

CLERMONT DU CAP

CONSTITUTION

OF THE

CLERMONT DU CAP HOME OWNERS ASSOCIATION

A statutory Body Corporate established in terms of Section 61 of the City of Cape Town Municipal Planning By-law, 2015.

ESTABLISHMENT IN TERMS OF STATUTE AND NAME

The **CLERMONT DU CAP HOME OWNERS ASSOCIATION** is constituted, as a body corporate, in terms of Section 61 of the City of Cape Town Municipal Planning By-law, 2015 in accordance with the conditions imposed by the Municipality when approving the Site Development Plan in terms of Section 98 of the said By-law, with the application for the subdivision of Erf 11851 Kuils River.

The name of the Association is **CLERMONT DU CAP HOME OWNERS ASSOCIATION**.

INTERPRETATION

In these presents:

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

"Association"	means CLERMONT DU CAP HOME OWNERS ASSOCIATION ;
"Accountants"	means the Accountants /Auditors of the Association;
"Business Day"	means weekdays other than Saturday, Sundays and Public Holidays.
Clermont Du Cap	means The Development;
"Completion Date"	means the date when the Municipality issues an occupational certificate for the last dwelling to be erected in the Development and in the event that the occupational certificate is issued prior to the transfer date of the last Unit to a member, then it means the date of transfer of registration of the last Unit.
"Chairman"	means the Chairman of the Trustee Committee;
"Developer"	means Brick 'n Board Group (Pty) Ltd, Registration number 2015/408549/07, or its successors in Title.
"The Development"	means the area subdivided from Erf 11851 Kuils River for purposes of a Residential Development in terms of the approved Site Development Plan;
"in writing"	means written or printed;
"Member"	means a member of the Association;
"month"	means calendar month;
"Municipality"	means the City of Cape Town;
"office"	means the registered office of the Association;
"Private Area"	means the private open space with any improvements or cultivation thereon situated within the Development.
"Registered Owner"	means a member;
"Rules of Conduct"	means such Rules as are referred to in 6;
"Site Development Plan"	means the plan approved by the Municipality in terms of which Erf 11851 Kuils River will be subdivided and all buildings to be erected in the Development as referred to in 33;
"Special Resolution"	means a resolution passed at a special general meeting of which not less than 21 (twenty one) days' notice has been given specifying the

	intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than three-fourths of the number of members entitled to vote at that meeting who are present in person or by proxy;
"these presents"	means this Constitution and regulations and by-laws of the Association from time to time in force;
"a Trustee"	means one of the Trustee Committee;
"Trustee Committee"	means the Board of Trustees of the Association;
"Unit Erven / erf / Unit"	means the residential Erven in The Development;
"Vice-Chairman"	means the Vice-Chairman of the Trustee Committee;
"year"	means calendar year.

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

1. PURPOSE DESCRIBING THE MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of its Members.

2. MAIN OBJECTS

- 2.1 The main object of the Association is the care, maintenance, upkeep and control of the Private Area/s and any buildings erected thereupon, the control over the maintenance of buildings erected on Unit Erven, and the promotion, advancement and protection of the communal and group interests of the Members generally.
- 2.2 To promote and enforce standards, not the least of which should be the congenial atmosphere in this Residential development in such a way that members may derive the maximum collective benefit there from;
- 2.3 To promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Residential development in order to achieve harmonious development thereof;

- 2.4 To formally represent the collective mutual interests of the area, suburb or neighbourhood set out in accordance with the conditions of development approval issued by the Municipality.
- 2.5 To take transfer of the Common Areas and to control and maintain such common areas and possible certain aspects of individual erven;
- 2.6 To register notarial servitude for the use of municipal electrical services and access, if required;
- 2.7 To maintain and repair all services in the Common Areas;
- 2.8 To maintain all servitudes in its individual and collective favour;
- 2.9 To ensure proper security and living standards within the Development and Common Areas;
- 2.10 The Association is responsible to take control and ownership over and maintenance of buildings, services or amenities, private open spaces, private streets arising from the Development as well as for the running cost of street lighting and the maintenance of all internal services, including the Private Road and bulk water reticulation up to the individual meters within the Development.
- 2.11 To have control over the design guidelines of the buildings and erven arising from the subdivision and to conform with the requirements of the Site Development Plan and to have the power to enforce these requirements.
- 2.12 The Association shall have the powers to do such acts as are necessary to accomplish these objects and is a juristic person, has perpetual succession and is capable of suing and of being sued.

3. FINANCIAL YEAR END

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

4. MEMBERSHIP

- 4.1 Membership of the Association shall be compulsory for every registered owner of a Unit. Membership of the Association shall be limited to the registered owners of Unit Even provided that, where any such owner is more than one person, all the registered owners of that Erf shall be deemed jointly and severally to be one Member of the Association.
- 4.2 When a Member ceases to be the registered owner of a Unit, he shall ipso facto cease to be a Member of the Association.
- 4.3 A Member shall not be entitled to sell or transfer a Unit unless it is condition of the sale and transfer that:
- 4.3.1 the transferee becomes a Member of the Association;
 - 4.3.2 the registration of transfer of that Unit into the name of that transferee shall *ipso facto* constitute the transferee as a Member of the Association;
 - 4.3.3 he first obtains the written consent of the Home Owners Association which consent shall be given provided the purchaser of such Unit agrees in writing to abide by the rules of the Constitution of the Association.
- 4.4 It is compulsory that it is a condition of a member's Title Deed that his Unit may not be transferred unless the Association consents thereto in writing, which consent may not unreasonably withhold.
- 4.5 The registered owner of a Unit may not resign as a member of the Association.
- 4.6 The Trustee Committee, by regulation, may provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.
- 4.7 The rights and obligations of a Member shall not be transferable and every Member shall:
- 4.7.1 to the best of his ability further the objects and interests of the Association;
 - 4.7.2 observe all by-laws and regulations made by the Association of the Trustee Committee
 - 4.7.3 provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of that Member's Unit.

- 4.8 Members acknowledge that they are aware of possible residential- and / or other developments on neighbouring properties by the Developer and as such they accept and agree to the establishment of any improvement on any neighbouring property by the Developer or its successor in Title and shall as a result of their membership of the Association not be able to object in any way to such developments.

5. LEVIES

- 5.1 The Trustee Committee shall from time to time, impose levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the Private Area, and/or for payment of all rates and other charges payable by the Association in respect of the Public Area, and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Public Area and the Association's affairs. In calculating levies, the Trustee Committee shall take into account, income, if any, earned by the Association.
- 5.2 The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Members, equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 5.3 The Trustee Committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in 5.1 (which are not included in any estimate made in terms of 5.2), and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall deem fit. Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to a Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Unit, to pay the levy attributable to that Erf. No Member shall transfer his Unit until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.

- 5.4 The total levy payable by Members shall be borne in equal shares by each Member, except for the Developer whose levy shall be equal to that of any one member, notwithstanding the number of Units registered in its name.
- 5.5 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 5.6 The Members consent to the amendment of the draft Constitution insofar it is a requirement of the Municipality in order to approve this Constitution.

6. RULES OF CONDUCT

- 6.1 Each member shall be bound by the Rules of Conduct of the Association, as applicable on the date of the acquisition by such individual member of his Unit, as amended from time to time.
- 6.2 The Trustee Committee may from time to time make new rules of conduct or amend existing rules of conduct.
- 6.3 Members may keep cats and dogs on the following conditions:
- 6.3.1 Only one cat and two dogs will be allowed per Unit.
- 6.4 All animals need to be spayed or neutered. A certificate from a veterinarian is required before permission will be granted.
- 6.5 All cats must wear a tagged collar. (Name tag with contact details of the Member)
- 6.6 Only small dogs will be allowed on the following conditions:
- 6.6.1 All dogs must wear a tagged collar (Name tag with contact details of the Member)
- 6.6.2 No dog will be allowed, when fully grown, taller than 40 (forty) cm. (Measured from the ground to the middle of the back).

- 6.6.3 Under no circumstances will the following dogs be allowed: Bull dogs, Bull Mastiffs, German Shepherds, Dobermans, Bull Terriers, Rottweilers, Labradors and Huskies.
- 6.7 All dogs, when entering the common property or an exclusive use area, will be leashed at all times.
- 6.8 Should a pet foul the common property or any exclusive use area, the owner of the pet concerned is required to remove the excrement and dispose of it in a hygienic manner.
- 6.9 Pets should not be nuisance to fellow residents. Should a pet become a nuisance, the trustees reserve the right to have such pet removed from the premises should the owner not do so on request. This is in the absolute discretion of the Trustee Committee.
- 6.10 Every member shall observe all laws, ordinances, by-laws and regulations or rules imposed by any statutory or other authority and, without detracting from the generality of the foregoing shall observe and comply with the provisions of the Cape Provincial Road Traffic Ordinance No. 1 21/1966 as amended or any ordinance or Act substituting therefore as fully and effectually as though the private road were a public road as defined in terms of Sections 1 of the Ordinance.

7 CONTRACTS AND REGULATIONS

- 7.1 The Trustee Committee may from time to time make regulations governing inter alia:
- 7.1.1 the external appearance of and the maintenance of the Private Area and the buildings;
 - 7.1.2 or other improvements erected thereon;
 - 7.1.3 the external appearance and maintenance of buildings or other improvements erected on Unit Erven;
 - 7.1.4 enter into agreement(s) with the local authorities governing the relevant matters and any other incidental matters.
- 7.2 Each Member undertakes to the Association that he shall comply with:
- 7.2.1 the provisions of this Constitution;
 - 7.2.2 any regulations made in terms of 7.1;

7.2.3 the Rules of Conduct referred to in 6;

8 BREACH

8.1 Any Member who fails to make payment to the Association on due date therefore of any monthly subscription or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of these presents, may, if so determined by a resolution passed by not less than 4 (four) of the Trustees present at a meeting of the Trustee Committee, or, if the meeting are attended by only 3 (three) Trustees, by unanimous decision of those present:

8.1.1 be fined by the Association in such amount; and/or

8.1.2 be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question, such sum as compensation;

8.1.3 as in each case shall have been determined at such Trustee Committee meeting.

8.2 The Member concerned shall be invited to attend such Trustee Committee meeting by notice in writing delivered to such Member not less than 7 (seven) days prior to the holding thereof, and such Member shall be given the right to speak thereat, and to be represented legally, but not to be present at the voting or to take part in the proceedings, other than as allowed by the Chairman of such meeting.

9 CESSION OF MEMBERSHIP

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executor, curators, trustees or liquidators), have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of subscriptions or other sums due from him to the Association at the time of his ceasing to be a Member.

10 TRUSTEE COMMITTEE

10.1 There shall be a Board of the Trustees of Association which shall consist of not less than 3 (three) and not more than 5 (five) Members.

10.2 Every Trustee must be a Member of the Association, except for the first two appointments by the Developer as provided in 12.2 below, provided that the spouse of a Member may be a Trustee.

11 REMOVAL & ROTATION OF TRUSTEE MEMBERS

11.1 Save as set forth in 11.2 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, but will be eligible for re-election to the Trustee Committee at such meeting.

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

11.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

11.2.2 his making any arrangement or compromise with his creditors;

11.2.3 his conviction for any office dishonesty;

11.2.4 his becoming of unsound mind or being found lunatic;

11.2.5 his resigning from such office in writing delivered to the Secretary;

11.2.6 his death;

11.2.7 his being removed from office by a Special Resolution of the members, provided that anything done in the capacity of a Trustee in good faith, by a person who ceased to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

11.3 Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee.

12 OFFICE OF TRUSTEES

12.1 The Developer shall call the first Annual General Meeting of the Association within 60 (sixty) days of transfer of 60% (sixty percent) of the Units in the Development or within 2 (two) years of the transfer of the first unit, whichever is the earlier.

12.2 The first Chairman, and Vice-Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices as provided for in clause 34.1, provided that any such office shall *ipso facto* be vacated by the Trustee holding such office upon him ceasing to be a Trustee for any reason.

- 12.3 Within 7 (seven) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, except for the first appointments as provided in 12.2 above, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office.
- 12.4 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or of Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 12.5 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.
- 12.6 The Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

13 FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

- 13.1 Subject to the express provisions of these presents, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.

- 13.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 13.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any Member or Members or the spouse of any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 13.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 13.5 The Trustee Committee may make regulations and by-laws, not inconsistent, with this Constitution, or any regulations or by-laws prescribed in the Association in general meeting:
- 13.5.1 as to disputes generally;
 - 13.5.2 for the furtherance and promotion of any of the objects of the Association;
 - 13.5.3 for the better management of the affairs of the Association;
 - 13.5.4 for the advancement of the interest of Members;
 - 13.5.5 for the conduct of Trustee Committee meetings and general meetings; and
 - 13.5.6 to assist it in administering and governing its activities generally;
 - 13.5.7 and shall be entitled to cancel, vary or modify any of the same from time to time.

14 PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 14.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 14.2 Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter.
- 14.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustees.
- 14.4 The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at

such meeting, provided further that should the Vice-Chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

- 14.5 A Trustee, or a person appointed for such purpose by the Trustees, shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance with *mutatis mutandis*, with the provisions of the Law relating to the keeping of minutes of meetings of directors and companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and the Municipality.
- 14.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until carried or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 14.7 Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 14.8 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

15 GENERAL MEETINGS OF THE ASSOCIATION

- 15.1 The Association shall before **30TH JUNE** in each calendar year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices, in terms of clause 16 below calling it.
- 15.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 15.3 All general meetings other than Annual General Meetings shall be called special general meetings.

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

16 NOTICE OF MEETINGS

16.1 An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by 21 (twenty -one) days' notice in writing at the least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by 14 (fourteen) days' notice in writing at the least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:

16.1.1 in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and

16.1.2 in the case of a special general meeting, by not less than 75% (seventy five percent) of the Members entitled to attend and vote thereat.

16.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

17 VENUE OF MEETINGS

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

18 QUORUM

- 18.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent 25% (twenty five percent) of the total votes of all Members of the Association entitled to vote, for the time being save that not less than 5 (five) Members must be personally present.
- 18.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and in if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

19 AGENDA AT MEETINGS

- 19.1 In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- 19.1.1 the consideration of the Chairman's report to the Trustee's Committee;
 - 19.1.2 the election of the Trustee Committee;
 - 19.1.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions
 - 19.1.4 the consideration of the balanced sheet of the Association for the last financial year of the Association preceding the date of such meeting;
 - 19.1.5 the consideration of the report of the Accountants;
 - 19.1.6 the consideration of the total levy for the financial year during which such Annual General Meeting takes place; and
 - 19.1.7 the consideration and fixing of the remuneration of the Accountants for the financial year of the Association preceding the Annual General Meeting.

20 PROCEDURE AT GENERAL MEETINGS

- 20.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall

act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

- 20.2 The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 20.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

21 PROXIES

- 21.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where an association of persons, by the secretary thereof.
- 21.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after expiration of 12 (twelve) months from the date of its execution.

22 VOTING

- 22.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for Each Unit registered in his name provided that if a Unit is registered in more than one name, then they shall jointly have one vote.
- 22.2 Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 22.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 22.4 Notwithstanding the provisions of 22.2 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote.
- 22.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 22.5.1 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 22.5.2 A special resolution or the amendment of a special resolution, shall be carried by 75% (seventy five percent) of the members present, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

22.6 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to be the propriety of validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

23 OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the right to engage on behalf of the Association, the services of Management Agents, Accountants, Attorneys, Advocates, Architects, Engineers, any other professional person of firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the trustee Committee shall decide, subject to any of the provisions of these presents, provided that any expenditure incurred in respect of the above shall be agreed upon by the Trustees.

24 ACCOUNTS

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

24.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Accountants, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in 16 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

25 SERVICE OF NOTICES

- 25.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally, by post in a prepaid registered letter, properly addressed to the Member at the address of the Unit owned by him, or by electronic mail.
- 25.2 No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 25.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 25.4 The accidental omission to give notice of a meeting to, or the non-script of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

26 INDEMNITY

- 26.1 All Trustee members and the Accountants shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a Trustee member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 26.2 Every Trustee member, every servant, agent and employee of the Association, and the Accountants shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their duties, including in the case of a Trustee Member, his duties as Chairman or Vice-Chairman.
- 26.3 Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed of

letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

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

27 PRIVILEGE IN RESPECT OF DEFAMATION

Every Member of the Association and every Trustee member shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee member, to have waived as against every other Member, the Trustee Committee, the Chairman or Vice-Chairman, every other Trustee member, the Accountants and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Trustee Committee, or any sub-committee, all claims and rights of action which such Member or Trustee member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee member, or any reference to such Member or Trustee member, made at any Trustee Committee meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee member, whether such statement be true or false.

28 ARBITRATION

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

28.1.1 any matters arising out of this Constitution; or

- 28.1.2 the rights and duties of any of the parties mentioned in this Constitution; or
- 28.1.3 the interpretation of this Constitution;
- 28.1.4 shall be submitted to a decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.
- 28.2 Arbitration shall be held in Kuils River informally and otherwise upon the provisions of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time) it being intended that if possible, it shall be held and concluded within 21 (twenty-one) Business Days after it has been demanded.
- 28.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 28.3.1 primarily an accounting matter - an independent accountant;
- 28.3.2 primarily a legal matter - a practising counsel or attorney of not less than 10 (ten) years standing;
- 28.3.3 any other matter - an independent and suitably qualified person appointed by the Auditors; as may be agreed upon between the parties to the dispute.
- 28.4 If agreement cannot be reached on whether the question in dispute falls under 28.3.1, 28.3.2 or 28.3.3, within 3 (three) Business Days after the arbitration has been demanded, then:
- 28.4.1 the President / head for the time being of the Legal Practice Counsel: Western Cape Office shall determine whether the question in dispute falls under 28.3.1, 28.3.2 or 28.3.3; or
- 28.4.2 the President for the time being of the Legal Practice Counsel: Western Cape Office shall nominate the arbitrator in terms of 28.4.1 within 7 (seven) Business Days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (twenty-one) Business Days.
- 28.5 The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

28.6 The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.

28.7 Notwithstanding anything to the contrary contained in 28.1-28.6 inclusive, the Trustee Committee shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

29 EFFECTIVE DATE

The provisions hereof shall come into force on date of transfer of the first unit arising from the Development.

30 ADDRESS OF ASSOCIATION

For the purposes of the conducting of its business, the Association chooses as its address and *domicilium citandi et executandi* at Clermont Du Cap, 90 Kerk Street, Kuils River, 7580.

31 INCOME TAX

If required by law, the Association will register itself for the purposes of the payment of income tax with the South African Revenue services.

32 AMENDMENT OF CONSTITUTION

This Constitution can be amended at any annual general meeting, or by Special General Meeting, on the express proviso that the amendment will only be possible with a majority vote of not less than 75% (seventy five percent) of the Members of the Association on condition that an amendment concerning a matter in subsection (1)(a) of the Section 61 of the City of Cape Town Municipal Planning By-law, 2015, is also approved by the Municipality.

33 BUILDING DESIGN & LANDSCAPING GUIDELINES

All Members shall be obliged to comply with the stipulations of the Site Development Plan approved by the Municipality, which apply to all structures erected, or to be erected, in the Development, as applicable on the date of the acquisition by such individual Member of his Unit as amended from time to time.

34 STATUS OF DEVELOPER

- 34.1 Until the Completion Date, the Developer shall at any General or Special Meeting be entitled to a number of votes not less than the total number of all other Members of the Association.
- 34.2 Until the Completion Date, the following provisions shall apply in addition to the conditions above being that the Developer shall be entitled:
- 34.2.1 to require that the Association enforces the rights granted to it in terms of this Constitution against any Member who in the opinion of the Developer is not complying with his obligations as a member, and in particular, without restricting the generality of the foregoing, has failed to maintain all buildings and other improvements on by giving such Member written notice in which his failure to comply with the particular provisions of and calling upon him to remedy such failure within a prescribed period of not more than 30 (thirty) days, failing which, the Developer shall be entitled at the sole cost to that Member to carry out all such work as may be required to maintain such building(s) and other improvements on his erf;
 - 34.2.2 to erect such signage, flagpoles, messages and/or other forms of notices or advertising in the Development including the common areas, the private road area and/or the exterior walls (if any) of the Development, subject to the regulations and by-laws of the Council appertaining to signage from time to time;
 - 34.2.3 to scrutinize, approve and submit all building plans relating to the Development and its common areas to the relevant authority to obtain the relevant approvals in order to achieve the completion of the scheme;
- 34.3 Until the Completion Date, no Member may appoint an estate agent to sell / market his property, without the written consent of the Developer.
- 34.4 Neither the Trustee Committee of the Association nor any Member of the Association shall prevent or hinder in any way the Developer from:
- 34.4.1 gaining access to the development;
 - 34.4.2 continuing any building operations in the Development; and/or

- 34.4.3 marketing and selling any of its unsold erven, including the advertisement of the sale of such erven on the common areas and/or at the Development;
- 34.4.4 in general, to carry on with its business activities. On condition that the interpretation of this clause shall be done in such a way that the Developer will not be refused access to any erf already transferred to a member should the Developer give such member 3 (three) days written notice. The Developer will be responsible for any damage caused on the property of such a member.
- 34.5 No member will be entitled to refuse the Developer access on condition that Proper notice was given and on condition that the Developer exercises his rights in a reasonable way. The Notice to a member in order to gain access contains the nature and extent of the work to be carded out and the relevant work to be carried out is limited to the border of the members Erf.
- 34.6 Until the Completion Date, in addition to the Developer's other rights, the Developer will be entitled to in accordance with the architectural character of the existing structures to veto any decisions of the Association, which decisions the Developer may be of the opinion, in his sole discretion, have the direct or indirect result to influence his ability to sell the remainder erven in the Development, negatively.
- 34.7 Until the Developer has sold and/or transferred all the erven in the Development it shall have a right of first refusal of any unimproved erf which a Member wants to sell. The Developer will exercise his right of first refusal within 14 (fourteen), days after he received a written notice from the Member, with a copy of the Offer to Purchase. Should the Developer not exercise his right with the said 14 (fourteen) days, the Member may proceed to sell the Erf based on the relevant offer.
- 34.8 The Association, empowered by its Members in a General-or any other meeting is not entitled to change any terms or conditions of this clause 34.1-34.7 without the written consent of the Developer.
- 34.9 The Developer, with power of substitution, is empowered to accept the benefits contained in this Constitution, on behalf of the Association, if so required by the Cape Town Deeds Registry, in order to insert the condition in the Member's title deed as provided for in the Sale Agreement of an Erf in the Development.

35 CONSTRUCTION

- 35.1 Any construction within the Development must conform to the Site Development Plan
- 35.2 No construction of any building, or any alterations/additions thereto, within the Development may be executed without the prior written approval of the building plans by the Trustee Committee.

36 MANAGING AGENT

The Trustee Committee shall be entitled to appoint a managing agent from time to time to control, manage and administer the common property and to exercise such power and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor. However, the Developer has the right to appoint the first Managing Agent for the first 3 (three) years calculated from the date of establishment of the Association in consideration for which the Association shall pay a market related fee.

37 OWNERS ASSOCIATION THAT CEASE TO FUNCTION

- 37.1 In the event that 25% of the members confirmed in writing that the association is dormant and ceased to function any member, by giving notice as provided for in paragraph 16 above may schedule a special meeting in order to get the association to function again and for this purpose a new trustee committee may be elected as provided for in paragraph 12.2 above.
- 37.2 any consent to be obtained from the Association in the event that the association ceased to function can only be issued once the association functions again, after implementation of the procedures provided for in paragraph 37.1 above