



CONSTITUTION OF

THE FERNWOOD PRIVATE ESTATE

HOME OWNERS ASSOCIATION

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1. DEFINITIONS AND INTERPRETATION

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

1.1.1. **“Alienate”** means to alienate any Erf, a share or part thereof and includes by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order or insolvency, prescription or expropriation, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and alienation shall have a corresponding meaning;

1.1.2. **“Association”** means The Fernwood Private Estate Home Owners Association;

1.1.3. **“Auditors”** mean the Auditors of the Association;

1.1.4. **“Building contractor”** means the building contractor engaged by a Member to attend to construction of a dwelling on his Erf;

1.1.5. **“Building Contractors Code of Conduct Agreement”** means the agreement which governs the conduct of building contractors in the Estate contained in **Annexure B** hereto, which is to be concluded between the Member, the building contractor and the Association in relation to the construction of a dwelling on an Erf;

1.1.6. **“Building Rules”** means the rules governing the plan approval and submission process, the procedures for the construction in the Estate, and building activities generally in the Estate and prescribing the Building Contractors Code of Conduct Agreement, which Building Rules are referred to in Clause 13 of the Constitution and contained in **Annexure B** hereto;

1.1.7. **“Chairman”** means the chairman of the Trustees appointed in terms of Clause 18.1;

1.1.8. **“Common Property”** means all Erven which are identified as private roads, private open space or other common areas in respect of the Development and includes any Common Property designated as such in any further phase/s of the Development and **“Common Areas”** shall have a corresponding meaning;

1.1.9. **“Constitution”** means this Constitution of the Association, including the Annexures thereto, as may be amended from time to time;

1.1.10. **“Council”** means the Municipality of Knysna or its successor/s in title or assigns and **“Local Authority”** shall have a corresponding meaning;

1.1.11. **“Design Guidelines”** means the Architectural Design Guidelines and the Landscape Design Guidelines referred to in Clause 14 of this Constitution and contained in **Annexure C** hereto;

1.1.12. **“Developer”** means Dormell Properties 560 (Pty) Ltd, Registration Number 2006/004556/07 or its successor in title or assign as the applicant to the Local Authority for approval of the further subdivisions of the Land to comprise the further phase/s in the Development;

- 1.1.13. **“Developer Trustee”** means a Trustee appointed by the Developer during the Development Period;
- 1.1.14. **“Development”** means the residential estate known as Fernwood Private Estate, as established and to be established on the Land and resulting from the subdivisions of the Land in accordance with the approvals obtained from the Local Authority, and generally in accordance with the Site Development Plan, in this regard the Land was initially subdivided to comprise Erven 15308, 15309, and 15310 Knysna and the Remainder Erf 13844 Knysna, and in Phase 1 of the Development Erf 15310 Knysna was subdivided to comprise 73 Erven numbered 15311 to 15383 Knysna, as reflected on General Plan No. 4231/2006, and in Phase 2 of the Development Erf 15308 Knysna was subdivided to comprise 18 Erven numbered 16320 to 16338 Knysna, as reflected on General Plan No. 5383/2007, and including all/any further subdivision/s of the Land (and as may be consolidated and/or amended) which may be incorporated as a further phase/s into the Development in terms of Clause 37 below, **“Estate”** shall have a corresponding meaning;
- 1.1.15. **“Development Period”** means the period from the incorporation of the Association until all the Erven in the Development have been sold and transferred by the Developer; alternatively until the Developer notifies the Association that it waives the rights herein conferred upon it during the Development Period, whichever shall first occur;
- 1.1.16. **“Environmental Management Plan (EMP)”** means the document of Peter Badenhorst Consulting Services dated July 2005, approved by the Department of Environmental Affairs on 11 August 2005 in terms of the requirements of that Department’s Environmental Authorisation dated 12 November 2003, and as amended from time to time by the Environmental Liaison Committee constituted in terms thereof;
- 1.1.17. **“Erf”** means any one of the Erven in the Development resulting from the subdivision of the Land, including any further subdivision or consolidation thereof, but excluding any Erf which forms part of the Common Property;
- 1.1.18. **“Electronic communication”** has the meaning set out in section 1 of the Electronic Communications and Transactions Act;
- 1.1.19. **“Electronic Communications and Transactions Act”** means the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002);
- 1.1.20. **“Estate Rules”** means the Estate rules of the Association referred to in Clause 12 of this Constitution and contained in **Annexure D** hereto;
- 1.1.21. **“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;
- 1.1.22. **“Further phases”** means the third and further phases of the Development as indicated on the Site Development Plan;
- 1.1.23. **“In writing”** means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form, including electronic communication;

- 1.1.24. "**Land**" means Erf 13844 (a Portion of Erf 1399) Knysna, situated in the Municipality and Division of Knysna, Province of the Western Cape;
- 1.1.25. "**Levies**" means the Levies payable by the Members to the Association in terms of in Clause 10 of this Constitution, including Ordinary Levies and Special Levies and the Penalty Levies payable in terms of Clause 14 of this Constitution;
- 1.1.26. "**Local Authority**" means the local authority having jurisdiction over the Land;
- 1.1.27. "**Manager**" or "**Managing agent**" means any natural or juristic person, appointed by the Association or the Developer to undertake functions of the Association as may be stipulated in the agreement of appointment;
- 1.1.28. "**Member**" means a Member of the Association and includes the Developer in respect of any Erf in respect of which the Developer is the Registered Owner;
- 1.1.29. "**Member Trustee**" means a Trustee appointed by the Members;
- 1.1.30. "**Ordinary Resolution**" means a resolution as defined in Clause 27.7 of this Constitution.
- 1.1.31. "**Owners**" means the Registered Owners of the Erven;
- 1.1.32. "**Prime rate**" means the prime bank overdraft rate of interest charged by the Association's bank 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);
- 1.1.33. "**Property**" means an Erf, including the dwelling, buildings, structures and improvements thereon, generically referred to in respect of an Owner;
- 1.1.34. "**Resident**" means any person who is resident in the Estate, including Owners and tenants or other occupiers of Properties;
- 1.1.35. "**Registered Owner**" means a Registered Owner of an Erf or share therein as registered in the relevant Deeds Office;
- 1.1.36. "**Services**" means such utilities and amenities as may be provided by or on behalf of the Association for the Members and Residents;
- 1.1.37. "**Special Resolution**" means a resolution as defined in Clause 28 of this Constitution;
- 1.1.38. "**Site Development Plan**" means the plan attached hereto marked **Annexure A**, indicating the Erven and private open space, which plan may be amended from time to time by the Association;
- 1.1.39. "**Trustee**" means a member of the Trustee Committee;
- 1.1.40. "**Trustees**" means the Trustee Committee of the Association;

1.2. In this Constitution, unless the context otherwise indicates:

- 1.2.1. any words importing the singular shall also include the plural and the converse shall also apply; words importing any one gender only shall include the other genders; and any reference to a person shall include any company incorporated or registered as such under any law, any close corporation, association, body of persons, corporate or unincorporated and any trust, whether testamentary or inter vivos;
- 1.2.2. The headings to the respective Clauses are for reference purposes only and shall not be taken into account in the interpretation of this Constitution;
- 1.2.3. Where consent or approval is required for any act by a Member, such consent or approval given on behalf of the Association, shall be in writing and duly signed, shall not be unreasonably withheld, and shall be given prior to the Member taking action;
- 1.2.4. If a Member consists of more than one person, they shall be jointly and severally liable *in solidum* for all their obligations in terms of this Constitution.
- 1.2.5. The Annexures to this Constitution are deemed to be incorporated in and form part of this Constitution;
- 1.2.6. Words and expressions defined in any sub-clause shall, for the purpose of the Clause to which that sub-clause forms part of, and in subsequent clauses, bear the meaning assigned to such words and expressions in such sub-clause;
- 1.2.7. When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.2.8. If any provision of this Constitution is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution;
- 1.2.9. If any provision in a definition in this Constitution is a substantive provision conferring rights, or imposing obligations, on any of the Members then, notwithstanding that it is only in the definition Clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution; and
- 1.2.10. If any provision in the Design Guidelines or Estate Rules is in conflict with any provision of this Constitution, the relevant provision of this Constitution shall prevail.

2. NAME OF THE ASSOCIATION

The name of the Association is:

THE FERNWOOD PRIVATE ESTATE HOME OWNERS ASSOCIATION

3. ESTABLISHMENT IN TERMS OF STATUTE

The Fernwood Private Estate Home Owners Association was constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance, No. 15 of 1985 (as amended) in accordance with the conditions imposed by the Council when approving in terms of Sections 25(1) and 42 of the said Ordinance of the subdivision of the Land, and came into existence simultaneously with the registration in the Deeds Office of the first of the Erven in the Development.

4. LEGAL STATUS OF THE ASSOCIATION

4.1. The Association will:

4.1.1. have legal personality and be capable of suing and being sued in its own name; and

4.1.2. will not operate for profit, but for the benefit of the Members.

4.2. No Member in his personal capacity shall have any right, title or interest in or to the funds or assets of the Association, all of which shall vest in and will be controlled by the Trustees.

4.3. All assets and rights of the Association shall vest in the Fernwood Private Estate Home Owners Association and shall be administered by the Trustees.

4.4. It is recorded that the Association has been established as a non-profit making institution for the purposes and objects set out in this Constitution. The Association shall not be for profit, but for the collective benefit and interest of its Members.

4.5. No part of the income of the Association may be paid or refunded to any Member, except to settle any debt to such Member that the Association may have.

4.6. The Association has the right to acquire, hold, lease and alienate property, both movable and immovable.

4.7. The sole object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Property of the Development and the collection of Levies for which such Members are liable.

4.8. The Association is not permitted to distribute its funds to any person other than to a similar association of persons.

4.9. 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.

4.10. Funds available for investment may only be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.

- 4.11. The Association is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or Levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.
- 4.12. The Association shall submit annual returns of income tax together with financial statements to the South African Revenue Services or similar relevant government departments as required.
- 4.13. Any amendments to Clause 4 of the Constitution must be submitted to the Commissioner for the South African Revenue Services.

5. THE MAIN OBJECTS OF THE ASSOCIATION

The main objects of the Association are:

- 5.1. the control over:
- 5.1.1. all buildings, and/or structures erected or to be erected in the Development;
- 5.1.2. the maintenance of all buildings and/or structures erected or to be erected in the Development; and
- 5.1.3. the compliance with the Design Guidelines;
- 5.2. the promotion, advancement and protection of the communal and group interests of the Members generally, including security;
- 5.3. to take title to the Common Areas simultaneously with the first separate registration of an Erf;
- 5.4. to enter into services agreements with the local authority or any other authority or supplier of services in regard to the supply of services in the Development, including refuse removal and security services;
- 5.5. to enforce compliance by the Members with the conditions of the Design Guidelines, the Building Rules and the Estate Rules;
- 5.6. to take action, including the imposition of fines or the institution of proceedings in a court of law, as may be deemed fit by the Trustees, in relation to the non-compliance by any Member of any of the requirements of this Constitution, and the Association shall have the power to do all such acts as are necessary to carry out the foregoing objects including, but no restricted to, the powers specifically contained in this Constitution;
- 5.7. to implement and ensure compliance with the Environmental Management Plan (EMP) as approved by the Directorate Environmental Affairs in respect of the Development;
- 5.8. the maintenance of all buildings, roads, services and amenities on the Common Areas and payment of the costs thereof.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1. Membership of the Association shall be automatic and compulsory for every Registered Owner of an Erf.
- 6.2. Membership of the Association shall be limited to the Developer in its capacity as such (represented by one or more nominees) and to all other persons who are Owners from time to time.
- 6.3. Every Owner of an Erf shall automatically be and become a Member of the Association upon registration of transfer of the Erf into his name and shall remain a Member until he ceases to own the Erf. The Developer shall be registered as a Member in respect of each Erf held by it until it ceases to own such Erf.
- 6.4. Where an Erf is owned by more than one person, all the Registered Owners shall together be deemed to be one Member of the Association and shall have the rights and obligations of one Member of the Association, subject to the provisions of Clause 27 as to voting.

7. OBLIGATIONS OF MEMBERS

- 7.1. Every Member shall comply with:
 - 7.1.1. the provisions of this Constitution, the Estate Rules, the Building Rules and all other rules or regulations made or promulgated by the Association or the Trustees;
 - 7.1.2. any agreement concluded by the Association or the Trustees or the Developer insofar as such agreement may directly or indirectly impose rights or obligations on a Member;
 - 7.1.3. the provisions contained within the Design Guidelines and EMP;
 - 7.1.4. any directive given by the Association, the Trustees, the Managing Agent or the Manager in the enforcement of the provisions of this Constitution.
- 7.2. The rights and obligations of a Member are not transferable, and every Member shall:
 - 7.2.1. to the best of his ability further the objects and interests of the Association;
 - 7.2.2. observe all directives made or given pursuant to the provisions of this Constitution, and;
 - 7.2.3. be jointly liable with the other Members for expenditure incurred in connection with the Association.
- 7.3. No Member shall let or otherwise part with the occupation of his Erf, whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by all the provisions of this Constitution.
- 7.4. This Constitution, and the duties of a Member in relation to the use, occupation and enjoyment of his Property and the use and enjoyment of the Common Areas shall be binding on all Members and Residents and it shall be the duty of the Member to ensure compliance with this Constitution by the Residents of his Property, including by his or their family members, visitors, guests, employees, servants, workers, contractors, agents, service providers and invitees.
- 7.5. A Member shall be vicariously liable for the acts or omissions of all persons occupying his Property, whether

lawfully or unlawfully, including without limitation, the Residents of his Property, and the family members, visitors, guests, employees, servants, workers, contractors, agents, service providers and invitees of the Member or of the Residents of his Property. In the event of any breach or contravention of any provision of this Constitution by any such person, the breach or contravention shall be deemed to have been committed by the Member concerned. Without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Member. Should any such person damage the Common Areas, the Member concerned shall be liable to the Association for the costs to repair such damage. Without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person who actually caused the damage as they may in their discretion deem fit, with or without proceedings against the relevant Member.

7.6. A Member shall not be entitled to, without prior written approval of the Trustees, having regard to the Design Guidelines:

7.6.1. erect any new buildings and/or structures of any nature whatsoever on any Erf in the Development;

7.6.2. make any changes or alterations to existing buildings and/or structures on any Erf in the Development, including changes to the external colour scheme.

7.7. The approval of the Trustees as contemplated in Clause 7.6 shall only be given after:

7.7.1. detailed plans of the proposed work has been submitted to the Trustees, or any competent person nominated by the Trustees (who may be an architect registered with the South African Council of Architects or the Institute of South African Architects); and

7.7.2. the Trustees or their nominee are satisfied that the proposed work is in accordance with the Design Guidelines 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, subject to the right of such Member to refer their decision to arbitration in terms of Clause 33 below;

7.7.3. the Member has made payment of any costs which may be incurred in obtaining this approval, including scrutiny fees payable to the nominee of the Trustees and administration costs payable to the Managing Agent, if applicable;

7.7.4. the Member has paid to the Trustees a deposit in such amount as the Trustees may from time to time determine as security for any damage to any of the Common Areas which amount shall be retained by the Trustees subject to the provisions of Clause 15 below; and

7.7.5. the Member, his building contractor and the Association have signed a Building Contractors Code of Conduct Agreement, in the instance where the Member is applying for the approval of the construction of a dwelling on his Erf;

provided the foregoing shall not be interpreted as detracting from the sole and final responsibility of the Local Authority to approve or reject building plans.

7.8. Any dispute relating to the Design Guidelines and/or the proposed buildings and/or structures and/or

alterations to the existing buildings and/or structures may be referred to an independent architect agreed to by the parties to the dispute. The architect shall act as an expert and not as an arbitrator and his determination shall be final and binding on the parties to the dispute.

- 7.9. Members shall use their Erven for residential purposes only and shall not use or conduct or permit the use or conduct thereon of any business, hospitality related facilities or 'bed and breakfast' establishment or any similar activity.
- 7.10. Except for the Developer in respect of the Further Phases, no Member shall apply to the Local Authority for the rezoning, consent, use, departure or any other relaxation in terms of the approved zoning scheme 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 the permitted use applicable upon establishment of the Estate without the prior written consent of the Trustees and subject to compliance with the conditions imposed by the Trustees.
- 7.11. Except for the Developer in respect of the Further Phases, no Member shall consolidate two or more Erven into one Erf without the prior written consent of the Trustees and subject to compliance with the conditions imposed by the Trustees.
- 7.12. Except for the Developer in respect of the Further Phases, no Member shall subdivide an Erf into two or more Erven, without the written consent of the Trustees and subject to compliance with the conditions imposed by the Trustees.
- 7.13. A Member shall not do or suffer to be done on or in any property anything which, in the opinion of the Trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any Resident.
- 7.14. A Member shall adequately insure the buildings in respect of his Erf and, if requested by the Trustees, shall furnish proof of such insurance to them and, in the event of the total- or partial destruction thereof, the Member must, within a reasonable time period, reinstate the buildings and/or structures in accordance with the Design Guidelines and building plans to be approved by the Trustees.
- 7.15. A Member shall maintain his Property in a state of good repair and in a clean and neat condition. If a Member fails to repair or maintain his Property 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 Trustees, the Trustees shall be entitled to remedy the Member's failure and to recover the reasonable cost of doing so from such Member.
- 7.16. Any costs incurred by the Trustees in terms of this Constitution, shall be due and payable by the Member upon demand, and failing which, the costs may be added to the Member's Levy statement and the costs may be recovered from the Member in the same manner as applies to arrear Levies, together with interest at the rate applicable to Levies.

8. TERMINATION OF MEMBERSHIP

- 8.1. when a Member ceases to be a Registered Owner of an Erf he shall automatically cease to be a Member of the Association.
- 8.2. The Developer shall be entitled at any time to cede in writing, and assign, all or any of its rights or

obligations in terms of this Constitution and the transferee shall be entitled to take transfer of all such rights and obligations.

8.3. The Developer may at any time abandon, in writing, in whole or in part, any rights conferred upon it in terms of this Constitution.

8.4. The Developer shall, when it is no longer the Registered Owner of any Erf, cease to be a Member of the Association.

9. RESTRICTION ON ALIENATION OF AN ERF

9.1. A Member shall not in any manner alienate or transfer an Erf unless:

9.1.1. the proposed transferee has irrevocably bound himself to become a Member of the Association and to observe the Constitution of the Association for the duration of his ownership of the Erf;

9.1.2. The Association has given its written consent thereto and has issued a clearance that all Levies and any other 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, to an extent which would reasonable justify the withholding of such consent; and

9.1.3. the proposed transferee acknowledges that upon the registration of transfer of the Erf into his name he shall automatically become a Member of the Association.

9.2. The provision of Clause 9.1 shall apply *mutatis mutandis* (i.e. with the necessary changes having been made) to any alienation of any undivided share in an Erf.

9.3. A Registered Owner may not at any time resign as a Member of the Association.

9.4. Restrictions on alienation aforesaid will be registered against all the Erven in order to give effect to the terms of this Clause. The Members shall be bound by this Clause whether or not such restrictions are registered against the Erven. The Association shall be entitled to determine a reasonable fee to be charged for the issuing of its written consent to alienation.

10. LEVIES PAYABLE BY THE MEMBERS

10.1. The Trustees shall from time to time, impose Levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustees reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the Common Areas including, specifically landscaping, all township services, sewage treatment, the security systems to be installed on the Common Areas and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Common Areas and the Association's affairs. In calculating Levies, the Trustees shall take into account, income, if any, earned by the Association.

- 10.2. The Trustees shall at least thirty (30) days, before the end of each financial year prepare a budget for the Association in respect of the ensuing financial year. The Trustees shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall impose a Levy (Ordinary Levy) upon the Members equal as nearly as is reasonably practical to such estimated amount. The Trustees may include in such Levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. The Levies so determined shall become effective and due from the date of the passing of the Trustees' resolution. Every such Levy shall be made payable by equal monthly instalments and shall be due and payable in advance on the first day of each and every succeeding month of the ensuing financial year.
- 10.3. The Trustees may from time to time impose Special Levies upon the Members in respect of all such expenses as are mentioned in this Clause 10 (which are not included in any estimate made in terms of Clause 10.2), and such Levies may be made payable in the sum or by such instalments and at such time or times as the Trustees shall think fit. The Special Levies so determined shall become effective and due from the date of the passing of the Trustees' resolution.
- 10.4. 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 such Member 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 first day of the month following the date upon which he becomes a Member pursuant to the transfer thereof, to pay the Levy attributable thereto.
- 10.5. In calculating the Levy (Ordinary- or Special Levy) payable by each Member, the Trustees shall as far as is reasonably practical, and in their sole discretion:
 - 10.5.1. assign those costs arising directly out of or directly attributable to an Erf to the Owner thereof;
 - 10.5.2. assign those costs arising directly out of or directly attributable to more than one Erf to the Owners of those Erven; and
 - 10.5.3. subject to 10.5.1 and 10.5.2 assign those costs relating to the Estate generally to all the Owners of all Erven equally, or if consolidated, then as if the consolidation had not taken place; provided, however, that the Trustees may in any case where they consider it equitable so to do, assign to any Owner a greater or lesser share of the costs as the Trustees consider may be reasonable in the circumstances.
- 10.6. The Trustees' decision or Trustees' resolution in calculating the Levies shall be final and binding on all Members.
- 10.7. 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.
- 10.8. Upon taking transfer of an Erf, the new Member shall become liable to the Association for the payment of the Levies in respect of the Erf. No Member shall be entitled to transfer his Erf until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association, or has made provision for such payment to the satisfaction of the Trustees.

- 10.9. Where any Erf is owned by more than one person, all the Registered Owners of that Erf shall be jointly and severally liable for the due performance of any obligation to the Association.
- 10.10. If a Member fails to pay his Levies in full to the Association on due date, the Association may institute an action for the recovery thereof in any competent court.
- 10.11. A Member shall be liable for payment of interest on arrear Levies and outstanding amounts due to the Association at the Prime Rate plus 5%. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment, both days inclusive.
- 10.12. Members shall be liable for payment of interest on arrear Levies and outstanding amounts due to the Association at a rate determined by the Trustees from time to time. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment, both days inclusive.
- 10.13. All moneys received from a Member towards his Levy account, shall be apportioned firstly towards interest, then towards legal- and other administrative costs, and then towards Levies or other service charges.

11. COSTS OF RECOVERING LEVIES

A Member shall be liable for and pay all legal costs, including costs, as between attorney and own client, collection commission, expenses and charges incurred by the Association in recovering any arrear Levy or other amounts due and owing to the Association. This includes the costs of enforcing compliance with this Constitution, the Building Guidelines, the Design Guidelines and Estate Rules and any rules or directives issued by the Association from time to time.

12. ESTATE RULES

- 12.1. The Estate Rules contained in **Annexure D** hereto, shall be binding upon Members and Residents. Subject to any restriction imposed or direction given at a general meeting of the Association and to any condition imposed by the Local Authority in approving the rezoning and subdivision of the Land, the Trustees may from time to time formulate and issue and/or amend Estate Rules in regard to:
- 12.1.1. building requirements and construction and the appearance of Erven, buildings, structures and improvements generally within the Estate;
- 12.1.2. the implementation of the relevant provisions and recommendations of the EMP;
- 12.1.3. the preservation of the natural environment vegetation and fauna on the Land including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any Erven;
- 12.1.4. the right to prohibit, limit, restrict and control the keeping of any animal or pet;
- 12.1.5. the conduct of any persons within the Estate for the prevention of nuisance of any nature to any Member or Resident;
- 12.1.6. the use, enjoyment, letting and occupation of Properties and restrictions in respect of the use,

enjoyment, letting and occupation of Properties;

- 12.1.7. the use and enjoyment of the Common Areas, and restrictions on the use and enjoyment thereof;
 - 12.1.8. the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;
 - 12.1.9. the maintenance of all buildings, out buildings, structures, improvements of any nature and landscaping on the property;
 - 12.1.10. the control of the number of occupiers permitted on any one Erf;
 - 12.1.11. the admission of any person onto the Land, and the eviction of any person not entitled to be thereon;
 - 12.1.12. the security measures in respect of the Estate and the control of traffic and parking within the Estate;
 - 12.1.13. refuse disposal and prohibiting littering; and
 - 12.1.14. generally any other provisions in 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 on the Land.
- 12.2. The Association may in general meeting by Ordinary Resolution formulate and issue and/or amend the Estate Rules.
 - 12.3. All Estate Rules must be reasonable and must apply equally to all Owners of Erven put to substantially the same, use.

13. BUILDING PLAN APPROVAL AND BUILDING RULES

- 13.1. The Building Rules contained in **Annexure B** hereto shall be binding upon the Members with regard to the submission of their building plans for approval to the Trustees and with reference to construction and building activities generally within the Estate. The Trustees may from time to time formulate and issue and/or amend the Building Rules. The Association may in general meeting by Ordinary Resolution formulate and issue and/or amend the Building Rules.
- 13.2. All Estate Rules must be reasonable and must apply equally to all Owners of Erven put to substantially the same, use.
- 13.3. No construction or erection of a dwelling, building or new structures or any additions, alterations or amendments to existing buildings or structures on an Erf may commence prior to the approval by the Association and the local authority of building plans for such improvements. In this regard:
 - 13.3.1. a full set of proposed building and landscaping plans, which indicate both construction and design details, shall be submitted to the Association for consideration and approval;
 - 13.3.2. the Association shall certify in writing that the plans comply with the development plan, the Design Guidelines and all other prescriptive conditions that may be applicable;

- 13.3.3. the Member shall thereafter submit the building and landscaping plans to the Local Authority for approval, with the approval of the Association evidenced by an endorsement of the plans;
- 13.3.4. having obtained the approval of the Local Authority, the Member shall comply with all conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Association;
- 13.3.5. any scrutiny fees payable to the Association will be paid by the Member as well as any additional scrutiny fees should any amended and/or further plans be submitted; and
- 13.3.6. any fees or costs payable to the Local Authority will be paid by the Member.

14. DESIGN GUIDELINES

- 14.1. The Design Guidelines contained in **Annexure C** hereto shall be binding upon the Members. Subject to any restriction imposed or direction given at a general meeting of the Association, the Trustees may amend, substitute, add to or repeal the provisions of the Design Guidelines from time to time, provided that the amended Design Guidelines shall be submitted to the Local Authority for approval.
- 14.2. The Design Guidelines shall prescribe:
 - 14.2.1. the architectural design of buildings, outbuildings and structures in the Estate and any additions and alterations to any such buildings, outbuildings or structures erected or to be erected in the Estate, and any improvements in the Estate;
 - 14.2.2. the colour of the exterior of buildings, outbuildings and structures and the materials to be used on such exteriors to ensure an attractive and aesthetically pleasing character thereof; and
 - 14.2.3. provisions relating to landscaping in the Estate.
- 14.3. The Trustees shall perform such acts as are necessary to accomplish the purposes expressed or implied in this Constitution, the Design Guidelines and the Building Rules, including:
 - 14.3.1. the examination and endorsement of building plans and the evaluation of landscaping proposals;
 - 14.3.2. the appointment of an architect or other advisors to assist the Trustees or to scrutinize the building plans on behalf of the Trustees;
 - 14.3.3. the delegation of powers and functions of the Trustees to an architect; and
 - 14.3.4. to impose a scrutiny fee on Members for the services as mentioned herein.
- 14.4. In the event of any of the provisions of the Design Guidelines being amended or added to and such amendment or additions will materially affect any further Development of any of the Erven, the Trustees shall by written notice inform all Members of the amendment or addition to the Design Guidelines.
- 14.5. All buildings and other structures erected on any Erf shall comply with the provisions of the Design Guidelines.

- 14.6. Every transferee of an Erf on or after the Effective Date of this amended Constitution as described in clause 35 of this Constitution shall ensure that the Erf shall have been developed by the completion of construction of a dwelling on the Erf within 48 months from the date of registration of the Erf to this first transferee of the Erf on or after the Effective Date. If any such Member fails to complete construction within the foregoing period, as may be applicable, the Trustees may impose a Penalty Levy on the Owner, which penalty levy shall not exceed the Ordinary Levy payable by the Owner in terms of Clause 10.2 of this Constitution. The Penalty Levy shall be payable for every month or part of a month for which the dwelling remains uncompleted. The Penalty Levy must be paid monthly in advance on or before the 7th day of every month and each month's Penalty Levy shall be equal, and in addition to, the monthly instalment of the Ordinary Levy.
- 14.7. Once a Member has commenced with construction of a dwelling on his Erf, he shall complete construction of the dwelling within 12 (twelve) months of commencement of construction. If a Member fails to complete construction within the foregoing period, the Trustees may impose a Penalty Levy on the Owner which penalty levy shall not exceed the Ordinary Levy payable by the Owner in terms of Clause 10.2 of this Constitution. The Penalty Levy shall be payable for every month or part of a month for which the dwelling remains uncompleted. The Penalty Levy must be paid monthly in advance on or before the 7th day of every month and each month's Penalty Levy shall be equal to, and in addition to, the monthly instalment of the Ordinary Levy.
- 14.8. For the purpose of Clauses 14.6 and 14.7 "completion of construction" shall mean when the Local Authority has issued an occupation certificate and the Trustees have certified the dwelling as being complete in accordance with the approved building plans, after they have received a report from an architect confirming same. Any dispute as to whether or not construction has been completed or not may be referred to an independent architect agreed to by the parties to the dispute. The architect shall act as an expert and not as an arbitrator and his determination shall be final and binding on the parties to the dispute.
- 14.9. For the purpose of Clause 14.7 "commenced with construction" shall mean excavation and laying of foundations.
- 14.10. The Penalty Levy referred to in Clause 14.6 and Clause 14.7 may be increased from time to time by the Trustees in their discretion taking into account inflation and they shall be entitled to impose a monthly escalation on such Penalty Levy provided such increase shall not exceed the total ordinary levy payable by the owner should they deem it appropriate or should they be so instructed by the Members of the Association.
- 14.11. Up and until such time a Member has commenced with construction, such Member will clean its Erf annually of vegetation and grass. Should a Member not clean its Erf within 30 days of having been requested to do so by the Association, then the Association will attend to the cleaning of the Erf, the costs for such cleaning to be for the account of such Member.

15. DEPOSIT FOR DAMAGE

- 15.1. Each Member shall, when submitting to the Trustees for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements in the Development in terms of Clause 13, pay to the Trustees a deposit in an amount to be determined from time to time by the Trustees which amount shall be retained by the Trustees in trust until completion by the Member and/or its contractors of such work. Interest on such deposit shall accrue to the

Homeowners Association.

- 15.2. Upon completion of all such building and other activities, the Trustees shall if they are satisfied that no damage has been effected by the Member or any of its 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 by crediting it on the Members account.
- 15.3. In the event of any landscaped area and/or the Common Areas having damage due to such work, the Member shall within 14 (fourteen) days of having been requested to do so in writing by the Trustees, rectify the damage to the satisfaction of the Trustees, failing which, the Trustees shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the Trustees as a building deposit shall be utilised to defray the expenses of the independent contractor. If, however, the deposit paid is not sufficient to cover the cost of such repairs, the Trustees shall be entitled to recover the shortfall from the Member.

16. TRUSTEES

- 16.1. There shall be a Trustee Committee of the Association which shall consist of not less than four (4) and not more than seven (6) Trustees.
- 16.2. Every Trustee must be a Member of the Association or an authorised representative of the Member where the Member is not a natural person.
- 16.3. The Trustees of the Association shall for the Development Period be divided into two classes, namely Developer Trustees and Member Trustees. Upon expiry of the Development Period there shall only be Member Trustees.
- 16.4. During the Development Period at least two (2) of the Trustees may be appointed by the Developer and the remainder of the Trustees shall be appointed by the Members provided that after the Development Period, all Trustees shall be appointed by the Members.

17. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 17.1. Save as set forth in Clause 17.2 below, each Trustee, except for the Developer Trustees who shall not be required to rotate on an annual basis, 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.
- 17.2. A Trustee shall be deemed to have vacated his office as such upon:
- 17.2.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 17.2.2. his making any arrangement or compromise with his creditors;
- 17.2.3. his conviction for any offence involving dishonesty;
- 17.2.4. his becoming of unsound mind or being found to be a lunatic;
- 17.2.5. his resigning from such office in writing delivered to the secretary;

- 17.2.6. his death;
- 17.2.7. his being removed from office by a Special Resolution of the Members; or
- 17.2.8. his being in arrears with his Levies or any other amounts due to the Association for two (2) months, or more.

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 minutes of the Trustee Committee.

- 17.3. Upon any vacancy occurring on the Trustee Committee prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee. Whilst Developer Trustees are in office the remaining Developer Trustees shall nominate a person to fill any such vacancy in their number.
- 17.4. The Developer may at any time and from time to time remove and replace any Developer Trustee at any time on written notice to the remaining Trustees.

18. OFFICE OF TRUSTEES

- 18.1. The Trustees shall appoint from amongst themselves, a chairman and vice-chairman.
- 18.2. The first chairman, and vice-chairman, may be appointed by the Developer, and such office bearers shall hold their respective offices until the first annual general meeting following the date of their appointment, provided that any such office shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.
- 18.3. Within seven (7) days of the holding of such annual general meeting, the Trustee Committee shall meet and shall elect from its own number the chairman and vice-chairman, who shall hold their respective offices until the annual general meeting held next after their said appointment, provided that the 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.
- 18.4. 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 Trustees or by the 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.
- 18.5. 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.

- 18.6. Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Trustees and/or chairman, vice-chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

19. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 19.1. Subject to the express provisions of this Constitution, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in 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 regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 19.2. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 19.3. The Trustees shall have the right to co-opt onto the Trustee Committee any member or members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 19.4. 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.
- 19.5. The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed in the Association in general meeting:
- 19.5.1. as to disputes generally;
 - 19.5.2. for the furtherance and promotion of any of the objects of the Association;
 - 19.5.3. for the better management of the affairs of the Association;
 - 19.5.4. for the advancement of the interests of Members;
 - 19.5.5. for the conduct of Trustees' meetings and general meetings;
 - 19.5.6. to assist it in administering and governing its activities generally; and
 - 19.5.7. to employ a Managing Agent;

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

20. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 20.1. The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 20.2. Meetings of the Trustee Committee shall be held at least once every four (4) months, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular four (4) months, then no meeting of the Trustee Committee need be held for that period.
- 20.3. The quorum necessary for the holding of any meeting of the Trustee Committee shall be two (2) Trustees.
- 20.4. 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 five (5) minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within five (5) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 20.5. The Trustees shall take minutes of every Trustees' meeting, although not necessarily word for word, 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, after being approved by the Trustees. The Trustees shall keep the minutes of Trustees' meetings in perpetuity. The minutes shall be open for inspection at all reasonable hours on business days by a Trustee, the Auditors, and the Members and copies may be made available on application and against payment of the reasonable costs thereof.
- 20.6. All competent resolutions recorded in the minutes of any Trustees' meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 20.7. 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.
- 20.8. A resolution signed by all the Trustees for the time being present in the Republic of South Africa shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.
- 20.9. Any resolution of the Trustees shall be carried by a simple majority of all votes cast, and each Trustee shall have one (1) vote. In the case of an equality of votes for and against a resolution, the chairman of the Trustees shall have a second casting vote.

21. GENERAL MEETINGS OF THE ASSOCIATION

- 21.1. The Association shall within three (3) calendar months after each financial year of the Association, hold a general meeting as its annual general meeting, in addition to any other general meetings, during such financial year, and shall specify the meeting as such in the notices in terms of Clause 22 below calling it.

- 21.2. 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.
- 21.3. All general meetings other than annual general meetings shall be called special general meetings.
- 21.4. The Trustee Committee may, whenever they think fit, convene a special general meeting.
- 21.5. General meetings of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time.

22. NOTICE OF MEETINGS OF THE ASSOCIATION

- 22.1. An annual general meeting and a meeting called for the passing of a Special Resolution, shall be called by not less than twenty-one (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 not less than fourteen (14) days' notice in writing at the least. In each case, the notice shall be exclusive of the day on which it is dispatched, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and 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.
- 22.2. 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 to 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.
- 22.3. 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.

23. QUORUM FOR GENERAL MEETINGS

- 23.1. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. 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 twenty percent (20%) of the total votes of all Members of the Association entitled to vote.
- 23.2. If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the 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.

24. 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:

- 24.1. the consideration of the chairman's report to the Trustee Committee;
- 24.2. the election of the Trustee Committee;
- 24.3. 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;
- 24.4. the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 24.5. the consideration of the report of the Auditors;
- 24.6. the consideration of the total Levy (as referred to in Clause 10) for the calendar year during which such annual general meeting takes place; and
- 24.7. the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the annual general meeting.

25. PROCEDURE AT GENERAL MEETINGS

- 25.1. The chairman shall preside as such at all general meetings, provided that should he not be present within five (5) minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within five (5) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting and entitled to vote, shall vote to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 25.2. The chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting 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.
- 25.3. 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.
- 25.4. Except as otherwise provided for in this Constitution, all general meetings shall be conducted in accordance with generally accepted practice and in such reasonable manner and form as the chairman of the meeting shall decide.

26. PROXIES FOR GENERAL MEETINGS

- 26.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the chairman of the board of directors of the company or by its secretary, and where an Association of persons, by the secretary thereof.
- 26.2. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the *domicilium citandi et executandi* of the Association or shall be handed to the chairman 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.
- 26.3. 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.
- 26.4. Should a Member be absent from his *domicilium address* for a continuous period in excess of three (3) months, a proxy must be appointed by such Member prior to his absence in accordance with Clauses 26.1 and 26.2 above, failing which the Member shall not be entitled to vote at any special general meeting, called during such Member's absence.

27. VOTING AT GENERAL MEETINGS

- 27.1. At every general meeting, every Member in person or by proxy and entitled to vote shall have one (1) vote for each Erf registered in his name, provided that if an Erf is registered in the name of more than one person, then they shall jointly exercise such rights in respect thereof and jointly have one (1) vote.
- 27.2. Save as expressly provided for in this Constitution, no person other than a Member who is not in arrears with his Levies for one (1) month or more shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 27.3. At any general meeting a resolution put to the vote of the meeting shall be decided 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 or by the chairman.
- 27.4. Notwithstanding the provisions of Clause 27.3 aforesaid, voting on the election of a chairman of a general meeting (if necessary) or on any question of adjournment shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote, 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 27.5 below.

- 27.5. 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.
- 27.6. 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.
- 27.7. 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.
- 27.8. 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 as to the propriety or validity of the procedure at such meeting, such declaration 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. The chairman of the meeting shall be obliged to announce the result of any voting either at the meeting or as soon as reasonably possible thereafter.
- 27.9. The Trustees shall take minutes of every general meeting, although not necessarily word for word, 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, after being approved by the Members by Ordinary Resolution in general meeting. The Trustees shall keep the minutes of general meetings in perpetuity. The minutes shall be open for inspection at all reasonable hours on business days by a Trustee, the Auditors, and the Members and copies may be made available on application and against payment of the reasonable costs thereof.

28. SPECIAL RESOLUTION

- 28.1. 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 fifty percent (50%) 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 Seventy Five Percent (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 Seventy Five Percent (75%) of the total votes to which the Members present in person or by proxy are entitled.
- 28.2. If less than fifty percent (50%) 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 25.3 shall apply in respect of such adjournment.

- 28.3. 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 Seventy Five Percent (75%) 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.

29. OTHER PROFESSIONAL OFFICERS

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, subject to any of the provisions of this Constitution, provided that any expenditure incurred in respect of the above, shall not exceed 5% of the total annual Levy for the year in question unless authorised by a Special Resolution.

30. ACCOUNTS

- 30.1. The Association in general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 30.2. At each annual general meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors if appointed, and there shall be attached to the notice sent to Members convening each annual general meeting, as set forth in Clause 22 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.
- 30.3. Should the Trustees or the majority of the Members so require, 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.

31. SERVICE AND ELECTRONIC TRANSMISSION OF NOTICES

- 31.1. A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at his *domicilium citandi et executandi*: provided that shall be competent for the Association to transmit a notice to a Member by telefax or electronic communication (e-mail) where the telefax number or e-mail address of the Member is recorded with the Association.
- 31.2. 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 the service of notices.

- 31.3. 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, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted. A notice successfully transmitted by telefax or e-mail to the telefax number or e-mail address of the Member shall be deemed to have been received on the first business day after the date of transmittal.
- 31.4. 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.
- 31.5. Notwithstanding anything to the contrary herein contained, a written notice received by a Member shall be adequate written notice to such Member notwithstanding that it was not delivered in accordance with Clause 31.1 above.

32. INDEMNITY OF TRUSTEES

- 32.1. 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.
- 32.2. 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 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.
- 32.3. 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 wrongful 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 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.

33. ARBITRATION

- 33.1. Any dispute, question or difference arising at any time between Member or between Members and Trustees out of or in regard to:
- 33.1.1. any matters arising out of this Constitution; or
- 33.1.2. the rights and duties of any of the parties mentioned in this Constitution; or

- 33.1.3. 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.
- 33.2. 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.
- 33.3. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 33.3.1. primarily an accounting matter - an independent accountant;
- 33.3.2. primarily a legal matter - a practising counsel or attorney of not less than ten (10) years standing;
- 33.3.3. any other matter - an independent and suitably qualified person appointed by the Auditors;
- as may be agreed upon between the parties to the dispute.
- 33.4. If agreement cannot be reached on whether the question in dispute falls under Clauses 33.3.1, 33.3.2 or 33.3.3 or upon a particular arbitrator in terms of Clause 33.3.3, within three (3) business days after the arbitration has been demanded, then:
- 33.4.1. the President for the time being of the Cape Law Society or its successor/s shall determine whether the question in dispute falls under Clauses 33.3.1, 33.3.2 or 33.3.3; or
- 33.4.2. the President for the time being of the Cape Law Society shall nominate the arbitrator in terms of Clause 33.3.1 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 33.2 above.
- 33.5. 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.
- 33.6. The decision of the arbitrator shall be final and binding and may be made an order of the Western Cape Division of the High Court of South Africa or its successor/s upon the application of any party to the arbitration.
- 33.7. Notwithstanding anything to the contrary contained in Clauses 33.1 to 33.7 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.
- 33.8. The above remedies subsist without prejudice to the right of any party to:
- 33.8.1. institute proceedings in any court having jurisdiction; and/or

33.8.2. institute proceedings in terms of the Community Schemes Ombud Service Act, No. 9 of 2011, when such service becomes operative; and/or

33.8.3. to refer a dispute relating to the Design Guidelines and/or the proposed buildings and/or structures or alterations to existing buildings and/or structures to an independent architect, who shall act as an expert and not as an arbitrator and whose determination shall be final and binding on the parties.

34. AMENDMENTS TO CONSTITUTION

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 and subject further to the written consent of the Council being obtained for the amendment of this Constitution and subject further to the prior written consent of the Developer during the Development Period being obtained for the amendment of this Clause and Clause 37 of this Constitution: Provided that the Annexures to this Constitution may from time to time be amended by a resolution of the Trustee Committee.

35. EFFECTIVE DATE OF CONSTITUTION AND AMENDED CONSTITUTION

The previous Constitution came into force when the first Erf in the Development was registered in the deeds office. This amended Constitution replaces the previous Constitution of the Association and shall take effect on the date of approval thereof by the local authority and such date shall be the Effective Date of the amended Constitution.

36. STATUS OF DEVELOPER

During the Development Period, the following provisions shall apply in addition to the provisions of and notwithstanding anything to the contrary contained in this Constitution:

36.1. the Developer shall be entitled:

36.1.1. to nominate and appoint at least two (2) of the Trustees to the Trustee Committee;

36.1.2. 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 prior consent of the Council, which will not be unreasonably withheld;

36.2. neither the Trustee Committee nor any Member of the Association shall prevent or hinder in any way the Developer from:

36.2.1. gaining access to and egress from the Development;

36.2.2. continuing any building operations at the Development;

36.2.3. marketing and selling any of its unsold Erven, including the advertisement of the sale of such Erven on the Common Areas and/or at the Development;

provided that, after the termination of the Development Period, the provisions of this Clause 36 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless forty-eight (48) hours prior written notice has been given to the Member concerned. 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;

36.4 Upon expiry of the Development Period, the rights of the Developer in terms of the provisions of this Clause 36 shall immediately automatically terminate and no longer be of any force and effect.

37. INCORPORATION OF FURTHER PHASES

The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity to ensure the success of the Development. Accordingly, none of the following provisions may be deleted or varied in any way in terms of Clause 34 without the prior written consent of the Developer:

37.1. the Developer has the right at any time and from time to time to extend or alter the area or composition of the Development by requiring the Association to incorporate into the Development any subdivisions of Erf 15309 Knysna as phase 3 of the Development and any other part/s of the Remainder Erf 15309, Knysna, from time to time as further phases of the Development which the Developer shall be entitled to develop as it may deem fit;

37.2. should any further property be incorporated into the Development, the Developer shall be entitled to require that the first and all subsequent Owners of Erven therein become Members of the Association in respect of those parts from such date as the Developer may determine, and on the same terms and conditions as are applicable to the other Members of the Association. The Members shall be bound by any such requirement of the Developer.

38. DOMICILIUM OF THE ASSOCIATION AND OF THE MEMBERS

38.1. The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:

38.1.1. such address shall be the address of the duly appointed Managing Agent, or the address of the chairman or of a Resident Trustee nominated by the Trustees or the address of the Manager;

38.1.2. the Trustees shall give notice to all Members of any change of such address.

38.2. The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf. A Member may by notice in writing to the Trustees change his *domicilium* address, provided that such new address may not be a post office box or *post restante* and provided that such address shall be situated within the Republic of South Africa and shall not be effective until fourteen (14) days after receipt of such notice by the Trustees

39. 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, every other Trustee, the Auditors, 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 Trustees' meeting or general meeting, 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.

40. EXCLUSION OF LIABILITY

- 40.1. Any Member or other person present in the Estate or on the Common Areas or using any of the facilities or Services of the Association does so entirely at their own risk. No Member or other person shall have any claim against the Association, the Trustees, the Managing Agent, or any of the Association's agents, employees or contractors, of whatsoever nature arising from such use. Any claim of a Member or any other person shall be limited to the amount actually recovered by the Association from the receipt of proceeds of any general public indemnity liability insurance, if any. If and to the extent that the Association does not have any such public indemnity liability insurance, no such person shall have any claim against the Association.
- 40.2. The Association, the Trustees, the Managing Agent or any of the Association's agents, employees or contractors shall not be liable for any loss (including consequential loss), injury, loss of life or damage to person or property of any nature whatsoever which any Member or other person whosoever may sustain:
- 40.2.1. by reason of any defect in or state of disrepair of the Estate or the Common Areas, or any facility, service or property, or any part thereof, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein, notwithstanding that such effect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Trustees, the Managing Agent, or any of the Association's agents, employees or contractors; or
- 40.2.2. directly or indirectly, in or about the Estate (including, without limiting the generality of the foregoing, the Common Areas and any property, whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire water leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other services to the Estate (irrespective of the cause thereof), or be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Trustees, the Managing Agent, or any of the Association's agent's, employees or contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.

- 40.3. The Members undertake in favour of the Association, as soon as practical, to notify the Residents in respect of their Properties, and their family members, employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees, of the provisions of this Clause 40, and to take all such steps required and/or necessary to ensure that such persons agree hereto in writing in such form as the Trustees may from time to time determine so as to enable the Association to accept the benefits hereof at any time without notice to such person.
- 40.4. Every Member individually hereby fully and completely indemnifies and holds harmless the Association against all claims of whatsoever nature and howsoever arising which may be brought against the Association by that Member or the Resident of his Property or any family member, employee, servant, worker, contractor, agent, service provider, visitor, guest or other invitee of the Member or Resident, or any other person present in the Estate at the invitation of or under the control of the Member or Resident concerned, notwithstanding the nature of such claim.
- 40.5. The Association shall not be liable for any costs of suite in any legal proceedings instituted against it in any court or arbitration forum or other tribunal by any Member. The exclusion herein contained will not apply if the proceedings in question are founded on any conduct of the Association or its representatives or employees which is alleged by the claimant, and found by the court, arbitrator or tribunal, as the case may be to be mala fide or wilfully wrongful.
- 40.6. The Association shall not be liable for any damage suffered by a Resident or any other person present in the Estate by reason of power surges.

41. BREACH

- 41.1. The Trustees may on behalf of and in the name of the Association institute legal proceedings against Members who are in breach of any of the provisions of this Constitution.
- 41.2. If a Member commits a breach of any provision of this Constitution by failing to pay on due date any Levies, fines or any other amounts payable by him to the Association and remains in default for more than thirty (30) days, the Trustees may, on behalf of the Association, institute legal proceedings against such Member in any court of competent jurisdiction for payment of such overdue Levies, fines or other amounts.
- 41.3. If a Member commits any other breach of a provision of this Constitution and fails to commence to remedy that breach within a period of seven (7) days' after the receipt of written notice to that effect by the Trustees, and to complete the remedying of such breach within a reasonable time or as may be specified in the notice, then the Trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees, or the Association, or any other Member, may have in terms of this Constitution, or in law, including the right to claim damages, to:
- 41.3.1. take or cause to be taken such steps as they may consider necessary to remedy the breach, and debit the cost of so doing to the Member concerned, which amount shall be deemed a debt owing by the Member concerned to the Association; and/or
- 41.3.2. institute legal proceedings in any court of competent jurisdiction to enforce the provisions of the Constitution or for such relief as the Trustees may consider necessary, and/or
- 41.3.3. institute proceedings with a competent Ombud for such relief as the Trustees may consider

necessary.

- 41.4. Where the Trustees institutes proceedings against a Member in terms of the foregoing provisions, the Trustees shall be entitled to recover from such Member all legal costs incurred by them, including attorney and own client charges, tracing fees and collection commission.
- 41.5. In the event of any breach of any provision of this Constitution by tenants or other Residents or by the family members, visitors, guests, employees, servants, workers, contractors, agents, service providers or invitees of the Member or Residents of his Property, 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 actually committing the breach as they may in their discretion deem fit.
- 41.6. The above remedies subsist without prejudice to the right of the Trustees to impose a fine on the Member in terms of Clause 42 of this Constitution.

42. IMPOSITION OF FINES

- 42.1. If the conduct of an Owner or Resident or the family members, employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees of an Owner or Resident constitute/s a nuisance in the opinion of the Trustees, or a contravention of a provision of this Constitution, the Trustees shall by written notice inform the Owner of the nuisance or contravention and warn the Owner that if the offender fails to remedy the contravention, or persist/s in the conduct or contravention, or repeats the conduct or contravention, a fine will be imposed on the Owner.
- 42.2. If, notwithstanding the written notice in terms of Clause 42.1 above, the Owner or offender fails to remedy the contravention or persists in the conduct or contravention, or repeats the conduct or contravention, the Trustees may by written notice, impose a fine on the Owner.
- 42.3. The fine imposed under Clause 42.2 above, shall become due on the date of the written notice and must be paid within thirty (30) days of the date of the written notice. Should the fine remain unpaid, it shall be added to the Owner's Levy statement and shall be recovered from the Owner in the same manner as applies to arrear Levies, together with interest at the rate applicable to arrear Levies.
- 42.4. The Trustees shall from time to time determine the amounts of fines in respect of the various contraventions and in respect of first and successive contraventions, subject to the directions given or restrictions imposed at general meetings of the Association.
- 42.5. A fine may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Owner shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable for a fine in respect of each such separate contravention.
- 42.6. An Owner may within thirty (30) days of the date of the written notice in terms of Clause 42.2, submit an objection, with a motivation against the fine imposed, to the Trustees.
- 42.7. Upon receipt of the objection, the Trustees may:
 - 42.7.1. withdraw or reduce the fine; or

- 42.7.2. schedule a Trustees' meeting (hearing) for the purpose of considering the objection and invite the Owner to attend.
- 42.8. At the Trustees' meeting (hearing) referred to in Clause 42.7.2 above, the Owner shall have the right to:
- 42.8.1. present his case;
- 42.8.2. present any evidence, including the calling of witnesses to substantiate his case;
- 42.8.3. cross-examine any person called as a witness in support of the charge;
- 42.8.4. have access to documents produced in evidence; and
- 42.8.5. produce mitigating factors.
- 42.9. The failure of the Owner charged to attend the Trustees' meeting referred to in Clause 42.7.2 shall not render the proceedings at the meeting void. Should the Owner or his representative fail to attend the Trustees' meeting and fail to provide a reasonable request for postponement, the Trustees may, in their sole discretion, continue with the Trustees' meeting and consider the objection in the absence of the Owner
- 42.10. Upon the conclusion of the Trustees' meeting, the Trustees shall deliberate the evidence and if so resolved, they may:
- 42.10.1. uphold the fine; or
- 42.10.2. withdraw or reduce the fine.
- 42.11. The above remedy subsist without prejudice to the right of any party to refer any matter in dispute to the Members in general meeting for their decision.

The following Annexures to this Constitution are deemed to be incorporated in and form part of this Constitution;

- Annexure A: Site Development Plan
 Annexure B: Building Contractors Code of Conduct Agreement & Building Rules
 Annexure C: Architectural Design Guidelines and the Landscape Design Guidelines
 Annexure D: Estate Rules