

CONSTITUTION

OF

CLARA ANNA FONTEIN

PROPERTY OWNERS ASSOCIATION

CONSTITUTION

CLARA ANNA FONTEIN ESTATE PROPERTY OWNERS ASSOCIATION

A statutory body established
In terms of Section 62 of the City of Cape Town Municipal Planning By-law,
2015

TABLE OF CONTENTS

1.	PREAMBLE.....	5
2.	INTERPRETATION.....	5
3.	CREATION OF ASSOCIATION	10
4.	STATUS OF THE ASSOCIATION	10
5.	MAIN OBJECT	10
6.	FINANCIAL YEAR END	13
7.	MEMBERSHIP OF THE ASSOCIATION	13
8.	ALIENATION	15
9.	DESIGN GUIDELINES AND LANDSCAPE MASTER PLAN	16
10.	DEPOSIT FOR DAMAGES	18
11.	CONSTRUCTION OF DWELLINGS	19
12.	VERGES AND CARRIAGE CROSSINGS	23
13.	PIPELINES	23
14.	SOLID WASTE COLLECTION.....	25
15.	GENERAL SERVICES CONDITIONS.....	25
16.	FIBRE NETWORK	27
17.	LEVIES	28
18.	DEALING WITH THE COMMON AREAS	31
19.	LIFESTYLE CENTRE AND THE FUTURE DEVELOPMENT AREA.....	31
20.	THE NATURE RESERVE.....	33
21.	THE SCHOOL ERF	33
22.	SERVICES	33
23.	CONTRACTS AND REGULATIONS	33
24.	ESTATE MANAGER	35
25.	ON-SITE SALES AGENT.....	36
26.	BREACH	37
27.	CESSATION OF MEMBERSHIP	38
28.	TRUSTEE COMMITTEE.....	38
29.	REMOVAL AND ROTATION OF TRUSTEE MEMBERS	40
30.	OFFICE OF TRUSTEES	41
31.	FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE	42
32.	PROCEEDINGS OF THE TRUSTEE COMMITTEE	46
33.	GENERAL MEETINGS OF THE ASSOCIATION	47
34.	NOTICE OF MEETINGS	48

35.	VENUE OF MEETINGS.....	49
36.	QUORUM.....	49
37.	AGENDA AT MEETINGS	50
38.	PROCEDURE AT GENERAL MEETINGS	51
39.	PROXIES	51
40.	VOTING	52
41.	SPECIAL RESOLUTION	53
42.	OTHER PROFESSIONAL OFFICERS	54
43.	ACCOUNTS	54
44.	AUDIT	55
45.	SERVICE OF NOTICES	55
46.	INDEMNITY	56
47.	ARBITRATION	57
48.	AMENDMENTS TO CONSTITUTION	59
49.	STATUS OF DEVELOPER.....	60
50.	INCORPORATION OF FURTHER PHASES	63
51.	OWNER’S ASSOCIATION WHICH FAILS TO MEET AN OBLIGATION OR CEASES TO FUNCTION	63
	ANNEXURES	66
	ANNEXURE “A”	67
	DIAGRAM OF THE LAND	67
	ANNEXURE “B”	68
	SITE DEVELOPMENT PLAN	68
	ANNEXURE “C”	69
	LEVIES PAYABLE IN RESPECT OF THE SCHOOL ERF	69
	ANNEXURE “C1”	74
	COMMON FACILITIES DIAGRAM	74

1. **PREAMBLE**

It is recorded that the Clara Anna Fontein Estate Property Owners Association is constituted as a statutory body in terms of Section 62 of the City of Cape Town Municipal Planning By-Law, 2015, in accordance with the conditions imposed by the City of Cape Town, when approving the consolidation, rezoning and sub-division of the Land.

2. **INTERPRETATION**

In this Constitution:

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

2.1.1. "Architect" means the architect appointed by the Association or, during the Development Period, by the Developer;

2.1.2. "Association" means the Clara Anna Fontein Property Owners Association;

2.1.3. "Auditors" means the auditors of the Association;

2.1.4. "Business Day" means weekdays other than Saturdays, Sundays and public holidays;

2.1.5. "By-Law" means the City of Cape Town Municipal Planning By-Law, 2015, as amended from time to time;

2.1.6. "Chairperson" means the Chairperson of the Trustee Committee;

2.1.7. "City" means the City of Cape Town, or its successors;

2.1.8. "Common Areas" means the Private Road Reserves, Private Open Spaces, the Nature Reserve and, once registered in the name of the Association, the Lifestyle Erf, together with any other area(s) and/or facilities which the Developer or the Trustee Committee may designate as Common Areas from time to time;

- 2.1.9. "Constitution" means this Constitution and all rules and regulations of the Association in force from time to time, and shall include all annexures;
- 2.1.10. "Contractor's 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;
- 2.1.11. "Design Guidelines" means design guidelines to control all aspects of architectural design of all Single Residential Erven, as amended from time to time in terms of this Constitution or as required by the City or the Developer during the Development Period;
- 2.1.12. "Developer" means Uitkamp Ontwikkelings Proprietary Limited (Registration Number 2006/030252/07) and Rabie Property Group Proprietary Limited (Registration Number 2006/012251/07) carrying on a joint venture under the name and style of Clara Anna Fontein Joint Venture, or their respective successor(s) in title as owner of the Land or the remainder thereof from time to time;
- 2.1.13. "Development Period" means the period commencing on the date of creation of the Association and terminating on the date that all the Erven, Sectional Title Units and/or Occupation Rights (as the case may be) in the Estate have been sold, transferred and/or ceded (as the case may be) by the Developer, including all such Erven, Sectional Title Units and Occupation Rights in respect of all such additional area(s) as may be incorporated as further phases into the Estate in terms of clause 50 below or until the Developer notifies the Association in writing that the Development Period has ceased, whichever occurs first;
- 2.1.14. "EMP" means the operational environmental management plan applicable to the Estate as approved by the relevant authorities;

- 2.1.15. "Erf" or "Erven" means any erf or erven in the Estate;
- 2.1.16. "Estate" means the Clara Anna Fontein development to be established on the Land comprising the Single Residential Erven, the Group Housing Erven, the Lifestyle Erf, the Retirement Village Erf, the School Erf, the Future Development Area, the Common Areas, and all such additional area(s) as may be incorporated as further phases(s) into the Development in terms of clause 50 below;
- 2.1.17. "Estate Manager" means the person appointed to manage the affairs of the Association, as more fully described in clause 24 below;
- 2.1.18. "Future Development Area" means that portion of the Land to be developed by the Developer at a future date, which portion is substantially reflected as such on Annexure "B" and which, upon development, will be dealt with in the same way as Residential Erven or Sectional Title Units in correlation with the method in which these areas are developed;
- 2.1.19. "Group Housing Erven" means those Erven within the Estate zoned as 'Group Housing', substantially reflected as such on Annexure "B" hereto;
- 2.1.20. "Land" means the portions of Portion 18 of the Farm Uitkamp No. 189, situated at Durbanville, Cape Town as follows:
- 2.1.20.1. the portion identified as 'Portion A', in extent approximately 120.0633ha (one two zero point zero six three three Hectares); and
- 2.1.20.2. the portion identified as 'Rem. No. 189/18', in extent approximately 7.6448ha (seven point six four four eight Hectares);
- as identified on the plan of subdivision annexed hereto as Annexure "A";

- 2.1.21. "Landscape Master Plan" means the landscape master plan prescribed by the Developer, as amended from time to time in terms of this Constitution or as approved by the City, if so required;
- 2.1.22. "Lifestyle Centre" means the building or buildings erected or to be erected for the communal benefit of the Members;
- 2.1.23. "Lifestyle Erf" means the Erf substantially reflected as such on Annexure "B" hereto on which the Lifestyle Centre will be situated;
- 2.1.24. "Member(s)" means a member(s) of the Association;
- 2.1.25. "month" means a calendar month;
- 2.1.26. "Nature Reserve" means the area within the Estate reserved for use as a nature reserve as envisaged in clause 20 below;
- 2.1.27. "Occupation Right" means a right of occupation in respect of any dwelling in the Estate which is registered in the deeds office as a registered life right in terms of a retirement scheme or registered leasehold right;
- 2.1.28. "Private Open Spaces" means the private open spaces within the Estate, substantially as reflected as such on Annexure "B" hereto;
- 2.1.29. "Private Road Reserves" means the private road reserves within the Estate, substantially as reflected as such on Annexure "B" hereto;
- 2.1.30. "Registered Owner" means the registered owner of any Erf or Sectional Title Unit or Occupation Right;
- 2.1.31. "Residential Erven" means the Single Residential Erven and the Group Housing Erven;
- 2.1.32. "Retirement Village" means the retirement village situated on the Retirement Village Erf;

- 2.1.33. "Retirement Village Erf" means the Erf identified as 'Retirement Village' on Annexure "B" hereto;
- 2.1.34. "School" means the school situated on the School Erf;
- 2.1.35. "School Erf" means the Erf identified as 'School' on Annexure "B" hereto;
- 2.1.36. "Sectional Title Unit" means a dwelling unit in a sectional title scheme in the Estate, but excludes a unit designated for other purposes, e.g. a garage or storeroom;
- 2.1.37. "Services" means such facilities, utilities, services and amenities as may be provided on the Estate in terms of clause 22 below, including (but not limited to) electricity, roads, stormwater, water, sewage and waste removal;
- 2.1.38. "Single Residential Erven" means those Erven within the Estate zoned as 'Single Residential', substantially reflected as such on Annexure "B" hereto;
- 2.1.39. "Site Development Plan" means a plan indicating various land use portions annexed hereto as Annexure "B";
- 2.1.40. "Special Resolution" means a resolution passed at a special general meeting in accordance with the provisions of clause 41 below;
- 2.1.41. "Trustee" means a member of the Trustees Committee;
- 2.1.42. "Trustee Committee" or "Trustees" means the Board of Trustees of the Association from time to time;
- 2.1.43. "in writing" means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 2.1.44. "year" means a calendar year.

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

3. **CREATION OF ASSOCIATION**

The Association will come into existence simultaneously with the first registration of transfer of an Erf or Sectional Title Unit from the Developer to a Registered Owner, as contemplated in Section 61 of the By-Law.

4. **STATUS OF THE ASSOCIATION**

- 4.1. The Association will:

- 4.1.1. have legal personality and be capable of suing and being sued in its own name; and
- 4.1.2. operate for the benefit of the Members.

- 4.2. No Member shall have any right, title or interest in or to the funds or assets of the Association in his personal capacity, all of which shall vest in the Association.

5. **MAIN OBJECT**

The main object of the Association is the matters referred to in section 62 of the By-Law and more specifically:

- 5.1. the control and maintenance over:
- 5.1.1. all Common Areas including, but not limited to, the Private Road Reserves and the Private Open Space;
 - 5.1.2. all buildings and/or structures on the Common Areas;
 - 5.1.3. all internal services, common landscaping, irrigation and amenities on the Common Areas;
 - 5.1.4. the further distribution of all relevant individual metering after bulk metering points;

- 5.1.5. all other Common Areas designated as such by the Developer or the trustee committee from time to time;
- 5.1.6. the perimeter walls and fences of the Estate and the Common Areas, including the main entrance facilities and gate house but specifically excluding the entrances, gate houses, walls and fences on the internal perimeter of the School Erf, the Retirement Village, the Single Residential Erven, the Group Housing Erven, the Lifestyle Erf (until it forms part of the Common Area) and the Future Development Area;
- 5.2. to impose and collect levies as contemplated in clause 17 below;
- 5.3. the control over the compliance and enforcement of the Landscape; Master Plan;
- 5.4. the control over the compliance and enforcement of the Design Guidelines in relation to the Single Residential Erven and all other design guidelines as may be introduced in terms of this Constitution;
- 5.5. the promotion, advancement and protection of the communal and group interests of the Members generally;
- 5.6. to implement and maintain security measures and systems for controlled access to the Estate;
- 5.7. to monitor and enforce compliance by the Registered Owners and the Association with the EMP's;
- 5.8. to monitor and enforce compliance by the Registered Owners and the Association with the relevant subdivision conditions imposed by the City in respect of the Estate and the management plans listed therein;
- 5.9. to bear the running cost of all street lighting within the Estate, as well as any consumption charges relating to the Common Areas;
- 5.10. to enter into services agreements with the City 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;

- 5.11. to accept the cession of any rights and delegation of any duties to the Association under any other agreement(s) entered into by the Developer for the benefit of the Association;
- 5.12. 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;
- 5.13. to register, where necessary, various service or other servitudes over the Common Areas in the Estate in favour of the City 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 stormwater escape routes are to be maintained and kept free of all obstruction and protected by servitudes where they traverse private property;
- 5.14. to acquire and hold servitudes in the Association's favour for access to the Estate and also for the supply of services, including communication, surveillance and water to the Estate;
- 5.15. to formulate, enforce, modify, amend, add and delete the Estate conduct rules and regulations;
- 5.16. to enforce the provisions of the Constitution;
- 5.17. to appoint an Estate Manager and any other personnel to manage the affairs of the Association;
- 5.18. to accredit architects and builders to be utilised by Registered Owners in respect of any design and construction work to be conducted on Erven, in accordance with such criteria as the Association may stipulate from time to time;
- 5.19. to accredit estate agents appointed by Registered Owners in respect of the resale of their Erven, in accordance with such criteria as the Association may stipulate from time to time;

- 5.20. to enter into agreements with other developments located in close proximity to the Estate and/or with landowners 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, roads, whether or not for the purposes of sharing the cost thereof;
- 5.21. 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.

6. **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.

7. **MEMBERSHIP OF THE ASSOCIATION**

- 7.1. Membership of the Association shall be limited to and compulsory for the following persons:
 - 7.1.1. each Registered Owner of an Erf, including a Residential Erf;
 - 7.1.2. each Registered Owner of a Sectional Title Unit;
 - 7.1.3. each Registered Owner of an Occupation Right;
 - 7.1.4. the Registered Owner of the School Erf;
 - 7.1.5. the Developer, for the duration of the Development Period.
- 7.2. Membership in terms of clause 7.1 shall commence simultaneously with registration of the Erf, Sectional Title Unit or Occupation Right into the name of the Registered Owner in the deeds office.

- 7.3. The following condition shall be binding on each Registered Owner and their successors-in-title and 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 Master 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."

- 7.4. Where a 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 1 (one) owner to represent them and vote at meetings of the Association;
- 7.5. When a Member ceases to be the Registered Owner, he shall ipso facto cease to be a Member of the Association.
- 7.6. A Registered Owner may not resign as a Member of the Association.
- 7.7. The Trustee Committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.
- 7.8. Subject to clause 19.6 below, the rights and obligations of a Member shall not be transferable and every Member shall:
- 7.8.1. to the best of his ability further the objects and interests of the Association referred to in clause 5 above;
- 7.8.2. observe all by-laws and regulations made by the Association and/or the Trustee Committee, from time to time.
- 7.9. The Developer or its nominee(s) 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 Occupation Rights sold by the Developer to the purchaser thereof.

- 7.10. A Member shall not be entitled to consolidate 2 (two) or more Erven into 1 (one) Erf or subdivide an Erf into 2 (two) or more portions without the prior written approval of the Developer during the Development Period and, thereafter, of the Association.

8. **ALIENATION**

- 8.1. Save in those instances where the Developer passes first transfer to a Registered Owner, in all other instances where a Registered Owner wishes to alienate or transfer his Erf, Sectional Title Unit or Occupation Right, or in the event that the said Erf or Sectional Title Unit is owned by a company or close corporation or trust, should the shareholder(s) or member(s) or trustee(s) or beneficiaries wish to alienate all their shares or membership interest or other interest in such entity he shall not be entitled to do so unless:

8.1.1. the transferee agrees in writing to accept and abide by the Constitution and becomes a Member of the Association;

8.1.2. the registration of transfer or cession (as the case may be) of that Erf, Sectional Title Unit or Occupation Right into the name of the transferee shall ipso facto constitute the transferee as a Member of the Association;

8.1.3. he obtains a clearance certificate from the Association which shall be given provided that:

8.1.3.1. 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;

8.1.3.2. $\frac{1}{2}$ (half) a percentage of the gross selling price of the Erf, Sectional Title Unit or Occupation Right, and any improvements thereon, is paid to the Association by the Registered Owner;

- 8.1.3.3. all amounts owing by the Registered Owner to the Association have been paid or satisfactorily secured, in the discretion of the Association;
- 8.1.3.4. all obligations of the Registered Owner in terms of the Constitution have been complied with in full;
- 8.1.3.5. he pays to the Association the fees pertaining to such certificate as determined by the Association from time to time.

9. **DESIGN GUIDELINES AND LANDSCAPE MASTER PLAN**

- 9.1. All buildings and other structures on the Single Residential Erven (or any part thereof) shall comply with the provisions of the Design Guidelines.
- 9.2. All buildings and other structures on all Erven (other than Single Residential Erven) shall comply with the conditions and guidelines imposed by the City and the Developer during the Development Period, and, thereafter, of the Association.
- 9.3. All landscaping on Erven and on the verges of Erven (as contemplated in clause 12 below) shall comply with the provisions of the Landscape Master Plan.
- 9.4. No party shall be entitled to:
 - 9.4.1. erect any new building and/or structures of any nature whatsoever on any Erf in the Estate;
 - 9.4.2. make any changes or alterations to existing buildings and/or structures on any Erf in the Estate including changes to the external colour scheme;

without signature of the Contractor's Agreement having regard to the Design Guidelines or the design guidelines imposed in terms of clause 9.2 above (whichever is applicable) and the Landscape Master Plan and the prior written approval of the Trustees or the Developer, during the Development Period.

9.5. The approval of the Trustees and/or the Developer as contemplated in clause 9.4 above shall only be given:

9.5.1. after detailed plans of the proposed work have been submitted to the Trustees, the architectural review committee (if any) or any other competent person (as nominated by the 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; and

9.5.2. the Trustees or their nominee(s) are satisfied that the proposed work is in accordance with the Design Guidelines or the design guidelines imposed in terms of clause 9.2 above (whichever is applicable) for the purposes of which the Trustees, the architectural review committee (if any) and/or any other nominee(s) shall be the sole arbiter and their decision shall be final and binding on the Registered Owner concerned; and

9.5.3. 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(s); and

9.5.4. 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 of clause 10 below;

provided the foregoing shall not be interpreted as detracting from the sole and final responsibility of the City to approve or reject building plans.

9.6. After the expiration of the Development Period, subject to the provisions of clause 9.7 and subject to the restrictions imposed or directions given at a general meeting of the Association, the Trustee Committee may from time to time amend, amplify, substitute or add to the provisions of the EMP, the Design Guidelines, the Landscape Master Plan and/or the Contractor's Agreement and introduce new design guidelines applicable to other Erven (other than the Single Residential

Erven) as contemplated in clause 9.2 above and to amend, amplify, substitute or add to the provisions of such design guidelines.

- 9.7. Any such amendment, amplification, substitution or addition contemplated in clause 9.6 above shall be subject to a resolution passed by the Trustees holding not less than 75% (seventy five percent) of the total voting rights of the Trustees.
- 9.8. In the event of any of the provisions of the EMP, the Design Guidelines, the Landscape Master Plan, the Contractor's Agreement or any design guidelines introduced in terms of clause 9.2 above being amended, amplified, substituted or added to, and such amendment, amplification, 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, amplification, substitution or addition to all Members.
- 9.9. The provisions of clauses 9.1, 9.2, 9.4, 9.4 and 9.5 above shall not apply to the Developer provided that the Developer shall comply with the conditions imposed by the City when approving the development of the Land.

10. **DEPOSIT FOR DAMAGES**

- 10.1. 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 on which deposit shall accrue to the Association.
- 10.2. Upon completion of all such building and other activities, the Trustees shall if they are satisfied that no damage has been effected by the Registered Owner or any its contractors to the Common Areas and/or landscaped 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 less any fines or penalties payable in terms of the Contractor's Agreement.

- 10.3. In the event of any landscaped area and/or the Common Areas having damage due to such work, the Registered Owner shall within 15 (fifteen) 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 or contractors 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.

11. **CONSTRUCTION OF DWELLINGS**

- 11.1. Registered Owners of Residential Erven are obliged to commence construction of dwellings on their respective Residential Erven within 5 (five) years from the first transfer date and to complete construction of such dwellings within 1 (one) year of the date that the Member commences construction. For the purposes of this clause 11:

11.1.1. "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 Residential Erf. For the sake of clarity it is recorded that any resale of a Residential Erf after the first transfer date, the new purchaser steps into the shoes of the seller in respect of calculation of the time period referred to in clause 11.1 above;

11.1.2. "commence construction", "commences construction", "commenced construction" or "commencement of construction" means the commencement of any work of whatsoever nature on the relevant Residential Erf relating to the construction of a dwelling, as certified by the Association whose certificate shall be final and binding on the Member; and

11.1.3. "complete construction" means a sufficiently completed dwelling for beneficial occupation, constructed and completed in accordance with the architectural Design Manual and other guidelines referred to in clause 5 and as certified as completed by the Association, whose certificate shall be final and binding on the Parties.

11.2. In the event that the Registered Owner of a Residential Erf should fail to commence construction in accordance with the provisions of clause 11.1 above, the following shall apply:

11.2.1. the Registered Owner shall pay a monthly penalty levy to the Association in an amount of the current monthly levy payable by such Registered Owner multiplied by 0.5 (zero point five) in respect of each month or part thereof beyond the 5th (fifth) anniversary of the first transfer 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 7th (seventh) anniversary of the first transfer date, whichever first occurs;

11.2.2. the Registered Owner shall pay a monthly penalty levy to the Association in an amount of the current monthly levy payable by such Registered Owner multiplied by 2 (two) in respect of each month or part thereof beyond the 7th (seventh) anniversary of the first transfer 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 10th (tenth) anniversary of the first transfer date, whichever first occurs;

11.2.3. the Registered Owner shall pay a monthly penalty levy to the Association in an amount of the current monthly levy payable by such Registered Owner multiplied by 3 (three) in respect of each month or part thereof beyond the 10th (tenth) anniversary of the first transfer 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 15th (fifteenth) anniversary of the first transfer date, whichever first occurs;

11.2.4. the Registered Owner shall pay a monthly penalty levy to the Association in an amount of the currently monthly levy payable by such Registered Owner multiplied by 4 (four) in respect of each month or part thereof beyond the 15th (fifteenth) anniversary of the first transfer 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.

11.3. In the event that the Registered Owner should fail to complete construction on or before the prescribed completion date in accordance with the provisions of clause 11.1 above, the following shall apply:

11.3.1. the Registered Owner shall pay a monthly penalty levy to the Association in an amount of the current monthly levy payable by such Registered Owner multiplied by 2 (two) 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 penalty levy shall be payable until the date the Registered Owner completes construction on the Residential Erf or until the 10th (tenth) anniversary of the prescribed completion date, whichever first occurs;

11.3.2. the Registered Owner shall pay a monthly penalty levy to the Association in an amount of the current monthly levy payable by such Registered Owner multiplied by 3 (three) in respect of each month or part thereof beyond the 10th (tenth) anniversary of the prescribed completion date that the Registered Owner has not completed construction on the Residential Erf, which

penalty levy shall be payable until the date the Registered Owner completes construction on the Residential Erf or until the 15th (fifteenth) anniversary of the prescribed completion date, whichever first occurs;

- 11.3.3. the Registered Owner shall pay a monthly penalty levy to the Association in an amount of the current monthly levy payable by such Registered Owner multiplied by 4 (four) in respect of each month or part thereof beyond the 15th (fifteenth) anniversary of the prescribed completion date that the Registered Owner has not completed construction on the Residential Erf, which penalty levy shall be payable until the date the Registered Owner completes construction on the Residential Erf.
- 11.4. Any penalty levy payable in terms of clauses 11.2 and 11.3 above shall be paid in addition to the levy payable by the Registered Owner in terms of clause 13 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.
- 11.5. No Member shall be entitled to:
 - 11.5.1. continue construction of any building(s) on his Single Residential Erf beyond ground floor slab level until such time as he has obtained a certificate from a registered land surveyor certifying the height or level of all ground floor slab(s) on his Erf and that such height(s) or level(s) complies with the floor slab height(s) or levels specified in the Design Guidelines;
 - 11.5.2. take occupation or allow any other person to take occupation of any building or part thereof erected upon his Single Residential Erf until such time as the construction of the external envelope of such building and all landscaping on the Erf 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 and in such event 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.

- 11.6. The provisions of this clause 11 shall not be applicable in relation to any of the works to be undertaken by the Developer on any of the Residential Erven.

12. **VERGES AND CARRIAGE CROSSINGS**

- 12.1. The Registered Owner of each Residential Erf shall at such owner's cost contract and maintain:

12.1.1. the carriage crossing between the boundary of such Residential Erf and the road;

12.1.2. the landscaping, grass, plants and flowers on the verge between the boundary of such owner's Residential Erf and the road and/or any other adjacent Common Area in accordance with the Landscape Master Plan;

and shall at all times keep the carriage crossing and the verge in in a clean, neat and tidy condition.

- 12.2. The Registered Owner of a Residential Erf shall be obliged to landscape the verge between the boundary of such Residential Erf and the road and/or any other adjacent Common Area within 7 (seven) years of the date of first transfer and in accordance with the Landscape Master Plan.

- 12.3. For the purposes of this clause 12, "date of first transfer" means the date of first registration of transfer of an Erf or Sectional Title Unit into the name of a Registered Owner from the Developer.

13. **PIPELINES**

- 13.1. It is the duty of each Registered Owner to ascertain from the Association whether such Registered Owner's Residential Erf is situated

above a pipeline or within such property's building line (the "Pipeline Area"), prior to commencing with the drafting of building plans.

- 13.2. If a Registered Owner's erf is situated above a pipeline and should such pipeline be situated within the building line of the Residential Erf, the Registered Owner will grant to 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 authorized representatives may be necessary or desirable for the construction and laying of the said pipes or for the cleansing, repairing, maintaining, renewing or replacing of the 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.
- 13.3. 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 made good by the Association.
- 13.4. 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 portions thereof.
- 13.5. 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 do 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 Registered Owner of obligations hereunder or under any law shall be made good 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.

- 13.6. The Association shall ensure that all conditions contained in this clause 13 are complied with prior to approving any building plans submitted to the Association for approval.

14. **SOLID WASTE COLLECTION**

- 14.1. Registered Owners of Residential Erven shall allow the collection of Solid Waste at such times as stipulated from time to time by the City of Cape Town and shall ensure that they at all times comply with all municipal laws, rules, regulations and guidelines pertaining to waste collection.
- 14.2. The School and Retirement Village will have a communal collection point with a refuse room where the solid waste will be collected.
- 14.3. The City of Cape Town will not be liable for any wear and tear on the Roads, or for any theft or accidental damage to any equipment, roads or any other feature in the development.
- 14.4. 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 City of Cape Town against any claims from all damages or losses incurred to roads, road furnishing and curbs as a result of the City of Cape Town collecting refuse within the boundaries of the Estate.

15. **GENERAL SERVICES CONDITIONS**

- 15.1. Registered Owners of Residential Erven shall without compensation be obliged to allow gas mains, electricity, telephone and television cables and/or wires, and main and/or other water pipes and foul sewers and storm water pipes, ditches, and channels of any other Residential Erven to be conveyed across the relevant Residential Erf concerned and shall furthermore without compensation be obliged to allow surface installations such as street lights, 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 Erf at any reasonable time for the purpose of constructing, altering, removing or inspection of any works connected with the above.
- 15.2. Registered Owners of Residential Erven shall be obliged, without compensation to receive such material or permit such excavations on the Residential Erf 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 Erf, unless the Registered Owner elects to build retaining walls to the satisfaction of and within a period to be determined by the Association.
- 15.3. 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 Erf and any other Residential Erf.
- 15.4. 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.
- 15.5. 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 subdivision, including boundary walls and fences, or

change the exterior colour scheme or 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.

15.6. Any Members having overland stormwater escape routes situated on their property shall be obliged to keep these areas free of all obstruction.

16. **FIBRE NETWORK**

16.1. The following provisions apply in respect of the use of the transmission and reception of telecommunication (voice, broadband and data), multimedia signals and services to property owners, lessees, occupiers and visitors to Clara Anna Fontein :-

16.1.1. A fibre based, carrier neutral open access network will be deployed for the purposes of carrying telecommunications and multimedia signals and services within the Estate. This network has been selected to provide rapid deployment of connectivity to all stakeholders within the Estate that is in line with internationally benchmarked best practices for the deployment of high capacity fibre based networks.

16.1.2. The Developer will provide a branch duct to the property boundary and the requisite ducting from the boundary termination point to the designated point of connection to each Erf.

16.1.3. Members are responsible for the cost of connection to this fibre network and complying with all of the requirements of the selected internet service providers to the Estate in respect of telecommunications and multimedia signals & services.

16.2. The provision of the fibre based carrier neutral open access network negates the need for and use of television antennae, satellite dishes, radio antennae, microwave dishes and other communication devices on the roofs of the building or buildings within the Estate.

16.3. In the unlikely event that the connectivity provided by the Clara Anna Fontein Network does not provide the technical solution for the

purchaser's connectivity requirements, application must be made to the Association for approval prior to the installation of any other connection method. Such application must be motivated on technical grounds and will be subject to the Association technical assessment. Further, pursuant to the technical approval being obtained from the Association for the installation of television antennae, satellite dishes, radio antennae, microwave dishes and other communication devices such installation must obtain prior Design Review Committee's approval. Appropriate use of screening and nesting of these devices may be necessary. The Purchaser will also be required to obtain any other relevant approval(s) that may be required in this regard. No antennae or dishes mounted in a way that makes it visible from the ground or adjacent buildings will be considered for approval.

17. **LEVIES**

17.1. 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:

17.1.1. maintenance, repair, improvement, and keeping in order and condition of the Common Areas, including specifically landscaping, all township services, sewage treatment and the security systems to be installed on the Common Areas; and/or

17.1.2. 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;

17.1.3. 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); and

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

- 17.2. In calculating levies, the Trustee Committee shall take into account income and other revenues if any, earned by the Association.
- 17.3. 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, as shall result from the preceding year, and shall determine a levy payable by the Members equal to or as near as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 17.4. The annual levy attributable to each Member (excluding the owner of the School Erf and the Developer) shall be calculated on the basis that:-
- 17.4.1. owners of Group Housing Erven or Sectional Title Units shall not pay more than 85%; and
- 17.4.2. owners of Erven, Sectional Title Units or Occupation Rights situated in the Retirement Village Erf shall not pay more than 65%
- of the levy charged to the owners of Single Residential Erven.
- 17.5. The annual levy attributable to the School Erf shall be determined in accordance with the provisions set out in Annexure "C" hereto.
- 17.6. The Trustee Committee, may from time to time, impose special levies upon the Members in respect of all such expenses as are mentioned in clause 17.1 (which are not included in any estimate made in terms of clause 17.2), and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit.
- 17.7. Any 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 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 an Erf, Sectional Title Unit or Occupation Right (as the case may be) shall be liable as from the date upon which he or she becomes a Member pursuant to the transfer or cession thereof, to pay the levy attributable thereto.

- 17.8. 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 2 (two) occasions in any financial year of the Association.
- 17.9. Except as provided in clause 17.10 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.
- 17.10. 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 17 and the actual expenditure of the Association in each financial year.
- 17.11. 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.
- 17.12. 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.
- 17.13. Where:
 - 17.13.1. 2 (two) or more Erven have been consolidated, levies shall be payable in respect of each such Erf as they existed prior to

consolidation and as if such consolidation had not occurred;
and

17.13.2. an Erf has been subdivided into 2 (two) or more portions,
levies shall be payable in respect of each new erf which
comes into existence as a result of such subdivision.

18. DEALING WITH THE COMMON AREAS

18.1. After transfer to the Association, neither the whole nor any portion of
the Common Areas shall be:

18.1.1. sold, subdivided or transferred; or

18.1.2. mortgaged;

without the approval of the Members by way of a Special Resolution
subject to the rights of use and any letting of the Lifestyle Centre which
is permissible in terms of clause 19 below.

18.2. 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, save that transfer of the Lifestyle Erf shall take place in
accordance with the provisions of clause 19 below. 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.

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

19. LIFESTYLE CENTRE AND THE FUTURE DEVELOPMENT AREA

19.1. The Developer shall develop the Lifestyle Centre on the Lifestyle Erf at
its cost.

- 19.2. The Developer shall transfer the developed Lifestyle Erf to the Association once its development has been completed by the Developer.
- 19.3. The Developer shall be entitled, at no charge, to use the Lifestyle Centre for marketing, promotional and any other purposes during the Development Period, by prior arrangement with the Trustee Committee.
- 19.4. Until the Association has taken transfer of the Lifestyle Erf, the Developer may appoint an operator to operate and manage the Lifestyle Centre on behalf of the Association.
- 19.5. Once the Association has taken transfer of the Lifestyle Erf:
- 19.5.1. the Association may appoint an operator to operate and manage the Lifestyle Centre;
 - 19.5.2. Members will be entitled to the use of the Lifestyle Centre on such terms and conditions and at such cost as the Trustee Committee may prescribe from time to time;
 - 19.5.3. the Lifestyle Centre will be for the private use of Members save that the Association is entitled to grant additional membership to persons who are not Members to ensure the financial sustainability of the Lifestyle Centre.
- 19.6. In the event that a Member leases his Erf or Sectional Title Unit or Occupation Right, then and in such event the Member's right to use the Lifestyle Centre may, should the Member so elect, be transferred to the tenant of the Member's Erf or Sectional Title Unit or Occupation Right for the duration of such lease, on written notice by the Member to the Association.
- 19.7. The Developer shall be entitled, in its discretion and at any time, to transfer the Future Development Area to the Association at no cost, in which event such Erf shall form part of the Common Area.

20. THE NATURE RESERVE

20.1. The Developer shall enter into an agreement with the registered owner of Portion 19 of the Farm Uitkamp No. 189 Durbanville situated adjacent to the western external boundary of the Nature Reserve which agreement shall provide, *inter alia*, for the free flow of game between the Nature Reserve and the aforesaid erf and that such border shall not be fenced or otherwise closed off without the prior written consent of the parties to such agreement.

20.2. The Developer shall cede its rights and delegate its obligations under the agreement referred to in clause 20.1 to the Association, and the Association shall accept such cession and delegation at its first special general meeting as contemplated in clause 5.8 above.

21. THE SCHOOL ERF

21.1. A school shall be established on the School Erf.

21.2. The provisions of this Constitution shall only apply to the School Erf and the Registered Owner thereof to the extent that there is a common interest and / or a cost to be shared between the Association and the owner of the School Erf by virtue of a shared interest or benefit.

21.3. The Developer shall construct and complete, at its cost, an internal pedestrian access point between the School Erf and the Estate in a location agreed to by the Developer, which access point shall be maintained and controlled by the Developer and then by the Association once it has been established in terms of clause 3 above.

22. SERVICES

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

23. CONTRACTS AND REGULATIONS

23.1. Subject to any restrictions imposed or directions given at a general meeting of the Association and subject to the conditions imposed by

the City in approving the rezoning and subdivision of the Land, the Trustee Committee may from time to time:

- 23.1.1. make regulations governing, inter alia:
 - 23.1.1.1. the management of the Estate;
 - 23.1.1.2. the Members' rights of use, occupation and enjoyment of the Common Areas;
 - 23.1.1.3. the external appearance of and the maintenance of the Common Areas and the building or other improvements erected on the Common Areas;
 - 23.1.1.4. 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, the Landscape Master Plan, the EMPs and the requirements of the City;
 - 23.1.1.5. compliance with the Design Guidelines, the Landscape Master Plan and the EMPs;
 - 23.1.1.6. the conduct of Members generally;
- 23.1.2. enter into agreement(s) with the local authorities governing the matters set out in clause 23.1 and any other incidental matters;
- 23.1.3. enter into agreement(s) with the City and other parties for the provision of Services on the Estate.
- 23.1.4. impose fines and/or penalties which it considers appropriate in its sole discretion against Members who are in default of any of their obligations in terms of this Constitution and/or any applicable rules of the Association, including the terms of payment of such fines and/or penalties.

23.2. 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, the Landscape Master Plan and the EMP's.

23.3. Each Member shall be obliged to comply with:

23.3.1. the provisions of this Constitution;

23.3.2. the Design Guidelines and any other design guidelines imposed in terms of clause 9.2 above;

23.3.3. the EMP;

23.3.4. the Landscape Master Plan;

23.3.5. any regulations made in terms of clause 23.1.1;

23.3.6. any agreements referred to in clauses 23.1.2 and 23.1.3 above insofar as those agreements either directly or indirectly impose obligations on him;

23.3.7. pay such fines as may be imposed in terms of clause 23.1.4 above.

23.4. 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 the Future Development Area and/or the Lifestyle Erf and/or any application for an increased number of learners on the School Erf.

23.5. All officials, employees and contractors employed by the Association, the City, 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.

24. **ESTATE MANAGER**

24.1. During the Development Period, the Developer shall be entitled to appoint an estate manager to manage the affairs of the Association. It shall be within the absolute discretion of the Developer to determine

the terms and conditions of the appointment of such a manager, including the fees and/or remuneration payable.

- 24.2. Any fees and/or remuneration payable to the Estate Manager shall be paid by the Association and not the Developer.
- 24.3. The appointment of the Estate Manager may extend beyond the Development Period, provided that the Developer shall endeavour to procure, when making such appointment, that the appointment may, if so required by the Association at a general meeting, and subject to the requirements of the law, be terminated on reasonable notice after the end of the Development Period.
- 24.4. After the Development Period, the Association shall be responsible for the appointment of any successive Estate Managers, it being contemplated that the affairs of the Association shall at all times be entrusted to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.
- 24.5. Subject to this Constitution, and the terms of his appointment, the Estate Manager shall manage and control the business and affairs of the Association under instruction and guidance of the Trustee Committee.

25. **ON-SITE SALES AGENT**

- 25.1. The Developer has entered into or shall 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").
- 25.2. The Appointed Estate Agent 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 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 25.2 on such terms and conditions as the Developer in its sole discretion deems appropriate.

25.3. 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 clause 25.2 above 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 clause 18.2 above.

26. **BREACH**

26.1. Should any Member:

26.1.1. 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 7 (seven) days after being notified in writing to do so by the Trustees Committee; or

26.1.2. commit any other breach of the provisions of this Constitution or any regulation made in terms of this Constitution and fail to commence remedying that breach within a period of seven (7) days after the receipt of written notice to that effect by the Trustees Committee and complete the remedying of such breach within a reasonable time;

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

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

26.1.4. in the case of clause 26.1.2, to remedy such breach and immediately recover the total costs incurred by the Trustees or the Association in so doing from such Member.

- 26.2. Should the Trustees Committee institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation, then without prejudice to any other rights which the Trustees Committee or the Association or any other Member may have in law, the Trustees Committee shall be entitled to recover from such member all legal costs incurred by the Trustees or the Association, including attorney/client charges reckoned on the non-litigious tariff recommended by the Law Society of the Cape of Good Hope (or its successors), tracing fees and collection commission.
- 26.3. Without prejudice to all or any of the rights granted to the Trustees Committee under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest on the amount due calculated at the maximum rate of interest permissible by law, from the due date of payment until the actual date of payment of such amount (both dates inclusive).
- 26.4. In the event of any breach of the rules by the Members 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 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.

27. **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.

28. **TRUSTEE COMMITTEE**

- 28.1. The affairs of the Association shall be managed and controlled by a Trustee Committee consisting of not fewer than 3 (three) and not more

than 9 (nine) Members which shall consist of at least one representative elected from each of the following groups :-

- 28.1.1. the Developer during the Development Period;
 - 28.1.2. the Single Residential Erven;
 - 28.1.3. the Group Housing Erven;
 - 28.1.4. the Retirement Village Erf;
 - 28.1.5. the School Erf.
- 28.2. A 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.
- 28.3. The Trustees of the Association shall for the Development Period be divided into 2 (two) classes, namely Developer Trustees and Member Trustees. Upon expiry of the Development Period there shall only be Member Trustees.
- 28.4. 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.
- 28.5. 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.

29. **REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

29.1. Each Trustee, except for the Developer's 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. A Trustee shall be deemed to have vacated his office as such upon:

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

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

29.1.3. his conviction for any offence involving dishonesty;

29.1.4. his becoming of unsound mind or being found lunatic;

29.1.5. if he absents himself from 3 (three) consecutive meetings of the trustees without leave of absence;

29.1.6. his resignation from such office in writing delivered to the secretary;

29.1.7. his death;

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

29.1.9. his alienating his Erf or Sectional Title Unit or Occupation Right in the event that he was a Member;

provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

29.2. 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. Whilst Developer Trustees are in office the remaining Developer Trustees shall nominate a person to fill any such vacancy in their numbers.

29.3. The Developer may at any time and from time to time remove and replace any Developer Trustee on written notice to the remaining Trustees.

30. **OFFICE OF TRUSTEES**

30.1. Subject to clause 30.2 below, the Trustees shall appoint from amongst themselves, a Chairperson and Vice-Chairperson.

30.2. The Chairperson, and Vice-Chairperson, shall, for the duration of the Development Period, be appointed by the Developer. The Chairperson and Vice-Chairperson shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.

30.3. Subject to the rights of the Developer as set out in clause 30.2 above, within 7 (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 their said appointment, provided that the office of the Chairperson or Vice-Chairperson shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office, subject however to the rights of the Developer as set out in clause 30.2 above.

30.4. Save as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by

the Trustee Committee or Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.

30.5. 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.

30.6. Trustees shall be entitled to be reimbursed all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairperson, Vice-Chairperson, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

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

31.1. 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.

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

31.3. 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.

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

31.4.1. as to disputes generally;

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

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

31.4.4. for the advancement of the interests of Members;

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

31.4.6. to assist it in administering and governing the Association's activities generally;

and shall be entitled to cancel, vary or modify any of the same from time to time.

31.5. 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 of their function, 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.

31.6. The Trustees may appoint an architectural review committee and a landscaping review committee to exercise the powers set out above in clause 9 and elsewhere in this Constitution. Members of such review committees shall not be required to be Members of the Association.

31.7. Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer, all plans for buildings, out-buildings, structures, additions, alterations and landscaping shall be approved by the Trustees or architectural review

committee (if so appointed) and/or the landscaping review committee (if appointed and if applicable), or any person designated by them for the purpose.

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

31.8.1. the siting of all buildings and improvements on the Erven, the use of motor vehicles and the parking of vehicles, including trucks, caravans, trailers and boats and the use of the roads;

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

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

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

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

31.8.6. 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;

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

31.8.8. the control of the number of occupiers permitted on any one Erf or Sectional Title Unit or dwelling subject to an Occupation Right;

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

31.8.10. maintenance of Common Areas;

- 31.8.11. refuse disposal;
- 31.8.12. littering;
- 31.8.13. responsibility of the members for the activities of domestic employees and their guests and access of such persons to the Estate;
- 31.8.14. security;
- 31.8.15. letting and re-selling of Erven;
- 31.8.16. the imposition of fines and other penalties;
- 31.8.17. subject to clause 25, the accreditation of estate agents for sales and re-sales of Erven, Sectional Title Units and/or Occupation Rights and the appointment of an on-site estate agent or agents to conduct sales and re-sales;
- 31.8.18. the accreditation of architects in respect of the submission of plans for any works to be conducted on Erven;
- 31.8.19. the accreditation of builders contracted to conduct construction work on Erven or in Sectional Title Units or in dwellings in respect of which an Occupation Right has been granted;
- 31.8.20. the accreditation of service providers or contractors in respect of work to be conducted on behalf of Members or the Association on the Estate;
- 31.8.21. 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.
- 31.8.22. The Association may in general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the Trustees from time to time.

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

32. PROCEEDINGS OF THE TRUSTEE COMMITTEE

32.1. 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.

32.2. 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.

32.3. The quorum necessary for the holding of any meeting of the Trustee Committee shall be 50% (fifty percent) of Trustees holding office at any time and during the Development Period, shall include the Developer unless the Developer elects not to attend.

32.4. The Chairperson shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairperson not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairperson shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

32.5. 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 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.

- 32.6. All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 32.7. Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 32.8. The Trustees shall not vote on any matter relating to the shares costs on which the school levy is based without having given the school trustee an opportunity to make representations in respect thereof.
- 32.9. 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.
- 32.10. Resolutions put to the vote at meetings of the Trustee Committee shall be carried by a simple majority subject to the provisions of clauses 49.1.3 and 49.1.12 below.
- 32.11. In the case of an equality of votes, the Chairperson of the Trustee Committee shall have a casting vote.

33. **GENERAL MEETINGS OF THE ASSOCIATION**

- 33.1. The Developer shall call the first general meeting of the Association within 60 days of the transfer of 60% of the Residential Erven and Sectional Title Units on the Retirement Village Erf 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 City within 2 (two) weeks of such meeting.

- 33.2. At the first general meeting of the Association, the members shall be obliged to elect the trustees of the Association.
- 33.3. The Association shall hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, as soon as possible after the end of each financial year, it being the intention that each Annual General Meeting shall take place not later than 3 (three) 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 (twelve) months from the date of the first general meeting as contemplated in clause 33.1 above. The Association shall specify the meeting as such in the notices, in terms of clause 34.1 below calling it.
- 33.4. 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.
- 33.5. All general meetings, other than Annual General Meetings, shall be called special general meetings.
- 33.6. The Trustee Committee, may, whenever they think fit, convene a special general meeting.
- 33.7. Where the Members who hold at least 25% (twenty five percent) of the total votes resolve to call a special general meeting, the Trustee Committee shall be obliged to call such meeting.

34. **NOTICE OF MEETINGS**

- 34.1. An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by not less than 21 (twenty one) days' notice in writing, and a special general meeting, other than one called for the passing of a Special Resolution, shall be called by not less than 14 (fourteen) 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 in terms of this Constitution entitled to receive such notices from the Association.

34.2. 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:

34.2.1. in the case of a meeting called as the Annual General Meeting, by not less than 75% (seventy five percent) of all the Members entitled to vote thereat; and

34.2.2. in the case of a special general meeting, by the Developer (for the duration of the Development Period), and by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 50% (fifty percent) of the total number of votes of all Members.

34.3. 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.

35. **VENUE OF MEETINGS**

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

36. **QUORUM**

36.1. 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% (twenty percent) of the total votes of all Members of the Association entitled to vote, for the time being, save that not less than 30 (thirty) 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.

- 36.2. If within 30 (thirty) minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned for another 15 (fifteen) minutes, and if at such adjourned meeting a quorum is not present, the Members present shall be a quorum.

37. **AGENDA AT MEETINGS**

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

- 37.1. the consideration of the Chairperson's report;
- 37.2. the determination of the number of trustees for the ensuing year subject to the provisions of clause 28.1 above and the election of the Trustee Committee;
- 37.3. 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;
- 37.4. the determination of the domicilium citandi et executandi of the Association;
- 37.5. the appointment of and auditor or accounting officer;
- 37.6. 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;
- 37.7. the consideration and approval of the report of the Auditors; and
- 37.8. the consideration and approval of the income and expenditure and the determination of the required reserves, for the ensuing year.

38. PROCEDURE AT GENERAL MEETINGS

- 38.1. The Chairperson shall preside as such at all general meetings, provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairperson, shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting, provided that, for the duration of the Development Period, the Chairperson shall be a Trustee who is appointed by the Developer.
- 38.2. The Chairperson may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 10 (ten) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 38.3. Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

39. PROXIES

- 39.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The Proxy shall be entitled to vote at a general meeting on behalf of that Member. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than 1 (one) person, any 1 (one) of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the chairperson of the board of

directors of the company or by its secretary, and where an association of persons, by the secretary thereof.

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

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

40. **VOTING**

40.1. At every general meeting, every Member in person or by proxy and entitled to vote shall have 1 (one) vote per Erf or Sectional Title Unit or Occupation Right owned by such Member, subject to the provisions of clause 40.3 and provided that the Registered Owner of the School Erf shall have no votes.

40.2. During the Development Period, the Developer shall have the same number of votes of all the other Members of the Association, plus 1 (one) vote.

40.3. Where 2 (two) or more Erven have been consolidated or 1 (one) Erf has been subdivided into 2 (two) or more Erven, then the Member in question shall continue to have the same number of votes he held prior to consolidation or subdivision, as if such consolidation or subdivision had not taken place.

40.4. Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect or of 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.

40.5. 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.

- 40.6. 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.
- 40.7. 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.
- 40.8. An ordinary resolution (that 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 the provisions of clause 49.1.12 below. 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.
- 40.9. Unless any Member present, in person or by proxy, at a general meeting, shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

41. **SPECIAL RESOLUTION**

A resolution by the Association shall be a special resolution if at a general meeting of which not less than 21 (twenty one) 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 in aggregate not less than 20% (twenty percent) 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% (seventy five percent) of the total votes to which the Members present in person or by proxy are entitled.

42. **OTHER PROFESSIONAL OFFICERS**

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

43. **ACCOUNTS**

43.1. The Association in general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

43.2. At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in clause 34.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

44. AUDIT

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

45. SERVICE OF NOTICES

45.1. 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 Erf or Sectional Title Unit or dwelling subject to the Occupation Right owned by such Member or by facsimile or email to the facsimile or email address last provided to the Association by the Member in terms of clause 45.2 below.

45.2. 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 a facsimile and/or email address, which shall be deemed to be his address for the purpose of the service of notices.

45.3. Any notice sent by telefax or email to a Member's chosen telefax number or email address, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

45.4. 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.

45.5. 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 *domicilium citandi et executandi*.

46. INDEMNITY

- 46.1. All Trustees shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee, in his capacity as Chairperson, Vice-Chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person(s) by the Court.
- 46.2. 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/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 bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 46.3. A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustee, 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 tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office(s) or in

relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

- 46.4. 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 Association's 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 effected 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 or her interest.
- 46.5. The City is exempt from liability for any damage which may be caused by its certification of a constitution of an owners association or an amendment thereof or by the loss of a constitution lodged with the City in accordance with the provisions of section 62(6) of the By-Law.

47. **ARBITRATION**

- 47.1. Any dispute, question or difference arising at any time between a Member or between Members and Trustees out of or in regard to:
- 47.1.1. any matters arising out of this Constitution; or
- 47.1.2. the rights and duties of any of the parties mentioned in this Constitution; or
- 47.1.3. 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.

- 47.2. Notwithstanding clause 47.1, 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.
- 47.3. Arbitration shall be held in Cape Town informally and otherwise in terms of the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time), it being intended that, if possible, it shall be held and concluded within 21 (twenty one) Business Days after it has been demanded.
- 47.4. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 47.4.1. primarily an accounting matter – an independent accountant;
 - 47.4.2. primarily a legal matter – a practising counsel or attorney of not less than 10 (ten) years' standing;
 - 47.4.3. any other matter – an independent and suitably qualified person appointed by the Auditors;
- as may be agreed upon between the parties to the dispute.
- 47.5. If agreement cannot be reached on whether the question in dispute falls under sub-clauses 47.4.1, 47.4.1, or upon a particular arbitrator in terms of sub-clause 47.4.2, within 3 (three) Business Days after the arbitration has been demanded, then:
- 47.5.1. the President for the time being of the Law Society of the Cape of Good Hope (or its successors) shall determine whether the question in dispute falls under sub-clauses 47.4.1, 47.4.1 or 47.4.2; or
 - 47.5.2. The President for the time being of the Law Society of the Cape of Good Hope (or its successors) shall nominate the arbitrator in terms of clause 47.5.1 within 7 (seven) Business Days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) Business Days referred to in clause 47.3 above.

- 47.6. The arbitrator shall make his award within 7 (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 may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 47.7. The decision of the arbitrator shall be final and binding and may be made an Order of the Cape of Good Hope Provincial Division of the High Court of South Africa (or its Successors) upon the application of any party to the arbitration.
- 47.8. Notwithstanding anything to the contrary contained in clauses 47.1 to 47.7 inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions.

48. **AMENDMENTS TO CONSTITUTION**

- 48.1. During the Development Period the Developer may without the approval of the Members amend, substitute and repeal any provision of this Constitution, subject further to the prior written consent of the City being obtained for the amendment of this clause 48 and clauses 2, 3, 4, 7, 8, 13, 14,15,16, 18, 48.1 and 50.
- 48.2. Any amendments to this Constitution relating to any matters referred to in section 62(1)(a) of the By-Law shall only come into effect once the City has given its written approval thereof.
- 48.3. 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.
- 48.4. Subject to the provisions of clauses 48.1, 48.2 and 48.3 above, after the termination of the Development Period, any such addition, amendment, substitution or repeal shall require the approval of at least 75% (seventy five percent) 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.

48.5. Any reference herein to 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 48.

48.6. The Constitution and any amendment thereof must be lodged with the City and the latest copy duly lodged with the City, and which the City has certified in terms of sections 62(2) and 62(4) of the By-Law is presumed to contain the operative provisions of the Constitution.

49. **STATUS OF 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:

49.1. the Developer shall be entitled:

49.1.1. to nominate and appoint the Trustees to the Trustee Committee;

49.1.2. at general meetings to a number of the votes equal to the total number of the votes of all Members plus 1 (one) vote;

49.1.3. at trustees meetings to a number of the votes equal to the total number of the votes of all Trustees plus 1 (one) vote;

49.1.4. to impose 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;

49.1.5. to make any amendments, amplifications, substitutions and/or additions to the Design Guidelines, and to impose any new design guidelines in the Estate and to make amendments, amplifications, substitutions and/or additions to any such new

design guidelines, as the Developer in its sole discretion may deem fit;

49.1.6. to make any amendments, amplifications, substitutions and/or additions to the EMP and to the Landscape Master Plan as the Developer in its sole discretion may deem fit;

49.1.7. 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 Erf by giving such Member written notice in which his failure to comply with the particular provisions of this Constitution is detailed and calling upon him to remedy such failure within a prescribed period of not more than 30 (thirty) 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 Erf;

49.1.8. to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the development including the common areas, the private road area and/or the exterior walls (if any) of the development, subject to the regulations and by-laws of the City appertaining to signage from time to time;

49.1.9. to change the name of the Association from time to time to any name which the Developer may deem fit;

49.1.10. to cede all of its rights in terms of this Constitution and the transferee shall be entitled to exercise such rights;

49.1.11. may at any time abandon, in writing, in whole or in part, any rights conferred upon it in terms of this Constitution;

49.1.12. to veto any decision of the members in a members meeting or the Trustees in a Trustees Committee meeting, and whether by way of ordinary or special resolution, that may, in the

Developer's sole discretion, be prejudicial to the Clara Anna Fontein development.

49.2. Neither the Trustee Committee nor any Member of the Association shall prevent or hinder in any way the Developer from :-

49.2.1. gaining access to and egress from the Estate;

49.2.2. continuing any building operations at the Estate;

49.2.3. marketing and selling any of its unsold Erven or Sectional Title Units or Occupation Right, including the advertisement of the sale of such Erven or Sectional Title Units or Occupation Right on the Common Areas and/or elsewhere in the Estate;

49.2.4. transferring or ceding (whichever is applicable) any Erf or Sectional Title Unit or Occupation Right to any third party purchaser or transferee;

provided that the provisions of this clause 49.2 shall not be interpreted as allowing the Developer access onto any of the Erven after the termination of the Development Period unless 48 (forty eight) 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.

49.3. Upon the expiry of the Development Period, the rights of the developer in terms of the provisions of this clause shall immediately terminate ipso facto and no longer be of any force and effect.

50. INCORPORATION OF FURTHER PHASES

The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity to ensure the success of the Estate. Accordingly, none of the following provisions may be deleted or varied in any way in terms of clause 49 above, without the prior written consent of the Developer:

- 50.1. the Developer has the right at any time and from time to time to extend or alter the area or composition of the Estate by requiring the Association to incorporate into the Estate any additional areas from time to time as further phases of the Estate which the Developer shall be entitled to develop as it may deem fit including, but not limited to, the Future Development Areas;
- 50.2. should any additional area or areas be incorporated into the Estate, the Developer shall be entitled to require that the first and all subsequent owners of Erven, Sectional Title Units or Occupation Rights therein become Members of the Association in respect of those parts from such date as the Developer may determine, and on the same terms and conditions as are applicable to the other Members of the Association. The Members shall be bound by any such requirement of the Developer.

51. OWNER'S ASSOCIATION WHICH FAILS TO MEET AN OBLIGATION OR CEASES TO FUNCTION

- 51.1. If the Association fails to meet any obligations in this Constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.
- 51.2. The City may recover any expenditure in respect of the action contemplated above from the Association or its members, who are jointly liable.
- 51.3. The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the

purposes of recovering expenditure incurred in connection with the Association from its Members.

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

51.4.1. hold a meeting and to reconstitute itself; or

51.4.2. dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed.

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

51.5.1. the purpose of the Association;

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

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

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

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

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

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

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

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

ANNEXURES

- "A" Diagram of the Land
- "B" Site Development Plan
- "C" Levies payable in respect of the School Erf
- "C1" Common Facilities Diagram

DIAGRAM OF THE LAND

SITE DEVELOPMENT PLAN

LEVIES PAYABLE IN RESPECT OF THE SCHOOL ERF

1. For the purposes of this Annexure "C", capitalised words and expressions shall bear the meaning ascribed to those words and expressions in the Agreement, unless the context clearly otherwise indicates and:
 - 1.1. "Common Facilities" shall mean all facilities which form part of the Development and which are intended for the shared use of the School Site and the Development generally, being the areas shaded in green, yellow and red on Annexure "C1" hereto (for the sake of clarity these areas fall outside the boundaries of the Clara Anna Fontein Estate and the School and includes the verge along Vissershoeek Road);
 - 1.2. "Independent Expert" means an appropriately qualified and experienced expert who is neither directly nor indirectly associated with any Trustee nor the Association, mutually agreed on by the Trustees and the School Trustee within a period of 5 (five) Business Days of a request by any Trustee for such agreement;
 - 1.3. "School Erf Owner" shall mean the registered owner of the School Erf;
 - 1.4. "School Trustee" means the trustee appointed by the School Erf Owner to the board of Trustees from time to time in terms of the Constitution;
 - 1.5. "Trustees" shall mean the trustees of the Association from time to time.
2. The Constitution shall provide for the appointment of a trustee to the board of Trustees by the School Erf Owner.

3. The Trustees shall, from time to time, impose levies upon the School Erf Owner on the following basis:
 - 3.1. the Trustees shall, subject to the provisions of clause 4 below, estimate the amount which shall be required by the Association to meet the expenses during each year for the:
 - 3.1.1. maintenance, repair, improvement and keeping in order and condition of the Common Facilities, including landscaping, irrigation, roads, street lights and the external façade of any walling/fencing abutting onto the Common Facilities, but excluding any infrastructure relating to security (e.g. cameras and electrification); and
 - 3.1.2. payment of all rates, consumption charges and other charges payable by the Association in respect of the Common Facilities and/or for the services rendered to it, including consumption charges for electricity and water;
 - 3.1.3. payment of all expenses necessary or reasonably incurred in connection with the management of the Common Facilities;

("the Common Facilities Costs").
4. In estimating the Common Facilities Costs, the Trustees shall take into account the estimated deficiency or surplus (if any) as may result from the preceding year and the Trustees may include an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
5. The Trustees shall determine an appropriate mechanism for apportioning the estimated Common Facilities Costs between the School Erf Owner and the remaining Members of the Development; and shall impose an annual levy (payable in equal monthly instalments) upon the School Erf Owner ("the School Levy") and the remaining Members equal to such amount. In

determining the apportionment mechanism the Trustees shall consider the following:

- 5.1. The apportionment of the annual levy is to be determined by the Trustees, in consultation with the School Trustee, taking into account the principles of reasonableness, fairness and equity, so that the annual levy contribution payable by the School Erf Owner is not disproportionate to that of other Members, including any Members who own properties which are used for businesses or commercial activities. t.
6. Notwithstanding anything to the contrary contained herein:-
 - 6.1. for the 12 (twelve) month period following the date of establishment of the Association or the date of possession of the School Erf by the Purchaser, whichever is the later, no levy shall be payable by the School Erf Owner;
 - 6.2. for the 12 (twelve) month period following the expiration of the period contemplated in clause 6.1 above, the School Erf Owner shall only be liable for 50% (fifty percent) of the School Levy determined in terms of clause 5 above.
7. In the event that the School Trustee disputes the apportionment of the annual levy for the Common Facilities between the School Erf Owner and the remaining Members as determined by the Trustees in terms of clause 5, the School Trustee shall be entitled (within 30 (thirty) days of such determination, to refer the matter to the Independent Expert, failing which the School Erf Owner shall be deemed to be bound by the Trustees determination). The matter may be referred to the Independent Expert on the following basis:
 - 7.1. each of the Trustees shall be entitled, but not obliged, to make written representations to the Independent Expert on the apportionment

within 10 (ten) days of the appointment of the Independent Expert (the "Representations");

- 7.2. each of the Trustees shall be entitled to submit written submissions (the "Submissions") to the Independent Expert on the Representations within a period of 10 (ten) days of receipt of such Representations;
- 7.3. all Representations and Submissions are to be submitted to the Independent Expert, with a copy to the other Trustees, at or before 18h00 (South African time) on the 10th (tenth) day referred to respectively in clauses 7.1 and 7.2 above. Any Representations or Submissions received by the Independent Expert after that time shall be disregarded by the Independent Expert in making its determination on the matter in dispute;
- 7.4. the Independent Expert shall be required to make its determination of the matter in dispute within a period of 25 (twenty five) days of receipt by it of the Submissions;
- 7.5. the costs of the Independent Expert in making a determination in accordance with this clause 7.3 above shall be paid by the Association, unless otherwise determined by the Independent Expert;
- 7.6. the Independent Expert shall in all respects act as an expert and not as an arbitrator;
- 7.7. the Trustees shall use their reasonable endeavours to procure that the Independent Expert complies with all relevant time periods provided for in this clause 7. To the extent that a time period has not been specified in this clause 7, the Trustees shall use their respective reasonable endeavours to cause the decision of the Independent Expert to be given within 60 (sixty) days after the Independent Expert is instructed to do so;

- 7.8. the Independent Expert shall not be bound to follow the general principles of law, but may decide the matter/s submitted to it according to what it considers just and equitable in the circumstances taking into account the Development as a whole and therefore strict rules of evidence or any legal formalities or procedures need not be observed or be taken into account by it in arriving at its decision;
 - 7.9. the Independent Expert shall be vested with entire discretion as to the procedure and manner to be followed in arriving at its decision;
 - 7.10. the Independent Expert will be entitled to investigate or cause to be investigated any matter, fact or thing which it considers necessary or desirable in connection with the dispute; and
8. In the event that the Trustees and the School Trustee fail to agree on the Independent Expert within the period of 5 (five) Business Days referred to in clause 1.2 above or should any Trustee not agree with the determination of the Independent Expert in terms of clause 7 above, the dispute shall be submitted to and decided by arbitration on notice given by any Trustee to the other Trustees within 30 (thirty) days of the Independent Expert's determination and the terms relating to Arbitration in the Constitution shall apply, *mutatis mutandis*, to the Parties to this dispute.
 9. The aforesaid provisions shall not be amended, without the prior written consent of at least 75% (seventy five percent) of the Members, including the School Erf Owner and, during the Development Period, the Developer (which consent shall not be unreasonably withheld).

COMMON FACILITIES DIAGRAM

