or any part thereof) or in respect of the Common Property (if applicable), in writing, in a form acceptable to the Developer, for the duration of the Development Period, and thereafter, the Board, in their sole and absolute discretion.
 - 13.9.5 Each Owner shall, when submitting the plans and specifications in respect of the Works to the Developer or the Board (as the case may be) in terms of Clause 14.3, pay to the Association a deposit in an amount to be determined from time to time by the Developer or the Board [as the case may be), which amount shall be retained by the Association in trust.
 - 13.9.6 Upon completion of the Works, the Association shall if the Developer, for the duration of the Development Period, and thereafter the Board, are satisfied, in their sole and absolute discretion, that the Common Property (or any part thereof) have not sustained any damage resulting from or incidental to the Works and that the Works have been carried out in accordance with the duly approved plans and specifications, release the deposit to the Member.
 - 13.9.6.1 Should-
 - 13.9.6.1.1 the Common Property [or any part thereof) have sustained any damage of whatsoever nature resulting from or incidental to the Works; or
 - 13.9.6.1.2 the Works not have been carried out in accordance with the duly approved plans and specifications;
 - 13.9.6.1.3 the Owner shall, within 21 days of having been requested to do so in writing –
 - 13.9.6.1.3.1 repair the damage; and/or



- 13.9.6.1.3.2 make such alterations to the improvements in order to procure compliance with the duly approved plans and specifications; to the satisfaction of the Developer, for the duration of the Development Period, and thereafter, the Board, failing which, the Developer or the Board (as the case may be) shall be entitled, notwithstanding any rights which the Developer, the Board, or the Association may have as a result of such failure, to appoint an independent contractor or contractors to repair the damage or make such alterations, and to apply the deposit to all costs of such repair and/or alteration.
- 13.9.6.1.3.3 If the amount paid to the Association as a deposit is not sufficient to cover the costs of such repair or alteration (as the case may be) by the independent contractor or contractors appointed by the Developer, or the Board, the Association shall be entitled to recover the shortfall from the Owner. Any shortfall so due by a Owner shall be paid with, and in addition to, the Levies due by that Owner to the Association.
- 13.9.6.1.4 Once approved by the Developer or the Board (as the case may be), the plans and specifications shall be submitted to all relevant authorities for approval, and having obtained the approval of any relevant authorities, the Member concerned shall comply with all conditions and standards imposed by any relevant authority insofar as these may be additional to the requirements of the Architectural Guidelines read together with the approved plans and specifications.
- 13.9.6.1.5 Any plans, notwithstanding approval by all relevant authorities, which have not been prepared and/or submitted and/or approved in compliance with the provisions of this Clause 14, shall be invalid.
- 13.9.6.1.6 The Owner shall be liable for all costs in respect of the scrutiny and Consideration of plans submitted by the Owner to the Developer or the Board (as the case may be).
- 13.9.6.1.7 an Owner fails to comply with any obligation contained in this Clause 14, the Developer, for the duration of the Development Period, and thereafter, the Board, shall be entitled, but not obliged, In addition to any other rights which they may have or remedies which may be available to them in terms of this Constitution or otherwise in law, to –



- 13.9.6.1.8 impose a daily financial penalty, the amount of which shall be determined from time to time by the Developer or the Board (as the case may be), on notice to the Owner, should the Owner fail to comply with any obligations contained in this Clause 14; and
 - 13.9.6.1.9 enter upon any Land Unit in order to inspect that Land Unit and any improvements constructed thereon.
- 13.10 The Developer will, during the Development Period, be entitled to apply and obtain approval for the amendment of the rezoning or subdivision approval of the Land or any Land Unit without the consent of the Association, any Sub-Association, any Body Corporate or Owner
- 14. TRUSTEES**
- 14.1. There shall be a maximum of 10 (Ten) Trustees of the Association, provided that:
- 14.1.1 during the Development Period all the Trustees shall be appointed or removed and replaced as the case may be, by the Developer, subject to the condition that the Developer will not be obliged to appoint any Trustees during the Development Period provided that the Developer or its nominated representatives, will act as Trustees during the Development Period, and
 - 14.1.2 after the Development Period all the Trustees shall be appointed by the Members.
- 14.2 A Trustee shall be an individual who represents a Sub-Association, as such being a Member, except in the case of the Chairperson of the Association, who may not be an Owner of a Land Unit in the Development. A Trustee, by accepting his appointment to Office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.
- 14.3 The Developer shall, by means of its representative, act as the Chairperson of the Board during the Development Period and thereafter the Developer may appoint the Chairman for a period of 1 (One) year after the termination of the Development Period, and thereafter the Members shall elect the Chairperson, which Chairperson must be a CLO. The Chairperson may never be an Owner or Occupant. The Chairperson must be compensated by the Board in respect of the functions of the Chairperson in the amount of R7.00 (Seven Rand) per Land Unit sold and transferred, being the base fee payable in the first year after the date of establishment of the Association, which amount will escalate, after the base year, at the official CPIX of south Africa, from time to time.
- 14.4 The Chairperson of the Board shall act as the Chairperson of the Annual General Meeting and Other General Meetings of the Association. Should he not be able to do so for any reason, the Trustees shall appoint the Vice Chairman to act as Chairperson of the meeting concerned.
- 14.5 Trustee is required to:
- 14.5.1 perform the functions of Office in good faith, honesty and in a transparent manner, and



- 14.5.2 at all times act in the best interests of the Association, and in such a way that the credibility and integrity of the Association is not compromised in any way.
- 14.6 When elected, a Trustee shall within 60 (sixty) days after election, declare in writing to the Board any financial interest he or his immediate family or business associates may have in respect of any contract, deliberations or other transactions with the Association.
- 14.7 Each Trustee will also declare in writing to the Board those respects in which, from time to time, his Land Units or any improvements thereon do not comply with the Conduct Rules and all other rules or regulations made or promulgated by the Association, any Sub-Association or the Board.
- 14.8 Each Trustee must declare to the Board any gifts, which he or his immediate family might be offered, or receive, from any business and or person involved or endeavouring to become involved, in any contract with financial gain with the Association.
- 14.9 Trustee may not without the permission of the Board, disclose any privileged or confidential information of the Board to any person not authorised or entitled to receive the same.
- 14.9.1 Trustee may not, except through the Chairperson of the Board:
- 14.9.2 interfere in the management or administration of the Development, unless mandated by the Board;
- 14.9.3 give or purport to give any instruction to any employee other than the Management Company;
- 14.9.4 obstruct or attempt to obstruct the Management Company or any of the Development Office staff in the implementation of any decision or resolution of the Board, or
- 14.9.5 encourage or participate in any conduct which would cause or contribute to maladministration by the Board.
- 14.10 The Board or the Management Company may at any time and from time to time investigate and make a finding in respect of any alleged breach by a Trustee(s) of any of the provisions of this Constitution, or of the Conduct Rules or any other rules or regulations made or promulgated by the Association or the Board, or establish a special committee to investigate and make appropriate recommendations to the Board in this respect.
- 14.11 Should the Board or the Management Company find that a Trustee has breached any provision of this Constitution or any of the rules or regulations aforesaid, the Board may:
- 14.11.1 issue a formal warning to the Trustee concerned;
- 14.11.2 reprimand the Trustee;
- 14.11.3 suspend the Trustee;
- 14.11.4 request the Trustee to resign, or



14.11.5 request the Association to remove the Trustee from the Board.

14.12 CHAIRPERSON

14.12.1 The Board shall within 14 days of each Annual General Meeting of the Association, appoint a Chairperson, who shall hold Office until the next Annual General Meeting, provided that the Office of Chairperson shall ipso facto be vacated by an Officer holding such Office upon his ceasing to be an Officer for any reason, in which event the Board shall immediately appoint an alternative Chairperson.

14.12.2 Except as otherwise provided in this Constitution, the Chairperson shall preside of all meetings of the Board and at all General Meetings of Members (including the Annual General Meeting) and, in the event of the Chairperson not being present within 15 minutes of the scheduled meeting time, or in the event of his inability or unwillingness to act, the Vice Chairperson appointed shall preside in his stead. Should the Chairperson at any stage be absent at two consecutive meetings, the Board and/or the Management Company may terminate the services of the Chairperson with immediate effect.

14.12.3 For the duration of the Development Period, the Chairperson shall always be a representative of the Developer and, after the Development period, the Chairperson must always be a CLO.

14.13 the Developer will, during the Development Period, communicate minutes of all the meetings held by it and/or decisions taken by the Developer, in its capacity as Trustees of the Association, to each Sub-Association and/or Body Corporate, as the case may be.

15. REMOVAL AND ROTATION OF TRUSTEES

15.1 During the Development Period all the Trustees shall be appointed or removed and replaced as the case may be, by the Developer, subject to the condition that the Developer will not be obliged to appoint any Trustees during the Development Period provided that the Developer or its nominated representatives, will act as Trustees during the Development Period, and.

15.2 A Trustee shall be deemed to have vacated his Office as such:

15.2.1 should he become disqualified to act as a director of a company in terms of the Companies Act;

15.2.2 should he be removed from Office by a resolution of the Board;

15.2.3 in the event of his being a Member of any Sub-Association, or a representative of a Member, should he become disentitled to exercise a vote in terms of Clause 7.10

15.2.4 should his Development be sequestrated whether provisionally or finally;

15.2.5 on his conviction of any offence involving dishonesty;



- 15.2.6 on the commission by him of any act of insolvency;
 - 15.2.7 should he become of unsound mind or being found to be a lunatic;
 - 15.2.8 on his resigning from such Office in writing.
 - 15.2.9 Upon any vacancy occurring in the Board prior to the next Annual General Meeting, a person shall fill the vacancy in question nominated by those Trustees remaining, or by another Trustee nominated by the Developer if such shall occur during the Development period.
- 15.3 The Board shall be entitled to co-opt any person chosen by them to act as a Trustee, subject always to the exclusive right of appointment and removal by the Developer during the Development Period.

16. TRUSTEES EXPENSES AND REMUNERATION

- 16.1. The Trustees shall be entitled to be repaid all reasonable bona fide expenses incurred by them in or about the performance of their duties as Trustees.
- 16.2. The Trustees shall not be entitled to remuneration in respect of the performance of their duties as determined by the Association in General Meeting.

17. POWERS OF BOARD

- 17.1. Subject to the provisions of this Constitution and subject to any limitations which may be imposed by the Association in a General Meeting, the Board shall have full powers to perform the functions allocated to them in this Constitution and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised and done by the Association itself with regard thereto.
- 17.2. The Board shall in consultation with the Management Company formulate a budget and a strategic plan and any amendments thereto for each Financial Year of the Association.
- 17.3. The Board are empowered to sign, execute and to enter into on behalf of the Association all and any contracts as may be required to give effect to the provisions of this Constitution, including subject always to the provisions of Clause 18.2, the appointment of a Management Company, and are empowered to delegate the management of the affairs and the business of the Association whether in whole or in part to such Management Company.
- 17.4. Furthermore, the Board shall at all times have the power and right to engage on behalf of the Association the services of accountants, Auditors, Attorneys, Architects, Engineers, Town Planners, or any other professional firm or person or other employees whatsoever, for any reason deemed necessary by the Trustees, on such terms as the Trustees may decide.
- 17.5. The Board shall further have the power;



- 17.5.1. to require that any construction of any sort in the Development shall be supervised so as to ensure that the provisions of this Constitution and the Conduct Rules, or any other rules or regulations, are complied with, and that all such construction is performed in a proper and workmanlike manner;
 - 17.5.2. to issue building and Landscaping Guidelines in respect of the Development and to ensure that same are complied with at all times, and
 - 17.5.3. to issue instructions in accordance with the operational environmental management plan, if any, and to ensure that such plan is at all times complied with.
 - 17.5.4. The Board shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 17.6. The Sub-Association that is in control of the commercial, retail and institutional Land Units (C1), will be subject to all the terms and conditions of this Constitution and will more specifically be subject to the Conduct Rules insofar as the terms and conditions of this Constitution and/or the Conduct Rules is not in contravention of any general accepted business principals. For the avoidance of doubt, it is recorded that the Association may not make any rules that may hinder the business of any Owner or Occupant of a Land Unit in the commercial, retail and institutional Sub-Association (C1).
- 17.7. The Board may, during the Development Period, communicate and deal with each Sub-Association and Member on an individual basis and is not required to convene any meetings of Members, during such period.
- 17.8. The Board may, in its sole discretion, take over any or all of the functions and responsibilities of any Body Corporate in the instance of such a Body Corporate failing to perform its duties in terms of the Sectional Titles Act or this Constitution for a period in the discretion of the Board.
- 18. PROCEEDINGS OF BOARD**
- 18.1. The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 18.2. The quorum necessary for the holding of all meetings of the Board, after the Development Period, shall be 5 (Five) Trustees present personally, and no meeting shall be held unless such quorum is present at the commencement of and for the duration of the meeting.
- 18.3. Any resolution of the Board shall be carried by a simple majority of all votes cast. In the case of an equality of votes for or against a resolution, the Chairperson of the Board shall have a second casting vote.
- 18.4. The Board shall cause minutes to be kept of every Board meeting, which minutes shall without undue delay after the meeting has closed, be reduced to writing and certified correct by the Chairperson. All minutes of Board meetings shall, after certification, be placed in a Boards' minute book.



18.5. Any resolution signed by all the Board shall be valid in all respects as if it has been duly passed at a meeting of the Board.

19. MANAGEMENT COMPANY

19.1. The Developer shall be entitled (but not obliged, and at their own discretion) to manage or to appoint a Management Company for the Development during the Development Period, which appointment shall be valid and binding on the Association during the Development Period and for a period of 5 (five) years after the termination of the Development Period or such period as determined by the Developer, in its sole discretion.

19.2. The Members hereby grant the Developer the irrevocable power and authority to appoint the Management Company of the Development during the aforesaid period and to determine the terms and conditions of such appointment.

19.3. Subject to the provisions of this Constitution and the terms of its appointment, the Management Company shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Association in a General Meeting, and may exercise all such powers of the Association and do all acts on behalf of the Association itself.

19.4. During the Development Period, the Developer will determine the fees or remuneration to be paid by the Association to the Management Company and the other terms and conditions of its appointment.

19.5. This appointment may extend beyond the Development Period provided that the Developer shall endeavour to procure in making such appointment, if so required by the Association, in a General Meeting, and subject to the requirements of law, be terminated on reasonable notice after the end after the Development Period has expired.

19.6. After the Development Period in the event that an existing Management Company's appointment is terminated, a successor Management Company shall from time to time be appointed by the Association in a General Meeting and the Members shall determine the fees or remuneration to be paid by the Association to such Management Company and all the other terms and conditions of their appointment, it being contemplated that at all times the affairs of the Association will be entrusted in whole or part to a professional Management Company with appropriate executive powers so as to conform to the requirements of good corporate governance.

19.7. The Association may enter into agreement with any third party for the provision of facilities or services to or for the Members, and may charge Levies in respect of the provision thereof, or may pass on such costs direct to the Owners. Furthermore it is recorded that the Members will be bound by all contracts concluded by the Developer for the leasing or purchase of all equipment or infrastructural assets, or for the provision of security for the Development, or for the provision of any other service or supplies for the Development which the Developer may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or outgoings on an ongoing basis. It is recorded, without limitation, that the Developer intends to conclude contracts for the hire or supply of electronic surveillance, monitoring and detection equipment for security purposes relating to the perimeter of the Development.



20. GENERAL MEETINGS OF THE ASSOCIATION

- 20.1. Subject to any directives given by the Developer during the Development Period, the first General Meeting of the Association will be held within 6 months after the Development Period.
- 20.2. Thereafter the Association shall within 6 months after the end of its Financial Year, hold a General Meeting as its Annual General Meeting in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices of meeting.
- 20.3. General Meetings shall be held at such time and place as the Board shall declare from time to time.
- 20.4. All meetings including Annual General Meetings shall be called General Meetings. The Board may, whenever they deem fit, convene a General Meeting. A General Meeting may also be convened by the Board on a requisition made by the Members in terms of the Act or should the Board not do so, may be convened by the requisitions as provided for and subject to the provisions of the Act.

21. NOTICES OF MEETINGS

- 21.1. An Annual General Meeting shall be called by not less than 21 Clear Days' notice in writing and any other General Meeting shall be called by not less than 14 Clear Days' notice in writing. The notice of an Annual General Meeting shall be accompanied by a copy of the financial statements as referred to in Clauses 26.4 and 26.5 and shall be given to all Members and shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting. A meeting called by shorter notice shall be deemed to have been duly called if it so agreed by a simple majority of the Members having the right to attend and to vote at the meeting.
- 21.2. The accidental omission to give notice of any resolution or to transmit any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings of any meeting or any resolution passed at any meeting. Furthermore, the non-receipt of notice of a meeting by any person entitled to receive such notice shall not invalidate the proceedings at that meeting.
- 21.3. The Annual General Meeting shall deal with the consideration of the Management Company's report, the consideration of the annual financial statements, the election of Trustees, if applicable, the appointment of an auditor and may deal with any other business included in the notice of meeting.

22. PROXIES

- 22.1. A Member may be represented at a General Meeting by a proxy, who must himself be a Member of the Association.
- 22.2. To be effective at a General Meeting or adjourned General Meeting, a proxy together with the original or a notarially certified copy of a power of attorney or other authority under which it is signed must be lodged with the Association at least 48 hours before the commencement of



the General Meeting or adjourned General Meeting concerned but the Trustees may from time to time determine that such documents:

- 22.2.1. are to be lodged at a particular place;
 - 22.2.2. are to be lodged a certain number of hours, not exceeding 48 (fourty eight) in all, before the meeting, or
 - 22.2.3. may be lodged at any time before or during the meeting. Notwithstanding the foregoing the Chairperson of the meeting may agree to accept a proxy tendered at any time before or during the meeting.
- 22.3. A proxy will be valid for an indefinite period in relation to the meeting for which it is given, unless it is stated on the proxy that it is only to be valid for a shorter period.
- 22.4. The instrument appointing a proxy shall be in such form that is acceptable to the Chairperson of the meeting or adjourned meeting in respect of which it is tendered and the decision of the Chairperson as to what is or is not acceptable will be binding on all the Members.
- 22.5. A proxy shall be valid for any adjournment of the meeting to which it relates unless otherwise indicated on the proxy.

23. **QUORUM**

- 23.1. No business shall be transacted at a General Meeting unless a quorum is present both when the General Meeting proceeds to business and when any resolution is to be passed. Save as otherwise provided in this Constitution 50% (Fifty percent) of the Members other than the Developer present in person, or by proxy, shall constitute a quorum provided that at least three Members are present in person at the commencement of and for the duration of such General Meeting.
- 23.2. If within fifteen minutes after the time appointed for the commencement of a General Meeting or within such extended period as the Chairperson may allow, a quorum is not present, the General Meeting shall be dissolved if it was convened on requisition. In all other cases the General Meeting shall stand adjourned to the same place at the same time on the same day of the next week or to such other place, time and day as the Chairperson may determine. If a quorum is not present as such adjourned General Meeting, the Members present shall constitute a quorum.

24. **ADJOURNMENT BY CHAIRPERSON**

- 24.1. The Chairperson of a General Meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by simple majority of all votes cast at the meeting. In the event of such an adjournment:
- 24.2. No notice need be given of the adjourned meeting save for an announcement at the original meeting of the date, time and venue of the adjourned meeting, unless the meeting is to be adjourned for thirty days or more in which event notice is to be given in the same manner as for the original meeting;



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

25. VOTING RIGHTS OF MEMBERS

25.1. Notwithstanding anything to the contrary herein contained, during the Development Period the Developer may without the approval of the Members of the Association, amend, substitute and repeal any provision of this Constitution and/or the Conduct Rules, as the case may be, with the approval of the Local Authority.

25.1.1. Only Members shall be entitled to vote on matters raised at General Meetings.

25.1.2. At every General Meeting:

25.1.2.1. each Member, present in person or by proxy and entitled to vote, shall have one vote;

25.1.2.2. during the Development Period, the Developer shall have a veto right in respect of any decision to be taken by the Board and/or the Association, as the case may be.

25.2. Save as provided in this Constitution no person other than a Member duly registered and who shall have paid every Levy and other amount, if any, which may be due and payable to the Association in respect of or arising out of his Membership, and who is not suspended, shall be entitled to be present or to vote on a matter, either personally or by proxy at any General Meeting.

25.3. Voting at General Meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded by the Chairperson. If a poll is demanded it shall be taken in such a manner as the Chairperson may direct.

25.4. Subject to the provision of this Constitution, all resolutions shall be passed by simple majority vote.

25.5. If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter, such difficulty or dispute is to be determined by the Chairperson whether or not scrutineers might have been appointed to count the votes, and his decision shall be final and conclusive.

25.6. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:

25.6.1. written notice of the revocation is received by the Association prior to the meeting concerned, or

25.6.2. the Chairperson agrees to accept written or oral notice of such revocation at the meeting.



- 25.7. No objection shall be raised to the admissibility of any vote except at the meeting or adjournment meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairperson of the meeting whose decision shall be final and conclusive.
- 25.8. A declaration made in good faith by the Chairperson of a meeting to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.
- 25.9. Any resolution which could be passed at a General Meeting, other than a Special Resolution or a resolution to remove a Trustee or auditor, may be passed without a General Meeting being held if one or more copies of the resolution are signed by or on behalf of a simple majority of all the Members entitled to vote at a General Meeting.

26. **ACCOUNTING RECORDS**

- 26.1. The Board shall cause such accounting records to be kept as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 26.2. The accounting records shall be kept at the registered Office of the Association or at such other place or places as the Board think fit, and shall be open to inspection by the Board at all reasonable times during business hours.
- 26.3. -The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association shall be open to inspection by Members not being Board and no Member, not being a Trustee, shall have any right of inspecting any accounting records or documents of the Association except as may be authorised by the Board.
- 26.4. At each General Meeting the Board shall lay before the Association financial statements for the immediately preceding Financial Year of the Association or, in the case of the first period after the date of commencement of the Association, made up for that period. Such financial statements shall be drawn in accordance with generally accepted accounting practices, and shall be accompanied by such additional reports as may be necessary at the discretion of the Board.
- 26.5. A copy of the financial statements which are to be laid before the Members in Annual General Meeting Shall:
 - 26.5.1. not less than 21 (Twenty One) days before the date of the meeting, be
 - 26.5.2. sent to every Member of the Association, provided that this Clause shall not require that a copy of those documents be sent to any person of whose address the Association is unaware.
 - 26.5.3. An auditor shall be appointed to the Association by the Board, and such appointment shall be subject to review on an annual basis at each annual General Meeting of the Association.



26.5.4. The Members shall, by way of Ordinary Resolution passed at a General Meeting of Members, nominate the Auditors of the Association and the secretary of the Association from time to time, provided that for the duration of the Development Period, the Developer may nominate the Auditors and the secretary of the Association.

26.5.5. The Financial Year end of the Association shall be the last day of December of each year.

27. **SERVICE OF NOTICES**

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

27.2. Notice of every General Meeting shall be given:

27.2.1. to every Member of the Association;

27.2.2. to the accounting Officer for the time being of the Association;

27.2.3. to any Trustee not a Member of the Association;

27.2.4. No other person shall be entitled to receive a notice of General Meetings.

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

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

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

28. **ACCOUNTS**

28.1. The Board shall cause proper books of account and records to be kept so as to fairly explain the transactions and financial position of the Association, which books of account and records shall include –

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

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



- 28.1.3. a register of Members showing, in each case, their addresses; and
 - 28.1.4. individual ledger accounts in respect of each Member.
 - 28.1.5. The Board shall cause all books of account and records to be retained for a period of 6 years after completion of the transactions, acts or operations to which they relate.
- 28.2 During the Development Period all payments on behalf of the Association must be approved by representatives of the Developer and the Management Company. After the Development period, all payments on behalf of the Association must be approved by the following signatories: the CLO, the Financial Trustee and a representative of the Management Company.

29. AUDIT

- 29.1. 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 sheet ascertained by the Auditors.
- 29.2. The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards applicable in the Republic of South Africa.

30. INDEMNITY

- 30.1. The Board, the Auditors and each Management Company, servant, agent or employee of the Association shall be and they are hereby indemnified by the Association against any liabilities bona fide incurred by them in their respective capacities in the proper discharge of any of their duties including, without limitation, the costs of defending any proceedings, civil, criminal or otherwise arising out of the due execution by them of their duties, and including all costs, losses and expenses, including traveling expenses, which they or any of them may incur or become liable for by reason of any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.
- 30.2. A Trustee shall not be liable for the act or omission of the Management Company, Auditors or of any of the other Trustees whether in their capacity as such or as Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which monies of the Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited, or for any loss or damage occasioned by any bona fide error of judgement or oversight on his part, or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties in relation thereto, unless same shall have occurred as a result of mala fides, breach of duty or breach of trust.
- 30.3. The Developer is hereby irrevocably indemnified against any loss or any possible damages or claim for damages that the Association, any Sub-Association, Body Corporate, Member, Owner or Occupant of any Land Unit may suffer as a result of any installation of any service or facility on the Estate or any act or conduct by the Developer in the exercising of the Development Rights, whether that such damage was caused by any willful or negligent act of the Developer

31. CONDITIONS IMPOSED BY LOCAL AUTHORITY

- 31.1. During the Development Period, this Constitution may from time to time be amended, without the need to be approved by the Association in General Meeting, so as to comply with the requirements from time to time of the Local Authority in relation to the conditions of establishment for the Development or any subdivisions thereof, or any other Land which may be added to the Development by the Developer, in his sole discretion.

32. DETERMINATION OF DISPUTES

- 32.1. Any disputes arising out of or in connection with this Constitution must be determined in accordance with this Clause 32, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 32.2. On a dispute arising (not moneys or a debt to the Association), the parties who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days after such notice, either of the parties to the dispute may refer the same to determination in terms of the following provisions of this Clause 32.
- 32.3. If a party exercises his right in terms of clause 32.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (Ten) years experience in their field
- 32.3.1. If the dispute is primarily an accounting or financial matter, a practicing chartered accountant with at least 10 years standing;
- 32.3.2. if the dispute is primarily a legal matter or a matter relating to the behaviour and or conduct of a Member, a practicing attorney or advocate with at least 10 years standing;
- 32.3.3. if the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practicing Architect with at least 10 years standing;
- 32.3.4. if the dispute primarily relates to the size of form of the Land or the position, height or size of buildings, structures, installations or equipment, a practicing Land surveyor with at least 10 years standing.
- 32.3.5. If the parties are unable to agree on the appointee as provided for in Clause 32.3 within 3 (three) days of being requested to do so, then the person shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope.
- 32.3.6. The person appointed as provided for in Clause 32.3 shall in all respects act as an expert and not as an arbitrator.
- 32.3.7. The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.



- 32.3.8. The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty one) days or so soon thereafter as possible.
- 32.3.9. The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 32.3.10. The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between "party and party" or as between "attorney and client".
- 32.3.11. The provisions of this Clause 32 constitutes the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw there from or claim in any such proceedings that they are not bound by such provisions.
- 32.3.12. The provisions of this Clause 32 shall be deemed to be severable from the remainder of the Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled, amended or declared of no force and effect for any reason.
- 32.3.13. Notwithstanding anything to the contrary contained in this Constitution the Board shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this Constitution and any of its annexure, including any amendments of additions thereto.

33. AMENDMENT OF CONSTITUTION

- 33.1. During the Development Period the Developer may without the approval of the Members of the Association, amend, substitute and repeal any provision of this Constitution with the approval of the Local Authority. Any such amendments as contemplated herein will only be communicated by the Developer to the Management Company and the Developer will therefore not be obliged to communicate these changes to the Members.
- 33.2. No provision of this Constitution shall be added to, amended, substituted or repealed without the prior written consent of the Developer for the duration of the Development Period.
- 33.3. Subject to the provisions of Clauses 33.1 and 33.2 above, any such addition, amendment, substitution or repeal shall require the approval of at least 51% (Fifty One percent) of the total number of votes of Members of the Association given at a General Meeting specifically called for such purpose, and the notice of such meeting shall, in addition to complying with the other requirements of this Constitution, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.
- 33.4. Any reference herein to this Constitution shall mean and include a reference to this Constitution as may from time to time be amended in accordance with the provisions of this Clause 34.



34. RESTRICTION ON ALIENATION

- 34.1. No Owner will be entitled to sell or Alienate his Land Unit or any component thereof for a period of 3 (Three) years calculated from the date of registration of transfer of such Land Unit in favor of an Owner.
- 34.2. This condition will be registered by the Developer against the Title Deed of each and every Land Unit in the Development, on the transfer date.

35. GAS INSTALLATION – CERTIFICATE OF CONFORMITY

In the event of their being a gas installation on any Land Unit, the Owner shall at his costs be obliged to obtain a certificate of conformity in respect of such installation as is required by the Occupational Health and Safety Act, No 85 of 1993, Regulation 17(3) of the Pressure Equipment Regulations of 2009. The Association and/or its agents will have reasonable access to any Land Unit for the purposes of inspection of such gas installation. Should any repairs be required by the Association or its agent to the gas installation, such repairs will be for the costs of the Owner. It is recorded that the Owner must supply The Board with the required Certificate of Conformity, once every year. No gas installation in excess of 7 (Seven) kilograms may be installed on any Land Unit without the prior written consent of The Board.

36. CONSTRUCTION OF CARPORTS

It is recorded that, should any Owner or Body Corporate, at any time, decide to construct carports in respect of any Land Unit, such carports must be uniform and must all be constructed simultaneously and be approved in terms of this Constitution by the ARC.

37. AGREEMENTS CONCLUDED ON BEHALF OF THE ASSOCIATION

It is recorded that the Developer will be allowed to enter into agreements and appoint any service provider on behalf of the Association for a period, to be in a discretion of the Developer, which agreements and/or appointments will be effective on the Association and its Members before or after the Development Period, provided that such service provider fulfill all its obligations and all the other terms and conditions of the agreement thus concluded.

38. PENALTIES

- 38.1 Any Owner or occupant contravening any of the terms and conditions of this Constitution, may receive a written warning from the Trustees of the Association or its agent, as well as a penalty, the amount to be determined by the chairman of the Trustees from time to time, for each infringement. Should the trespasser be a guest of an inhabitant, the Trustees reserve the right to act in terms of this rule against such inhabitant, who shall be liable for the behavior of his guest. This reservation does not impinge on any other rights of the Trustees or any others rights which the Trustees may have against any such trespasser or inhabitant.
- 38.2 Each penalty may be levied against the Owners Levy account for each infringement and



each Owner will be liable to pay such amount promptly.

39. PUBLIC / PRIVATE OPEN SPACE/ROADS AND SPECIAL ARRANGEMENTS

- 39.1 Erf 29608, being a Land Unit in the Development, is zoned for Public Open Space and may only be utilized in respect of Public Parking. The relevant Erf will be transferred by the Developer to the Local Authority.
- 39.2 Erf 29615, being a Land Unit in the Development, is zoned as Private Open Space and will be transferred to the Association. The usage of such a Land Unit will be determined by the Association in co-operation with the Local Authority. This Land Unit will not be liable for the payment of Levies and must be maintained at the cost and expense of the Association
- 39.3 Erf 29641, being a Land Unit in the Development, will have access only from Sage Road. Should the Owner thereof need further access or entrances, application will be made to the Local Authority.
- 39.4 Belladonna Way, indicated on the SDP, will be closed on the Northern side and there will be no through road as a result of no further extension by the Local Authority in respect of such road. It is recorded that the extension will be constructed by the Local Authority upon their decision to extend the Belladonna Way, as indicated on the SDP.
- 39.5 No Land Unit adjacent to Eerste River Road, will be entitled to any vehicular access from such road. Only pedestrian access will be allowed, except the Land Unit as referred to in Clause 39.1. which Land Unit is entitled to a left-in left-out entrance and exit, as approved by the Local Authority.
- 39.6 Erf 29600, being a Land Unit in the Development, and zoned for religious purpose, may utilize all public parking for its own benefit on any Sunday or a Religious Holiday.
- 39.7 All sectional title Developments as well as the commercial, retail and institutional Sub-Association C1 will be liable for the maintenance of the boundary wall next to Eerste River Road, under supervision and control of the Association.
- 39.8 The abovementioned Land Units will be provided with separate water connections, installed on such Land Units, which will enable the Owners thereof to attend to and maintain the landscaping on the road reserve next to Eerste River Road and Albert Frelander Road, under supervision and control of the Association.
- 39.9 It is hereby recorded that the Developer has paid the bulk levy contributions to the Local Authority, which bulk levy contributions was based on a certain percentage of bulk allowed by the Local Authority. Should the commercial, retail and institutional Owner wish to increase the bulk approved by the Local Authority, any additional bulk levy contributions in respect thereof, will be for the account of such an Owner.
- 39.10 Erf 29296, being a Land Unit in the Development, zoned as Public Open Space, will be maintained by the Local Authority, but the cleaning of the storm water system will be an obligation of the Association in terms of a Memorandum of Understanding concluded between the Association and the Local Authority.



39.11 Erf 29643, being a Land Unit on the Development, will be used as a detention pond and must be transferred to the Local Authority. The Local Authority will be liable for the construction and maintenance of the detention pond.

39.12 The Developer is entitled to appoint PEC Metering or any similar service provider, during the Development Period, which company will be mandated by the Developer to supply, read and maintain all electricity to the Bodies Corporate and Sub-Association C1.

40. GENERAL

40.1 The Board or the Management Company or their employees, agents or contractors shall be entitled and shall have the right to enter any Land Units for the purpose of repairing, maintaining or installing any facilities, services, equipment or structures relating to the provision of security or any other service to the Development generally.

40.2 The provisions of this Constitution shall be binding upon all Members/Owners and, insofar as they may be applicable to all persons occupying any Land Unit through or under any Member/Owner, whatsoever the nature of such occupation.

40.3 No Owner ceasing to be a Member of a Sub-Association for any reason, and neither shall such Owner's executors, curators, Trustees or liquidators, shall have any claim upon or interest in or right to the funds or any Land or other asset of the Association.

40.4 The Association may claim from any Member or his Development all arrear Levies and interest or other sums due from his to the Association at the time of his ceasing to be a Member for any reason.

40.5 Any person using any of the services, Land or facilities of the Association within the Development does so entirely at his own risk.

40.6 The Developer may at any time in writing, cede and assign all or any of its rights or obligations in terms of this Constitution to any transferee of its choice and such transferee shall be entitled to take transfer of all such rights and obligations.

40.7 The Developer may, at any time in writing, abandon in whole or in part, any of its rights.

40.8 Approved in terms of Section 29(2) of LUPO under the authority of the Director: Town Planning.