

C O N S T I T U T I O N

BIG BAY MASTER PROPERTY OWNERS ASSOCIATION

a body corporate established
in terms of Section 29 of the Land Use
Planning Ordinance, No 15 of 1985

January 2004

ESTABLISHMENT OF THE ASSOCIATION

Big Bay Master Property Owners Association is constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance No 15 of 1985 (as amended) in accordance with the conditions imposed by the City of Cape Town when approving in terms of Sections 25(1) and 42 of the Ordinance of the subdivision of Erf 1 Big Bay and shall come into existence simultaneously with the registration in the Deeds Office of the first of the erven in the subdivision.

1. INTERPRETATION

- 1.1 In this constitution, unless the context otherwise indicates:
- 1.1.1 "Association" means the Big Bay Master Property Owners Association;
 - 1.1.2 "auditors" mean the auditors of the Association;
 - 1.1.3 "chairperson" means the chairperson of the trustee committee;
 - 1.1.4 "Council" means the City of Cape Town or its successor/s;
 - 1.1.5 "date of invoice" in relation to levies, means the date of issue of the invoice or statement of account to members in respect of levies (whichever is the earlier date) regardless of whether such invoice or statement of account is issued by the Council or the Association;
 - 1.1.6 "design guidelines" mean the generic design guidelines and/or the internal design guidelines, whichever is applicable to any buildings, improvements and/or landscaping within the development;
 - 1.1.7 "development" means:
 - 1.1.7.1 all land within the boundaries of Erf 1 Big Bay, situate in the City of Cape Town, Cape Division, in the Province of the Western Cape and includes any portion/s thereof; and
 - 1.1.7.2 any land which may be incorporated into the development in terms of clause 9.1 below;

- 1.1.8 "development block" means a specific portion of the development identified as a development block for the purposes of, *inter alia*, the appointment of the trustees in terms of clause 12, it being the intention that initially there will be 6 development blocks, being the portions of land designated as A to F (both inclusive) on the development framework plan annexed hereto (marked schedule 1);
- 1.1.9 "Development Facilitator" means Rabcav Joint Venture or its successor/s or assigns as the development facilitator to facilitate the development in terms of the development facilitation agreement entered into with the Council;
- 1.1.10 "development period" means the period from the establishment of the Association until all rateable properties within the development have been sold and transferred by the Council;
- 1.1.11 "generic design guidelines" mean the design guidelines to control all aspects of the design of all buildings, improvements and landscaping within the development, as amended from time to time in terms of this constitution or as required by the Council from time to time;
- 1.1.12 "internal design guidelines" mean the design guidelines (if any) to control all aspects of the design of all buildings, improvements and landscaping within a development block or development within the development, as amended from time to time or as required by the Council from time to time;
- 1.1.13 "member" means a member of the Association;
- 1.1.14 "month" means a calendar month;
- 1.1.15 "office" means the registered office of the Association;
- 1.1.16 "Ordinance" means the Land Use Planning Ordinance No 15 of 1985 and includes any statutory amendment or re-enactment thereof;
- 1.1.17 "owner" means any registered owner of rateable property;

- 1.1.18 "prime rate" means the prime bank overdraft rate of interest charged by Nedcor Bank Limited or its successor/s from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of the said bank whose certificate shall be final and binding on the members);
- 1.1.19 "property owners' sub-association" means a property owners association established in respect of a portion of the development;
- 1.1.20 "public amenities" mean all toilets, playground equipment, boardwalks, pedestrian pathways, cycling tracks, fences, walls, landscaping, lawns and gardens on the public open spaces from time to time, including landscaping of the centre road islands and road reserves;
- 1.1.21 "public open spaces" mean such areas within the development as may be designated by the Council as public open spaces, including any conservation areas and dune areas within the development;
- 1.1.22 "rateable value" in relation to any rateable property, means the valuation of such property for rates purposes as appears from time to time from the valuation roll prepared for the assessment of property rates in accordance with any relevant legislation and includes an interim valuation;
- 1.1.23 "rateable property" means any immovable property within the development on which property rates may be levied in accordance with any enabling legislation and for the purposes hereof, any sectional title unit within the development shall be deemed to be rateable property, provided that any immovable property owned by the Council shall not be deemed to be rateable property unless the Council develops such property for commercial or residential purposes;
- 1.1.24 "sectional title unit" means a section (as defined in the Sectional Titles Act No 95 of 1986 as amended or any statutory amendment or re-enactment thereof) together with its undivided share in the common property apportioned to that section in accordance with the participation quota of the section;

- 1.1.25 "special resolution" means a resolution passed at a special general meeting in accordance with the provisions of clause 24 below;
 - 1.1.26 "this constitution" means this constitution and regulations and by-laws of the Association from time to time in force;
 - 1.1.27 "trustee committee" means the board of trustees of the Association;
 - 1.1.28 "trustee" means one of the trustee committee;
 - 1.1.29 "vice-chairperson" means the vice-chairperson of the trustee committee;
 - 1.1.30 "year" means a period of 12 calendar months calculated from 1 July of each and every calendar year.
- 1.2 Words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing persons shall include partnerships, trusts and bodies corporate, and vice versa.
- 1.3 The head notes to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

2. **OBJECTS OF THE ASSOCIATION**

- 2.1 The objects of the Association shall be the following:
 - 2.1.1 the maintenance, repair, improvement and keeping order of the public open spaces and public amenities within the development, to the extent that such public open spaces and public amenities are not normally maintained, repaired, improved and/or kept in order in the course of the normal services provided by the Council in other areas within its jurisdiction, it being the intention that the responsibilities of the Association shall include (but not be limited to) the following:
 - 2.1.1.1 the maintenance of conservation areas;
 - 2.1.1.2 the maintenance of landscaped areas, including irrigation systems;

- 2.1.1.3 the cost of electrical charges to irrigate the public open spaces;
- 2.1.1.4 the maintenance of fencing and walling in the road reserves;
- 2.1.1.5 the maintenance of urban beacons within the development;
- 2.1.2 the control and management of the public open spaces and the public amenities within the development, subject to clause 8 below;
- 2.1.3 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development;
- 2.1.4 to enter into service agreements and other necessary agreements with the local authority or any other authority or supplier of services in connection with the development;
- 2.1.5 to generally do all such things as may be necessary or requisite to give effect to and implement the objects of the Association and to do all such things ancillary or incidental to the objects;

provided however, that nothing in this constitution shall in any way detract from or relieve the Council or any other authority from any of its duties and obligations or any services which it is required to provide by law to property owners or occupiers of any land or buildings within the development.

- 2.2 The Council shall be responsible for the normal maintenance, repair, improvements and upkeep of all services, public open spaces and public amenities normally maintained, repaired, improved and kept up by the Council in the course of normal services provided by the Council in other areas within its jurisdiction, including (but not limited to) the following:

- 2.2.1 the maintenance, repair, improvement and upkeep of public roads, sewer pipes, water pipes, stormwater pipes, electrical reticulation and street lights;
- 2.2.2 normal municipal services, including disaster control such as fires, and collection of refuse in accordance with the normal Council service for which it currently charges users.

2.3 The Association and the Council shall be jointly responsible for the following functions to the extent that there is an overlapping of their respective duties and functions in terms of clauses 2.1 and 2.2 above:

2.3.1 litter control;

2.3.2 law enforcements (the Association may elect to have additional law enforcement);

2.3.3 the maintenance of public amenities and buildings to the extent that the Association may elect to carry out such maintenance in addition to the normal maintenance services provided by the Council in other areas within its jurisdiction;

2.3.4 the cost of water and/or irrigation to the public open spaces.

2.3.5 to determine environmental management programmes for all environmentally sensitive areas forming part of the common property and to oversee and control the implementation of the Big Bay Operational Phase Environmental Management Plan.

3. **MEMBERSHIP OF THE ASSOCIATION**

3.1 Membership of the Association shall be compulsory for every registered owner of all rateable properties within the development.

3.2 Such membership shall commence simultaneously with the registration of transfer of the rateable property into the name of the transferee.

3.3 Membership of the Association shall be limited to the registered owners of rateable property within the development provided that where any such owner is more than one person, all the registered owners of rateable property shall be deemed jointly and severally to be one member of the Association and nominate one owner to represent them and vote at meetings of the Association.

3.4 When a member ceases to be the registered owner of rateable property within the development, such person shall ipso facto cease to be a member of the Association.

- 3.5 No member shall be entitled to sell or transfer any rateable property within the development unless it is a condition of the sale and transfer that:
 - 3.5.1 the transferee agrees in writing to become a member of the Association and to be bound by the provisions of this constitution;
 - 3.5.2 the registration of transfer of such rateable property into the name of the transferee shall ipso facto constitute the transferee as a member of the Association;
 - 3.5.3 the member first obtains the written consent of the Association which consent shall be given provided the transferee of such rateable property agrees in writing to become a member of the Association and to be bound by the constitution of the Association and provided further that the member has paid all levies and any other amounts owing by such member in terms of this constitution as at the date of registration of transfer of the rateable property to the transferee.
- 3.6 The registered owner of any rateable property within the development shall not be entitled to resign as a member of the Association.
- 3.7 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.
- 3.8 The rights and obligations of a member shall not be transferable and every member shall:
 - 3.8.1 to the best of the ability of such member further the objects and interests of the Association;
 - 3.8.2 observe all by-laws and regulations made by the Association or the trustee committee.
- 3.9 No member ceasing to be a member of the Association for any reason shall, nor shall any such member's executor, curator, trustee, liquidator or other legal representative 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 the estate of such member any arrears of levies or any other amounts due from such

member to the Association at the time of such member so ceasing to be a member.

4. LEVIES PAYABLE BY THE MEMBERS

4.1 Subject to clause 4.2 below, the trustee committee shall from time to time impose levies upon the members for the purpose of meeting all the expenses which the Association has incurred, or to which the trustee committee reasonably anticipates the Association will be put by way of the following:

4.1.1 the maintenance, repair, improvement and keeping order of the public open spaces and public amenities within the development, to the extent that such public open spaces and public amenities are not normally maintained, repaired, improved and/or kept in order in the course of the normal services provided by the Council in other areas within its jurisdiction;

4.1.2 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the development, including security and security systems;

4.1.3 all services rendered to the Association and/or for payment of all expenses necessarily or reasonably incurred in connection with the management and objects of the Association and its affairs;

4.1.4 in order to give effect to and implement the objects of the Association and to do all such things ancillary or incidental to the objects;

and in calculating the levies, the trustee committee shall take into account the income (if any) earned by the Association.

4.2 No levies shall be payable by the Council in respect of any immovable property within the development registered in the name of the Council (regardless of whether or not it is rateable property) unless the Council develops such property in which event the Council shall be liable for levies with effect from the earlier of the following dates:

4.2.1 the date on which the Council approves any building plans in respect of such development; or

4.2.2 the date on which any improvements on such property is first used or occupied by any person, other than

contractors or other persons directly or indirectly engaged in the construction of such improvements.

- 4.3 The trustee committee shall, in consultation with the Council, prepare an annual budget of the estimated amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency (if any) as shall result from the preceding year, and shall impose a levy upon the members' equal as nearly as is reasonably practical to such estimated amount.
 - 4.4 The budget shall specify separately the amount to be provided for the maintenance, repair, improvement and keeping in order of the public open spaces and public amenities during the ensuing year.
 - 4.5 The trustee committee may include in such budget levies in an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
 - 4.6 The levy payable by each member in respect of each year shall be calculated as a percentage of the assessment rates payable in respect of the rateable property owned by such member as at the invoice date which percentage shall be the same percentage as the total amount provided for in the budget for that year to meet:
 - 4.6.1 the estimated amount the expenses during that year;
 - 4.6.2 the estimated deficiency (if any) as shall result from the preceding year/s;
 - 4.6.3 the amount (if any) to be held in reserve in respect of anticipated future expenditure not of an annual nature;
 - 4.6.4 all or any other amounts which the trustees have provided for during that year;
- bears to the total assessment rates payable in respect of all rateable property within the development as at the invoice date provided that the assessment rates payable in respect of any rateable property owned by the Council which has not been developed as contemplated in clause 4.2 above, shall not be taken into account in calculating such total assessment rates.
- 4.7 Should any rateable property not have been assessed for rates purposes, the levy payable by the member owning such property in respect of each year shall be calculated by the trustee committee, taking into account the following factors:

4.7.1 the proportion which the extent of such rateable property bears to the aggregate extent of all rateable properties within the development block concerned and/or the development;

4.7.2 the proportion which the value of the rateable property (including any improvements thereon) bears to the aggregate value of all rateable properties within the development block concerned and/or the development;

4.7.3 the purpose for which such rateable property is used;

4.7.4 the traffic flow generated by such rateable property;

provided, however, that the trustee committee may consider any other factor which the trustee committee, in its sole discretion, may deem relevant.

4.8 The Council shall collect such levies on behalf of the Association as a surcharge on the assessment rates payable by owners of rateable property within the development.

4.9 The trustee committee shall, prior to the preparation by the Council of invoices for assessment rates to the owners of rateable property within the development, notify the Council in writing of the percentage to be levied as a surcharge on such assessment rates in terms of clause 4.7 above.

4.10 Levies imposed in respect of each year in terms of the budget shall be payable at the option of each member either:

4.10.1 annually in advance within 30 days after the invoice date; or

4.10.2 by way of 12 equal monthly instalments payable on the first day of each and every succeeding month commencing from the first day of the month following the invoice date of such levies in respect of the rateable property concerned.

4.11 Such levies shall be levied in addition to all other amounts which the Council may levy from the owners of rateable property (excluding the owners of excluded property) in respect of rates, levies, fees, taxes, duties and tariffs and the surcharge shall be indicated as a separate item from all other amounts levied by the Council.

- 4.12 All levies collected by the Council for the Association shall be paid to the trustee committee monthly within 30 days of receipt thereof, free of any deductions or set off for the purposes of funding the expenses of the Association, less the amount provided for in the annual budget for the maintenance, repair, improvement and keeping in order of the public open spaces and public amenities which the Council shall retain for the purposes thereof.
- 4.13 All amounts received from an owner of rateable property in respect of rates, levies, fees, taxes, duties or tariffs due in law to the Council and/or any levies to the Association in terms of this constitution, shall be applied first to rates and taxes and other amounts payable to the Council and thereafter to the payment of levies due to the Association in terms of this constitution.
- 4.14 If at any time/s the Council is unwilling or unable or refuses to collect the levies on behalf of the Association, then:
- 4.14.1 the trustee committee shall collect the levies from its members; or
- 4.14.2 the trustee committee or board of directors (as the case may be) of any property owners' sub-association shall collect the levies of the Association from such property owners' sub-association's members (which are also members of the Association) on behalf of the Association;
- as the trustee committee, in its sole discretion, may deem fit.
- 4.15 The trustee committee may from time to time impose special levies upon the members in respect of all such expenses as are mentioned in this clause 4 (which are not included in any estimate made in terms of clause 4.2) and such levies :
- 4.15.1 may be made in the sum or by such instalments and at such time or times as the trustee committee shall think fit;
- 4.15.2 may be imposed upon all the members or only upon such members who will directly or indirectly receive the benefit from the purpose for which such special levies are required;

- 4.15.3 may be levied by the trustee committee *mutatis mutandis* in accordance with all or any of the provisions of clauses 4.1 to 4.14 (both inclusive).
- 4.16 Any amount due by a member by way of a levy shall be a debt due by such member to the Association.
- 4.17 The obligation of a member to pay levies to the Association shall cease upon such member ceasing to be a member of the Association, without prejudice to the right of the Association to recover arrear levies.
- 4.18 No levies paid by a member to the Council and/or the Association shall under any circumstances be repayable by the Council and/or the Association upon such member ceasing to be a member.
- 4.19 A member's successor in title to any rateable property shall be liable as from the date upon which such successor becomes a member pursuant to the transfer of such rateable property, to pay the levy attributable to the rateable property.
- 4.20 Any special levies imposed by the trustees in terms of clause 4.15 may be apportioned between the members by the trustees in an apportionment which the trustees may regard as reasonable, regard being had of the direct benefits which the member(s) may derive from the proposed expenditure for which the special levies are imposed.
- 4.21 No member shall be entitled to any of the privileges of membership unless and until such member shall have paid every levy or other amount (if any) which shall be due and payable to the Association in respect of the membership of such member.

5. **BUILDINGS AND ALTERATIONS**

- 5.1 A member shall not be entitled to without the prior written approval of the Council, having regard to the design guidelines:
- 5.1.1 erect any new buildings and/or structures of any nature whatsoever on any erf in the development;
- 5.1.2 make any changes or alterations to existing buildings and/or structures on any property within the development, including changes to the external colour scheme.

- 5.2 The approval of the Council as contemplated in clause 5.1 above shall only be given:
- 5.2.1 after the Association and the property owners sub-association (if any) or the body corporate (if any) of which such member is a member has approved their detailed plans of the proposed work in writing; and
 - 5.2.2 after detailed plans of the proposed work has been submitted to the Council, or any competent person nominated by the Council (who may be an architect, registered with the South African Council of Architects or the Institute of South African Architects); and
 - 5.2.3 the Council or its nominee/s is/are satisfied that the proposed work is in accordance with the design guidelines of for the purposes of which the Council or its nominee/s shall be the sole arbiter and their decision shall be final and binding on the member, subject to the right of such member to refer their decision to arbitration in terms of clause 29 below; and
 - 5.2.4 the member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Council or its nominee/s;
 - 5.2.5 the member has paid to the Council a deposit in such amount as the Council may from time to time determine as security for any damage to any of the common areas which amount shall be held in trust by the Council subject to the provisions of clauses 7 and 15 below;

provided that the provisions of this clause shall not be interpreted as detracting from the sole and final responsibility of the Council to approve or reject building plans.

6. **DESIGN GUIDELINES**

- 6.1 The Council shall be entitled to amend, amplify, clarify or add to any of the provisions of any of the design guidelines.
- 6.2 The trustees may in liaison and with the consent of the Council amend, amplify, clarify or add to any of the provisions of any of the design guidelines.
- 6.3 In the event of the generic design guidelines being amended or added to, and such amendment or addition will materially affect any further development of any property within the development,

the trustees shall by written notice inform all members of the amendment or addition to the generic design guidelines. In the case of any such changes being required to be made to the internal design guidelines, only the affected members shall be informed by the trustees of such amendments or additions thereto.

- 6.4 All buildings and other structures erected on any property within the development shall comply with the provisions of the design guidelines.
- 6.5 In the event of any conflict between the generic design guidelines and the internal design guidelines, the internal design guidelines shall take precedence over the generic design guidelines provided that such internal guidelines are duly approved by the Council.
- 6.6 No site occupation or possession of any property within the development shall be permitted until written acknowledgement of the design guidelines has been received from the registered owner thereof provided that the signature of a deed of sale with the design guidelines annexed thereto shall be deemed to be an acknowledgement of the design guidelines for the purposes of this clause.
- 6.7 Any member who has not completed a building on his erf within 36 months after the registration of the erf into his name or who has failed to complete a building on his erf within 12 months after the commencement of the erection thereof, such member shall pay the Association a penalty levy of R500.00 per month or part thereof for which such building remains uncompleted.
- 6.8 The penalty levy shall be paid in addition to the levy payable by the member in terms of Clause 5 hereof and, in the event of a dispute arising as to whether a building is completed for purposes of the provision of this clause, the Chairperson shall determine such dispute and his decision shall be final and binding.

7. DEPOSIT FOR DAMAGE

- 7.1 When submitting to the Council for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements in the development in terms of clause 5.1 above, each member shall, if required by the Council or the Association (as the case may be), pay to the Council or the Association (as the case may be) a deposit in an amount to be determined from time to time by the

Council or the Association (as the case may be) which amount shall be retained by the Council or the Association (as the case may be) in trust until completion by the member and/or its contractors of such work.

7.2 Upon completion of all such building and other activities, the Council or the Association (as the case may be) shall, if it is satisfied that no damage has been effected by the member or any of its contractors to the common areas and/or landscaped areas within the development and that the work has been constructed in accordance with duly approved plans, release the building deposit to the member, excluding any interest thereon which will accrue to the Association.

7.3 In the event of any landscaped area and/or the common areas having damage due to such work, the member shall within 15 days of having been requested to do so in writing by the Council or the Association (as the case may be), rectify the damage to the satisfaction of the Council or the Association (as the case may be), failing which, the Council or the Association (as the case may be) shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the Council or the Association (as the case may be) as a building deposit shall be utilised to defray the expenses of the independent contractor. If, however, the damage caused is not sufficient to cover the cost of such repairs, the Council or the Association (as the case may be) shall be entitled to recover the shortfall from the member.

8. PUBLIC OPEN SPACES

8.1 The Council shall maintain, repair, improve and keep in order the public open spaces and public amenities within the development in accordance with the normal services which it provides in other areas within its jurisdiction.

8.2 Should the Council fail to maintain, repair, improve and keep in order the public open spaces and public amenities, and remain in default for more than 30 days after receipt of written notice from the Association to remedy such failure, then and in that event, without prejudice to all or any other rights or remedies of the Association and/or the members:

8.2.1 the Association shall be entitled (but not obliged) to remedy such failure;

- 8.2.2 the Council shall within 7 days after written request pay to the Association all reasonable costs to remedy such failure.
- 8.3 Neither the whole nor any portion of the public open spaces and/or the public amenities shall be:
 - 8.3.1 sold, let, alienated or otherwise disposed of or subdivided or transferred; or
 - 8.3.2 mortgaged or encumbered in any manner whatsoever; or
 - 8.3.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, save those enjoyed by the members in terms hereof; or
 - 8.3.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities.

without the specific prior written consent of the Council (which shall not be unreasonably withheld) and the sanction of a special resolution of the Association (and no member shall be entitled to unreasonably vote against any such special resolution which may be proposed).

9. **INCORPORATION AND EXCLUSION OF AREAS**

- 9.1 The Council shall have the right at any time to extend or alter the area or composition of the development by requiring the Association to incorporate into the development any land outside the development from time to time, including developed or undeveloped areas, roads, public open spaces, conservation areas and/or amenities, or by requiring the Association to transfer to the Council any part of the development on which no facilities or amenities are located.
- 9.2 The Council shall have the right at any time to reduce or alter the area or composition of the development by excluding any portion or portions of the development from the development.
- 9.3 Should any land outside the development be incorporated into the development, the Council shall be entitled to require the first and all subsequent owners of such land to become members of the Association in respect of such land from such date as the Council may reasonably determine, and on the same terms and conditions as are applicable to the other members of the

Association who shall be bound by any such requirement of the Council.

- 9.4 No member shall be entitled to object to the subdivision, rezoning and/or development of any part of the development area provided that such subdivision, rezoning and/or development (as the case may be) is not inconsistent with the development plan approved by the relevant authorities for that part of the development area.

10. **CONTRACTS AND REGULATIONS**

10.1 The trustee committee may from time to time:

10.1.1 make regulations governing inter alia:

10.1.1.1 the members' rights of use and enjoyment of the public areas and amenities;

10.1.1.2 the public rights of use and enjoyment of the public open spaces, the common areas and the public amenities;

10.1.1.3 the external appearance of and the maintenance of the public open spaces and the amenities thereon;

10.1.1.4 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on the public open spaces.

10.1.2 enter into agreement(s) with the local authorities governing the matters set out in clause 10.1.1 and any other incidental matters;

10.1.3 enter into any other agreement(s) for the purposes of achieving the objects of the Association, including (but not limited to) agreements with security organisations to provide security to the whole or any part of the development.

10.2 Each member undertakes to the Association to comply with:

10.2.1 the provisions of this constitution;

10.2.2 any regulations made in terms of clause 10.1.1 above;

10.2.3 any agreements referred to in clause 10.1.2 above insofar as those agreements may directly or indirectly impose obligations on such member.

11. BREACH OF THIS CONSTITUTION

11.1 Should any member:

11.1.1 fail to pay on due date any amount due by that member in terms of this constitution or any regulation made thereunder and remain in default for more than 7 days after being notified in writing to do so by the trustees; or

11.1.2 commit any other breach of any of the provisions of this constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 days after the receipt of written notice to that effect by the trustees and complete the remedying of such breach within a reasonable time;

then and in either such event, the Council (or failing the Council, the trustees) shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the trustees or the Association or any other member may have in law, including the right to claim damages:

11.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his or her obligations in terms of this constitution or any regulation made in terms of this constitution, as the case may be; and/or

11.1.4 in the case of the failure to pay any levy instalment in terms of clause 4 on due date, to claim immediate payment of the whole of the outstanding levies payable in respect of the relevant year, together with interest thereon; and/or

11.1.5 in the case of clause 11.1.2 above, to remedy such breach and immediately recover the total cost incurred by the trustees or the Association in so doing from such member.

11.2 Should the trustees of the Association institute any legal proceedings against any member pursuant to a breach by that member of this constitution or any regulation made thereunder,

then without prejudice to any other rights which the trustees or the Association or any other member may have in law, the trustees shall be entitled to recover from such member all legal costs incurred by the trustees or the Association, including attorney/client charges, tracing fees and collection commission.

- 11.3 Without prejudice to all or any of the rights the trustees or the Association granted under this constitution, should any member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at the prime rate plus 5% calculated from the due date for payment until the actual date of payment of such amount, both dates inclusive.

12. **TRUSTEE COMMITTEE**

- 12.1 There shall be a trustee committee of the Association which shall consist of not less than 2 trustees and not more than the number of trustees that may be appointed in terms of clauses 12.2, 12.3 and 12.4 below.

- 12.2 The Council shall be entitled to appoint 1 trustee and to appoint 1 alternate to each such trustee and to remove, replace and fill any vacancy in any such appointment as trustee or alternate trustee.

- 12.3 All the members:

12.3.1 who are registered owners of rateable property in development block A shall jointly be entitled to appoint 4 trustees and 1 alternate to each such 4 trustees; and

12.3.2 who are registered owners of rateable property in any other development block, 1 trustee and 1 alternate to such trustee;

and to remove, replace and fill any vacancy in any such appointments as trustee or alternate trustee; provided that:

12.3.3 in the case of such registered owners being unable to agree on the appointment of such trustee/s or alternate trustee/s within 14 days after the previous trustee ceased to hold office for whatever reason; or

12.3.4 in the case of the appointment of the first trustee/s in respect of such development block;

then, in either such case, the following provisions shall apply:

- 12.3.5 the trustee committee shall convene a meeting of such registered owners upon notice published in one issue of an Afrikaans and one issue of an English local newspaper, within a period not less than 14 days before the date of such meeting;
- 12.3.6 a quorum necessary for the holding of such meeting shall be at least 1 of such registered owners entitled to vote;
- 12.3.7 the registered owners present or represented by proxy at such meeting shall be entitled to put forward 1 nominee or, in case of development block A, 4 nominees as trustee/s and alternate trustee/s for the development block;
- 12.3.8 the registered owner or owners present or represented by proxy at the meeting shall vote for the appointment of the trustee/s and alternate trustee/s from such nominee/s in accordance with the voting ratio set out in clause 23.4 below, *mutatis mutandis*;
- 12.3.9 the provisions of clause 22 shall apply *mutatis mutandis* to any proxy appointed for the purposes of such meeting.
- 12.4 During the development period, the Development Facilitator shall be entitled to appoint 1 trustee and to appoint 1 alternate to each such trustee and to remove, replace and fill any vacancy in any such appointment as trustee or alternate trustee.
- 12.5 Any appointment, removal and/or replacement of any trustee shall be made by written notice to the Association signed by the party exercising such right and shall be operative as soon as any such written notice is received at the office of the Association.
- 12.6 At the meeting of the trustee committee:
 - 12.6.1 the trustees of development block A shall collectively have a vote equal to the voting ratio in terms of clause 23.4 of each such development block;
 - 12.6.2 each trustee of the other development blocks present at the meeting shall have a vote in accordance with the voting ratio in terms of clause 23.4 of each such development block;

save that during the development period, the trustee appointed by the Development Facilitator shall have the same number of votes as all the other trustees plus 1 additional vote.

- 12.7 Should the trustees of development block A present at a meeting of the trustees' committee be unable to cast a collective vote as contemplated in clause 12.6.1 above, such trustees shall be deemed to have abstained from voting.
- 12.8 The decision of the majority of the votes of the trustees present at any meeting shall be the decision of the trustee committee provided that no decision effecting the common areas or the conservation areas shall be passed without the consent of the trustee appointed by Council which consent shall not be unreasonably withheld.
- 12.9 Until the first trustees of the Association are appointed, the Development Facilitator shall be entitled to carry out all the functions and duties of the trustee committee in terms of this constitution.

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

- 13.1 A trustee shall be deemed to have vacated his or her office as such upon:
 - 13.1.1 his or her estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 13.1.2 his or her making any arrangement or compromise with his creditors;
 - 13.1.3 his or her conviction for any offence involving dishonesty;
 - 13.1.4 his or her becoming of unsound mind or being found lunatic;
 - 13.1.5 his or her resigning from such office in writing delivered to the secretary;
 - 13.1.6 his or her death;
 - 13.1.7 his or her being removed from office by a resolution of the majority of the trustees, subject to clause 13.2 below;

provided that anything done in the capacity of a trustee in good faith, by a person who ceases to be a trustee, shall be valid until

the fact that he is no longer a trustee has been recorded in the minute book of the trustee committee.

- 13.2 Where any trustee vacates or is deemed to have vacated his or her office as such, then the vacancy may only be filled by the party who appointed such trustee.

14. OFFICE OF TRUSTEES

- 14.1 The trustees shall appoint from amongst themselves, a chairperson and vice-chairperson.
- 14.2 The first chairperson and vice-chairperson shall be appointed by the Development Facilitator until the expiration of a period of 36 months after the registration of transfer of the first of the erven in the development to the purchaser thereof, and such office bearers shall hold their respective offices until the end of each year provided that any such office shall *ipso facto* be vacated by the trustee holding such office upon his or her ceasing to be a trustee for any reason.
- 14.3 Within 30 days prior to the end of each year and subject to clause 14.2 above, the trustee committee shall meet and shall elect from its own number the chairperson and vice-chairperson, who shall hold their respective offices until the end of the following year, provided that the office of the chairperson or vice-chairperson shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason. 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.
- 14.4 Save as otherwise provided in this constitution, the chairperson shall preside at all meetings of the trustee committee, and all general meetings of members, and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the trustee committee or of members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 14.5 The vice-chairperson shall assume the powers and duties of the chairperson in the absence of the chairperson, or his inability or refusal to act as chairperson, and shall perform such other duties as may from time to time be assigned to him by the chairperson or the trustee committee.

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

15. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 15.1 Subject to the express provisions of this constitution, the trustee committee shall manage and control the affairs of the Association, and shall have full powers in the management and direction of such affairs and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the trustee committee which would have been valid if such regulation had not been made.
- 15.2 The trustee committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 15.3 The trustee committee shall have the right to co-opt onto the trustee committee any person or persons chosen by it. Any co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees, but no co-opted trustee shall have any vote at any meeting of the trustee committee.
- 15.4 The trustee committee may should it so decide, investigate any suspected or alleged breach by any member or trustee of this constitution in such reasonable manner as it shall decide from time to time.
- 15.5 The trustee committee may make regulations and by-laws not inconsistent with this constitution or any regulations or by-laws prescribed in the Association in general meeting:
- 15.5.1 as to disputes generally;
- 15.5.2 for the furtherance and promotion of any of the objects of the Association;

- 15.5.3 for the better management of the affairs of the Association;
- 15.5.4 for the advancement of the interests of members;
- 15.5.5 for the conduct of trustee committee meetings and general meetings; and
- 15.5.6 to assist it in administering and governing its activities generally,

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

- 15.6 The trustee committee shall be entitled to delegate all or any of its functions and duties to any committee or sub-committee, or to the trustees of any body corporate property owners sub-association within the development.

16. **PROCEEDINGS OF THE TRUSTEE COMMITTEE**

- 16.1 The trustee committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this constitution.
- 16.2 Meetings of the trustee committee shall be held at least once every 6 months provided that if all the trustees shall in writing have waived the above requirement in respect of a particular 6 months period, then no meeting of the trustee committee need be held for that period.
- 16.3 The quorum necessary for the holding of any meeting of the trustee committee shall be the trustees or alternate trustees appointed by the members of not less than 3 development blocks as contemplated in clause 12.3 above, provided that during the development period there shall be no quorum unless the trustee or alternate trustee appointed by the Development Facilitator in terms of clause 17.4 is present.
- 16.4 If within 30 minutes after the time appointed for the meeting, a quorum is now present, the meeting shall stand adjourned to a day not earlier than 24 hours and not later than 7 days after the date of the meeting and if at such adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the trustee or trustees (or their alternate/s) present at the meeting shall constitute a quorum.

- 16.5 The chairperson shall preside as such at all meetings of the trustee committee, provided that should at any meeting of the trustee committee the chairperson not be present within 15 minutes after the time appointed for the holding thereof, then the vice-chairperson shall act as chairperson at such meeting, provided further that should the vice-chairperson also not be present within 5 minutes of the time appointed for the holding of such meeting, those present of the trustees shall vote to appoint a chairperson for the meeting, who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.
- 16.6 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 chairperson of the meeting. All minutes of trustee committee meetings shall after certification as aforesaid be placed in a trustee committee minute book to be kept in accordance mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The trustee committee minute book shall be open for inspection at all reasonable times by a trustee, the auditors, and the members.
- 16.7 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.
- 16.8 Save as otherwise provided in this constitution, the proceedings at any trustee meeting shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide.
- 16.9 A resolution signed by all the trustees shall be valid in all respects as if it had been duly passed at a meeting of the trustee committee duly convened.

17. **GENERAL MEETINGS OF THE ASSOCIATION**

- 17.1 The Association shall within 6 months after 30 June in each calendar year hold a general meeting as its annual general meeting, in addition to any other general meetings, during that

year, and shall specify the meeting as such in the notices in terms of clause 18.1 below calling it.

- 17.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the trustee committee shall decide from time to time.
- 17.3 All general meetings other than annual general meetings shall be called special general meetings.
- 17.4 The trustee committee may, whenever it thinks fit, convene a special general meeting for any purpose.
- 17.5 General meetings of the Association shall take place at such place/s as shall be determined by the trustee committee from time to time.

18. **NOTICE OF MEETINGS OF THE ASSOCIATION**

- 18.1 An annual general meeting and a meeting called for the passing of a special resolution, shall be called by notice published in one issue of an Afrikaans and one issue of an English local newspaper within a period not less than 21 days before such meeting, and a special general meeting shall be called by notice published in one issue of an Afrikaans and one issue of an English local newspaper within a period not less than 14 days before such special general meeting.
- 18.2 In each case, the notice shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this constitution, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the trustee committee to a member.

19. **QUORUM FOR GENERAL MEETINGS**

- 19.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 19.2 The quorum necessary for the holding of any general meeting shall be the trustees or alternate trustees appointed by the members of not less than three development blocks as contemplated in clause 12.3 above, provided that during the development period there shall be no quorum unless the trustee or

alternate trustee appointed by the Development Facilitator in terms of clause 12.4 is present.

- 19.3 If within 30 minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the chairperson of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

20. **AGENDA AT GENERAL MEETINGS**

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

- 20.1 the consideration of the chairperson's report to the trustee committee;
- 20.2 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 20.3 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 20.4 the consideration of the report of the auditors;
- 20.5 the consideration of the total levy (as referred to in clause 4 for the calendar year during which such annual general meeting takes place; and
- 20.6 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting.

21. **PROCEDURE AT GENERAL MEETINGS**

- 21.1 The chairperson shall preside as such at all general meetings provided that should he not be present within 15 minutes after the time appointed for the holding thereof, then the vice-chairperson, shall act as chairperson at such meeting provided further that should the vice-chairperson not be present within 15 minutes of the time appointed for the holding of such meeting, then the

members present at such meeting entitled to vote shall vote to appoint a chairperson for the meeting who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.

21.2 The chairperson may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.

21.3 Whenever a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

21.4 Except as otherwise set forth in this constitution, all general meetings shall be conducted in accordance with generally accepted practice.

22. **PROXIES FOR GENERAL MEETINGS**

22.1 A member and a trustee may be represented at a general meeting by a proxy who need not be a member of the Association, provided that a proxy of a member shall not be entitled to vote.

22.2 The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form provided that where a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairperson of the board of directors of the company or by its secretary, and where an association of persons, or a body corporate, by the chairperson thereof.

22.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting concerned. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution.

- 22.4 A vote given in accordance with the terms of an instrument of proxy of a trustee shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the trustee committee at least 10 minutes before the time fixed for the holding of the meeting.
- 22.5 Should a member be absent from the recorded *domicilium* address which the trustees may have for such member for a continuous period in excess of 30 days, a proxy must be appointed by such member prior to his absence in accordance with clauses 22.1 and 22.3 above, failing which a member shall not be entitled to vote, at any special general meeting, called during such member's absence.

23. VOTING AT GENERAL MEETINGS

- 23.1 At every general meeting, the members who are registered owners of rateable property in a development block shall jointly have a vote in accordance with the voting ratio of all rateable properties within such development block as at the date of the meeting. Such vote may only be exercised by the trustee/s appointed by such members in terms of clause 12.3 above.
- 23.2 The trustee/s may exercise his or her vote as he or she is mandated by the members of the development block concerned or the Council (as the case may be), in person or represented by proxy, provided that the trustees of development block A may only exercise their vote jointly, failing which such trustees shall be deemed to have abstained from their vote.
- 23.3 Notwithstanding the provisions contained in clause 23.1, during the development period, the Council shall have the same number of votes as the total number of votes of the members of all development blocks, at that meeting, plus 1 vote. Such vote may only be exercised only by the trustee appointed by the Council in terms of clause 12.2 above. The trustee may exercise his or her vote as he or she deems fit, in person or represented by proxy.
- 23.4 For the purposes 23.1 above, the term "voting ratio" in relation to any rateable property shall mean the same percentage as the rateable value of such rateable property bears to the total rateable value of all rateable property as at the date of the relevant general meeting and in the case of registered owners of sectional title units within the development, the "voting ratio" applicable to all the rateable property within the sectional title scheme shall be apportioned between such registered owners in

proportion to the participation quota of their respective units in terms of the scheme.

- 23.5 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairperson of the result of the show of hands, a poll is demanded by any member entitled to vote at such meeting.
- 23.6 Notwithstanding the provisions of clause 23.5 above, voting on the election of a chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or any of the members in terms of clause 23.7 below.
- 23.7 When a poll is demanded regard shall be had, in computing the majority on the poll, to the number of votes cast for and against the resolution.
- 23.8 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, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 23.9 Unless any member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairperson of the meeting as to the result of any voting at the meeting.

24. SPECIAL RESOLUTION

A resolution by the Association shall be a special resolution if at a general meeting the resolution has been passed, on a show of hands, by not less than 75% of the number of members of the Association entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than 75% of the total votes to which the members present in person or by proxy are entitled.

25. 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, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the trustee committee and on such terms as the trustee committee shall decide, subject to any of the provisions of this constitution, provided that any expenditure incurred in respect of the above, shall not exceed 5% of the total annual levy for the year in question unless authorised by a special resolution.

26. ACCOUNTS OF THE ASSOCIATION

26.1 The financial year end of the Association shall be the last day of June of each and every year.

26.2 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.

26.3 At each annual general meeting the trustee committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the trustee committee and the auditors if appointed, and there shall be attached to the notice sent to members convening each annual general meeting, as set forth in clause 18.1 above, copies of such accounts, balance sheet and

reports and of any other documents required by law to accompany the same.

- 26.4 Should the trustees or the majority of the members so require, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the auditors at least once a year.

27. **SERVICE OF NOTICES**

- 27.1 A notice shall be in writing and shall be given or served by the Association upon any member, either personally, or by post in a prepaid registered letter, properly addressed to the member at the address of the rateable property owned by such member.
- 27.2 No member shall be entitled to have a notice served on such member 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.
- 27.3 Any notice 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.
- 27.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

28. **INDEMNITY**

- 28.1 All trustees shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a trustee, in his or her capacity as chairperson or vice-chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.
- 28.2 Every trustee, every servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the trustee committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any

act or deed done, by such person or persons in the discharge of any of their respective duties, including in the case of a trustee, his or her duties as chairperson or vice-chairperson. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by such person jointly or severally in connection with the discharge of his or her duties, provided that any such act, deed or letter has been done or written in good faith.

- 28.3 A trustee shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustees, whether in their capacities as trustees or as chairperson or vice-chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the trustee committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his or her office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

29. **ARBITRATION**

- 29.1 Any dispute, question or difference arising at any time between member or between members and trustees out of or in regard to:
- 29.1.1 any matters arising out of this constitution; or
 - 29.1.2 the rights and duties of any of the parties mentioned in this constitution; or
 - 29.1.3 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.
- 29.2 Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if

possible it shall be held and concluded within 21 business days after it has been demanded.

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

29.3.1 primarily an accounting matter - an independent practising accountant of not less than 10 years standing;

29.3.2 primarily a legal matter – an independent practising counsel or attorney of not less than 10 years standing;

29.3.3 primarily an architectural or design matter – independent practising architect of not less than 10 years standing;

29.3.4 any other matter - an independent and suitably qualified person appointed by the auditors;

as may be agreed upon between the parties to the dispute and, failing agreement, the arbitrator shall be appointed in terms of clause 29.4 below.

29.4 If agreement cannot be reached on whether the question in dispute falls under clauses 29.3.1, 29.3.2 or 29.3.4 or upon a particular arbitrator in terms of clause 29.3.4, within 3 business days after the arbitration has been demanded, then:

29.4.1 the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 29.3.1, 29.3.2 or 29.3.4 above; or

29.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 29.3.1 within 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 21 business days referred to in clause 29.2 above.

29.5 The arbitrator shall make his award within 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.

29.6 The decision of the arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa or its successor/s upon the application of any party to the arbitration.

29.7 Notwithstanding anything to the contrary contained in clauses 29.1 to 29.7 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 these provisions.

30. **AMENDMENTS TO CONSTITUTION**

30.1 This constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a special resolution adopted at an annual general meeting or a general meeting of the members, subject to clause 30.2 below.

30.2 Notwithstanding the provisions of clause 30.1 above, this constitution shall not be repealed or amended without the written consent of the Council which consent shall not be unreasonably withheld.