



**KNYSNA**  
LIFESTYLE ESTATE

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**CONSTITUTION**

**KNYSNA LIFESTYLE ESTATE**

A Statutory body established in terms of Section 29(1) as read with Section 42 of the Land Use  
Planning Ordinance 15 of 1985

ANNEXURES

- “A” Not Applicable (Deleted)
- “B” Diagram for the Land
- “C” Site Development Plan
- “D” Proxy Form
- “E” Not Applicable (Deleted)

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1. **PREAMBLE**

It is recorded that the Knysna Lifestyle Estate Homeowners Association is constituted as a statutory body in terms of Section 29 of LUPO, in accordance with the conditions imposed by the Municipality of Knysna, when approving the consolidation, rezoning and sub-division of the Land referred to in clause 2.1.16 below.

2. **INTERPRETATION**

In this Constitution:

- 2.1. The following words shall, unless the context otherwise requires, have the meanings assigned to them below:
- 2.1.1. "the Architectural Design Manual" means the architectural and landscape design manual, as amended by the Trustees with the approval of the Council from time to time, for the development of improvements on the Residential Erven;
  - 2.1.2. "the Association" means the Knysna Lifestyle Estate Homeowners' Association;
  - 2.1.3. "the Auditors" means the Auditors of the Association as appointed from time to time;
  - 2.1.4. "Business Day" means weekdays other than Saturdays, Sundays and public holidays;
  - 2.1.5. "Chairman" means the Chairman of the Trustee Committee;
  - 2.1.6. "Common Property" means a part of the Estate, which is not a Residential Erf, or which property is held in the name of the Association;
  - 2.1.7. "Conduct Rules" means the conduct rules, as amended from time to time by the Trustees;
  - 2.1.8. "Constitution" means this Constitution, the Architectural Design Manual and any Regulation, Rule and By-Law issued in accordance with this Constitution from time to time by the Trustees;
  - 2.1.9. "the Council" means the Knysna Municipality, or its successors;

- 2.1.10. "the Developer" means Ledevco Development (Proprietary) Limited (Registration No. 2009/003375/07) or its successor in title as owner of the Land or the remainder thereof from time to time;
- 2.1.11. "Development Period" means the period commencing on the creation of the Association and which period shall endure:
- 2.1.11.1. at least until such date as 75% (seventy five percent) of the Residential Erven have been transferred from the Developer to third parties and same Residential Erven have been improved by the erection of buildings thereon;  
or
  - 2.1.11.2. until the Developer and the Association agree that the period shall be terminated, provided that, in coming to such agreement, the Developer shall be prohibited from exercising any votes that it may be entitled to in terms of this Constitution, and provided further that the Development Period shall terminate by no later than the date by which the last of the Residential Erven is transferred from the Developer to a third party and same has been improved by the erection of buildings thereon;
- 2.1.12. "the Estate" means the estate called "Knysna Lifestyle Estate" to be established on the Land comprising the Common Property and the Residential Erven;
- 2.1.13. "Estate Manager" means the person appointed by the Developer to manage the affairs of the Association during the Development Period, and thereafter appointed by the Association from time to time, as more fully described in clause 34 below;
- 2.1.14. "the EMPs" means the Environmental Management Plans applicable to the Estate as approved by the relevant authorities;
- 2.1.15. "First Transfer" means the date of registration of the first transfer by the Developer of any Residential Erf into the name of the first purchaser of same;
- 2.1.16. "the Land" means a portion of Erf 8577, Knysna, in the municipality and division of Knysna, Western Cape measuring 51.1 (fifty one comma one) hectares, which is reflected on Annexure "B", and any further land incorporated into the Development in terms of the provisions of this Constitution;
- 2.1.17. "the Landscape Master Plan" means the landscape plan for the Estate as approved by the Council;

- 2.1.18. "Levy Stabilisation Contribution" means a payment due by the Members to the Association which is the contribution towards the operational and running costs of the communal facilities of the Estate calculated in accordance with the provisions of clause 25;
- 2.1.19. "LUPO" means the Cape Land Use Planning Ordinance, No. 15 of 1985;
- 2.1.20. "Member(s)" means a member(s) of the Association;
- 2.1.21. "month" means a calendar month;
- 2.1.22. "Registered Owner" means the registered owner of any of the Residential Erven;
- 2.1.23. "the Residential Erven" means subdivided erven of the Land (including the dwellings and other improvements constructed on each such erf) other than the Common Property and which erven are numbered erven and "Residential Erf" shall mean any one such erf;
- 2.1.24. "Services" means such facilities, utilities, services and amenities as may be provided on the Estate, including (but not limited to) electricity, road services, stormwater, water, sewage and waste removal;
- 2.1.25. "Site Development Plan" means a plan indicating various land use portions annexed to this agreement marked Annexure "C";
- 2.1.26. "a Trustee" means a member of the Trustee Committee;
- 2.1.27. "the Trustee Committee" means the Board of Trustees of the Association from time to time;
- 2.1.28. "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; and
- 2.1.29. "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 gender.
- 2.3. Reference to the Constitution means this Constitution, the Architectural Design Manual and any Regulation, Rule and By-Law of the Association.
- 2.4. The terms defined in this Constitution shall bear the same meaning in the Architectural Design Manual and any Regulation, Rule and By-Law of the Association.

- 2.5. The head notes to the paragraphs to this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.6. If the provisions of this Constitution are in any way inconsistent with the provisions of any law, the provisions of such law shall prevail and this Constitution shall be read in all respects subject to that law.
- 2.7. When any number of days is prescribed in this Constitution, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

### 3. **CREATION OF ASSOCIATION**

The Association is hereby created with effect from the date on which the First Transfer of the first subdivided Residential Erf of the Land is registered in the Deeds Office.

### 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 objects of the Association are the matters referred to in section 29(2)(b) and (c) of LUPO and more specifically:

- 5.1. to control the design and construction of any alterations to all buildings, and/or structures erected or to be erected on the Residential Erven in accordance with the Architectural Design Manual, the EMPs, the conditions of approval of sub-division of the Land, the Site Development Plan, any applicable Landscape Master Plan and any other plan, manual, guidelines, policy, contract and the like of any authority and to which the development of the Land may be subject or which may hereafter be imposed, and the requirements of the Council or other authority;
- 5.2. to comply with, and to ensure compliance by Members with, the conditions imposed by the Council pursuant to the Council's approval for subdivision of the Land, including but not limited



- to the monitoring and enforcement of compliance by Registered Owners, and by the Association itself, with the EMPs for the ongoing management of the Estate;
- 5.3. to control, manage and maintain the structures, Services and amenities situated on the Common Property as well as the areas over which servitudes are registered in favour of the Association as referred to in clause 31 below, and to oversee the functioning of any retaining walls situated in the Estate, whether situated on Common Property, servitudes registered in favour of the Association or on Residential Erven;
  - 5.4. to promote, advance and protect the communal and group interests of the Members generally;
  - 5.5. to take transfer of the Common Property;
  - 5.6. to implement and maintain security measures and systems for controlled access to the Estate;
  - 5.7. to enter into service agreements with the Council or any other authority or supplier of Services;
  - 5.8. at the first general meeting, by written resolution, to accept the cession of any rights and delegation of any duties to the Association under any other agreement(s) entered into by the Developer for the benefit of the Association prior to the creation of the Association;
  - 5.9. to prescribe measures for the landscaping and development of the Estate, and for the architectural design and building of improvements to Residential 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;
  - 5.10. to register, where necessary, various service or other servitudes over Common Property in the Estate in favour of the local authority/Public Works Department and/or similar developments or neighbouring properties located in close proximity to the Estate and to register servitudes in favour of the erven in the Estate over other land owned by the Association as are from time to time required and to register servitudes in favour of the Estate over certain Residential 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;
  - 5.11. 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;
  - 5.12. to formulate, enforce, modify, amend, add and delete the Conduct Rules;
  - 5.13. to appoint an Estate Manager to manage the affairs of the Association after the completion of the Development Period;

- 5.14. to include in the Title Deeds of the Common Property to be transferred to the Association, that all such Common Property shall not be sold, alienated, otherwise disposed of or transferred to any other party, nor mortgaged other than is permitted in terms of this Constitution;
- 5.15. to accredit architects and builders to be utilised by Registered Owners in respect of any design and construction work to be conducted on Residential Erven from time to time, in accordance with such criteria as the Association may stipulate from time to time;
- 5.16. subject to the provisions of clause 35, to accredit Estate Agents appointed by Registered Owners in respect of the resale of their Residential Erven, in accordance with such criteria as the Association may stipulate from time to time;
- 5.17. to enter into agreements with other developments and/or relevant authorities (eg. the Public Works Department) located in close proximity to the Estate or with the owners of neighbouring properties with regard to the sharing of facilities or services of any nature whatsoever, including but not being limited to security, landscaping, gardening, agricultural services, water, sewerage, electricity, roads, whether or not for the purposes of sharing the cost thereof;
- 5.18. to maintain the exterior of the Dwellings situated on the Residential Erven and to perform basic garden maintenance in respect of the gardens situated in the Estate, whether situated on Common Property or Residential Erven;
- 5.19. to accredit service providers or contractors in respect of services to be rendered to members of the Association, including but not limited to garden service contractors;
- 5.20. to grant or refuse a Registered Owner consent to transfer his Residential Erf, depending as to whether or not there has been compliance with this Constitution, the Conduct Rules or such other rules and / or determinations made by the Association;
- 5.21. to include in the Title Deeds of Residential Erven that transfer of such erven shall be subject to the Association granting its written consent in respect of such transfer;
- 5.22. to ensure the ongoing maintenance of the landscape master plan after the Developer has implemented same;
- 5.23. to bind Members to contribute by way of subscriptions and levies towards the funds of the Association and to enforce payment of and to collect and receive from Members such subscriptions and levies (including, if necessary, to institute legal action to do so); and
- 5.24. to enforce compliance with its Constitution in such manner as it may deem fit and in particular by means of a system of fines or such other penalties as it may see fit to prescribe.

**6. FINANCIAL YEAR END**

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

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

- 7.1. The Developer shall appoint the first Trustees of the Association.
- 7.2. The Developer shall be entitled to appoint 1 (one) Trustee from time to time during the Development Period.
- 7.3. Save as set forth in clause 7.6 below, each Trustee shall continue to hold office until the Annual General Meeting next following his appointment or election, at which meeting each Trustee shall be deemed to have resigned from office as such, and shall be eligible for re-election to the Trustee Committee at such meeting, subject however to the Developer's rights as set out in clause 7.2.
- 7.4. The Trustee Committee shall consist of not fewer than 3 (three) and not more than 10 (ten) Members from time to time.
- 7.5. The Trustee Committee shall consist of a chairman, vice-chairman and Trustees.
- 7.6. Subject to the provisions of clause 21, the Trustees shall after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines, and failing which, as determined by the Chairman from time to time) of those Members who attend the general meeting of the Association, and successive Trustees shall be elected likewise at each successive Annual General Meeting of the Association, provided that no Member shall be eligible for election unless he shall have been duly nominated and seconded in writing by other Members and such written nomination, duly endorsed by the nominee, shall have been handed to the Chairman not later than the day preceding the meeting and provided further that such nominee's levies for the current year shall have been duly paid and such nominee is not in breach of any of the Conduct Rules or any provision of this Constitution.
- 7.7. A Trustee shall be deemed to have vacated his office as such upon:
- 7.7.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
  - 7.7.2. his making any arrangement or compromise with his creditors;
  - 7.7.3. his conviction for any offence involving dishonesty;
  - 7.7.4. his becoming of unsound mind or being found mentally ill;

- 7.7.5. every Annual General Meeting, but shall be eligible for re-election;
  - 7.7.6. him absenting himself from 3 (three) consecutive meetings of the Trustees without leave of absence;
  - 7.7.7. his resignation from such office in writing delivered to the Chairman of the Association;
  - 7.7.8. his death;
  - 7.7.9. his being removed from office by an ordinary resolution of the Members;
  - 7.7.10. in the event of him being disentitled to exercise a vote as a Registered Owner (or if he is the representative of the Registered Owner, such Registered Owner becoming disentitled to exercise a vote); or
  - 7.7.11. his alienating his Residential Erf in the event that he was a Registered Owner.
- 7.8. A Trustee need not be a Registered Owner.
- 7.9. Any act performed in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.
- 7.10. Where a Trustee vacates his office, during any financial year, for any reason whatsoever, then such a vacancy on the Trustee Committee may be filled by co-option at the instance of the majority vote of the Trustee Committee, for the remainder of the financial year, and until the next Annual General Meeting of the Association. In the event that more than 3 (three) Trustees vacate their office, during any financial year, for any reason whatsoever, then the remaining Trustees shall summon a general meeting for the purpose of appointing new Trustees.
- 7.11. Where the number of Trustees falls below the minimum required level as set out in clause 7.4, the remaining Trustees may act only:
- 7.11.1. to increase the number of Trustees to the required minimum set out in clause 7.4 by appointing casual vacancies as envisaged in clause 7.10; or
  - 7.11.2. to summon a general meeting for the purpose of appointing new Trustees, provided that if there is no Trustee, any Member may call a meeting for such purpose.

## 8. OFFICE OF TRUSTEES

- 8.1. Subject to clause 8.2, the Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.
- 8.2. The Chairman shall, for such time as the Developer is the beneficial owner of 50% (fifty percent) of the Residential Erven, be the Trustee appointed by the Developer in terms of clause 7.2.
- 8.3. Subject to clause 8.2, the Chairman and Vice-Chairman 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.
- 8.4. Subject to the rights of the Developer as set out in clause 8.2 above, within seven (7) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman 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 8.2 above.
- 8.5. Save as otherwise provided in this Constitution, the Chairman 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 Chairman and such other duties as may be prescribed by the Trustee Committee or Members, and shall 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.
- 8.6. The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.
- 8.7. Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, and/or Vice-Chairman, 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.

## 9. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 9.1. Subject to the express provisions of this Constitution, including but not limited to clause 34, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and as are not in terms of this Constitution required to be exercised or done by the Association in general meeting. Notwithstanding the foregoing, the Association in general meeting may, from time to time, prescribe certain regulations concerning the powers conferred upon the Trustee Committee, 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.
- 9.2. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 9.3. Subject to the provisions of clause 7.4, the Trustee Committee shall have the right to co-opt onto the Trustee Committee any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 9.4. The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 9.5. The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association in general meeting:
- 9.5.1. as to disputes generally;
  - 9.5.2. for the furtherance and promotion of any of the objects of the Association;
  - 9.5.3. for the better management of the affairs of the Association;
  - 9.5.4. for the advancement of the interests of Members;
  - 9.5.5. for the conduct of Trustee Committee meetings and general meetings; and
  - 9.5.6. to assist it in administering and governing the Association's activities generally;
- and shall be entitled to cancel, vary or modify any of the same from time to time.
- 9.6. The Trustees shall further:

- 9.6.1. have the power to require that any construction of any sort on the Estate shall be supervised to ensure that the provisions of this Constitution and the Conduct Rules are complied with and that all such construction is performed in a proper and workmanlike manner;
  - 9.6.2. have the power to, subject to clause 43.4 and subject to the Council's approval of same, issue and amend the Architectural Design Manual and ensure that such Architectural Design Manual is complied with at all times;
  - 9.6.3. have the power to issue a Landscape Master Plan, an EMP and contracts or instructions in respect of the Estate, and to ensure that these documents and instructions are complied with at all times;
  - 9.6.4. have the power to determine the criteria for the accreditation of architects, builders, estate agents and other service providers or contractors employed by Registered Owners or the Association, provided that any such criteria shall not apply to any service providers or contractors appointed by the Developer for the Development Period; and
  - 9.6.5. have the power to enter into agreements with other developments located in close proximity to the Estate with regard to the sharing of facilities or services, or with a view of sharing the cost of services, including but not being limited to security, landscaping, gardening and agricultural services.
- 9.7. The Trustees shall have the right to appoint committees consisting of such number of their members and such outsiders, including an Estate Manager as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the trustees may from time to time deem necessary.
  - 9.8. The Trustees may appoint an architectural review committee to exercise the powers set out above in clause 9.6. Members of the architectural review committee shall not be required to be Members of the Association.
  - 9.9. Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer on the Common Property, all plans for buildings, out-buildings, structures, additions and alterations shall be approved by the Trustees or architectural review committee (if so appointed), or any person designated by them for the purpose prior to such plans being submitted to the Council for approval in terms of the Council's plan approval processes in place from time to time.

- 9.10. The Trustees shall only be entitled to amend the Architectural Design Manual if such amendment has been approved at a general meeting of the Association by an ordinary majority of the Members of the Association.

## 10. CONDUCT RULES

- 10.1. The Trustees shall have the power to, subject to sub-clause 43.4, make and enforce the Conduct Rules, which rules are subject to amendment at the discretion of the Trustees and may contain provisions governing *inter alia*:
- 10.1.1. the relationship between the Members and the Association, Trustees and the Members and the Trustees and Association;
  - 10.1.2. the use, maintenance, renovations, installations and repairs of the Common Property of the Estate, subject at all times to the zoning of the land comprising the Estate and the regulations imposed by the Council in approving the Development;
  - 10.1.3. the harmonisation of the aesthetic upmarket appearance of the Estate including the maintenance of the gardens whether situated on Common Property or Residential Erven and the maintenance of the exterior of Dwellings erected on Residential Erven;
  - 10.1.4. the authorisation of permitted persons on the Estate;
  - 10.1.5. the permissibility of activities on the Estate, subject at all times to the zoning of the land comprising the Estate and the regulations imposed by the Council in approving the Development; and
  - 10.1.6. the establishment and management of sporting and social clubs for the benefit of the Members.
- 10.2. For the enforcement of any of the Conduct Rules made by the Trustees in terms of clause 10.1 above, the Trustees may:
- 10.2.1. take or cause to be taken such steps as they may consider necessary to remedy any breach of the said Conduct Rules of which a Member may be guilty, and debit the costs of so doing to the Member concerned, which costs shall be deemed to be a debt due and payable by the Member concerned to the Association; and/or
  - 10.2.2. impose a system of fines or penalties; and/or



- 10.2.3. take such other action including legal proceedings as they may deem fit and, to this end, employ such legal representatives as they deem necessary.
- 10.3. In the event of any breach of the aforesaid Conduct Rules by members of a Member's household or by his guests or lessees, such breach shall be deemed to have been committed by such Member himself but, 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 in their discretion may deem fit.
- 10.4. In the event of any Member disputing the fact that he has committed a breach of any of the said Conduct Rules, a committee of three Trustees appointed by the Chairman shall adjudicate upon the issue at such time, in such manner and according to such procedure as the Chairman may direct, subject always to the observance of the precepts of natural justice.
- 10.5. Any fine imposed upon any Member in terms of clause 10.2.2 above shall be deemed to be a debt due and payable by the Member to the Association, recoverable by ordinary civil process.
- 10.6. In the event of any Member being in persistent or flagrant breach of any of the presents or any of the aforesaid Conduct Rules, or being in breach thereof and failing to remedy such breach, the Trustees may discontinue any service provided to such Member and/or to the Member's Residential Erf for such period as the Trustees may deem fit, provided that the Trustees shall have given to the Member concerned not less than 7 (seven) days prior written notice of their intention to do so.
- 10.7. The Estate Manager or such other person as may be empowered by the Trustees shall ensure compliance with the aforesaid Conduct Rules by the Members, their guests, their lessees and all other persons within the Estate and to this end issue such notices, impose and collect such fines and do such things as may be necessary in this regard.
- 10.8. Every Member hereby undertakes to the Association that he shall comply (and shall ensure that his guests comply) with any Conduct Rules made in terms of this clause 10.
- 10.9. Whenever the Trustees intend to amend the Conduct Rules they shall, before amending the Conduct Rules, distribute the amendment to the Members of the Association for their consideration. Whenever an amendment is distributed in terms of this sub-clause, the Members shall elect within 14 (fourteen) days from the date on which amendment was distributed, whether or not they request a general meeting of the Association to be called for the consideration of the amendment.
- 10.10. Whenever an ordinary majority of the Members request that a general meeting of the Association be called for the consideration of the amendment of the Conduct Rules distributed

in accordance with clause 10.9, then the Rules may not be amended by the Trustees before it has been considered at a general meeting of the Association. Should an ordinary majority of the Members of the Association not elect to request a general meeting of the Association to consider the amendment of the Conduct Rules within 14 (fourteen) days, then the Trustees of the Association shall be entitled to make and issue the proposed amendment of the Conduct Rules.

- 10.11. Should the Members at a general meeting where any amendment of the Conduct Rules is considered resolve by an ordinary majority that such Rules must be amended or must not be amended, as the case may be, such decision will be binding on the Trustees and the Rule shall be amended or not amended in accordance with the resolution by the general meeting.

## 11. **PROCEEDINGS OF THE TRUSTEE COMMITTEE**

- 11.1. The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this Constitution.
- 11.2. Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall, in writing, have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee needs be held for that quarter.
- 11.3. Any Trustee may convene a meeting at any time, by providing notice to the other Trustees, and to the Estate Manager who shall be entitled to attend the meeting, but not vote thereat.
- 11.4. The quorum necessary for the holding of any meeting of the Trustee Committee shall be 50% (fifty percent) of the Trustees holding office at any time and present in the country as at the date of the meeting, and in the event that there are 3 (three) (or less than 3 (three) Trustees), the quorum shall be 2 (two) of Trustees holding office at any time and present in the country as at the date of the meeting.
- 11.5. The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee, the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as chairman at such meeting, provided further that should the Vice-Chairman 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 Chairman for the meeting, and that chairman so appointed shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 11.6. A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing, without undue delay, after the meeting

will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings, after such certification, shall be placed in a Trustee Committee minute book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee minute book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Members and local authority.

- 11.7. 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.
- 11.8. Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 11.9. A resolution signed by all the Trustees present in the country, and being not less than is required to form a quorum, shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened. The resolution may consist of several documents, each signed by one or more Trustees.
- 11.10. Resolutions put to the vote at meetings of the Trustee Committee shall be carried by a simple majority.
- 11.11. In the case of an equality of votes, the Chairman of the Trustee Committee shall have a casting vote.
- 11.12. All acts done by the Trustees or by any committee of Trustees shall, notwithstanding that it be discovered that there was some defect in the appointment of that Trustee or any of them, be as valid as if every person had been duly appointed and was qualified.

## 12. MEMBERSHIP

- 12.1. Subject to the provisions of clause 45 below, it is recorded that that there are two categories of Members, the first being constituted by the Developer and the second by Registered Owners.
- 12.2. For the duration of the Development Period or for so long as the Developer owns the Land, any portion thereof or the remainder thereof from time to time, the Developer shall be a Member of the Association.

- 12.3. Upon termination of the Development Period, membership of the Association shall be limited to and compulsory for the Registered Owners provided that:
- 12.3.1. a person who is entitled to obtain a certificate of registered title to any Residential Erf shall be deemed to be the Registered Owner of such Residential Erf ; and
  - 12.3.2. where any such Registered Owner is more than one person, all the Registered Owners of that Residential Erf shall be deemed jointly and severally to be one Member.
- 12.4. Membership in terms of clause 12.3 shall commence simultaneously with the transfer of the Residential Erf into the name of the Registered Owner.
- 12.5. When a Member ceases to be the Registered Owner, he shall *ipso facto* cease to be a Member of the Association.
- 12.6. A Registered Owner may not resign as a Member of the Association.
- 12.7. 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.
- 12.8. The rights and obligations of a Member shall not be transferable and every Member shall:
- 12.8.1. to the best of his ability further the objects and interests of the Association referred to in clause 5 above; and
  - 12.8.2. observe all by-laws and regulations made by the Association and/or the Trustee Committee, from time to time.
- 12.9. No Member shall let or otherwise part with the occupation of his Residential Erf without complying with the requirements of clause 23 and obtaining the prior written consent of the Trustee Committee, which may impose any condition to such consent in its discretion, including requiring the written agreement of the proposed occupier that the proposed occupier will be bound by the provisions of this Constitution.
- 12.10. The Member shall be liable and accountable for the acts or omissions of all persons occupying his Residential Erf, whether lawfully or unlawfully, including but not limited to lessees, guests, invitees, contractors and agents.
- 12.11. Save in those instances where the Developer passes First Transfer to a Registered Owner, in all other instances where a Registered Owner wishes to alienate or transfer his Residential Erf or in the event that the said erf is owned by a company, close corporation or trust, should the shareholder/s or member/s or trustee/s or beneficiaries wish to alienate all their shares or

membership or beneficial interest in such entity he shall not be entitled to do so unless he complies with the requirements of clause 36.

- 12.12. The registration of transfer of that Residential Erf into the name of the transferee shall *ipso facto* constitute a transferee as a Member of the Association.
- 12.13. For the avoidance of doubt it is recorded that the Association shall not furnish consent to any sale envisaged in clause 12.11 during the Development Period, without the Developer's prior written consent.
- 12.14. Any Member which is in breach of any provision of this Constitution, or who is in arrears with respect to any amount payable to the Association or any related committee, shall not be entitled to the rights and powers provided to him in terms of this Constitution.
- 12.15. Notwithstanding the foregoing, the owner(s), in perpetuity, of Erf 16722 Knysna, and Erf 16723, Knysna, both portions of Erf 8577, Knysna shall have limited rights of membership and to this extent, shall:
- 12.15.1. not be entitled to the use of any of the facilities situated on the Common Property and made available to Members from time to time for their use and enjoyment; and
- 12.15.2. not be entitled to any voting rights as are otherwise conferred upon Members in term of this Constitution; and
- 12.15.3. not be entitled to expect the Association to maintain the gardens or exterior of the Dwellings erected on such erven; and
- 12.15.4. not , save as is set out in this clause 12.15, be bound generally by the terms of this Constitution, including the provisions set out in clauses 7 (*Appointment, Removal and Rotation of Trustee Members*), 10 (*Conduct Rules*), 21 (*Voting*), 25 (*Levy Stabilisation Fund*), 29 (*Health Care Facilities*), 32 (*Services*), and 36 (*Transfer of Residential Erven*); and
- 12.15.5. be afforded a right of way as may be reasonably required to access the aforementioned erven or to provide telephone, water, electricity and related services to such erven; and
- 12.15.6. only enjoy the benefit of any security measures employed around the Development as a whole, and no other services provided by the Association (or by any other body to whom the Association has delegated any powers) from time to time,

and to this extent, the owner(s) of such properties from time to time shall be liable to the Association only for their proportional share of the costs associated with the provision of such security services and the maintenance and upkeep of security equipment and such of the infrastructure on the Common Property as may be used by them. For the avoidance of doubt, the owners of these erven shall be expected to maintain the gardens and Dwellings situated on such erven in a manner which befits the remainder of the Estate.

**13. 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.

**14. CO-OWNERSHIP**

14.1. No Residential Erf shall be held in co-ownership by more than 2 (two) persons and no time-sharing agreement may be entered into between any such co-owners in terms of which they are entitled to occupy such Residential Erf at predetermined times.

14.2. No juristic person may be so structured or utilised as to permit its members or shareholders to occupy at pre-determined times any Residential Erf owned by it.

**15. GENERAL MEETINGS OF THE ASSOCIATION**

15.1. The Association shall hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, as soon as possible after the end of each financial year, it being the intention that each Annual General Meeting shall take place not later than 6 (six) months after each financial year. Notwithstanding the foregoing, the first Annual General Meeting of the Association is only required to take place by no later than the end of the financial year following which the Association comes into existence. The Association shall specify the meeting as such in the notices, in terms of clause 16.1 below, calling it.

15.2. Any meetings of the Association shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.

15.3. deleted.

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

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

## 16. NOTICE OF MEETINGS

- 16.1. An Annual General Meeting and a general meeting called for the passing of a Special Resolution, shall be called by twenty one (21) days' notice in writing, and a general meeting, other than one called for the passing of a Special Resolution, shall be called by fourteen (14) days' notice in writing.
- 16.2. Any notice in respect of an Annual General Meeting or a general meeting shall, in each case, be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and the general nature of the business of the general meeting, and in the case of a Special Resolution, the terms and effect of the resolution and the reasons for it.
- 16.3. Notices shall be provided to all Members, the Auditors, and to the Estate Manager.
- 16.4. A general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:
- 16.4.1. in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat (as well as the Developer for the duration of the Development Period); and
- 16.4.2. in the case of a general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy five percent) of the total number of votes (as provided for in clause 21.1 below) of all Members (and by the Developer for the duration of the Development Period).
- 16.5. 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.
- 16.6. A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member, subject to the provisions of clause 16.7 below, at the address of the Residential Erf owned by him.
- 16.7. No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.

- 16.8. Any notice given by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 16.9. Where a notice is to be given to a Member, which comprises more than one person, then any notice provided to the person mentioned first in the register of members shall be validly delivered.
- 16.10. In the event of the death, legal disability, or insolvency (which shall include the liquidation or placing under judicial management of a company or other body corporate) of a Member, the Association shall be entitled to give any notice required by this Constitution in any manner in which the same may have been given if the death, legal disability, or insolvency had not occurred. Notwithstanding the foregoing, as soon as proof of the appointment of any representative of such Member has been given to the Association, such notices shall thereafter be given by the Association to any such representative addressed to such person by name and at the address provided, and failing the provision of such address, at the address of the Residential Erf of the Member concerned.

## 17. **QUORUM**

- 17.1. No business shall be transacted at any general meeting unless a quorum is present at the beginning of the meeting.
- 17.2. 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 35% (thirty five percent) of the total votes of all Members of the Association entitled to vote, for the time being, save that not less than 15 (fifteen) Members must be personally present or present by proxy, and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.
- 17.3. If within ½ (half) an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum, provided that, for the duration of the Development Period, the Developer is present in person or by proxy.

## 18. **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:



- 18.1. the confirmation of the minutes of the preceding Annual General Meeting and of any extraordinary general meetings held subsequently;
- 18.2. the consideration of the Chairman's report to the Trustee's Committee;
- 18.3. the election of the Trustee Committee, the Auditors, and any other office bearers;
- 18.4. the consideration of any matters raised at the meeting, including any resolution proposed for adoption by the meeting and the voting upon ant such resolution;
- 18.5. 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;
- 18.6. the consideration and approval of the report of the Auditors;
- 18.7. the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting;
- 18.8. the consideration and approval of the total levy, for the calendar year during which such Annual General Meeting takes place, the total levy being the sum of all the levies to be collected from Members in terms of clause 24; and
- 18.9. any other matters as may be required to be dealt with by the Members or the Trustees.

## 19. **PROCEDURE AT GENERAL MEETINGS**

- 19.1. The Chairman 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-Chairman, shall act as Chairman at such meeting, provided further that should the Vice-Chairman 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 Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 19.2. The Chairman 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.

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

20. **PROXIES**

- 20.1. 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.
- 20.2. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, 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, and where a Member is a juristic person, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where the Member is an association of persons, by the secretary thereof.
- 20.3. 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.
- 20.4. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months calculated from the date of its execution.
- 20.5. The instrument appointing a proxy shall be in the form of proxy provided in Annexure "D" or as near thereto as circumstances permit:
- 20.6. A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

21. **VOTING**

- 21.1. At every general meeting, the following provisions shall apply in regard to voting:
- 21.1.1. the Developer shall, during the Development Period, have 1 (one) vote for each Residential Erf, not as yet transferred by the Developer to a purchaser or any other party. A representative of the Developer shall in person or by proxy be entitled to pass such votes; and
- 21.1.2. every Member in person or by proxy and entitled to vote shall have 1 (one) vote in respect of each Residential Erf registered in his name, provided that if a Residential Erf is registered in more than one person's name, then they shall jointly exercise such votes.

- 21.2. Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 21.3. Where a Member is a juristic person, such Member shall be represented by such representative as the Member may determine provided that the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member;
- 21.4. Where a Member comprises more than one person, such Member shall be represented by such representative as the Member may determine provided that:
  - 21.4.1. the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member;
  - 21.4.2. if such persons cannot so decide unanimously, then the person whose name stands first in the register of members shall be entitled to cast the vote; and
  - 21.4.3. the vote(s) cast to the satisfaction of the Chairman shall be final and binding upon all persons constituting the relevant Member, irrespective of any error or absence of authority.
- 21.5. At any general meeting, unless a poll is requested, a resolution put to the vote of the meeting shall be decided on a show of hands.
- 21.6. Voting on the election of a Chairman of a general meeting (if necessary), or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, subject however to the Developer's rights in clauses 8.2 and 21.10.
- 21.7. 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.
- 21.8. A Special Resolution or the amendment of a Special Resolution, shall be carried by 75% (seventy five percent) of the total number of Members ("Special Resolution").
- 21.9. An ordinary resolution (that is a resolution other than a Special Resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereon.

- 21.10. For the duration of the Development Period, the Developer shall have the right to veto any resolution if the impact of such resolution, in the opinion of the Developer, should such resolution be carried into effect, would affect the image of the Development, alter the aesthetic nature of the improvements on the Land or be prejudicial to the ongoing marketing of the Development and/or to sales of Residential Erven and/or to the successful completion of the Development.
- 21.11. An abstention shall not be counted as a vote for or against the resolution in question.
- 21.12. In the case of an equality of votes, the Chairman of the general meeting shall be entitled to a casting vote in addition to its deliberative vote.
- 21.13. 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 Chairman 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 Chairman 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 Chairman of the meeting as to the result of any voting at the meeting.

## 22. **OTHER PROFESSIONAL OFFICERS**

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

## 23. **OCCUPATION**

- 23.1. No Member shall be entitled to take occupation or allow any other person to take occupation of any dwelling or part thereof erected upon his Residential Erf until such time as the construction of such dwelling has been fully completed and the architect appointed by the Developer has issued a Certificate of Completion in respect of such dwelling. In the event that a Member should take occupation or allow occupation to be taken of his dwelling or part thereof, without first obtaining a Certificate of Completion from the Developer, 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 dwelling or part thereof, evicted

therefrom or to refuse the Member and/or all persons occupying the dwelling or part thereof access to the Estate. Notwithstanding the foregoing, no Member shall be entitled to take occupation or allow any other person to take occupation of any dwelling or part thereof erected upon his Residential Erf until such time as the Council has issued a certificate of completion in terms of the prevailing statutes and regulations.

- 23.2. Save in respect of the First Transfers, immediately on acquisition of the Residential Erf, the Registered Owner shall nominate a maximum of 2 (two) persons to be the occupants of the dwelling constructed on that Residential Erf and only such nominated occupant(s) shall be entitled to exercise the rights of use and occupation of the said Residential Erf and the shared rights of use and enjoyment of the communal facilities and Common Property in the Estate. The Association shall consider, on receipt of written request from a Member or proposed Member, whether to increase the number of permitted occupants, in its sole discretion.
- 23.3. Where a Registered Owner becomes a Member as a result of a First Transfer, then notwithstanding the provisions of clause 23.2, such Registered Owner shall have a period of 36 (thirty six) months calculated from the date on which an agreement of sale was concluded between such Registered Owner and the Developer (whether conditional or not) to confirm the identities of the nominated occupant(s) of the Dwelling.
- 23.4. On the death or permanent vacation of the relevant Residential Erf by the nominated occupant(s), the said Registered Owner shall, without delay, nominate a new occupant(s) for the relevant Residential Erf, which nominated occupant(s) shall, subject to the provisions of clause 25, solely be entitled to exercise the right of use and occupation.
- 23.5. No person shall be nominated as an occupant of a Residential Erf unless such person meets the prior written approval of the Trustee Committee in accordance with the criteria set out in clause 36.

#### 24. **LEVIES**

- 24.1. The Members shall be jointly liable for expenditure incurred by the Association in direct proportion to the floor area of the Dwelling constructed on their Residential Erf. For the duration of the Development Period, the Developer shall be liable for actual expenditure incurred by the Association in direct proportion to the floor area of dwellings reflected on the Site Development Plan, but not yet transferred to third parties, subject further to clause 24.12.
- 24.2. The Trustee Committee shall from time to time, determine the total amount of levies payable by the Members for the purpose of meeting all the expenses which the Association has incurred, or which the Trustee Committee reasonably anticipates the Association will incur in respect of:

- 24.2.1. facilities and services (including the Services) in connection with the Estate;
  - 24.2.2. maintenance of the Common Property, and of any servitudes registered in favour of the Association, basic maintenance of the gardens of the Residential Erven and the exterior of all Dwellings and other buildings erected in the Estate;
  - 24.2.3. the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs; and
  - 24.2.4. any reserves which the Trustee Committee may deem necessary.
- 24.3. In calculating levies, the Trustee Committee shall take into account income and other revenues if any, earned by the Association.
- 24.4. A Member shall be liable to pay levies with effect from the date upon which the Member becomes a Registered Owner, pro-rated where applicable.
- 24.5. The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall determine an annual levy payable by the Members equal to or as near as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year and shall be paid by way of a debit order in favour of the Association or by any other method as determined by the Trustee Committee from time to time.
- 24.6. The Trustee Committee, may from time to time, determine the special levies payable by the Members in respect of all such expenses as are mentioned in clause 24.2, 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.
- 24.7. The Trustee Committee shall not less than thirty (30) days prior to the end of each financial year of the Association give every Member at the address chosen by it a written notice of the monthly contribution payable by that Member to such expenses and reserve fund.
- 24.8. In the event of the Trustee Committee for any reason whatsoever failing to prepare and timeously give notice of the estimate referred to in clause 24.7 above, every Member shall until served with such estimate, continue to pay the levy previously imposed and shall after such notice pay such levy as may be specified in the notice, in the manner specified above, together with any arrear levies, which may be owing by the Member.
- 24.9. Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be Member of the

Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor-in-title to a Residential Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that erf, to pay the levy attributable to that erf. No Member shall transfer his Residential Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association and furnished the Member with a clearance certificate.

- 24.10. Subject to clause 24.12, the total levy payable shall be borne jointly by the Members in proportion to the floor areas of the Dwellings constructed on each of the Residential Erven.
- 24.11. The Trustee Committee's decision in calculating the levy and imposing any annual escalation thereon shall be final and binding on all Members.
- 24.12. For so long as the Developer is the registered owner of the Land or any portion thereof or the remainder thereof, the Developer shall not be required to pay levies as contemplated in clause 24.2 above. The Developer shall, however, for the duration of the Development Period pay the difference between the actual expenses incurred by the Association (as referred to in clause 24.1 above) but excluding any provisions for a reserve fund, and the aggregate of the levies payable jointly by the Members who are Registered Owners of Residential Erven each month from time to time, including any other income received by the Association (e.g. penalties). For the avoidance of any doubt it is recorded that in determining the aggregate of individual levies payable by Members who are Registered Owners from time to time for the purposes of this clause 24.12, the aggregate shall include all levies payable by such Members, irrespective of whether or not such levies have actually been paid by those Members. In the event that there is a dispute as to the actual costs incurred by the Association at any time, then the matter shall be referred to the Developer's auditor who, acting as an expert and not as an arbitrator, shall issue a certificate which shall be final and binding on the parties and who shall be entitled for this purpose to have access to all the records and books of account of the Association as and when required. The costs of the said auditor shall be borne by the Association.
- 24.13. No Member shall be entitled to any of the privileges of membership unless and until he shall have paid all levies and any other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 24.14. The Trustee Committee shall be empowered to impose fines in respect of non-compliance with the provisions of this Constitution and/or to charge interest on any arrear levies and to determine the rate of interest from time to time chargeable upon such arrear levies, which shall be in addition to such other rights as the Association may have in law against the Members, provided that such interest shall not exceed the rate laid down in terms of the Usury

Act, No 73 of 1968, or the National Credit Act, No 34 of 2005, or any statutory modification or re-enactment thereof, and provided further that nothing contained in this clause shall derogate from any other legal remedies of the Association.

- 24.15. Any amounts paid by a Member in respect of levies shall be apportioned first towards outstanding interest and costs of recovery, and thereafter towards any levies and amounts due by the Member to the Association.

**25. LEVY STABILISATION FUND**

- 25.1. In the event of the transfer of rights of use and occupation of the Residential Erf through the transfer of a Residential Erf by the Registered Owner, the Levy Stabilisation Contribution (calculated in accordance with the provisions of clause 25.2 below) payable by the transferee shall be included in, and form part of, the full payment consideration for the Residential Erf.

- 25.2. The Levy Stabilisation Contribution referred to in clause 25.1 above shall be calculated in accordance with the following formula:

$$\text{The Levy Stabilisation Contribution} = \frac{C - Z}{4}$$

**WHERE**

“A”= the full purchase consideration for the Residential Erf, payable by the transferee;

“B”= the full open market valuation of the Residential Erf at the time of the disposal thereof to the transferee, as determined by the Auditors on due consideration of then prevailing property market conditions and the prices at which the rights in respect of other Residential Erven in the Estate were sold during the period of 12 months prior to the transfer of the transferee;

“C”= the greater of “A” and “B”;

“X”= the full payment consideration for the Residential Erf paid by the transferor (or the valuation of the Residential Erf as at the date of last nomination of an occupant in terms of clause 23 read with clause 25.3, applied in the determination of the the Levy Stabilisation Contribution payable at the time of such last nomination);

“Y”= the full open market valuation of the Residential Erf at the date of acquisition by the transferor, or the open market valuation as at the date of last nomination of an occupant in terms of clause 23 read with clause 25.1 above and as applied in the determination of the Levy Stabilisation Contribution payable at the time of



such last nomination, and such open market valuation to be determined by the Auditors; and

“Z”= the greater of “X” and “Y”.

- 25.3. Where the transfer of rights of use and occupation arises as a result of the death or permanent vacation of the nominated occupant(s) of the Residential Erf (as further set out in clause 23), the Levy Stabilisation Contribution shall be calculated as 25% (twenty five percent) of the increase in the open market valuation of the Residential Erf from the date of nomination of the occupant(s) who has (have) so died or permanently vacated, to the date of the nomination of the new occupant(s) and such increase shall be determined by the Auditors.
- 25.4. Notwithstanding anything to the contrary contained in this Constitution, no Levy Stabilisation Contribution shall be payable in respect of:
- 25.4.1. the first transfer of any Residential Erf from the estate of a deceased Registered Owner to his/her surviving spouse, provided that such exemption shall not apply to any subsequent transfer of the said Residential Erf from the deceased estate of the surviving spouse and in such instance, the provisions of clause 25.2 shall apply, save that:
- “X”= the full payment consideration paid for the Residential Erf paid by the first dying spouse; and
- “Y”= the full open market valuation of the Residential Erf as at the date of acquisition of same by the first dying spouse, and such open market valuation shall be determined by the Auditors;
- 25.4.2. the nomination by a Registered Owner, who is a juristic person, of the surviving spouse of a deceased nominated occupant of the relevant Residential Erf, provided that such exemption shall not apply upon the subsequent death of the surviving spouse and any nomination following therefrom, and the Levy Stabilisation Contribution shall be calculated as 25% (twenty five percent) of the increase in the open market valuation of the Residential Erf from the date of nomination of the first dying spouse (in respect of whose death the exemption applied) to the date of the death of the surviving spouse, and the increase shall be determined by the Auditors.
- 25.5. As soon as the first Levy Stabilisation Contribution is received by the Association, in terms of this clause 25, the Trustee Committee shall establish the Levy Stabilisation Fund into which such Levy Stabilisation Contribution and all subsequent such levies shall be paid, which may be invested by the Trustee Committee in their sole discretion, the capital and any income

derived therefrom to be applied in such manner as such Trustees deem appropriate so as best to contain escalations in the levies payable by the Members in terms of clause 24.

- 25.6. The provisions of this clause 25 shall not be substituted, added to, amended or repealed without the sanction of a resolution passed by at least 75% (seventy five percent) of the Members of the Association, having the right to vote at the relevant meeting and holding in aggregate at least 75% (seventy five percent) of the total number of votes of all Members of the Association entitled to vote. The provisions of the Companies Act, No. 71 of 2008, or of any act replacing same, relating to the holding of a meeting and the passing of a Special Resolution, shall apply mutatis mutandis, to the passing of any such resolution of the Members of the Association.

## 26. **RATES AND TAXES**

- 26.1. Each Member shall be responsible for and shall pay such rates and taxes and other municipal charges as are levied in respect of the Residential Erf.
- 26.2. The levies shall include amounts in respect of the rates and taxes and other municipal charges as are levied in respect of the Common Property.

## 27. **APPROVAL FOR PROPOSED WORK**

- 27.1. A Member desiring to make any alterations, additions, modifications or renovations to such buildings and/or structures ("the proposed work") on his Residential Erf shall submit a full set of proposed building and landscaping plans (if applicable), which indicate both construction and design details, to the Trustee Committee, or any person nominated by the Trustee Committee, for written approval, prior to submission of such plans to the Council.
- 27.2. The Trustees shall only give written approval for the proposed work:
- 27.2.1. after detailed plans of the proposed work as prepared by an architect registered with the South African Council for the Architectural Profession and who has been accredited by the Association, have been submitted to the Association;
  - 27.2.2. if the proposed work complies with the documents and requirements set out in clause 5.1 above; and
  - 27.2.3. the Member has made payment of all costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee(s) and any scrutiny fees as determined by the Trustees from time to time.

27.3. No Member may:

- 27.3.1. change the colour of the exterior walls of the dwelling constructed on the Residential Erf or of the exterior of any of the doors, window frames, and any appurtenances of fixtures and fittings, included door and window handles, locks, numbering, knockers and similar ornaments;
- 27.3.2. construct or remove any appurtenances upon the exterior walls or surfaces of the dwelling constructed on the Residential Erf, including pergolas, blinds, shutters, awnings or ornaments, save to renew what may have initially been placed there, save that blinds may be installed which comply with the specific specifications set out in the Architectural Design Manual;
- 27.3.3. make any additions or extensions to any dwelling constructed on the Residential Erf, whether or a temporary or permanent nature; or
- 27.3.4. erect any boundary wall or plant any vegetation which would achieve the same effect as a boundary wall,

without the prior written consent of the Trustees, which in all instances shall require that the Member complies with the content of the Architectural Design Manual.

- 27.4. After obtaining the written approval of the Trustees for the proposed work, the Member shall submit the building and landscaping plans (if applicable) to the Council for approval, with the approval of the Trustees evidenced by an endorsement of the relevant plans.
- 27.5. After obtaining the approval of the Council for the proposed work, the Member shall comply with all conditions, standards and requirements imposed by the Council and the Association.
- 27.6. The provisions of this clause 27 shall not apply to the Developer provided that the Developer shall comply with the Architectural Design Manual and the conditions imposed by the Council when approving the development of the Land.
- 27.7. The Trustee Committee shall be entitled to determine a Sidewalk Deposit and a Builder's Management Fee payable by a Registered Owner so as to provide for the repairs of damage caused by the Registered Owner's builder as well as for the management and control of the building process on his erf, which deposit and fee shall be payable by the Registered Owner concerned in such amount and on such terms and conditions as may be determined by the Trustee Committee from time to time. The Developer shall not be obliged to pay any such Sidewalk Deposit or Builder's Management Fee.

28. **COMMON PROPERTY**

- 28.1. After transfer to the Association, and subject to the Developer's right to include additional land into the Development in terms of clause 44, neither the whole nor any portion of the Common Property shall be:
- 28.1.1. sold, alienated, otherwise disposed of, subdivided or transferred; or
  - 28.1.2. mortgaged; or
  - 28.1.3. subjected to any rights of use, occupation or servitude other than those contained in the present existing title deed of the Land, or to be imposed in the title deed(s) of the Common Area as required by any relevant authority or as contained in this Constitution, whether registered in a Deeds Registry or not, save that the Association may, in its discretion enter into a lease agreement with third parties over portions of the Common Property for the provision of services for the benefit of the Association and/ or its Members.
- 28.2. The Association is hereby empowered to take transfer and shall take title to the Common Property or portions thereof, from time to time, free of any mortgage bond, at a nominal consideration. Such transfer shall be effected in respect of those portions of the Common Property that fall within any particular phase of the Development simultaneously with the transfer of the last Residential Erf to be transferred in any such phase, or such earlier date(s) as may be agreed between the Developer and the Association, and in any event by no later than the completion of the Development Period.
- 28.3. The Association acknowledges that the Council shall not be responsible for, and the Association shall be solely responsible for the construction, care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Common Property, all services therein (other than services provided and/or maintained by the Council, if any) and all amenities and improvements located or to be located on or within the Common Property.
- 28.4. The Council shall at no time in the future assume ownership of the Common Property.
- 28.5. The Association shall at all times promote environmental awareness and responsibility within the Common Property.
- 28.6. No Member shall be entitled to:
- 28.6.1. undertake any gardening or planting activities on the Common Property; or
  - 28.6.2. use any portion of the Common Property as a storeroom, drying yard, or carport or other similar use;

without the prior written consent of the Trustees, who may impose such conditions as they in their sole discretion may determine.

- 28.7. Subject to the provisions of clause 29, the Trustees shall have control of all sporting, social and recreational facilities and amenities within the Estate and may set down such rules as they may consider necessary for time to time for the use of any such amenities by the Members, including the charging of such fee as they may deem necessary or desirable. The Trustees may delegate to committees such powers, duties and functions as to enable the committee to co-ordinate the activities and requirements of the various sporting sub-clubs and other Estate societies and associations, particularly in relation to the orderly use of the Clubhouse facilities. No persons other than Members may use or enjoy such facilities, save for such limited number of guests, personally invited and accompanied by the Member concerned. The Trustees may establish or permit the establishment of clubs or associations of Members to control and regulate the use of any sporting, social or recreational facilities and may delegate to the committees of such clubs any or all their functions, powers and duties in relation to the particular facility or amenity concerned as they may deem fit.
- 28.8. The owner(s) or occupier(s) of any Residential Erf shall be entitled to a right of way over the Common Property so as to ensure that they are able to access their Residential Erf.

## 29. **HEALTH CARE FACILITIES**

- 29.1. The Developer shall use its best commercial endeavours to apply for the registration of a health care facility in terms of section 3 of the Aged Persons Act, No. 81 of 1967, which facility shall comprise part of the facilities available to Members on the Common Property, which facility shall contain a maximum of 20 (twenty) beds ("**the Health Care Facility**").
- 29.2. Ownership of the Health Care Facility shall vest in the Association.
- 29.3. The Trustees shall control the Health Care Facility and shall set down such rules as they may consider necessary for time to time for the use of such Health Care Facility by the Members, including the charging of such fee as they may deem necessary or desirable. The Trustees shall appoint a suitably qualified person or entity to manage the Health Care Facility on behalf of the Association.

## 30. **INSURANCE**

- 30.1. At the first meeting of the Trustees or so soon thereafter as is possible, and annually thereafter, the Trustees shall take steps to insure all buildings and other structures situated on the Common Property and all movable property of the Association to the full replacement value thereof against such risks as the Trustees may determine.

- 30.2. The Trustee Committee may also insure the Members and the Trustees and to keep them insured against liability in respect of:
- 30.2.1. death, bodily injury or illness; and
  - 30.2.2. loss of, or damage to, property occurring in connection with the Common Property, or any areas over which servitudes are registered in favour of the Association for a sum of liability of not less than R1,000,000 (one million rand), which sum may be increased from time to time.
- 30.3. The Trustee Committee will procure:
- 30.3.1. to the extent determined by the Members in general meeting, a fidelity guarantee in terms of which shall be refunded any loss of moneys belonging to the Association for which they are responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the service of the Association and all Trustees and persons acting in the capacity of the Estate Manager; and
  - 30.3.2. a cash policy as determined by the Members in general meeting, in terms of which policy there will be made good:
    - 30.3.2.1. loss of money in the course of business up to and including an amount equivalent to total levies due and payable in one month, or such lesser amount as the Trustees from time to time may determine; and
    - 30.3.2.2. loss of or damage to any receptacle for which the Association is responsible resulting from the theft or attempted theft of money.
- 30.4. The Members may by Special Resolution direct the Trustees to insure against such other risks as the Members may determine.
- 30.5. For the avoidance of doubt, a Registered Owner shall remain obligated to insure the risk in relation to retaining walls situated on that Owner's Residential Erf, if any.

## 31. **SERVITUDES**

- 31.1. It is recorded that a servitudinal right of way in favour of the Registered Owner(s) of the Residential Erven may be registered against the title deed of the Land.
- 31.2. The Association will bear responsibility for the cost, maintenance, upkeep and repair of said servitude (including retaining walls situated in such servitudinal area), if any, and such costs shall be included in the levies payable by Members in terms of clause 24.

## 32. SERVICES

- 32.1. With effect from the date upon which the Association is created in terms of clause 3, the obligation to maintain and repair the Services shall pass from the Developer to the Association.
- 32.2. The Association shall accordingly be responsible for maintenance of the Services on the Estate.

## 33. CONTRACTS AND REGULATIONS

- 33.1. The Trustee Committee may from time to time:
- 33.1.1. make regulations governing, inter alia:
    - 33.1.1.1. the Members' rights of use, occupation and enjoyment of the Common Property;
    - 33.1.1.2. the external appearance of and the maintenance of the Common Area and the building or other improvements erected on the Common Property;
    - 33.1.1.3. the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on Residential Erven, subject always to the Architectural Design Manual, the EMP's and the requirements of the Council;
    - 33.1.1.4. compliance with the EMP's;
    - 33.1.1.5. the conduct of Members generally;
  - 33.1.2. enter into agreement(s) with the local authorities governing the matters set out in clause 33.1 and any other incidental matters;
  - 33.1.3. enter into agreement(s) with the Council and other parties for the provision of Services on the Estate; and
  - 33.1.4. impose penalties which it considers appropriate in its sole discretion against Members who are in default of any of their obligations in terms of this Constitution, including the terms of payment of such penalties.
- 33.2. Each Member undertakes to the Association that he shall comply with:

- 33.2.1. the provisions of this Constitution;
  - 33.2.2. any regulations made in terms of clause 33.1.1;
  - 33.2.3. any agreements referred to in clause 33.1.2 insofar as those agreements either directly or indirectly impose obligations on him.
- 33.3. Each Member undertakes to the Association that he shall not object to any application for land use rights, including but not limited to an application for rezoning, such as may be necessary and in order to implement the Development and/or for the Developer to incorporate additional land as is envisaged in clause 44 below.

#### 34. **ESTATE MANAGER**

- 34.1. Subject to the provisions of clause 34.4, the Trustees shall be entitled to appoint an Estate Manager and any employees to manage the affairs of the Association, so as to ensure that the obligations of the Association in terms of this Constitution are properly satisfied. .
- 34.2. Any fees and/or remuneration payable to the Estate Manager shall be paid by the Association and not the Developer.
- 34.3. The appointment of the Estate Manager shall be capable of termination on reasonable notice.
- 34.4. The affairs of the Association shall at all times be entrusted to a professional manager with appropriate executive powers, suitable qualifications and relevant experience, so as to conform to the requirements of good corporate governance.
- 34.5. Subject to this Constitution, and the terms of his appointment, the Estate Manager shall have the full power to manage and control the business and affairs of the Association, and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised by the Association itself.
- 34.6. Any contract concluded with an Estate Manager shall include a provision which shall allow for the termination to be revoked if:
  - 34.6.1. he is in breach of any of the provisions of the contract or he is guilty of any conduct which at common law would justify the termination of a contract between master and servant; and
  - 34.6.2. where the Estate Manager is a juristic person:
    - 34.6.2.1. an order is made for its provisional or final liquidation or it is placed in business rescue, or compromises with any of its creditors; or



34.6.2.2. any director or member of the Estate Manager is convicted of an offence involving an element of dishonesty or fraud;

34.6.3. where the Estate Manager is a natural person:

34.6.3.1. he applies for the surrender of his estate as insolvent, or his estate is sequestrated, either provisionally or finally; or

34.6.3.2. he is convicted of an offence involving an element of dishonesty or fraud; or

34.6.4. a Special Resolution of the Members is passed to that effect, provided that in such event the Estate Manager so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.

### 35. **ON-SITE SALES AGENT**

35.1. The Developer or its nominee hereby appoints Lemanco Management (Proprietary) Limited (Registration Number 2009/003151/07) to provide an on-site sales agency service for the benefit of the Association and its Members ("**the appointed estate agent**"). The appointed estate agent may from time to time nominate an accredited sub-agent at its discretion. The appointed estate agent shall retain the on-site sales agency for so long as the Developer owns a portion of the Land or a Residential Erf.

35.2. Subject to the remaining provisions of this clause 35, no Member shall be entitled to sell his or her Residential Erf, save through the agency of the appointed estate agent.

35.3. The appointed estate agent shall charge a rate of commission of 5.5% (five point five percent) of the selling price of the Residential Erf, plus value added tax thereon.

35.4. A Member may personally and directly sell his or her Residential Erf, without the assistance or intervention of an estate agent, in which event the Association shall, on request, provide an administrative service in respect of sale documentation that gives effect to this Constitution. In return for such administrative service, the Association shall be entitled to charge the Member a fee of 3% (three percent) of the selling price plus value added tax thereon.

35.5. A Member wishing to sell or seek the consent of the Association to a sale shall notify the Association forthwith of the proposed sale and identify the purchaser(s).

35.6. Upon the conclusion of a sale contemplated in clause 35.4, the Member shall pay the appointed estate agent commission as contemplated in clause 35.3 in the event that the purchaser identified by the seller is recorded as having been introduced to the Estate by the

appointed estate agent within a period of 24 (twenty four) months prior to the notification and identification referred to above.

- 35.7. In the event that the appointed estate agent fails to sell the Residential Erf within a period of 6 (six) months after been requested to do so by the Registered Owner, the Registered Owner shall be entitled to engage the services of a third party estate agency, duly accredited by the Association, who shall be allowed to operate in the Estate subject to the conditions set out above (and in particular, clause 35.6) and such other conditions as may be imposed by the Association.

### 36. **TRANSFER OF RESIDENTIAL ERVEN**

- 36.1. No Member shall be entitled to transfer his Residential Erf, unless the Association has granted it prior written consent to such transfer. No such consent shall be granted unless:

- 36.1.1. the Trustee Committee has satisfied itself as to the suitability, in the discretion of the Trustee Committee, of the proposed transferee in relation to need and compatibility, bearing in mind that the Estate primarily provides accommodation for senior citizens who have a reasonable need for such accommodation, provided that the Trustees shall not be obliged to furnish any reasons for any decisions made by them in this regard;
- 36.1.2. the proposed transferee has, if so required to do by the Trustees, furnished reasonable proof that he has passed his 50th (fiftieth) birthday, subject always to the discretion hereby vested in the Trustees to admit to Membership of the Association, *ceteris paribus*, a quota of Members (limited to 5% (five percent) of the total Membership of the Association from time to time) who are under the age of 50 (fifty) years;
- 36.1.3. such Member is not indebted to the Association in any way in respect of levies or other amounts which the Association may be entitled to claim from him in terms of this Constitution;
- 36.1.4. the proposed transferee has (in accordance with the provisions of clause 12) agreed in writing to become a Member of the Association, and to be subject to this terms and conditions contained in this Constitution; and
- 36.1.5. the Levy Stabilisation Contribution referred to in clause 25 has been paid to the Association, or a suitable bank, building society or other financial institution guarantee acceptable (in their sole discretion) to the Trustees has been furnished for the payment thereof.

- 36.2. The Association shall be entitled to levy a charge, to be determined by the Trustee Committee from time to time, for the granting of the written consent referred to in clause 36.1 above.

**37. BREACH**

- 37.1. Should any Member:

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

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

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

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

37.1.4. in the case of clause 37.1.2, to remedy such breach or rectify such condition and immediately recover the total costs incurred by the Trustees or the Association in so doing from such Member.

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

- 37.3. Without prejudice to all or any of the rights granted to the Trustee 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 outstanding from time to time, in accordance with the provisions of clause 24.14.

- 37.4. In addition to and without prejudice to their powers in terms of this clause 37, in the event that any Member is in persistent breach of any of his obligations under this Constitution, the Trustees may give such Member 90 (ninety) days written notice to remedy such breach and in the event of such Member failing to do so, the Association shall have the power to dispose of that Member's Residential Erf on his behalf, for such amount and on such terms as it may deem fit. The relevant Member hereby grants the Association a power of attorney in such circumstances to sell and transfer the Residential Erf to any third party and to pay the proceeds (after the deduction of any costs incurred by the Association), to the Member. For the purposes of this clause 37.4, a Member shall be deemed to be in persistent breach of his said obligations, should he fail to remedy the relevant breach within 14 (fourteen) days of being requested in writing to do so by the Trustees or should he commit or allow a further breach of a similar nature within a period of 6 (six) months after receipt of the aforesaid notice.

### 38. **ACCOUNTS**

- 38.1. 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.
- 38.2. At each Annual General Meeting the Trustee Committee shall lay before the Association an audited income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in clause 16.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law or resolution of the Members to accompany the same.

### 39. **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.

**40. INDEMNITY**

- 40.1. All Trustees and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide and reasonably incurred by them in their respective said capacities and in the case of a Trustee, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 40.2. Every Trustee, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee, his duties as Chairman or Vice-Chairman. 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.
- 40.3. A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustees, whether in their capacities as Trustees or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

**41. EXCLUSION OF LIABILITY**

- 41.1. Any Member or other Person using any of the services, Common Property, sporting or recreational facilities of the Association does so entirely at his own risk, and no Member or other person shall have any claim against the Developer, the Association, the Estate Manager or any of their agents, employees or contractors, of whatsoever nature arising from use.
- 41.2. The Association, the Estate Manager or any of their agents, employees or contractors shall not be liable for loss (including consequential loss), injury loss of life or damage to person or

property of any nature whatsoever which any Member, the lessee or occupier of any Residential Erf or Common Property, any member of his/their family(ies), or his /their employee, agent, contractor, servant, invitee, guest or any other person whomsoever may sustain:

41.2.1. by reason of any defect in or state of disrepair of the Common Property, any communal building, communal facility, sporting or recreational facility or individual Residential Erf in the Estate, or any part thereof, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein, notwithstanding that such defect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Estate Manager, or any of their agents, employees or contractors; or

41.2.2. directly or indirectly, in or about the Estate (including, without limiting the generality of the foregoing, the Common Property and the Residential Erven), whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire, water, leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other services to the Estate (irrespective of the cause thereof), or be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Estate Manager, or any of their agents, employees or contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.

41.3. Every Member individually hereby indemnifies and holds harmless the Association and the Estate Manager against all claims of whatsoever nature which may be brought against the Association or the Estate Manager by that Member, members of his family or any person within the Estate at the invitation of or under the control of the Member concerned, whatsoever the nature of such claim and howsoever arising.

## 42. **ARBITRATION**

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

42.1.1. any matters arising out of this Constitution; or

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

42.1.3. the interpretation of this Constitution;

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

- 42.2. Notwithstanding clause 42.1, a party declaring a dispute in respect of payment of levies, subject to clause 23, is not obliged to refer the dispute to arbitration and may institute court proceedings.
- 42.3. Arbitration shall be held in Knysna informally and otherwise in terms of the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time), it being intended that, if possible, it shall be held and concluded within twenty one (21) Business Days after it has been demanded.
- 42.4. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 42.4.1. primarily an accounting matter - an independent accountant;
  - 42.4.2. primarily a legal matter - a practising counsel or attorney of not less than ten (10) years' standing;
  - 42.4.3. any other matter - an independent and suitably qualified person appointed by the Auditors;
- as may be agreed upon between the parties to the dispute.
- 42.5. If agreement cannot be reached on whether the question in dispute falls under clauses 42.4.1, 42.4.2, 42.4.3, or upon a particular arbitrator in terms of clause 42.4.3, within three (3) Business Days after the arbitration has been demanded, then:
- 42.5.1. the President for the time being of the Cape Law Society (or its successors) shall determine whether the question in dispute falls under sub-clauses 42.4.1, 42.4.2 or 42.4.3; or
  - 42.5.2. the President for the time being of the Cape Law Society (or its successors) shall nominate the arbitrator in terms of clause 42.5 within seven (7) Business Days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the twenty one (21) Business Days referred to in clause 42.2.
- 42.6. The arbitrator shall make his award within seven (7) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either

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

- 42.7. The decision of the arbitrator shall be final and binding and may be made an Order of the Western Cape High Court, Cape Town (or its successors) upon the application of any party to the arbitration.
- 42.8. Notwithstanding anything to the contrary contained in clauses 42.1 to 42.7 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.

#### 43. **AMENDMENTS TO CONSTITUTION**

- 43.1. This Constitution shall not be repealed or amended, and no new clauses shall be made, save by a special resolution adopted at a general meeting of the Members.
- 43.2. Any amendment of the Constitution that requires to be approved by the Council in terms of the Knysna Municipality By-Law on Municipal Land Use Planning (or its successor) shall, after it has been amended in accordance with clause 43.1, be submitted for approval by the Council, if so required by the By-Law.
- 43.3. Save for the provisions of clause 43.2 being applicable in all instances where any regulatory documentation of the Association is amended, this clause 43 shall not apply to amendments of such documentation of the Association.
- 43.4. During the Development Period the Constitution, Architectural Design Manual and the Conduct Rules may only be amended with the written consent of the Developer.

#### 44. **EXTENSION OF DEVELOPMENT**

- 44.1. The Developer has the right at any time during the Development Period to extend or alter the area or composition of the Land at no cost to Members or to the Association by requiring the Association to incorporate into the Land, such property contiguous to the Land which the Developer in its sole discretion shall determine ("Additional Development Land"), provided that the aggregate area of such Additional Development Land shall be limited in size to an area equal to the aggregate area of the Land.
- 44.2. Should the said Additional Development Land be incorporated into the Land, the Developer shall be entitled to require that first and all subsequent owners of the same, or parts thereof, become members of the Association in respect of any erven within such Additional Development Land, from such date as the Developer may determine, and on the same terms



and conditions as are applicable to other Members of the Association. The Members shall be bound by such requirement of the Developer.

The provisions of the above two articles may not be amended at any time without the prior written consent of the Developer.

45. **BENEFITS CONFERRED UP ON OCCUPANTS OF ASSISTED LIVING UNITS**

45.1. For the purposes of this clause 45, the following words shall, unless the context otherwise requires, have the meanings assigned to them below:

45.1.1. "Life Right Holder" means the natural person (or persons) who has purchased the right to occupy an Assisted Living Unit; and

45.1.2. "Assisted Living Unit" means one of the 18 (eighteen) assisted living units built by the Developer, on Residential Erven in respect of which the Developer shall sell occupancy rights.

45.2. The Developer intends to:

45.2.1. develop six of the Residential Erven by building three units on each such erf (in aggregate 18 units), which will be marketed and sold as Assisted Living Units;

45.2.2. sell rights of occupancy in the Assisted Living Units to purchasers.

45.3. In order to bestow certain rights on each such Life Rights Holder in terms of this Constitution, and to bind them to certain undertakings and obligations, each Life Right Holder shall be deemed to be a Member (in terms of clause 12 above). Following from their right as a Member, each such Life Right Holder shall be entitled to all the benefits of membership of the Association, and bound by the obligations contained in the following clauses of the Constitution:

45.3.1. Clause 4 (Status of the Association);

45.3.2. Clause 5 (Main Object);

45.3.3. Clause 7 (Appointment, Removal and Rotation of Trustee Members);

45.3.4. Clause 9 (Functions and Powers of the Trustee Committee);

45.3.5. Clause 10 (Conduct Rules);

45.3.6. Clause 12 (Membership), and in this regard:

- 45.3.6.1. where any Assisted Living Unit is occupied by more than one person, all the occupants of that Assisted Living Unit shall be deemed jointly and severally to be one Member;
- 45.3.6.2. membership in terms of clause 12.3 shall commence simultaneously with the date on which the Life Right Holder is granted occupancy of the Assisted Living Unit;
- 45.3.6.3. when a Life Right Holder's right of occupancy is terminated or otherwise comes to an end, then he shall ipso facto cease to be a Member of the Association; and
- 45.3.6.4. a Life Right Holder may not resign as a Member of the Association.
- 45.3.7. Clause 13 (Cessation of Membership);
- 45.3.8. Clause 15 (General Meetings of the Association);
- 45.3.9. Clause 16 (Notice of Meetings), save that such notices shall be delivered at the Life Right Holder's Assisted Living Unit;
- 45.3.10. Clause 17 (Quorum);
- 45.3.11. Clause 18 (Agenda at Meetings);
- 45.3.12. Clause 19 (Procedure at General Meetings);
- 45.3.13. Clause 20 (Proxies);
- 45.3.14. Clause 21 (Voting), save that in respect of clause 21.1.2, each Life Right Holder who is a Member shall be entitled to one vote in respect of his Assisted Living Unit (save that where an Assisted Living Unit is occupied by more than one person, such occupants shall jointly exercise such vote). For the avoidance of doubt, the Life Right Holder shall be entitled to vote only if there has been full compliance with the terms of the Constitution;
- 45.3.15. Clause 24 (Levies) and in this regard:
  - 45.3.15.1. levies in respect of each Assisted Living Unit shall become payable by a Life Right Holder with effect from the date upon which the Life Right Holder is granted occupancy of the Assisted Living Unit, pro-rated where applicable; and

45.3.15.2. for the avoidance of doubt, the Developer shall not be liable to pay any levies in regard to the Assisted Living Units.

45.3.16. Clause 28 (Common Property);

45.3.17. Clause 29 (Health Care Facilities);

45.3.18. Clause 30 (Insurance);

45.3.19. Clause 31 (Servitudes);

45.3.20. Clause 33 (Contracts and Regulations) and specifically the Life Right Holder shall be bound by clause 33.2 and 33.3; and

45.3.21. Clause 38 (Accounts);

45.3.22. Clause 40 (Indemnity);

45.3.23. Clause 41 (Exclusion of Liability);

45.3.24. Clause 42 (Arbitration);

45.3.25. Clause 43 (Amendments to Constitution); and

45.3.26. Clause 44 (Extension of Development).

45.4. The provisions of this clause 45 may not be amended at any time without the prior written consent of the Developer.

#### 46. **BENEFITS CONFERRED UPON HOUSE LIFE RIGHT HOLDERS**

46.1. For the purposes of this clause 46, the following words shall, unless the context otherwise requires, have the meanings assigned to them below:

46.1.1. **"House Life Right Holder"** means the natural person (or persons) who has purchased the right to occupy a Life Right House; and

46.1.2. **"Life Right House"** means one of the houses built or to be built by the Developer, on Residential Erven, and in respect of which the Developer shall sell occupancy rights on a life right basis.

46.2. The Developer intends to construct dwellings on some of the Residential Erven, which dwellings will be marketed and sold as Life Right Houses to purchasers of same.

- 46.3. In order to bestow certain rights on each such House Life Right Holder in terms of this Constitution, and to bind them to certain undertakings and obligations, each House Life Right Holder shall be deemed to be a Member (in terms of clause 12 above). Following from their right as a Member, each such House Life Right Holder shall be entitled to all the benefits of membership of the Association, and bound by the same obligations as the Life Right Holders are bound to, as further set out in clause 45, *mutatis mutandis*.
- 46.4. In addition to the provisions of clause 46.3, each of the House Life Right Holders shall be required to pay any and all rates and taxes payable to any authority in respect of each Life Right House, which shall become payable by a House Life Right Holder with effect from the date upon which the House Life Right Holder is granted occupancy of the Life Right House, pro-rated where applicable (as contemplated in clause 26 above).
- 46.5. For the avoidance of doubt:
- 46.5.1. levies shall include amounts in respect of the rates and taxes and other municipal charges as are levied in respect of the Common Property; and
  - 46.5.2. the Developer shall not have any votes in respect of the Life Right Houses as contemplated in clause 21.1.1.
- 46.6. The provisions of this clause 46 may not be amended at any time without the prior written consent of the Developer.
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**NOT APPLICABLE / DELETED**

**DIAGRAM FOR THE LAND**

**SITE DEVELOPMENT PLAN**

**Annexure “D”**

**KNYSNA LIFESTYLE ESTATE**

A Statutory body established in terms of Section 29(1) as read with Section 42 of the Land Use Planning Ordinance 15 of 1985 (“the Association”)

**PROXY**

I, \_\_\_\_\_ of \_\_\_\_\_ being a Member of the Association hereby appoint \_\_\_\_\_ of \_\_\_\_\_ or failing him, \_\_\_\_\_ of \_\_\_\_\_ or failing him, \_\_\_\_\_ of \_\_\_\_\_ as my proxy to vote for me on my behalf at the Annual General Meeting (as the case may be) of the Association to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof as follows:

	<b>In Favour or</b>	<b>Against</b>	<b>Abstain</b>
Resolution No. ....			
Resolution No. ....			
Resolution No. ....			

(indicate instruction to proxy by way of a cross in space provided above)

Unless otherwise instructed, my proxy will vote or abstain as he thinks fit.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

(NOTE: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead. Such proxy need not be a member of the Association).

\_\_\_\_\_

**SIGNATURE**



**NOT APPLICABLE / DELETED**