



HOMEOWNERS ASSOCIATION (HOA)

CONSTITUTION

Version 3

August 2025

1. INTERPRETATION

In this constitution:

- 1.1 The following words shall, unless the context otherwise requires, have the meanings assigned to them below:
- 1.1.1 "Estate Architect" means the architect appointed by the association or, during the development period, by the developer.
 - 1.1.2 "Association" means the Robertson Lifestyle Estate Home Owners Association (sometimes also referred to as Property Owners Association) and abbreviated as HOA.
 - 1.1.3 "Auditors" means the auditors of the Association.
 - 1.1.4 "Business day" means days other than Sundays, Saturdays or public holidays.
 - 1.1.5 "Chairperson" means the chairperson of the HOA trustee committee.
 - 1.1.6 "Commercial freehold erf" means any erf or erven zoned in terms of the town planning scheme for commercial or business purposes or which is used for commercial or business purposes with the consent of the local authority and the Association.
 - 1.1.7 "Commercial sectional title unit" means any sectional title unit/s or exclusive use area/s zoned in terms of the town planning scheme for commercial or business purposes or which is used for commercial or business purposes with the consent of the local authority and the Association.
 - 1.1.8 "Common areas" means the estate road reserves, estate open spaces and estate gardens, together with any other areas and/or facilities which the developer or the trustee committee may designate as common areas from time to time.
 - 1.1.9 "Constitution" means this constitution and all rules and regulations of the Association as amended and in force from time to time, and shall include all annexures.
 - 1.1.10 "Building performance agreement" means the agreement to be entered into between the Association and any contractor appointed to construct an improvement on an erf, in the standard form issued by the Association from time to time.
 - 1.1.11 "Design guidelines" (also referred to as "Architectural design guidelines") means design guidelines to control all aspects of architectural design of all erven, as amended from time to time in terms of this constitution or as required by the local authority.
 - 1.1.12 "Developer" means Robertson Uitbreiding 9 (Pty) Ltd, a private company incorporated in terms of the Companies Act, Act 71 of 2008 and all its respective successors in title as owners of the estate land or the remainder thereof from time to time.
 - 1.1.13 "Development period" means the period commencing on the date of creation of the Association and terminating on the date that all but the last four (4) original residential erven in the estate have been sold, transferred and/or ceded (as the case may be) for the first time by the developer, or until the developer notifies the Association in writing that the development period has ceased, or by 28 February 2029, whichever occurs first.
 - 1.1.14 "Erf" or "Erven" means any erf or erven on the estate.
 - 1.1.15 "Estate" means the Robertson Lifestyle Development established on the estate land comprising of single residential erven, assisted living area, hospital, parking space, independent living areas, sectional title apartments, common areas, commercial and retail area and all such additional areas as may be incorporated as further or altered phases into the development as provided for herein.
 - 1.1.16 "Estate administrator" means the person or company appointed to manage the mostly financial and secretarial affairs of the Association as described herein later.

- 1.1.17 "Estate manager" means the person appointed as an employee to manage the day to day on-site affairs of the Association.
- 1.1.18 "Land" means Erf 7545, Robertson in the Langeberg Municipality, Robertson, Western Cape currently held under title deed T10065/2018.
- 1.1.19 "Local authority" means the Langeberg Municipality or its successors.
- 1.1.20 "Member(s)" means a member or members of the Association.
- 1.1.21 "Month" means a calendar month.
- 1.1.22 "Office" means the registered office of the Association, situated at 12 Johan de Jong Avenue, Robertson.
- 1.1.23 "Ordinance" means the Land Use Planning Ordinance (Ordinance 15 of 1985) as amended or substituted from time to time, as well as any regulations promulgated in terms thereof and "Bylaw" means the Langeberg Municipal Land Use Planning Bylaw, 2015.
- 1.1.24 "Registered owner" means the registered owner of any erf or sectional title unit if applicable.
- 1.1.25 "Residential freehold erf" means any erf or erven zoned in terms of the town planning scheme for residential purposes or which is used for residential purposes with the consent of the local authority and the Association.
- 1.1.26 "Residential sectional title unit" means any sectional title unit/s or exclusive use area/s zoned in terms of the town planning scheme for residential purposes or which is used for residential purposes with the consent of the local authority and the Association.
- 1.1.27 "Services" means such facilities, utilities, services and amenities as may be provided on the estate including (but not limited to) electricity, roads, storm water pipes or channels, water sewage and waste removal.
- 1.1.28 "Sectional title unit/s" means any sectional title unit/s and exclusive use area/s on the estate forming part of a Sectional Title Scheme.
- 1.1.29 "Site development plan" means a plan substantially indicating various land use portions in the estate as amended from time to time.
- 1.1.30 "Special resolution" means a resolution passed at a special general meeting in accordance with the provisions provided herein.
- 1.1.31 "Trustee" means a member of the trustee committee.
- 1.1.32 "Trustee committee" or "trustees" means the board of trustees of the Association from time to time.
- 1.1.33 "In writing" means written, printed or lithographed or partly one and partly another, and/or other modes of representing or producing words in a visible form.
- 1.1.34 "Year" means a calendar year.
- 1.1.35 "Emergency Response Scheme (ERS)" means a voluntary resident opt-in emergency alert and response service facilitated by the RLE HOA in partnership with third-party providers, which may include both medical and non-medical services.
- 1.1.36 "CSOS Act" means the Community Schemes Ombud Service Act (Act Nr 9 of 2011).
- 1.1.37 "SAIV" means the South African Institute of Valuers.
- 1.2 Unless the context otherwise requires, any words importing the singular will include the plural and *vice versa*, and words importing one gender will include the other genders.

- 1.3 Words and expressions used in this constitution to which a meaning has been assigned in the ordinance will bear the meanings so assigned to them.

2. CREATION OF THE ASSOCIATION

The Association came into existence simultaneously with the first registration of transfer of an erf or sectional title unit as the case may be from the developer to a registered owner, which was on 13 June 2019.

3. STATUS OF THE ASSOCIATION

- 3.1 The Association will:
- 3.1.1 Have legal personality and be capable of suing and being sued in its own name.
 - 3.1.2 Operate for the benefit of the members.
- 3.2 No member shall have any right, title or interest in or to the funds or the assets of the Association in his personal capacity, all of which shall vest in the Association.

4. MAIN OBJECT OF THE ASSOCIATION

The main object of the Association is the matters referred to in terms of this constitution and more specifically:

- 4.1 The control over and maintenance of:
- 4.1.1 All common areas in general.
 - 4.1.2 All buildings and/or structures on the common areas.
 - 4.1.3 All internal services, landscaping, irrigation and amenities on the common areas.
 - 4.1.4 The further distribution of all relevant individual metering beyond bulk metering points.
 - 4.1.5 All additional common areas designated as such by the developer or the trustee committee from time to time.
 - 4.1.6 The perimeter walls and fences of the estate and the common areas, including the main entrances, facilities and gatehouse, but specifically excluding the entrances, gate houses, walls and fences on the internal perimeter of internal developments within the estate.
- 4.2 To impose and collect levies as contemplated herein below.
- 4.3 The control over the compliance and enforcement of the design guidelines in relation to all erven and all other guidelines as may be introduced in terms of the constitution;
- 4.4 The promotion, advancement and protection of the communal and group interests of the members generally.
- 4.5 To implement and maintain security measures and systems for controlled access to the estate.
- 4.6 To monitor and enforce compliance by the registered owners and the Association with the constitution.
- 4.7 To monitor and enforce compliance by the registered owners imposed by the local authority in respect of the estate.
- 4.8 To bear the running cost of all street lighting within the estate, as well as any consumption charges related to the common areas as per paragraph 4.1.4 above.
- 4.9 To enter into service agreements with the local authority or any other authority or supplier of services in regard to the supply of services to the Estate, including *inter-alia* refuse removal and security services.

- 4.10 To accept the cession of any rights and delegation of any duties to the Association under any other agreement entered into by the developer for the benefit of the Association.
- 4.11 To prescribe measures for the landscaping and development of erven on the estate, and for the architectural design and building of improvements to erven on the estate so as to ensure a harmonious and aesthetic development of the estate, and to prescribe measures for the maintenance of such standards of development.
- 4.12 To register, where necessary, various service or other servitudes over the common areas in the estate in favour of the local authority 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 common services. All overland storm water escape routes are to be maintained and kept free of all obstruction and protected by servitudes where they traverse private property.
- 4.13 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.
- 4.14 To formulate, enforce, modify, amend, add and delete the estate rules and regulations.
- 4.15 To enforce the provisions of the constitution.
- 4.16 To appoint an estate administrator, manager and/or any other personnel to manage the affairs of the Association.
- 4.17 To accredit architects, engineers and builders to be utilised by registered owners in respect of any design and construction work to be conducted on any erven, in accordance with such criteria as the Association may stipulate from time to time.
- 4.18 To accredit estate agents appointed by registered owners in respect of resale of erven, in accordance with such criteria as the Association may stipulate from time to time.
- 4.19 To enter into agreements with other developments located in close proximity to the estate and/or with land owners of land adjacent to the estate with regard to the sharing of facilities or services of any nature whatsoever including, but not limited to, security, landscaping, gardening, agricultural services, water, sewerage, electricity, refuse removal and roads, whether or not for the purposes of sharing the cost thereof.
- 4.20 To accredit service providers or contractors in respect of services to be rendered to members, including, but not limited to pool cleaning and garden service contractors.

5. FINANCIAL YEAR END

The financial year end of the Association is the end of February of each year or such other date as the trustees may decide from time to time.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership of the Association shall be limited to and compulsory for the following persons:
 - 6.1.1 Each registered owner of an erf, including but not limited to a residential erf.
 - 6.1.2 Each registered owner of a sectional title unit if and when applicable.
 - 6.1.3 The registered owner of the hospital.
 - 6.1.4 The developer, for the duration of the development period.
- 6.2 Membership in terms of clause 6.1 shall commence simultaneously with registration of the erf or sectional title unit, if applicable, into the name of the registered owner in the deeds office.

- 6.3 The following conditions shall be binding on each registered owner and their successors in title and the following words shall be included in the title deed of each erf, sectional title unit or property subject to an occupation right:
- “The Owner of each subdivided erf, sectional title unit or occupation right shall upon registration of such erf, unit or right in its name ipso facto become a member of the Robertson Lifestyle Estate Homeowners Association (or Robertson Lifestyle Estate Property Owners Association) and remain so while owning the property or the right. The erf, unit or right may not be sold or transferred save with the consent of the Association, which consent will not be unreasonably withheld.”***
- 6.4 Where the registered owner is more than one person, all the registered owners of that erf, sectional title unit or occupation right shall be deemed jointly and severally to be one member and shall nominate one owner to represent them and vote at meetings of the Association.
- 6.5 When a member ceases to be a registered owner, he shall *ipso facto* cease to be a member of the Association.
- 6.6 A registered owner may not resign as a member of the Association.
- 6.7 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.
- 6.8 The rights and obligations of a member shall not be transferable and every member shall:
- 6.8.1 To the best of his ability further the objects and interests of the Association.
- 6.8.2 Observe all bylaws and regulations made by the Association and/or the trustee committee from time to time.
- 6.9 The developer or its nominee shall be entitled on behalf of the Association to sign all such documents as may be necessary in order to enable the developer to give transfer of erven, sectional title units or any other occupation rights sold by the developer to the purchaser thereof.
- 6.10 A member shall not be entitled to consolidate two or more erven into one or subdivide erven into two or more portions without the prior written approval of the developer during the development period and, thereafter, of the Association.

7. ALIENATION

- 7.1 Save in those instances where the developer passes first transfer to a new owner or otherwise agree thereto in writing, in all instances where a registered owner wishes to alienate or transfer his erf or sectional title unit, if applicable, or in the event that the said erf or sectional title unit is owned by a company or close corporation or trust, should the shareholders or members or trustees or beneficiaries wish to alienate all their shares or membership interest or other interest in such entity, he or it shall not be entitled to do so unless:
- 7.1.1 The transferee agrees in writing to accept and abide by the constitution and becomes a member of the Association;
- 7.1.2 The registration of transfer or cession (as the case may be) of that erf or sectional title into the name of the transferee shall *ipso facto* constitute the transferee as a member of the Association;
- 7.1.3 He or it obtains a clearance certificate from the Association which shall be issued provided that:
- 7.1.3.1 The transferee, and in case of any legal entity the shareholders, members, trustees and beneficiaries *in solidum* with the transferee agrees in writing to accept and abide by the constitution of the Association, including all rules made by the trustees and/or the developer in terms of this constitution.

- 7.1.3.2 In the case of all residential erven or sectional title units, one percent (1%) of the gross selling price of the erf or sectional title unit and any improvements thereon is paid to the Association by the selling registered owner.
- 7.1.3.3 All amounts owing by the registered owner to the Association have been paid or satisfactorily secured, in the discretion of the Association.
- 7.1.3.4 All obligations of the registered owner in terms of the constitution has been complied with in full.
- 7.1.3.5 He or it pays the Association the fees pertaining to such certificate as determined by the Association from time to time.

7.2 Alienation of an erf is considered to be:

- 7.2.1 A sale, donation, bequest or any other form of alienation (except for the registration of a bond) of an erf or unit.
- 7.2.2 The sale, donation, bequest or any other form of alienation of shares in a company or members interest in a close corporation.
- 7.2.3 A sale, donation, bequest or any other form of alienation of the rights of existing beneficiaries in a trust.

7.3 In the event of an erf being alienated at a value less than market value the amount referred to in paragraph 7.1.3.2 shall be calculated on the fair market value. If the trustees and the member or his representative cannot agree on the fair market value within 10 days the trustees and the member will appoint a registered valuator to determine the fair market value, the cost of which will be payable by the Association and the member in equal shares. In the event of the parties being unable to agree within 10 days on the valuator, a SAIV registered valuator must be appointed by the auditor of the Association.

7.4 The amount received by the Association in terms of clause 7.1.3.2 shall be for the benefit of the Association and may be utilised to limit future increases in levies payable by members to the Association or for any other purpose in furthering the objectives of the Association.

8. DESIGN GUIDELINES

- 8.1 All buildings and other structures or any part thereof shall comply with the provisions of the design guidelines.
- 8.2 All buildings and other structures on all erven shall comply with the conditions and guidelines imposed by the local authority and the developer during the development period, and thereafter, of the Association.
- 8.3 No party shall be entitled to, without signature of the building performance agreement having regard to the design guidelines imposed and the prior written approval of the trustees and the developer, during the development period:
 - 8.3.1 Erect any new building and/or structures of any nature whatsoever on any erf in the estate.
 - 8.3.2 Make any changes or alterations to existing buildings and/or structures on any erf in the estate including changes to the external colour scheme.
- 8.4 The approval of the trustees and/or the developer as contemplated above shall, provided it not be interpreted as detracting from the sole and final responsibility of the local authority to approve or reject building plans, only be given:
 - 8.4.1 After detailed plans of the proposed work have been submitted to the trustees, the architectural review committee or any other competent person (as nominated by the developer or trustees from time to time), which person may be an architect or architects registered within the South African Council of architects or the Institute of South African Architects.

- 8.4.2 The developer or trustees or their nominee is satisfied that the proposed work is in accordance with the design guidelines imposed for the purposes of which the trustees, the architectural review committee and/or any other nominee shall be the sole arbiter and their decision shall be final and binding on the registered owner concerned.
- 8.4.3 The registered owner concerned has made payment of any costs which may be incurred in obtaining this approval, including the costs of the trustees or their nominee.
- 8.4.4 The registered owner concerned has paid to the trustees a deposit in such amount as the trustees may from time to time determine in their sole discretion, as security for any damage to any of the common areas, which amount shall be held by the Association, subject to the provisions stipulated herein below.
- 8.5 After the expiration of the development period and subject to the restrictions imposed or directions given at a general meeting of the Association, the trustees may from time to time amend, augment, substitute or add to the provisions of the design guidelines and/or the building performance agreement and introduce new design guidelines applicable to other erven and to amend, amplify, substitute or add to the provisions of such design guidelines.
- 8.6 Any such amendment, augmentation, substitution or addition shall be subject to a resolution passed by the trustees holding no less than 75% (seventy-five percent) of the total voting rights of the trustees.
- 8.7 In the event of any of the provisions of the design guidelines, the building performance agreement or any design guidelines introduced in terms of this constitution being amended, augmented, substituted or added to, and such amendment, augmentation, substitution or addition, in the opinion of the trustee committee, materially affects any further development within the estate (or any part thereof), the trustee committee shall give written notice of any such amendment, augmentation, substitution or addition to all members.
- 8.8 The provisions of the clauses above shall not apply to the developer, provided that the developer shall comply with the conditions imposed by the local authority when approving any development of the land.

9. DEPOSIT FOR CONSTRUCTION DAMAGES

- 9.1 Each registered owner shall, when submitting to the trustees for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements in the estate, pay to the Association a deposit in an amount to be determined from time to time by the developer or the trustees which amount shall be retained by the Association in trust until completion by the registered owner and/or its contractors of such work, the interest of which deposit shall accrue for the benefit of the Association.
- 9.2 Upon completion of all such building and other activities, the trustees shall, if they are satisfied that no damage has been affected by the registered owner or any of its contractors to the common areas within the estate and that the work has been constructed in accordance with the duly approved plans, release the building deposit to the registered owner, excluding any interest thereon which will accrue to the Association and further less any fines or penalties payable in terms of the building performance agreement, if applicable.
- 9.3 In the event of any common area having been damaged due to such work, the registered owner shall within 15 days of having been requested to do so in writing by the trustees, rectify the damage to the satisfaction of the trustees, failing which, such trustees shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the Association as a building deposit shall be utilised to pay all costs of such repair. If the amount paid to the Association as a building deposit is not sufficient to cover the cost of such repairs the Association shall be entitled to recover the shortfall from the registered owner.

10. CONSTRUCTION OF DWELLINGS

- 10.1 Registered owners of residential erven are obliged to commence construction of dwellings on their respective residential erven as follows:

- 10.1.1 In the case of those erven designated as “Independent Living”, within 12 months from the first transfer date, and to complete construction of such dwelling within one year of the date the member commences construction.
- 10.1.2 In case of those erven designated as “Single Residential”, within 24 months from the first transfer date, and to complete construction of such dwelling within one year of the date that the member commences construction.
- 10.2 For the purposes of clauses 10.1:
 - 10.2.1 The first transfer date means the date of the registration of the relevant residential erf from the developer into the name of the first purchaser of such erf.
 - 10.2.2 In the case of a resale of any residential erf, the new purchaser shall step into the shoes of the seller in respect of calculation of the time period referred to in clauses above.
 - 10.2.3 Commencement of construction or commenced construction means the commencement of any work of whatsoever nature on the relevant erf relating to the construction of a dwelling, as certified by the Association whose certificate shall be final and binding on the member.
 - 10.2.4 Completed construction means a sufficiently completed dwelling for beneficial occupation, constructed and completed in accordance with the design guidelines referred to herein and certified as contemplated by the Association, whose certificate shall be final and binding on the parties.
- 10.3 In the event that the registered owner of a residential erf should **fail to commence construction** in accordance with the provisions of clause 10.1 and 10.2 above the following shall apply:
 - 10.3.1 The registered owner shall pay a **monthly penalty levy** to the Association in an amount of the current monthly levy payable by such owner **multiplied by 0.5 (zero point five)** in respect of each month or *pro rata* part thereof **beyond the specified commencement deadline date** that the registered owner has not commenced construction on the residential erf, which monthly penalty levy shall be payable until the date the registered owner commences construction on the residential erf or until the second anniversary of the first transfer date, whichever occurs first.
 - 10.3.2 The registered owner shall pay a **monthly penalty levy** to the Association in an amount of the current monthly levy payable by such owner **multiplied by 1 (one)** in respect of each month or *pro rata* part thereof **beyond the first anniversary of the specified commencement deadline date** that the registered owner has not commenced construction on the residential erf, which monthly penalty levy shall be payable until the date the registered owner commences construction on the residential erf or until the third anniversary of the first transfer date, whichever occurs first;
 - 10.3.3 The registered owner shall pay a **monthly penalty levy** to the Association in an amount of the current monthly levy payable by such owner **multiplied by 2 (two)** in respect of each month or *pro rata* part thereof **beyond the second anniversary of the specified commencement deadline date** that the registered owner has not commenced construction on the residential erf, which monthly penalty levy shall be payable until the date the registered owner commences construction on the residential erf.
 - 10.3.4 In the case of a resale, the penalty levies above will be waived for the first 6 (six) months after the date of transfer into the name of the new owner.
- 10.4 In the event that the registered owner should **fail to complete construction** on or before the prescribed completion date in accordance with provisions of clause 10.1 above the following shall apply:
 - 10.4.1 The registered owner shall pay a **monthly penalty levy** to the Association in an amount of the current monthly levy payable by such owner **multiplied by 0.5 (zero point five)** in respect of each month or part thereof **beyond the prescribed completion date** that the registered owner has not completed construction on the residential erf, which monthly penalty levy shall be

payable until the date the registered owner finalizes construction on the residential erf or until the second anniversary of the prescribed completion date whichever occurs first.

- 10.4.2 The registered owner shall pay a **monthly penalty levy** to the Association in an amount of the current monthly levy payable by such owner **multiplied by 2 (two)** in respect of each month or *pro rata* part thereof **beyond the first anniversary of the prescribed completion date** that the registered owner has not completed construction on the residential erf, which monthly penalty levy shall be payable until the date the registered owner finalizes construction on the residential erf.
- 10.5 Any penalty levy payable in terms of the above clauses shall be paid in addition to the normal levy payable by the registered owner in terms of this constitution and in the event of a dispute arising as to whether a dwelling is completed for the purposes of the provisions of this clause, the chairperson of the trustee committee shall determine such dispute and his decision shall be final and binding.
- 10.6 No member shall be entitled to:
- 10.6.1 Continue construction of any building beyond the casting of the foundations until such time as he has obtained a certificate from the ARC certifying the layout of the building upon it.
- 10.6.2 Take occupation or allow any other person to take occupation of any building or part thereof erected upon his erf until such time as the construction of the external envelope of such building has been completed and the Association has issued a certificate of completion in respect of such building. In the event that a member should take occupation or allow occupation to be taken of his building or part thereof without first obtaining a certificate of completion from the Association, then the Association shall be entitled, without prejudice to any other rights that it may have, to have the member and/or all persons occupying the building or part thereof, evicted therefrom or to refuse the member and/or all persons occupying the building or part thereof access to the estate, including locking such occupier out from having access to the estate.
- 10.7 The provisions of paragraph 10 shall not be applicable in relation to any of the works to be undertaken by the developer on any of the residential erven.

11. VERGES, SIDEWALKS & CONSOLIDATED ERVEN

- 11.1 The registered owner of each erf shall at such owner's cost at all times keep the following maintained in a clean, neat, tidy and appropriate condition according to the sole discretion of the Board of Trustees:
- 11.1.1 The sidewalk between the boundary of such residential erf and the road.
- 11.1.2 The landscaping, grass, plants and flowers on the verge between the boundary of such owners' residential erf and the road and/or any other adjacent common area.
- 11.1.3 The whole of any erf consolidated with the main erf for the purpose of gardening.
- 11.2 The registered owner shall be obliged to landscape the verge between the boundary of such erf and the road and/or any other adjacent common area within 2 (two) years of the date of first transfer.
- 11.3 For the purposes of clause 11 the date of first transfer means the date of first registration of transfer into the name of the registered owner from the developer.

12. PIPELINES

- 12.1 It is the duty of each registered owner to ascertain that his architect establish from the Association whether such registered owner's property or its building line is situated above a pipeline or "pipeline area", prior to commencement of the drafting of building plans.
- 12.2 If a registered owner's property is situated above a pipeline and should such pipeline be situated within the building line of the residential property, the registered owner will grant the Association the right at all times to bring upon the pipeline area all such workmen, conveyances, tools, machinery and materials as

in the opinion of the Association or its authorised representatives may be necessary or desirable for the construction and laying of the said pipes or for the cleaning, repairing, maintaining, renewing or replacing of same from time to time and to make such excavations on the pipeline area of such depth and in such manner as may be necessary or desirable in the discretion of the Association.

- 12.3 The Association shall be entitled to deposit temporarily on the land adjoining the said pipeline area such materials as may be excavated by the Association during the course of the construction, repair, maintenance, removal or replacement of the said pipeline as the Association in its discretion may deem necessary. Should any damage be caused to the property as a direct result of the process of construction, repair, maintenance, removal or replacement of the said works, such damage shall be compensated by the Association.
- 12.4 The Association shall at all times before or after the completion of the said pipeline or any part thereof as aforesaid have full and free access by its officials, assistants, workmen, employees, vehicles or agents to the said pipeline area for the purpose of carrying out, constructing, laying down, examining, cleaning, clearing, maintaining, repairing and removing or replacing the said pipeline and/or portions thereof.
- 12.5 The registered owner shall not erect or cause or permit to be erected any buildings or other structures on or over the said pipeline area or plant or permit to be planted thereon any large rooted trees, or dump or permit to be dumped any soil or rubbish thereon, or to, or permit to be done anything in or on the pipeline area or in the immediate vicinity thereof which will or is likely to interfere with or prejudice the rights conferred upon the Association in this constitution. Any damage which may be caused to the said pipeline constructed by the Association on the said pipeline area or to any portion thereof by reason of any breach by the owner of obligations hereunder or under any law shall be compensated by the registered owner at the registered owner's own expense. If the registered owner covers the pipeline area with paving or concrete, the Association shall not be liable for any damage caused as a result of the upliftment of such paving or concrete.
- 12.6 The Association shall ensure to the best of its ability that all conditions contained in this clause are complied with prior to approving any building plans submitted to the Association for approval, but do not accept responsibility for any damages for whatever reason.

13. SOLID WASTE COLLECTION AND OTHER SERVICES

- 13.1 Registered owners shall allow the collection of solid waste at such times as stipulated from time to time by the local authority and shall ensure that they at all times comply with all municipal laws, rules, regulations and guidelines pertaining to waste collection.
- 13.2 The local authority will not be liable for any wear and tear on the roads, or for any theft or accidental damage to any equipment, roads or other feature in the development.
- 13.3 The trustees of the Association shall be entitled to sign any indemnity letter, on behalf of the Association, in terms of which the Association indemnifies the local authority against any claims from all damages or losses incurred to roads, road furnishing and curbs as a result of the local authority's collecting refuse within the boundaries of the estate.
- 13.4 Registered owners of residential erven shall without compensation be obliged to allow gas mains, electricity, communication and television cables and/or wires, and main and/or other water pipes and foul sewers and storm water pipes, trenches, and channels of any other residential erven to be conveyed across the residential property concerned and shall furthermore without compensation be obliged to allow surface installations such as streetlights, mini substations, meter kiosks and service pillars to be installed thereon if considered necessary by the Association in such manner and position as may from time to time be reasonably required. This shall include the right of access to the residential property at any reasonable time for the purpose of constructing, altering, repairing, removing or inspection of any works connected with the above.
- 13.5 Registered owners of residential erven shall be obliged, without compensation to receive such material or permit such excavations on the residential property as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the residential property, unless the registered owner elects to build retaining walls to the satisfaction of and within a period to be determined by the Association.

- 13.6 Registered owners of residential erven shall be obliged, without compensation to maintain every part of any retaining wall, roof, pipe, gutter, wiring or other structure or thing as is common to such residential property and any other residential property.
- 13.7 Registered owners of residential erven shall be obliged, without compensation to permit access to such residential erven for the purpose of maintaining, cleaning, renovating, repairing, renewing, altering and adding to any wall, roof, pipe, gutter, wiring or other structure or thing, and shall not do anything which will prevent or hinder any such access or work from being done.
- 13.8 Registered owners of residential erven shall be obliged not to make any alterations or additions to or demolish any part of the buildings erected on the servitudes, including boundary walls and fences, or change the exterior colour scheme of materials of such buildings without the written consent of the Association, nor shall they permit the exterior of the building to deteriorate and become untidy or dirty.
- 13.9 Any members having overland storm water escape routes situated on the property shall be obliged to keep these areas free of all obstructions.

14. LEVIES

- 14.1 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:
 - 14.1.1 Maintenance, repair, improvement, and keeping in order and proper condition of the common areas, including specifically landscaping, all services, sewage treatment and the security systems to be installed on the common areas.
 - 14.1.2 Payment of all rates and other charges payable by the Association in respect of the common areas, if any, and/or for the services rendered to it.
 - 14.1.3 Payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, the common areas and the association's affairs (including its obligations arising in terms of this constitution).
 - 14.1.4 Any reserves which the trustee committee may deem necessary.
- 14.2 In calculating levies, the trustee committee shall take into account income and other revenues if any, earned by the Association. The trustee committee shall as far as reasonably possible:
 - 14.2.1 Assign those costs arising directly out of any Erf or Sectional Title Unit to the owner/s of such Erf or Sectional Title Unit.
 - 14.2.2 Assign those costs relating to the estate in general to the registered owners of all Erven and Sectional Title Units equally, provided however that the trustee committee may assign to any owner/s of an Erf or Sectional Title Unit any greater or lesser share of the costs and expenses in their sole discretion as they may consider to be reasonable under the circumstances.
 - 14.2.3 Assign a proportion of those costs attributable generally or specifically to a particular Sectional Title Scheme, it being agreed that the Body Corporate of such Sectional Title Scheme shall determine the pro-rata portion due by each registered owner of a Sectional Title Unit in the said Sectional Title Scheme and shall be responsible for collecting such pro-rata amounts from each owner of a Sectional Title Unit, which owner/s of a Sectional Title Unit agrees to be jointly and severally liable with the Body Corporate of such Sectional Title Scheme for payment of the levies.
- 14.3 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, that shall result from the preceding year, and shall determine the 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 month and every succeeding month of such year.

- 14.4 The trustee committee may, from time to time, impose special levies upon the members in respect of all such expenses as are mentioned and which are not included in any estimate made in terms of the constitution, 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 necessary. Such levies shall only be imposed after consultation with the members of the HOA and after the majority vote in favour thereof.
- 14.5 The amount due by a member by way of a levy shall be a debt due by such member to the Association. The obligation of a member to pay a levy shall cease upon such member ceasing to be a member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a member shall under any circumstances be repayable by the Association upon such member ceasing to be a member. A member's successor in title to a property, as the case may be, shall be liable as from the date upon which he becomes a member pursuant to the transfer or session thereof, to pay the levy attributable thereto.
- 14.6 A member shall make payment of the monthly levies by virtue of debit order drawn on the member's banker, should the trustees so demand after a member has defaulted in timeous payment of his monthly levies on more than two occasions in any financial year of the Association.
- 14.7 Except as provided for in clause 14.8 below, for the duration of the development period, the developer shall have no obligation to pay or to contribute to any levies or special levies.
- 14.8 During the development period, the developer shall pay the shortfall between the income derived from the levies paid by the members in terms of this clause and the actual expenditure of the Association in each financial year.
- 14.9 The trustee committee shall at all times ensure that the maintenance and control of the common areas and the expenditure incurred in respect thereof is carried out in a manner which is fair and equitable to all the members of the Association.
- 14.10 No member shall be entitled to any of the privileges of membership, including voting at any meeting, unless and until he shall have paid all levies and any other sum (if any) which shall be due and payable to the Association by such member.
- 14.11 Where two or more erven has been consolidated, levies shall be payable in respect of each such property as they existed prior to consolidation and as if such consolidation had not occurred.
- 14.12 Where a property has been subdivided into two or more portions, levies shall be payable in respect of each new property which comes into existence as a result of such subdivision.
- 14.13 A member will be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the Association in recovering arrear levies, or any other arrear amounts due and owing by such members to the Association or in enforcing compliance with this constitution, the conduct rules or obligations of the Association.

15. DEALING WITH COMMON AREAS

- 15.1 After transfer to the Association, neither the whole nor any portion of the common areas shall be sold, subdivided, transferred or mortgaged without the approval of the members by way of a special resolution subject to the rights of use and any letting permissible in terms of this constitution.
- 15.2 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. In this regard the developer or the chairperson of the Association shall be entitled to sign any documents that may be required to enable the registration of transfer of the common areas in the name of the Association.
- 15.3 The Association acknowledges that the local authority shall not be responsible for, and the Association shall solely be 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 local authority, if any) and all amenities and improvements located or to be located on or within the common areas.

16. CURRENT AND FUTURE DEVELOPMENTS

Developments as originally envisaged by the developer consists of the following:

- 16.1 The establishment of private medical facilities with accompanying parking area including but not limited to a day surgery, radiology facilities and the establishment of a subacute hospital.
- 16.2 The establishment and division of erven on the estate in four separate residential categories, all subordinate to this constitution, rules, regulations, and trustee committee created in terms of this constitution, and as determined by the developer exclusively, namely:
 - 16.2.1 Assisted living (sectional title scheme mainly for persons in need of care).
 - 16.2.2 Independent living residential erven.
 - 16.2.3 Single residential residential erven.
 - 16.2.4 Sectional title scheme apartments.
- 16.3 The establishment of a business centre and accompanying parking area.
- 16.4 The establishment of a church-owned zone.

17. SERVICES

With effect from the date upon which the Association is created in terms of clause 2, the obligation to maintain and repair services shall pass from the developer to the Association.

18. CONTRACTS AND REGULATIONS

- 18.1 Subject to any restrictions imposed or directions given at a general meeting of the Association and subject to the conditions imposed by the local authority in approving the rezoning and subdivision of land, the trust committee may from time to time:
 - 18.1.1 Make regulations governing, *inter-alia*:
 - 18.1.1.1 The management of the estate.
 - 18.1.1.2 The members' rights of use, occupation and enjoyment of the common areas.
 - 18.1.1.3 The external appearance of and the maintenance of the common areas and the buildings or other improvements erected on the common areas.
 - 18.1.1.4 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 erven, subject always to the design guidelines and the requirements of the local authority.
 - 18.1.1.5 The conduct of members generally.
 - 18.1.2 Enter into agreements with local authorities governing matters and any other incidental matters.
 - 18.1.3 Enter into agreements with the local authority and other parties for the provision of services on the estate.
 - 18.1.4 Impose fines and/or penalties which it considers appropriate in its sole discretion against members who are in default of any of the obligations imposed in terms of this constitution and/or any applicable rules of the Association, including the terms of payment of such fines and/or penalties.
- 18.2 The trustee committee (on behalf of the Association) shall monitor and enforce compliance by the registered owners and by the Association with the design guidelines.

- 18.3 Each member shall be obliged to comply with:
- 18.3.1 The provisions of this constitution.
 - 18.3.2 The design guidelines and any other guidelines imposed in terms of this constitution.
 - 18.3.3 Any regulations made in terms of clause 18.1.
 - 18.3.4 Any agreements referred to in clause 18.1 insofar as those agreements either directly or indirectly impose obligations on him.
 - 18.3.5 Pay such fines as may be imposed in terms of clause 18.1.
- 18.4 Each member undertakes to the developer and the Association that he shall not object to any application for land use rights, including but not limited to an application for rezoning of any current or future development provided that the developer has obtained a unanimous approval from the Board of Trustees after the latter had the opportunity to consider and discuss all implications of such rezoning proposal. This clause shall supersede any conflicting voting provisions contained in clauses 44.1.3 and 44.1.10. Only a unanimous resolution by the Board of Trustees shall be valid for the purposes of authorising land use rights or rezoning applications as described herein.
- 18.5 All officials, employees and contractors employed by the Association, the local government, any public service company and the developer shall, at all times, have reasonable access to the erven and the common areas for purposes of inspecting and/or maintaining all services supplying and/or traversing any part thereof.

19. ESTATE ADMINISTRATOR

- 19.1 During the development period, the developer shall in its sole discretion be entitled to appoint an estate administrator 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 person or company, including the fees and/or remuneration payable.
- 19.2 Any fees and/or remuneration payable to the estate administrator shall be paid by the Association and not the developer.
- 19.3 The appointment of the estate administrator 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 the general meeting, and subject to the requirements of law, be terminated on reasonable notice after the end of the development period.
- 19.4 After the development period, the Association shall be responsible for the appointment of any successive estate administrators, it being contemplated that the affairs of the Association shall at all times be entrusted to a professional administrator with appropriate executive powers and ability so as to conform to the requirements of good corporate governance.
- 19.5 Subject to this constitution, and the terms of his appointment, the estate administrator shall manage and control the business and affairs of the Association under instruction and guidance of the trustee committee.

20. ON-SITE SALES AGENT

- 20.1 The developer may enter into an on-site sales agent agreement in terms of which it appoints an estate agent to provide estate agency services to members ("the appointed estate agent").
- 20.2 The appointed estate agent (if appointed) shall be physically located on the estate at the main security entrance or elsewhere as the developer may determine and the developer shall be entitled to enter into a servitude agreement, long-term lease or sale agreement with the appointed estate agent in respect of the premises contemplated in this clause on such terms and conditions as the developer in its sole discretion deems appropriate.

- 20.3 The developer shall cede its rights and delegate its duties under the on-site sales agent agreement and any lease agreement (if relevant) contemplated in this clause to the Association, and the Association shall accept such cession and delegation on transfer of the applicable portion of the common areas to the Association in terms of the constitution.

21. BREACH

- 21.1 Should any member:

- 21.1.1 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 days after being notified in writing to do so by the trustee committee; or
- 21.1.2 commit any other breach of the provisions of this constitution or any regulation made in terms of this constitution and fail to remedy that breach within a period of seven days after the receipt of written notice to that effect by the trustees committee and complete 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 trustee committee or the Association or any other member may have in law, including the right to claim damages:

- 21.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his obligation in terms of this constitution or any regulation made in terms of this constitution, as the case may be; or
- 21.1.4 to without further notice remedy a breach as contemplated above in paragraph 21.1.2 and immediately recover the total costs incurred by the trustees or the Association in doing so from such member.
- 21.2 Should the trustee 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 trustee committee or the Association or any other member may have in law, the trustee 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 (or its successors), tracing fees and collection commission included.
- 21.3 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 calculated at the prime interest rate plus 2,5 %**, from the due date of payment until the actual date of payment of such amount (both dates inclusive).
- 21.4 In the event of any breach of the rules by a member or any member's household or his lessees, guests, visitors, invitees, employees, contractors and/or agents, such breach shall be deemed to have been committed by the member himself, who shall be jointly and severally liable with such a 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. 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.

23. TRUSTEE COMMITTEE

23.1 The affairs of the Association shall be managed and controlled by a trustee committee consisting of not fewer than five (5) and not more than eight (8) members which shall be nominated or elected from each of the following groups and as indicated:

23.1.1 During the Development Period:

23.1.1.1 Developer

23.1.1.2 Independent Living Residents

23.1.1.3 Single Residential Residents

23.1.1.4 Chairperson of a Sub-committee as established and decided by the Trustees from time to time

23.1.1.5 Owner or Resident of the Sectional Title Scheme Apartments

23.1.1.6 One Additional Trustee nominated by the Developer

23.1.2 After the Development Period:

23.1.2.1 Independent Living Residents --- at least two

23.1.2.2 Single Residential Residents --- at least two

23.1.2.3 Chairperson of a Sub-committee as established and decided by the Trustees from time to time

23.1.2.4 Owner or Resident of the Sectional Title Scheme Apartments

23.2 A member trustee shall be a member or the spouse of a member or an authorised representative of a member where the member is not a natural person.

23.3 The trustees of the Association shall for the development period be divided into two classes, namely "developer trustees" and "member trustees". Upon expiry of the development period there shall only be member trustees.

23.4 During the development period, the majority of the trustees may be appointed by the developer and the remainder of the trustees shall be appointed by the members provided that after the development period, all trustees shall be appointed by the members.

23.5 Until the first trustees of the Association are appointed, the developer shall be entitled to carry out all the functions and duties of the trustees in terms of this constitution.

24. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

24.1 Each trustee, except for the developer trustees who shall not be required to rotate on an annual basis, shall continue to hold office until the next annual general meeting 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.

24.2 A trustee shall be deemed to have vacated his office as such upon:

24.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

24.2.2 his making any arrangement or compromise with his creditors;

24.2.3 his conviction for any offence involving an element of dishonesty;

- 24.2.4 his becoming of unsound mind or being found a lunatic;
 - 24.2.5 if he absents himself from three consecutive meetings of the trustees without leave of absence;
 - 24.2.6 his resignation from such office in writing delivered to the secretary;
 - 24.2.7 his death;
 - 24.2.8 his being removed from office by special resolution of the members;
 - 24.2.9 his alienating of his property in the event that he was a member.
- 24.3 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 or the date of his resignation in writing.
- 24.4 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, if deemed necessary under the circumstances. Whilst developer trustees are in office the remaining developer trustees shall nominate a person to fill any such vacancy in their numbers.
- 24.5 The developer may at any time and from time to time remove and replace any developer trustee on written notice to the remaining trustees.

25. OFFICE OF THE TRUSTEE COMMITTEE

- 25.1 Subject to clause 25.2 below, the trustees shall appoint from amongst themselves, a chairperson and vice chairperson.
- 25.2 The chairperson, and vice chairperson, can, 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.
- 25.3 Subject to the rights of the developer as set out in clause 25.2 above, within seven 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 next annual general meeting held after the 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 25.2 above.
- 25.4 Save as otherwise provided for 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.
- 25.5 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.
- 25.6 Trustees shall be entitled to be reimbursed all reasonable and *bone 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.

26. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 26.1 Subject to the express provisions of this constitution, the trustee committee shall manage and control the business and affairs of the Association and shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not 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.
- 26.2 The trustee committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 26.3 The trustee committee may, should it so decide, investigate any suspected or alleged breach by any member or trustee of this constitution in such reasonable manner as it shall decide from time to time.
- 26.4 The trustee committee may make regulations and bylaws, not inconsistent with this constitution, or any regulations or bylaws prescribed by the Association in general meeting:
- 26.4.1 as to disputes generally;
 - 26.4.2 for the furtherance and promotion of any of the objects of the Association;
 - 26.4.3 for the better management of the affairs of the Association;
 - 26.4.4 for the advancement of the interests of members;
 - 26.4.5 for the conduct of trustee committee meetings and general meetings;
 - 26.4.6 to assist it in administering and governing the Association's activities generally;
 - 26.4.7 and shall be entitled to cancel, vary or modify any of the above from time to time.
- 26.5 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 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.
- 26.6 The trustees may appoint an architectural review committee (ARC) to exercise the powers set out above and in this constitution. Members of such review committee shall not be required to be members of the Association.
- 26.7 Except for any buildings, outbuildings, structures, additions or alterations to be erected or affected by the developer, all plans for buildings, outbuildings, structures, additions, alterations and landscaping shall be approved by the trustees or architectural review committee or any person designated by them for the purpose.
- 26.8 The trustees shall further have the power to make estate and/or conduct rules in regard to *inter-alia*:
- 26.8.1 the siting of all buildings and improvements on the erven, the use of motor vehicles and the parking of vehicles, including, but not limited to trucks, caravans, trailers and boats and the use of the roads;
 - 26.8.2 the use of common areas and the restrictions for the use and enjoyment thereof;
 - 26.8.3 the right to prohibit, restrict or control the keeping of any animals which they, in their sole discretion, regard as dangerous or a nuisance;
 - 26.8.4 the conduct of any persons within the estate for the prevention of nuisance of any nature to any member;

- 26.8.5 the use of services, recreational areas, amenities and facilities including the right to charge a reasonable fee for the use thereof;
- 26.8.6 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;
- 26.8.7 the maintenance of the buildings, outbuildings, structures, improvements of any nature and landscaping of erven on the estate;
- 26.8.8 the control of the number of occupiers permitted on any one property or sectional title unit or dwelling subject to an occupational right;
- 26.8.9 the admission of any person to the estate, and the eviction of any person not entitled to be thereon;
- 26.8.10 maintenance of common areas;
- 26.8.11 refuse disposal and littering;
- 26.8.12 responsibility of the members for the activities of domestic employees and their guests and access of such persons to the estate;
- 26.8.13 security;
- 26.8.14 letting and reselling of erven or properties;
- 26.8.15 the imposition of fines and other penalties;
- 26.8.16 subject to stipulations above and elsewhere in the constitution, the accreditation of estate agents for sales and resales of erven and property and the appointment of an on-site estate agent or agents to conduct sales and resales;
- 26.8.17 the accreditation of architects in respect of submission of plans for any work to be conducted on erven;
- 26.8.18 the accreditation of builders contracted to conduct construction work on erven or in dwellings and property in the estate;
- 26.8.19 the accreditation of service providers or contractors in respect of work to be conducted on behalf of members or the Association on the estate.
- 26.9 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.
- 26.10 The Association may itself in a general meeting 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.
- 26.11 The trustees, in the name of 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 4.
- 26.12 A Trustee may not use his position on the board of trustees for personal or financial gain or use the assets or personnel of the HOA for his benefit.
- 26.13 In general the Trustees shall comply with all applicable legislation, legal requirements and responsibilities according to the CSOS Act.

27. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 27.1 The trustee committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this constitution.
- 27.2 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 requirements in respect of a particular quarter, then no meeting of the trustee committee needs to be held for that quarter.
- 27.3 The *quorum* necessary for the holding any meetings of the trustee committee shall be 50% of trustees holding office at any time and during the development period, shall include the developer unless the developer elects not to attend.
- 27.4 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 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 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, who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.
- 27.5 Minutes shall be taken at every trustee committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing, without undue delay, after the meeting has closed and shall then be certified correct by the chairperson of the meeting. All minutes of the 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 directors of companies. The trustee committee minute book shall be open for inspection at all reasonable times by the trustees, the auditors and the members.
- 27.6 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 resolution, 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.
- 27.7 Save as otherwise provided for in these presents, the proceedings at any trustee meeting shall be conducted in such a reasonable manner and form as the chairperson of the meeting shall decide.
- 27.8 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.
- 27.9 Resolutions put to the vote at meetings of the trustee committee shall be carried by a simple majority subject to what is otherwise provided for in this constitution.
- 27.10 In the case of an equality of votes, the chairperson of the trustee committee shall have a casting vote.

28. GENERAL MEETINGS OF THE ASSOCIATION

- 28.1 The developer shall call the first general meeting of the Association within 60 days of the transfer of 60% of the residential erven or within two years of the transfer of the first land unit, whichever occurs first and the minutes of such meeting shall be sent to the local authority within two weeks of such meeting.
- 28.2 At the first general meeting of the Association, the members shall be obliged to elect the first trustees of the Association.
- 28.3 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 no later than four (4) months after each financial year. Notwithstanding the foregoing, the first annual general meeting of the Association is only required to take place by no later than 12 months from the date of the first general meeting as contemplated above. The Association shall specify the meeting as such in the notices, in terms of the relevant clauses here below.

- 28.4 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.
- 28.5 All general meetings, other than annual general meetings, shall be called special general meetings.
- 28.6 The trustee committee, may, whenever they deem fit, convene a special general meeting.
- 28.7 Where the members who holds at least 25% of the total votes resolve to call a special general meeting, the trustee committee shall be obliged to call such meeting.

29. NOTICE OF GENERAL MEETINGS

- 29.1 An annual general meeting and the meeting called for the passing of a special resolution, shall be called with no less than 21 days' notice in writing, and a special general meeting, other than one called for the passing of a special resolution, shall be called with no less than 14 days' notice in writing. In each case, the notice shall be exclusive of the day on which it is dispatched, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this constitution, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the trustee committee to such persons whom, in terms of this constitution, are entitled to receive such notices from the Association.
- 29.2 A general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this constitution, be deemed to have been duly called if it is so agreed:
 - 29.2.1 in the case of a meeting called as the annual general meeting, by no less than 75% of all the members entitled to vote thereat; and
 - 29.2.2 in the case of a special general meeting, by the developer (for the duration of the development period), or by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding no less than 50% of the total number of votes of all members.
- 29.3 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.

30. THE VENUE OF GENERAL MEETINGS

General meetings of the Association shall take place at such place as shall be determined by the trustee committee from time to time.

31. QUORUM FOR GENERAL MEETINGS

- 31.1 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 at least 20% of the total votes of all members of the Association entitled to vote (excluding the developer), for the time being, save that no less than 15 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.
- 31.2 If within 30 minutes from the time appointed for the holding of the general meeting a *quorum* is not present, the meeting shall stand adjourned for another 15 minutes, and if at such adjourned meeting a *quorum* is not present, the members present shall be a *quorum*.

32. AGENDA OF ANNUAL GENERAL MEETINGS

In addition to any other matters required by this constitution, to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 32.1 The consideration of the chairperson's report.
- 32.2 The determination of the number of trustees for the ensuing year and the election of the trustee committee.
- 32.3 The consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions.
- 32.4 The determination of the *domicilium citandi et executandi* of the Association.
- 32.5 The appointment of an auditor or accounting officer.
- 32.6 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.
- 32.7 The consideration and approval of the report of the auditors.
- 32.8 The consideration and approval of the income and expenditure and the determination of the required reserves (ie the budget) for the ensuing year.

33. PROCEDURE AT GENERAL MEETINGS

- 33.1 The chairperson shall preside as such at all general meetings, provided that should he not be present within 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 15 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.
- 33.2 The chairperson may, with the consent of any general meeting at which a *quorum* is present (and if so directed by the meeting) adjourn the 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 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.
- 33.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

34. PROXIES FOR GENERAL MEETINGS

- 34.1 A member may be represented at a general meeting by a proxy, who must also 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 one person any one of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairperson of the board of directors of the company or by a secretary, and where an association of persons, by the secretary thereof.
- 34.2 The said proxy shall be deposited to the Association's secretary (administrator) at least 24 hours prior to the time appointed for the commencement of the meeting.
- 34.3 No instrument appointing a proxy shall be valid after the expiration of 12 months calculated from the date of its execution.
- 34.4 No member may act as a proxy for more than 1 member, and a proxy may not be transferred by the holder thereof.

35. VOTING AT GENERAL MEETINGS

- 35.1 At every general meeting, every member in person or by proxy and entitled to vote shall be allocated voting rights as follows:
- 35.1.1 The owner/s of a residential freehold erf shall have 1 (one) vote per residential freehold erf.
 - 35.1.2 The owner/s of a commercial freehold erf shall have 1 (one) vote per commercial freehold erf.
 - 35.1.3 All owner/s of a residential sectional title unit shall jointly have a total number of votes per Sectional Title Scheme equal to the percentage of the total levies of the Association contributed by that particular Sectional Title Scheme to the Association in the financial year directly preceding the general meeting, which votes shall be exercised at general meetings by a representative appointed by the relevant Body Corporate from time to time for that purpose. Where such percentage consists of both a number and a decimal fraction, for example 16,55%, the decimal fraction shall be rounded off to the nearest number, for example 17%.
 - 35.1.4 All owners/s of a commercial sectional title unit shall jointly have a total number of votes per Sectional Title Scheme equal to the percentage of the total levies of the Association contributed by that particular Sectional Title Scheme to the Association in the financial year directly preceding the general meeting, which votes shall be exercised at general meetings by a representative appointed by the relevant Body Corporate from time to time for that purpose. Where such percentage consists of both a number and a decimal fraction, for example 18,45%, the decimal fraction shall be rounded off to the nearest number, for example 18%.
- 35.2 During the development period, the developer shall have the same number of votes as the total of the other members of the Association, plus one vote.
- 35.3 Where two or more erven have been consolidated or one property has been subdivided into two or more erven, then the member in question shall continue to have the same number of votes he held prior to the consolidation or subdivision, as if such consolidation or subdivision had not taken place.
- 35.4 Save as expressly provided for in these presents, no person other than a member duly registered, and who has 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.
- 35.5 At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands or in such method as may be prescribed by the chairperson.
- 35.6 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 terms of this constitution.
- 35.7 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.
- 35.8 An ordinary resolution (which is a resolution other than a special resolution) or the amendment of any ordinary resolution, shall be carried on a simple majority of all the votes cast thereon subject to other provisions in terms of this constitution. 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.
- 35.9 Unless any member present, in person or by proxy, at a general meeting, has 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 a declaration made by the chairperson of the meeting as to the result of any voting at the meeting.

36. SPECIAL RESOLUTION

A resolution by the Association shall be a special resolution if, at a general meeting of which not less than 21 days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which members holding an aggregate not less than 20% of the total votes of all the members entitled to vote thereat, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than 75% of the total votes to which the members present in person or by proxy are entitled.

37. OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this constitution, the trustee committee shall at all times have the right to engage on behalf of the Association, the service of accountants, auditors, attorneys, advocates, property managers, architects, engineers, any other professional person or firm and/or any other employee whatsoever, for any reasons thought necessary by the trustee committee and on such terms as the trustee committee shall decide.

38. ACCOUNTS

- 38.1 The Association in general meeting or the trustee committee, may from time to time prescribe reasonable conditions and regulations as to the time and manner of the inspection by the members of the accounts and books of the Association, and subject to such conditions and regulations, the accounts and books of the Association shall be open to inspection of members at all reasonable times during normal business hours.
- 38.2 At each annual general meeting the trustee committee shall lay before the Association a proper income and expenditure account for the immediate 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 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 the members convening each annual general meeting, as set forth above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

39. AUDIT

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

40. SERVICE OF NOTICES

- 40.1 A notice shall be in writing and shall be given or served by the Association upon any member, either personally in writing, properly addressed to the member at the address of the property owned by such member or by email to the email address last provided to the Association by the member.
- 40.2 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 a physical address within the Republic of South Africa, as well as an email address, which shall be his elected *domicilium citandi et executandi* address for the purpose of the service of notices.
- 40.3 Any notice sent by email to members' chosen email address shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 40.4 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.
- 40.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a member shall be an adequate written notice or communication to him notwithstanding that it was not sent to or delivered at his chosen *domicile* address.

41. INDEMNITY

- 41.1 All trustees shall be indemnified out of the funds of the Association against any liabilities *bone fide* incurred by them in their respective capacities and in the case of a trustee, in his capacity as chairperson, vice chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person by the court.
- 41.2 Every trustee, every servant, agent and employee of the Association shall be indemnified by the Association against (and it shall be the duty of the trustee committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his or their respective duties, including in the case of a trustee, 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 *bone fide* act, deed or letter done or written by them 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.
- 41.3 A trustee shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustees, whether in their capacities as trustees or as 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 delictual 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 or in relation thereto, unless the same shall happen through lack of *bona fide* or breach of duty or breach of trust.
- 41.4 No member shall have any claim of any nature whatsoever against the Association for any loss, damage or injury which such member may directly or indirectly suffer (even if such loss, damage or injury is caused through the negligence of the Association, the trustees, or any of the associations employees or appointees) by reason of any latent or patent defects on the development (including the common areas), or fire on the development, or theft from the development, or by reason of any building, improvement or other structure within the development being in a defective condition or state of disrepair or any particular repair not being affected by the Association timeously or at all, by any person whatsoever, for any purpose whatsoever, or arising from any other cause whatsoever, and each member is advised to take the necessary steps to insure his own interest.
- 41.5 The local authority is exempt from liability for any damage which may be caused by its certification of the constitution of the Association or an amendment thereof or by the loss of the constitution lodged with the local authority.

42. ARBITRATION

- 42.1 Any dispute, question or difference arising at any time between a member or between members and trustees out of or in regard to:
- 42.1.1 any matters arising out of this constitution;
 - 42.1.2 the rights and duties of any of the parties mentioned in this constitution;
 - 42.1.3 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.
- 42.2 Notwithstanding clause 42.1, a party declaring a dispute in respect of payment of levies, is not obliged to refer the dispute to arbitration and may institute court proceedings.

- 42.3 Arbitration shall be held in Robertson informally and otherwise in terms of the provisions of the Arbitration Act 42 of 1965 (as amended or replaced from time to time), it being intended that, if possible, it shall be held and concluded within 21 business days after it has been demanded.
- 42.4 Save as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is:
- 42.4.1 primarily an accounting matter – an independent accountant;
 - 42.4.2 primarily a legal matter – an independent practising counsel or attorney of no less than 10 years standing;
 - 42.4.3 any other matter – an independent and suitably qualified person appointed by the auditors of the Association;
- as may be agreed upon between the parties to the dispute.
- 42.5 If agreement cannot be reached on whether the question in dispute falls under the above sub-clauses, or upon a particular arbitrator to be appointed, within three business days after the arbitration has been demanded, then:
- 42.5.1 the auditor of the Association shall determine whether the question in dispute falls under the above sub-clauses and/or
 - 42.5.2 the auditor of the Association shall nominate the arbitrator within seven business days after the parties have failed to agree, so that arbitration can be held and concluded as soon as possible within the 21 business days referred to in clause 42.3 above.
- 42.6 The arbitrator shall make his award within seven 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 be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 42.7 The decision of the arbitrator shall be final and binding and may be made an order of an applicable court, upon the application of any party to the arbitration.
- 42.8 Notwithstanding anything to the contrary contained in the clauses above, the trustees, exclusively, 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.

43. AMENDMENTS TO THIS CONSTITUTION

- 43.1 During the development period, the developer may without the approval of the members amend, substitute and repeal any provision of this constitution subject to the unanimous approval of the Board of Trustees and the written approval thereof by the local authority where such approval is applicable and necessitated. This clause shall supersede any conflicting voting provisions contained in clauses 44.1.3 and 44.1.10. Only a unanimous resolution by the Board of Trustees shall be valid for the purposes of authorising any changes to the Constitution during the development period as described herein.
- 43.2 No provision of this constitution shall be added to, amended, substituted or repealed without the prior written consent of the developer for the duration of the development period.
- 43.3 Subject to the provisions above, after the termination of the development period, any such addition, amendment, substitution or repeal shall require the approval of at least 75% of the total number of votes of members of the Association entitled to attend and vote thereat given at a special general meeting specifically called for such purpose, and the notice of such meeting shall, in addition to complying with the other requirements of this constitution, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.
- 43.4 Any reference hereinto this constitution shall mean and include a reference to this constitution as may from time to time be amended in accordance with the provisions of this clause 43.

43.5 The latest copy of the constitution and any amendment thereof must be lodged with the local authority.

44. STATUS OF THE DEVELOPER

During the development period, the following provisions shall apply in addition to the provisions of and notwithstanding anything to the contrary contained in this constitution:

44.1 The developer shall be entitled:

- 44.1.1 To nominate and appoint the developer trustee committee members.
- 44.1.2 At general meetings to a number of the votes equal to the total number of the votes of all members plus one vote.
- 44.1.3 At trustee meetings to a number of votes equal to the total number of the votes of all trustees plus one vote.
- 44.1.4 To impose, subject to the unanimous approval of the Board of Trustees, any rules relating to the management of the development from time to time, as the developer may deem fit, and to amend, amplify, substitute and/or add to any such rules. This clause shall supersede any conflicting voting provisions contained in clauses 44.1.3 and 44.1.10. Only a unanimous resolution by the Board of Trustees shall be valid for the purposes of implementing or modifying such rules as described in this clause.
- 44.1.5 To make any amendments, augmentations, substitutions and/or additions to the design guidelines, and to impose any new design guidelines in the estate and to make amendments, augmentations, substitutions and/or additions to any such new design guidelines, as the developer in its sole discretion may deem fit.
- 44.1.6 To require that the trustee committee enforces the rights granted to it in terms of this constitution against any member who in the opinion of the developer is not complying with his obligations as a member, and in particular, without restricting the generality of the foregoing, has failed to maintain all buildings and other improvements on its property by giving such member written notice in which his failure to comply with a particular provision of this constitution is detailed and calling upon him to remedy such failure within a prescribed period of no more than 30 days, failing which, the developer shall be entitled at the sole cost of that member to carry out all such work as may be required to maintain such building and other improvements on its property.
- 44.1.7 To erect such signage, flagpoles, messages and/or other forms of notices or advertising on the development including the common areas and/or the exterior walls (if any) of the development, subject to the regulations and bylaws of the local authority pertaining to signage from time to time.
- 44.1.8 To cede all its rights in terms of this constitution and the transferee shall be entitled to exercise such rights.
- 44.1.9 May at any time abandon, in writing, in whole or part, any rights conferred upon it in terms of this constitution.
- 44.1.10 To veto any decision of the members in a members meeting or the trustees in a trustee committee meeting, and whether by way of ordinary or special resolution, that may, in the developer's sole discretion, be prejudicial to the intended development.

44.2 Neither the trustee committee nor any member of the Association shall prevent or hinder in any way the developer from:

- 44.2.1 gaining access to and egress from the estate;
- 44.2.2 continuing any building operations at the estate;

- 44.2.3 marketing and selling any of its unsold erven, including the advertisement of the sale of such erven on the common areas and/or elsewhere in the estate;
- 44.2.4 transferring or ceding (whichever is applicable) any erf to any third party purchaser or transferee;

provided that the provisions of this clause 44.2 shall not be interpreted as allowing the developer access onto any of the members' erven before the termination of the development period unless 48 hours prior written notice has been given to the member concerned. The developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the member. No member shall be entitled to refuse the developer access if the required notice has been given.

- 44.3 Upon the termination of the development period, the rights of the developer in terms of the provisions of clause 44.1 and 44.2 shall immediately terminate *ipso facto* and no longer be of any force and effect.
- 44.4 Upon the termination of the development period, if the developer still has unsold erven in the Estate, the developer shall still not be liable for the payment of any levies on such erven.

45. FAILURE OF THE ASSOCIATION

- 45.1 In terms of section 30 of the Langeberg Municipal Land Use Planning Bylaw of 2015, if an owners' association ceases to function or carry out its obligations, the municipality or any affected person, including a member of the Association, may apply:
 - 45.1.1 To disestablish the Association, subject to:
 - 45.1.1.1 the amendment of the conditions of approval to remove the obligation to establish the Association; and
 - 45.1.1.2 the amendment of title conditions pertaining to the Association, to remove any obligation in respect of the Association;
 - 45.1.2 In terms of section 15(2)(r) for appropriate action by the municipality to rectify a failure of the Association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3)(b), or to the High Court to appoint an administrator who must exercise the powers of the Association to the exclusion of the Association.
- 45.2 In considering an application contemplated above, the municipality must have regard to:
 - 45.2.1 the purpose of the Association;
 - 45.2.2 who will take over the control over and maintenance of services for which the Association is responsible;
 - 45.2.3 the impact of the disestablishment of the Association on the members of the Association and the community concerned.
- 45.3 The municipality or the affected person may recover from the members of the Association the amount of any expenditure incurred by the municipality or that affected person, as the case may be, in respect of any action taken in terms of the above.
- 45.4 The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association.

46. EMERGENCY RESPONSE SCHEME (ERS)

- 46.1 The Trustees may facilitate an optional non-profit Emergency Response Scheme (ERS) by which third-party emergency and care service providers can deliver these defined services to residents. Trustees shall ensure that such agreements include appropriate indemnity, performance, responsibility and accountability clauses and that the HOA bears no liability for the operation, delay or failure of these services.

- 46.2 The HOA and its Trustees shall not be liable for any injury, loss or damage suffered by any member or resident arising from the use, failure or provision of ERS services. Residents participating in the ERS do so at their own risk and agree to indemnify the HOA and its Trustees from any such claims.
- 46.3 Any funding of ERS related services from levies, reserve funds or special contributions shall be subject to approval via a General Meeting of members. Such funding must be transparently allocated and monitored.
- 46.4 Participation in the ERS shall be entirely voluntary and based on individual opt-in by residents. Each participating resident shall sign an opt-in disclaimer form acknowledging the limitations of the service and agreeing to its terms and associated costs.
- 46.5 The HOA shall maintain a formal channel for monitoring, complaints, feedback or suggestions related to ERS services. This may include written submissions, digital forms or resident surveys coordinated by a designated ERS Sub-Committee appointed at the AGM each year.
- 46.6 In the event that ERS related services are financed wholly or partially through HOA levies, all service level agreements will include indemnity clauses protecting the HOA and its Trustees from liability resulting from service provider failure, malpractice, delays or omissions. Trustees shall not be held personally liable for decisions made in good faith regarding service provider selection, funding or service coordination.

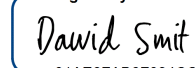
47. AUTHORIZATION

Signed at Robertson on **27 August 2025** .

Signed by:

89726A4A48AD409...
JF van Zyl

DEVELOPER

Signed by:

01AE6FAB6F034CC...
JD Smit

RLE HOA CHAIRPERSON