



CONSTITUTION

OF THE

MASTER HOME OWNERS' ASSOCIATION

OF

**THE SOMERSET LIFESTYLE AND
RETIREMENT VILLAGE**

THE SOMERSET

APPROVAL

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The Somerset Lifestyle and Retirement Village

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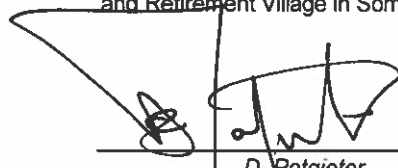
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APPROVAL:



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Note: This document is a draft unless approved.

REVISION HISTORY

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TABLE OF CONTENTS

1	INTRODUCTION.....	5
2	OBJECTIVES.....	5
3	DEFINITIONS	7
4	INTERPRETATION	10
5	ESTABLISHMENT	10
6	STATUS.....	11
7	MEMBERSHIP	11
8	FUNCTIONS	12
9	<i>DOMICILIUM</i> OF ASSOCIATION.....	12
10	MEMBERS' CONTRIBUTIONS.....	12
11	THE TRUSTEES AND MANAGEMENT	15
12	LEVY STABILISATION FUND	17
13	FUNCTIONS, POWERS AND DUTIES OF TRUSTEES	17
14	FINANCIAL YEAR-END.....	19
15	BOOKS OF ACCOUNT	19
16	DEPOSIT AND INVESTMENT OF FUNDS.....	20
17	AUDIT.....	20
18	MANAGEMENT COMPANY	20
19	MEETINGS AND RESOLUTIONS	21
20	GENERAL MEETINGS	21
21	NOTICE OF GENERAL MEETINGS.....	22
22	QUORUM FOR GENERAL MEETINGS.....	22
23	AGENDA AT ANNUAL GENERAL MEETINGS	22
24	PROCEDURE AT GENERAL MEETINGS	23
25	REPRESENTATION AND VOTING AT GENERAL MEETINGS	23
26	MEMBERS' RIGHTS AND OBLIGATIONS	23
27	<i>DOMICILIUM</i> OF MEMBER.....	24
28	CONDUCT RULES.....	24
29	BREACH.....	25
30	THE DEVELOPER.....	26
31	INDEMNITY	27
32	DEFAMATION PRIVILEGE.....	27
33	RISK	28
34	AMENDMENT OF THE CONSTITUTION	28
35	IMPOSITION OF PENALTIES	28
36	DISPUTE RESOLUTION	29

THE SOMERSET

37	ALIENATION AND DEVELOPMENT OF PRIVATE OPEN SPACES	30
38	SUB-OWNER ASSOCIATIONS	31
39	NO VARIATION	31
40	DISSOLUTION OF THE ASSOCIATION	32

THE SOMERSET

WHEREAS the Developer is developing certain land into a mixed use Development, comprising of commercial and residential components and whereas such land will comprise of a Development to be administered by a Master Owners' Association and sub-Owners' Association subject, where applicable, to the provisions of the Land Use Planning Ordinance No. 15 of 1985, and, where applicable, the Sectional Titles Act No. 95 of 1986, the Housing Development Schemes for Retired Persons Act No.65 of 1988 and the Property Practitioners Act No. 22 of 2019.

NOW THEREFORE this document shall henceforth serve as the Constitution of the said Master Owners' Association.

1 INTRODUCTION

- 1.1 This document is the Constitution of the Development known as The Somerset Lifestyle and Retirement Village. All office bearers, sub-Owners' Associations and Members within the Development are bound by the provisions hereof and whatever is legitimately done, performed or resolved in terms thereof.
- 1.2 In order to adapt this Constitution to accommodate the needs and interests of Members, but preserving the realistic and reasonable interests of the Developer, the Developer, through its appointed Trustees, shall retain the right to amend its provisions from time to time, until conclusion of the Development Period as described herein.
- 1.3 After conclusion of the Development Period, Members shall be able to exercise control through appointed Trustees and as otherwise provided for in this Constitution in its present or amended form.

2 OBJECTIVES

- 2.1 Subject to the rights, functions and powers reserved by the Developer in terms of this Constitution, the objectives of the Master Home Owners' Association ("hereinafter referred to as the "MHOA") shall be as follows:
 - 2.1.1 To serve as a MHOA for the sub-Owners' Associations, to manage, administer and control all aspects of common interests of Members and sub-Owners' Associations, including Private Open Spaces and common assets, improvements and facilities, and the usage thereof.
 - 2.1.2 To establish a fund for expenses of the MHOA, including provision for future expenses and contingencies.
 - 2.1.3 To determine and collect Levies for the purposes of the said fund from Members.
 - 2.1.4 To enforce Members' obligations in terms of this Constitution, the Design Guidelines, and any Rules created in terms thereof.
 - 2.1.5 To ensure compliance with the legal requirements of any Local Authority, including the conditions of subdivision and rezoning imposed by any competent authority.

THE SOMERSET

- 2.1.6 To comply with, and to monitor and ensure compliance by Members with, the conditions imposed by the Local Authority pursuant to the Local Authority's Approval, and the Site Development Plan, the Maintenance Management Plan, the Maintenance Agreement, the Operational Management Plan, any subdivision approvals or any other management plan, including but not limited to the monitoring and enforcement of compliance thereof by Members, and by the Association itself for the ongoing management of the Association;
- 2.1.7 To maintain all common land, services, facilities, installations and other common assets according to the standards envisaged by the Developer, and after expiry of the Development Period, by the Trustees, and where necessary, to repair and replace such services, facilities, installations and other assets.
- 2.2 The MHOA shall be the Ruling Body over the sub-Owners' Associations. In the event of there being a conflict with the respective Constitutions, Management and Conduct Rules of the sub-Owners' Association, the MHOA's Constitution shall prevail.
- 2.3 In general:
 - 2.3.1 to ensure the maintenance and promotion of harmony in the physical and social environment of the Development.
 - 2.3.2 to promote, and encourage Members to maintain at all times, the external appearances of their properties in a clean and tidy condition and to maintain high standards in this regard so as to ensure that the appearances of their properties are both aesthetically pleasing and desirable when viewed from the outside and further to take steps to enforce the maintenance of such standards where deemed necessary in the opinion of the Trustees.
 - 2.3.3 to protect and promote the interests of the MHOA, sub-Owners' Association and Members, as far as the Development is concerned.
 - 2.3.4 to control the transfer of Erven in the Development and ensure compliance with this Constitution and its annexures, conditions imposed by the Local Authority, and conditions imposed by the Developer in Agreements of Sale.
 - 2.3.5 to take transfer of, maintain and insure, where necessary, the roads, the Private Open Space and improvements thereupon in the Development and control the usage thereof and of the facilities belonging to the MHOA or falling under its control.
 - 2.3.6 to create suitable Rules for the management of the Development, including such Rules of conduct as the Trustees may deem necessary.
 - 2.3.7 to create Design Guidelines for the maintenance of aesthetic integrity and high physical and visual standards within the Development.
 - 2.3.8 to perform functions and exercise powers delegated or assigned to it by sub-Owners' Associations.
- 2.4 The Developer and the MHOA shall have the powers to perform such acts as are necessary and reasonably required to accomplish the fulfilment of the aforementioned objectives including, but not restricted to, powers specifically contained in this Constitution.

THE SOMERSET

- 2.5 If the Association fails to meet any obligations in this Constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure. The City may recover any expenditure in respect of the action contemplated above from the Association or its members, who are jointly liable. The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.
- 2.6 If the Association ceases to function effectively or to carry out its obligations, the City may give the Association a binding instruction to:
- 2.6.1 hold a meeting and to reconstitute itself; or
 - 2.6.2 dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed.
- 2.7 In determining whether to act in terms of the above, the City must have regard to:
- 2.7.1 the purpose of the Association;
 - 2.7.2 who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
 - 2.7.3 the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
 - 2.7.4 the impact of the dissolution of the Association on its members and the community;
 - 2.7.5 any written representations from the Association and its members.
- 2.8 If the Association is dissolved, the members must jointly pay the costs of:
- 2.8.1 the transfer to the City of the Association's property which contains the internal engineering services and private open spaces;
 - 2.8.2 the upgrading of the internal engineering services to the standards of the City.
- 2.9 In the event that the Association has ceased to function and an owner wishes to transfer an Erf in that event, the owner must obtain the consent of at least 60% (Sixty Percent) of the members of the Association, which consent is deemed to be the consent of the Association.

3 DEFINITIONS

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

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

THE SOMERSET

- 3.2 "**Architect**" means such Architect or Architects or their successors, as may be appointed by the Developer from time to time, or subsequent to the Development Period, by the Trustees.
- 3.3 "**Association**" means the The Somerset Lifestyle and Retirement Village Master Home Owner's Association, which is split into 2 (two) components, namely the "Freehold Residential Association", consisting of Freehold Residential Erven, and the "Life Rights Association", consisting of cottages subject to the provisions of the Housing Development Schemes for Retired Persons Act 65 of 1998 and the control of the Cape Peninsula Organisation for the Aged ("CPOA"), and "**MHOA**" will have a corresponding meaning.
- 3.4 "**Auditors**" means the Auditors of the Association as may be appointed from time to time by the Trustees.
- 3.5 "**Capital Growth**", for purposes of clause 12 below, means the difference between the selling price of a Freehold Residential Erf and the base cost and qualifying expenditure as defined in paragraph 20 of the Eighth Schedule to the Income Tax Act 58 of 1962.
- 3.6 "**Chairman**" means the Chairman of the Trustees, who shall also serve as Chairman at all general meetings.
- 3.7 "**Common Area**" means the Private Open Spaces and features, improvements and facilities of the Development, which are intended for general use and benefit.
- 3.8 "**Constitution**" means this document with the annexures thereto, established in terms of Section 29 of the Land Use Planning Ordinance No. 15 of 1985, as may be amended from time to time.
- 3.9 "**Developer**" means Proud Heritage Properties (Pty) Ltd. Registration number 2004/022128/07 or its nominees, cessionaries or successors in respect of the Development of the whole or any part of the Development.
- 3.10 "**Developer Trustee**" means a Trustee appointed by the Developer.
- 3.11 "**Development**" means The Somerset Lifestyle and Retirement Village, situate at Somerset West.
- 3.12 "**Development Period**" means the period terminating upon the transfer from the Developer to another person of the last Erf in the Proposed Development.
- 3.13 "**Dwelling unit**" means a single residential property providing a habitable space for person/s.
- 3.14 "**Erf**" or "**Erven**" means unless otherwise indicated every Erf in the Development collectively, and includes immovable property transferred or to be transferred in accordance with the provisions hereof to the Association, but excludes the parent Erven, which are to be subdivided into Erven and Sections and common property.

- 3.15 "**Freehold Residential Association**" means the erven located within the Development that are not subject to the provisions of the Housing Development Schemes for Retired Persons Act 65 of 1988 or the control of the CPOA.
- 3.16 "**Freehold Residential Erf**" or "**Freehold Residential Erven**" means an Erf located within the Freehold Residential Association, and "**sub-Owner Association**" has a corresponding meaning.
- 3.17 "**Levy**" means the Levy or contribution due to the Association by a Member in terms of this Constitution.
- 3.18 "**Life Rights Association**" means the Erven within the Master Association subject to the provisions of the Housing Development Schemes for Retired Persons Act 65 of 1998 and the control of the CPOA, and "**sub-Owner Association**" has a corresponding meaning;
- 3.19 "**Life Rights Association Trustee**" means a Trustee or Trustees appointed by the CPOA;
- 3.20 "**Local Authority**" means the Local Authority having jurisdiction over the Development.
- 3.21 "**Managing Company**" means any person or entity appointed by the MHOA as an independent contractor, or as an employee, to undertake any of the administrative functions of the Association, including in respect of the sub-Managing Bodies.
- 3.22 "**Member**" means every Owner of a dwelling unit in the Development, as evidenced by registration in the Cape Town Deeds Registry.
- 3.23 "**Member Trustee**" means a Trustee or Trustees appointed by Members other than the Developer.
- 3.24 "**Occupant(s)**" means a person or person(s) living in the Association, who may not be less than 50 (fifty) years of age;
- 3.25 "**Ordinary resolution**" means a resolution passed with more than 50% (fifty percent) of the voting rights exercised on the resolution by the Members at a general meeting.
- 3.26 "**Owner**" means the registered Owner of an Erf in the Development.
- 3.27 "**Private Open Space**" means all areas generally designated as private open space on the Site Development Plan of the Development as may be amended from time to time, including all roads, pavements, gardens and other open areas for common usage.
- 3.28 "**Representative**" means a natural person, being a Trustee of a sub-Managing Body, appointed by such sub-Managing Body to represent it at any general meeting of the Association and there to exercise its voting powers.
- 3.29 "**Rules**" means such Rules as the MHOA may make from time to time in terms of the provisions of this Constitution for the proper management, control and maintenance of the Association, including Conduct Rules.

THE SOMERSET

- 3.30 **"Site Development Plan"** means the Architect's drawing, which was submitted and approved by the Planning Authorities.
- 3.31 **"Special resolution"** means a resolution passed by at least 75% calculated both in value and in number, of the votes of the Members of the Association who are represented at a general meeting, or agreed to in writing by Members of the Association holding at least 75% calculated both in value and in number, of all the votes.
- 3.32 **"Trustees"** means until expiry of the Development Period, the Developer Trustees, Life Rights Association Trustees and the Member Trustees of the Association, collectively from time to time, and thereafter the Life Rights Association and Member Trustees only, and includes alternate and co-opted Trustees.

4 INTERPRETATION

- 4.1 The clause headings are for convenience only and shall be disregarded in construing this Constitution.
- 4.2 Unless the context clearly indicates a contrary intention:
- 4.2.1 the singular shall include the plural and *vice versa*; and
- 4.2.2 a reference to any one gender shall include the other genders; and
- 4.2.3 a reference to natural persons includes legal persons and *vice versa*.
- 4.3 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.
- 4.4 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 4.5 Annexures to this Constitution are deemed to be incorporated in, and form part of, this Constitution.

5 ESTABLISHMENT

- 5.1 It is recorded that the Association shall be deemed to be established on the date of registration of transfer of the first Erf in the Development from the Developer to an Owner, and this Constitution, as may be amended from time to time, shall then become and remain binding upon the Developer and Members.
- 5.2 The Association may only be dissolved:
- 5.2.1 by a unanimous resolution of the Members, ratified by the written consent of the Local Authority, or
- 5.2.2 by an order of the High Court.

6 STATUS

- 6.1 The Association shall, subject to the provisions of this Constitution, be responsible for the control, administration and management of the Development for the benefit of all Members, and this Constitution shall be binding upon all Members and upon all sub-Owners' Association.
- 6.2 The Association shall have perpetual succession and shall be capable of suing and being sued in its own name.
- 6.3 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.
- 6.4 No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association, which shall vest in and be controlled by the Trustees on behalf of its Members, according to the objectives of the Association.

7 MEMBERSHIP

- 7.1 The Membership of the Association shall consist of the Developer and every registered Owner of an Erf in the Development, such membership commencing automatically (in the case of the Developer) on the date of establishment of the Association, and (in the case of an Owner) on the date of registration of transfer into an Owner's name, and ceasing automatically on the date upon which the last Erf owned by the Developer or Owner, respectively, is transferred to another. This requirement is binding on the registered owners and their successors –in title and shall be included in the Title Deed of each Erf. The Power of Attorney to pass transfer shall include the following condition which shall be carried forward into the title deeds:

“Subject to the following condition imposed by the City of Cape Town in terms of Section 42 of Ordinance 15 of 1985 when approving the subdivision of Erf 16698 Somerset West namely:

- (1) That the property may not be alienated without the prior consent of the Home Owners' Association of which the transferee or his successors in title shall become a member and bound by its Constitution, rules and regulations.
 - (2) Each Property owner shall conform to any conservation and / or rationing programme or scheme introduced, adopted and implemented by a sphere of government or relevant regulating body by reducing his/her electricity consumption as required in terms of such programme or scheme.
- 7.2 Membership shall be automatic and compulsory. No Member may resign, or cede or assign his membership to another.

THE SOMERSET

- 7.3 Each Member shall, for the duration of his membership of the Association, also be a Member of the sub-Owners' Association created for the area within which his Erf is situated. Every Member shall be bound by the provisions of the sub-Constitution and/or Rules of such sub-Owners' Association.

8 FUNCTIONS

- 8.1 The functions to be performed by the Association shall include-
- 8.1.1 the establishment of a fund to defray the expenses of the Association, including, but not limited to, expenses relating to maintenance, repairs, services, renewal, upgrading, security, insurance, landscaping, statutory rates, taxes and charges and administrative expenses, including reasonable provision for future expenses resulting from maintenance, repairs, renewal and upgrading when necessary;
 - 8.1.2 to determine and collect contributions in the form of Levies, by means of appointing the Management Company to collect such contributions from Members, in order to maintain the funds of the Association;
 - 8.1.3 to properly maintain the Private Open Spaces and all assets and facilities of the Association;
 - 8.1.4 to ensure compliance with the provisions of this Constitution, any law, ordinance or by law relating to the scheme, the Design Guidelines and Rules established in terms hereof, by all Members and Occupiers;
 - 8.1.5 to ensure that the environmental, architectural, building and social standards are maintained within the Development;
 - 8.1.6 to accommodate and facilitate the establishment and administration of sub-Owners' Associations and to perform such functions and duties and exercise such powers as may be delegated and assigned to it in this regard;
 - 8.1.7 to perform such other functions and duties as may be referred to elsewhere in this Constitution;
 - 8.1.8 to perform such ancillary functions as may be necessary to achieve the objectives;
 - 8.1.9 in general to control, manage and administer the Development for the benefit of all Members.

9 DOMICILIUM OF ASSOCIATION

- 9.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
- 9.1.1 during the Development Period, such address shall be 163 Bizweni Ave, Somerset West 7129;
 - 9.1.2 after the Development Period, such address shall be 163 Bizweni Ave, Somerset West 7129;
 - 9.1.3 the Trustees shall give notice to all Members of any change of such address.

10 MEMBERS' CONTRIBUTIONS

- 10.1 The Trustees shall, as soon as possible after the end of each financial year, prepare:
- 10.1.1 a common budget of the income and expenditure for the next financial year in respect of such features of the Common Area and the Development in respect of which each

THE SOMERSET

sub-Owners' Association shares in the financial responsibility, excluding items falling under the below clause;

- 10.1.2 a special budget for each sub-Owners' Association in respect of such features of the Common Area and the Development in respect of which the Members of such sub-Owners' Association enjoys substantially lesser benefits compared to other sub-Owners' Associations, as may be determined by the Trustees of the Association from time to time (but excluding expenses and income which relate to such sub-Owners' Association exclusively).
- 10.2 Such budgets shall respectively be for expenses relating to the Common Area, all assets of the Association and all administrative and other expenses for which the Association is responsible, (excluding any expenses assigned to a sub-Owners' Association exclusively) and any amounts proposed to be held in reserve in respect of future maintenance, repairs or capital expenditure. Provision should be made for at least the following:
 - 10.2.1 expenses in respect of security;
 - 10.2.2 maintenance expenses;
 - 10.2.3 insurance premiums;
 - 10.2.4 landscaping expenses;
 - 10.2.5 expenses and charges in respect of services;
 - 10.2.6 statutory rates, taxes and charges (excluding Erven of Members which may be rated separately by the Local Authority);
 - 10.2.7 administrative expenses, including the cost of a Managing Company;
 - 10.2.8 banking and auditing expenses;
 - 10.2.9 provision for future maintenance and repairs, contingencies and future capital expenditure;
 - 10.2.10 such further items as the Developer, or subsequent to the Development Period, the Trustees, may add to the above items.
- 10.3 The Developer shall be responsible for expenses relating to any undeveloped portions of the Development.
- 10.4 The budgets shall be approved by a resolution of the Trustees, whereafter such budgets must be considered by the Members at each Annual General Meeting.
- 10.5 Within 7 (seven) days after approval of the budgets, the Trustees must, by making a Trustees' resolution to such effect, apportion the budgets to the respective Members as annual Levies. Such apportionment shall be made to Members:
 - 10.5.1 in respect of the common budget, equally in respect of every dwelling unit in the Development;

THE SOMERSET

- 10.5.2 in respect of the special budgets, equally in respect of every dwelling unit in the applicable sub-Owners' Association.
- 10.6 Liability for payment of the above Levies to the Association shall vest in the individual Members.
- 10.7 The Levies so determined shall be due and payable immediately upon making the Trustees' resolution referred to above, (calculated from the first day of the month subsequent to the day of approval of the budget) but may, without accrual of interest, be paid in equal monthly instalments over a period of 12 (twelve) months.
- 10.8 No Member shall enjoy the privileges of usage of the Private Open Spaces or facilities unless he has paid every Levy, or other sum (if any), which may be due and payable to the Association in terms of this Constitution.
- 10.9 All levies must be paid, in advance, on the first day of each month and every Member must arrange for payment to the Association by debit order or via electronic transfer (EFT).
- 10.10 Upon taking transfer of an Erf, the new Owner becomes liable for payment of Levies in respect of the unpaid portion of levies for that financial year, excluding arrears. In respect of the month during which transfer takes place, a pro rata apportionment is to be made.
- 10.11 The Trustees may from time to time, when necessary, make special levies upon the Members in respect of all expenses which have not been included in the budget and such levies may be made payable in one sum or in such instalments as the Trustees may determine in their own discretion. Such special levies become due and payable on the date of the relevant Trustees' resolution.
- 10.12 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.
- 10.13 If a Member fails to pay its levies in full to the Association on due date, the Association may institute an action for the recovery thereof in any competent court.
- 10.14 A Member shall be liable for all reasonable legal costs, including attorney and own client costs, collection commission, expenses, and other charges, administrative or otherwise, incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due to it, or in enforcing compliance with this Constitution, any annexure thereto, or the Rules.

THE SOMERSET

10.15 The Association shall be entitled to charge simple interest on any arrear amounts at a minimum rate of the Prime bank lending rate or such higher rate as the Trustees may from time to time determine. Interest calculated at the rate as determined by the Trustees, is recoverable from the date on which the amount is due and payable up to the date of payment, both days inclusive.

11 THE TRUSTEES AND MANAGEMENT

- 11.1 The Trustees shall comprise of 2 (two) Trustees elected by the Members of the sub-Owner Association at their annual general meeting, 2 (two) Trustees nominated by and representing the interests of the Life Rights Association, and 3 (three) Developer Trustees, appointed by the Developer, until termination of the Development Period or the earlier withdrawal of the Developer Trustees by notification by the Developer, upon which all Trustees shall be either Life Rights Association Trustees or Member Trustees in a number equal to twice the number of sub-Owner Associations.
- 11.2 A Trustee shall be a natural person. Every Member Trustee must be an Owner or a Representative of an Owner, which is a company, close corporation, trust or other legal entity. Every Member Trustee must reside in the Development as his permanent residence.
- 11.3 No Member may be appointed as a Trustee if he is in arrears with his Levy payments by more than 30 days.
- 11.4 Not later than 14 (fourteen) days before the date on which the Annual General Meeting is to take place, members must nominate their proposed Trustees in writing, upon the basis that Members of a sub-Managing Body shall nominate 2 (two) of their Trustees to represent them. The persons nominated as Trustees by the various sub-Managing Bodies, shall be regarded as the elected Member Trustees. The Developer shall nominate and appoint the Developer Trustees at the meeting.
- 11.5 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- 11.6 Subject to the provisions of sub-clause 11.7, each Member Trustee shall continue to hold office until the Annual General Meeting of the Association following his appointment, at which meeting each Member Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The Developer shall, by written notice to the Trustees, be entitled to remove any Developer Trustee and upon such removal or upon any Developer Trustee ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.
- 11.7 A Trustee shall be deemed to have vacated his office:

THE SOMERSET

- 11.7.1 upon his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
- 11.7.2 upon his making any arrangement or composition with his creditors;
- 11.7.3 upon his conviction for any offence involving dishonesty;
- 11.7.4 upon his being judicially declared incompetent;
- 11.7.5 after 14 (fourteen) days of receipt of his written notice of resignation given to the remainder of the Trustees;
- 11.7.6 upon his death;
- 11.7.7 upon his being removed from office by a resolution of Trustees (provided he is a Member Trustee);
- 11.7.8 upon his being disentitled to exercise a vote in terms of this Constitution (provided he is a Member Trustee).
- 11.8 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided for herein, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the approved Minutes of the Association. Should the office of a Trustee fall vacant prior to the next Annual General Meeting of the Association, the vacancy may be filled by the Developer if the vacancy is in respect of a Developer Trustee and by the remaining Member Trustees if the vacancy is in respect of a Member Trustee and the person so appointed shall hold office until the next Annual General Meeting.
- 11.9 Prior to the first general meeting and at the first general meeting, the Chairman shall be a Developer Trustee, appointed by the Developer.
- 11.10 Within 7 (seven) days of the holding of the first general meeting and within 7 (seven) days after each subsequent Annual General Meeting of the Association, the Trustees shall meet and shall elect a Chairman who shall hold office until the Annual General Meeting held next after his/her appointment, provided that the office of Chairman shall *ipso facto* be vacated upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the aforesaid office, the Trustees shall meet as soon as reasonably possible to appoint a replacement to such office.
- 11.11 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees and all general meetings of the Association and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings.
- 11.12 If the Chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees shall elect another Chairman for such meeting.

THE SOMERSET

- 11.13 If any Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.
- 11.14 A Member Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute or proposed dispute, with the Association, by virtue of any interest he may have therein.
- 11.15 No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by the Chairman and one Trustee, the latter specifically appointed as authorised signatory in terms of a resolution of Trustees whereby the Trustees bind the Association.
- 11.16 If deadlock is reached on any matter being voted upon by the trustees, the Chairman shall have the casting vote.
- 11.17 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees and/or Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 11.18 Trustees may not make loans on behalf of the Association to Members or to themselves.

12 LEVY STABILISATION FUND

- 12.1 It is hereby recorded that upon the sale of an Erf or a unit within the Association, a percentage of the proceeds of the sale shall be paid into a Levy Stabilisation Fund. Such percentage shall be calculated as:
- 12.1.1 25% of the capital growth in respect of the sale of a Freehold Residential Erf, and
- 12.1.2 10% of the capital growth in respect of the sale of a right of occupation of an Erf located within the Life Rights Association that is operating under the Housing Development Schemes for Retired Persons Act No.65 of 1988 and the CPOA.
- 12.1.3 Each sub-Managing Body will have its own separate and independently operating Levy Stabilisation Fund.
- 12.2 The funds allocated to the Levy Stabilisation Fund shall be exclusively for the purposes of levy stabilisation.

13 FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

- 13.1 Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any Management Company as provided for in clause 18 below, and 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. The

THE SOMERSET

Association's right of dismissal of the Management Company shall, however be limited to instances of material breach of the Management Agreement between the Management Company and the Association.

- 13.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, managing agents, or any other professional firm or person or other employees or contractors whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 13.3 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 13.4 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution in such reasonable manner as they shall decide from time to time, and to take appropriate steps to remedy such breach.
- 13.5 The Trustees may make Rules not inconsistent with this Constitution or any other Rules prescribed by the Association in general meeting:
 - 13.5.1 as to the resolution of disputes generally;
 - 13.5.2 for the furtherance and promotion of any of the objects of the Association;
 - 13.5.3 for the safety and security of its Members and Occupants, and the Association in general;
 - 13.5.4 for the better management of the affairs of the Association;
 - 13.5.5 for the advancement of the interests of Members;
 - 13.5.6 for the conduct at meetings;
 - 13.5.7 to levy and collect contributions from Members and Occupants in accordance with this Constitution;
 - 13.5.8 to levy and recover from Members and Occupants moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association;
 - 13.5.9 to assist them in administrating and governing their activities generally.
- 13.6 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
 - 13.6.1 the determination of what constitutes appropriate standards for commercial conduct, residential living, maintenance, repairs, additions to and improvements of all Erven in the Development in accordance with the provisions of the Design Guidelines. The architectural Design Guidelines have been designed to create strict control measures to discourage any external alterations and extensions. Only under exceptional circumstances will such application be considered.

THE SOMERSET

- 13.7 the making of, entering into and carrying out of agreements with third parties on behalf of the Association for any purposes of the Association;
- 13.8 the employment on behalf of the Association of agents, employees and any other party and the payment of such persons;
- 13.9 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as sewage, electricity supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse, where applicable;
- 13.10 the regulation of any and all access control procedures for Members, Occupants, visitors, employees, contractors, or any other persons when entering and/or exiting the Association;
- 13.11 the institution or defence of actions in the name of the Association and to appoint legal representative for such purpose.

14 FINANCIAL YEAR-END

- 14.1 The financial year-end of the Association is the last day of March of each year, or such other date as may be determined by the Trustees from time to time.

15 BOOKS OF ACCOUNT

- 15.1 The Trustees shall cause proper books of account and records to be kept so as to record and fairly to explain the transactions and financial position of the Association including:
 - 15.1.1 a record of the assets and liabilities of the Association;
 - 15.1.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
 - 15.1.3 a register of sub-Owner Association and their incumbent Trustees;
 - 15.1.4 a register of all Members, reflecting their addresses;
 - 15.1.5 individual ledger accounts in respect of every sub-Owner Association and of its Members.
- 15.2 The Trustees shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.
- 15.3 The Trustees may from time to time make reasonable Rules as to the time and matter of the inspection by Members of the accounts and books of the Association, or any of them, and subsequent to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 15.4 At each Annual General Meeting the Trustees shall lay before the Association financial statements for the immediately preceding financial year of the Association. Such financial statements shall be drawn up in accordance with generally accepted accounting

THE SOMERSET

practise and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

16 DEPOSIT AND INVESTMENT OF FUNDS

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

17 AUDIT

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

18 MANAGEMENT COMPANY

- 18.1 The Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Management Company to control, manage and administer the Association and to exercise such powers and duties as may be entrusted to the Management Company, including the power to collect Levies, provided that a Management Company shall be appointed for a year at a time after the completion of the initial appointment referred to in clause 18.3. Unless the Trustees notify the Management Company to the contrary, such appointment shall be automatically renewed from year to year.
- 18.2 The Trustees shall ensure that there is included in the contract of appointment of a Management Company a provision to the effect that if the Management Company is in material breach of any of the provisions of the Management Agreement, the Trustees may, with written notice, cancel such Management Agreement and the Management Company shall have no claim whatsoever against the Trustees and/or the Association as a result of such cancellation.

- 18.3 With effect from date of establishment of the Association or as soon as required and practically possible thereafter, the Developer Trustees shall appoint the first Management Company for a period of 5 (five) years.

19 MEETINGS AND RESOLUTIONS

- 19.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution .
- 19.2 Meetings of the Trustees shall be held at least once every 3 (three) months.
- 19.3 The Chairman always has the right to convene meetings of Trustees, in a manner as may be decided by the Trustees from time to time.
- 19.4 A Trustee may, provided he has the support in writing of 2 (two) other Trustees, at any time convene a meeting of Trustees by giving to the other Trustees not less than 7 (seven) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 19.5 A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.
- 19.6 No resolution or purported resolution of the Trustees shall be of any force or effect, or shall be binding upon the Members or Trustees unless such resolution is competent within the powers of the Trustees.
- 19.7 The quorum necessary for the holding of any meeting of Trustees shall be 4 (four) Trustees present personally provided that, until conclusion of the Development Period, no less than 1 (one) Developer Trustee is present.
- 19.8 Any resolution of the Trustees shall be carried by a simple majority of all votes cast, each Member Trustee and Life Rights Association Trustee present having a number of votes equal to the number of dwelling units being represented by the Member Trustee or Life Rights Association Trustees, and the Developer Trustee/s having a number of votes equal to the total number of Member Trustees and Life Rights Association Trustees votes plus 1 (one), which votes may be exercised by a single Developer Trustee.

20 GENERAL MEETINGS

- 20.1 The MHOA shall, within 3 (three) months of each financial year-end of the Association, hold Annual General Meetings.
- 20.2 Special General Meetings may be held at such time and place, subject to the aforementioned provisions, as the Trustees shall decide from time to time.
- 20.3 Every Member shall be notified of all general meetings, and shall be entitled to attend and speak at all general meetings, but voting powers shall be exercised by Representatives, as herein determined.

21 NOTICE OF GENERAL MEETINGS

- 21.1 An Annual General Meeting shall be called by not less than 21 (twenty one) days notice to all Trustees and all Members, and a Special General Meeting by not less than 14 (fourteen) days notice to all Trustees and all Members. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the Trustees, to such persons as are, under this Constitution entitled to receive such notices from the Association.
- 21.2 Notice of the Annual General Meeting shall be given by posting thereof to each Member at his *domicilium citandi et executandi*, and delivery of additional copies to the Developer and each Trustee personally, where practical.
- 21.3 The non-receipt of notice of a meeting by any person entitled to receive notice, other than the Developer, shall not invalidate the proceedings of that meeting.

22 QUORUM FOR GENERAL MEETINGS

- 22.1 The quorum necessary for the holding of any general meeting shall be at least 50% (fifty percent) of the elected Trustee representatives from the sub-Owner Association, Life Rights Association-nominated and the Developer-nominated Trustees.
- 22.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present or represented by proxy shall constitute a quorum, provided that during the Development Period, at least 1 (one) Developer Trustee must be present as Representative of the Developer.

23 AGENDA AT ANNUAL GENERAL MEETINGS

- 23.1 In addition to any other matters required by legislation or by this Constitution to be dealt with at any Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- 23.1.1 consideration of the Chairman's report;
 - 23.1.2 the announcement of the appointment of new Developer Trustees;
 - 23.1.3 the announcement of the 2 (two) sub-Owner Association Member Trustees, representing the sub-Owner Associations, and the 2 (two) Trustees nominated to represent the interests of the Life Rights Association, for the upcoming financial year;
 - 23.1.4 the consideration and confirmation of the budget as presented by the Trustees;
 - 23.1.5 any other business pertinent to such meeting, including any resolutions proposed for adoption by such meeting and voting upon any such resolutions.

24 PROCEDURE AT GENERAL MEETINGS

- 24.1 The Chairman shall preside as such at all meetings, provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Trustees present at such meeting shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 24.2 Save as otherwise provided in this Constitution, the proceedings at any meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 24.3 The Chairman may adjourn a meeting from time to time and from place to place. No notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as the original meeting. No business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. During the Development Period, no adjourned meeting may proceed without the presence of at least 1 (one) Developer Trustee.
- 24.4 Unless any Representative present shall, before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting and the meeting shall in all aspects be deemed to have been properly and validly constituted and conducted. An entry in the minutes of the Association to the effect that any resolution has been adopted or rejected, shall be deemed to 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.

25 REPRESENTATION AND VOTING AT GENERAL MEETINGS

- 25.1 At every general meeting:
- 25.1.1 every Sub-Owner Association, represented by its Representative, shall have votes equal in number to the number of dwelling units within the Sub-Owner Association; and
- 25.1.2 the Developer in person or represented by proxy shall at all times, until conclusion of the Development Period, hold a number of votes equal to the total number of votes held by the Sub-Owner Associations in the Development, plus one (1).

26 MEMBERS' RIGHTS AND OBLIGATIONS

- 26.1 Every Member is obliged to comply with:
- 26.1.1 the provisions of this Constitution, its annexures, and all Rules or regulations passed by the Association or the Trustees;

THE SOMERSET

- 26.1.2 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member;
- 26.1.3 any reasonable directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution .
- 26.2 Every Member shall to the best of his ability, further the objectives and interests of the Association.
- 26.3 Members shall be jointly and severally liable for debts and expenditure incurred by the Association.
- 26.4 An Owner shall not be entitled to transfer an Erf without giving written notice to the Trustees, provided that it be a condition of sale that –
 - 26.4.1 all Levies due in respect of such Erf have been paid or secured to their satisfaction; and
 - 26.4.2 there has been substantial compliance with the provisions of this Constitution, and of the Rules;
 - 26.4.3 and that the Trustees sign-off a document certifying that the above provisions have been fully complied with before the transfer of such Erf may be registered.

27 DOMICILIUM OF MEMBER

- 27.1 The *domicilium citandi et executandi* of each Member at which all documents and notices may be delivered, shall be the street address of the Member's Erf in the Development.
- 27.2 It shall be sufficient to give any notice to a Member by telefax or email where the Member has advised the Trustees in writing of his telefax number or email address.
- 27.3 Notice shall be deemed to have been properly served on the date, 5 (five) days after posting to the Member's *domicilium* address, or if faxed or emailed or delivered, on the day of faxing, emailing or delivery thereof to the Member's elected telefax number or email address or *domicilium* address respectively.

28 CONDUCT RULES

- 28.1 Each Member shall be obliged to adhere to his sub-Owner Association's Rules, together with adhering to the following rules:
 - 28.1.1 maintain the interior of their Erf and unit in accordance with the Design Guidelines and the Rules;

THE SOMERSET

- 28.1.2 adequately insure the improvements on his Erf and, if requested by the Trustees, furnish proof of such insurance to them and, in the event of total/partial destruction, he shall, within a reasonable time period, make good such damage or reconstruction in accordance with the original approved plans or, in the event of total destruction in accordance with the Design Guidelines;
- 28.1.3 comply with all security and access control procedures and directives implemented and issued from time to time by the Trustees;
- 28.1.4 adhere strictly to the terms of servitudes granting access to Private Open Space, common property, Erven and Units;
- 28.1.5 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of the Development and that planting on his Erf does not interfere with pedestrian traffic or obscure the vision of motorists;
- 28.1.6 make use of the communal television aerial(s), satellite dishes and services that may be arranged by the Trustees from time to time.

29 BREACH

- 29.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings, in the relevant and appropriate legal forum, against Members who are in breach of any of the provisions of this Constitution and the Rules.
- 29.2 The Trustees may on behalf of and in the name of the Association serve notice on such Member in breach, calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:
 - 29.2.1 enter upon the Erf or unit to take such action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand, provided that the relevant Community Schemes Ombud Service adjudication order has first been obtained;
 - 29.2.2 call upon such Member in writing to remove or alter within a specified period any portion of the improvements or any addition erected contrary to the provisions of this Constitution read with the Rules and, failing which, the matter shall be referred to a Special Meeting of the Association convened to afford such Member the opportunity to give directives to the Trustees. The resolution of the Association at such meeting shall be binding upon such defaulting Member and shall be implemented by the Trustees; and/or
 - 29.2.3 institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief. Such costs and expenses may be added to the same manner as applies to arrear Levies, together with interest at the rate applicable to Levies, and/or
 - 29.2.4 implement procedures to impose penalties in terms of the provisions of this Constitution.
- 29.3 Nothing in the aforementioned shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for recovery of

any money due by any Member arising from any cause of action whatsoever or for any other relief.

- 29.4 In the event of any breach of this Constitution by the members of any Member's household or his invitees or Occupiers, such breach shall be deemed to have been committed by the Member himself but, without prejudice to the aforementioned, 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.

30 THE DEVELOPER

- 30.1 The Developer intends to develop and market the Development in phases as the Developer deems fit and, for the duration of the Development Period, the Developer shall enjoy unrestricted rights provided they are exercised in a reasonable manner, with regard to the marketing of the Development and, in particular, the right to erect signage within the Development, and to perform all activities normally associated with Development and building operations.
- 30.2 The developer shall transfer the roads and Private Open spaces demarcated as such on the approved surveyor's diagram simultaneously with the transfer or separate registration of the first deducted land portion in the various phases of the development. The Power of Attorney in respect of the transfer of the private area, open space and road shall include a condition imposed by the City of Cape Town in terms of section 42 of the Land Use Planning Ordinance that the land shall not be disposed of, alienated or transferred to any other party or mortgaged which condition shall be carried over in the respective title deeds of the subject Erven. Where applicable, the Developer shall procure the registration of reciprocal rights of way and other servitudes on behalf of the Association, in respect of the various portions of the Development. The Developer shall ensure the registration of notarial servitudes of municipal electrical services at his own costs. That the developer is to ensure that all main services to be taken over by the Local Authority and all existing municipal services crossing private property are to be protected by a registered servitude of a minimum of 3 metres wide. The developer will be responsible for the registration of the required servitudes as well as the costs thereof. The developer shall also obtain the written consent of all affected owners where a route of a proposed service crosses private properties and a servitude be registered on the aforesaid properties in favour of the City of Cape Town for the account of the developer. Upon registration of transfer to the Association and/or registration of the servitudes, the risk of the in and of such Private Open Spaces and private open roads shall pass to the Association who shall become responsible for the running costs of the street lighting and

the maintenance of all internal service, private roads and private open spaces as well as the rates and all charges attaching thereto. The Developer shall further be obliged to comply with any planning conditions imposed by the Local Authority in terms of the Land Use Planning Ordinance No. 15 of 1985.

31 INDEMNITY

- 31.1 All the Trustees are indemnified by the Association against any liabilities bona fide incurred by them in their capacities as such and in the case of the Chairman in his capacity as Chairman, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.
- 31.2 A Trustee shall not be liable for the acts or omission of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairman or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which monies of the Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited or for any loss or damage occasioned by any error of judgment or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of *mala fides*, breach of duty or breach of trust.
- 31.3 Every Member individually, and the Association, hereby indemnifies and holds harmless the Local Authority for any damage or loss which may be caused by its certification of this Constitution or any amendment made in terms hereof or by the loss of this Constitution by the Local Authority.

32 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, 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-Managing Body, all claims and rights of action which such Member or Trustee might otherwise have had in law arising as a result of any statement, record, report, complaint or notice of or concerning such Member or Trustee, or any reference to such Member or Trustee, made at any meeting of Trustees, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, record,

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.

33 RISK

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

34 AMENDMENT OF THE CONSTITUTION

- 34.1 Subject to the exercise right of the Developer to amend the Constitution until conclusion of the Development Period, any subsequent amendment, substitution, or repeal of a provision of this Constitution shall require the approval of at least 75% (seventy-five percent) of the total number of votes of the Trustee Representatives elected to serve the interests of the various components within the Association, provided that Representatives shall furnish proof that the proposed amendment has been approved by their respective sub-Owner Associations, by ordinary resolution.
- 34.2 Any amendment passed by the Developer or the Association must be communicated to the Local Authority by delivery of a written notice of the proposed amendments. No amendment shall take effect until ratified by the Local Authority in writing, or in the event of the failure of the Local Authority to respond to such notice, after expiry of a period of 60 (sixty) days after delivery of such notice.

35 IMPOSITION OF PENALTIES

- 35.1 If the conduct of a Member, an Occupant or their visitors, constitutes a nuisance in the opinion of the Trustees, or if a Member or Occupant contravenes, breaches, disobeys or disregards this Constitution or any Rules in respect of the sub-Owner Association or the Design Guidelines, the Trustees may furnish the Member and Occupant (if applicable) with a written notice which may in the discretion of the Trustees be delivered by hand, email or by registered post. In the notice the particular conduct, which constitutes a nuisance, must be adequately described or the clause or rule that has allegedly been contravened must be clearly indicated, and the Member must be warned that if he or his Occupant or visitor persists in such conduct or contravention, a fine may be imposed on him at a meeting held for that purpose.
- 35.2 A written notice by which he is informed of the purpose of the meeting and invited to attend, must be sent to the Member and Occupant (if applicable) at least 7 (seven) days before the meeting is held. At the meeting the Member and Occupant (if applicable) must be given the opportunity to present his case, orally or by way of a submission in

THE SOMERSET

writing, but except in so far as may be permitted by the Chairperson, he may not participate in the affairs and/or voting at the meeting.

- 35.3 After the Member or Occupant has been given the opportunity to present his case, the Trustees may, by way of a majority resolution of the Trustees present at the meeting with a minimum of 4 (four) Trustees), impose upon the Member, an initial penalty for the first offence and a subsequent penalty for every identical offence thereafter.
- 35.4 Any fine imposed in terms of clause 35.3 may, if it is not paid within 14 (fourteen) days after the Member has been notified of the imposition of the fine, be added to the Member's Levy account and claimed and recovered by the Association as part of the monthly Levy payable by the Member, subject to interest at the rate applicable to Levies, and subject to the recovery of attorney and own client costs and expenses, as in the case of Levies.
- 35.5 The Trustees may, from time to time, determine the amount of the initial and subsequent penalties, noting that except in the instance of security and access control and deviations from the Association's Design Guidelines, no single penalty imposed in respect of a contravention shall exceed the monthly levy contribution that the offending Member is liable for.

36 DISPUTE RESOLUTION

- 36.1 Should any dispute, question or difference arise between Members or between a Member/s and the Association or the Trustees, out of or in regard to:
- 36.1.1 the interpretation of;
 - 36.1.2 the effect of;
 - 36.1.3 their respective rights or obligations under;
 - 36.1.4 a breach of (save for non-payment of Levies or any other amount due by a Member in terms of this Constitution) this Constitution or any of its ancillary documents, such dispute shall be decided by arbitration in the manner set out in this clause.
- 36.2 In respect of any claim arising from non-payment of Levies or any other amount due by a Member to the Association in terms of this Constitution, the Association and Trustees shall continue to enjoy common law rights and shall not be precluded from instituting proceedings in any court of competent jurisdiction.
- 36.3 The arbitration referred to in clause 36.1 shall:
- 36.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict Rules of evidence; and
 - 36.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and

THE SOMERSET

- 36.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 36.4 The arbitrator shall be a practicing senior counsel or attorney of not less than 10 (ten) years standing who shall not be a Member or Occupant, appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the Arbitration Foundation of South Africa ("AFSA").
- 36.5 The arbitrator shall in giving his award have regard to the principles contained in this Constitution, the Rules and the Design Guidelines, and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict Rules of Law need not be observed or be taken into account by him in arriving at his decision.
- 36.6 The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration hearing in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other or both of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 36.7 Each of the parties to the arbitration irrevocably agrees that the decision of the arbitrator made at such arbitration proceedings:
- 36.7.1 shall be final and binding on each of them; and
- 36.7.2 shall be carried into effect immediately; and
- 36.7.3 may be made an order of the High Court.
- 36.8 Notwithstanding the arbitration process aforementioned, and in the event of the dispute not being resolved internally, a party to the dispute may make an application for relief to the Community Schemes Ombud Service.
- 36.9 Notwithstanding anything to the contrary contained in this clause, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purpose of restraining or interdicting breaches of any of the provisions of this Constitution, including the Rules and the Design Guidelines, or for any order of an urgent nature.

37 ALIENATION AND DEVELOPMENT OF PRIVATE OPEN SPACES

Subject to the rights of the Developer during the Development Period, it is recorded that Members have a shared interest in the private open space of the Association (as it will be deemed to be established on the date of Establishment of the Association) and it may only be alienated, developed, destroyed or substantially altered if approved by the Local

THE SOMERSET

Authority, authorised by a resolution made unanimously by all Sub-Owner Associations, and the written consent of every Owner of an Erf adjacent to the affected part of the Private Open Space, or by an order of the High Court. The Developer may nevertheless, during the Development Period in consultation with the Local Authority, assign parts of the private open space for the purposes of parking of vehicles, which assignments shall be deemed to be incorporated in the Site Development Plan.

38 SUB-OWNER ASSOCIATIONS

- 38.1 The Developer shall, in his sole discretion, divide the Development in separate Development areas to be managed and administered by sub-Owner Associations.
- 38.2 Subject to this Constitution, each sub-Managing Body shall have its own Constitution or Management and Conduct Rules, which will initially be formulated by the Developer in his sole discretion. The provisions of the Constitution or Rules applicable to the relevant sub-Owner Associations shall bind all Members.
- 38.3 Each sub-Owner Association shall be empowered to approve a budget and to determine its own levies relating to expenses which are not of a general nature to the Development, and shall delegate the collection of such levies and other administrative functions to the Association, as determined from time to time in accordance with this Constitution and the Constitutions and Rules of the sub-Owner Association.
- 38.4 In the event of conflict between the provisions of this Constitution and the Constitutions or Rules of a sub-Owner Association, the provisions of this Constitution shall prevail.
- 38.5 Each sub-Owner Association shall be entitled to representation on the board of Trustees of the Association and shall be obliged to appoint two Trustees as its Representatives as from such date as the sub-Owner Association becomes functional.
- 38.6 Each sub-Owner Association shall be entitled to representation at all general meetings and shall be obliged to appoint two of its own Trustees as Representatives to all general meetings, as from the date of the sub-Owner Association becoming functional in terms of their own Constitutions.

39 NO VARIATION

No documentation pertaining to this Constitution, Management Rules, Conduct Rules and/or any annexures to this Constitution may be amended and/or altered by means other than in terms of the provisions contained herein and a general meeting specifically held for such proposes of amendment/alteration will be required.

Further to the above, any deletion, amendment or alteration of any clause which has any effect on the Local Authority's rights, benefits and obligations or as contained in the Local Authority's Approval shall also be subject to the prior written consent of the Local Authority.

40 DISSOLUTION OF THE ASSOCIATION

- 40.1 If the Association fails to meet an obligation or ceases to function or if the Association fails to meet any obligations in this Constitution respectively and the Local Authority believes that the community is adversely affected by the failure, the Local Authority may take appropriate action to rectify the failure.
- 40.2 The Local Authority may recover any expenditure in respect of the action contemplated above from the Association or its Members, who are jointly liable.
- 40.3 The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.
- 40.4 If the Association ceases to function effectively or to carry out its obligations, the Local Authority may give the Association a binding instruction to:
- 40.4.1 hold a meeting and to reconstitute itself; or
 - 40.4.2 dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed.
- 40.5 In determining whether to act in terms of the above, the Local Authority must have regard to:
- 40.5.1 the purpose of the Association;
 - 40.5.2 who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
 - 40.5.3 the costs of upgrading the internal engineering services and other infrastructure if the Local Authority is to take over the infrastructure;
 - 40.5.4 the impact of the dissolution of the Association on its Members and the community;
 - 40.5.5 any written representations from the Association and its Members;
- 40.6 If the Association is dissolved, the Members must jointly pay the costs of:
- 40.6.1 the transfer to the Local Authority of the Association's property which contains the internal engineering services and private open spaces; and
 - 40.6.2 the upgrading of the internal engineering services to the standards of the Local Authority.
- 40.7 In the event that the Association has ceased to function, and an owner wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% (sixty percent) of the members of the Association, which consent is deemed to be the consent of the Association.