

C O N S T I T U T I O N
O F
T H E M A R E M M A N A H O M E O W N E R S ' A S S O C I A T I O N

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45. MARKETING AND SALES**34****1. ESTABLISHMENT OF THE ASSOCIATION**

1.1 The Maremmana Home Owners' Association is constituted as a body corporate with its main object being the creation of an association of the owners of portions in the Maremmana Development, which will entitle the members to share in the use of and benefit from recreational facilities, security facilities, parking facilities, gardens, agricultural areas and other common areas and facilities on a common basis, to share the costs incurred in keeping, repairing and maintaining the common areas as a common expense and generally to regulate and control access to and the use of the common areas.

1.2 The Association shall come into existence simultaneously with the registration of transfer in the Deeds Office of the first portion in the subdivision of the land.

1.3 This Constitution shall come into force when the first portion in the development is registered in the Deeds Office.

2. 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 to divest of ownership of any portion or part thereof, and includes alienation by way of sale, exchange, donation, deed, intestate or testate succession, cession, assignment, court order, insolvency or liquidation, prescription or expropriation, irrespective of whether such alienation is subject to a suspensive or resolution condition, and alienation shall have a corresponding meaning. The cession of a member's interest in a close corporation or change in the controlling interest in the shareholding of a company will constitute “alienation” for the purpose of this Constitution;

2.1.2 **“Architectural & Urban Design Controls”** means the design manual to control all aspects of the design of all buildings improvements, and landscaping within the development as amended from time to time in terms of this Constitution;

2.1.3 **“Association”** means the Maremmana Home Owners' Association;

2.1.4 **“Association's architect”** means a professional architect registered with the South African Council for the Architectural Profession with a registered status of Professional Architect (Pr Arch) as may be appointed by the developer from time to time, or subsequent to the development period by the trustee committee;

2.1.5 **“auditors”** means the auditors of the Association as may be appointed from time to time;

2.1.6 **“budget”** means an itemised financial estimate of income and expenditure of the Association for the ensuing financial year;

- 2.1.7 “**Building Contractor’s Code of Conduct Agreement**” means the agreement governing the conduct of building contractors in the development as contained in Annexure D hereto;
- 2.1.8 “**business day**” means weekdays other than Saturdays, Sundays and public holidays;
- 2.1.9 “**chairman**” means the chairman of the trustee committee;
- 2.1.10 “**common areas**” mean those parts of the land which are intended for general use and benefit of the members and are not subject to an exclusive right of use by a member and shall include but not be limited to private roads, visitors parking areas, private open space, conservation areas, security gate, security electrical fencing perimeter, and amenities within the development;
- 2.1.11 “**completion of the scheme**” means the date of transfer of the last portion of the land in the development from the developer to the relevant purchaser thereof;
- 2.1.12 “**Conduct Rules**” means the rules referred to in clause 14 of the Constitution and contained in Annexure B hereto;
- 2.1.13 “**Constitution**” means this document with the annexures thereto, as may be amended from time to time;
- 2.1.14 “**developer**” means Stratovest 117 (Proprietary) Limited Registration Number 2002/023831/07 and its successor/s in title or assigns;
- 2.1.15 “**development**” means the entire development known as Maremmana established on the land, which development may be varied by the developer in accordance with clause 44 of this Constitution;
- 2.1.16 “**development period**” means the period from the establishment of the Association until all the portions within the development have been transferred by the developer, or upon the developer notifying the trustee committee in writing, of termination of the development period, whichever occurs first;
- 2.1.17 “**dwelling**” means a building or place of residence constructed in accordance with the Architectural & Urban Design Controls;
- 2.1.18 “**Environmental Management Plan**” means the environmental management plan for the development as approved by the Provincial Authority;
- 2.1.19 “**exclusive use area**” means an area of 600 square metres in extent surrounding each portion as described in the Architectural & Urban Design Controls, which shall be for the exclusive use of the owner of the particular portion, to the exclusion of the other owners in the development;

- 2.1.20 “**fund**” means a common fund for performing all functions of the Association to defray expenses and other financial obligations incurred by the Association;
- 2.1.21 “**general plan**” means the general plan in respect of the land as contained in Annexure A to this Constitution;
- 2.1.22 “**improvements**” mean any building or structure of whatsoever nature constructed or erected on a portion;
- 2.1.23 “**land**” means the subdivision or subdivisions of portion 5 (a portion of portion 4) of the Farm No 781, situate in the Theewaterskloof Municipality, Division of Caledon, Province of the Western Cape, to form portions 6 to 56 as appears from the General Plan and comprising the development.
- 2.1.24 “**levy**” means the levy due by a member to the Association in terms of clause 13 of this Constitution;
- 2.1.25 “**local authority**” means the Theewaterskloof Municipality and its successors in title;
- 2.1.26 “**managing agent**” means the managing agent appointed in terms of clause 33 of this Constitution;
- 2.1.27 “**member**” means a member of the Association;
- 2.1.28 “**month**” means a calendar month;
- 2.1.29 “**office**” means the *domicilium citandi et executandi* of the Association determined from time to time in terms of clause 5.1 of this Constitution;
- 2.1.30 “**owner**” means the registered owner of a portion within the development;
- 2.1.31 “**portions**” mean the portions of land in the development being portions 6 to 55 referred to in clause 2.1.23; excluding the common areas and exclusive use areas and reference to a “portion” shall have the corresponding meaning;
- 2.1.32 “**the prime rate**” means the prime bank overdraft rate of interest charged by ABSA Bank Limited or its successor/s from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the members);
- 2.1.33 “**resident**” means the lessee or occupant of a dwelling;
- 2.1.34 “**special resolution**” means a resolution passed at a special general meeting in accordance with the provisions of clause 31 of this Constitution;

- 2.1.35 “**trustee committee**” means the board of trustees of the Association and trustees shall have a corresponding meaning;
- 2.1.36 “**trustee**” means one of the trustee committee;
- 2.1.37 “**vice-chairman**” means the vice-chairman of the trustee committee;
- 2.1.38 “**year**” means a period of 12 calendar months calculated to coincide with the financial year in terms of clause 5 of this Constitution.
- 2.2 Words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing persons shall include partnerships, trusts and bodies corporate, and vice versa.
- 2.3 The clause headings are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.4 When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 The following annexures to this Constitution are deemed to be incorporated in and form part of this Constitution:
- 2.5.1 Annexure A – the General Plan
- 2.5.2 Annexure B – the Conduct Rules
- 2.5.3 Annexure C – the Architectural & Urban Design Controls
- 2.5.4 Annexure D – the Building Contractor’s Code of Conduct Agreement
- 2.6 If any provision in an annexure to this Constitution should be in conflict with a provision of this Constitution, the provision of this Constitution shall prevail.

3. STATUS OF THE ASSOCIATION

- 3.1 The Association shall be an Association:
- 3.1.1 with legal personality, capable of suing and being sued in its own name;
- 3.1.2 none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the trustee committee in terms hereof;

- 3.1.3 not for profit, but for the benefit of all its members;
- 3.1.4 with the right to acquire, hold, lease and alienate property, both movable and immovable.
- 3.2 The Association is not permitted to distribute its funds to any person other than to a similar Association of persons.
- 3.3 On dissolution the remaining assets must be distributed to a similar Association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act.
- 3.4 Any amendments to clause 3 of the Constitution must be submitted to the Commissioner for the South African Revenue Service.
- 3.5 Funds available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), 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).

4. OBJECTS OF THE ASSOCIATION

The purpose and objects of the Association shall be:

- 4.1 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development;
- 4.2 to control all aspects of the design of all buildings, improvements and landscaping within the development in order to maintain high standards and to ensure an attractive and harmonious development;
- 4.3 to ensure that all portions have been developed and dwellings have been completed within the time frame as specified in this Constitution;
- 4.4 to enforce members' obligations in terms of the provisions of this Constitution, the Conduct Rules, the Architectural & Urban Design Controls and the Building Contractor's Code of Conduct Agreement;
- 4.5 to establish a fund for expenses of the Association, including provision for future expenses and contingencies;
- 4.6 to determine and collect levies for the purpose of the said fund from members;
- 4.7 to control the alienation and transfer of portions in the development, and to ensure compliance with the provisions of this Constitution and Annexures;
- 4.8 to ensure that members satisfactorily maintain their dwellings, improvements and portions in the development;

- 4.9 the maintenance, control and management of the common areas within the development and to take transfer of the common areas;
- 4.10 the provision and maintenance of effective security measures for the development;
- 4.11 to enter into service agreements and other necessary agreements with the local authority or any other authority or supplier of services in connection with the development;
- 4.12 to take action, including the imposition of penalties or the institution of court or arbitration proceedings, as may be deemed necessary by the trustee committee, in relation to the non-compliance by any member of the requirements of this Constitution;
- 4.13 to ensure that all conditions of approval, zoning and scheme regulations for the development are complied with;
- 4.14 to have due regard to the principles recorded in the Environmental Management Plan and any environmental management system for the development prepared by the developer;
- 4.15 to comply with the obligations placed on the Association in terms of the Environmental Management Plan and the environmental management system, including, but not limited to, the preparation of environmental audit reports and the submission thereof to the local authority; and
- 4.16 to generally do all such things as may be necessary or requisite to give effect to and implement the objects of the Association and to do all such things ancillary or incidental to the objects.

5. DOMICILIUM CITANDI ET EXECUTANDI AND FINANCIAL YEAR OF THE ASSOCIATION

- 5.1 The trustee committee shall from time to time determine the *domicilium citandi et executandi* of the Association, subject to the following:
 - 5.1.1 such address shall be the address of the chairman or of a resident trustee nominated by the trustee committee or the address of any duly appointed managing agent.
 - 5.1.2 the trustee committee shall give notice to all members of any change of such address.
- 5.2 The financial year end of the Association shall be on a date determined by the trustee committee or the members in general meeting.
- 5.3 The fiscal year of the Association shall normally be a twelve month period always ending on the financial year-end date, the period to be reduced or increased only when necessary to accommodate changes to the year-end date and approved by members in general meeting.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership of the Association shall be compulsory for every registered owner of a portion and such membership shall commence simultaneously with the registration of transfer of the portion into the name of the transferee. When a member ceases to be the registered owner of a portion, such person shall ipso facto cease to be a member of the Association.
- 6.2 Membership of the Association shall be limited to the registered owners of portions, provided that:
- 6.2.1 a person who is entitled to obtain a certificate of registered title to any such portion shall be deemed to be the registered owner thereof;
- 6.2.2 where any such owner is more than one person, all the registered owners of that portion shall be deemed jointly and severally to be one member of the Association and nominate one owner to represent them and vote at meetings of the Association.
- 6.3 Membership shall be automatic and compulsory for every registered owner of a portion and no member may resign, or cede or assign his membership to another, but shall remain a member for as long as such owner is the registered owner of a portion in the development.
- 6.4 The trustee committee may provide for the issue of a membership certificate which certificate shall be in such form as may be prescribed by the trustee committee.
- 6.5 No member ceasing to be a member of the Association for any reason shall, nor shall any such member's executor, curators, trustees or liquidators, have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such member or the estate of such member any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a member.

7. OBLIGATIONS OF MEMBERS

- 7.1 Every member is obliged to comply with:
- 7.1.1 the provisions of this Constitution, the Conduct Rules, the Architectural & Urban Design Controls and the Building Contractor's Code of Conduct Agreement;
- 7.1.2 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a member; and
- 7.1.3 any direction imposed by the trustee committee or given by the members in general meeting in enforcing the provisions of this Constitution, the Conduct Rules and the Architectural & Urban Design Controls.
- 7.2 The rights and obligations of a member are not transferable and every member shall to the best of his ability, further the objects and interests of the Association.

- 7.3 The members shall be jointly liable for expenditure incurred in connection with the Association.
- 7.4 No member shall apply for the subdivision or rezoning of his portion with a view to procure a variation or amendment or substitution of use rights.
- 7.5 A member shall be entitled to use his exclusive use area to the exclusion of other members, subject to the provisions of this Constitution and the Conduct Rules. No improvement may be constructed on an exclusive use area.
- 7.6 Each member shall maintain his dwelling and all improvements on his portion in a neat and tidy condition and in a state of good repair.
- 7.7 If a member fails to repair or maintain his dwelling or improvements as required in clause 7.6 above and any such failure persists for a period of thirty (30) days after the giving of written notice to repair or maintain given by the trustee committee, the trustee committee shall be entitled to remedy the member's failure and to recover the reasonable cost of doing so from such member. The expenses incurred by the trustee committee shall be deemed to be part of the levy due by the member and the trustee committee may recover it from the member as a levy debt.
- 7.8 Each member shall:
- 7.8.1 in respect of his portion maintain a garden to a standard acceptable to the trustee committee and in compliance with the Architectural & Urban Design Controls, where applicable;
 - 7.8.2 in respect of his exclusive use area ensure that it complies with the requirements of Cape Nature; and
 - 7.8.3 in respect of a vacant stand keep his vacant stand clean and veld grass must be kept short to prevent veld fires.
- 7.9 If a member fails to adequately maintain his garden as required in clause 7.8.1 above, or to ensure that his exclusive use area complies with the requirements of Cape Nature as required in clause 7.8.2 or to keep his vacant stand clean and the veld grass short as required in clause 7.8.3 above, and any such failure persists for a period of fourteen (14) days after the giving of written notice by the trustee committee, the trustee committee shall be entitled to remedy the member's failure and to recover the reasonable costs of doing so from such member. The expenses incurred by the trustee committee shall be deemed to be part of the levy due by the member and the trustee committee may recover it from the member as a levy debt.

8. RESTRICTIONS ON ALIENATION OF A PORTION

- 8.1 A member shall not be entitled to alienate a portion unless it is a condition of the sale and transfer that:
- 8.1.1 the transferee agrees in writing to become a member of the Association and to be bound by the provisions of this Constitution;

- 8.1.2 the registration of transfer of that portion into the name of the transferee shall *ipso facto* constitute the transferee as a member of the Association; and
- 8.1.3 the member first obtains the written consent of the Association.
- 8.2 The written consent of the Association referred to in clause 8.1.3 above, shall not be unreasonably withheld provided that:
- 8.2.1 the transferee of such portion agrees in writing to become a member of the Association and to be bound by the Constitution of the Association;
- 8.2.2 all levies due in respect of the portion and any other amounts due by the member to the Association have been paid or secured to the satisfaction of the trustee committee; and
- 8.2.3 there has been substantial compliance with the provisions of this Constitution, the Conduct Rules, the Architectural & Urban Design Controls and the Building Contractor's Code of Conduct Agreement.

9. OBLIGATION TO COMPLETE DWELLING

- 9.1 Each member shall ensure that the portion owned by him shall have been developed by the completion of a dwelling, in conformity with the Architectural & Urban Design Controls, within a period of 108 (one hundred and eight) months from the date of registration of transfer of the portion concerned from the Developer to the first purchaser thereof.
- 9.2 In the event of a member failing to comply with his obligations under clause 9.1 above, the trustee committee, for and on behalf of the Association, shall, without derogation from any other right/s which the Association may have, impose on such member a penalty equal to three times the then current monthly levy determined under clause 13 of the Constitution. The penalty shall be payable to the Association monthly in advance on the first of each and every successive month until the dwelling has been completed. The penalty will be payable irrespective of whether or not the failure to commence construction and to complete the dwelling was attributable to such member, or any predecessor in title.
- 9.3 For the purposes of 9.1 "completion" shall mean when either the member's or the Association's architect certifies the dwelling suitable for occupation.
- 9.4 In the event of a member selling his portion, in terms of an Agreement of Sale dated between 01 February 2017 and 31 July 2017, the new owner shall:
- 9.4.1 Commence construction of a dwelling on that portion by breaking ground within 6 (six) months of the date of registration of transfer into his name; and
- 9.4.2 Complete the dwelling and deliver an occupation certificate, issued as envisaged in clause 9.3, to the Home Owners' Association within a total of 9 (nine) months of the date of transfer into his name,

Failing either of which, the new owner shall become liable for the penalty provided for in clause 9.2 above.

- 9.5 The term "new owner" shall mean an individual, a member of a Close Corporation or a shareholder of a Company or a Trustee of a Trust, who has not previously owned property in the Development, either in his personal capacity or in the aforesaid representative capacity.

10. CONSTRUCTION OF DWELLING, IMPROVEMENTS AND ALTERATIONS

- 10.1 No member may without the written approval of the trustees or their nominee:

10.1.1 commence with the clearing and fencing of his portion, the establishment of a site office/store and builders' toilet facilities, the excavation and throwing of foundations and the construction of his dwelling, or

10.1.2 erect any new buildings or improvements of any nature whatsoever on his portion, or

10.1.3 effect refurbishment, alterations or additions to existing buildings or improvements on his portion or change the external appearance thereof.

- 10.2 The approval as contemplated in clause 10.1 shall only be given:

10.2.1 After the submission of detailed plans of the proposed work to the trustees or their nominee as envisaged in the Architectural & Urban Design Controls;

10.2.2 after the trustees or their nominee is satisfied that the proposed work is in accordance with the Architectural & Urban Design Controls for the purposes of which the trustees or their nominee shall be the sole arbiter and their decision shall be final and binding on the member;

10.2.3 after the member has made payment of any costs, which may be incurred in obtaining this approval, including the costs of the trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature;

10.2.4 after the member has paid to the trustee committee a deposit in such amount as the trustee committee may from time to time determine as a building deposit subject to the provisions of clause 11 below;

Provided that the provisions of this clause shall not be interpreted as detracting from the obligation of members to obtain approval of building plans from the Local Authority.

- 10.3 When giving their approval in terms of clause 10.2 above, the trustee committee may impose any reasonable condition on the member. The trustee committee may impose a time limit within which the work must be completed.
- 10.4 For the purpose of 10.3 "completed" shall mean when either the member's or the Association's architect certifies the work as being complete in terms of the relevant approved plans.
- 10.5 A member shall not be entitled to deviate from any approved plan, without the approval of the trustees or their nominee.

11. DEPOSIT FOR DAMAGE

- 11.1 Each member shall, when submitting the detailed plans to the trustee committee for approval in terms of clause 10.2.1, pay to the trustee committee a deposit in an amount to be determined from time to time by the trustee committee, which amount shall be retained by the trustee committee until completion by the member and/or his contractors of such work.
- 11.2 Upon completion of all such work, the trustee committee shall if they are satisfied that no damage has been effected by the member or any of his contractors to the common areas and/or landscaped areas within the development and that the work has been constructed in accordance with duly approved plans, release the building deposit to the member, excluding any interest thereon which will accrue to the Association.
- 11.3 In the event of any landscaped area and/or the common areas having been damaged, due to such work, the member shall within fifteen (15) days of having been requested to do so in writing by the trustee committee, rectify the damage to the satisfaction of the trustee committee, failing which, the trustee committee shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the trustee committee as a building deposit shall be utilised to defray the expenses of the independent contractor. If, however, the deposit is not sufficient to cover the cost of such repairs, the trustee committee shall be entitled to recover the shortfall from the member.

12. ARCHITECTURAL & URBAN DESIGN CONTROLS

- 12.1 The Architectural & Urban Design Controls contained in annexure C to this Constitution constitute an integral part of this Constitution and all dwellings, buildings, improvements, changes and/or alterations shall comply with the provisions of the Architectural & Urban Design Controls.
- 12.2 Having regard to the contents of the Architectural & Urban Design Controls, the trustee committee shall be entitled to:
- 12.2.1 implement and enforce conditions on members in order to harmonise the architectural styles and design criteria, as well as the materials and colours to be used in all dwellings and buildings erected within the development, including any refurbishment, alterations, additions or changes to existing buildings;

- 12.2.2 perform such acts as are necessary to accomplish the purposes expressed or implied herein which acts shall include, inter alia, the examination and endorsement of the relevant building plans as necessary for any construction, renovation and alterations within the development;
 - 12.2.3 delegate powers and functions to a Design Review Committee, of which the Architect shall be a member;
 - 12.2.4 appoint such advisors as are necessary to scrutinize the relevant plans referred to herein; and
 - 12.2.5 impose a scrutiny fee on members for the services as mentioned herein.
- 12.3 The developer and subsequent to the development period, the trustee committee may amplify, clarify or add to the provisions of the Architectural & Urban Design Controls.
- 12.4 No site occupation of any portion within the development shall be permitted until written acknowledgement of the Architectural & Urban Design Controls has been received from the registered owner thereof.

13. BUDGET AND LEVIES PAYABLE BY MEMBERS

- 13.1 The trustee committee shall establish and maintain a fund of the Association for the purpose of meeting all the expenses, which the Association has incurred, or to which the trustee committee reasonably anticipates the Association will be put by way of the following:
- 13.1.1 the maintenance, management, repair, improvement and keeping in order of the common areas, including specifically landscaping, all services and sewage treatment and retention dams servicing the development;
 - 13.1.2 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development, including security and security systems, personnel and staff;
 - 13.1.3 salaries of employees and staff employed by the Association;
 - 13.1.4 administrative expenses, including the cost of a managing agent if applicable;
 - 13.1.5 banking and auditing expenses;
 - 13.1.6 payment of all rates and other charges and insurance premiums payable by the Association in respect of the common areas;
 - 13.1.7 all services rendered to the Association; and
 - 13.1.8 all other expenses necessarily or reasonably incurred in connection with the management and objects of the Association and its affairs.

- 13.2 Before every annual general meeting, the trustee committee shall prepare a budget of the anticipated income and expenses of the Association, during the ensuing financial year, together with such estimated deficiency (if any) as shall result from the preceding year. The trustee committee may include in such budget an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 13.3 The budget shall be laid before the annual general meeting for approval by the members by ordinary resolution.
- 13.4 Within fourteen (14) days after each annual general meeting, the trustee committee shall by making an appropriate resolution, determine the levy payable by each member by apportioning the approved budget to members equally in respect of every portion in the development.
- 13.5 The levies so determined shall be due and payable upon making the trustees' resolution referred to in clause 13.4 above.
- 13.6 Levies imposed in terms of 13.4 above shall be paid in equal monthly instalments over a period of 12 months, monthly in advance on the first day of every month.
- 13.7 Levies may be paid by means of any of the following methods:
- 13.7.1 the issue of a debit order against his account; or
 - 13.7.2 electronic fund transfer; or
 - 13.7.3 such other method as the trustee committee may determine from time to time; or
 - 13.7.4 by means of an advance payment of all levies due for the full year.
- 13.8 Members who require a monthly invoice in any form other than by e-mail shall pay a service fee as determined by the trustee committee from time to time.
- 13.9 The trustee committee may from time to time make special levies upon the members in respect of all such expenses as are mentioned in this clause 13.1 (which are not included in the budget in terms of clause 13.2).
- 13.10 The trustee committee shall apportion the special levies to members equally in respect of every portion in the development. Special levies may be payable in the sum or by such instalments and at such time or times as the trustee committee shall think fit.
- 13.11 Any amount due by a member by way of a levy or penalty shall be a debt due by such member to the Association and shall attract interest at the prime rate.
- 13.12 The obligation of a member to pay levies to the Association shall cease upon such member ceasing to be a member of the Association, without prejudice to the right of the Association to recover arrear levies.

- 13.13 No levies paid by a member to the Local Authority and/or the Association shall under any circumstances be repayable by the Local Authority and/or the Association upon such member ceasing to be a member.
- 13.14 A member's successor in title to the portion shall be liable as from the date upon which such successor becomes a member pursuant to the transfer of such portion, to pay the levy attributable to the portion.
- 13.15 No member shall be entitled to any of the privileges of membership unless and until such member shall have paid every levy or other amount (if any), which shall be due and payable to the Association in respect of the membership of such member.

14. CONDUCT RULES

The Conduct Rules governing the rights of use and enjoyment by members and residents of their portions, exclusive use areas and the common areas as contained in Annexure B to this Constitution shall be binding upon all members and residents of dwellings from the date of establishment of the Association

15. IMPOSITION OF PENALTIES

- 15.1 The trustee committee shall have the power to impose penalties upon members to the extent and according to the procedures complying with the requirements of a fair administrative hearing as stipulated in the Conduct Rules.
- 15.2 Members shall be liable for payment of such penalties and all costs related to the imposition and recovery thereof.

16. COMMON AREAS

- 16.1 The Association shall take title to the parts of the common areas, which are registerable.
- 16.2 The Association acknowledges that the Local Authority shall not be responsible for, and the Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and property control of the common area, all services therein and any structure or thing erected on or contained therein, including the private road and parking thereon, the perimeter fence and for the landscaping of any parts of the common areas.
- 16.3 Neither the whole nor any portion of the common areas shall be:
- 16.3.1 sold, alienated or otherwise disposed of or subdivided or transferred, or
 - 16.3.2 mortgaged or encumbered in any manner whatsoever, or
 - 16.3.3 let for a period of 10 years or more, or

16.3.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities,

without the sanction of a special resolution of the Association.

16.4 Notwithstanding the provisions of clause 16.3 above, the trustee committee may let parts of the common areas to owners or residents for a period of less than 10 years, subject to any direction or restriction given by the members of the Association by ordinary majority resolution in general meeting.

16.5 All officials, employees and contractors employed by the Association, local authority, any public service company and/or the owner of the Remainder of Portion 4 of the Farm No 781 Caledon shall, at all times, have reasonable access to the common areas for purposes of inspecting and/or maintaining all services supplying and/or traversing any part thereof.

16.6 Members shall be entitled to access to and over all common areas provided that access shall be limited to the defined routes and areas as may be determined from time to time by the trustee committee and use of the common areas and facilities shall be subject to compliance with the provisions of the Conduct Rules and the reasonable conditions which may be imposed from time to time by the trustee committee.

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

16.8 Should polo facilities and/or horse stabling facilities be established by the developer or by the Association on any land forming part of the development or on adjacent land, members shall have the right, subject to any terms, conditions and rules prevailing from time to time, to the use of such facilities, and to become members of any club or other body formed in respect of the use and control of such facilities.

17. BREACH OF THIS CONSTITUTION

17.1 Should any member:

17.1.1 fail to pay on due date any amount due by that member in terms of this Constitution, the Conduct Rules or the Architectural & Urban Design Controls and remain in default for more than seven (7) days after being notified in writing to do so by the trustee committee; or

17.1.2 commit any other breach of any of the provisions of this Constitution, the Conduct Rules or the Architectural & Urban Design Controls and fail to commence remedying that breach within a period of seven (7) days after the receipt of written notice to that effect by the trustee committee and complete the remedying of such breach within a reasonable time;

then and in either such event the trustee committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the trustee committee or the Association or any other member may have in law, including the right to claim damages:

- 17.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his obligations in terms of this Constitution, the Conduct Rules or the Architectural & Urban Design Controls, as the case may be; and/or
- 17.1.4 to suspend all or any services to the portion owned by that member; and/or
- 17.1.5 in the case of clause 17.1.2 above, to remedy such breach and immediately recover the total cost incurred by the trustee committee or the Association in so doing from such member.
- 17.2 Should the trustee committee of the Association institute any legal proceedings against any member pursuant to a breach by that member of this Constitution, the Conduct Rules or the Architectural & Urban Design Controls, then without prejudice to any other rights which the trustee committee or the Association or any other member may have in law, the trustee committee shall be entitled to recover from such member all legal costs incurred by the trustee committee or the Association, including costs between attorney and own client, tracing fees, collection commission, expenses and charges incurred or levied by the Association in obtaining the recovery of arrear levies or any other arrear amount due and owing by such member to the Association, or in enforcing compliance with this Constitution, the Conduct Rules or the Architectural & Urban Design Controls.
- 17.3 Without prejudice to all or any of the rights the trustee committee or the Association granted under this Constitution, should any member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at the prime rate calculated from the due date for payment until the actual date of payment of such amount, both dates inclusive.
- 18. TRUSTEE COMMITTEE**
- 18.1 There shall be a board of trustees of the Association, which shall consist of not less than five (5) and not more than seven (7) members.
- 18.2 Every trustee must be a member or the lawful spouse of a member or an authorised representative of the member where the member is not a natural person.
- 18.3 During the development period, the Developer shall be entitled to appoint one (1) trustee to the trustee committee and to appoint an alternate to such trustee and to remove, replace and fill any vacancy in any such appointment as trustee or alternate trustee.
- 18.4 At any meeting of the trustee committee, the trustees present at the meeting shall each have one vote.
- 18.5 Until the first trustees of the Association are appointed, the Developer shall be entitled to carry out all the functions and duties of the trustees in terms of this Constitution.

19. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

19.1 Save as set forth in clause 19.2 below, each trustee shall continue to hold office until the annual general meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, and shall be eligible for re-election to the trustee committee at such meeting.

19.2 A trustee shall be deemed to have vacated his office as such upon:

19.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

19.2.2 his making any arrangement or compromise with his creditors;

19.2.3 his conviction for any offence involving dishonesty;

19.2.4 his becoming of unsound mind or being found lunatic;

19.2.5 his resigning from such office in writing delivered to the secretary;

19.2.6 his death;

19.2.7 his being removed from office by a resolution of the majority of the trustees;

19.2.8 his being removed from office by ordinary resolution of the members in general meeting;

provided that anything done in the capacity of a trustee in good faith, by a person who ceases to be a trustee, shall be valid until the fact that he is no longer a trustee has been recorded in the minute book of the trustee committee.

20. OFFICE OF TRUSTEES

20.1 The trustees shall appoint from amongst themselves, a chairman and vice-chairman.

20.2 The first chairman and vice-chairman shall be appointed by the Developer until the expiration of a period of twelve (12) months after the registration of transfer of the first of the portions in the development to the purchaser thereof, and such office bearers shall hold their respective offices until the end of each year provided that any such office shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason.

20.3 Within fourteen (14) days of the holding of an annual general meeting, the trustee committee shall meet and shall elect from its own number the chairman and vice-chairman, who shall hold their respective offices until the end of the following year, provided that the office of the chairman or vice-chairman shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason. No one trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the trustee committee shall immediately meet to appoint one of their number as a replacement in such office.

- 20.4 Save as otherwise provided in this Constitution, the chairman shall preside at all meetings of the trustee committee, and all general meetings of members, and shall perform all duties incidental to the office of chairman and such other duties as may be prescribed by the trustee committee or by members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 20.5 The vice-chairman shall assume the powers and duties of the chairman in the absence of the chairman, or his inability or refusal to act as chairman, and shall perform such other duties as may from time to time be assigned to him by the chairman or the trustee committee.
- 20.6 trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as trustees and/or as chairman or vice-chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 20.7 Written nominations by members for the election of trustees at an annual general meeting shall be lodged with the trustee committee not later than 48 hours before each annual general meeting and shall be proposed and seconded by members and accepted by the nominee. If insufficient written nominations have been received by the trustee committee, nominations may also be given at the annual general meeting and shall be proposed and seconded by members and accepted by the nominee.

21. POWERS OF THE ASSOCIATION

The Association shall exercise the powers and perform the functions entrusted to it as set out in this Constitution the Conduct Rules and the Architectural & Urban Design Controls and shall perform such ancillary functions and exercise such powers as may be necessary in pursuit of its objectives. In particular, without detracting from the generality of the above, the Association shall have the following functions and powers, namely:

- 21.1 to establish a fund for the Association;
- 21.2 to collect levies from the members for the purpose of the fund;
- 21.3 to open and operate an account or accounts with a commercial bank and financial institution for the fund and to invest surplus moneys of the fund;
- 21.4 to properly maintain common areas and assets of the Association in a state of good and serviceable repair and to insure common areas and assets as may be necessary;
- 21.5 to comply with any notice or order of the local authority requiring any repairs to or work in respect of the common areas;
- 21.6 to establish and maintain on the common areas suitable landscaping, lawns, gardens and recreational facilities;

- 21.7 to appoint such agents and employees as it may deem fit;
- 21.8 to appoint a managing agent;
- 21.9 to purchase or otherwise acquire, take transfer of, mortgage, sell, give transfer of, or hire or let immovable property, when essential for the proper fulfilment of its functions;
- 21.10 to purchase, hire or otherwise acquire movable property for the use of members for their enjoyment or protection, or in connection with the enjoyment or protection of the common areas;
- 21.11 to borrow moneys required by it in the performance of its functions or the exercise of its powers and to secure the repayment of moneys borrowed by it and the payment of interest thereon, by negotiable instrument or by the hypothecation of unpaid levies, or by mortgaging any property vested in it;
- 21.12 to enter into agreements with the local authority or any other person or entity for the supply to the development of electric current, gas, water, fuel and sanitary or other services;
- 21.13 to enter into any other agreement(s) for the purpose of achieving the objects of the Association, including (but not limited to) agreements with security organisations to provide security to the whole or any part of the development;
- 21.14 to enter into an agreement with a member or resident for the provision of amenities or services by the Association to the member or resident; and
- 21.15 to do all things reasonably necessary for the enforcement of the Constitution, the Conduct Rules, the Architectural & Urban Design Controls and the Building Contractor's Code of Conduct Agreement and for the control, management and administration of the common areas.

22. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 22.1 Subject to the express provisions of this Constitution, the trustee committee shall manage and control the affairs of the Association, and shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this Constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such restrictions or directions as may be given by the members in general meeting from time to time, provided that no restriction or direction given by the Association in general meeting shall invalidate any prior act of the trustee committee which would have been valid if such direction had not been given.
- 22.2 The trustee committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

- 22.3 The trustee committee shall have the right to co-opt onto the trustee committee any person or persons chosen by it. Any co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees, but no co-opted trustee shall have any vote at any meeting of the trustee committee.
- 22.4 The trustee committee may, should it so decide, investigate any suspected or alleged breach by any member or trustee of this Constitution in such reasonable manner, as it shall decide from time to time.
- 22.5 The trustee committee may not make loans on behalf of the Association to members.
- 22.6 No document signed on behalf of the Association shall be valid and binding unless it is signed by two trustees or by one trustee and the managing agent, except the consent referred to in clause 8.1.3, which may be signed by one trustee or the managing agent.

23. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 23.1 The trustee committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 23.2 Meetings of the trustee committee shall be held at least once every quarter provided that if all the trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the trustee committee need be held for that quarter.
- 23.3 The quorum necessary for the holding of any meeting of the trustee committee shall be 50% (fifty percent) of the trustees.
- 23.4 The chairman shall preside as such at all meetings of the trustee committee, provided that should at any meeting of the trustee committee the chairman not be present within 5 minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 5 minutes of the time appointed for the holding of such meeting, those present of the trustees shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 23.5 The trustees shall ensure that minutes are taken of every trustee committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the chairman of the meeting. All minutes of trustee committee meetings shall after certification as aforesaid be placed in a minute book to be kept in perpetuity. The minute book shall be open for inspection at all reasonable times by a trustee, the auditors, and the members.
- 23.6 All competent resolutions recorded in the minutes of any trustee committee meeting shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the trustee committee shall be of any

force or effect, or shall be binding upon the members or any of the trustees unless such resolution is competent within the powers of the trustee committee.

23.7 Save as otherwise provided in this Constitution, the proceedings at any trustees' meeting shall be conducted in such reasonable manner and form, as the chairman of the meeting shall decide.

23.8 A resolution signed by all the trustees shall be valid in all respects as if it had been duly passed at a meeting of the trustee committee duly convened.

24. GENERAL MEETINGS OF THE ASSOCIATION

24.1 The Association shall within sixty (60) days after the end of the financial year of the Association 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 in terms of clause 25.1 below calling it.

24.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the trustee committee shall decide from time to time.

24.3 All general meetings other than annual general meetings shall be called special general meetings.

24.4 The trustee committee may whenever they think fit convene a special general meeting for any purpose.

24.5 General meetings of the Association shall take place at such place/s as shall be determined by the trustee committee from time to time.

25. NOTICE OF MEETINGS OF THE ASSOCIATION

25.1 An annual general meeting and a meeting called for the passing of a special resolution, shall be called by 21 days' notice in writing at the least and a special general meeting, other than one called for the passing of a special resolution shall be called by 14 days' notice in writing at the least.

25.2 In each case, the notice shall specify the place, the day and the hour of the meeting, being exclusive of the day on which it is given and,

25.2.1 in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and

25.2.2 in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the trustee committee,

to such persons as are, under this Constitution, entitled to receive such notices from the Association.

25.3 A general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed:

- 25.3.1 in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- 25.3.2 in the case of a special general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 75% of the total voting rights of all members.
- 25.4 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

26. QUORUM FOR GENERAL MEETINGS

- 26.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 26.2 The quorum necessary for the holding of any general meeting shall be such of the members entitled to vote, as together for the time being, represent 25% of the total votes of all members of the Association entitled to vote, save that not less than four (4) members must be personally present.
- 26.3 If within thirty (30) minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

27. AGENDA AT GENERAL MEETINGS

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

- 27.1 the consideration of the chairman's report to the trustee committee;
- 27.2 the election of the trustee committee;
- 27.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 27.4 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
- 27.5 the consideration of the report of the auditors;

- 27.6 the consideration and approval of the budget and the total levy (as referred to in clause 13) for the calendar year during which such annual general meeting takes place;
- 27.7 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting;
- 27.8 the approval of the appointment of the auditors proposed for the year following the annual general meeting.

28. PROCEDURE AT GENERAL MEETINGS

- 28.1 The chairman shall preside as such at all general meetings provided that should he not be present within 15 minutes after the time appointed for the holding thereof, then the vice-chairman, shall act as chairman at such meeting provided further that should the vice-chairman not be present within 15 minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote shall vote to appoint a chairman for the meeting who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 28.2 The chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.
- 28.3 Whenever a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 28.4 Except as otherwise set forth in this Constitution, all general meetings shall be conducted in accordance with generally accepted practice.

29. PROXIES FOR GENERAL MEETINGS

- 29.1 A member may be represented at a general meeting by a proxy who need not be a member of the Association. The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form provided that where a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairman of the board of directors of the company or by its secretary, and where an association of persons, or a body corporate, by the chairman thereof.
- 29.2 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the

instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date of its execution.

- 29.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the trustee committee at least one hour before the time fixed for the holding of the meeting.

30. VOTING AT GENERAL MEETINGS

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

- 30.2 Save as expressly provided for in this Constitution, no person other than a member duly registered, and who shall have paid every levy and other amount (if any), which shall be due and payable to the Association in respect of or arising out of the membership of such member, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

- 30.3 At any general meeting a resolution, put to the vote of the meeting, shall be decided on a show of hands, unless, either prior to, or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any member entitled to vote at such meeting.

- 30.4 Notwithstanding the provisions of clause 30.3 above, voting on the election of a chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or any of the members in terms of clause 30.5 below.

- 30.5 When a poll is demanded regard shall be had, in computing the majority on the poll, to the number of votes cast for and against the resolution.

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

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

- 30.8 Unless any member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the chairman of the meeting as to the result of any

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

31. SPECIAL RESOLUTION

- 31.1 A resolution by the Association shall be a special resolution if at a general meeting of which not less than twenty one (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 at which members holding in aggregate not less than 25% of the total votes of all the members entitled to vote thereat, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than 75% of the number of members of the Association entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than 75% of the total votes to which the members present in person or by proxy are entitled.
- 31.2 If less than 25% of the total votes of all the members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than fourteen (14) days and not later than thirty (30) days after the date of the meeting and the provisions of clause 28.3 shall apply in respect of such adjournment.
- 31.3 At the adjourned meeting, the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than 75% of such members shall be deemed to be a special resolution even if less than 25% of the total votes are represented at such adjourned meeting.

32. MINUTES OF GENERAL MEETINGS

- 32.1 The trustees shall ensure that minutes are taken of every general meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the chairman of the meeting. All minutes of general meetings shall after certification as aforesaid be placed in a minute book to be kept in perpetuity. The minute book shall be open for inspection at all reasonable times by a trustee, the auditors, and the members.
- 32.2 All competent resolutions recorded in the minutes of any general meeting shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the members shall be of any force or effect, or

shall be binding upon the members or any of the trustees unless such resolution is competent within the powers of the members.

33. MANAGING AGENT AND OTHER PROFESSIONAL OFFICERS

33.1 The trustee committee shall be entitled to appoint a managing agent from time to time to control, manage and administer the development and to exercise such power and duties as may be entrusted to the managing agent, including the power to collect levies.

33.2 The Developer shall be entitled to appoint such a managing agent for the first twelve (12) months of the development period.

33.3 Save as specifically provided otherwise in this Constitution, the trustee committee shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the trustee committee and on such terms as the trustee committee shall decide.

34. ACCOUNTS OF THE ASSOCIATION

34.1 The trustee committee shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association including:

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

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

34.1.3 a register of members showing in each case their addresses;

34.1.4 individual ledger accounts in respect of each member.

34.2 On the application of any member the trustee committee shall make all or any of the books of account and records available for inspection by such member.

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

34.4 At each annual general meeting the trustee committee shall lay before the Association, the financial statements for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the establishment of the Association. The financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the trustee committee. There shall be

attached to the notice sent to members convening each annual general meeting, copies of such financial statements and reports.

- 34.5 The trustee committee shall further cause to be prepared and shall lay before every annual general meeting a report signed by the chairman reviewing the affairs of the Association during the past year.

35. DEPOSIT AND INVESTMENT OF FUNDS

- 35.1 The trustee committee shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association. Subject to any direction given or restriction imposed by the members at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.

- 35.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the trustee committee from time to time.

- 35.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

36. AUDIT

- 36.1 At every annual general meeting, the members shall appoint an auditor to hold office until the conclusion of the next annual general meeting.

- 36.2 Once at least in every year, the accounts of the Association shall be examined and the correctness of the financial statements ascertained by the auditors.

- 36.3 The duties of the auditors shall be regulated in accordance with general practise and applicable professional standards.

37. DOMICILIUM CITANDI ET EXECUTANDI OF MEMBERS

The *domicilium citandi et executandi* of each member shall be the street address of his portion in the development. A member may by notice in writing to the trustee committee at the office, change his *domicilium citandi et executandi*, provided that his new address shall be situate within the Republic of South Africa and shall not be a post office box or *poste restante* and provided that the new address shall not be effective until fourteen (14) days after receipt of such notification by the trustee committee.

38. SERVICE OF NOTICES

- 38.1 A notice in terms of this Constitution shall be in writing and shall be given or served by the Association upon any member, either personally or by post in a prepaid registered letter properly addressed to the member at his *domicilium citandi et executandi*.
- 38.2 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter, containing the notice, was properly addressed and posted.
- 38.3 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 38.4 Notwithstanding the provisions of clause 38.1, it shall be competent to give any notice to a member by e-mail or telefax where the member has advised the trustee committee in writing of his e-mail address or telefax number. Notice shall be deemed to have been properly served on the date of disposal thereof to the member's elected e-mail address or telefax number.

39. INDEMNITY OF THE TRUSTEES

- 39.1 All trustees shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a trustee, in his capacity as chairman or vice-chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.
- 39.2 Every trustee, every servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the trustee committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of their respective duties, including in the case of a trustee, his duties as chairman or vice-chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by such person jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 39.3 A trustee shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustees, whether in their capacities as trustees or as chairman or vice-chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the trustee committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall

happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

40. DEFAMATION PRIVILEGE

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

41. ARBITRATION

41.1 Any dispute, question or difference arising at any time between members or between members and trustees out of or in regard to:

41.1.1 any matters arising out of this Constitution; or

41.1.2 the rights and duties of any of the parties mentioned in this Constitution; or

41.1.3 the interpretation of this Constitution;

shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

41.2 Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within twenty one (21) business days after it has been demanded.

41.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

41.3.1 primarily an accounting matter - an independent accountant;

41.3.2 primarily a legal matter - a practising counsel or attorney of not less than 10 years standing;

41.3.3 any other matter - an independent and suitably qualified person appointed by the auditors;

as may be agreed upon between the parties to the dispute and, failing agreement, the arbitrator shall be appointed in terms of clause 41.4 below.

- 41.4 If agreement cannot be reached on whether the question in dispute falls under clauses 41.3.1, 41.3.2 or 41.3.3 or upon a particular arbitrator in terms of clause 41.3.3, within three (3) business days after the arbitration has been demanded, then:
- 41.4.1 the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 41.3.1, 41.3.2 or 41.3.3 above; or
- 41.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 41.3.3 within seven (7) business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the twenty one (21) business days referred to in clause 41.2 above.
- 41.5 The arbitrator shall make his award within seven (7) days after completion of the arbitration and shall in giving his award have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 41.6 The decision of the arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa or its successor/s upon the application of any party to the arbitration.
- 41.7 Notwithstanding anything to the contrary contained in clauses 41.1 to 41.6 inclusive, the trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

42. AMENDMENTS TO THE CONSTITUTION

- 42.1 This Constitution, or any part thereof, shall not be repealed or amended save by a special resolution adopted at an annual general meeting or a general meeting of the members.
- 42.2 The Annexures to this Constitution shall not be repealed or amended save by way of the following resolutions:
- 42.2.1 A trustees' resolution in respect of the Site Development Plan as contained in Annexure A.
- 42.2.2 A special resolution in respect of the Conduct Rules as contained in Annexure B.
- 42.2.3 A trustees' resolution in respect of the Architectural & Urban Design Controls as contained in Annexure C.
- 42.2.4 A trustees' resolution in respect of the Building Contractor's Code of Conduct Agreement as contained in Annexure D.

43. STATUS OF DEVELOPER

43.1 Until such time as the completion of the development, the Developer shall be entitled:

43.1.1 to nominate and appoint one (1) trustee to the trustees Committee;

43.1.2 to a number of votes equal to the number of unsold portions at any time at any general meeting of members;

43.1.3 to require that the trustee committee enforces the rights granted to it in terms of these presents against any member who in the opinion of the developer is not complying with his obligations as a member, and in particular, without restricting the generality of the foregoing, has failed to maintain all buildings and other improvements on its portion by giving such member written notice in which his failure to comply with the particular provisions of these presents is detailed and calling upon him to remedy such failure within a prescribed period of not more than thirty (30) days, failing which, the developer shall be entitled at the sole cost of that member to carry out all such work as may be required to maintain such building and other improvements on the portion;

43.1.4 to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the development including the common areas, the private road area and or the exterior walls (if any) of the development, subject to the regulations and by-laws of the local authority pertaining to signage from time to time.

43.2 Until such time as the completion of the development, neither the trustee committee nor any member of the Association shall prevent or hinder in any way the developer from:

43.2.1 gaining access to and egress from the development;

43.2.2 continuing any building or services operations at the development; and / or

43.2.3 marketing and selling any of its unsold portions, including the advertisement of the sale of such portion on the common areas and/or at the development.

43.3 Upon the completion of the scheme, the rights of the developer in terms of the provisions of this clause 43 shall immediately terminate ipso facto and no longer be of any force and effect.

43.4 In the event of a dispute as to whether or not the development has been completed as envisaged herein, the decision of the Association's architect shall be final and binding.

44. VARIATIONS TO THE DEVELOPMENT

During the development period, the developer shall in his absolute discretion be entitled to:

- 44.1 apply for, and subject to the necessary approvals being granted by the requisite authorities, vary the layout and/or zoning and/or size and/or boundaries of portions and/or the extent and position of dunes, streets, or roads comprising the development; and/or
- 44.2 increase and expand the development by incorporating further land into the development;

and members shall be bound thereby and shall have no claim of whatsoever nature against the developer arising therefrom. Insofar as the consent of the member is required to any of the aforesaid, the developer is irrevocably granted a power of attorney to grant any/all such consents on behalf of members, as may be required.

45. MARKETING AND SALES

- 45.1 During the development period the member shall:
- 45.1.1 not be entitled to erect any marketing material, signboards or the like on the portion;
- 45.1.2 appoint only such broker or brokers as the developer may appoint for the marketing and the selling of all the portions forming part of the development for the on-sale and/or lease by the member.
- 45.2 The members acknowledge that the restrictions recorded in clause 45.1 above are imposed for the general benefit of all parties acquiring portions forming part of the development, from the developer and are imposed to enable the developer to co-ordinate and control all marketing and sales activities in order for such marketing and sales to be done on a co-ordinated basis and in a manner beneficial to all parties.