



HOME OWNERS' ASSOCIATION CONSTITUTION

NAME AND ESTABLISHMENT

The Dódeka Home Owners' Association (the Association is an Association, constituted as a body corporate, in terms of section 29 of the Land Use Planning Ordinance, No 15 of 1985 in accordance with the conditions imposed by the Local Authority when approving in terms of section 25 (1) and 42 of the said Ordinance of the subdivision of the Land defined in 1.10 hereof and shall come into existence upon the registration in the Deeds Office of the Erven.

1 DEFINITIONS

In this Constitution, unless the context indicates the contrary:

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| 1.1 | Alienate: | means alienate any Erf or part thereof and includes by way of sale, exchange, donation, deed, intestate, will, cession, assignment, court order or insolvency, irrespective whether such alienation is subject to a suspensive or resolutive condition, and alienation shall have a corresponding meaning. |
| 1.2 | Association: | means Dódeka Home Owners' Association and shall be a Body Corporate established pursuant to the provisions of Section 29 of the Land Use planning Ordinance No 15 of 1985. |
| 1.3 | Auditors: | means the auditors of the Association |
| 1.4 | Developer: | means Kunye Properties (Pty) Ltd and its successors in title and permitted assignees |
| 1.5 | Development Period: | means the period commencing on the date the Local Authority approve the site development plan until all the Erven in the Estate have been transferred from the Developer; alternatively, on the date on which the Developer notifies the Association in writing that it terminates the Development period. |
| 1.6 | Erf/Erven: | means any of the residential Erven depicted on the General Plans of the Land whether registered or not in accordance with the Deeds Registries Act No. 47 of 1937 including further subdivisions or consolidations thereof but excluding roads and private areas as defined herein. |
| 1.7 | Estate: | means the Dódeka Development to be developed on the Land. |
| 1.8 | Financial Year | means the Financial Year of the Association which shall run from the first day of March in each year until the last day of February in a subsequent year. |
| 1.9 | General Plan: | means the General Plans of the subdivision of the Land as approved by the Surveyor General at Cape Town. |
| 1.10 | Land: | means Erf 1347 Porterville located between Waterkant street and Malan street |
| 1.11 | Levy: | means the levy referred to in Clause 22.2.13 |
| 1.12 | Local Authority: | means the Bergvliet Municipality. |
| 1.13 | Member: | means a member as defined in clause 5 hereof. |
| 1.14 | Owners: | mean the registered owners of Erven. |
| 1.15 | Person: | shall include a company, Close Corporation, Trust, Partnership or other Association of persons entitled by law to hold title to immovable property. |
| 1.16 | Private areas: | means all erven on the Estate, which are identified as private roads and private open spaces. |
| 1.17 | Trustees: | means the board of trustees of the Association. |

Unless the context otherwise indicates, any words importing the singular shall also include the plural and vice versa, words importing any one gender shall also include the others.

2 PURPOSE DESCRIBING MAIN BUSINESS

The main business of the Association is to promote, advance and protect the communal interests of the owners and occupiers of dwellings in the Dódeka Development and in so promoting such communal interests to ensure acceptable aesthetic, architectural and environmental standards on the Land.

3 OBJECTIVES OF THE ASSOCIATION

- 3.1 The main objectives of the Association are the exercise and control over:
 - 3.1.1 the maintenance of all dwellings, including the external facades and roofs thereof, which maintenance is to be carried out by and at the expense of the owner; and
 - 3.1.2 the maintenance of all roads, services and landscaping on private areas, which maintenance is to be carried out by and at the expense of the Association.
- 3.2 The other objectives of the Association are:
 - 3.2.1 The promotion, advancement and protection of the interests of the members generally, in all matters affecting the Estate.
 - 3.2.2 To enter into service agreements with the Local Authority or any other authority or supplier of services.
 - 3.2.3 To implement and maintain security measures and systems for controlled access to the Estate.
 - 3.2.4 To prescribe measures for the landscaping and development of Erven on the Estate, and for the architectural design and building of improvements to Erven on the Estate to ensure a harmonious and aesthetic development of the Estate, and to prescribe measures for the maintenance of such standards of development.
 - 3.2.5 To register where necessary various service servitudes over private areas in the Estate in favour of the Local Authority and to register servitudes in favour of the Erven in the Estate over other land owned by the Association as are from time to time required.
 - 3.2.6 The formulation, enforcement, modification, amendment, additions and deletions of Estate Rules and regulations.
 - 3.2.7 To delegate the management of the Association to an outside agency.
 - 3.2.8 To incorporate any adjoining property/ies into and within the ambit of the Association and to incorporate owners of any such adjoining property/ies and any subdivisions thereof as members of the Association.

4 MEMBERSHIP

- 4.1 Membership of the Association shall be compulsory for every registered owner of a residential Erf in the Estate.
- 4.2 Such membership shall commence simultaneously with the transfer of the Erf into the name of the transferee.
- 4.3 Membership shall be limited to all the registered owners of Erven provided that:
 - 4.3.1 a person who is entitled to obtain a certificate of registered title to any Erf shall be deemed to be the registered owner thereof;
 - 4.3.2 where an Erf is owned by more than one person, a company, close corporation, partnership or trust all the registered owners or the holders of proprietary interests in such company, close corporation, partnership or trust shall together be deemed to be one member of the Association and shall have the rights and obligations of one member of the Association and nominate one person to represent them and vote at meetings of the Association.
- 4.4 When a member ceases to be the registered owner of an Erf, he shall ipso facto cease to be a member of the Association.
- 4.5 A member shall not be entitled to sell or transfer and Erf unless it is a condition of the sale that;
 - 4.5.1 the transferee becomes a member of the Association;
 - 4.5.2 the registration of the transfer of the Erf into the name of the transferee shall ipso facto constitute the transferee as a member of the Association.
 - 4.5.3 he first obtains the written consent of the Association, which consent will be given provided the purchaser of such Erf agrees in writing to abide by the terms of the Constitution of the Association and any rules and regulations made in terms of the Constitution, an provided further that such member has paid all levies and any other amounts owing by him to the Association as at the date of transfer of the Erf. The restriction against alienation and transfer referred to herein shall be registered against the Title Deeds of all Erven.
- 4.6 A member shall not without the prior written approval of the Association:
 - 4.6.1 erect any building and/or structures of any nature whatsoever on his Erf;
 - 4.6.2 make any changes or alterations to existing buildings and/or structures on his Erf, including changes to external colour scheme;
 - 4.6.3 install or fix burglar bars to any external windows or doors of the buildings on his Erf;
 - 4.6.4 erect or construct any pergolas, patio awnings, shade ports, car ports, washing lines, Wendy houses, walls or any other structures which may affect the external appearance of the improvements on his Erf.
- 4.7 The consent of the Association as contemplated in clause 24 shall only be given:
 - 4.7.1 after detailed plans of the proposed work have been submitted to the Association, or any person nominated by the Association;
 - 4.7.2 the Association or their nominee are satisfied that the proposed work is in accordance with the external appearance of the Development, for the purposes of which, the Association or their nominee shall be the sole arbiter and their decision shall be final and binding on the member; and
 - 4.7.3 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.

- 4.8 The registered owner of an Erf may not resign as a member of the Association.
- 4.9 The Association may, by regulation, issue a membership certificate, which certificate shall be in such form as may be prescribed by the Association.
- 4.10 The rights and obligations of a member shall not be transferable, and every member shall:
 - 4.10.1 to the best of his ability further the objects and interests of the Association;
 - 4.10.2 observe all the rules and regulations made by the Association or the trustees;
 - 4.10.3 be jointly liable with all the members for expenditure properly incurred in connection with the Association, insofar as third parties are concerned, if nothing contained in this constitution shall prevent a member from ceding his rights in terms of this Constitution as security to the mortgagee of that member's Erf.

5 MANAGEMENT

- 5.1 During the Development Period, the affairs of the Association shall be managed and controlled by a Board of Trustees consisting of five (5) Trustees to remain in office for one year, three (3) of whom shall be representatives of the Developer, the remaining two (2) to be elected by majority votes by Members of the Association.
- 5.2 On the expiry of the Development Period a general meeting of members shall be called for electing the five (5) Trustees.
- 5.3 The Trustees as contemplated by clause 5.1, and subsequent Trustees, shall after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines) of those members who attend the general meeting of the Association, and successive Trustees shall be elected likewise at each successive annual general meeting of the Association, provided that no member shall be eligible for election unless he shall have been duly nominated and seconded in writing by other members and such written nomination, duly endorsed by the nominee, shall have been handed to the secretary not later than the day preceding the meeting and provided further that such nominee's levies for the current year shall have been duly paid. Save for the three (3) representatives of the Developer, only registered owners shall be eligible for election as Trustees. If the registered owner is a company, close corporation, trust or other Association of persons, the duly authorised representatives of such entity shall be eligible for election as a trustee.
- 5.4 The Board of Trustees shall consist of a chairman, secretary/treasurer and three (3) trustees. The Trustees shall from their ranks elect a Chairman, provided that the Chairman, until the expiry of the Development Period, shall be a representative of the Developer. A quorum of the Trustees shall consist of four (4) trustees, of which two (2) shall comprise representatives of the Developer. Should a quorum not be formed as aforesaid, the meeting shall stand adjourned until a time to be decided upon by the chairman. All matters at any meeting shall be determined by a majority of those present and voting. In the event of an equality of votes, the chairman of any meeting shall have a casting as well as the deliberative vote.
- 5.5 The trustees, except for the representatives of the Developer during the Development Period, shall cease to hold office: -
 - 5.5.1 at every annual general meeting, but shall be eligible for re-election;
 - 5.5.2 by notice to the Board of Trustees if he resigns his office;
 - 5.5.3 removed from office by the majority vote of the trustees; .
 - 5.5.4 if he absents himself from three (3) consecutive meetings of the trustees without leave of absence;
 - 5.5.5 if he or the registered owner he represents ceases to be the registered owner of the Property and a member of the Association;
 - 5.5.6 upon his Estate being sequestered, whether provisionally or finally;
 - 5.5.7 upon the commission by him of any act of insolvency;
 - 5.5.8 upon his conviction of any offence involving dishonesty.
- 5.6 Vacancies on the Board of Trustees may be filled by co-option at the instance of the majority vote of the members.
- 5.7 Trustees shall receive no remuneration but will be entitled to a refund of reasonably incurred expenses in the execution of their duties.
- 5.8 No Trustee shall be liable to the Association or any member thereof or to any other person whomsoever for any act or omission by himself, the Association or its servants or agents. Every trustee is indemnified by the Association against any loss suffered by him in consequence of any purported liability provided that such member has, upon the basis of information known to him, acted in good faith and without gross negligence and/or without dishonesty.
- 5.9 Meetings of the Trustees shall be held as frequently as may otherwise be decided by the Board of Trustees, and minutes shall be drawn and audited annually, by the Auditors.

6 STATUS OF THE DEVELOPER

- 6.1 No person or any member of the Association shall, during the Development Period prevent or hinder in any way the Developer from;
 - 6.1.1 gaining access to and egress from the Estate;
 - 6.1.2 continuing its building and/or construction operations at the Estate;
 - 6.1.3 marketing and selling any of the unsold Erven;

- 6.1.4 generally carrying on its business operations, provided that the provisions of clause 7.1 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a member unless 48 hours prior written notice has been given to the member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the member. No member shall be entitled to refuse the Developer access if the required notice has been given;
- 6.1.5 the Developer shall have the sole right of appointment and dismissal of any managing agent during the Development Period.

7 ACCESS TO THE ESTATE AND SERVITUDES

- 7.1 It is recorded that officials, employees and contractors employed by the Association, Local Authority and/or any public service company shall, at all times, have reasonable access to the Erven and common areas for purposes of inspecting and/or maintaining all services.

8 TERMINATION OF MEMBERSHIP

- 8.1 When a member ceases to be a registered owner he shall ipso facto cease to be a member of the Association.
- 8.2 The Developer shall be entitled to cede all or any of its rights in terms of this constitution and the transferee shall be entitled to take transfer of the rights so ceded.
- 8.3 The Developer may at any time in writing, abandon in whole or in part, any rights conferred on it in terms of this Constitution.
- 8.4 The Developer shall, when it is no longer the owner of any Erven, whether or not separately registered or held by the Developer as part of the remainder of the Land, cease to be a member of the Association.

9 MEETINGS

- 9.1 The annual general meeting shall be held on a date fixed by the Board of Trustees during the month of May and twenty-eight (28) days written notice thereof, including the agenda shall be sent to all members by the secretary. A full annual report of the committee shall be tabled at every Annual General Meeting. Each said meeting shall also include the election of members for the forthcoming year, adoption of financial reports and the determination and approval of the Levy for the forthcoming year.
- 9.2 Special general meetings may be called by the Board of Trustees whenever they consider it desirable and shall be called upon the requisition in writing of three (3) trustees, in either event on twenty-eight (28) days written notice by the secretary specifying the business to be discussed.
- 9.3 At all meetings the chair shall be taken by the chairman of the Trustees. In the absence of the chairman, the members present shall elect a chairman.
- 9.4 The chairman shall not have a casting vote and a quorum at all general meetings shall consist of members (including persons holding proxies on behalf of owners), owning at least 25% of the total votes, to which the members present, in person or by proxy are entitled.
- 9.5 If within half an hour from the time appointed for any meeting of the Association, a quorum is not present, the meeting shall be adjourned to a date not earlier than fourteen (14) days and not later than thirty (30) days after the date of such adjourned meeting on written notice to the members. If at such adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the members present in person or by proxy and entitled to vote shall form a quorum.
- 9.6 At all meetings votes on any matter shall be by show of hands of those present, unless the meeting decides otherwise, the majority vote to count.

10 VENUE OF MEETINGS

- 10.1 General meetings of the Association shall take place at such place/s as shall be determined by the trustees from time to time.

11 AGENDA AT MEETINGS

- 11.1 In addition to any other matters required by these presents to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:
- 11.1.1 the consideration of the chairman's report to the trustees;
- 11.1.2 the election of the trustees;
- 11.1.3 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.
- 11.1.4 the consideration of the balance sheet and income statement of the Association for the last Financial Year of the Association preceding the date of such meeting.
- 11.1.5 the consideration and approval of the report of the Auditors;

- 11.1.6 the consideration and approval of the total Levy, for the calendar year during which such annual general meeting takes place, the total Levy being the sum of all the levies to be collected in respect of the Erven, and
- 11.1.7 the consideration and the fixing of the remuneration of the Auditors for the Financial Year of the Association preceding the annual general meeting.

12 PROXIES

- 12.1 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 authorized agent in writing, but need not be in any particular form, provided that where a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairman of the board of directors of the company or by its secretary, and where an Association of persons, by the secretary thereof.
- 12.2 The instrument appointing the proxy and the power of attorney or other authority (if any) under which it is signed, or a notarial 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 12 months from the date of its execution. Any instrument appointing a proxy and submitted as set out above, may be cancelled prior to the expiration of 12 months, provided that written notice of the cancellation thereof if received by the trustee committee at least one hour prior to the time fixed for any meeting of the Association.
- 12.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or the 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.

13 VOTING

- 13.1 At every general meeting: -
 - 13.1.1 The Developer shall during the Development Period have one (1) vote for each Erf not as yet transferred by the Developer to a Purchaser as indicated on the General Plan (whether or not separately registered or held by the Developer as part of the remainder of the land). A representative of the Developer shall in person, or by proxy be entitled to cast such votes;
 - 13.1.2 Every other member or its duly authorised representative in the case of clause 4.3.2 being applicable, in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name provided that if an Erf is registered in more than one person's name then they shall jointly have one vote.
- 13.2 Save as expressly provided for in these presents, no person other than a member duly registered, and who shall have paid every Levy and other amount (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 13.3 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 person entitled to vote at such meeting.
- 13.4 Notwithstanding the provisions of clause 13.3 aforesaid, voting on the election of a chairman of a general meeting (if necessary) or on any questions 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 declaration of the result of the show of hands) demanded by the chairman or any of the members in terms of clause 13.5 below.
- 13.5 When a poll is demanded, it shall be taken in such manner as the chairman may direct, either immediately or after an interval or adjournment.
- 13.6 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.
- 13.7 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.
- 13.8 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 or validity of the procedure at such meeting, such declaration by the chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry into the minutes to the effect that any motion has been carried or list, 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.

14 SPECIAL RESOLUTION

- 14.1 Notwithstanding the provisions of clause 9.2, a resolution by the Association shall be a special resolution if at a 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 at which members holding in aggregate not less than one fourth of the total votes of all the members entitled to vote thereto are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than three- fourths 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 three- fourths of the total votes to which the members present in person or by proxy entitled.
- 14.2 If less than one-fourth 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 a special resolution, the meeting shall stand adjourned to date not earlier than 14 days and not later than 30 days after the date of the meeting and the provisions of clause 15.3 below shall apply in respect of such adjournment.
- 14.3 Whenever a meeting is adjourned for 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.
- 14.4 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 three-fourths of the votes of such members, shall be deemed to be a special resolution even if less than one-fourth of the total votes are represented at such adjourned meeting, or where a poll has been demanded, by not less than three- fourths of the total votes to which the members present, in person or by proxy, are entitled.

15 ACCOUNTS

- 15.1 The Association in general meeting or the trustees, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of members at all reasonable times during normal business hours.
- 15.2 At each annual general meeting the trustees shall lay before the Association a proper income and expenditure account for the immediately preceding Financial Year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up at the last Financial Year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the trustees and the Auditors, and there shall be attached to the notice sent to members convening each annual general meeting, copies of such accounts, balance sheet and reports and any other documents required by law to accompany the same.

16 AUDIT

- 16.1 The accounts of the Association shall be examined, and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors at least once a year.

17 SERVICE OF NOTICES

- 17.1 A notice shall be in writing and shall be given or served by the Association on any member, either personally or by post in a prepaid registered letter, properly addressed to the member at the address of the property owned by him.
- 17.2 No member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of service of notices, or such other address as the member is obliged to furnish to the Association.
- 17.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient proof that the letter containing the notice was properly addressed and posted and notice by facsimile or email shall be deemed to have been served four (4) hours after the time of transmission.
- 17.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

18 INDEMNITY

- 18.1 All trustees shall be indemnified by 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.

- 18.2 Every trustee servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the trustees out of the funds of the Association to pay) all costs, losses and expenses (including traveling expenses) which such person/s may incur or become liable for by reason or contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties including in the case of a trustee, his duties as chairman or vice chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties provided that any such act, deed or letter has been done or written in good faith.
- 18.3 A trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any other trustee, whether in their capacities as trustee 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 trustees 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 fide or breach of duty or breach of trust.

19 ARBITRATION

- 19.1 Any dispute, question or difference arising at any time between members or between members and trustees out of or regarding;
- 19.1.1 any matters arising out of this constitution; or
- 19.1.2 the rights and duties of any of the parties mentioned in this constitution; or
- 19.1.3 the interpretation of this constitution;
- shall be submitted to the Association and unless such dispute is resolved by the Association within 30 days of such submission, the dispute shall be referred to and be decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.
- 19.2 Arbitration shall be held in Porterville 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 21 business days after it has been demanded.
- 19.3 Save as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is;
- 19.3.1 primarily an accounting matter - an independent accountant
- 19.3.2 primarily a legal matter - a practicing counsel or attorney of not less than 10 years standing,
- 19.3.3 any other matter - an independent and suitably qualified person appointed by the Auditors; as may be agreed upon between the parties to the dispute.
- 19.4 If agreement cannot be reached on a particular arbitrator in terms of clause 19.3 within three business days after the arbitration has been demanded, then the President for the time being of the Law Society of the Western Cape shall nominate the arbitrator so that the arbitration can be held and concluded as soon as possible within the 21 business days referred to in clause 19.2 above.
- 19.5 The arbitrator shall make his award within 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.
- 19.6 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 and its successor/s upon the application of any party to the arbitration.
- 19.7 Notwithstanding anything to the contrary in clauses 19.1 to 19.6 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.

20 AMENDMENTS TO CONSTITUTION

This constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a Special Resolution adopted at an annual general meeting or a general meeting of the members and subject further to the prior written consent of the Local Authority being obtained for the amendment of this clause and clauses 1, 2, 3, 4, 5 and 7 of this constitution and subject further to the prior written consent of the Developer during the development period.

21 LEVIES

- 21.1 The trustees may from time to time, impose upon the members, levies, for the purpose of meeting all the expenses in relation to the facilities and services, and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and the Association's affairs. In calculating the amount of the levies the trustees shall take into account income, if any, earned by the Association.

- 21.2 The trustees may from time to time, when necessary impose special levies upon the members or call upon them to make special contributions in respect of all such expenses as are mentioned in clause 21.1 and the amount of such levies and the manner of payment thereof by members shall be at the discretion of the trustees.
- 21.3 The Developer shall not be responsible for the payment of levies in respect of any unsold Erven still held by it, save where the Erf in question has been developed by the Developer and is occupied by a third party. For purposes hereof, "developed" shall mean the erection and completion of any habitable structure. The Developer shall however pay a pro-rata share of the rates and taxes (if any) as levied by the Local Authority, proportionate to the extent of the land still held by it.
- Notwithstanding the provisions of clause 21.1, 21.2 and 21.3 the Developer's contribution towards the expenses shall be limited to the shortfall between the operating costs and the ordinary levies receivable.
- 21.4 Any amount due by a member by way of a levy shall be a debt due by him to the Association. The obligation of a member to pay a levy shall cease upon his ceasing to be a member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member. A member's successor-in-title to an Erf shall be liable, as from the date upon which he becomes a member pursuant to the transfer of that Erf into his name, to pay the levy attributable to that Erf. No member shall be entitled to transfer his Erf until the Association has certified that the member has at the date of transfer paid all amounts owing by him to the Association.
- 21.5 In calculating the levy payable by each member, the trustees may as far as reasonably practical, and in their sole discretion:
- 21.5.1 assign those costs arising directly out of or directly attributable to the Erf itself to the registered owner thereof, based on the actual roof and exterior façade areas of the structures erected thereon or based on any other factors as determined by the trustees.
- 21.5.2 subject to clause 21.5.1 assign those costs relating to the Land generally to the owners of all Erven equally, provided however that the trustees may in any case where considered equitable to do so, assign to any member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 21.6 The trustee's decision in calculating the levy shall be final and binding on all members.
- 21.7 No member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any), which shall be due and payable to the Association in respect of his membership thereof.

22 POWERS OF THE TRUSTEES

- 22.1 The management and administration of the Association shall vest in the Board of Trustees which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself.
- 22.2 Subject to the express provisions of this constitution, the trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of any managing agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association in general meeting, subject however to such rules as may have been made by the Association in general meeting or as may be made by the trustees from time to time.
- 22.3 Save as specifically provided otherwise in this constitution, the trustees shall at all times have the rights to engage on behalf of the Association, the services of accountants, Auditors, Attorneys, advocates, architects, engineers, town planners, managing agents, environmental consultants, and any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the trustees and on such terms as the trustees shall decide, subject to any of the provisions of these presents.
- 22.4 The trustees shall further have the power to require that any construction of any sort on the Estate shall be supervised to ensure that the provisions of this constitution and the Estate rules are complied with and that all such construction is performed in a proper and workmanlike manner;
- 22.5 The trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 22.6 The trustees shall have the right to appoint committees consisting of such number of their members and such outsiders, including a managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the trustees may from time to time deem necessary.
- 22.7 Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer, all plans for buildings, out-buildings, structures, additions and alterations shall be approved by the Association or any person designated by them for the purpose. Should any member feel aggrieved by the decision, he shall be entitled to lodge an appeal with the trustees, who shall be entitled to rescind the decision after having given due consideration thereto and if in their sole and absolute discretion the circumstances so allow.

23 ALIENATION

- 23.1 A member shall not in any manner alienate an Erf unless:
- 23.1.1 the proposed transferee has irrevocably bound himself to become a member of the Association and to observe the constitution and rules of the Association for the duration of his ownership of the Erf;
 - 23.1.2 the Association has given its written consent thereto and has issued a clearance that all amounts owing to the Association by such member have been paid and that the member is not in breach of any of the provisions of this constitution; and
 - 23.1.3 the proposed transferee acknowledges that upon the registration of transfer of the Erf into his name he *shall ipso facto* become a member of the Association.
- 23.2 The provisions of clause 23.1 shall apply mutatis mutandis to any alienation of any undivided share in an Erf.
- 23.3 This constitution shall also bind any person occupying an Erf and no member shall let or otherwise part with occupation of his Erf whether temporarily or otherwise unless the proposed occupier has agreed to be bound by this constitution. Notwithstanding this, a registered owner shall always remain bound by this constitution and be required to ensure compliance therewith by an occupier.
- 23.4 A registered owner may not at any time resign as a member of the Association.
- 23.5 Such restrictions as are registrable will be registered against the title deeds of all the Erven to give effect to the terms of this clause. The members shall be bound by this clause whether or not such restrictions are registered.
- 23.6 Neither the whole nor any portion of the private areas may be:
- 23.6.1 sold, let, alienated or otherwise disposed of, sub-divided or transferred; or
 - 23.6.2 mortgaged; or
 - 23.6.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude other than servitudes in favour of the Local Authority for services and those referred to in this constitution and particularly those referred to in clause 4.7;
- without the sanction of a special resolution of the Association and the prior written consent of the Local Authority and the Developer.

24 CONSTRUCTION

In order to maintain high standards and to ensure an attractive and harmonious development:

- 24.1 No building or structure may be erected on the property and/or the external appearance (including the colour) of any existing or future building or structure may be changed unless the architectural design plans and specifications (including materials) of such building or structure have been approved by the Association or an architect nominated by it.
- 24.2 All buildings and structures shall be built in a good and proper and workmanlike manner and strictly in accordance with the plans and specifications approved in accordance with 24.1 above.
- 24.3 The costs of preparing detailed building plans as well as the cost of obtaining Local Authority approval of any plans and scrutiny fees shall be payable by the member.

25 ESTATE RULES

- 25.1 Subject to this constitution, to any restriction imposed or direction given at a general meeting of the Association and subject to any condition imposed by the Local Authority, in approving the rezoning and subdivision of the Land, the trustees may from time to time make rules and vary or modify these rules, in regard to *inter alia*
- 25.1.1 the standards and guidelines of all buildings and out-buildings, structures of any nature, swimming pools and all additions or alterations of any such buildings, out-buildings or structures erected or to be erected on the Erven in accordance with the architectural and landscape design guidelines and in particular to control the design and colour of the exterior of such buildings, out-buildings or structures and the materials to be used on such exteriors to ensure an attractive and aesthetically pleasing character to all buildings on the Estate;
 - 25.1.2 the siting of all buildings and improvements on the Erven, the use of motor vehicles and the parking of vehicles, including trucks, caravans, trailers and boats and the use of the roads;
 - 25.1.3 the use of common areas and the restrictions for the use and enjoyment thereof;
 - 25.1.4 the right to prohibit, restrict or control the keeping of any animals which they regard as dangerous or a nuisance;
 - 25.1.5 the conduct of any persons within the property for the prevention of nuisance of any nature to any member;
 - 25.1.6 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents of the Estate;
 - 25.1.7 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents of the Estate;
 - 25.1.8 the maintenance of all buildings, out-buildings, structures, improvements of any nature and landscaping of individual Erven and the Estate;

- 25.1.9 the control of the number of occupiers permitted on any one Erf;
 - 25.1.10 the admission of any person to the Estate, and the eviction of any person not entitled to be thereon.
 - 25.1.11 maintenance of private areas;
 - 25.1.12 refuse disposal;
 - 25.1.13 the operation of business operations and the restrictions relating thereto;
 - 25.1.14 installation of air conditioning units and television aerials;
 - 25.1.15 littering;
 - 25.1.16 responsibility of the members for the activities of domestic employees and their guests and access of such persons to the Estate;
 - 25.1.17 security;
 - 25.1.18 letting and re-selling of property;
 - 25.1.19 the imposition of fines and other penalties.
- 25.2 For the enforcement of any of the rules made by the trustees in terms of this clause, or of any of the provisions of this constitution generally, the trustees may:
- 25.2.1 give notice to the member concerned requiring him to remedy such breach within such period as the trustees may determine; and/or
 - 25.2.2 take or cause to be taken such steps, as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the Association; and/or
 - 25.2.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 25.3 Should the trustees institute any legal proceedings against any member or resident on the Estate 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 or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 25.4 In the event of any breach of the rules by the members of any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the trustees may take or cause to be taken such steps against the person committing the breach as they may in their discretion deem fit.
- 25.5 Notwithstanding anything to the contrary herein contained, the trustees may in the name of the Association enforce the provisions of any rules or civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as they may deem fit.
- 25.6 The Association may in general meeting itself make any rules regarding any matter and may also vary or modify any rule made by it or by the trustees from time to time.
- 25.7 All rules must be reasonable and must apply equally to all owners of Erven put to substantially the same use.

26 FURTHER RIGHTS AND OBLIGATIONS OF MEMBERS

- 26.1 Each member shall:
- 26.1.1 maintain his Erf in accordance with the Association rules;
 - 26.1.2 maintain in a neat and tidy condition and in a state of good repair all improvements on his Erf;
 - 26.1.3 not do or suffer to be done on any Erf anything which, in the opinion of the trustees, is noisome, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any member, tenant or occupier of any Erf in the development;
 - 26.1.4 not, during construction/erection of improvements, permit the erection of more than 1 (one) advertising board on an Erf and such permitted board shall not have a surface area exceeding 1 (one) square metre and shall be removed immediately upon conclusion of the building contract for the improvements;
 - 26.1.5 not erect or permit the erection of any advertising boards on any Erf without the written approval of the Developer or the trustees of the Association as the case may be;
 - 26.1.6 adequately insure the improvements on his Erf and, if requested by the Developer or trustees of the Association, furnish proof of such insurance to them and, in the event of total/partial destruction he shall within a reasonable time period, make good such damage or reconstruction in accordance with the original approved plans;
 - 26.1.7 comply with all security procedures implemented from time to time;
 - 26.1.8 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of the development and that planting on his property does not interfere with the pedestrian traffic or obscure the vision of motorists.
- 26.2 Members are permitted to keep dogs or cats without the permission of the Developer or the Association as the case may be, subject to the resident ensuring that the dog and/or other animal does not create a disturbance at any time or become a nuisance. Dogs must be kept on a leash in all open areas and the person in control must ensure that the dog(s) are not the cause of uncleared fouling of the sidewalks or any open areas.

- 26.3 A member shall not be entitled to apply for the rezoning of his property with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his property for any purpose other than permitted use applicable upon establishment of the development
- 26.4 No member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of the Association
- 26.5 No share block scheme as contemplated in the Share Blocks Control Act No. 59 of 1980 and/or time-sharing scheme as contemplated in the Property Time-sharing Act No. 75 of 1983 as amended and/or any other similar scheme or arrangement may be conducted on the Property, nor shall a guesthouse or bed and breakfast be operated on the Property, without the prior written consent of the Developer during the Development Period and the Association thereafter.

27 STATUS OF THE ASSOCIATION

- 27.1 The Association shall be an Association:
- 27.1.1 with legal personality, capable of suing and being sued in its own name, and
 - 27.1.2 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, and
 - 27.1.3 not for profit, but for the benefit of the owners and occupants of immovable property situate in the Estate, and
 - 27.1.4 with the right to acquire, hold, lease, offer as security and alienate property, both movable and immovable save for and excepting for private areas.