



**CONSTITUTION**

**OF**

**THE MASTER HOME OWNERS' ASSOCIATION**

**OF**

**LETHABONG VILLAGE 2**

A legal persona established by the Developer

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## 1. **ESTABLISHMENT IN TERMS OF STATUTE**

The Association is constituted as a legal persona in accordance with the conditions imposed by the Developer.

## 2. **DEFINITIONS AND INTERPRETATION**

2.1 In this Constitution the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them:

2.1.1 "A & D Guidelines" means the Architectural and Design Guidelines relating to the design and construction requirements prepared for and applicable to the Res 1 Erven and the Res 3 Erven, as contemplated in the Governing Rules, that will be applicable from time to time, which guidelines may be amended from time to time in accordance with the provisions of this Constitution, the Landscape Guidelines and the C & O Manual, and which guidelines or any amendment thereto, must be approved by the Developer, during the Development Period, and thereafter by the Board;

2.1.2 "AGM" means the Annual General Meeting of the Association held in terms of the provisions of this Constitution;

2.1.3 "Alienate" means the Alienation of any Land Unit, or portion of the Parent Property or part thereof whether by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, change in shareholding of a

Company, membership in a Close Corporation or control of an inter vivos Trust or the vesting of assets in an inter vivos Trust or Trust mortis causa, irrespective of whether such alienation is subject to a resolutive condition or a condition precedent, and "Alienation" shall have a corresponding meaning;

2.1.4 "ARC"

means the Architectural Review Committee established by the Developer during the Development Period, and thereafter by the Board, the functions of which committee are described in Clause 3 below, acting in accordance with the A & D Guidelines, this Constitution, the Development Controls and the Governing Rules with jurisdiction over the Res 1 Erven and the Res 3 Erven;

2.1.5 "Association"

means this Association established in respect of the Lethabong Extension 1 Township, to be known as the Lethabong Village 2 Master Home Owners Association, an association not for gain, constituted in terms hereof (also known as "LEVMHOA 2");

2.1.6 "Auditors"

means the Auditors of the Association appointed by the Developer during the Development Period and thereafter by the Board, from time to time;

2.1.7 "Board"

means the Trustees assembled as a Board, at which a quorum is present;

- 2.1.8 "Bodies Corporate" means the Bodies Corporate to be established in respect of the ST Erven, which Bodies Corporate will be established in terms of the provisions of the STA and the STSMA and be governed in terms of this Constitution, the Governing Rules, the M & C Rules and the relevant legislation pertaining to Sectional Title Schemes;
- 2.1.9 "Chairperson" means the Chairperson of the Board and the Association, from time to time;
- 2.1.10 "Clear Days" means in a computation of days, the exclusion of the first and last day of the period to be calculated;
- 2.1.11 "CLO" means the elected Community Liaison Officer;
- 2.1.12 "COE" means the statement of the conditions under which the Application made by the Developer under the provisions of Chapter IV of the TPTO, read with the provisions of the SPLUMA and the Municipal Planning By-Law for permission to establish a township on the Parent Property, is approved and which Conditions of Establishment is dated the 23<sup>rd</sup> of June 2022 (Rev 26), available on the Website;
- 2.1.13 "C & O Manual" means the Construction and Operations Manual, including the Lethabong Site Building Regulations, approved by the Developer during the Development Period, and thereafter by the board, and the Local Authority, controlling and

- regulating all construction and operations within the Village, available on the Website;
- 2.1.14 "Common Property" means, in relation to a Sectional Title Development, the land included in the Scheme and such parts of the building or buildings that are not included in a Section;
- 2.1.15 "Communal Property" means collective reference to Private Access Phase 4, Private Access Phase 5; Private Open Space Phase 4, Private Open Space Phase 5 and Sports Fields;
- 2.1.16 "Constitution" means the Constitution of LEVMHOA 2, set out in this document, and as may be amended, from time to time in terms of the provisions hereof;
- 2.1.17 "Developer" means Set Square Developments Proprietary Limited, Registration Number: 2013/199166/07, a private company with limited liability duly incorporated in terms of the laws of the Republic of South Africa, its respective successors-in-title or assigns;
- 2.1.18 "Development" means development, being constructed on the Parent Property or any portion thereof, indicated as such on the MSDP;
- 2.1.19 "Development Controls" means the Development Controls prescribed by the Developer, including the zoning rights pertaining to the Parent Property as provided for, inter alia, but not limited to, the MSDP;

- 2.1.20 "Development Period" means the period from the date of establishment of the Association until all the Land Units situated on the Parent Property have been transferred from the Developer and/or improved by the Developer, or, until the Developer notifies the Association in writing that the Development Period has ceased, whichever event occurs first;
- 2.1.21 "Development Rights" means all the Development Rights granted to the Developer by all relevant authorities to enable the Developer to develop the Village, including the Development Controls;
- 2.1.22 "DHS" means National Department of Human Settlements, Republic of South Africa, having jurisdiction over the Gauteng Province;
- 2.1.23 "Dwelling" means a Building on an Erf, which is upon completion, suitable for occupation and use for residential purposes by natural persons;
- 2.1.24 "DWS" means the Department of Water and Sanitation, being a department of the Local Authority;
- 2.1.25 "EA" means the Environmental Authorization approved in terms of the National Environmental Management Act, 1998, Act Number 107/1998, and the Environmental Impact Assessment Regulations of 2010 on the 9<sup>th</sup> of May 2022 under reference Number: GAUT 002/21 - 22/E2980 by GDARD in the name of and in favour of the Developer, to be



amended by the Developer in accordance with any legal requirements and/or in the discretion of the Developer, during the Development Period, available on the Website;

2.1.26 "ECO"

means the Environmental Control Officer, who will be responsible for the compliance with all the provisions of the EA and the EMPR, during the Development Period;

2.1.27 "ELMSPLUM"

means the Emfuleni Local Municipality Spatial Planning and Land Use Management By-Law, 2018;

2.1.28 "EMPR"

means the Environmental Management Program Report for Lethabong Mixed Use Housing Development on the Parent Property, approved by GDARD under Reference Number: GAUT 002/15-16/E0095, dated May 2016, available on the Website;

2.1.29 "Erf/Erven"

means any Erf created by the subdivision of the Parent Property, as indicated on the MSDP, or any amendments thereto, zoned for residential purposes and accordingly excluding the Communal Property, the Institutional Erven, the Public Crossings, the Public Roads, the Place of Instruction Phase 4 and the Wetlands;

2.1.30 "ESKOM"

means Eskom Holdings SOC Limited, Registration Number: 2002/015527/06;

- 2.1.31 "Financial Year" means the Financial Year of the Association which shall run from the first day of the month following the first registration of transfer of a Land Unit in favour of an Owner until the last day of the month of June and thereafter from the first day of July in each year until the last day of June in the subsequent year;
- 2.1.32 "GAUTRANS" means the Gauteng Department of Roads and Transport;
- 2.1.33 "GDARD" means the Gauteng Department of Agricultural and Rural Development;
- 2.1.34 "General Plans" means the General Plans in respect of the subdivisions and phases of the Parent Property, providing for the subdivision thereof and the development of the Parent Property in 5 Phases, to be approved by the Surveyor General, to be in accordance with the MSDP;
- 2.1.35 "GM" means a collective reference to the AGM and all SGM's;
- 2.1.36 "Governing Rules" means the Governing Rules to govern, amplify and/or implement the provisions of this Constitution, to be drafted and approved by the Developer and implemented by the Association, which Governing Rules will, as far as any Body Corporate is concerned, deemed to be including the M & C Rules;

- 2.1.37 "Gravesite" means Erf Number 3482, indicated on the MSDP;
- 2.1.38 "H&S Legislation" means all applicable Health and Safety Legislation and Regulations in terms of the South African legislation and precedent law;
- 2.1.39 "HSO" means the Health and Safety Officer appointed in terms of the H&S Legislation, by the Developer, during the Development Period;
- 2.1.40 "Institutional Erven" means the Medical Phase 5 Erf, the Place of Instruction Phase 4 erf, the Special Community Facilities Phase 4 Erf and the Special Community Facilities Phase 5 Erf;
- 2.1.41 "Landscape Guidelines" means the Landscape Guidelines, including the Landscape Plan, applicable on the portions of the Village as indicated in the requisite Landscape Guidelines, to be approved by the Developer during the Development Period and thereafter by the Board, which Landscape Guidelines is available on the Website;
- 2.1.42 "Land Unit(s)" means any subdivided portion of the Parent Property registered or capable of being registered as a separate Erf or Section in the Pretoria Deeds Registry;
- 2.1.43 "Levy/Levies" means the Levies imposed, calculated and payable in terms of the provisions of this Constitution and more specifically, but not limited to, Clause 10, but excluding any Special Levies;

- 2.1.44 "Local Authority" means the Local Authority having jurisdiction over the Village, being the Emfuleni Local Municipality, or its successors in title;
- 2.1.45 "M & C Rules" means the Management and Conduct Rules as provided for in the STA and the STSMA, duly amended by the Developer, to be approved by the Developer, during the Development Period, and thereafter by the Board, in respect of each Sectional Title Development forming a part of the Village, which M & C Rules are deemed to be incorporated into the Governing Rules;
- 2.1.46 "Management Company" means any person or entity appointed by the Developer, during the Development Period, and thereafter by the Board, as an independent contractor to undertake all the management functions of the Association, any Sub-Association and/or Body Corporate, subject to and in terms of the provisions of this Constitution;
- 2.1.47 "Medical Phase 5" means Erf Number 3359, which Erf shall be utilized for institutional purposes including Hospitals, Day-Clinics, Medical Consulting Rooms and such other purposes as may be permitted with the written approval of the Local Authority, in terms of the VTPS and approved in terms of the COE;
- 2.1.48 "Member" means a Member of the Association as provided for in Clause 5 of this Constitution;

- 2.1.49 "MRA" means the written consent to the Development from the Department of Minerals and Energy, Ref: PWV 6/3/2/14679 dated the 24<sup>th</sup> of February 2015, available on the Website;
- 2.1.50 "MSDP" means the Master Site Development Plan for the development of the phases comprising the Village, approved by the Local Authority, as the Layout Plan Let/Rev 25 dated the 8<sup>th</sup> of June 2022, available on the Website;
- 2.1.51 "Occupant" means any person/s occupying an Erf, Section, Dwelling or any improvements or structures thereon;
- 2.1.52 "Office" means the registered office of the Association, being the physical address of the Management Company, from time to time;
- 2.1.53 "Ordinary Resolution" means a resolution taken at any meeting, where a quorum is present, by more than 50% (Fifty Percent) of the Members of the Association present in that meeting, personally or by means of a proxy, and entitled to vote at such a meeting in terms of the provisions of this Constitution;
- 2.1.54 "Owner" means the registered Owner of a Land Unit and as such a member of a Sub-Association or a Body Corporate;
- 2.1.55 "Parent Property" means the land approved for Development by the Local Authority, being the Remainder of the Farm Quaggasfontein, alias Lapdoorns, No.

548, Registration Division I.Q, Province of Gauteng, In Extent: 236,9639 hectares, Held by Deed of Transfer Number T 83385/2019, upon which the Village will be developed by the Developer in terms of and subject to the Development Rights;

2.1.56 "Participation Quota"

means, in relation to any Section, the square meterage of such a Section expressed as a percentage, in four decimals, in relation to the building constructed on any Erf, and indicated as such on the Sectional Title Plan in respect of each Sectional Title Development;

2.1.57 "Phase 4"

means the Development to be established on a portion of the Parent Property, being the fourth phase of the Village, as indicated as Phase 4 on the MSDP;

2.1.58 "Phase 5"

means the Development to be established on a portion of the Parent Property, being the fifth phase of the Village, as indicated as Phase 5 on the MSDP;

2.1.59 "Place of Instruction Phase 4"

means Erf Number 2343, which Erf shall be utilized as a Place of Instruction, including a primary school, community facilities and ancillary purposes, provided that of required for this purpose, then the Erf may be utilized for such other purposes as may be permitted with the written approval of the Local Authority, the applicable legislation and approved in terms of the COE;

- 2.1.60 "Planning Legislation" means, collectively, the TPTO, SPLUMA, the Municipal Planning By-Law and the applicable legislation;
- 2.1.61 "Power Lines" means the electrical Power Line Servitudes registered over the Parent Property, including the servitude corridors, which Power Lines are managed and controlled by ESKOM and the Local Authority, and will be indicated as such on the General Plans and separate Servitude Diagrams, if required, to be approved by the Surveyor General;
- 2.1.62 "Prime Rate" means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (Three Hundred and Sixty Five) day year irrespective of whether or not the year is a leap year, from time to time published by Nedbank Bank Limited as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;
- 2.1.63 "Private Access Phase 4" means Erf Numbers 2363 and 2364, which Erven shall be utilized for private accesses and related purposes, in terms of the VTPS and approved in terms of the COE;
- 2.1.64 "Private Access Phase 5" means Erf Numbers 3361 and 3362, which Erven shall be utilized for private accesses and related purposes, in terms of the applicable legislation and approved in terms of the COE;

- 2.1.65 “Private Open Space Phase 4” means Erf Numbers 2345, 2346, 2348 – 2360, which Erven shall be utilized as Private Open Space in terms of the applicable legislation and approved in terms of the COE;
- 2.1.66 “Private Open Space Phase 5” means Erf Numbers 3341 – 3356, 3357 (Ridge Buffer), 3358 (Unchanneled Valley Bottom Wetland) and 3360, which Erven shall be utilized as Private Open Space in terms of the applicable legislation and approved in terms of the COE;
- 2.1.67 “Public Crossings” means the 2 (Two) Public Crossings (both being Public Roads) linking Phase 2 to the Medical Phase 5 (a secondary access) and Phases 2 and 3 to Phase 5 (a primary access) as indicated on the MSDP, to be transferred by the Developer to the Local Authority, free of counter value;
- 2.1.68 “Procurement Procedure” means the Procurement Procedure Policy, approved by the Developer and the DHS, to which Procurement Policy the Developer, during the Development Period, shall be bound;
- 2.1.69 “Pro Rata Quota” means in relation to any Erf, the square meterage of the Erf, expressed as a percentage, in four decimals, of all the Res 1 Erven and Res 3 Erven, as indicated on the MSDP comprising Phases 4 and 5 or any amendments thereto;



- 2.1.70 "Purchaser" means any person or entity that enters into an Agreement of Sale with the Developer in respect of a Land Unit during the Development Period;
- 2.1.71 "Public Roads" means the Public Roads indicated as such on the MSDP and the General Plans, to be transferred by the Developer to the Local Authority, free of counter value;
- 2.1.72 "Res 1 Erven" means a collective reference to the Residential 1 Phase 4 Erven and the Residential 1 Phase 5 Erven and indicated as RDP Housing on the MSDP;
- 2.1.73 "Residential 1 Phase 4 Erven" means Erf Numbers 1542 – 2332, 2365 and 2366, which Erven shall be utilized for Residential 1 purposes in terms of the applicable legislation and approved in terms of the COE;
- 2.1.74 "Residential 1 Phase 5 Erven" means Erf Numbers 2367 – 3338 which Erven shall be utilized for Residential 1 purposes in terms of the applicable legislation. and approved in terms of the COE;
- 2.1.75 "Res 3 Erven" means a collective reference to Residential 3 Phase 4 Erven and Residential 3 Phase 5 Erven and indicated as FLISP Housing and/or Bonded Housing on the MSDP;
- 2.1.76 "Residential 3 Phase 4 Erven" means Erf Numbers 2333 – 2340 and 2347 which Erven shall be utilized for Residential 3

purposes in terms of the applicable legislation and approved in terms of the COE;

2.1.77 “Residential 3 Phase 5 Erf”

means Erf Number 3340 which Erf shall be utilized for Residential 3 purposes in terms of the applicable legislation and approved in terms of the COE;

2.1.78 “Restricted Erven”

means Erf Number 2343 in Phases 4 and Erf Number 3359 in Phase 5 of the Village, indicated as such on the MSDP;

2.1.79 “SAC”

means the constitution of any Sub-Association, approved by the Developer, during the Development Period, and thereafter, the Board, which constitution may never conflict or alter any provisions of this Constitution and the Governing Rules or any of the documents referred or guidelines referred to in this Constitution and/or the Governing Rules;

2.1.80 “SARS”

means the Commissioner of the South African Revenue Services;

2.1.81 “STSDP”

means the Site Development Plan approved by the Authority in respect of every Sectional Title Development, indicated as such on the MSDP;

2.1.82 “Section”

means any Section as defined in the Sectional Titles Act;

2.1.83 “Sectional Title Development”

means the development of an Erf in terms of and subject the provisions of the Sectional Titles Act;

- 2.1.84 “Security Protocol” means the Security protocol, governing all aspects of the security of the Village, Owners and Occupants, which protocol will be part of and drafted and approved in terms of the Governing Rules and available on the Website;
- 2.1.85 “Services” means such infrastructural utilities, amenities, internal engineering services structures or improvements to be provided and/or installed on the Parent Property by the Developer, the Association or the Local Authority, as provided for in Clause 2.3 and 2.8 of the COE and in the SLA;
- 2.1.86 “SLA” means a Service Level Agreement to be concluded between the Developer and the Local Authority with the purpose of, inter alia, but not limited to, the provision and installation of water, electricity and sanitation, the construction of roads and stormwater drainage and for the payment of Development Contributions by the Developer to the Local Authority;
- 2.1.87 “Special Levy” means any Special Levy/Levies imposed by the Developer, during the Development Period, and thereafter by the Board, over and above the Levies as referred to in Clause 10, but also calculated and payable in terms of the provision of Clause 10;

2.1.88 "Special Community Facilities Phase 4" means Erf Number 2341, which Erf shall be utilized for an early childhood development center and such other purposes as may be permitted with the written approval of the Local Authority, and Erf 2342, which Erf shall be utilized for a place of public worship and such other purposes as may be permitted with the written approval of the Local Authority in terms of the applicable legislation and approved in terms of the COE;

2.1.89 "Special Community Facilities Phase 5" means Erf Number 3339, which Erf shall be utilized for community facilities and such other purposes as may be permitted with the written approval of the Local Authority, in terms of the applicable legislation and approved in terms of the COE;

2.1.90 "Special Resolution" means a resolution passed at a SGM of which not less than 21 (Twenty One) Clear Days' notice has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than 75% (Seventy Five Percent) of the total number of Members or Sub-Members, as the case may be, present at the meeting who, at minimum, form a quorum for a GM;

- 2.1.91 “SPLUMA” means the Spatial Planning and Land Use Management Act, Act Number 16 of 2013, as may be amended;
- 2.1.92 “SGM’ means all Special General Meetings held by the Association as provided for and in terms of the provisions of this Constitution;
- 2.1.93 “Sports Fields” means Erf 2344, being a portion of the Private Open pace that must be used for sports fields and recreational purposes and ancillary and related purposes, provided that the usage of the Erf may be amended with the prior written approval of the Local Authority;
- 2.1.94 “SA Plan” means a Sub-Association Plan, approved by the Developer, available on the Website, in terms whereof the Developer has grouped the 2 Sub-Associations (Comprising Phases 4 and 5) and the Bodies Corporate together;
- 2.1.95 “ST Erven” means Erf Numbers 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2347 and 3340, as indicated on the General Plans;
- 2.1.96 “STA” means the Sectional Titles Act, Act Number 95/1986, as amended, including the Regulations pertaining thereto;
- 2.1.97 “STSMA” means the Sectional Titles Schemes Management Act, Act Number 8/2011, as amended. Including the Regulations pertaining thereto

- 2.1.98 “Sub-Members” means each Owner of a Land Unit, from time to time, collectively forming the Sub-Associations and which Sub-Associations have been grouped together as per the SA Plan;
- 2.1.99 “SWMP” means the approved Stormwater Master Plan, including the Stormwater Maintenance Plan, to be approved by the Local Authority, the DWS and GDARD and incorporated into the design and lay-out of the Wetland, available on the Website;
- 2.1.100 “Third Party Purchaser” means any person or entity that enters into an Agreement of Sale with a Purchaser of a Land Unit before date of registration of transfer of such a Land Unit in favour of such a Purchaser or with an Owner during the Development Period;
- 2.1.101 “TPTO” means the Town Planning and Township Ordinance 1986, (Ordinance 15 of 1986), as amended, and includes any subsequent Planning Legislation;
- 2.1.102 "Trustees" means the Trustees, from time to time, of the Association, including the Professional Trustees, as provided for in terms of the provisions of this Constitution;
- 2.1.103 “Unanimous Resolution” means a resolution passed unanimously by all the Members, who are present or represented by proxy or by a representative recognized by

law at a GM of the Association of which at least 21 (Twenty One) Clear Days' notice, specifying the proposed Unanimous Resolution, has been given, and at which meeting at least 80% (Eighty) of all the Members or Sub-Members are present or represented, or agreed to in writing by all the Members of the Association personally or by proxy or by a representative of any such Member recognized by law;

- 2.1.104 "Village" means Lethabong Village, being the township to be established by the Developer on the Parent Property, as approved in terms of Clause 2.1 of the COE, as being Lethabong Extension 1 Township, comprising Phase 4 and Phase 5;
- 2.1.105 "VTPS" means the Vereeniging Town Planning Scheme 1992 or any subsequent or substituting Town Planning Scheme;
- 2.1.106 "Website" means <https://lethabongestate.co.za/>;
- 2.1.107 "Wetlands" means the environmentally sensitive areas designated for use as a Wetland, indicated as such in the EMPR, the EA and on the MSDP, including the canal system and all ponds relating thereto, as detailed and available on the Website;
- 2.1.108 "WULA" means the Water Use License approved and issued by the Department of Water Affairs,

Republic of South Africa, in terms of Chapter 4 of the National Water Act, 1998, Act Number 36 of 1998, under License Number: 08/G22H/C22F/CI/11687, File Number: 27/2/2/C622/46/3, Reference Number: WU18948, dated the 25<sup>th</sup> of April 2022, available on the Website.

- 2.2 Any reference to natural persons includes artificial persons and vice versa.
- 2.3 Any reference to a gender includes the other genders (including neuter).
- 2.4 Any reference to the singular includes the plural and vice versa.
- 2.5 The Clause heading in this Constitution have been inserted for convenience only and shall not be considered in its interpretation.
- 2.6 Words and expressions defined in any sub-Clause shall, for the purposes of the Clause of which that sub-Clause forms part, bear the meaning assigned to such words and expressions in such sub-Clause.
- 2.7 No provision of this Constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto consequential to such a party having or being deemed to have structured or drafted such provision.
- 2.8 This Constitution shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the Association and every Member consent to the jurisdiction of any competent court of the Republic of South Africa, for the purposes of any proceedings instituted pertaining to this Constitution.

### **3. THE MAIN BUSINESS OF THE ASSOCIATION**

- 3.1 The Association is established by the Developer in terms of Section 57 of the ELMSP LUM.



- 3.2 The Developer, during the Development Period, and thereafter the Board, may establish a City Improvement District for the Village in accordance with the provisions of the Gauteng City Improvement Districts Act, Act Number: 12/1997, as provided for in Clause 2.10(b) of the COE.
- 3.3 The main business of the Association is to manage and control the promotion, enhancement and protection of the Members and the Sub-Members and to manage, control and regulate the Village to the best advantage of the Members and the Sub-Members.
- 3.4 For the Association to qualify for exemption in respect of the income received by the Association from the Levies and Special Levies or other sources in terms of Section 10(1)(e)(iii) of the Income Tax Act, the following conditions shall apply:
- 3.2.1 the main objective of the Association is to manage the collective interest common to all its Members and Sub-Members, which includes expenditure applicable to the Common Property, the Communal Property, any Sub-Association or Body Corporate, and the collection of Levies and Special Levies for which such Sub-Member/Owner is liable;
- 3.2.2 the Association is not permitted to distribute its funds to any person other than to a similar association of persons;
- 3.2.3 on dissolution, the remaining assets of the Association must be distributed to a similar association of persons, which is also exempt from Income Tax in terms of Section 10(1)(e)(iii) of the Income Tax Act;
- 3.2.4 any amendments to the Constitution must be submitted to SARS;
- 3.2.5 funds available for investment may only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, and in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985, (Act No. 1 of 1985);

- 3.2.6 the Association may not be a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by SARS;
- 3.2.7 must submit annual returns of income together with financial statements to SARS, on or before the 31<sup>st</sup> of October of each Financial Year.

#### **4. MAIN OBJECTIVES OF THE ASSOCIATION**

- 4.1 The main objectives of the Association are as follows:
- 4.1.1 to oversee, regulate and control the harmonious development of the Village and to ensure and promote the general high standard of the Village;
- 4.1.2 to own, control, improve and maintain and to insure where necessary the building, structures, installations and equipment relating to the Communal Property and the Common Property;
- 4.1.3 to institute, control and pay for measures relating to the security of the Members, Sub-Members and the Village;
- 4.1.4 to promote, advance, and control the communal interests of Members, Sub-Members, Owners and Occupants;
- 4.1.5 to acquire and grant servitudes;
- 4.1.6 to control the nature and position of buildings, structures, installations and equipment relating to the Land Units and to ensure compliance with the A&D Guidelines, the Governing Rules and any other control measures in respect of the Village required by law or document and any applicable legislation;
- 4.1.7 to control and ensure compliance with the Landscape Guidelines and the landscaping requirements determined by the Developer during the Development

Period and thereafter by the Board on the Common Property, the Communal Property and around verges and entrances;

- 4.1.8 to instigate action, including the imposition of fines, or the institution of proceedings in a Court of Law, as may be deemed fit by the Board, in relation to the non-compliance by any Member/Sub-Member/Owner/Occupant of any of the requirements of this Constitution, the Governing Rules, the M & C Rules and/or the COE;
- 4.1.9 to enter into and to implement any contract relating to the EA, the EMPR, the Development Controls and the COE, and to incur any costs in this regard, it being recorded that the Association will be bound by any contracts concluded by the Developer on behalf of the Association and or Management Company, either before or after the date of approval of this Constitution;
- 4.1.10 to approve the SAC, the Governing Rules and the M&C Rules;
- 4.1.11 to control the aesthetic appearance of the Land Units, including the Dwellings, Sections and any improvements thereon;
- 4.1.12 the promotion of environmental awareness and responsibility amongst Members/Sub-Members/Owners and Occupants;
- 4.1.13 to enter into any agreement and other appropriate arrangement with any supplier, contractor or other third party, in relation to the administration, management and/or control of the Village;
- 4.1.14 to maintain the Services, the Communal Property, the Common Property and all relevant landscaping, at the costs of the Association;
- 4.1.15 to assist the Local Authority to enforce the applicable conditions of sub-division approval and management plans, listed in the COE and the Development Controls.
- 4.2 The Association shall be deemed to have come into existence on the date of the first registration of transfer of a Land Unit from the Developer to an Owner.

4.3 The Association is a legal persona and as such:

4.3.1 its assets, liabilities, rights and obligations shall vest in the Association, independently of its Members and/or the Sub-Members;

4.3.2 The Association shall have perpetual succession;

4.3.3 all legal proceedings shall be brought by or against the Association, in the name of the Association, and the Board may authorize any person/s to act on behalf of the Association and to sign all such documents and take all such steps as required by any such legal proceedings; and

4.3.4 its Members shall not, consequential to their membership, be liable for the liabilities and obligations of the Association.

## **5. MEMBERSHIP OF THE ASSOCIATION**

5.1 Membership of the Association shall be compulsory for the following:

5.1.1 the Developer, during the Development Period and;

5.1.2 each of the Sub-Associations and Bodies Corporate established in respect of the Village situated on any portion of the Parent Property, represented by its Chairperson, as provided for in Clause 6.2 of this Constitution.

5.2 The Sub-Associations and Bodies Corporate shall *ipso facto* be and become Members of the Association upon establishment of the requisite Sub-Association or Body Corporate concerned and be represented at meetings of the Association by its Chairperson, as provided for in Clause 6.2 of this Constitution.

5.3 The Developer shall be a Member and act as the Chairperson, during the Development Period.

5.4 A Sub-Association/Member may not at any time resign as a Member of the Association.

5.5 The provisions of this Constitution shall be binding upon all Members and Sub-Members and, insofar as they may be applicable on all Occupants/Owners, whatsoever the nature of such occupation.

5.6 All Land Units are subject to the following condition imposed by the Local Authority in terms of Clause 2.10 of the COE:

“The Property may not be transferred without the written consent of the Association, of which the transferee or his successors in title shall become a Sub-Member”.

Accordingly, no Owner may apply to the Registrar of Deeds, Pretoria, for the registration of, and the Registrar of Deeds, Pretoria, may not register a Land Unit without the consent of the Association, which consent, subject to the provisions contained in Clause 8 of this Constitution, may not be unreasonably withheld.

5.7 No Owner ceasing to be a Sub-Member or member of any Sub-Association or Body Corporate for any reason shall, (nor shall any such Sub-Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other assets of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Sub-Member any arrear Levies, Special Levies, subscriptions or other sums due by him to the Association at the time of his ceasing to be a Sub-Member.

## **6. SUB-ASSOCIATIONS/BODIES CORPORATE**

6.1 The Developer intends to subdivide the Parent Property into various Land Units, which will be developed and will be subject to this Constitution, SAC, the Governing Rules, the M & C Rules and the Development Controls, substantially in accordance with the SA Plan or as may be determined by the Developer during the Development Period.

6.2 All Sub-Associations and Bodies Corporate will be Members of the Association, represented at any meeting of the Association, by the Chairman or a Vice

Chairman of the Sub-Association or Body Corporate, or a representative nominated by the Trustees of such a Sub-Association or Body Corporate.

- 6.3 Membership of the Sub-Associations and Bodies Corporate will comprise the Owners of the various Land Units grouped together in the SA Plan.
- 6.4 An Owner will become a member of the relevant Sub-Association or Body Corporate and a Sub-Member of the Association upon taking transfer of a Land Unit. An Owner may never resign as a member of the relevant Sub-Association or Body Corporate or as a Sub-Member of the Association.
- 6.5 The terms and conditions of SAC and the M & C Rules must never contradict this Constitution, the Governing Rules or any of the related documents referred to in this Constitution. In the instance of any conflict, the terms and conditions of the Constitution, the Governing Rules or the related documents will prevail.
- 6.6 The terms and conditions of SAC and the M & C Rules may not deviate from the definitions of Ordinary Resolution, Special Resolution and/or Unanimous Resolution as provided for this Constitution. The SAC or the M & C Rules may never require a lesser approval percentage for any matter provided for in this Constitution and must follow this Constitution as far as resolution requirements are concerned.
- 6.7 The functions and powers of any Body Corporate must be assigned to the Association, as provided for in Section 6(4) of the Regulations promulgated in terms of the STSMA, and the Association must accept this assignment. For the avoidance of doubt, the Management Rules is contained in Annexure 1 to the Regulations to the STSMA, do not apply to any of the Bodies Corporate.

## **7. GENERAL RIGHTS AND OBLIGATIONS OF MEMBERS/OWNERS**

- 7.1 Every Member/Sub-Member/Owner/Occupant shall always be bound by and will strictly adhere to:
  - 7.1.1 the terms, conditions, stipulations, guidelines and obligations contained in the

Constitution, the SAC, the Governing Rules, the M & C Rules, the Development Controls, the A & D Guidelines, the EMPR, the SWMP, the EA, the WULA and the H & S Legislation;

- 7.1.2 all conditions imposed by the Local Authority or any other statutory body relating to Land Units and shall be solely responsible for non-compliance with such conditions;
  - 7.1.3 any agreement concluded by the Association, the Board or the Developer insofar as such agreement may directly or indirectly impose rights or obligations on a Member, Sub-Member, Owner and/or Occupant;
  - 7.1.4 the provisions of the EMPR, EA, the WULA, the COE, any directive issued by the Association or the Local Authority, GDARD and/or issued in terms of the Planning Legislation;
  - 7.1.5 any directive given by the Association, the Board, the Developer (during the Development Period) or the Management Company in the enforcement of the provisions of this Constitution.
- 7.2 Save as may be provided for herein, the rights and obligations of a Member and a Sub-Member are not transferable, and every Member and Sub-Member shall:
- 7.2.1 to the best of his ability further the objectives and interests of the Association, the Sub-Associations and/or Bodies Corporate;
  - 7.2.2 observe all directives made or given pursuant to the provisions of this Constitution, and
  - 7.2.3 be jointly liable with the other Members and/or Sub-Members for expenditure incurred pertaining to the business and objectives of the Association.
  - 7.2.4 not use any building or other structure constructed within the Village, or allow any other person to use such building or other structure, for purposes not permitted by this Constitution, the Governing Rules, the M & C Rules or any rules and/or regulations made in terms of this Constitution and the COE;

- 7.2.5 not apply for the consolidation, subdivision or rezoning of its Land Unit with a view to procuring a variation, amendment or substitution of the Development Controls, provided that selected departures or consent uses may be allowed, upon approval thereof by the ARC, the Developer, during the Development Period, the Board and the Local Authority;
- 7.2.6 not conduct, or permit to be conducted or change the nature of, any business on a Land Unit, or use, or permit the use of, such Land Unit for purposes other than residential use, excluding the Institutional Erven, the Communal Property, Public Roads, Public Crossings and/or the Wetlands, unless the Developer, for the duration of the Development Period, or thereafter, the Board has in writing approved the use to which the Land Unit is to be put, and the Local Authority has, to the extent that it may be necessary, granted approval authorizing such use in terms of the Planning Legislation and other applicable laws and regulations.
- 7.3 Membership of the Association shall confer upon a Member, *inter alia*, the following rights, subject to the provisions of this Constitution:
- 7.3.1 the right to inspect and/or receive copies of the annual financial statements of the Association;
- 7.3.2 the right to vote at all GM's in accordance with the provisions of this Constitution;
- 7.3.3 the right to receive notices of, attend and speak at all GM's in accordance with the provisions of this Constitution;
- 7.3.4 the right to convene a General Meeting of Members (other than the AGM), provided that the Members holding between them, in aggregate, not less than one third of the voting rights of the Association, collectively, convene such a meeting;
- 7.3.5 each Member, referring to the Sub-Associations grouped together on the SA Plan and the Bodies Corporate, will be entitled to 1 (One) vote at any meeting or GM of the Association, irrespective whether voting is conducted by means of show of hands or by means of a poll.



## 8. **ALIENATION**

- 8.1 The Board shall ensure that none of its Sub-Members shall in any manner Alienate or transfer a Land Unit unless:
- 8.1.1 the proposed transferee, new shareholder of a Company, new Members of a Close Corporation or new trustees of a Trust have irrevocably bound themselves in writing to become ipso facto a Sub-Member and to observe this Constitution, the SAC, the M & C Rules as well as any Governing Rules applicable, for the duration of his ownership of any Land Unit;
- 8.1.2 the Management Company has given its prior written consent thereto and has issued a clearance certificate that all amounts owing to the Association, Sub-Association or any Body Corporate, by such Owner have been paid and that the Owner is not in breach of this Constitution, the SAC, the M & C Rules, the Development Controls and/or any of the Governing Rules;
- 8.1.3 the Association has given its prior written consent thereto and has issued a clearance certificate which will only be issued if a clearance fee is paid by the Owner concerned to the Association and all other amounts owing by the Owner have been paid in full to the Developer and/or the Association, the Sub-Association and/or the Body Corporate.
- 8.2 The provisions of Clause 8.1 shall apply mutatis mutandis to any Alienation or transfer of an undivided share in any Land Unit.
- 8.3 Restrictions will be registered against the title deeds of all Land Units to give effect to the terms of this Clause 8. The Members shall however be bound by this clause irrespective whether such restrictions are registered in the Pretoria Deeds Registry against the title deed of any Land Unit, or not.

## **9. COMMUNAL PROPERTY**

- 9.1 The Association will take title to the Communal Property, indicated on the MSDP, which Communal Property will be transferred to the Association, free of counter value.
- 9.2 It will be the Association's responsibility to maintain, repair and insure, inter alia, but not limited to, any structures, buildings, roads, lights, the main entrance, any secondary entrance, equipment, all movable and immovable assets of the Association that is transferred, ceded or handed to or in favour of the Association. Registration of the transfer of the Communal Property will be effected by the Attorneys appointed by the Developer, to the Association, free of counter value.
- 9.3 The Association acknowledges that neither the Local Authority nor the Developer shall be responsible for, and the Association shall be solely responsible for, the care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Communal Property and any structure or thing erected or contained therein or thereon, including private parking, electricity, telecommunications and any other private services, if applicable, and similarly be responsible for the Services.
- 9.4 The Association shall furthermore comply with all the conditions imposed by the Local Authority relating to the COE, and shall be solely responsible for any non-compliance with such conditions.
- 9.5 The Developer will construct Attenuation Ponds on the Parent Property as required by the Local Authority, which ponds will be fenced and secured by the Developer, which construction will be done by the Developer, at its cost, as soon as possible after the design and installation of the Wetland has been approved by the Local Authority as well as all other relevant authorities. Owners and/or Occupants will have no claim against the Developer, the Association, any Sub-Association or the Body Corporate for any damages or loss suffered consequential to the Attenuation Ponds and the fence being constructed by the Developer.

- 9.6 The Board must subscribe to an All Risk Insurance Policy in respect of all the aspects covered under such an Insurance Policy. The amount of the All Risk Insurance Policy must be determined by the Board at the AGM. The premiums in respect of the Insurance Policy will be collected from the Sub-Members by means of the Levies.

## **10. LEVIES**

- 10.1 The Board shall from time to time impose Levies and Special Levies upon the Sub-Members and Bodies Corporate for the purposes of meeting all the expenses in relation to the facilities and Services for the Village, and for the payment of all expenses necessarily or reasonably incurred for the management of the Village, the Association and its affairs. In calculating the amount of the Levies and the Special Levies the Board shall be considered income from other sources if any, earned by the Association. It is recorded that every Owner of a Land Unit in the Village, excluding the Developer, will be liable for the payment of Levies and Special Levies, as may be imposed by the Association or the Body Corporate and/or the Board in terms of this Constitution and/or the Governing Rules.
- 10.2 Should a Sub-Member/Owner obtain permission from the Developer, during the Development Period, and thereafter by the Board, to consolidate two or more Land Units, the Association shall debit the amount of the Levies and Special Levies as per the original number of Land Units, despite the consolidation thereof.
- 10.3 During the Development Period the Developer, shall not be obliged to pay the shortfall between the income derived from Levies and Special Levies paid by Sub-Members in terms of Clause 10.1 and the actual expenditure of the Association in each Financial Year.
- 10.4 During and after the Development Period, the Developer, shall have no liability or obligation to pay or to contribute to any Levies or Special Levies.
- 10.5 An Owner of a Land Unit that has been transferred by the Developer to such Owner, will be liable for payment of 100% (One Hundred) of the Levies and or

Special Levies as from date of registration of transfer of such Land Unit in favour of the Owner. The Developer, will however, not be liable for the payment of any Levies or Special Levies in this regard. The Developer will however be liable for the payment of Levies and Special Levies in the instance of the occupation of any Dwelling or Section registered in the name of the Developer, from which date the Developer will be liable for the payment of 100% (One Hundred Percent) of the Levies and/or Special Levies, due and payable to the Association in respect of such a Dwelling or Section as from the date of occupation thereof.

- 10.6 It is recorded that a Sub-Member will be liable, upon the first payment of a 100% (One Hundred Percent) of the Levy payable in respect of any Land Unit, for the payment of a double Levy which will be equal to 2 (Two) months Levies, being payable on the day that such Levy becomes due and payable.
- 10.7 The DHS must pay the total amount of all Levies and Special Levies due by Sub-Members, to the Association, into the nominated bank account of the Association, on the 1<sup>st</sup> day of every month.
- 10.8 All Levies shall be paid by the Owner monthly in advance to the Local Authority and collected by the Local Authority by including the Levies and Special Levies of each Land Unit in the monthly rates and taxes account issued by the Local Authority to the relevant Sub-Member or by any other method as determined by the Board, from time to time.
- 10.9 The Local Authority must pay all Levies and Special Levies collected in terms of Clause 10.8 of this Constitution, monthly to the DHS into the nominated bank account of the DHS,
- 10.10 Every Sub-Member, must, during his membership of any Sub-Association or Body Corporate, ensure and is obligated to ensure that the balance on his Levy account in the financial records of the Association, is always equal to the amount determined in terms of Clause 10.6 of this Constitution.

- 10.11 No Sub-Member may do an off-set of any amount due by him due the Association, Sub-Association, Body Corporate or the Developer against the amount of the Levies held by the Association in terms of Clause 10.6 of this Constitution.
- 10.12 Levies and Special Levies shall be calculated according to the Pro Rata Quota and the Participation Quota, unless exempted from the payment of Levies or Special Levies, by the Developer during the Development Period, and thereafter by the Board.
- 10.13 All Sections will be internally levied by the Association and the Owners of Sections will be liable for payments of Levies and Special Levies to the Local Authority.
- 10.14 The Board may, from time to time, impose Special Levies upon the Sub-Members. In addition to other Levies, in respect of all or portion of such expenses as are mentioned in Clause 10.1 and the amount of such Special Levies and the manner of payment thereof by Sub-Members shall be at the discretion of the Board and be determined by the Board.
- 10.15 Any amount due by a Sub-Member by way of a Levy or Special Levy shall be a debt due by him to the Association. The obligation of a Sub-Member to pay Levies and Special Levies shall cease upon his ceasing to be a member of the relevant Sub-Association or the Body Corporate, without prejudice to the Association's right to recover arrear Levies or Special Levies from such a Sub-Member. No Levies or Special Levies paid by a Sub-Member shall under any circumstances be repayable by the Association upon his ceasing to be a Sub-Member. A Sub-Member's successor-in-title shall be liable, as from the date upon which he becomes a Sub-Member, to pay the Levies and Special Levies.
- 10.16 Save as may be provided for herein, in calculating the Levy or Special Levy payable by each Sub-Member, the Board shall as far as is reasonably practical, and in their sole discretion:
- 10.16.1 assign those costs arising directly out of or directly attributable to Land Units in a specific Sub-Association or Body Corporate to the Sub-Member

concerned;

- 10.16.2 assign those costs arising directly out of or directly attributable to Land Unit/s in more than one Sub-Association or Body Corporate to the Sub-Member/s concerned;
- 10.16.3 subject to Clauses 10.16.1 and 10.16.2, assign those costs relating to the Village generally to all the Sub-Members; provided however that the Board may in any case where they consider it equitable so to do, assign to any Sub-Member a greater or lesser share of the costs as the Board consider may be reasonable in the circumstances.
- 10.17 No Sub-Member shall be entitled to the privileges of membership of the Association or the relevant Sub-Association or Body Corporate, nor shall such a Sub-Member be entitled to vote meeting of the Association, Sub-Association or Body Corporate, unless and until he shall have paid every Levy, Special Levy and other sum, if any, which may be due and payable to the Association in respect of his membership of any of the legal persona referred to above.
- 10.18 The Owners of the Institutional Erven will always be subject to this Constitution but is exempted from the payment of any Levies or Special Levies.
- 10.19 Monthly Levy Statements will be circulated by the Local Authority as part of its rates and taxes accounts the Sub-Members of the Association via e-mail. A Sub-Member will still be liable to effect monthly payments of the Levies and Special Levies irrespective whether the statement was received and/or circulated by the Local Authority to such Member.
- 10.20 The Association, the Local Authority and/or the DHS may hand-over any debt due to the Association to its Attorneys for collection if the debt is outstanding for more than 7 (Seven) days.
- 10.21 The Board and/or the Local Authority may, in the instance of any amount due by the Sub-Member in terms of this Clause 10, suspend the applicable service directly linked to the amount in arrears.

- 10.22 A Sub-Member shall be liable for and shall pay all legal costs, including costs, as between attorney and own client, collection commission, tracing agents fee, interest at the Prime Rate plus 25% (Twenty Five Percent) per annum on all amounts due to the Association, the Local Authority and/or the DHS resulting from Levies, Special Levies or any other cause whatsoever, expenses and charges incurred by the Association, the Local Authority and/or the DHS, in recovering any arrear Levy or Special Levy or other amounts due and owing to the Association, the Local Authority, the DHS or the Developer, and also the costs incurred in the enforcement of any of the Constitution, the Governing Rules, the M & C Rules or rules and regulations issued or made by or on behalf of the Association, from time to time.
- 10.23 The Association and/or the Developer shall not be liable for the payment of Service Contributions, Municipal Rates and Consumption Charges to the Local Authority in respect any un-serviced Land Units and undeveloped Phases until these Phases have been serviced, building plans have been approved, buildings have been completed and registration of transfer to the end-user has been registered in the Pretoria Deeds Registry.
- 10.24 The Association and/or the Developer shall not be liable for the payment of contributions in respect of the provision of Private Open Spaces as provided for in the Planning Legislation, consequential to the total amount of Open Space exceeds that required in terms of the Planning Legislation.
- 10.25 The Owners of the Res 1 Erven are completely exempted from the payment of any Levies or Special Levies.

## **11. RESPONSIBILITY FOR THE PROVISION OF SERVICES**

- 11.1 The responsibility for the provision of the Services, utilities, any other services and amenities of whatever nature as may be provided by or on behalf of the Association to the Members, Sub-Members, Owners or Occupants within the Village, shall pass from the Developer to the Association on the date of the registration of transfer of a Land Unit from the Developer to an Owner.

- 11.2 It is recorded that the Association shall be responsible for the provision of the management, maintenance, upkeep and repair, in amongst others, of the Services, the Communal Property, the Common Property, the Attenuation Ponds and the Wetlands.
- 11.3 A maintenance period of 12 (Twelve) months in respect of the Services, shall commence when each of the internal engineering services has been completed and certified as such by the professional Engineer appointed by the Developer and shall be supported by the requisite guarantee as provided for in Clause 2.9 of the COE.

## **12. GOVERNING RULES AND CODES OF CONDUCT**

- 12.1 Subject to the provisions of this Constitution and to any directives given by the Association in a GM and to any conditions imposed by the Local Authority or the Developer or any other statutory body, the Developer, during the Development Period, and thereafter, the Board, may make the Governing Rules, any other form of rules, the M & C Rules and any directives relating to the implementation of amplification of any of the provisions of this Constitution and/or the Governing Rules and/or the M & C Rules and may vary or modify the same from time to time, in connection with, inter alia, but not limited to, the following:
- 12.1.1 the installation, operation and maintenance of irrigation in respect of the Communal Property and the Common Property;
- 12.1.2 the determination or control of security measures;
- 12.1.3 the control of the building operations, as more fully provided for in the A & D Guidelines;
- 12.1.4 the control and conduct of persons for the prevention of nuisance of any nature to any Owner/Occupant/Sub-Member;
- 12.1.5 the control and conduct of persons using the Communal Property and/or the Common Property;



- 12.1.6 the use of roads, infrastructure, Services, amenities and facilities in the Communal Property and/or the Common Property, including the right to charge a reasonable fee for the use of the amenities and facilities;
- 12.1.7 the furtherance and promotion of any of the objectives of the Association, for the better management of the affairs of the Association and for the advancement and protection of the interests of the Members, Sub-Members, Owners and Occupants;
- 12.1.8 the management and control of the Village;
- 12.1.9 the furtherance and promotion of any of the objectives of the Association including the promotion of better management of the affairs of the Association and the advancement of the interests of the Members and Sub-Members;
- 12.1.10 the use, occupation and enjoyment of the Communal Property and the Common Property (or any parts thereof);
- 12.1.11 the preservation of the natural environment within the Village;
- 12.1.12 the pedestrian and vehicular traffic including parking within the Village;
- 12.1.13 the conduct of any business within the Village;
- 12.1.14 the conduct of any Owner, Occupant or visitor to the Village;
- 12.1.15 the nature, content and design of garden and landscaped areas within the Village, as more fully provided for in the Landscape Guidelines;
- 12.1.16 the admission of any person within the Village, including the conditions upon which persons may enter the Village, and the eviction of any person who is not entitled to be present within the Village;
- 12.1.17 the storage of flammable and other harmful substances as provided for in the H & S Legislation;
- 12.1.18 the enforcement of any rules or directives made in terms of this

Constitution and the adjudication of disputes relating to the application and/or interpretation of any of the Governing Rules and/or the M & C Rules;

- 12.1.19 the introduction of fines and other penalties that may be payable by any Member/Sub-Member/Owner, Occupant or visitor for contravening or failing to comply with any of the provisions of this Constitution, the Governing Rules, the SAC, the M & C Rules or any rules, directives or regulations made thereunder, which fines and penalties will be more fully provided for in the Governing Rules and in terms of Clause 34 of this Constitution;
- 12.1.20 the determination and control of security measures which will be governed and managed by the Security Protocol, available on the Website;
- 12.1.21 the admission of any person within the Village, including the conditions under which person may enter the Village and the eviction of any person who is not entitled to be present within the Village, as more fully provided for in the Security Protocol.

12.2 Any rules (including the Governing Rules and the M & C Rules) made in terms of this Clause 12 shall be binding upon:

12.2.1 every Owner/Sub-Member;

12.2.2 every Occupant within the Village, *mutatis mutandis*, and every Owner/Occupant shall procure that all its representatives, tenants, members of the household, visitors, invitees and other persons related to that Owner/Occupant comply with the Constitution, the SAC, the M & C Rules and the Governing Rules made in terms of this Constitution and every Owner/Occupant acknowledges and agrees that it will be liable for any breach or non-compliance by any of its representatives, tenants, Occupants, family members, visitors, invitees and other persons related to that Owner/Occupant.

### 13. TRUSTEES

13.1 There shall be a minimum of 3 (Three) and a maximum of 5 (Five) Trustees of the Association, provided that:

13.1.1 One Trustee must a representative of the DHS;

13.1.2 One Trustee must a representative of the Local Authority;

13.1.3 One Trustee must be a representative of the Developer, during the Development Period;

13.1.4 One Trustee must be a Professional Trustee representing the Management Company;

13.1.5 One Trustee must be the CLO.

13.2 After the Development Period, the Trustee representing the Developer must be replaced one representative elected by the Chairpersons of the Sub-Associations and the Bodies Corporate.

13.3 A Trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.

13.4 The representative of the Developer shall be the Chairperson of the Association during the Development Period and thereafter the CLO shall be the Chairperson.

13.5 A Trustee is required to:

14.2.1 perform the functions of office in good faith, honesty and in a transparent manner, and

14.2.2 at all times act in the best interests of the Association, and in such a way that the credibility and integrity of the Association and/or the Village is not compromised in any way.

13.6 When nominated, a Trustee shall simultaneously with his nomination, declare in writing to the Board any financial interest he or his immediate family or business

associates may have in respect of any contract, deliberations or other transactions with the Association.

- 13.7 No Sub-Member may be nominated to become a Trustee if his Land Unit or any improvements thereon do not comply with the Constitution, the A & D Guidelines, Governing Rules or any other rules or regulations made or promulgated by the Association, any Sub-Association, Body Corporate or the Board.
- 13.8 Each Trustee must declare to the Board any gifts, which he or his immediate family might be offered, or receive, from any business and or person involved or endeavoring to become involved, in any contract with financial gain with the Association.
- 13.9 A Trustee may not, without the permission of the Board, disclose any privileged or confidential information of the Board to any person not authorized or entitled to receive the same.
- 13.10 A Trustee may not, except through the Chairperson and/or the Board:
  - 13.10.1 interfere In the management or administration of the Village, unless mandated by the Board;
  - 13.10.2 give or purport to give any instruction to any employee other than the representative of the Management Company;
  - 13.10.3 obstruct or attempt to obstruct the Management Company or any of the employees of the Association in the implementation of any decision or resolution of the Board, or
  - 13.10.4 encourage or participate in any conduct which would cause or contribute to maladministration by the Board.
- 13.11 The Board may at any time and from time to time investigate and make a finding in respect of any alleged breach by a Trustee(s) of any of the provisions of this Constitution or the Governing Rules or any other rules or regulations made or

promulgated by the Association or the Board, or establish a special committee to investigate and make appropriate recommendations to the Board in this respect.

13.12 Should the Board find that a Trustee has breached any provision of this Constitution or any of the rules or regulations aforesaid or has been found to be negligent in any of the duties assigned to him in his capacity as a Trustee or has reasonable grounds to suspect that a Trustee was or is involved in any form of theft or fraud regarding any funds of the Association, the Board may:

13.12.1 issue a formal warning to the Trustee concerned;

13.12.2 reprimand the Trustee;

13.12.3 suspend the Trustee;

13.12.4 suspend the Trustee pending the outcome of a forensic audit in the instance of any suspected theft or fraud, or

13.12.5 request the Trustee to resign, or

13.12.6 request the Association to remove the Trustee from the Board.

13.13 The Developer will, during the Development Period, communicate minutes of all the meetings held by it and/or decisions taken by the Developer, in its capacity as Chairperson, to each Sub-Association and/or Body Corporate. Copies of these minutes will be available for inspection at the Office of the Management Company during office hours. The Developer will, until date of establishment of the Association, circulate regular Newsletters to all concerned parties.

13.14 The Developer, during the Development Period, and thereafter, the Board, may appoint further Professional Trustees to serve as a Trustee on the Board for a predetermined time-period, as and when the Board determines that the need for such a Professional Trustee has occurred. The Professional Trustee must be familiar with the operation and management of the Village. The Professional Trustee may attend Board meetings but will only serve in an advisory capacity and will have no voting rights whatsoever. The Developer, or the Board, must agree on the

fee structure of the Professional Trustee prior to his appointment and is subject to the allowance for professional fees in the budget of the Association and the availability of such funds.

- 13.15 A Trustee may only be appointed or elected as a Trustee if he has received formal training to enable to act as a Trustee. This qualification must be endorsed by the Management Company and must be submitted simultaneously with the nomination of the relevant appointee prior to his anticipated election/appointment.

#### **14. CHAIRPERSON**

- 14.1 For the duration of the Development Period, the Chairperson shall a representative of the Developer.
- 14.2 After the Development Period, the Board shall appoint the CLO as the Chairperson, who shall hold office until the next AGM, provided that the office of Chairperson shall ipso facto be vacated by the CLO holding such office upon his ceasing to be the CLO for any reason, in which event the Board shall immediately appoint an alternative CLO as the Chairperson.
- 14.3 Except as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Board and at all GM's, and, in the event of the Chairperson not being present within 15 (Fifteen) minutes of the scheduled meeting time, or in the event of his inability or unwillingness to act, any one of the remaining Trustees shall preside in his stead. Should the Chairperson at any stage be absent at 2 (Two) consecutive meetings, the Board and/or the Management Company may terminate the services of the Chairperson with immediate effect.

#### **15. REMOVAL AND ROTATION OF TRUSTEES**

- 15.1 Each Trustee shall hold office as such from the date of his appointment until the next AGM following his appointment, or, at his discretion, until the second AGM following his appointment at which AGM each Trustee shall be deemed to have retired from office, but shall be eligible for re-election as a Trustee, provided the

Trustees comprises the persons/appointees as provided for in Clause 13.1 of this Constitution.

15.2 A Trustee shall be deemed to have vacated his office as such:

15.2.1 should he become disqualified to act as a director of a Company in terms of the Companies Act;

15.2.2 should he be removed from office by a resolution of the Board;

15.2.3 on his conviction of any offence involving dishonesty;

15.2.4 on the commission by him of any act of insolvency;

15.2.5 should he become of unsound mind or being found to be a lunatic;

15.2.6 on his resignation from such office in writing.

## **16. TRUSTEES EXPENSES AND REMUNERATION**

The Trustees shall be not entitled to be repaid any costs or expenses incurred by them in or about the performance of their duties as Trustees.

## **17. POWERS OF THE BOARD**

17.1 Subject to the provisions of this Constitution and subject to any limitations which may be imposed by the Association in a GM, the Board shall have full powers to perform the functions allocated to them in this Constitution and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised and done by the Association itself.

17.2 The Board shall in consultation with the Management Company formulate a budget and a strategic plan and any amendments thereto for each Financial Year of the Association.

17.3 The Board must perform a mid-term budget review and may make amendments to the yearly budget if necessitated by relevant circumstances. These amendments need no approval at an AGM.

- 17.4 The Developer, during the Development Period, and thereafter, the Board, is empowered to sign, execute and to enter into on behalf of the Association all and any contracts as may be required to give effect to the provisions of this Constitution, including, but subject to the provisions of Clause 17.2, the appointment of a Management Company, and is empowered to delegate the management of the affairs and the business of the Association, whether in whole or in part, to such Management Company.
- 17.5 The Developer, during the Development Period, and thereafter, the Board, shall always have the power and right to engage on behalf of the Association the services of Accountants, Auditors, Attorneys, Engineers, Town Planners, or any other professional firm or person or other employees whatsoever, for any reason deemed necessary by the Board, on such terms as the Board may decide.
- 17.6 The Board shall further have the power:
- 17.6.1 to require that any construction of any sort in the Village shall be supervised to ensure that the provisions of this Constitution, the Governing Rules, the C & O Manual, the A & D Guidelines, the Development Controls or any other rules or regulations, are complied with, and that all such construction is performed in a proper and workmanlike manner;
  - 17.6.2 to amend the A & D Guidelines and the Landscape Guidelines in respect of the Village and to ensure that same are always complied with, and
  - 17.6.3 to issue instructions in accordance with the operational EMPR, if any, and to ensure that such plan is always complied with;
- 17.7 The Board shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 17.8 The Board must appoint a Health and Safety Officer to ensure compliance with the H & S Legislation by the Association, the Sub- Associations, Body Corporates, Owners, Occupants and any obligations in terms of the A & D Guidelines and the C & O Manual.



## **18. PROCEEDINGS OF TRUSTEES**

- 18.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 18.2 The quorum necessary for the holding of all Board meetings, during the Development Period, shall be the Trustees representing the Developer, the DHS and the Local Authority, present personally, and no meeting shall be held unless such quorum is present at the commencement of and for the duration of the meeting.
- 18.3 After the Development Period the Trustees representing the DHS, the Local Authority and the CLO, present personally shall form a quorum and no meeting shall be held unless such quorum is present at the commencement of and for the duration of the meeting.
- 18.4 Any resolution of the Board shall be taken by Ordinary Resolution. In the case of an equality of votes for or against a resolution, the Chairperson shall have a second casting vote.
- 18.5 The Board shall cause minutes to be kept of every Board meeting, which minutes shall without undue delay after the meeting has closed, be reduced to writing and certified correct by the Chairperson. All minutes of Board meetings shall, after certification, be placed in a Board meeting minute book.
- 18.6 Any resolution signed by all the Trustees shall be valid in all respects as if it has been duly passed at a Board meeting.

## **19. MANAGEMENT COMPANY**

- 19.1 The Developer shall be entitled (but not obliged, and at their own discretion) to manage, or to appoint a Management Company for the Village, during the Development Period, which appointment shall be valid and binding on the Association during the Development Period and for a period of 10 (Ten) years after

the termination of the Development Period. For the avoidance of doubt, it is recorded that only one Management Company may be appointed for the whole of the Village irrespective of whether such appointment is made during the Development Period, or thereafter.

- 19.2 During the Development Period, the Developer has the irrevocable power and authority to appoint the Management Company for the Village during the aforesaid period and to determine the terms and conditions of such appointment.
- 19.3 Subject to the provisions of this Constitution and the terms of its appointment, the Management Company shall have full power to manage and control the business and affairs of the Association or such portion thereof as may be determined by the Association in a GM, and may exercise all such powers of the Association and do all acts on behalf of the Association itself.
- 19.4 During the Development Period, the Developer will determine the fees or remuneration to be paid by the Association to the Management Company and the other terms and conditions of its appointment, which fees will be agreed upon by the parties to the relevant agreement, provided that the fees thus payable must be allowed for in the budget of the Association.
- 19.5 After the Development Period plus the additional period of 10 (Ten) years as provided for in Clause 19.1 of this Constitution, and in the event that an existing Management Company's appointment is terminated, a successor Management Company shall from time to time be appointed by the Association in a GM and the Members shall determine the fees or remuneration to be paid by the Association to such Management Company and all the other terms and conditions of their appointment, it being contemplated that at all times the affairs of the Association will be entrusted in whole or part to a professional Management Company with appropriate executive powers so as to conform to the requirements of good corporate governance. The Board will, at the final termination date of the agreement regarding the appointment of the Management Company, use best

endeavors to negotiate a further extension of the appointment of the Management Company.

## **20. MEETINGS OF THE ASSOCIATION**

20.1 Notwithstanding the provisions hereof, the Developer must convene the first AGM within 60 (Sixty) days after the Development Period or within a period of 10 (Ten) Years of the transfer of the first Land Units, whichever is the earlier. The Developer must, within 60 (Sixty) days after the first AGM, notify the Local Authority that the meeting was held and provide the Local Authority with a copy of the minutes of the meeting.

20.2 Notwithstanding any of the provisions hereof, the Developer shall, during the Development Period, be entitled at any GM to:

20.2.1 A veto right or casting vote in respect of all decisions to be taken by the Board, the Trustees, the Association, any Sub-Association or any Body Corporate, and

20.2.2 Appoint sufficient numbers of Trustees to ensure that the Developer always has majority of such Trustees, and

20.2.3 Acting as the Chairperson.

20.3 After the Development Period, the following provisions shall apply:

20.3.1 The Association shall within 6 (Six) months after the end of its Financial Year (at least one AGM per year) hold a GM as its AGM in addition to any other GM's during that year, and shall specify the meeting as such in the notices of meeting.

20.3.2 GM's shall be held at such time and place as the Board shall decide from time to time.

20.3.3 All meetings including any AGM and the SGM, shall be called GM's.

20.3.4 The Board may, whenever they deem fit, convene a GM. A GM may also be convened by the Board on a requisition made by the Members.

## **21. NOTICES OF MEETINGS**

- 21.1 An AGM shall be called by not less than 21 (Twenty One) Clear Days' notice in writing and any other GM shall be called by not less than 14 (Fourteen) Clear Days' notice in writing. The notice of an AGM shall be accompanied by a copy of the Financial Statements as referred to in Clause 26 and shall be given to all Members and shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting. A meeting called by shorter notice shall be deemed to have been duly called if it so agreed by an Ordinary Resolution of the Members having the right to attend and to vote at the relevant meeting.
- 21.2 The accidental omission to give notice of any resolution or to transmit any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings of any meeting or any resolution passed at any meeting. Furthermore, the non-receipt of notice of a meeting by any Member entitled to receive such notice shall not invalidate the proceedings at that meeting. It is the responsibility of each member to ensure that he has received all the documents relevant to the GM to be held.
- 21.3 The AGM shall deal with the consideration of the Management Company's report, the consideration of the annual Financial Statements, the budget for the following year, the election of Trustees, if applicable, the appointment of an Auditor and may deal with any other business included in the notice of meeting.

## **22. PROXIES**

- 22.1 A Member may be represented at a GM by a proxy, who must himself be a Sub-Member.
- 22.2 To be effective at a GM or adjourned GM, a proxy together with the original or a notarially certified copy of a power of attorney or other authority under which it is signed must be lodged with the Management Company at least 48 (Fourty Eight)

hours before the commencement of the GM or adjourned GM concerned but the Board may from time to time determine that such documents:

- 22.1.1 are to be lodged at a specific place;
- 22.1.2 are to be lodged a certain number of hours, not exceeding 48 (Forty Eight) in all, before the meeting.
- 22.3 A proxy will be valid for the specific GM it was granted and not for any other meeting, including an adjourned GM
- 22.4 The instrument appointing a proxy shall be in such form that is acceptable to the Chairperson of the GM or adjourned GM in respect of which it is tendered and the decision of the Chairperson as to what is or is not acceptable will be binding on all the Members.

### **23. QUORUM**

- 23.1 No business shall be transacted at a GM unless a quorum is present both when the GM proceeds to business and when any resolution is to be passed. Save as otherwise provided in this Constitution, 50% (Fifty) of the Members representing formed and active Sub-Associations, other than the Developer present in person, or by proxy, shall constitute a quorum provided that at least 3 (Three) Members are present in person at the commencement of and for the duration of such a GM.
- 23.2 If within 15 (Fifteen) minutes after the time appointed for the commencement of a GM, or within such extended period as the Chairperson may allow, a quorum is not present, the GM shall stand adjourned to the same place at the same time on the same day of the next week or to such other place, time and day as the Chairperson may determine. If a quorum is not present at such adjourned GM, the Members present shall constitute a quorum.

## **24. ADJOURNMENT BY CHAIRPERSON**

24.1 The Chairperson of a GM may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by Ordinary Resolution. In the event of such an adjournment:

24.1.1 No notice needs be given of the adjourned meeting save for an announcement at the original meeting of the date, time and venue of the adjourned meeting, unless the meeting is to be adjourned for 30 (Thirty) days or more in which event notice is to be given in the same manner as for the original meeting;

24.1.2 Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

## **25. VOTING RIGHTS OF MEMBERS**

25.1 Only Members shall be entitled to vote on matters raised at GM's.

25.2 At every GM:

25.2.1 each Member, present in person or by proxy and entitled to vote, shall have 1 (One) vote;

25.2.2 during the Development Period the Developer shall as Member be entitled to 2 (Two) votes in respect of the number of the other Members.

25.3 Save as provided in this Constitution, no person other than a Sub-Member duly registered and who shall have paid every Levy, Special Levy and other amount, if any, which may be due and payable to the Association in respect of or arising out of his membership, and who is not suspended, shall be entitled to be present or to vote on a matter, either personally or by proxy at any GM.

25.4 Voting at GM's shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded by the Chairperson. If a poll is demanded it shall be taken in such a manner as the Chairperson may direct.

- 25.5 Subject to the provision of this Constitution, all resolutions at all GM's shall be passed by Ordinary Resolution.
- 25.6 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter, such difficulty or dispute is to be determined by the Chairperson irrespective whether scrutinizers might have been appointed to count the votes, and his decision shall be final and conclusive.
- 25.7 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
- 25.7.1 written notice of the revocation is received by the Association prior to the meeting concerned, or
- 25.7.2 the Chairperson agrees to accept written or oral notice of such revocation at the meeting.
- 25.8 No objection shall be raised to the admissibility of any vote except at the meeting or adjournment meeting at which the vote objected to, is casted and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairperson of the meeting whose decision shall be final and conclusive.
- 25.9 A declaration made in good faith by the Chairperson of a meeting to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.
- 25.10 Any resolution which could be passed at a GM, other than a Special Resolution or a resolution to remove a Trustee or Auditor, may be passed without a GM being held if one or more copies of the resolution are signed by or on behalf of a simple majority of all the Members entitled to vote at a GM.

## **26. ACCOUNTING RECORDS**

- 26.1 The Board shall cause such accounting records to be kept as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 26.2 The accounting records shall be kept at the registered Office of the Association or at such other place or places as the Board think fit, and shall be open to inspection by the Board at all reasonable times, during business hours.
- 26.3 The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association shall be open to inspection by Sub-Members and no Sub-Member shall have any right of inspecting any accounting records or documents of the Association except as may be authorized by the Board.
- 26.4 At each GM the Board shall lay before the Association Financial Statements for the immediately preceding Financial Year of the Association or, in the case of the first period after the date of commencement of the Association, made up for that period. Such Financial Statements shall be drawn in accordance with generally accepted accounting practices, and shall be accompanied by such additional reports as may be necessary at the discretion of the Board.
- 26.5 A copy of the Financial Statements which are to be laid before the Members in AGM shall, not less than 21 (Twenty One) days before the date of the meeting, be sent to every Member of the Association.
- 26.6 The Members shall, by way of Ordinary Resolution passed at a GM, nominate the Auditors of the Association and the Secretary of the Association from time to time, provided that for the duration of the Development Period, the Developer may nominate the Auditors and the Secretary of the Association.
- 26.7 The Financial Year end of the Association shall be the last day of June of each year.



26.8 The Board shall cause proper books of account and records to be kept so as to fairly explain the transactions and financial position of the Association, which books of account and records shall include –

26.8.1 a record of the assets and liabilities of the Association;

26.8.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occurred;

26.8.3 a register of Sub-Members showing, in each case, their addresses; and

26.8.4 individual ledger accounts in respect of each Sub-Member.

26.9 The Board shall cause all books of account and records to be retained for a period of 5 (Five) years after completion of the transactions, acts or operations to which they relate.

26.10 At least once in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by the Auditors.

26.11 The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards applicable in the Republic of South Africa.

26.12 The Management Company must provide the Board with a monthly trial balance on the second business day of every consecutive month. The Board must consider each trial balance and must take appropriate action to manage the financial situation and cash-flow of the Association effectively.

## **27. SERVICE OF NOTICES**

27.1 Notices may be given by the Association to any Member or Sub-Member either at the address indicated by him, or by sending it by post in a prepaid letter addressed to such Member or Sub-Member at the address (if any) within the Republic of South Africa supplied by him to the Association for the giving of notices to him.

27.2 Notice of every GM shall be given:

27.1.1 to every Member of the Association;

27.1.2 to the accounting officer for the time being of the Association;

27.1.3 to any Professional Trustee.

27.3 No other person shall be entitled to receive a notice of General Meetings.

27.4 Any notice given in terms of this Constitution shall be in writing and shall:

27.4.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

27.4.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8<sup>th</sup> Day following the date of such posting;

27.4.3 if transmitted by e-mail be deemed to have been received by the addressee on the day following the date of the e-mail, unless the contrary is proved.

27.5 Notwithstanding anything to the contrary contained or implied in this Constitution, a written notice or communication received an addressee, including by way of e-mail transmission, shall be adequate written notice or communication to such party.

27.6 Any notice by post shall be deemed to have been served at the time when it was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the notice was properly addressed and posted to the last known address of the Member.

27.7 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.

27.8 When a given number of days' notice or notice extending over any other period is required to be given, the day on which it is served or deemed to be served and the day for which it is given shall not be counted in such number of days or period.

## 28. INDEMNITY

- 28.1 The Developer, the Trustees, the Professional Trustees, the Auditors, the Management Company and each servant, agent or employee of the Association shall be and they are hereby indemnified by the Association against any liabilities *bona fide* incurred by them in their respective capacities in the proper discharge of any of their duties including, without limitation, the costs of defending any proceedings, civil, criminal or otherwise arising out of the due execution by them of their duties, and including all costs, losses and expenses, including traveling expenses which they or any of them may incur or becomes liable for by reason of any contract entered into, or any act or deed done, by them in the due discharge of any of their respective duties.
- 28.2 A Trustee, the Developer or the Professional Trustee shall not be liable for the act or omission of the Management Company, Auditors or of any of the other Trustees whether in their capacity as such or as Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which monies of the Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited, or for any loss or damage occasioned by any *bona fide* error of judgement or oversight on his part, or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties in relation thereto, unless same shall have occurred as a result of *mala fides*, breach of duty or breach of trust.
- 28.3 The Developer is irrevocably indemnified against any loss or any possible damages or claim for damages that the Association, any Sub-Association, Body Corporate, Member, Owner, or Occupant, guest or visitor of any Owner or Occupant may suffer as a result of any installation of any Service or facility, including all water bodies (fenced or unfenced), the Wetland and the Power Lines on the Village or any act or conduct by the Developer in the exercising of the Development Rights, whether that such damage was caused by any willful or negligent act of the Developer.

- 28.4 Any person using any of the Services or any other facilities or amenities of the Association within the Village, does so entirely at his own risk.
- 28.5 The right of admission to the Village is reserved in favour of the Developer and/or the Association.

## **29. CONDITIONS IMPOSED BY LOCAL AUTHORITY**

- 29.1 During the Development Period, this Constitution may from time to time be amended by the Developer, without the need to be approved by the Association in a GM, to comply with the requirements from time to time of the Local Authority in relation to the conditions of establishment for the Village or any subdivisions thereof, or any other land which may be added to the Village by the Developer, in his sole discretion.
- 29.2 The Developer and every Owner must always, during and after the establishment of the Village, conform to the Development Controls.

## **30. DETERMINATION OF DISPUTES**

- 30.1 Any disputes arising out of this Constitution must be determined in accordance with this Clause 30, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 30.2 On a dispute arising (not moneys or a debt to the Association), the parties who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (Fourteen) days after such notice, either of the parties to the dispute may refer the same to determination in terms of the following provisions of this Clause 30.
- 30.3 If a party exercises his right in terms of Clause 30.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (Ten) years' experience in their field:
- 30.3.1 If the dispute is primarily an accounting or financial matter, a practicing chartered accountant with at least 10 (Ten) years standing;

- 30.3.2 if the dispute is primarily a legal matter or a matter relating to the behavior and or conduct of a Member, a practicing attorney or advocate with at least 10 (Ten) years standing;
- 30.3.3 if the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practicing registered Architect with at least 10 (Ten) years standing;
- 30.3.4 if the dispute primarily relates to the size of form of the Land or the position, height or size of buildings, structures, installations or equipment, a practicing registered Land Surveyor with at least 10 (Ten) years standing.
- 30.4 If the parties are unable to agree on the appointee as provided for in Clause 30.3 within 3 (Three) days of being requested to do so, then the person shall be nominated by the President for the time being of the Legal Practice Council Gauteng.
- 30.5 The person appointed as provided for in Clause 30.3 shall in all respects act as an expert and not as an arbitrator.
- 30.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 30.7 The parties shall use their best endeavors to procure that the decision of the expert shall be given within 21 (Twenty One) days or so soon thereafter as possible.
- 30.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 30.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between "party and party" or as between "attorney and client".

- 30.10 The provisions of this Clause 30 constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw there from or claim in any such proceedings that they are not bound by such provisions.
- 30.11 The provisions of this Clause 30 shall be deemed to be severable from the remainder of the Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled, amended or declared of no force and effect for any reason.
- 30.12 Notwithstanding anything to the contrary contained in this Constitution the Trustees shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this Constitution and any of its annexure, including any amendments or additions thereto.

**31. AMENDMENT OF CONSTITUTION AND THE RIGHTS AND OBLIGATIONS OF THE LOCAL AUTHORITY**

- 31.1 Notwithstanding anything to the contrary herein contained, during the Development Period, the Developer may without the approval of the Members or any Sub-Members of the Association, amend, substitute and repeal any provision of this Constitution, with the approval of the Local Authority. Any such amendments as contemplated herein will only be communicated by the Developer to the Management Company and the Developer will therefore not be obliged to communicate these changes to the Members.
- 31.2 No provision of this Constitution shall be added to, amended, substituted or repealed without the prior written consent of the Developer for the duration of the Development Period.
- 31.3 Subject to the provisions of Clauses 31.1 and 31.2 above and after the Development Period, any such addition, amendment, substitution or repeal shall

require the approval of at least an Unanimous Resolution given at a GM specifically called for such purpose, and the notice of such meeting shall, in addition to complying with the other requirements of this Constitution, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed. Any provision in the best interest of the Village or the Members of Sub-Members may never be deleted from the Constitution.

- 31.4 Any reference herein to this Constitution shall mean and include a reference to this Constitution as may from time to time be amended in accordance with the provisions of Clauses 29 and/or 31 of this Constitution.
- 31.5 Any amendment of the Constitution, in terms of Clauses 29 or 31 of this Constitution, will only become effective once certified by the Local Authority.
- 31.6 The certified copy of the Constitution is deemed to be the Constitution of the Association.
- 31.7 The Local Authority is exempted from liability for any damage which may be caused by its certification of the Constitution or any amendment thereof or by a loss of the Constitution lodged with the Local Authority.
- 31.8 If the Association fails to meet any financial obligation or if the Association fails to control and manage the Private Open Space, Private Roads and the Communal Areas, the Services or amenities arising from the development of the Village under the Association's control for the benefit of the Sub-Members, and the Local Authority believes that the Sub-Members are adversely affected by the failure, the Local Authority may take appropriate action to rectify the failure. The Local Authority may recover any expenditure in respect thereof from the Association or the Sub-Members, who are jointly liable. This expenditure will be considered as part of the Levies of Special Levies.
- 31.9 If the Association fails to meet any obligations in this Constitution and the Local Authority believes that the community is adversely affected by the failure, the Local

Authority may take appropriate action to rectify the failure. In this instance, the following terms and conditions will prevail:

31.9.1 The Local Authority may recover any expenditure in respect of the action contemplated above from the Association, its Members or Sub-Members, who are jointly liable;

31.9.2 The amount of any expenditure so recovered will be considered expenditure incurred relating to the Association for the purposes of recovering expenditure incurred relating to the Association from its Members or Sub-Members;

31.9.3 If the Association ceases to function effectively or to carry out its obligations, the Local Authority may give the Association a binding instruction to:

31.9.3.1 Hold a meeting and to reconstitute itself, or

31.9.3.2 Dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of the relevant conditions in the title deeds of the Land Units.

31.10 In determining whether to act in terms of Clause 31.9.3.1 or 31.9.3.2 the Local Authority must have regard to:

31.10.1 The purpose of the Association;

31.10.2 The taking over of the maintenance of the internal engineering services, the Services and other obligations which the Association is responsible for, if at all;

31.10.3 The costs of upgrading the internal engineering services, the Services and other infrastructure of the Village in general;



31.10.4 The impact of the dissolution on the Members, Sub-Members and the community in general;

31.10.5 Any written representations from the Association, its Members or Sub-Members.

31.11 If the Association is dissolved, the Sub-Members must jointly pay the costs of:

31.11.1 The transfer to the Local Authority of the Private Roads and Communal Property, including the Services;

31.11.2 The upgrading of the internal engineering services and the Services to meet the required standards of the Local Authority.

31.12 If the Association ceased to function and an Owner wishes to transfer a Land Unit, the Owner must obtain the consent of at least 60% (Sixty) of the Members of the Association, which consent will be deemed to be the consent of the Association.

## **32. GENERAL**

32.1 The Trustees or the Management Company or their employees, agents or contractors shall be entitled and shall have the right to enter any Land Units for the purposes of repairing, maintaining or installing any facilities, Services, equipment or structures relating to the provision of security or any other service to the Village generally, provided, that they have complied with any Access Procedure, if applicable.

32.2 The Developer may at any time, during the Development Period, in writing, cede delegate and/or assign all or any of its rights or obligations in terms of this Constitution to any transferee of its choice and such transferee shall be entitled to take cession/delegation of all such rights and obligations.

32.3 During the Development Period, the Developer may, at any time in writing, abandon in whole or in part, any of its rights which it is entitled to in terms of this

Constitution, in which event the abandoned rights of the Developer will cease and vest in the Association, the Board and/or the Members.

- 32.4 Should a Sub-Member/Owner obtain permission from the Developer, during the Development Period, and thereafter by the Board, to consolidate two or more Land Units, no construction of any kind and/or any improvements may be done over the common boundary lines of the original Erven (the original building lines and servitudes as per the A & D Guidelines will apply).

### **33. AGREEMENTS CONCLUDED ON BEHALF OF THE ASSOCIATION**

- 33.1 It is recorded that the Developer will be allowed to enter into agreements and appoint any service provider on behalf of the Association for a period, to be in a discretion of the Developer, which agreements and/or appointments will be automatically effective on the Association and its Members before or after the Development Period, provided that such service provider fulfill all its obligations and all the other terms and conditions of the agreement thus concluded.
- 33.2 The Association may, after the Development Period, conclude agreements with any third party for the provision of facilities or services to or for the Members and/or the Sub-Members and may impose charges in respect of the provision thereof, or may pass on such costs direct to the Members and/or the Sub-Members. Furthermore, it is recorded that the Members will be bound by all contracts concluded by the Developer for the leasing or purchase of all equipment or infrastructural assets, or for the provision of security for the Village, or for the provision of any other service or supplies for the Village which the Developer may consider necessary in its discretion, even where such contracts or commitments include the payment of costs or outgoings on an ongoing basis. It is recorded, without limitation, that the Developer intends to conclude contracts, inter alia, but not limited to, for the hire or supply of electronic surveillance, monitoring and detection equipment for security purposes relating to the perimeter of the Village.
- 33.3 The Developer, during the Development Period, and thereafter, the Board, may appoint only 1 (One) service provider for the provision of any kind of service or

product to the Village, the Members, any Sub-Association, Body Corporate, Owner or Occupant. The Members, Sub-Associations, Body Corporates, Owners and/or Occupants will be bound by such appoint being made. This condition will be binding and of full force and effect on all appointments to be made or agreements to be concluded with such service provider, as may be provided for in the Constitution, or in the discretion of the Developer during the Development Period, and the Board, after the Development Period.

- 33.4 No business of a Property Sales Agent/Agency or Property Letting Agent/Agency, may ever be conducted from any Land Unit, including the Institutional Erven, save for such Agencies appointed by the Developer during the Development Period, which appointments may be binding on the Association for an indefinite period, in the sole and absolute discretion of the Developer. The conditions of appointment will be stipulated in the Governing Rules and may only be amended by means of a Unanimous Resolution.

#### **34. BREACH AND PENALTIES**

- 34.1 Any Owner or Occupant contravening any of the terms and conditions of this Constitution and/or the Governing Rules, may receive a written warning from the Board or the Management Company, as well as a penalty, the amount to be determined in terms of the Governing Rules by the Board, from time to time, for each infringement. Should the trespasser be a guest of an Owner or Occupant, the Board reserves the right to act in terms of this rule against such Owner or Occupant, who shall be liable for the behavior of his guest. This reservation does not impinge on any other rights of the Board or any other rights which the Board may have against any such trespasser, Owner or Occupant.
- 34.2 Each penalty may be levied against the Owners Levy Account for each infringement and each Owner will be liable to pay such amount promptly.
- 34.3 For the enforcement of the Governing Rules or any of the provisions of this Constitution generally, the Board or the Management Company may:

- 34.3.1 give notice to the Sub-Member/Owner/occupant concerned to remedy any breach within such period as they may determine;
  - 34.3.2 take or cause to be taken such action as they deem fit to remedy the breach of which the Sub-Member, Owner or Occupant concerned may be guilty and debit the cost thereof, which shall be a debt due to the Association, to his Levy Account, and which shall be payable as part of his Levy on the first day of the following month, and
  - 34.3.3 impose a fine on the Sub-Member, Owner or Occupant concerned which amount shall be a debt due to the Association, shall be debited to his Levy Account and shall be payable as part of his Levy on the first day of the following month.
- 34.4 Should the Board or Management Company institute legal proceedings against any Sub-Member, Owner or Occupant for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Sub-Member, Owner or Occupant concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 34.5 In the event of any breach of the Governing Rules or of any of the provisions of this Constitution by any person residing on a Land Unit of a Sub-Member or his guests, employees, contractors, and sub-contractors or agents, such breach shall be deemed to have been committed by the Sub-Member himself; but without prejudice to the foregoing, the Board or Management Company may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the Sub-Member concerned.
- 34.6 Whenever the Board, Management Company or the ARC consider that the appearance of any Land Unit or buildings owned by an Owner is such as to be unsightly or injurious to the amenities of the surrounding area or the Village generally, the Board or the Management Company may serve notice on such

Owner to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Owner or a Member fail within a reasonable time, as specified in such notice, to comply therewith, the Board or Management Company or their employees, agents or contractors may enter upon the Land Unit or buildings concerned and take such steps as may be necessary and recover the costs thereof from the Owner concerned, which costs shall be deemed to be a debt owing by that Owner to the Association. The Board or the Management Company shall be obliged in giving such notice to act reasonably. In the event of any dispute, the Owner shall bear the onus of establishing that the Board or the Management Company acted unreasonably.

34.7 If an Owner fails to comply with any obligation contained in this Clause 34, the Developer, for the duration of the Development Period, and thereafter, the Board, shall be entitled, but not obliged, in addition to any other rights which they may have or remedies which may be available to them in terms of this Constitution or otherwise in law, to:

34.7.1 impose a daily financial penalty, the amount of which shall be determined from time to time by the Developer or the Board, on notice to the Owner, should the Owner fail to comply with any obligations contained in this Clause 34; and

34.7.2 enter upon any Land Unit to inspect that Land Unit and any improvements constructed thereon, subject to the provisions of any Access Procedure (if applicable), and

34.7.3 The Owner will be liable and obligated to perform all such work and required actions, irrespective of whether his Levies or Special Levies are paid up to date, or not.

### **35. RIGHTS OF REGISTERED MORTGAGEES**

35.1 No Loan Agreements may be entered into by the Association or any Body Corporate unless notification is given and notice by the respective Mortgagees.

- 35.2 No Application may be made to the High Court for the appointment of an Administrator of the Association or any Body Corporate unless notification is given and notice by the respective Mortgagees.
- 35.3 The Trustees shall cause copies of the schedules, estimate, audit statements and reports to be delivered to the respective Mortgagees, at no cost to the Mortgagee and at least 14 (Fourteen) days before the date of the AGM at which they are to be considered.
- 35.4 All Mortgagees must be notified within 30 (Thirty) days from the date of any change to the Management Company together with a copy of the Agreement between the Association and the former party.
- 35.5 The Board must insure the debtor's book of any Body Corporate against default debtors.
- 35.6 The Association hereby irrevocably waives, in favour of any Mortgagee, any rights or restrictive conditions registered in the title deed of any Land Unit in its favour, in the instance of foreclosure procedures being instituted by the relevant Mortgagee against any such an Owner.

**36. INSTITUTIONAL ERVEN**

The following special provisions will apply to the Special Business Erven:

- 36.1 The specific Land Units will be not liable for the payment of Levies and Special Levies;
- 36.2 The provisions of Clause 33.4 of this Constitution will apply;
- 36.3 The usage of all the Land Units comprising the Institutional Erven must be approved by the Developer, in writing, during the Development Period, and thereafter by the Board.

### **37. OBLIGATIONS OF THE DEVELOPER**

- 37.1 The Developer must comply with the conditions of GAUTRANS issued under Ref No: 1/1/3/1/3-14514 (Vo 2) dated the 6<sup>th</sup> of February 2015, as amended on the 2<sup>nd</sup> of July 2020, where it is confirmed that the Waterdal Road does not form part of the Gazetted Gauteng Strategic Network and is a Municipal Road which is excluded from the Village.
- 37.2 The Developer must comply with the conditions of Transnet/PRASA as per letter with Ref No: TFR.I/SC/TWN/CR/141202003 dated the 17<sup>th</sup> of February 2015 and as per a letter from PRASA dated the 23<sup>rd</sup> of February 2021, read with a letter from the Local Authority File Number 7/2/Lethabong dated the 7<sup>th</sup> of March 2017 – Annexure 5.
- 37.3 The Developer must implement the SWMP when required to do so by the Local Authority, in accordance with the procedures of the SLA and the conditions imposed by the DWS and GDARD.
- 37.4 The Developer must attend to the cancellation of all restrictive conditions which effect the Village adversely, at the cost of the Developer, including, but not limited to, the title deed conditions referred to in 1.1 of the COE.
- 37.5 The SLA must be concluded between the Developer and the Local Authority as provided for in Clause 1.2 of the COE.
- 37.6 The Developer must comply with the provisions of Sections 72(1), 75(1) and 101 of the TPTO as provided for in Clause 1.3 of the COE.
- 37.7 The Developer has obtained the MRA, as required in terms of Clause 1.3 0 Mineral Rights, of the COE.
- 37.8 The Developer will be liable for the cost of the removal or the replacement of Municipal or Telkom services in accordance with Clause 2.6 of the COE.
- 37.9 Certain existing and planned Power Lines are to be relocated, irrespective whether same are protected by registered servitudes or not, to new positions as indicated

on the MSDP, by prior agreement with ESKOM, as required in terms of Clause 2.7 of the COE.

- 37.10 The Developer may not offer for free nor alienate the Restricted Erven within a period of 6 (Six) months after the relevant Erf became registerable, to any person or body other than to the Government of the Republic of South Africa, unless the Gauteng Department of Education or the Department of Health (in respect of Erf 3359) has indicated in writing that it does not wish to acquire the Erven, as more fully provided for in Clause 2.11 of the COE.
- 37.11 The Gravesite must, at the cost of the Developer, be transferred to the Local Authority, as required in terms of Clause 2.12.2 of the COE.
- 37.12 The Developer must appoint the ECO, at its cost and expense, for the duration of the Development Period.
- 37.13 The Developer must appoint the HSO, at its cost and expense, for the duration of the Development Period.
- 37.14 The Developer will be bound to the Procurement Procedure, for the duration of the Development Period.
- 37.15 The Public Roads must be transferred by the Developer to the Local Authority, at the cost of the Developer and free of counter value.

### **38. CONDITIONS OF TITLE AND SERVITUDES**

- 38.1 All Land Units shall be subject to existing conditions and servitudes, where applicable, as provided for in Clause 2.13 of the COE, save for the condition registered against the title deed of Erf 3359 in Phase 5 as referred to in Clause 2.13 A of the COE, and the condition registered against the title deeds of Erf 3358 and Erf 3359 in Phase 5 as referred to in Clause 2.13 B of the COE, which servitudes will only be applicable on Erf Numbers 3358 and 3359 respectively.



- 38.2 The Local Authority has, in terms of the TPTO imposed the conditions of title contained in Clause 3.1 of the COE, on all Land Units comprising the Village and indicated as such on the MSDP.
- 38.3 The Erf Numbers listed in Clauses 3.5.1 and 3.6.1 of the COE are subject to a non-exclusive servitude in favour of ESKOM for overhead Power Lines and a non-exclusive servitude in favour of the Local Authority for municipal services, stormwater management facilities, including attenuation facilities.
- 38.4 The Erf Numbers listed in Clause 3.5.2 of the COE is subject to a non-exclusive servitude in favour of the Local Authority for municipal services, stormwater management facilities, including attenuation facilities.
- 38.5 The Erf Numbers listed in Clauses 3.5.3 and 3.6.4 of the COE are subject to a non-exclusive servitude in favour of the Local Authority for municipal purposes for services and controlled private access.
- 38.6 The Erf Number listed in Clause 3.6.2 of the COE (Ridge) is subject to a non-exclusive servitude in favour of the Local Authority for municipal services and stormwater management facilities.
- 38.7 The Erf Number listed in Clauses 3.6.3 of the COE (Unchanneled Valley Bottom) is subject to a non-exclusive servitude in favour of the Local Authority for services and access purposes. The Erf is also subject to a non-exclusive servitude in favour of Erf 3379 for services and access purposes.
- 38.8 The C & O Manual must be adhered to by all relevant parties during the Development Period. The Board may extend the obligations and procedures contained in the C & O Manual after the Development Period.

## **39. ZONING AND RESTRICTIONS**

- 39.1 The Residential 1 Phase 4 Erven may only be used for the purposes and subject to the restrictions as detailed in Clause 4.4.1 of the COE.

- 39.2 The Residential 3 Phase 4 Erven may only be used for the purposes and subject to the restrictions as detailed in Clause 4.4.2 of the COE.
- 39.3 The Private Open Space Phase 4 Erven may only be used for the purposes and subject to the restrictions as detailed in Clause 4.4.3 of the COE.
- 39.4 The Private Access Phase 4 Erven may only be used for the purposes and subject to the restrictions as detailed in Clause 4.4.4 of the COE.
- 39.5 The Special Communities Phase 4 Erven may only be used for the purposes and subject to the restrictions as detailed in Clause 4.4.5 of the COE.
- 39.6 The Place of Instruction Phase 4 Erf may only be used for the purposes and subject to the restrictions as detailed in Clause 4.4.6 of the COE.
- 39.7 The Place of Instruction Phase 4 Erf may only be used for the purposes and subject to the restrictions as detailed in Clause 4.4.6 of the COE.
- 39.8 The Sports Field may only be used for the purposes and subject to the restrictions as detailed in Clause 4.4.7 of the COE.
- 39.9 The Grave Site may only be used for the purposes and subject to the restrictions as detailed in Clause 4.4.8 of the COE.
- 39.10 The Residential 1 Phase 5 Erven may only be used for the purposes and subject to the restrictions as detailed in Clause 4.5.1 of the COE.
- 39.11 The Residential 3 Phase 2 Erven may only be used for the purposes and subject to the restrictions as detailed in Clause 4.5.2 of the COE.
- 39.12 The Private Open Space Phase 5 Erven, the Ridge Buffer and the Unchanneled Valley Bottom Wetland may only be used for the purposes and subject to the restrictions as detailed in Clause 4.5.3, 4.5.6 and 4.5.7 of the COE.
- 39.13 The Private Access Phase 5 Erven may only be used for the purposes and subject to the restrictions as detailed in Clause 4.5.4 of the COE.

- 39.14 The Medical Phase 5 Erf may only be used for the purposes and subject to the restrictions as detailed in Clause 4.5.5 of the COE.
- 39.15 The Special Community Facilities Phase 5 Erf may only be used for the purposes and subject to the restrictions as detailed in Clause 4.5.8 of the COE.
- 39.16 All Land Units are subject to the General conditions referred to in Clause 4.6 of the COE.
- 39.17 Excluding the Residential 1 Phase 4 Erven and the Residential 1 Phase 5 Erven, Site Development Plans must be submitted to the Local Authority for approval, as more fully provided for in Clause 4.6.4 of the COE.
- 39.18 A STSDP in respect of all the ST Erven must be submitted to the Local Authority for approval prior to building plans being submitted for approval.