



**HOMEOWNERS ASSOCIATION  
CONSTITUTION**

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**RIVERSIDE LIFESTYLE ESTATE  
HOMEOWNERS ASSOCIATION  
CONSTITUTION**

**1 NAME AND ESTABLISHMENT**

The Riverside Estate Homeowners Association ("the Association") is an Association, 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 Buffalo City Municipality when approving in terms of the said Ordinance the sub-division of the Land defined hereunder and shall come into existence upon the registration in the Deeds Office of the erven.

**2 INTERPRETATION**

2.1 In this Constitution, unless the context otherwise indicates, reference to:-

- 2.1.1 the singular shall include the plural and vice versa;
- 2.1.2 any one gender shall include the other gender and vice versa;
- 2.1.3 any natural person shall include bodies corporate and trusts and vice versa; and
- 2.1.4 any party hereto shall include the successors in title and assignees of that party
- 2.1.5 the following words shall have the meanings assigned to them:
- 2.1.6 the headings to the clauses are for convenience only and do not amplify, clarify or operate as aid to the interpretation of the clauses to which they refer.

2.2 "ADRP" means the Architectural Design and Review Panel.

2.3 "Alienate" means the alienation of any erf or part thereof by sale, exchange, donation, deed, succession, cession, assignment, court order or insolvency irrespective of whether such alienation is subject to a suspensive or resolutive condition.

2.4 "Architectural Design and Review Panel" means a panel of architects appointed by the Developer to approve plans for the construction of buildings on Riverside and to carry out such other duties allocated to the panel by the Developer from time to time and may be any number including only one Architect.

2.5 "Architectural Guidelines and Design Criteria" means the Architectural Guidelines and Design Criteria which Purchasers are obliged to conform to, defining the parameters in which the Architectural Design and Review Panel will operate.

2.5 "Association" means the Riverside Lifestyle Estate Homeowners Association established as a Body Corporate in terms of the provisions of Section 29 of the Land Use Planning Ordinance No 15 of 1985, as amended.

2.6 "Auditors" means the Chartered Accountants appointed by the Association from time to time to audit the Financial Statements.

2.7 "Developer" means WF Osner Investments (Pty) Ltd and its successors in title and/or assignees being a Company carrying on business at Office Suites, Kennaway, Esplanade, East London.

2.8 "Development Period" means the period commencing 1<sup>st</sup> March 2013 until all the erven in the Estate have been transferred from the Developer; alternatively on the date on which the Developer notifies the Association in writing that it terminates the Development Period whichever is the earlier.

2.9 "Erf/Erven" means the erven as depicted on the General Plans of sub-division of the land as registered in terms of the Deeds Registry's Act No 47 of 1937 including any further sub-divisions or consolidations thereof.

2.10 "Estate" means the Riverside Lifestyle Estate to be developed on the land.

2.11 "Financial Year" means the financial year of the Association which shall commence on the 1<sup>st</sup> March in each year until the last day of February in each subsequent year.

2.12 "Land" means:-  
 Portion 41 (a Portion of Portion 8, (Grandview) of Farm No. 816,  
 Portion 10 (a Portion of Portion 7) (Allersma) of Farm No. 816,  
 Portion 30 (a Portion of Portion 1) of Farm No. 816 and  
 Portion 31 (a Portion of Portion 8) (Grandview) of Farm No. 816  
 Buffalo City Metropolitan Municipality, Division of East London  
 Province of the Eastern Cape  
 In Extent 36,8406 Hectares.  
 and shall also include, if required by the Developer, any adjacent land purchased or used for the extension of the Development.

2.13 "Local Authority" means the Buffalo City Metropolitan Municipality or any other Government or quasi Government Body which is required to approve any aspect of the development of the Estate.

2.14 "Member" means the registered owner of any erf.

2.15 "person" shall include a Company, Close Corporation, Trust, Partnership or other association of persons in title by law to hold title to immovable property.

2.16 "prime rate" means the prime rate of interest charged by the Association's bankers from time to time fluctuating automatically with any fluctuation in the said Bank's prime rate.

2.17 "Riverside" / "Riverside Lifestyle Estate means  
 the Riverside Lifestyle Estate situated on  
 Portion 41 (a Portion of Portion 8, (Grandview) of Farm No. 816,  
 Portion 10 (a Portion of Portion 7) (Allersma) of Farm No. 816,  
 Portion 30 (a Portion of Portion 1) of Farm No. 816 and  
 Portion 31 (a Portion of Portion 8) (Grandview) of Farm No. 816  
 Buffalo City Metropolitan Municipality, Division of East London  
 Province of the Eastern Cape  
 In Extent 36,8406 Hectares.

### 3 MAIN BUSINESS

The main business of the Association is to promote, advance and protect the communal interests of the owners and occupiers of erven in the Estate and in particular in so promoting such communal interests to ensure acceptable aesthetic, architectural and environmental standards on the Land and to promote and maintain recreational facilities available to the said owners as well as common areas, facilities and services for the use of the owners, occupiers, or their guests as may be required by the Developer in connection with the Estate.

### 4 MAIN OBJECT

4.1 The main object of the Association is:-

4.1.1 The exercise of control over the construction and maintenance of all dwellings, including the external facades and roofs thereof which constructions and maintenance is to be carried out by and at the expense of the owner.

4.1.2 The maintenance of all buildings and / or structures erected or to be erected on the Land for the use of the owners, which maintenance is to be carried out by and at the expense of the Association other than those buildings reserved by the Developer.

4.1.3 The maintenance of all roads, services, landscaping and facilities (including all recreational facilities) as specified by the Developer which maintenance is to be carried out by and at the expense of the Association.

- 4.2 The promotion and protection of the interests of the members generally in all matters affecting the Estate.
- 4.3 To enter into service agreements with the Developer and / or the Local Authority or any other authority or supplier of services.
- 4.4 To provide and maintain security measures and systems for controlled access and general security within the Estate.
- 4.5 To prescribe regulations for the landscaping and development on the Estate and for the Architectural Design and construction of improvements thereon so as to ensure a harmonious and aesthetic development of the Estate and to prescribe measures for the maintenance of such standards of development.
- 4.6 To register various service servitudes over the Estate as may be required by any Local Authority or by members to ensure access and the provision of services as may be required from time to time.
- 4.7 To acquire by way of lease or ownership, even in the Estate for the purpose of providing access or the provision of services as may be required from time to time and to register transfer of ownership thereof in the name of the Association; to acquire and hold servitudes in the Association's favour for the same purposes as required from time to time.
- 4.8 To open a banking account with a banking institution in the name of my Association and to deposit therein all monies not immediately invested and to withdraw therefrom any monies required for the purposes herein mentioned;
- 4.9 The formulation, enforcement, modification, amendment, additions and deletions of Estate Rules and Regulations.
- 4.10 To delegate the management of the Association to an outside agency.
- 4.11 To incorporate any adjoining properties into and within the ambit of the Association and to incorporate owners of such adjoining properties and any sub-divisions thereof as members of the Association.

## 5 MEMBERSHIP

- 5.1 Membership of the Association shall be compulsory for every registered owner of a residential erf in the estate.
- 5.2 Such membership shall commence on registration of transfer of an erf into the name of the transferee.
- 5.3 The Developer shall, by virtue of its ownership of even in the Estate and any other amenities and facilities to be developed become and remain a member of the Association for so long as any property is registered in the name of the Developer.
- 5.4 Where an erf is owned by more than one person or an entity, then all such persons shall be deemed to be one member of the Association in respect of that particular erf and shall nominate one person to represent them and vote at meetings of the Association.
- 5.5 When a member ceases to be a registered owner of an erf, he shall ipso facto cease to be a member of the Association.
- 5.6 A member shall not be entitled to:-
  - 5.6.1 sell or transfer an erf unless it is a condition of the sale or instrument of transfer that
    - 5.6.1.1 the transferee becomes a member of the Association
    - 5.6.1.2 the registration of transfer of the erf into the name of the transferee shall ipso facto constitute the transferee as a member of the Association
    - 5.6.1.3 he/she first obtains the written consent of the Association, which consent shall be given provided the purchaser of such erf agrees in writing to abide by the terms of the Constitution of the Association and any Rules and Regulations made in terms thereof and further provided that the Transferor has paid all levies and any other amounts owing by him/her to the Association

- 5.6.1.4 the restriction against alienation and transfer referred to herein shall be registered against the Title Deeds of all erven
- 5.6.1.5 the registered owner of an erf may not resign as a member of the Association
- 5.6.1.6 the rights and obligations of a member shall not be transferable provided a member shall be entitled to cede his rights as security to a mortgagee of that member's erf.

## 6 IMPROVEMENTS

- 6.1 A Member shall not without the prior written approval of the Association:-
  - 6.1.1 Erect any building and / or structures of any nature whatsoever on the erf;
  - 6.1.2 make any changes or alterations to existing buildings and / or structures on the erf including changes to the external colour scheme;
  - 6.1.3 install or fix burglar bars to any external windows or doors of the buildings on the erf;
  - 6.1.4 erect or construct any pergolas, patio, awnings, shade ports, car ports, washing lines, Wendy houses, walls, fences or any other structures which may affect the external appearance of the improvements on the erf.
- 6.2 The consent of the Association shall only be given:-
  - 6.2.1 after detailed plans of the proposed work have been submitted to the Association or the Architectural Design and Review Panel ("ADRP");
  - 6.2.2 The Association through the ADRP has approved the proposed work which shall be in accordance with the Architectural Design and Development Manual for the purposes of which, the Association or its nominee shall be the sole arbiter and their decision shall be final and binding on the Member;
  - 6.2.3 The Member has made payment of any costs which may be incurred in obtaining this approval including the costs of the ADRP which shall be set by them from time to time provided such costs shall not exceed the recommended tariff of the Institute of South African Architects for work of a similar nature.

## 7 DEVELOPER

- 7.1 The Developer shall be entitled to cede all or any of its rights in terms of this Constitution and the Transferee shall be entitled to take transfer of the rights so ceded.
- 7.2 The Developer may at any time in writing, abandon in whole or in part any rights conferred on it in terms of this Constitution.
- 7.3 The Developer shall, when it is no longer the owner of any erven in the Estate, cease to be a member of the Association.
- 7.4 No person or any member of the Association shall, during the development period, prevent or hinder the Developer in any way from:
  - 7.4.1 gaining access to and egress from the Estate;
  - 7.4.2 continuing its building and / or construction operations at the Estate;
  - 7.4.3 marketing and selling any of the unsold erven;
  - 7.4.4 generally carrying on its business operations.
- 7.5 The Developer shall have the sole right to appoint and dismiss any managing agent during the development period.
- 7.6 The Developer has reserved the right and shall be entitled to build and establish on the land further amenities and facilities on any portion of the land as it in its sole discretion deems fit and to sub-divide from

the land such amenities and facilities as separate erven and to dispose of and / or operate such amenities and facilities for its own benefit, separate and independent from the remainder of the development.

8

## TRUSTEES

- 8.1 During the development period, the affairs of the Association shall be managed and controlled by a Board of Trustees consisting of Three (3) Trustees to remain in office for one (1) year, two (2) of whom shall be representatives appointed by the Developer and the remaining one (1) to be elected by majority vote of members of the Association. The Developer may increase the number of Trustees during the development period. Once the development is complete the number of Trustees may be increased by a resolution taken at a General Meeting of the Association.
- 8.2 On expiry of the development period, the Trustees terms of office shall expire and a general meeting shall be called for the purpose of electing all the Trustees.
- 8.3 Those Trustees that are elected, shall be elected by ballot or show of hands (if the meeting so determines) of those members who are entitled to attend the general meetings of the Association provided that no member shall be eligible for election unless he shall have been duly nominated and seconded in writing by other members and such written nomination, duly endorsed by the nominee, shall have been handed to the Secretary not later than the day preceding the meeting and provided further that such nominee's levies for the current year shall have been duly paid.
- 8.4 Save for representatives appointed by the Developer only registered owners shall be eligible for election as Trustees. If the registered owner is a legal entity, the duly authorized representative of such entity shall be eligible for election as a Trustee.
- 8.5 The Trustees shall elect one Trustee as Chairman provided that the Chairman until the expiry of the development period shall be appointed by the Developer.
- 8.6 A quorum shall consist of two (2) Trustees of which at least one (1) Trustee shall be a representative of the Developer. Should a quorum not be formed as aforesaid, the meeting shall stand adjourned until a time to be decided upon by the chairman. All matters at any meeting shall be determined by a majority vote of those present. In the event of an equality of votes, the Chairman of any meeting shall have a casting as well as a deliberative vote.
- 8.7 The Trustees, except for the representatives of the Developer during the development period, shall cease to hold office:-
  - 8.7.1 at every annual general meeting but shall be eligible for re-election;
  - 8.7.2 by notice to the Board of Trustees if he/she resigns from office;
  - 8.7.3 is removed from office by the majority vote of the other Trustees or by the Developer during the development period;
  - 8.7.4 absent himself/herself from three (3) consecutive meetings of the Trustees without leave of absence;
  - 8.7.5 upon his / her estate being sequestrated, whether provisionally or finally;
  - 8.7.6 upon the commission by him / her of any act of insolvency;
  - 8.7.7 upon his / her conviction of any offence involving dishonesty;
  - 8.7.8 if he /she is the appointed representative of the registered owner of the property who thereafter ceases to be a member of the Association, with effect from the date that the registered owner ceased to be an owner.
- 8.8 Vacancies on the Board of Trustees may be filled by co-option at the instance of the majority vote of the remaining Trustees failing which the Developer may fill the vacancy during the development period.
- 8.9 Trustees shall receive no remuneration but may be refunded reasonably incurred expenses in the execution of their duties.

- 8.10 No Trustee shall be liable to the Association or any member thereof or to any person whomsoever for any act or omission by himself, the Association or its servants or agents. Every Trustee is indemnified by the Association against any loss suffered by him / her in consequence of any purported liability provided that such member has, upon the basis of information known to him / her acted in good faith and without gross negligence and/or without dishonesty.
- 8.11 Meetings of the Trustees shall be held as frequently as may be decided by the Board of Trustees provided they shall meet not less than twice in each year. Minutes shall be kept of all meetings and decisions taken.
- 8.12 A resolution of which all Trustees have been given notice and signed by the majority of Trustees shall be sufficient without the Trustees having to meet personally.
- 8.13 Proper books of account of the administration of finances of the Association shall be kept and financial accounts shall be drawn and audited annually by the auditors.
- 8.14 Pending the holding of the first Annual General Meeting the Developer shall appoint the Trustees to hold office until Trustees are duly appointed at that meeting.

## 9 MEETINGS

- 9.1 The annual general meeting shall be held on a date fixed by the Board of Trustees each year and twenty-eight (28) days written notice thereof, including the agenda shall be sent to all members. The agenda shall include a full annual report of the Board, the election of Trustees for the forthcoming year, adoption of the Financial Reports and determination and approval of the levy for the forthcoming year.
- 9.2 Special General Meetings may be called by the Board of Trustees whenever they consider it desirable upon the requisition in writing of the majority of Trustees provided not less than twenty-eight (28) days written notice is furnished to all members specifying the business to be discussed.
- 9.3 The Chairman of the Meeting shall be Chairman of the Trustees and in his/her absence the members present shall elect a Chairman.
- 9.4 The Chairman shall not have a casting vote and a quorum at all General Meetings consist of members (including persons holding proxies on behalf of owners) owning at least twenty five percent (25%) of the total votes, to which the members present, in person or by proxy are entitled.
- 9.5 If within half an hour from the time appointed for any meeting of the Association, a quorum is not present, the meeting shall be adjourned to a date not earlier than fourteen (14) days and not later than thirty (30) days after the date of such adjourned meeting on written notice to the members. If at such adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the members present in person or by proxy and entitled to vote shall form a quorum.
- 9.6 At all meetings votes on any matter shall be by show of hands of those present unless the meeting decides otherwise by majority vote.
- 9.7 General meetings of the Association shall be held at the Estate or at such other place as the Trustees may decide from time to time.

## 10 PROXIES

- 10.1 The member may be represented at a General Meeting by a proxy, who shall be a member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his/her duly authorized agent, in writing, but need not be in any particular form.
- 10.2 The instrument appointing a proxy must be lodged with the Chairman of the Meeting prior to commencement of the Meeting at which the proxy is to be utilized. A proxy shall be valid for a period of twelve (12) months from date of signature.

## 11 VOTING

- 11.1 At every General Meeting, resolutions shall be passed by a majority of those Members present and entitled to vote in person or by proxy provided that no resolution may be passed during the development period unless the Developer votes in favour of such resolution.

- 11.2 Only Members duly registered, whose levies and all other amounts due and payable to the Association have been paid up to date, shall be entitled to vote either in person or by proxy at any General Meeting.
- 11.3 A resolution put to the vote shall be decided on a show of hands unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 11.4 When a poll is demanded, it shall be taken in such manner as the Chairman may direct, either immediately or after an interval or adjournment.
- 11.5 Every resolution and every amendment of a resolution proposed for adoption by a General Meeting must be seconded at the meeting and if not seconded, shall be deemed not to have been proposed.
- 11.6 The Chairman of a General Meeting shall not have a casting vote.

## 12 SPECIAL RESOLUTION

- 12.1 A special resolution may be passed at a General Meeting of which not less than twenty eight (28) days notice has been given specifying the intention to propose the special resolution, the details and reasons for the resolution.
- 12.2 A special resolution shall require not less than twenty five percent (25%) of the total votes of all members entitled to vote thereat being present in person or by proxy and not less than seventy five percent (75%) of those present in person or by proxy voting in favour of the resolution provided that where a poll has been demanded, by not less than seventy five percent (75%) of the total votes to which members present in person or by proxy are entitled.
- 12.3 If less than twenty five percent (25%) of the total votes of all the members entitled to attend the meeting and vote thereat are present, or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than fourteen (14) days and not later than thirty (30) days after the date of the meeting provided notice of such adjournment is given to all members.
- 12.4 At the adjourned meeting, the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than seventy five percent (75%) of the votes of such members shall be deemed to be a special resolution even if less than the twenty five percent (25%) of the total votes are represented at such adjourned meeting, or where a poll has been demanded, by not less than seventy five percent (75%) of the total votes to which the members present, in person or by proxy, are entitled.
- 12.5 Notwithstanding the above, no special resolution may be passed during the development period unless the Developer votes in favour thereof.

## 13 ACCOUNTS

- 13.1 Proper books of account shall be kept of all financial transactions of the Association and shall be available at all reasonable times for inspection by any member of the Association during normal business hours.
- 13.2 At each Annual General Meeting, the Trustees shall lay before the Association a proper Financial Statement duly audited and accompanied by a proper report of the Trustees and the Auditors.
- 13.3 Copies of the audited Financial Statements and reports shall be sent to all members together with the notice of the Annual General Meeting.
- 13.4 The accounts of the Association shall be audited by the auditors at least once per year.

## 14 AMENDMENTS TO CONSTITUTION

- 14.1 This Constitution, or any part thereof, may only be amended, repealed or altered by a Special Resolution adopted at a General Meeting of the Association provided that prior written consent of the local Authority shall be obtained for amendment of any of the provisions that relate to requirements or responsibility of the Association to the Local Authority in terms of any of the conditions of approval of the Development.
- 14.2 The following provisions shall not be repealed or amended:-

- 14.2.1 All registered owners shall be members of the Association.
- 14.2.2 On ceasing to be a registered owner, the membership of the Association shall cease.
- 14.2.3 The Association shall be entitled to register servitudes over the Estate in favour of the Local Authority where required and such other servitudes as are required to enable the Association to carry out all or any maintenance or services which it may undertake to have undertaken to perform.
- 14.2.4 The Association shall have the power to acquire ownership or to lease and to register servitudes, over and in favour of portions of any adjoining properties for the purposes of providing access, maintenance, extensions, recreational facilities and in the case of ownership, to consolidate or subdivide such portions of land, if required.
- 14.3 The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity and no amendment may be made to this Constitution during the development period without the consent of the Developer. However the Developer shall have the right on giving written notice to members to amend this Constitution in any respect that it considers in its sole discretion will be for the benefit of the estate development during the development period.

## 15 LEVIES

- 15.1 The Trustees may from time to time impose levies on members for the purpose of meeting all the expenses in relation to the facilities and services, for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association and its affairs and for the purpose of attaining its objects in terms of the Constitution. In calculating the amount of the levies, the Trustees shall take into account income, if any, earned by the Association.
- 15.2 The Trustees may from time to time where necessary, impose special levies upon the members or call upon them to make special contributions in respect of any expenses legally incurred by the Association.
- 15.3 The Developer shall not be liable for payment of levies in respect of any unsold erven still registered in its name or any of its associate companies save where the erf in question has been developed by the erection and completion of any habitable structure and is occupied for residential purposes.
- 15.4 Levies shall not be payable in respect of any erven reserved for the erection of any required support buildings and any land which will finally constitute public areas of the Estate.
- 15.5 Any amount due by a member by way of a levy shall be a debt due by him / her to the Association and shall not be refundable on the member ceasing to be a member of the Association.
- 15.6 No member shall be entitled to transfer his / her erf until the Association has certified that the member has at the date of transfer paid all amounts owing to him to the Association.
- 15.7 In calculating the levy payable by each member, the Trustees may as far as reasonably practical and in their sole discretion,
  - 15.7.1 assign those costs arising directly out of or directly attributable to the erf itself to the registered owner thereof based on the actual roof and exterior façade areas of the structures erected thereon or based on any other factors as determined by the Trustees.
  - 15.7.2 Subject to the above, assign those costs related to the land generally to the owners of all erven for residential purposes equally provided however that the Trustees may in any case where considered equitable to do so, assign to any member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 15.8 The Trustees decisions in calculating the levies shall be final and binding on all members.
- 15.9 No member shall be entitled to any privileges of membership unless and until he shall have paid all levies and other amounts owing to the Association in respect of his/her membership thereof.

## 16 SERVICE OF NOTICES

- 16.1 The notice shall be in writing and shall be given or served by the Association on any member, either personally or by post in a prepaid registered letter, properly addressed to the member at the address of the property owned by him or by email to the email address or facsimile number as specified by the member.

- 16.2 No member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but a member may require the Association, by notice, to alter his address within the Republic of South Africa which shall be deemed to be his address for the purpose of service of notices, or such other address as the Member is obliged to furnish to the Association.
- 16.3 A notice by post shall be deemed to have been served four (4) days after the letter was posted and notice by facsimile shall be deemed to have been served four (4) hours after the time of transmission.
- 16.4 The non-receipt of a notice of a meeting by any persons entitled to receive notice shall not invalidate the proceedings of that meeting.

## 17 INDEMNITY

- 17.1 All Trustees shall be indemnified by the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee in his capacity as Chairman or Vice Chairman, whether defending any proceedings, civil, criminal or otherwise in which relief is granted to any such person by the court.
- 17.2 Every Trustee, servant, agent and employee of the Association, shall be indemnified by the Association against all costs, losses and expenses (including traveling expenses) which such persons may incur or become liable for by reason of contract entered into, or any act or deed done, by such person or persons in the discharge of any of his respective duty 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 persons 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.
- 17.3 A Trustee shall not be liable for the acts, receipts, negligence or default of the auditors or of any other Trustee, whether in their capacities as Trustee or as the holder of any office 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 Trustees 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 of any person with whom any money, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his officials or in relation thereto, unless the same shall happen through lack of bona fide or breach of duty or breach of trust.

## 18 DISPUTE RESOLUTION

- 18.1 Any dispute, question or difference arising at any time between members or between members and Trustees out of or in regard to any matters arising out of this Constitution or the rights and duties of any of the parties mentioned in this Constitution or the interpretation of this Constitution shall be submitted to the Association and unless such dispute is resolved by the Association within thirty (30) days of such submission, the dispute shall be referred to and be decided by dispute resolution on notice given by any party to the other parties who are interested in the matter in question.
- 18.2 Arbitration shall be held at a place to be decided by the Association informally and in accordance with the formalities and procedures settled or determined by the Arbitrator and the arbitration shall be conducted in an informal and summary manner, that is, it shall not be necessary to observe or carry out the strict rules of evidence, and otherwise subject to the Arbitration Act in force from time to time it being intended that if at all possible it shall be held and concluded informally within thirty (30) business days after it has been demanded.
- 18.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:-
  - 18.3.1 Primarily an accounting matter an independent Chartered Accountant.
  - 18.3.2 Primarily a legal matter a practicing counsel or attorney of not less than ten (10) years standing.
  - 18.3.3 Any other matter an independent and suitably qualified person as agreed between the parties to this dispute and failing agreement as appointed by the auditors.
  - 18.3.4 The Arbitrator shall make his award within thirty (30) 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 shall be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

18.3.5 The decision of the Arbitrator shall be final and binding and may be made an order of the High Court of South Africa upon the application of any party to the arbitration.

## 19 POWERS OF TRUSTEES

19.1 The management and administration of the Association shall vest in the Board of Trustees which may exercise all such powers of the Association and do on behalf of the Association all such acts as may be exercised and done by the Association itself.

19.2 The Trustees shall manage and control the business affairs of the Association, shall have full powers in the management and direction of such business including the right of appointment and dismissal of any managing agent.

19.3 The Trustee shall at all times have the rights to engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers, town planners, managing agents, environmental consultants and any other professional persons or firm and/or any other employee/s whatsoever for any reasons thought necessary by the Trustees and on such terms as the Trustees shall decide.

19.4 The Trustees shall issue Architectural and Landscape Design Guidelines, Environmental Design and Maintenance instructions in respect of the Estate as they consider necessary, and ensure that such guidelines and instructions are complied with at all times provided no alterations shall be made during the development period without the consent of the Developer.

19.5 The Trustees shall have the right to appoint committees as they deem fit and to delegate powers to such committees.

19.6 On completion of the development period, the Trustees shall have the right to appoint persons to the ADRP whether such persons are members of the Association or not.

19.7 The Trustees shall have the right to open a Bank account for the Association and to appoint the signatories thereto which shall be duly appointed Trustees and shall not be less than two Trustees.

## 20 ALIENATION

20.1 A member shall not in any manner alienate an erf unless :-

20.1.1 The proposed transferee has irrevocably bound himself to become a member of the Association and to observe the Constitution and Rules of the Association for the duration of his ownership of the erf.

20.1.2 The Association has given its written consent thereto and has issued a clearance that all amounts owing to the Association by such member have been paid.

20.1.3 The proposed transferee acknowledges that upon the registration of transfer of the erf into his name, he shall ipso facto become a member of the Association.

20.2 The provisions of the preceding clause shall apply mutatis mutandis to any alienation of any undivided erf share in an erf.

20.3 A registered owner may not at any time resign as a member of the Association.

20.4 These restrictions as are registrable shall be registered against the Title Deeds of all erven in order to give effect to the terms of this clause and the Members shall be bound by this clause whether or not such restrictions are registered.

## 21 ESTATE RULES

21.1 The Association shall be entitled to make Estate Rules to be enforced in regard to all aspects of the development, operation of the Estate and conduct of members and their guests and the members undertake to abide by all such rules as approved by the Association.

21.2 During the development period, the Developer shall have the right to make such rules which shall be enforceable by the Association both during the development period and thereafter.

21.3 The right to make such Estate Rules, alter them from time to time and to enforce them, shall be the responsibility of the Trustees.

## 22 STATUS OF THE ASSOCIATION

The Association shall be an Association:-

- 22.1 With a legal personality capable of suing and being sued in its own name.
- 22.2 None of its members in their personal capacities shall have any right title or interest to or in the property, funds or assets of the Association which shall vest in and be controlled by the Trustees in office from time to time and;
- 22.3 Not for profit but for the benefit of the owners and occupants of immovable property situate in the Estate and;
- 22.4 With the right to acquire, hold, lease, offer as security and alienate property, both movable and immovable save for an excepting for private areas.

## 23 LIABILITY OF MEMBERS

- 23.1 No member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by or on behalf of the Association.
- 23.2 The Association shall not be liable for any damage caused to private residences and private property and the owners shall be obliged to ensure that adequate insurance is effected at their own cost to cover such eventualities.

## 24 RESTRICTIONS

- 24.2 All improvements and/or alterations constructed on the property must conform to the Architectural Guidelines and Design Criteria and must be approved by the Architectural Design and Review Panel prior to commencement of such work. All plans shall be submitted to the panel for approval prior to commencement of construction and the costs of approval which shall be determined by the Trustees from time to time provided the fee shall not exceed any tariff of the Institute of Architects for similar work and shall be for the account of the Purchaser.
- 24.2 On completion of the Development period all rights vesting in the Architectural Design and Review Panel shall accrue to the Homeowners Association. The Purchaser undertakes to abide by the guidelines stipulated by the Panel for the submission of plans covering the construction, alteration, specifications and any other requirements as designated by the said Panel.
- 24.3 No construction work may be carried out on the property except by a building contractor appointed to the Panel of builders approved by the Developer unless the Developer issues written consent to another contractor being used. In such event, the building contractor shall furnish the Developer with an undertaking of the Builders' Code of Conduct to comply with all requirements, security and otherwise, before the building contractor and its employees will be allowed access to the property.
- 24.4 The property may be used solely for residential purposes. No share block scheme as contemplated in the Share Blocks Control Act No 59 of 1980 and/or time sharing scheme as contemplated in the Property Time Sharing Act No 75 of 1983 and/or any other similar scheme or arrangement or short term letting of less than thirty (30) days may be conducted on the property, nor shall a guest house or bed and breakfast be operated on the property, without the prior written consent of the Developer during the development period and thereafter the Homeowners Association. Without limiting the generality of the foregoing, no auction, business, profession or any commercial activity may be conducted from the property without the prior written consent of the Developer during the development period and the Association thereafter. The Developer and/or the Association, as the case may be shall not be required to furnish any reasons for declining any request to utilize the property for the above purposes.
- 24.5 No boats and/or caravans and/or trailers and/or other vehicles shall be parked or stand on the property other than in an enclosed garage if, in the sole opinion of the Homeowners Association, they are parked in such a way as to constitute a nuisance, obstruction or eye-sore.

- 24.6 The Developer shall be entitled to register any required servitudes over the property that may be necessary for the installation of surveillance and communication systems, water pipes, irrigation, sewage and other services.
- 24.7 No subdivision of any erf shall be allowed with the Developer's consent during the development period and thereafter the Home Owners Association and if such consent is given the developer or the Association as the case may be shall be entitled to impose such conditions as they see fit.
- 25.7 A member who intends to sell his / her property shall obtain approval from the Association beforehand and shall comply with all conditions imposed in regard to agents and third party access to the estate for purposes of viewing the property. No advertising or sign boards by the agent or the member shall be permitted on or at the entrance to the estate without the prior written approval of the Association.

## 25 INTEREST AND COSTS

- 25.1 If any payment by a member is not made on due date interest shall accrue and be payable by such member calculated at the rate of prime plus five per cent (5%) from the due date to date of payment, both days inclusive, compounded and payable monthly in arrears.
- 25.2 In the event that any member fails to pay any amount due to the Association and the Association hands the matter to an Attorney or Debt Collector for recovery then the member shall be liable for all costs including tracing agent's fees, collection commission and costs on an Attorney/Client scale.
- 25.3 The Association shall be entitled to charge an administration fee for all amounts due and unpaid on due date and in respect of any returned cheque or debit order in amounts to be determined from time to time by the Trustees.

## 26 FINES

- 26.1 The Association shall have the right to impose a fine on any member for contravention of any provision of this Constitution or Estate Rules made from time to time.
- 26.2 A list of the proposed fines shall be drawn up and may be amended from time to time by the Trustees and shall become effective as soon as a copy of the list has been sent to each member at the same address and in the same manner that levy statements are sent to that member.
- 26.3 Any member shall be entitled to call for review of the list of the amounts of the proposed fines which shall be referred to the next Annual General Meeting of the Association and by ordinary resolution at such meeting the amount of the fines may be confirmed, altered or increased.
- 26.4 The offending member shall be notified in writing by the Association of any alleged contravention and the amount of the fine to be imposed. The offending member shall have fourteen (14) days within which to submit written representations for the fine to be waived or reduced whereafter the Trustees shall decide on the fine and their decision shall be final and binding on the member.
- 26.5 Any fines payable shall be added to the next levy invoice due by that member and shall be due and payable on the same date as that levy.

## 27 FURTHER PHASES

- 27.1 The Developer has the right at any time to alter the Site Development Plan and the development and from time to time to extend or alter the area of composition of the development by requiring the Association to incorporate into the development any part/s of any adjoining properties owned or acquired by the Developer from time to time as further phases of the development which the Developer shall be entitled to develop as it may deem fit.
- 27.2 Should any further property be incorporated into the development, the Developer shall be entitled to require that the first and all subsequent owners of erven therein become members of the Association in respect of those parts from such date as the Developer may determine and on the same terms and conditions as are applicable to the other members of the Association. The members shall be bound by any such requirement of the Developer.

**28 TRANSFER RIGHTS**

Once the Development is complete, all rights of the Developer in terms of this Constitution shall automatically transfer to the Association who shall be entitled to exercise such rights in its own name.