

# CONSTITUTION

## **THE CROYDON GARDENS MASTERS HOME OWNERS' ASSOCIATION**

An association established  
In terms of Section 29 of the Land Use  
Planning Ordinance, No 15 of 1985



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## 1. INTERPRETATION

In these present:

1.1. The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:-

- 1.1.1. "the Association" means the Croydon Gardens Home Owners' Association;
- 1.1.2. "the Auditors" means the Auditors of the Association;
- 1.1.3. "Business Day" means weekdays other than Saturdays, Sundays and public holidays;
- 1.1.4. "Chairperson" means the Chairperson of the Trustee Committee;
- 1.1.5. "the Common Areas" means the Gatehouse and any such private open spaces and private roads as may in the future be created and/or acquired by the Developer and/or the Association for purposes of the Estate with the approval of the relevant authorities;
- 1.1.6. "the City" means the City of Cape Town, or its successors;
- 1.1.7. "the Architectural Design Guidelines" means the Architectural Design Guidelines, as amended by the Association from time to time, for the development of improvements on the Residential Erven, annexed hereto marked "B";
- 1.1.8. "the Developer" means JV Wilnet Proprietary Limited, Registration No. 2013/013819/07 or its successor in title as the developer of the Estate;
- 1.1.9. "Development Period" means the period commencing on the creation of this Association and terminating upon the transfer of the last of the Residential Erven from the Developer or such earlier date on which the Developer notifies the Association in writing that it terminates the development period;
- 1.1.10. "Developer Trustees" means a Trustee who is nominated or appointed by the Developer;
- 1.1.11. "the Estate" means the Common Areas and the Residential Erven;
- 1.1.12. "the Gatehouse" means the gatehouses to be constructed at the entrance to the Estate;
- 1.1.13. "the Land" means the erven reflected on Annexure "A";
- 1.1.14. "LUPO" means the Cape Land Use Planning Ordinance, No. 15 of 1985;
- 1.1.15. "Member(s)" means a member(s) of the Association;
- 1.1.16. "month" means a calendar month;
- 1.1.17. "the Office" means the registered office of the Association;



- 1.1.18. "these presents" means this Constitution and regulations and by-laws of the Association from time to time in force, and shall include the annexures hereto;
- 1.1.19. "Registered Owner" means the registered owner of any of the Residential Erven;
- 1.1.20. "Registered Erf" or "Residential Erven" means a residential erf or all the residential erven, as the case may, be situated on the Land;
- 1.1.21. "Resolution by the Members" means a decision taken by a majority of the Members present at an Annual General meeting duly constituted by no less than 21 days' written notice or at a Special General meeting duly constituted by no less than 14 days' written notice (or shorter notice in both instances if condoned in terms of clause 23.1.1 and 23.1.2)
- 1.1.22. "Resolution by the Trustees" means a decision taken in accordance with the Powers and Functions of the Trustee Committee at a duly convened meeting of the Trustee Committee;
- 1.1.23. "Services" means such municipal services as may be required on the Estate, including (but not limited to) electricity, road services, stormwater, water, sewage and waste removal;
- 1.1.24. "Special Resolution" means a decision taken by at least 75% of the Members present at an Annual General or other meeting constituted by no less than 21 days' written notice (or shorter notice if condoned in terms of clause 23.1.1 and 23.1.2) which notice shall contain the terms and effect of, and reasons for, the Resolution subject to the Developer's rights in clause 29.6;
- 1.1.25. "a Trustee" means one of the Trustee Committee;
- 1.1.26. "the Trustee Committee" means the Board of Trustees of the Association;
- 1.1.27. "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;
- 1.1.28. "year" means a calendar year.

1.2. Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other two genders.

**2. CREATION of ASSOCIATION - COMMENCEMENT DATE**

The Association, as contemplated in terms of Section 29 of LUPO, is hereby created with effect from the date of registration of transfer in the Deeds Office of the first Registered Erf from the Developer to an owner.

**3. STATUS OF THE ASSOCIATION**

3.1. The Association will:



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

3.1.2. not operate for profit, but for the benefit of the Members.

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

#### **4. MAIN OBJECT**

The main object of the Association is the control over and the maintenance of buildings, services and amenities on the Estate and the matters refer to LUPA and without detracting from the generalating thereof to ensure compliance with the conditions for subdivision imposed by the Local Authority when approving the Development and, more specifically:-

4.1. to control the design and construction of and any alterations to all buildings, and/or structures erected or to be erected on the Residential Erven in accordance with the Architectural Design Guidelines (Annexure "B"), the Site Development Plan (Annexure "A"), and any other plan, manual, guidelines, policy, contract and the like of any authority and to which the development of the Land may be subject or which may hereafter be imposed, and the requirements of the City or other authority.

4.2. to control and maintain any structures, services and amenities situate on the Common Areas and, subject to any agreement(s) with the City, the Public Open Spaces and Public Roads situate within the Estate.

4.3. the promotion, advancement and protection of the communal and group interests of the Members generally;

4.4. to take transfer of the Common Areas and internal engineering services arranges out of the subdivision concerned.

4.5. ensure the general high standard of the Development.

#### **5. FINANCIAL YEAR END**

The financial year end of the Association is the end of June of each year.

#### **6. MEMBERSHIP**

6.1. For the duration of the Development Period or for so long as the Developer owns any portion of the development the Developer shall be a Member of the Association.

6.2. Membership of the Association shall be limited to and compulsory for the Registered Owners provided that:-

6.2.1. a person who is entitled to obtain a certificate of registered title to any such Residential Erf shall be deemed to be the Registered Owner thereof;



- 6.2.2. where any such Registered Owner is more than one person, all the Registered Owners of that erf shall be deemed jointly and severally to be one Member.
- 6.3. Membership in terms of clause 6.2 shall commence simultaneously with the transfer of the Residential ERF into the name of the Registered Owner.
- 6.4. When a Member ceases to be the Registered Owner he shall ipso facto cease to be a Member of the Association.
- 6.5. A Registered Owner may not resign as a Member of the Association.
- 6.6. The Trustee Committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.
- 6.7. The rights and obligations of a Member shall not be transferable and every Member shall:
  - 6.7.1. to the best of his ability further the objects and interests of the Association;
  - 6.7.2. observe all by-laws and regulations made by the Association or the Trustee Committee.
- 6.8. No Member shall let or otherwise part with the occupation of his Residential Erf without obtaining the written approval of the Association, which approval shall not be unreasonably withheld. An application for approval shall be submitted to the Association within 7 (seven) days of a lease agreement being signed which shall include a written agreement of the proposed occupier that he will be bound by the provisions of this Constitution.
- 6.9. The Member shall be liable for the acts or omissions of all persons occupying his Residential Erf, whether lawfully or unlawfully, including but not limited to lessees, guests, employees, invitees, contractors and agents.
- 6.10. A Member shall not be entitled to:-
  - 6.10.1. alienate or transfer a Residential Erf by means of re-sale unless it is a condition of the alienation and transfer that:-
    - 6.10.1.1. a transferee becomes a Member of the Association;
    - 6.10.1.2. the registration of transfer of that Residential Erf into the name of the transferee shall ipso facto constitute a transferee as a Member of the Association;
    - 6.10.1.3. he obtains a clearance certificate from the Association which shall be given provided -
      - 6.10.1.3.1. the alienee of such Residential Erf agrees in writing to accept and abide by the Constitution of the Association;



6.10.1.3.2. all amounts owing by the Registered Owner to the Association have been paid or satisfactorily secured.

6.10.1.3.3. all obligations of the Registered Owner in terms of this Constitution have been complied with in full.

## **7. APPROVAL FOR PROPOSED WORK**

7.1. The Design Review Committee has been established by the Developer during the Development Period and by the Trustee Committee thereafter, for the purposes of approving all applications for the erection of improvements on the Estate in accordance with the Architectural Design Guidelines.

7.2. The Design Review Committee shall be constituted of not less than 3 (three) members, including an architect and a landscape architect.

7.3. A Member desiring to erect any buildings and/or structures of any nature whatsoever, or to make any alterations, modifications or renovations to such buildings and/or structures (“the proposed work”) on his Residential Erf shall submit a full set of proposed building and landscaping plans (if applicable), which indicate both construction and design details, to the Trustees, or any person nominated by the Trustees, for written approval, prior to submission of such plans to the City.

7.4. The Trustees shall only give written approval for the proposed work:-

7.4.1. if the proposed work complies with the documents and requirements set out in clause 4.1 above; and

7.4.2. the Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee(s).

7.5. After obtaining the written approval of the Trustees for the proposed work, the Member shall submit the building and landscaping plans (if applicable) to the City for approval, with the approval of the Design Review Committee evidenced by an endorsement of the relevant plans.

7.6. After obtaining the approval of the City for the proposed work, the member shall comply with all conditions, standards and requirements imposed by the City and the Association, including but not limited to, the Builders’ Code of Conduct annexed hereto marked “C”.

7.7. The provisions of sub-Clause 7.1 shall not apply to the Developer provided that the Developer shall comply with the Architectural Design Guidelines and any conditions imposed by the City.

## **8. LEASE OF HOA**

8.1. Owner’s Association which fails to meet an obligation or cease to function:

“If the HOA 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 OA or its members, who are jointly liable.

The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the OA for the purposes of recovering of expenditure incurred in connection with the Association from its Members.

If the OA ceases to function effectively or to carry out its obligations, the City may give the Association a binding instruction to:

- a) hold a meeting and to reconstitute itself; or
- b) 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.

In determining whether to act in terms of the above, the City must have regard to:

- a) the purpose of the Association;
- b) who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
- c) the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
- d) the impact of the dissolution of the Association on its members and the community;
- e) any written representation from the Association and its members.

If the Association is dissolved, the members must jointly pay the costs of:

- a) the transfer to the City of the Association's property which contains the internal engineering services and private open spaces;
- b) the upgrading of the internal engineering services to the standards of the City.

## **9. LEVIES**

9.1. The Members shall be jointly liable for expenditure incurred by the Association.

9.2. The Trustees Committee shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or which the Trustee Committee reasonably anticipates the Association will incur in respect of:

9.2.1. Facilities and services in connection with the Estate;

9.2.2. The payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs.



- 9.3. In calculating levies the Trustee Committee shall take into account income, if any, earned by the Association.
- 9.4. A Member shall be liable to pay levies with effect from the date upon which the Member becomes a Registered Owner, pro-rated where applicable.
- 9.5. The Trustee Committee 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 make a levy upon the Members equal to or as near as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year and shall be paid by way of a debit order in favour of the Association or by any other method as determined by the Manager from time to time.
- 9.6. The Trustee Committee, may from time to time, make special levies upon the Members in respect of all such expenses as are mentioned in Clause 8.2, and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit.
- 9.7. Any amount due by a Member by way of a levy shall be a debt due by him to the Association, the obligation of a Member to pay a levy shall cease upon his ceasing to be 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 a Residential Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that erf, to pay the levy attributable to that erf. No member shall transfer his Residential Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.
- 9.8. Subject to clause 8.9, the total levy payable shall be borne jointly by the Members in equal shares.
- 9.9. The Developer shall not be required to pay levies as contemplated in clause 8.8 above for the duration of the Development Period.
- 9.10. No Member shall be entitled to any of the privileges of membership unless and until he shall have paid all levies and any other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

## **10. DEALING WITH THE COMMON AREAS**

- 10.1. Neither the whole nor any portion of the Common Areas shall be:-
  - 10.1.1. Sold, let, alienated, otherwise disposed of, subdivided or transferred; or
  - 10.1.2. Mortgaged; or



10.1.3. Subjected to any rights other than those contained in the present existing title deeds of the subdivided erven constituting the Land, or to be imposed in the title deed(s) of the Common Areas as required by any relevant authority or as contained in this Constitution, whether registered in a Deeds Registry or not, of use, occupation or servitude.

10.2. The Association is hereby empowered to take transfer and shall take title to the Common Areas as soon as is legally possible, save that transfer of the Gatehouse shall take place at the end of the Development Period, or such earlier date as may be agreed between the Developer and the Association.

10.3. The Association acknowledges that the City shall not be responsible for, and the Association shall be solely responsible for the construction, care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Common Areas, all services therein (other than services provided and/or maintained by the City, if any) and all amenities and improvements located or to be located on or within the Common Areas.

10.4. The City shall at no time in the future assume ownership of any of the Common Areas.

## **11. SERVICES**

11.1. With effect from the date upon which the Association is created in terms of clause 2, the Association shall be obliged to provide the Services to the extent that the Services are not provided by the City. Provision of the Services shall include the maintenance and repair of any infrastructure required to provide the Services.

11.2. The Developer during the Development Period, and the Home Owner's Association thereafter, shall accept responsibility with regard to the maintenance and operation of the sewer pump station and rising main, and the City of Cape Town shall not be liable for any claims whatsoever from the Developer, its successors(s)-in-title, or the Home Owners' Association, whether for loss, damages, or otherwise, which may arise as a result of or lack of any required maintenance.

## **12. SECURITY AND ACCESS TO THE ESTATE**

12.1. The Association shall implement and maintain adequate security measures and systems for controlled access to the Estate, including but not limited to:-

12.1.1. Provision of guarding services at the entrance to the Estate on a continuous basis;

12.1.2. Subject to applicable laws, maintaining and controlling security booms at the entrance to the Estate, it being recorded that the Association may only be legally entitled to do so once it has acquired the public roads in the Estate and such roads have been declared private roads.

## **13. CONTRACTS AND REGULATIONS**

13.1. The Trustee Committee may from time to time:-



- 13.1.1. Make rules and regulations (and vary and/or amend any existing rules and regulations) governing, inter alia:-
    - 13.1.1.1. the Member’s right of use, occupation and enjoyment of the Common Area;
    - 13.1.1.2. the external appearance of and the maintenance of the common Area and the building or other improvements erected thereon;
    - 13.1.1.3. the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on Residential Erven, subject always to the Architectural Design Guidelines and the requirements of the City;
    - 13.1.1.4. the conduct of Members generally;
  - 13.1.2. enter into agreement(s) with the local authorities governing the matters set out in sub-Clause 12.1 and any other incidental matters;
  - 13.1.3. enter into agreement(s) with the City and other parties for the provision of Services on the Estate;
  - 13.1.4. impose penalties which it considers appropriate in its sole discretion against members who are in default of any of their obligations in terms of this Constitution, including the terms of payment of such penalties.
- 13.2. It is recorded that the trustees shall be deemed to have adopted the Code of Conduct annexed hereto marked “D” which code of conduct constitutes rules and regulations for the purposes of clause 12.1.
- 13.3. Each member undertakes to the Association that he shall comply with:
- 13.3.1. the provisions of this Constitution;
  - 13.3.2. any regulations made in terms of sub-Clause 12.1.1;
  - 13.3.3. any agreements referred to in sub-Clause 12.1.2 insofar as those agreements either directly or indirectly impose obligations on him.

**14. MANAGER**

- 14.1. During the Development Period, the Developer shall be entitled to appoint a Manager and/or Managing Agent to manage the affairs of the Association. It shall be within the absolute discretion of the Developer to determine the terms and conditions of the appointment of such a manager and/or remuneration payable.
- 14.2. Any fees and/or remuneration payable to the Manager and/or Managing Agent shall be paid by the Association and not the Developer.
- 14.3. The appointment of the Manager and/or Managing Agents may extend beyond the Development Period, provided that the Developer shall endeavour to procure, when making



such appointment, that the appointment may, if so required by the Association at a General Meeting, and subject to the requirements of the law, be terminated on reasonable notice after the end of the Development Period.

- 14.4. After the Development Period, the Association shall be responsible for the appointment of any successive Managers and/or Managing Agents, it being contemplated that the affairs of the Association shall at all times be entrusted to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.
- 14.5. Subject to this Constitution and the terms of his appointment, the Manager and/or Managing Agents shall have the power to manage and control the business and affairs of the Association, and may exercise all such powers of the Association and do all acts on behalf of the Association as may be delegated to him by the Association in writing, from time to time.

## **15. BREACH**

15.1. Should any Member:-

15.1.1. fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation made thereunder and remain in default for more than seven (7) days after being notified in writing to do so by the Trustees; or

15.1.2. commit any other breach of the provisions of this Constitution or any regulation made thereunder and fail to commence remedying that breach within a period of seven (7) days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time; then and in either such event, 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 law, including the right to claim damages:-

15.1.3. to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made thereunder, as the case may be; or

15.1.4. in the case of Clause 14.1.1 and 14.1.2, to remedy such breach and immediately recover the outstanding amount together with interest as referred to below and costs on the scale as between attorney and own client incurred by the Trustees or the Association in so doing from such Member.

15.2. Should the Trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation made thereunder, then without prejudice to any other rights which the Trustees or the Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Association, including attorney/client charges reckoned on the non-litigious tariff recommended by the Law Society of the Cape of Good Hope (for its successors), tracing fees and collection commission.



15.3. Without prejudice to all or any of the rights granted to the Trustees of the Association under this Constitution, should any Member fail to pay any amount due by that member on due date, then such Member shall pay interest thereon at 2% (Two percent) above the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date of payment until the actual date of payment of such amount or be liable for a fine in an amount determined by the Trustees.

## **16. CESSATION OF MEMBERSHIP**

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a Member.

## **17. TRUSTEE COMMITTEE**

- 17.1. Members of Association must at the first meeting of the association elect the trustees of the association.
- 17.2. There shall be a Committee of the Trustees which shall consist of not less than three (3) and not more than seven (7) Members.
- 17.3. A Trustee is required to be a Member.

## **18. APPOINTMENT, REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

- 18.1. The Developer shall appoint the first Trustees of the Association and any other Trustees appointed from time to time during the Development Period. Save as set forth in Clause 17.2 below, each Trustee shall continue to hold office until the Annual General Meeting next following his appointment or election, at which meeting each trustee shall be deemed to have resigned from office as such, and shall be eligible for re-election to the Trustee Committee at such meeting, subject however to the Developer's rights as set out in the previous sentence of this clause 17.1.
- 18.2. A Trustee shall be deemed to have vacated his office as such upon:-
  - 18.2.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
  - 18.2.2. his making any arrangement or compromise with his creditors;
  - 18.2.3. his conviction for any offence involving dishonesty;
  - 18.2.4. his becoming of unsound mind or being found lunatic;
  - 18.2.5. his resignation from such office in writing delivered to the Secretary;
  - 18.2.6. his death;



18.2.7. once the development period has come to an end, his being removed from office by a Special Resolution of the Members;

18.2.8. his alienating his Registered Erf in the vent that he was a Registered Owner,  
provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute book of the Trustee Committee.

18.3. 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, subject however to the rights of the Developer as set out in the second sentence of clause 17.1 above which shall apply to this clause 17.3.



## **19. OFFICE OF TRUSTEES**

- 19.1. Subject to clause 18.2, the Trustees shall appoint from amongst themselves, a Chairperson and Vice-Chairperson.
- 19.2. The Chairperson, and Vice-Chairperson, 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.
- 19.3. Subject to the rights of the Developer as set out in clause 18.2 above, 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 Chairperson and Vice-Chairperson, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairperson or Vice-Chairperson 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 at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office, subject however to the rights of the Developer as set out in clause 18.2 above.
- 19.4. Save as otherwise provided in these presents, the Chairperson 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 Chairperson and such other duties as may be prescribed by the Trustee Committee or of 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.
- 19.5. The Vice-Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson, and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the Trustee Committee.
- 19.6. 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 Chairperson, Vice-Chairperson, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

## **20. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

- 20.1. Subject to the express provisions of this Constitution, including but not limited to clause 13, 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 these presents, may exercise all such powers of the Association, and as are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulation 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.





- 20.2. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 20.3. The Trustee Committee shall have the right to co-opt onto the Trustee Committee any Member or Members chosen by it, provided that, for the duration of the Development Period all Trustees shall be appointed by the Developer. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 20.4. The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 20.5. 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:
  - 20.5.1. as to disputes generally;
  - 20.5.2. for the furtherance and promotion of any of the objects of the Association;
  - 20.5.3. for the better management of the affairs of the Association;
  - 20.5.4. for the advancement of the interests of Members;
  - 20.5.5. for the conduct of Trustee Committee meetings and general meetings;
  - 20.5.6. to assist it in administering and governing the Association's activities generally; and shall be entitled to cancel, vary or modify any of the same from time to time.

**21. PROCEEDINGS OF THE TRUSTEE COMMITTEE**

- 21.1. 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 these presents.
- 21.2. Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for the quarter.
- 21.3. The quorum necessary for the holding of any meeting of the Trustee Committee shall be three (3) Trustees.
- 21.4. The Chairperson shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairperson not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-Chairperson shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson 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 Chairperson for the meeting provided that, for the duration of the Development Period, such Chairperson shall be appointed from the Trustees appointed by the Developer, and that Chairperson so appointed shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.



- 21.5. A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairperson of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and Local Authority.
- 21.6. All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 21.7. Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 21.8. A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

## **22. GENERAL MEETINGS OF THE ASSOCIATION**

- 22.1. The Association shall hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, as soon as possible after the end of each financial year, it being the intention that each Annual General Meeting shall take place not later than 6 (six) months after each financial year, within 60 (sixty) days of the transfer of 60% of the land units arising from the subdivision or within 2 (two) years of the transfer of the first land unit, whichever is the earlier. The first Annual General Meeting of the Association shall specify the meeting as such in the notices, in terms of Clause 22.1 below calling it.
- 22.2. The Developer must within 60 (sixty) days of the first meeting notify the City of Cape Town that the meeting has taken place and provide the city with a copy of the minutes of the meeting.
- 22.3. Such Annual General Meetings shall be held at such time and place, subject to the forgoing provisions, as the Trustee Committee shall decide from time to time.
- 22.4. All general meetings other than Annual General Meetings shall be called special general meetings.
- 22.5. The Trustee Committee, may, whenever they think fit, convene a special general meeting.

## **23. NOTICE OF MEETINGS**

- 23.1. An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall (subject to Clause 35.2) be called by 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 fourteen (14) days' notice in writing at the least. In each case, the notice shall be exclusive of the day on which it is given, 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 these presents, 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 these presents entitled to receive such notices from the Association, provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:

23.1.1. in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and

23.1.2. in the case of a special general meeting or an Annual General Meeting called for the passing of a Special Resolution, by the Developer (for the duration of the Development Period, and 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% (seventy five percent) of the total number of votes (as provided for in clause 28.1 below) of all Members.

23.2. 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 these presents, 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.

#### **24. VENUE OF MEETINGS**

General Meetings of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time.

#### **25. QUORUM**

25.1. 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 25% of the total votes of all Members of the Association entitled to vote, for the time being save that not less than three (3) Members must be present, and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.

25.2. 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 Chairperson 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, provided that, for the duration of the Development Period, the Developer is present in person or by proxy.

## **26. AGENDA AT MEETINGS**

In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 26.1. the consideration of the Chairperson's report to the Trustee's Committee;
- 26.2. the election of the Trustee Committee;
- 26.3. the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

## **27. PROCEDURE AT GENERAL MEETINGS**

- 27.1. The Chairperson shall preside as such at all general meetings, provided that should he not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairperson, shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson, also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting, provided that, for the duration of the Development Period, the Chairperson shall be a Trustee who is appointed by the Developer.
- 27.2. The Chairperson 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 from which the adjournment took place. Whenever a meeting is adjourned for ten 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 any adjourned meeting.
- 27.3. Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

## **28. PROXIES**

A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The Proxy shall be entitled to vote at a general meeting on behalf of that Member. 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 1 (one) person, any 1 (one) of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company or by its secretary, and where an association of person, by the secretary thereof.



## 29. VOTING

- 29.1. Subject to the provisions of clause 30.6 below, at every general meeting, the following provisions shall apply in regard to voting:
- 29.1.1. every Member in person or by proxy and entitled to vote shall have the number of votes for each Residential Erf registered in his name, as set out below, provided that if a Residential Erf is registered in more than one person's name, then they shall jointly have one vote.
  - 29.1.2. in the event of two or more Residential Erven being consolidated, then the Member in question shall continue to have the same number of votes he held prior to consolidation, as if such consolidation had not taken place.
- 29.2. Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any questions, either personally or by proxy, at any general meeting.
- 29.3. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands.
- 29.4. Voting on the election of a Chairperson 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 Member's present in person or by proxy, subject however to the Developer's rights in clause 20.3 and 24.1.
- 29.5. 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.
- 29.6. 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 as provided for in clause 28.1 above, provided however, that for the duration of the Development Period, no vote shall be carried unless the Developer or its proxy votes in favour of either the ordinary or Special Resolution. an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the chairperson of the general meeting shall be entitled to a casting vote in addition to its deliberative vote.
- 29.7. 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 Chairperson 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 Chairperson 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 Chairperson of the meeting as to the result of any voting at the meeting.



### **30. 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, property managers, 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.

### **31. ACCOUNTS**

31.1. 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 time during normal business hours.

31.2. 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, and there shall be attached to the notice sent to members convening each Annual General Meeting, as set forth in Clause 22.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

### **32. AUDIT**

Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

### **33. SERVICE OF NOTICES**

33.1. 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 the address of the Residential Erf owned by him.

33.2. 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.

33.3. Any notice given by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

33.4. 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.



- 33.5. The Association appoints the physical address of the Auditors as its registered office at which address it will accept any formal notices.

#### **34. INDEMNITY**

- 34.1. All Trustee Members and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fida incurred by them in their respective said capacities and in the case of a Trustee member, in his capacity as Chairperson, Vice-Chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 34.2. Every Trustee Member, every servant, agent and employee of the Association, and the Auditors 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 traveling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act of deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee Member, his duties as Chairperson or Vice-Chairperson. 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.
- 34.3. A Trustee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustee Members, whether in their capacities as trustee members or as Chairperson or Vice-Chairperson, 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, for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

#### **35. ARBITRATION**

- 35.1. Any dispute, question or difference arising at any time between a Member or between Members and Trustees out of or in regard to:-
- 35.1.1. any matters arising out of this Constitution;
- 35.1.2. the rights and duties of any of the parties mentioned in this Constitution; or
- 35.1.3. 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 questions.



- 35.2. Notwithstanding clause 34.1, a party declaring a dispute in respect of payment of levies, subject to clause 9, is not obliged to refer the dispute to arbitration and may institute court proceedings.
- 35.3. Arbitration shall be held in Cape Town informally and otherwise in terms of 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.
- 35.4. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 35.4.1. primarily an accounting matter - an independent accountant;
  - 35.4.2. primarily a legal matter - a practicing counsel or attorney of not less than ten (10) years' standing;
  - 35.4.3. any other matter - an independent and suitably qualified person appointed by the Auditors; as may be agreed upon between the parties to the dispute.
- 35.5. If agreement cannot be reached on whether the question in dispute falls under sub-Clauses 34.4.1, 34.4.2, 34.4.3, or upon a particular arbitrator in terms of sub-Clause 34.4.3, within three (3) Business Days after the arbitration has been demanded, then:
- 35.5.1. the President for the time being of the Law Society of the Cape of Good Hope (or its successors) shall determine whether the question in dispute falls under sub-clauses 34.4.1, 34.4.2 or 34.4.3; or
  - 35.5.2. the President for the time being of the Law Society of the Cape of Good Hope (or its successors) shall nominate the arbitrator in terms of Clause 34.4 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 34.3
- 35.6. 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.
- 35.7. The decision of the arbitrator shall be final and binding and may be made an Order of the Cape of Good Hope Provincial Division of the High Court of South Africa (or its successors) upon the application of any party to the arbitration.
- 35.8. Notwithstanding anything to the contrary contained in Clauses 34.1 to 34.7 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 purpose of restraining or interdicting breaches of any of the provisions.





### **36. AMENDMENTS TO CONSTITUTION**

- 36.1. This constitution, or any part thereof, as contained herein shall not be repealed or amended, and so no new clauses shall be made, save by a Special Resolution adopted at any Annual General Meeting or General Meeting of the Members;
- 36.2. Notwithstanding the notice procedure contained in clause 22.1 to call for an Annual General Meeting and a meeting called for the passing of a Special Resolution, a meeting called for the passing of a Special Resolution to amend the constitution shall require two (2) notices. The first notice shall be given no less than sixty (60) days prior to such meeting, and the second notice no less than thirty (30) days before such meeting and shall specify the place, the day and the hour of the meeting and, like is the case with any other Special Resolution, in addition to any other requirements contained in these presents, the terms and effect of the resolution and the reasons for it shall be given in such notice;
- 36.3. Further to clause 35.1 above, any amendment or alteration to Clauses 3, 6.3, 6.5, 8.1, 8.4, 8.6, 8.7, 8.10, 30.1 and 34.1 of the Constitution shall be subject to the prior written consent of the City;
- 36.4. This clause 35 shall not apply to amendments to the annexures referred to in clause 4.1 above;
- 36.5. Any amendments to the Constitution only becomes effective when Certified by the City in terms of Section 62(4)(1)(a) of the municipal by law;
- 36.6. The Constitution and any amendments thereof must be lodged with the City, and certified by the City to contain the operative provisions of the constitution.
- 36.7. The City is exempt from liability for any damage which may be caused by its certification of the constitution or amendment to the constitution lodged with the City.

