



CONSTITUTION
of the
CHAPMAN'S BAY ESTATE
HOME OWNERS' ASSOCIATION

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SUBDIVISION PLAN: ANNEXURE "A"

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1. INTERPRETATION

In these presents:

- 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 Chapman's Bay Home Owner's Association;
 - 1.1.2 "the Architect" means LENNARD & LENNARD ARCHITECTS AND PLANNERS, 3 Minke Close, Kleinslangkop, Kommetjie, Tel: 021 783 2624 and his successor/s as appointed by the Association from time to time;
 - 1.1.3 "the Auditors" means the Auditors of the Association;
 - 1.1.4 "Business Day" means weekdays other than Saturdays, Sundays and public holidays;
 - 1.1.5 "Chairperson" means the Chairperson of the Trustee Committee;
 - 1.1.6 "the Common Areas" means Erf 4523, 4524, 4525, 4526, 4527, 4528, 4529, 4530, 4531 and 4532 Noordhoek;
 - 1.1.7 "the City" means the City of Cape Town, or its successors;
 - 1.1.8 "the Architectural Design Manual" means the Architectural Design Manual, as amended by the Association from time to time, for the development of improvements on the Residential Erven, annexed hereto marked "B";
 - 1.1.9 "Design Review Committee" means the committee referred to in clause 8 below who shall, together with the Architect, govern the compliance of homes within the Estate with the Architectural Design Manual and to govern the aesthetics of the Development;
 - 1.1.10 "the Developer" means Chapman's Bay Property Development Trust, Registration No. IT20323/2014; or its successor in title as the Developer of the Estate;
 - 1.1.11 "Development Period" means the period starting on 1 June 2014 and ending when the last of the erven for Dwellings in the Development are transferred from the Seller, or on an earlier date on which the Developer notifies the Association in writing that it ends the development period (subject to the terms and conditions of the constitution of the Association);
 - 1.1.12 "Developer Trustee" means a Trustee who is nominated or appointed by the Developer;
 - 1.1.13 "ECO" / "ESO" means the Environmental Control / Site Officer;
 - 1.1.14 "EMP" / "OEMP" / "CEMP" means the (Operational) or (Construction Phase) Environmental Management Plan;

- 1.1.15 "EMS" means the City's Environmental Management Services;
- 1.1.16 "the Estate" means the Common Areas and the Residential Erven;
- 1.1.17 "the Gatehouse" means the gatehouse and associated structures to be constructed at the entrance to the Estate;
- 1.1.18 "the Land" means means Portion 1 of Portion 7 of the Farm Dassenberg No 947 Noordhoek, depicted by and containing the plots listed on Annexure "A";
- 1.1.19 "LUPO" means the Western Cape Cape Land Use Planning Ordinance, No. 15 of 1985;
- 1.1.20 "Landscaping Plan" means the Plan approved by Council in terms of which the Landscaping in the Development shall be implemented by the Developer and maintained by the Association;
- 1.1.21 "Member(s)" means a member(s) of the Association;
- 1.1.22 "month" means a calendar month;
- 1.1.23 "NEMA" means the National Environmental Management Act, Act 107 of 1998;
- 1.1.24 "the Office" means the registered office of the Association;
- 1.1.25 "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;
- 1.1.26 "Registered Owner" means the registered owner of any of the Residential Erven;
- 1.1.27 "Registered Erf" or "Residential Erven" means a residential erf or all the residential erven, as the case may, be situated on the Land;
- 1.1.28 "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);
- 1.1.29 "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;
- 1.1.30 "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;

1.1.31 "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;

1.1.32 "a Trustee" means one of the Trustee Committee;

1.1.33 "the Trustee Committee" means the Board of Trustees of the Association;

1.1.34 "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;

1.1.35 "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. **PREAMBLE**

The name of the Association is the Chapman's Bay Estate Homeowners' Association, which is an Association to be established in accordance with the provisions of section 29 of the Land Use Planning Ordinance, No 15 of 1985 (LUPO) in accordance with the conditions imposed by the City of Cape Town when approving in terms of section 25 (1) and 42 of the said Ordinance the subdivision of the Land defined in 1.1.18 hereof and shall come into existence prior to Council certifying in terms of Section 31 of LUPO that any condition on which the subdivision was granted, has been complied with.

3. **CREATION OF ASSOCIATION**

The Association shall be created on the date of registration of transfer in the Deeds Office of the first Registered Erf from the Developer to an end-purchaser.

4. **STATUS OF THE ASSOCIATION**

4.1 The Association will:

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

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

4.2 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.

5. **MAIN OBJECT**

The main object of the Association is the control over and the maintenance of buildings or structures, services and amenities on the Common Areas on the Estate, and more specifically to: -

- 5.1 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 Manual (Annexure "B", the Subdivision Plan (Annexure "A"), and any other plan, manual, Manual, 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;
- 5.2 comment to the City on whether building plans comply with the approved Architectural Design Manual;
- 5.3 promote, advance and protect the communal and group interests of the Members generally and to promote harmonious living;
- 5.4 take transfer of the Common Areas and pay rates and taxes for such areas to the City;
- 5.5 maintain all internal roads, private open space, and internal services (excluding bulk Municipal services and the electrical network situated on the property) on the Common Property and to assume liability for the street lightning;
- 5.6 manage the landscaping of the Common Areas in line with the Landscaping Plan by using only locally found, indigenous vegetation;
- 5.7 manage the Development in accordance with the "OEMP";
- 5.8 ensure compliance by all Members with the conditions of the Department of Environmental Affairs and Development Planning with specific reference to the conditions referred to in clauses 30 and 31 below.
- 5.9 To ensure the compliance with the Fire Management Plan for the property referred to in clause 30.2 below.

6. **FINANCIAL YEAR END**

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

7. **MEMBERSHIP**

- 7.1 For the duration of the Development Period or for so long as the Developer owns any of the Residential Erven, the Developer shall be a Member of the Association.

- 7.2 Membership of the Association shall be limited to and compulsory for the Registered Owners of Portions 1 to 130 (or any subdivided portion thereof) as designated on the subdivision plan attached hereto as Annexure "A", provided that:-
- 7.2.1 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;
 - 7.2.2 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;
 - 7.2.3 Membership in terms of clause 7.2 shall commence simultaneously with the transfer of the Residential Erf into the name of the Registered Owner;
 - 7.2.4 When a Member ceases to be the Registered Owner he shall ipso facto cease to be a Member of the Association.
- 7.3 A Registered Owner may not resign as a Member of the Association.
- 7.4 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.
- 7.5 The rights and obligations of a Member shall not be transferable and every Member shall:
- 7.5.1 to the best of his ability further the objects and interests of the Association;
 - 7.5.2 observe all by-laws, rules and regulations made by the Association or the Trustee Committee.
- 7.6 No Member shall let or otherwise part with the occupation of his Residential Erf without obtaining the written approval of the Association in terms of the Code of Conduct.
- 7.7 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.
- 7.8 A Member shall not be entitled to alienate or transfer a Residential Erf by means of re-sale or to sell any interest in a juristic person that owns such Residential Erf, which sale effectively constitutes a transfer of the property, unless it is a condition of the alienation and transfer that:-
- 7.8.1 a transferee becomes a Member of the Association;
 - 7.8.2 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;
 - 7.8.3 he obtains a clearance certificate from the Association which shall be given provided

- 7.8.3.1 the alienee of such Residential Erf agrees in writing to accept and abide by the Constitution of the Association;
- 7.8.3.2 1 (one) percent of the selling price of the Residential Erf, including improvements thereon, or the selling price of any interest in a juristic person that owns such Residential Erf and any improvements thereon, which sale effectively constitutes a transfer of the property, is paid to the Association by the Registered Owner;
- 7.8.3.3 all amounts owing by the Registered Owner to the Association have been paid or satisfactorily secured,
- 7.8.3.4 all obligations of the Registered Owner in terms of this Constitution have been complied with in full.

- 7.9 The registered owners shall become members of the Association automatically upon taking transfer of their respective erf. This requirement will be binding on the said owners and any successors in title and shall be included in the title deed of each erf / property. Any Power of Attorney to pass transfer shall include the following conditions, which shall be carried forward into the relevant title deeds:

SUBJECT to the following condition imposed by the City of Cape Town in terms of Section 42 or Ordinance 15 of 1985 when approving the subdivision of Portion 7 of Cape Farm 940.

“The subject property may not be alienated without the prior written consent of the Home Owners’ Association of which the within transferee or his successors in title shall become a member.”

8. APPROVAL FOR PROPOSED WORK

- 8.1 The Design Review Committee shall be established by the Developer during the Development Period and by the Trustee Committee thereafter, for the purposes of commenting to the local authority on whether the erection of improvements on the Estate is in accordance with the Architectural Design Manual.
- 8.2 The Design Review Committee shall constituted of not less than 3 (three) persons including an architect.
- 8.3 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 Design Review Committee in terms of the procedure in the Architectural Design Manual for written approval, prior to submission of such plans to the City.
- 8.4 The Design Review Committee shall only give written approval for the proposed work: -
- 8.4.1 if the proposed work complies with the documents and requirements set out in clause 8.1 above; and

- 8.4.2 the Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Design Review Committee.
- 8.5 After obtaining the written approval from the Design Review Committee 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.
- 8.6 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".
- 8.7 The provisions of sub-clause 8.1 shall not apply to the Developer provided that the Developer shall comply with the Architectural Design Manual and any conditions imposed by the City.

9. **LEVIES**

- 9.1 The Members shall be jointly liable for expenditure incurred by the Association.
- 9.2 The Trustee Committee shall from time to time, impose 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 facilities and services in connection with the Estate and 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 impose 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 Trustee Committee from time to time.
- 9.6 The Trustee Committee, may from time to time, impose special levies upon the Members in respect of all such expenses as are mentioned in clause 9.2, 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 9.9, 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 9.8 above for the duration of the Development Period. The Developer shall, however, for the duration of the Development Period, pay the difference between the actual expenses incurred by the Association (as referred to in clause 9.1 above) but excluding any provisions for a reserve fund, and the aggregate of the levies payable jointly by the Members who are registered owners of Residential Erven each month from time to time. For the avoidance of any doubt it is recorded that in determining the aggregate of individual levies payable by Members who are registered owners from time to time for the purposes of this clause 9.9, the aggregate shall include all levies payable by such Members, irrespective of whether or not such levies have actually been paid by those Members. In the event that there is a dispute as to the actual costs incurred by the Association at any time, then the matter shall be referred to the Developer's auditor who, acting as an expert and not as an arbitrator, shall issue a certificate which shall be final and binding on the parties and who shall be entitled for this purpose to have access to all the records and books of account of the Association as and when required. The costs of the said auditor shall be borne by the Association.

9.10 Penalty levies as determined by the Trustees Committee are payable to the Association if a dwelling on the property is not completed within 3 (three) years from date of transfer of the property from the Developer on the basis that construction of the dwelling should commence within 2 (two) years from date of transfer of the property into the name of the Purchaser, and completed within 1 (one) year from date of commencement of such construction process, which shall be undertaken on a continuous basis, unless an extended time period is approved by the Design Review Committee due to the complexity of the dwelling.

9.11 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.

9.12 THE LEVY STABILISATION FUND

9.12.1 The Association must establish and maintain a levy stabilisation fund.

9.12.2 The levy stabilisation fund must be used and administered by the Trustee Committee in the manner contemplated in all applicable provisions of this constitution.

9.12.3 The Association and the Trustee Committee must ensure that the levy stabilisation fund is used only to defray expenditure on the Common Areas.

9.12.4 Every Member must pay into the levy stabilisation fund the contribution referred to in clause 7.8.3.2 of this constitution. Although every Member will become liable for that contribution on admission as a Member, that contribution will become due and payable only when the Member sells the Residential Erf in question.

9.13 Exemption in Terms of Section 10(1)(e)(i)(cc) of the Income Tax Act

In order to confirm that the levies received by the Association in terms of this clause 9 are exempt from income tax in terms of section 10(1)(e)(i)(cc) of the Income Tax Act, it is recorded that:

9.13.1 The sole object of the Association must be and remain to manage the collective interests common to all the Members, which includes expenditure applicable to the common immovable property and the collection of levies for which the Members are liable.

9.13.2 The Association must not knowingly be a party to, or knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been payable by any person under the Income Tax Act or any other law administered by the Commissioner for the South African Revenue Service.

9.13.3 The Association is not permitted to distribute its funds to any person other than :

9.13.3.1 In the course of carrying out the sole object referred to in clause 9.13.1 above; or

9.13.3.2 To a similar association of persons.

9.13.4 Any amendments to the constitution must be submitted to the Commissioner for the South African Revenue Service.

9.13.5 On dissolution of the Association, its net remaining assets, after all its liabilities have been paid or settled, must be distributed to a similar association of persons which is also exempt under section 10(1)(e) of the Income Tax Act”.

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 condition referred to in clause 10.1 above shall be carried forward into the title deed(s) of the concerned land.
- 10.3 The Association shall take transfer of the Common Areas defined in clause 1.1.6 with the transfer of the first residential erf in each phase to the end-user thereof.
- 10.4 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 (including the street lighting but excluding the electrical network and the sewer line running down from Silver Mine) 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

With effect from the date upon which the Association is created in terms of clauses 2 and 3, 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.

12. SECURITY AND ACCESS TO THE ESTATE

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

- 12.1 provision of guarding services at the entrance to the Estate on a continuous basis;
- 12.2 maintaining and controlling security booms and/or security gates at the entrance to the Estate; and
- 12.3 maintaining the security fence to the perimeter of the Estate.

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 Members' rights 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 Manual and the requirements of the City;
- 13.1.1.4 the conduct of Members generally;
- 13.1.2 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 13.1.
- 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 13.1.1;
- 13.3.3 any agreements referred to in sub-clause 13.1.2 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 Managing Agent including the market related fees 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:–

15.1.2.1 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

15.1.2.2 in the case of clause 15.1.1 and 15.1.2, 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 (or 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 There shall be a Committee of the Trustees which shall consist of not less than three (3) and not more than seven (7) Persons.

17.2 A Trustee appointed by the Developer need not 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 18.2 below, each Trustee shall continue to hold office until the second Annual General Meeting following his appointment or election, at which meeting such 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 18.1.

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 event 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 18.1 above which shall apply to this clause 18.3.

19. OFFICE OF TRUSTEES

- 19.1 Subject to clause 19.2, the Trustees shall appoint from amongst themselves, a Chairperson and Vice-Chairperson.
- 19.2 The Chairperson, and Vice-Chairperson, shall, for the duration of the Development Period, be appointed by the Developer. 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 19.2 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. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office, subject however to the rights of the Developer as set out in clause 19.2 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 this clause 20, 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 form sub-committees and 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 that 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 fifteen (15) 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 fifteen (15) 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 the City.
- 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. FIRST MEETING AND FURTHER GENERAL MEETINGS OF THE ASSOCIATION

- 22.1 The first meeting of the Association shall be called once 80% of the erven have been sold or buildings occupied on such erven (whichever occurs first), and the minutes of such meeting shall be submitted to the Director: Planning & Building Development Management within 2 weeks of such meeting taking place.
- 22.2 In addition, a first Annual General Meeting must be held by the Developer within twelve (12) months from the date of the first transfer of an erf in favour of a purchaser.
- 22.3 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.
- 22.4 Such Annual General Meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.

22.5 All general meetings other than Annual General Meetings shall be called special general meetings.

22.6 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 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 25.1 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 personally 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.

25.3 A Member cannot dispute any quorums of previous general meetings of the Association at any subsequent general meeting.

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.

26.4 subject to clause 33.2 below, the consideration of the Annual Financial Statements of the Association.

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 15 (fifteen) 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 15 (fifteen) 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 other than the business which might have been transacted at the 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 an 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, the same may be signed by the Chairperson of the Board of Directors of the 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 29.6 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 24 hours before the meeting, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

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 Members present in person or by proxy, subject however to the Developer's rights in clauses 25.1 and 25.2.

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 29.1 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. CONDITIONS IMPOSED IN TERMS OF THE WESTERN CAPE LAND USE PLANNING ORDINANCE (LUPO)

30.1 The Owner shall provide a minimum of 2 onsite parking bays (inclusive of garaging) per dwelling house.

30.2 A Fire Management Plan for the Estate, which deals with measures to be undertaken to reduce the risk of damage caused by veld fires, and to manage veld fires when they occur, shall be drawn up by a suitable qualified professional and submitted for approval to the Director: Fire Services. Such veld fire management plan shall be to the satisfaction of the Director: Fire Services.

30.3 All common boundary fencing / walls must have gaps of at least 10 centimetres by 15 centimetres every 10 meters at the ground level to allow faunal movement.

31. CONDITIONS IMPOSED IN TERMS OF THE NATIONAL ENVIRONMENT MANAGEMENT ACT (NEMA)

31.1 The Development shall comply with the conditions of approval contained in the Record of Decision issued on 17 April 2009 by the Department of Environmental Affairs and Development Planning.

31.2 An Operational Phase Environmental Management Plan ("OEMP") which includes the conditions of the environmental authorisation by the Department of Environmental Affairs and Development Planning must be implemented.

31.3 The Developer must ensure that an environmental audit be undertaken every six months during the construction phase of the development and submit the audit report to the Association and the City for comment. Thereafter, the audit reports (including comments) must be submitted to the Department: Environmental Affairs and Development Planning for

acceptance. Where relevant, the Department: Environmental Affairs and Development Planning will issue instructions to the applicant to undertake corrective action based on the audit findings. The audit reports must indicate the date(s) on which construction was completed, detail compliance with the conditions of this environmental authorisation as well as recommendations for improved environmental management.

31.4 After the construction phases have been completed, the Association must undertake an environmental audit biannually. The audit report must be made available to the public on request. This must include the plan to undertake corrective action based on the audit findings.

31.5 The introduction and spread of alien invasives must be prevented by adopting the following mitigation measures:

31.5.1 All soils and top material must be bought from a reliable source and must be free of alien seeds or grass runners;

31.5.2 Only locally occurring, indigenous vegetation will be permitted. No kikuyu grass will be permitted.

31.5.3 The spread of exotics must be monitored and prevented by the Association.

31.4 The conservation plight of WL Toads must be brought to the attention of residents so that they can consider its micro-habitat requirements when cultivating their gardens. The use of pesticides in gardens must be discouraged.

31.5 Swimming pools must thus be raised to prevent toad access, or the pools need to have overflow areas where toads can escape. Alternatively, devices can be placed in the pools to provide a means for climbing out.

31.6 The Association must advocate the plight of the WL Toad in the form of road-side notices, and interpretive displays along the wetland boardwalk or bird-hide so that residents and visitors can act responsibly in this regard.

32. **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.

33. **ACCOUNTS**

33.1 The Association in general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such

conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

- 33.2 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 23.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

34. **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.

35. **SERVICE OF NOTICES**

- 35.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally, electronically or by post in a prepaid registered letter, properly addressed to the Member at the address of the Residential Erf owned by him.
- 35.2 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.
- 35.3 Any notice given by post shall be deemed to have been served at the time when the letter containing the same was posted or transmitted, 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.
- 35.4 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.
- 35.5 The Association appoints the physical address of the Auditors as its registered office at which address it will accept any formal notices.

36. **INDEMNITY**

- 36.1 All Trustee Members and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee 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.

36.2 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 travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee 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.

36.3 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, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of 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.

37. **ARBITRATION**

37.1 Any dispute, question or difference arising at any time between a Member or between Members and Trustees out of or in regard to:-

37.1.1 any matters arising out of this Constitution; or

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

37.1.3 the interpretation of this Constitution;

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

37.2 Notwithstanding clause 37.1, a party declaring a dispute in respect of payment of levies, subject to clause 15, is not obliged to refer the dispute to arbitration and may institute court proceedings.

37.3 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.

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

37.4.1 primarily an accounting matter - an independent accountant;

37.4.2 primarily a legal matter - a practising counsel or attorney of not less than ten (10) years' standing;

37.4.3 any other matter - an independent and suitably qualified person appointed by the Auditors; as may be agreed upon between the parties to the dispute,

37.4.4 design / construction related matters - an independent architect with ten years' experience appointed by the Trustees Committee.

37.5 If agreement cannot be reached on whether the question in dispute falls under sub-clauses 37.5.1, 37.5.2, 37.5.3, or upon a particular arbitrator in terms of sub-clause 37.5.3, within three (3) Business Days after the arbitration has been demanded, then:

37.5.1 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 37.5.1, 37.5.2 or 37.5.3; or

37.5.2 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 37.5 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 37.3.

37.6 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 the other of the disputing parties or by the Association as he in his sole discretion may deem fit.

37.7 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.

37.8 Notwithstanding anything to the contrary contained in clauses 37.1 to 37.8 inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions.

38. AMENDMENTS TO CONSTITUTION

- 38.1 This constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new clauses shall be made, save by a Special Resolution adopted at an Annual General Meeting or General Meeting of the Members.
- 38.2 Notwithstanding the notice procedure contained in clause 23.1 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.
- 38.3 Further to clause 38.1 above, any amendment or alteration to clauses 5, 7, 8, 30, 31 and 38 of the Constitution shall be subject to the prior written consent of the City.
- 38.4 This clause 38 shall not apply to amendments to the annexures referred to in the table of contents above.