Subject: ORIBI RIDGE HOA 70560096- FINAL SIGNED
Date: Wednesday, 20 October 2021 at 11:47:06 South Africa Standard Time
From: Anne Smit
To: Johan Smit
CC: Philiswa Magadlela
Attachments: image002.jpg, image004.png, image001.jpg, 41371_10-20-2021-111021.pdf, Oribi Ridge Const_10-20-2021-111335.pdf

Good day,

Find herewith the approved constitution.

Anne Smit
Senior Professional Officer
Development Management: Northern District
Department: Spatial Planning and Environment

WORKING FROM HOME DURING COVID-19
Working hours 7:30 to 12:30
Contact number Northern info hub: 021 4441057
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DEVELOPMENT MANAGEMENT

Philiswa Magadlela
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Case ID: 70560096

12 October 2021

Lutoria Investments CC
5 Lighthouse Road
Atlantic Beach Golf Estate
Melkbosstrand
7441

Dear Sir / Madam

ORIBI RIDGE HOME OWNERS ASSOCIATION CONSTITUTION:
ERF 41371, 4 STEENBOK STREET KRAAIFONTEIN

Your application in the above regard refers.

You are hereby informed that the constitution is herewith approved in terms of Section 98(b) of the City of Cape Town Municipal Planning By-Law 2015 insofar it addresses the requirements of the said By-Law. Reasons for the recommended decision may be summarised as follows:

- The Owners' Association Constitution complies with City's requirements in terms of the conditions of approval and the City of Cape Town Municipal Planning By-Law, 2015, considering the comment from Legal Services confirming that they are satisfied with the Owners' Association Constitution.

It is the responsibility of the Association to provide all current and future owners with copies of the approved constitution as attached hereto.

Yours faithfully

(for) **DIRECTOR: DEVELOPMENT MANAGEMENT**
20/10/2021

CONSTITUTION

ORIBI RIDGE HOME-OWNERS ASSCOCIATION

A statutory body established in terms of Chapter 6 Part 5, read with Section 61, of the City of Cape Town Municipal Planning By-Law, 2015

ORIBI RIDGE

STAD KAAPSTAD

2 0 OCT 2021

CITY OF CAPE TOWN

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"H" LANDSCAPING PLAN

1. **PREAMBLE**

It is recorded that the Oribi Ridge Home-Owners Association is constituted as a statutory body in terms of Section 61 of the City of Cape Town Municipal Planning By-Law, 2015, in accordance with the conditions imposed by the City of Cape Town, when approving the sub-division of the Land referred to in Clause 2.1.17 below.

2. **INTERPRETATION**

In this Constitution:

2.1. The following words shall, unless the context otherwise requires, have the meanings assigned to them below:

2.1.1.	"Association"	means the Oribi Ridge Home-Owners Association;
2.1.2.	"Auditors"	means the Auditors of the Association;
2.1.3.	"Business Day"	means weekdays other than Saturdays, Sundays and public holidays;
2.1.4.	"By-Law"	means the City of Cape Town Municipal Planning By-Law, 2015, as amended.
2.1.5.	"CEMP"	means the Construction Environmental Management Plan applicable to the Estate as approved by the relevant authorities, attached hereto as Annexure "E";
2.1.6.	"Chairperson"	means the Chairperson of the Trustee Committee;
2.1.7.	"Common Areas"	means the Private Road and Private Open Spaces, indicated as such on the General Plan;
2.1.8.	"Constitution"	means this Constitution, regulations, rules and by-laws of the Association in force from time to time, and shall include all Annexures;
2.1.9.	"CSOS Act"	means the Community Schemes Ombud Service Act, Act No. 9 of 2011;
2.1.10.	"Council"	means the City of Cape Town, or its successors in title;
2.1.11.	"Design Manual"	means the Council approved architectural design manual prepared by Axion Architects International CC, as amended with the approval of the Council from time to time, for the development of improvements on the Residential Erven, annexed to this Constitution as Annexure B;
2.1.12.	"Developer"	means Lutoria Investments cc, Registration Number: 1998/002721/23, or its successor in title as owner of the Land or the remainder thereof from time to time;

2.1.13. "Development Period"	means the period commencing on the creation of the Association and terminating on the date that all the Residential Erven have been transferred from the Developer to third parties and all Residential Erven have been improved by the erection of buildings thereon, or until the Developer, in its sole discretion, notifies the Association in writing that the Development Period has ceased.
2.1.14. "Developer Trustee"	means a Trustee who is nominated or appointed by the Developer;
2.1.15. "Estate"	means the Estate called **"Oribi Ridge"** to be established on the Land comprising the Common Areas and the Residential Erven;
2.1.16. "Extension Land"	means the Remainder of Erf 11675, Kraaifontein, City of Cape Town, Western Cape Province, indicated as such on the Extended SDP;
2.1.17. "Extended SDP"	means a draft site development plan, providing for the extension of the Estate by the adding of the Extension Land;
2.1.18. "First Transfer"	means the date of first transfer as defined in Clause 7.4 below;
2.1.19. "General Plan"	means the Plan approved by the Surveyor-General in respect of the subdivision of the Land, to be attached hereto as Annexure "D";
2.1.20. "Land"	means Erf 41371, a portion of Erf 11675, Kraaifontein, City of Cape Town, Western Cape Province; which is reflected on Annexure "A", and any further land incorporated into the Development in terms of the provisions of this Constitution;
2.1.21. "Landscaping Plan"	means the Landscaping Plan, approved by the Local Authority and attached hereto as Annexure H;
2.1.22. "Managing Agent"	means any person or entity appointed by the Developer, during the Development Period, and thereafter by the Trustee Committee, as an independent contractor to undertake any or all of the management functions of the Association, subject to and in terms of the provisions of this Constitution;
2.1.23. "Member(s)"	means a member(s) of the Association;
2.1.24. "Month"	means a calendar month;
2.1.25. "Office"	means the registered office of the Association;
2.1.26. "Ombud Service"	means the services provided by the Chief Ombud's office in terms of the CSOS Act;
2.1.27. "ORHOA"	means the Association established in terms of Section 61 of the By-Law and in accordance with the conditions imposed by the Council when approving the rezoning and subdivision of the Land;

2.1.28.	"Registered Owner"	means the registered owner of any of the Residential Erven;
2.1.29.	"Residential Erven"	means subdivided Erven of the Land, other than non-residential erven and Common Areas, in total 20 (Twenty) Erven;
2.1.30.	"Scheme Layout"	means the currently approved scheme layout for the Estate which the Developer proposes to effect, as reflected on Annexure "A";
2.1.31.	"Site Development Plan/s"	means the Site Development Plan/s for the Estate, approved by the Council, as may be amended from time to time;
2.1.32.	"Stormwater Management Plan"	means the stormwater management plan attached hereto as Annexure "C";
2.1.33.	"Services"	means such facilities, utilities, services and amenities as may be provided on the Estate in terms of clause 13, including (but not limited to) electricity, road services, stormwater, water, sewage and waste removal;
2.1.34.	"Special Resolution"	means a resolution passed at a General Meeting in respect of which 21 (twenty-one) days' notice has been given, by not less than three-quarters of the Members entitled to vote in person or by proxy at such meeting; except for in the circumstances as set out in Clause 25 below when the total number of votes for the passing of a Special Resolution may be calculated in a different manner in order to give effect thereto.
2.1.35.	"Trustee"	means a member of the Trustees Committee;
2.1.36.	"Trustee Committee"	means the Board of Trustees of the Association from time to time;
2.1.37.	"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;
2.1.38.	"Year"	means any calendar year in accordance with the Gregorian Calendar.

2.2. 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 gender.

3. **CREATION OF ASSOCIATION**

The Association is hereby created with effect from the date of the First Transfer.

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. operate for the benefit of the Members.

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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.

4.3. The Association does not pursue any pecuniary gain for itself or any of its Members and will not be permitted to distribute any of its funds other than in accordance with the provisions of this Constitution.

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

4.5. On dissolution of the Association, the remaining assets must be distributed to a similar association of persons, which is also exempt from Income Tax in terms of Section 10(1)(e) of the Income Tax Act.

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

4.7. The Association shall submit annual returns for income tax together with financial statements to the South African Revenue Services or similar relevant government departments as required.

5. MAIN OBJECTIVES OF THE ASSOCATION

The main objectives of the Association is to carry on the promotion, advancement and protection of the Members of this Association and more specifically:

5.1. to control the design and construction of any alterations to all buildings, and/or structures erected or to be erected on the Residential Erven in accordance with the Design Manual, the CEMP, the conditions of approval of the sub-division of the Land, the Site Development Plan/s, the Scheme Layout 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 Council or other authority;

5.2. to comply with, and to ensure compliance by Members with, the conditions imposed by the Council pursuant to the Council's approval for subdivision of the Land, as well as the conditions imposed by the Provincial Administration of the Western Cape pursuant to its approval for rezoning of the Land, and in particular the environmental conditions, including but not limited to the monitoring and enforcement of compliance by Registered Owners, and by the Association itself, with the CEMP for the ongoing management of the Estate;

5.3. to control, manage and maintain the structures, services and amenities situated on the Common Areas and the external wall of ORHOA as well as the running costs of any street lighting;

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

5.5. to take transfer of the Common Areas;

5.6. to enter into service agreements with the Council or any other authority or supplier of services;

5.7. at the first special general meeting, by written resolution, to accept the cession of any rights and delegation of any duties to the Association under any other agreement(s) entered into by the Developer for the benefit of the Association prior to the creation of the Association.

5.8. to prescribe measures and ensure compliance with the Design Manual attached hereto as Annexure "B", so as to ensure a harmonious and aesthetic development of the Estate, and to prescribe measures for the maintenance of such standards of development;

5.9. to register, where necessary, various service or other servitudes over Common Areas in the Estate in favour of the Council/Public Works Department and/or similar developments located in close proximity to the Estate, and to register servitudes in favour of the Erven in the Estate over other land owned by the Association as are from time to time required and to register servitudes in favour of the Estate over certain erven to protect the Services. All overland stormwater escape routes are to be maintained and kept free of all obstruction and protected by servitudes where they traverse private property;

5.10. to acquire and hold servitudes in the Association's favour for access to the Estate and also for the supply of services, including communication, surveillance and water to the Estate;

5.11. to formulate, enforce, modify, amend, add and delete the Estate conduct rules and regulations;

5.12. to include in the Title Deeds of the Common Areas to be transferred to the Association, that, after the Development Period all such Common Areas shall not be sold, alienated, otherwise disposed of or transferred to any other party, nor mortgaged other than is permitted in terms of this Constitution;

5.13. to accredit architects and builders to be utilised by Registered Owners in respect of any design and construction work to be conducted on Residential Erven, in accordance with such criteria as the Association may stipulate from time to time;

5.14. to accredit Estate Agents appointed by Registered Owners in respect of the resale of their Residential Erven, in accordance with such criteria as the Association may stipulate from time to time;

5.15. to enter into agreements or arrangements with any owners of properties and/or other developments located in close proximity to the Estate, with regard to the sharing of facilities or services of any nature whatsoever, including but not being limited to security, site protection, landscaping, gardening, fencing, agricultural services, water, sewerage, electricity, roads, pathways, trails, environmental management and planning, whether or not for the purposes of sharing the cost thereof;

5.16. to accredit service providers or contractors in respect of services to be rendered to Members of the Association, including but not limited to pool cleaning and garden service contractors;

5.17. to grant or refuse a Registered Owner consent to transfer his Residential Erf, depending as to whether or not there has been compliance with this Constitution, the Conduct Rules or such other rules and / or determinations made by the Association;

5.18. to include in the Title Deeds of Residential Erven that the owner of any residential erf in this Estate shall become and remain a member of the ORHOA and that transfer of such erven shall be subject to the Association granting its written consent in respect of such transfer;

5.19. to ensure the ongoing maintenance of the landscaping after the Developer has implemented and maintained same in terms of the conditions of approval of the Estate, as more fully provided for in the Landscaping Plan;

5.20. To ensure compliance with the Stormwater Management Plan, as approved by the Catchment, Stormwater and River Management Branch of the Local Authority.

6. **FINANCIAL YEAR END**

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

7. **MEMBERSHIP**

7.1. It is recorded that that there are two categories of Members, the first being constituted by the Developer and the second by Registered Owners.

7.2. For the duration of the Development Period or for so long as the Developer owns the Land, any portion thereof or the remainder thereof from time to time, the Developer shall be a Member of the Association.

7.3. Upon termination of the Development Period, membership of the Association shall be limited to and compulsory for the Registered Owners provided that:

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

7.3.2. 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.

7.4. Membership in terms of clause 7.3 shall commence simultaneously with the transfer of the Residential Erf into the name of the Registered Owner in the Cape Town Deeds Registry.

7.5. When a Member ceases to be the Registered Owner, he shall ipso facto cease to be a Member of the Association.

7.6. A Registered Owner may not resign as a Member of the Association.

7.7. 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.

7.8. The rights and obligations of a Member shall not be transferable and every Member shall:

7.8.1. to the best of his ability further the objects and interests of the Association referred to in clause 5 above;

7.8.2. observe all by-laws and regulations made by the Association and/or the Trustee Committee, from time to time.

7.9. No Member shall let or otherwise part with the occupation of his Residential Erf without obtaining the written agreement of the proposed occupier that the proposed occupier will be bound by the provisions of this Constitution.

7.10. The Member shall be liable and accountable 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.

7.11. Save in those instances where the Developer passes First Transfer to a Registered Owner, in all other instances where a Registered Owner wishes to alienate or transfer his Residential Erf or in the event that the said erf is owned by a Company, Close Corporation or Trust, should the shareholder/s or member/s or Trustee/s or Beneficiaries wish to alienate all their shares or membership or beneficial interest in such entity he shall not be entitled to do so unless:

7.11.1. the transferee of such Residential Erf, shares, membership or beneficial interest, as the case may be, agrees in writing to accept and abide by the Constitution and, in the case of the purchaser of a Residential Erf, to become a Member of the Association;

7.11.2. the Registered Owner shall not, without the Developers prior written consent, be able to sell his Residential Erf, nor shall any party be entitled to dispose of his shareholding or membership or beneficial interest in a Registered Owner until such time as all the Residential Erven have been sold and transferred to Registered Owners by the Developer, and in the case where the Developer is constructing a dwelling, until such time as all such dwellings are complete and paid for (as certified by the Developer, whose certificate in this regard shall be final and binding);

7.11.3. 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;

7.11.4. he obtains a clearance certificate from the Association which shall be given provided –

7.11.4.1. the transferee of such Residential Erf, shareholding, membership or beneficial interest agrees in writing to accept and abide by the Constitution of the Association;

7.11.4.2. all amounts owing by the Registered Owner to the Association have been paid or satisfactorily secured, in the discretion of the Association;

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

7.11.4.4. he pays to the Association the fees pertaining to such certificate as determined by the Association from time to time.

7.12. For the avoidance of doubt, it is recorded that the Association shall not furnish consent to any sale envisaged in clause 7.11 during the Development Period, without the Developer's prior written consent.

8. **APPROVAL FOR PROPOSED WORK**

8.1. A Member desiring to add any buildings and/or structures of any nature whatsoever, or to make any alterations, additions, 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 Committee, or any person nominated by the Trustees Committee, for written approval, prior to submission of such plans to the Council.

8.2. It is recorded that the Trustee Committee shall not be obliged, nor in fact be entitled, to approve any buildings plans which are contrary to the Site Development Plan/s or any amendment/s thereto;

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

8.3.1. after detailed plans of the proposed work as prepared by an architect registered with the South African Council for the Architectural Profession and who has been accredited by the Association, have been submitted to the Association;

8.3.2. if the proposed work complies with the documents and requirements set out in clause 5.1 above; and

8.3.3. the Member has made payment of all costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee(s) and any scrutiny fees as determined by the Trustees from time to time.

8.4. 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 Council for approval, with the approval of the Trustees evidenced by an endorsement of the relevant plans.

8.5. After obtaining the approval of the Council for the proposed work, the member shall comply with all conditions, standards and requirements imposed by the Council and the Association.

8.6. The provisions of sub-Clause 8.1 shall not apply to the Developer provided that the Developer shall comply with the Design Manual and the conditions imposed by the Council when approving the development of the Land.

9. **LANDSCAPING**

9.1. Members shall be responsible to landscape and maintain, at their own cost, the road verge/s separating their erf from the road/s, it being recorded that when the erf is located on a corner, there will be at least two road verges.

9.2. Boundary walls and vegetation must be done in accordance with the approved Landscaping Plan and Building Plans as approved by the ORHOA and the Local Authority

9.3. The Association shall be responsible for maintaining the landscaping within the Common Areas, commencing on the expiry date of the Developer's responsibility to maintain same as set out in clause 5.19 above, in accordance with the Landscaping Plan;

10. **LEVIES**

10.1. The Members shall be jointly liable for expenditure incurred by the Association, in accordance with the percentage of their levy, as more fully set out in clause 10.8 below.

10.2. The Trustee Committee shall from time to time, determine the total amount of levies payable by 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:

10.2.1. facilities and services in connection with the Estate;

10.2.2. maintenance of the Common Areas;

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

10.2.4. any reserves which the Trustee Committee may deem necessary.

10.3. In calculating levies, the Trustee Committee shall take into account income and other revenues if any, earned by the Association. The Developer may suspend the payment of levies by members as from the transfer date to the occupation date in respect of the first transfers from it to a member, where the Developer is constructing the dwelling on the Residential Erf for the Member.

10.4. 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. A member shall make payment of the monthly levies by virtue of debit order drawn on the member's banker.

10.5. 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 determine a levy payable by 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.

10.6. The Trustee Committee, may from time to time, determine the special levies payable by the Members in respect of all such expenses as are mentioned in Clause 10.2, 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.

10.7. 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 and furnished the Member with clearance certificate as contemplated in clause 7.11.

10.8. For so long as the Developer is the registered owner of the Land or any portion thereof or the remainder thereof, the Developer shall be required to pay levies equal to a single member's contribution.

10.9. 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.

10.10. Arrear levies shall bear interest calculated at 2% (two percent) above the publicly quoted prime rate of interest as charged by the Association's Bankers from time to time, from due date of payment until the actual payment, calculated monthly in arrears.

10.11. Any amounts paid by a Registered Member in respect of levies shall be apportioned first towards outstanding interest and thereafter towards any levies and amounts due by the Member to the Association.

11. DEALING WITH THE COMMON AREAS

11.1. After transfer to the Association, and subject to the Developers right to include additional land into the Development, neither the whole nor any portion of the Common Areas shall be:

11.1.1. sold, let, alienated, otherwise disposed of, subdivided or transferred; or

11.1.2. mortgaged; or

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

11.2. The Association is hereby empowered to take transfer and shall take title to the Common Areas at no consideration as soon as is legally possible, or such earlier date as may be agreed between the Developer and the Association.

11.3. The Association acknowledges that the Council 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 Council, if any) and all amenities and improvements located or to be located on or within the Common Areas.

11.4. The Council shall at no time in the future assume ownership of the Common Areas.

11.5. The Trustee Committee must insure all the Common Areas against all possible risks relating thereto, including, but not limited to, Public Liability Insurance, which premiums must be included in the Levies.

12. SERVITUDES

It is recorded that several Service Servitudes and an Access Servitude will be registered against the title deeds of the requisite Residential Erven and Common Areas, as more fully provided for in the General Plan, attached hereto.

13. SERVICES

13.1. With effect from the date upon which the Association is created in terms of clause 3, the obligation to maintain and repair Services shall pass from the Developer to the Association.

13.2. Notwithstanding clause 13.1, the Council may, at its discretion, elect to assume the obligation to repair and maintain water, sewage and electricity services ("the Council Services") on the Estate, provided that a written agreement is concluded between the Council and the Association which agreement shall include the following provisions:

13.2.1. the Council Services will be provided to each Member on an individually metered basis;

13.2.2. the Association shall allow the Council's staff twenty-four (24) hour access to all elements of the systems on the Estate in respect of Council Services;

13.2.3. all elements of the systems in respect of Council Services must comply fully with the Council's specifications and requirements;

13.2.4. the Council shall, after repairs to systems in respect of Council Services, only be obliged to re-instate roads, verges, footways and the like to such reasonable standards as may be applicable in non-private townships. Any further reinstatements over and above such standard shall be undertaken by the Association at its cost;

13.2.5. the Association indemnifies the Council (or its duly appointed agent) against any responsibility for payment for repairs of any damage to roads, walls, fences, verges and the like which may be caused by the Council's vehicles or staff on the Estate;

13.2.6. full servitude rights of way will be granted by the Association to the staff of the Council, and their vehicles, along all roads and pipeline cable routes for the purposes of inspection, maintenance and repair of the Council Services;

13.2.7. the Common Areas shall be metered and the Association shall be liable for the payment of all costs relating to Council Services.

13.3. The Association shall be responsible for internal collection of refuse on the Estate, which shall be removed from the Estate by the Council from a centralised collection point. The cost of the internal refuse collection will be borne by the Association and paid for through the levies.

13.4. The Developer and each Member are required to provide measures to improve energy efficiency to reduce the consumption of electricity within the Estate.

13.5. Members must conform to any conservation and/or rationing programme or scheme introduced, adopted or implemented by a sphere of government or relevant regulating body by reducing their electricity consumption as required in terms of such programme or scheme.

13.6. Electrical installations with a new or upgraded authorised capacity of more than 41,5 kVA will have to meet certain energy efficiency requirements. These requirements are subject to change.

14. CONTRACTS AND REGULATIONS

14.1. The Trustee Committee may from time to time:

14.1.1. make regulations governing, inter alia:

14.1.1.1. the Members' rights of use, occupation and enjoyment of the Common Areas;

14.1.1.2. the external appearance of and the maintenance of the Common Area and the building or other improvements erected on the Common Areas;

14.1.1.3. 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 Design Manual, the CEMP's and the requirements of the Council;

14.1.1.4. compliance with the CEMP's;

14.1.1.5. the conduct of Members generally;

14.1.2. enter into agreement(s) with the local authorities governing the matters set out in sub-Clause 14.1 and any other incidental matters;

14.1.3. enter into agreement(s) with the Council and other parties for the provision of Services on the Estate;

14.1.4. enter into agreement(s) with any owner and/or other development for the purposes set out in clause 5.17 above; and

14.1.5. 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.

14.2. Each Member undertakes to the Association that he shall comply with:

14.2.1. the provisions of this Constitution;

14.2.2. any regulations made in terms of sub-Clause 14.1.1;

14.2.3. any agreements referred to in sub-Clause 14.1.2 insofar as those agreements either directly or indirectly impose obligations on him.

14.3. Each Member undertakes to the Association that he shall not object to any application for land use rights, including but not limited to an application for rezoning, such as may be necessary and in order to implement the Development.

15. **MANAGING AGENT**

15.1. The Developer shall be entitled (but not obliged, and at their own discretion) to manage, or to appoint a Managing Agent for the Estate, during the Development Period, which appointment shall be valid and binding on the Association during the Development Period. For the avoidance of doubt, it is recorded that only one Managing Agent may be appointed for the whole of the Estate irrespective of whether such appointment is made during the Development Period, or thereafter.

15.2. During the Development Period, the Developer has the irrevocable power and authority to appoint the Managing Agent of the Estate during the aforesaid period and to determine the terms and conditions of such appointment.

15.3. Subject to the provisions of this Constitution and the terms of its appointment, the Managing Agent shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Association in a General Meeting, and may exercise all such powers of the Association and do all acts on behalf of the Association itself.

15.4. During the Development Period, the Developer will determine the fees or remuneration to be paid by the Association to the Managing Agent and the other terms and conditions of its appointment, which fees will be agreed upon by the parties to the relevant agreement, provided that fees thus payable must be allowed for in the budget of the Association.

15.5. After the Development Period, and in the event that an existing Managing Agent's appointment is terminated, a successor Managing Agent shall from time to time be appointed by the Association in a GM and the Members shall determine the fees or remuneration to be paid by the Association to such Managing Agent and all the other terms and conditions of their appointment, it being contemplated that at all times the affairs of the Association will be entrusted in whole or part to a professional Managing Agent with appropriate executive powers so as to conform to the requirements of good corporate governance. The Trustee Committee will, at the final termination date of the agreement regarding the appointment of the Managing Agent, use best endeavors to negotiate a further extension of the appointment of the Managing Agent.

16. **ON-SITE SALES AGENTS**

16.1. The Developer may elect to appoint multiple On-Site Sales Agents for the benefit of the Association and its Members in terms of which it will appoint an estate agent to provide estate agency services to Members ("the appointed estate agent").

16.2. Should such appointment be made, the appointed estate agents shall be physically located on the Estate, subject to the Council granting the appropriate land use rights to permit the appointed estate

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agent on the Estate. The granting of such land use rights shall be subject to any time periods which the Council may determine when granting such rights. In the event that the Council (or any appeal body) does not grant such land use rights, then the On-Site Sales Agents mandates shall automatically terminate. Any renewal of the On-Site Sale Agent mandate shall be subject to the Association acquiring the necessary land use rights to permit the continued operation of an estate agency on the Estate.

16.3. The Developer shall cede its rights and delegate its duties under the On-Site Sales Agents to the Association, and the Association shall accept such cession and delegation at its first special general meeting as provided for in terms of clause 5.7, should it so wish, it being under no obligation to do so.

16.4. The appointed estate agents shall be deemed to be an accredited estate agent for the purposes of clause 5.16.

17. **BREACH**

17.1. Should any Member:

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

17.1.2. commit any other breach of the provisions of this Constitution or any regulation made in terms of the Constitution 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 Committee and complete the remedying of such breach within a reasonable time;

then and in either such event, the Trustees Committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees Committee or the Association or any other Member may have in law, including the right to claim damages:

17.1.3. 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 in terms of the Constitution, as the case may be; or

17.1.4. in the case of Clause 17.1.2, to remedy such breach and immediately recover the total costs incurred by the Trustees or the Association in so doing from such Member.

17.2. Should the Trustees Committee institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation, then without prejudice to any other rights which the Trustees Committee or the Association or any other Member may have in law, the Trustees Committee 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.

17.3. Without prejudice to all or any of the rights granted to the Trustees Committee under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest on the amount due 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

18. **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.

19. **TRUSTEES COMMITTEE**

19.1. During the Development Period, the affairs of the Association shall be managed and controlled by a Trustees Committee consisting of not fewer than 3 (three) and not more than 4 (four) Trustees.

19.2. A trustee need not be a Registered Owner and a Professional Consultant may be appointed as Trustee.

20. **APPOINTMENT, REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

20.1. 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 20.5 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 20.1.

20.2. Upon the expiry of the Development Period, a general meeting of members shall be called for the purpose of electing a Trustees Committee.

20.3. The Trustee committee shall consist of a chairman, vice-chairman and Trustee/s.

20.4. The Trustees contemplated in clause 20.2, shall after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines) of those members who attend the general meeting of the Association, and successive Trustees shall be elected likewise at each successive annual general meeting of the Association, provided that no member shall be eligible for election unless he shall have been duly nominated and seconded in writing by other members and such written nomination, duly endorsed by the nominee, shall have been handed to the secretary not later than the day preceding the meeting and provided further that such nominee's levies for the current year shall have been duly paid.

20.5. A Trustee shall be deemed to have vacated his office as such upon:

20.5.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

20.5.2. his making any arrangement or compromise with his creditors;

20.5.3. his conviction for any offence involving dishonesty;

20.5.4. his becoming of unsound mind or being found mentally ill;

20.5.5. every annual general meeting, but shall be eligible for re-election;

20.5.6. him absenting himself from 3 (three) consecutive meetings of the trustees without leave of absence;

20.5.7. his resignation from such office in writing delivered to the Secretary;

20.5.8. his death;

20.5.9. his being removed from office by a Special Resolution of the Members;

20.5.10. his alienating his Registered Erf in the event that he was a Registered Owner,

20.6. Any act performed 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.

20.7. Vacancies on the Trustee Committee may be filled by co-option at the instance of the majority vote of the Members.

21. **OFFICE OF TRUSTEES**

21.1. Subject to clause 21.2, the Trustees shall appoint from amongst themselves, a Chairperson and Vice-Chairperson.

21.2. 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.

21.3. Subject to the rights of the Developer as set out in clause 21.2 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 21.2 above.

21.4. Save as otherwise provided in this Constitution, 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 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.

21.5. 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.

21.6. 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.

22. **FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

22.1. Subject to the express provisions of this Constitution, including but not limited to clause 15, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and as are not in terms of this Constitution 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.

22.2. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

22.3. 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.

22.4. 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.

22.5. The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association in general meeting:

22.5.1. as to disputes generally;

22.5.2. for the furtherance and promotion of any of the objects of the Association;

22.5.3. for the better management of the affairs of the Association;

22.5.4. for the advancement of the interests of Members;

22.5.5. for the conduct of Trustee Committee meetings and general meetings;

22.5.6. 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.

22.6. The Trustees shall further have the power to:

22.6.1. require that any construction of any sort on the Estate shall be supervised to ensure that the provisions of this constitution and the Estate rules are complied with and that all such construction is performed in a proper and workmanlike manner;

22.6.2. issue architectural and landscape design manuals, environmental management plans and contracts or instructions in respect of the Estate, and to ensure that these documents and instructions are complied with at all times and in no way interfere or contradict the already approved Design Manual and Landscape Plan, unless first approved by Council;

22.6.3. determine the criteria for the accreditation of architects, builders, estate agents and other service providers or contractors employed by Registered Owners or the Association.

22.6.4. enter into agreements with other developments located in close proximity to the Estate with regard to the sharing of facilities or services, or with a view of sharing the cost of services, including but not being limited to security, landscaping, gardening and agricultural services.

22.7. The Trustees shall have the right to appoint committees consisting of such number of their members and such outsiders, including a manager as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the trustees may from time to time deem necessary.

22.8. The Trustees may appoint an architectural review committee to exercise the powers set out above in clause 22.7. Members of the architectural review committee shall not be required to be Members of the Association.

22.9. Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer, on non-residential erven, all plans for buildings, out-buildings, structures, additions and alterations shall be approved by the Trustees or architectural review committee (if so appointed), or any person designated by them for the purpose.

22.10. The Trustees shall further have the power to make Estate and/or Conduct Rules in regard to inter alia:

22.10.1. the use of motor vehicles and the parking of vehicles, including trucks, caravans, trailers and boats and the use of the roads;

22.10.2. the use of Common Areas and the restrictions for the use and enjoyment thereof;

22.10.3. the right to prohibit, restrict or control the keeping of any animals which they regard as dangerous or a nuisance;

22.10.4. the conduct of any persons within the Estate for the prevention of nuisance of any nature to any member;

22.10.5. the use of services, recreational areas, amenities and facilities including the right to charge a reasonable fee for the use thereof;

22.10.6. the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents of the Estate;

22.10.7. the maintenance of all buildings, out buildings, structures, improvements of any nature and landscaping of Residential Erven on the Estate;

22.10.8. the control of the number of occupiers permitted on any one Residential Erf;

22.10.9. the admission of any person to the Estate, and the eviction of any person not entitled to be thereon;

22.10.10. maintenance of Common Areas;

22.10.11. refuse disposal;

22.10.12. installation of air conditioning units and television and radio antennae and/or satellite dishes;

22.10.13. littering;

22.10.14. responsibility of the members for the activities of domestic employees and their guests and access of such persons to the Estate;

22.10.15. security;

22.10.16. letting and re-selling of Residential Erven;

22.10.17. the imposition of fines and other penalties;

22.10.18. the accreditation of architects in respect of the submission of plans for any works to be conducted on Residential Erven;

22.10.19. the accreditation of builders contracted to conduct construction work on Residential Erven;

22.10.20. the accreditation of service providers or contractors in respect of work to be conducted on behalf of members or the Association on the Estate;

22.10.21. For the enforcement of any of the rules made by the Trustees in terms of this clause, or of any of the provisions of this constitution generally, the Trustees may:

22.10.21.1. give notice to the member concerned requiring him to remedy such breach within such period as the trustees may determine; and/or

22.10.21.2. take or cause to be taken such steps, as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the Association; and/or

22.10.21.3. take such action including the imposition of a fine, or proceedings in court, as they may deem fit.

22.10.22. Should the Trustees institute any legal proceedings against any Member or resident on the Estate for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.

22.10.23. In the event of any breach of the rules by the Members or any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, who shall be jointly and severally liable with such wrongdoer to and in favour of the Association. However, without prejudice to the foregoing, the trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.

22.10.24. Notwithstanding anything to the contrary herein contained, the Trustees may in the name of the Association enforce the provisions of any rules by criminal action or civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as they may deem fit.

22.10.25. The Association may in general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the trustees from time to time.

22.10.26. The Association shall generally have the power and shall perform the functions so as to implement and evoke the objects of the Association referred to in Clause 5.

23. **PROCEEDINGS OF THE TRUSTEE COMMITTEE**

23.1. The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this Constitution.

23.2. 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 needs be held for that quarter.

23.3. The quorum necessary for the holding of any meeting of the Trustee Committee shall be not less than 2 out of the 3, or 3 out of the 4 (as the case may be) of Trustees holding office at any time.

23.4. 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 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, 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 all Trustees appointed by the Developer during the development period, and that Chairperson so appointed shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

23.5. 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.

23.6. 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.

23.7. 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.

23.8. 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.

23.9. Resolutions put to the vote at meetings of the Trustee Committee shall be carried by a simple majority.

23.10. In the case of an equality of votes, the Chairperson of the Trustee Committee shall have a casting vote.

24. **GENERAL MEETINGS OF THE ASSOCIATION**

24.1. The Developer shall call the first meeting of The Association within 60 days of transfer of 60% of the residential erven or within two years of the transfer of the first residential erven, whichever event occurs first.

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24.2. The Developer must notify Council within 60 days of the first meeting that the meeting has taken place and provide them with a copy of the Minutes of the meeting.

24.3. 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. Notwithstanding the aforegoing, the first Annual General Meeting of the Association is only required to take place by no later than the end of the financial year following which the Association comes into existence. The Association shall specify the meeting as such in the notices, in terms of Clause 25.1 below calling it.

24.4. Such Annual General Meetings shall be held at such time and place, subject to the aforegoing provisions, as the Trustee Committee shall decide from time to time.

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

24.6. The Trustee Committee, may, whenever they think fit, convene a special general meeting.

24.7. Where the Members who hold at least 51% (fifty-one percent) of the total votes resolve to call a special general meeting, the Trustee Committee shall be obliged to call such meeting.

25. **NOTICE OF MEETINGS**

25.1. 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, 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. 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 this Constitution, the general nature of that business, and in the case of a Special Resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons in terms of this Constitution entitled to receive such notices from the Association.

25.2. 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:

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

25.2.2. in the case of a special general meeting, 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 31.1 below) of all Members.

25.3. The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of 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.



26. **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.

27. **QUORUM**

27.1. 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 in person or by proxy as together represent no less than one quarter or one half of the total votes of all Members of the Association, and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.

27.2. Notwithstanding anything to the contrary contained in the Constitution, if within 30 (thirty) minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, the Members present shall constitute a quorum, save that not less than two thirds of the Trustees must be personally present, and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.

27.3. If the Members entitled to vote at the general meeting, either in person or by proxy, together represent less than one-quarter one half of the total votes of all Members of the Association, then the Members who are present in person or by proxy and are entitled to vote, may deal with the business for which the meeting was convened and any proposed resolution passed by not less than three-quarters of such Members shall be deemed to be a Special Resolution, provided that at least two thirds of the Trustees were personally present and voted at the meeting, and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.

28. **AGENDA AT MEETINGS**

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

28.1. The consideration of the Chairperson's report to the Trustee's Committee;

28.2. The election of the Trustee Committee;

28.3. The consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting;

28.4. The consideration of the balance sheet and income statement of the Association for the last Financial Year of the Association preceding the date of such meeting;

28.5. The consideration and approval of the report of the Auditors; and

28.6. The consideration and approval of the total Levy, for the calendar year during which such annual general meeting takes place, the total Levy being the sum of all the levies to be collected from members.

29. **PROCEDURE AT GENERAL MEETINGS**

29.1. 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.

29.2. 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 10 (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.

29.3. Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

30. **PROXIES**

30.1. 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.

30.2. The said proxy shall be deposited to the Association Secretary at least 24 (twenty four) hours prior to the time appointed for the commencement of the meeting.

30.3. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months calculated from the date of its execution.

30.4. A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

31. **VOTING**

31.1. Subject to the provisions of clause 31.6 below, at every general meeting, the following provisions shall apply in regard to voting:

31.1.1. The Developer shall, during the Development Period, have 22 (Twenty Two) votes, and shall, in addition, have 1 (one) vote for each Residential Erf, not as yet transferred by the Developer to a purchaser or any other party. A representative of the developer shall in person or by proxy be entitled to pass such votes;

31.1.2. Irrespective of the provisions in Clause 31.1.1, the Developer shall during the Development Period as a Member be entitled to have a veto right in respect of all decisions and resolutions to be taken by the Trustee/s, the Board and the Association

31.1.3. 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;

31.1.4. in the event of 2 (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.

31.2. 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 question, either personally or by proxy, at any general meeting.

31.3. At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands.

31.4. 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 22.3 , 31.1.1 and 31.1.2

31.5. 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.

31.6. 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 31.1 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 the 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.

31.7. 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.

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, subject to any of the provisions of these presents provided that any expenditure incurred in respect of the above, shall not exceed 5% (five per centum) of the total annual levy for the year in question unless authorized by a Special Resolution.

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 25.1 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 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, 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.

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. **DETERMINATION OF DISPUTES**

37.1. Any disputes arising out of or in connection with this Constitution must be determined in accordance with the CSOS Act, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.

37.2. On a dispute arising (not moneys or a debt to the Association), the parties who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (Fourteen) days after such notice, either of the parties to the dispute may refer the same to determination in terms of the CSOS Act.

37.3. The provisions of this Clause 37 constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw there from or claim in any such proceedings that they are not bound by such provisions.

37.4. The provisions of this Clause 37 shall be deemed to be severable from the remainder of the Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled, amended or declared of no force and effect for any reason.

37.5. Notwithstanding anything to the contrary contained in this Constitution the Trustees shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this Constitution and any of its annexure, including any amendments of additions thereto.

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. Further to clause 38.1 above, any amendment or alteration to Clauses 2, 3, 4, 5.1 7, 8, 10, 11, 12, 24.1, 24.2 and 38 of the Constitution shall be subject to the prior written consent of the Council.

38.3. This clause 38 shall not apply to amendments to the annexures referred to in clause 5.1 above.

38.4. This constitution and any amendment thereof must be lodged with the City of Cape Town so that the latest copy duly lodged with the City, and which City has certified in terms of subsection 62(2) or 62(4) of the By-Law, is presumed to contain the operative provisions of the Constitution. The City must therefore certify that the Constitution of the Association complies with Section 62(1) of the By-Law.

38.5. The City is exempt from liability for any damage which may be caused by its certification of this Constitution or any amendment thereof or by the loss of a Constitution lodged with the City.

39. OWNERS ASSOCIATION WHICH FAILS TO MEET AN OBLIGATION OR CEASES TO FUNCTION

39.1. If the Association fails to meet any obligations in this Constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.

39.2. The City may recover any expenditure in respect of the action contemplated above from the Association or its members, who are jointly liable.

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

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

39.4.1. hold a meeting and to reconstitute itself; or

39.4.2. dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owner's 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:

39.4.3. the purpose of the Association;

39.4.4. who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;

39.4.5. the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;

39.4.6. the impact of the dissolution of the Association on its members and the community;

39.4.7. any written representations from the Association and its members.

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

39.5.1. the transfer to the City of the Association's property which contains the internal engineering services and private open spaces;

39.5.2. the upgrading of the internal engineering services to the standards of the City.

39.6. In the event that the Association has ceases to function and an owner wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% (Sixty Percent) of the members of the Association, which consent is deemed to be the consent of the Association".

40. **EFFECTIVE DATE OF CONSTITUTION**

This Constitution, as certified by the City of Cape Town, is deemed to be the Constitution of the ORHOA nd comes into force upon the transfer of the first residential erf mentioned herein.

41. **RIGHT TO EXTEND**

41.1. The Developer, its successors in title, assigns or nominees will have the absolute right to extend and enlarge the Development and as such, the Estate, by the addition of the Additional Land, indicated as such on the Extended SDP, by adding more Residential Erven and Common Areas to the Development and as such the Estate, thereby increasing the number of the Members.

41.2. This right to extend will only terminate once the Developer has exercised its rights in terms of this Clause 41 or in the instance of the Developer unilaterally waiving and terminating its right to extend.

41.3. The Members and/or the Trustee Committee may not under any circumstances prevent the Developer from exercising its rights in terms of this Clause 41.

41.4. The Additional Land must be incorporated into the Estate and managed and controlled in terms of the provisions of this Constitution.

41.5. The Land and the Additional Land will be considered to be 1 (One) Estate, controlled and managed by the Trustee Committee and Managing Agent.

41.6. The owners of the residential erven in the Additional Land must also become Members of the ORHOA and will be subject to the same obligations and entitled to the same rights as provided for in this Constitution.

41.7. The Levies will be amended accordingly and all Members will be subject to the payment of 1 (One) equal Levy.

STAD KAAPSTAD

2 0 OCT 2021

SIGNED BY THE FIRST TRUSTEES

Signature	Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

STAD KAAPSTAL

2 0 OCT 2021