

CONSTITUTION

GRAANENDAL HOME OWNERS' ASSOCIATION

1. Preliminary

This Constitution shall not be added to, amended or any part thereof repealed without approval of the City of Cape Town (Durbanville Administration).

2. Interpretation

2.1 The following words shall, unless the context requires, have the same meanings hereinafter assigned to them.

"Auditor" mean the auditors of the Association qualified to act as such under the Auditing Professions Act 26 of 2005.

"Architectural Design Guidelines" mean the Architectural Design Guidelines as prepared by a qualified person and as approved by the Trustees, which shall be available for inspection at the chosen *domicilium citandi et executandi* address and on the website-www.graanendal.co.za.

"Association" means The Graanendal Home Owners' Association established for the Development.

"Chairman" means the Chairman of the Trustees.

"Common Area" means building and improvements in the Private Area and shall include access roads, but not limited to the following:-

- guard house and buildings;
- security equipment, cameras, electric fencing, computers, booms;
- perimeter walls and palisade fences (excluding the fences that surrounds Villa Cortona);
- irrigation equipment;
- borehole pumps and equipment;

within the borders of the geographical area in Annexure A.

See also clauses 3.6.1 to 3.6.3.

"Development" means the Erven, the Private Areas and roads on the Parent Properties known as Erf 15600, Durbanville, portion 5 (a portion of portion 3), portion 4 (a portion of portion 3) Erf 16275, Durbanville, portion 7 (a portion of portion 4) of the farm Groot Phesantekraal no 1165 and Erf 18547 in the City of Cape Town,

Cape Division, Province of the Western Cape as depicted on annexures A, B and C and attached hereto is the subdivisional plan. The geographical area of the above is the area within the red dotted line in Annexure A.

- "Developer"** means: MULTIDIRECT INVESTMENTS 41 (PTY) LTD or its successor.
- "Establishment of Association"** means the date upon which the first Erf is transferred from the Developer to a purchaser.
- "Local Authority"** means The City of Cape Town (Durbanville Administration) or any other Local Authority established or to be established to succeed in whole or in part such authority in exercising control over the Local Area of which the Development forms part.
- "Ordinance"** means the Land use Planning Ordinance (Ordinance 15 of 1985), as amended from time to time, as well as any regulations in force thereunder
- "Member"** means every registered Owner of an Erf and shall include sectional title owners. If a Member consists of more than one person, such person shall be jointly and severally liable *in solidum* for all obligations of a Member in terms of this Constitution.
- "Month"** means a calendar month.
- "Office"** means the registered Office of the Association being: Rust & Vrede, Business Square, 21 Church Street, Durbanville, 7550
- "Parent property"** means erven 15600, 18547 and 16275 Durbanville in the City of Cape Town, Cape Division, Province of the Western Cape as per annexures A, B, C, D and E.
- "Erf"** means the residential erven resulting from the subdivision of the Parent property as well as the erven resulting from the subdivision of any Group House and/or General residential Erf indicated on the Subdivisional Plan.
- "Group House Erf" or "General residential Erf"** means a residential Erf indicated as such on the Subdivisional Plan that may be subdivided in accordance with the Local Authority's approval.
- "Private Area"** means the private open spaces in the Development inclusive of all services thereon or thereunder.
- "Owner"** means the registered Owner of a residential Erf and shall include sectional title Owners and the representative of any juristic person or a trust.
- "Regulations"** means the Builders' Code of Conduct, the Architectural Design Guidelines and the Conduct Rules and any other rules that the Trustees may make, as amended from time to time. See in this regard clause 22 of the Constitution.

- "Remainder"** means the remainder of portion 4 of the Farm Groot Phesantekraal number 1165 in the City of Cape Town, Cape Division, Province of the Western Cape as depicted on Annexure E.
- "Subdivisional Plan"** means the plan comprising of single residential group housing-, general, residential- and commercial erven, roads and Private Areas situated in the Development as per Annexure A.
- "Special Resolution"** means a resolution passed at a general meeting of which not less than twenty one (21) 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, at the aforesaid meeting by not less than three-fourths (3/4) of the number of Members entitled to vote at that meeting who are represented in person or by proxy.
- "Trustees"** means the Board of Trustees of the Association.
- "A Trustee"** means one of the Trustees.
- "Year"** means a calendar year.
- "Special conditions"** means the special conditions imposed and to be imposed by the Local Authority.

- 2.2 Unless the context otherwise requires, any word importing the singular number shall include the plural number, and vice versa, and words importing any one gender shall include the other gender. Headings are merely for practical purposes only.
- 2.3 Words and expressions to which a meaning has been assigned in the ordinance shall bear the meanings so assigned to them.

3. Purpose

Main Object

In accordance with the provisions of Section 29 of the Ordinance, the main objects of the Association are:

- 3.1 To act in accordance with the collective mutual interest of its Members.
- 3.2 the care, maintenance, upkeep, service and control of the Private and Common Areas.
- 3.3 control over the design of buildings and other improvements erected or installed on the erven in accordance with the Architectural Design Guidelines. See clause 22.1.2.
- 3.4 the promotion, advancement and protection of the communal and group interest of the Members generally.
- 3.5 to control access to the Development by means of man controlled security gates at the entrances of the Development.

- 3.6 without limiting the generality of the foregoing:
- 3.6.1 the maintenance and repairs to the Private and Common Areas shall be the sole responsibility of the Association, including the maintenance and repair, to the satisfaction of the Local Authority, of the boundary wall and fence on the perimeter of the Development.
 - 3.6.2 all maintenance, servicing and repairs to the civil and electrical township services and roads shall be the responsibility of the Local Authority.
 - 3.6.3 the security entrance gates to the Development and the cables servicing the low voltage Electrical Kiosk.
- 3.7 to comply or to ensure due compliance with any Special Conditions imposed or to be imposed by the Local Authority and shall include inter alia:
- 3.7.1 the maintenance for storm water infrastructure as described in the approved storm water management report and the agreement between the Developer.
 - 3.7.2 the maintenance of all open channels, weirs, underground pipes and structures on private open spaces;
 - 3.7.3 the care, maintenance, upkeep and service and control of the retention / detention dam on the opposite side of Klipheuwel Road, with all its structures, channels and attenuation facilities and landscaping;
 - 3.7.4 to ensure that a servitude is registered over the retention / detention dam, including a right of way for access of maintenance from the existing farm entrance in favour of the Association and that such diagram shall be submitted for approval prior to registration to the Local Authority.
- 3.8 to take out the necessary insurance to comply with clause 10.3.
- 3.9 to comply with income tax requirements and it is confirmed that the Association:
- 3.9.1 qualifies for exemption from income tax in terms of Section 10(1)(e)(i)(cc) of the Income Tax Act;
 - 3.9.2 The levy income will not be taxable, however, the income from other sources exceeding R50 000.00 will be taxable including investment income. Only expenditure applicable to such income, will be allowed as a deduction in terms of Section 11(a) of the Act. The relevant exemption is subject to the following:
 - (a) the sole object of the Association must be to manage the collective interest common to all Members, which includes expenditure applicable to the Development and the collection of levies for which such members are liable;
 - (b) the Association is not permitted to distribute its funds to any person other than a similar association or a person;
 - (c) on dissolution the remaining assets must be distributed to a similar association of persons, which is also exempted from income tax in terms of Section 10(1)(e)(iii) of the Act;

- (d) any amendment to this Constitution must be submitted to the Commissioner of the South African Receiver Services; and
 - (e) all funds available for investments, may only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990) and in securities listed on the stock exchange as defined in Section 1 of the Stock Exchanges Control Act 85 (Act No. 1 of 85)
- 3.10 Annual returns of Income Tax together with financial statements must be submitted to the Tax Exemption Unit.

4. Membership

- 4.1 Membership of the Association shall be compulsory for every registered Owner of an Erf and the Purchaser of an Erf will become a Member on registration of transfer of the Erf purchased in his name. A member cannot resign from the Association.
- 4.2 Membership of the Association shall be limited to the registered Owners of the erven provided that where any such Owner is more than one (1) person, all the registered Owners of the Erf shall be deemed jointly and severally to be one Member of the Association.
- 4.3 When a Member ceases to be the registered Owner of an Erf, he shall *ipso facto* cease to be a Member of the Association.
- 4.4 A Member shall not be entitled to sell or transfer an Erf without the prior written consent of the Association which consent may only be withheld for the reasons described in 4.6.1 - 4.6.2 below.
- 4.5 To comply with paragraph 4.4, any Member, including the Developer, who wishes to sell his Erf to a purchaser (transferee) must in writing apply in a form as prescribed from time to time by the Association, for consent by the Association to the sale of his Erf. The aforesaid application must *inter alia* contain a full description of the identity of the Purchaser and in the event that the Purchaser is a legal person or Trust any other particulars that the Association may require in respect of the Members of the Purchaser.
- 4.6 The Association will grant its consent referred to in paragraph 4.4 if:
- 4.6.1 the transferee has in writing applied to become a Member of the Association, and has in writing agreed to abide by the terms of this Constitution and has in writing agreed that transfer of an Erf into his name will *ipso facto* constitute him a Member of the Association; and
 - 4.6.2 the Member who wishes to pass transfer has paid to the Association all amounts due or that which may become due and owing to the Association by him prior to the expected transfer date.
- 4.7 Should the Association provide its consent, registration of transfer will *ipso facto* constitute the transferee as a Member of the Association.
- 4.8 Notwithstanding anything to the contrary herein, any person who becomes a registered Owner of an Erf, without paragraph 4.6.1 to 4.6.2 having been

complied with, will from date of registration of transfer of the Erf in his name be *ipso facto* a Member.

- 4.9 The registered Owner of an Erf cannot resign as a Member of the Association.

5. *Domicilium citandi et Executandi*

The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association.

6. Trustees of the Association

- 6.1 The number of trustees shall be determined from time to time by the Members of the Association in a general meeting, provided that there shall be no less than two (2) trustees.
- 6.2 With effect from the date of the establishment of the Association, all Owners shall be trustees who shall hold office until the first general meeting of the Members of the Association as contemplated in clause 11.1 whereupon they shall retire but shall be eligible for re-election.
- 6.3 The Chairman of the Trustees referred to in clause 6.2 shall be the Developer concerned or his nominee, who shall hold office until the general meeting referred to in clause 11.1 takes place when he shall retire as a trustee and as Chairman, but shall be eligible for re-election in terms of clause 6.4.

Election of Trustees

- 6.4 Save for the provisions of clause 6.2 the Trustees shall be elected at the first annual general meeting and thereafter at each subsequent annual general meeting and shall hold office until the next succeeding annual general meeting, but they shall be eligible for re-election. Only Owners or their spouses shall be eligible as Trustees.
- 6.5 Villa Cortona Home Owners' Association, including the sectional title Development situated within the area of Villa Cortona Home Owners' Association, shall be entitled to nominate a representative and such representative shall be a trustee. The said representative shall represent the interest of Villa Cortona Home Owners' Association and as such shall have one vote on behalf of all the Owners in Villa Cortona at any meeting.

Nominations

- 6.6 Nominees by Owners for the election of trustees at any annual general meeting shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the *domicilium* of the Association not later than forty eight (48) hours before the meeting: provided that trustees are also capable of being elected by way of nomination with the consent of the nominee given at the meeting itself should insufficient written nominations be received to comply with clause 6.1.

Vacancy in number of trustees

- 6.7 The trustees may fill any vacancy in their number. A trustee so appointed shall hold office until the next annual general meeting when he shall retire and be eligible for re-election.

Validity of Act of Trustees

- 6.8 Any act performed by the trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any trustee, be as valid as if such trustees had been duly appointed or had duly continued in office.

Indemnity

- 6.9 (a) Subject to the provisions of clause 6.9.2, every trustee, agent or other officer or servant of the Association shall be indemnified by the Association against all costs, losses, expenses and claims which he may incur or become liable to by reason of any act done by him in the discharge of his duties, unless such costs, losses, expenses or claims are caused by the mala fide or grossly negligent act or omission of such person.
- (b) it shall be the duty of the trustees to pay such indemnity out of the funds of the Association.
- 6.10 the indemnity referred to in clause 6.9 shall not apply in favour of any managing agent appointed in terms of clause 9.2.

7. Disqualification of Trustees

- 7.1 A Trustee shall cease to hold office as such:
- (a) if by notice in writing to the Association, he resigns his office;
- (b) if he is or becomes of unsound mind;
- (c) if he surrenders his estate as insolvent, or if his estate is sequestrated;
- (d) if he is convicted of an offence which involves dishonesty;
- (e) if by resolution of a general meeting of the Association, he is removed from his office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
- (f) if he is or becomes disqualified in terms of the old or new Companies Act, from being appointed or acting as director of a company.

8. Meeting of Trustees - quorum, Chairman, voting

When to be held and notices

- 8.1 Subject to the provisions of clause 8.2 below, the trustees may give notice convening meetings, meet together to despatch of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give

notice of a meeting of trustees to any trustee for the time being absent from the Republic.

- 8.2 A trustee may at any time convene a meeting of the trustees by giving to the other trustees, not less than seven (7) days written notice of a meeting proposed by him, which notice of a meeting proposed by him, shall specify the reason for calling such a meeting. Provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.

Quorum

- 8.3 At a meeting of the trustees, fifty (50) percent of the number of the then serving trustees, but not less than two (2), shall form a quorum.
- 8.4 If the number of trustees falls below the number necessary to form a quorum, the remaining trustee or trustees may continue to act but only for the purpose of appointing or co-opting additional trustees to make up a quorum or for the purpose of convening a general meeting of Owners.
- 8.5 If at any meeting of trustees a quorum is not present within thirty (30) minutes of the appointed time of the meeting, the meeting shall stand adjourned to the next business day at the same time, and the trustees then present, who shall not be less than two (2), shall form a quorum.

Chairman

- 8.6 At the commencement of the first meeting of trustees after an annual general meeting, at which trustees have been elected, the trustees shall elect a Chairman from among their number, who shall hold office as such until the end of the next annual general meeting of the Members of the Association and who shall have a casting as well as a deliberative vote.
- 8.7 The Trustees at a trustee meeting or the Members of the Association at a general meeting, in respect of either of which notice of the intended removal from office of the chairperson has been given, may remove the chairperson from his or her office.
- 8.8 If any Chairman elected in terms of clause 8.6 vacates his office as Chairman or no longer continues in office by virtue of the provisions in clause 8. 7, the trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman, and who shall have the same rights of voting.
- 8.9 If any Chairman vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the trustees present at such meeting shall choose another Chairman for such meeting who shall have the same rights of voting as the Chairman.

Voting

- 8.10 All matters at any meeting of the trustees shall be determined by a majority of the votes of the trustees present and voting.
- 8.11 A trustee shall be disqualified from voting in respect of any contract, or any litigation or proposed litigation, with the Association, by virtue of any personal interest he may have therein.

- 8.12 The Trustees shall be entitled to have a Round Robin trustee meeting and a resolution in writing signed by all the trustees for the time being, present in the Republic of South Africa and shall be as valid and effective as if it had been passed at a meeting of the trustees duly convened and held.

9. Functions, Powers and Duties of Trustees

General

- 9.1 The duties and power of the Trustees shall, subject to the provisions of the Ordinance and the Constitution and subject to any restriction imposed or direction given at a general meeting of the Owners, be performed or exercised by the Trustees of the Association holding office in terms of the Constitution.

Powers

- 9.2 Subject to any restriction imposed or direction given at a general meeting of the Association, the powers of the trustees shall include the following:
- (a) To appoint for and on behalf of the Association such agents and employees as they deem fit in connection with;
 - (i) the control, management and maintenance of any building, Private Areas and amenities arising from the subdivision of any Erf;
 - (ii) the exercise and performance of any or all the powers and duties of the Association.
 - (b) To delegate to one (1) or more of the trustees, in writing, such of their powers and duties as they deem fit, and at any time to revoke such delegation.
 - (c) To establish, amend or replace Regulations for the Development from time to time.

Contract and Regulations

- 9.3 The Trustees may from time to time:
- (a) make Regulations governing *inter alia* the Members' rights of use, occupation and enjoyment of the Common and Private Areas;
 - (b) make other rules that they consider to be necessary.

- 9.4 The Trustees may not make any loans.

Signing of instruments

- 9.5 No contract signed on behalf of the Association shall be valid and binding unless it is signed by at least 2 trustees.

10. Duties of Trustees

Statutory and General Duties

- 10.1 Without detracting from the scope of the additional duties specified in clauses 10.3 and 10.22, 10.24 - 10.27 inclusive, the trustees shall perform the functions entrusted to the Association in terms of section 29 of Ordinance 15 of 1985 and in this Constitution and described under the clause heading "Main Object".
- 10.2 The trustees shall do all things reasonably necessary for the enforcement of the Regulations in force.

Insurance

- 10.3 At the first meeting of the trustees or so soon thereafter as is possible and annually thereafter the trustees shall take steps to insure any buildings and improvements to the Common Area, to the full replacement value thereof against:
- (i) fire, lighting and explosion;
 - (ii) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of a or in connection with any political organisation;
 - (iii) storm, tempest and flood;
 - (iv) earthquake;
 - (v) aircraft and other aerial devices or articles dropped therefrom;
 - (vi) bursting or overflowing of water tank, water apparatus or water pipes;
 - (vii) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
 - (viii) housebreaking or any attempt thereat, or any forcible entry;
 - (ix) loss of occupation or loss or rent in respect of any of the above risks;
 - (x) such other perils or dangers as the trustees or any Owner may deem appropriate.
- 10.4 At the first meeting of the Trustees or as soon as possible thereafter and annually thereafter, the trustees shall take all reasonable steps;
- (a) to insure the Association and the trustees and to keep them insured against liability in respect of:
 - (i) death, bodily injury or illness; and
 - (ii) loss of, or damage to property;
 - (iii) public liability;occurring in connection with the Private Area for a sum of liability of not less than R1 000 000.00 (One Million Rand), which sum may be increased from time to time as directed by the Owners in general meeting; and

10.5 to make provision for the indemnity as set out in clause 6.9.1.

Levies

10.6 The Trustees shall from time to time charge levies upon the Members for the purpose of meeting of all the expenses which the Association has incurred and to determine the levies to be charged, or to which the Trustees reasonably anticipates the Association will be put by way of insurance, maintenance, repair, improvement and keeping in order of the Private and Common Areas, access roads over adjoining land, conduits, pipelines and the areas and structures on adjoining land which is also used by the Association and/or for payment of all rates and other charges payable by the Association in respect of the Private and Common Areas and/or if applicable, for the payment of electricity consumed by street lighting and other lighting services rendered to it and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Private and Common Areas and the Association's affairs, inclusive of any obligations imposed or to be imposed by the Local Authority. In calculating levies the Trustees shall take into account income, if any, earned by the Association.

10.6.1 Every registered Owner of an Erf shall be responsible to pay levies in equal shares, from date of registration of the Erf in his/her name, except for Owners in Villa Cortona (see in this regard clause 10.10) and the Developer (see in this regard clause 10.6.2).

10.6.2 The Developer shall only be obliged to pay levies if 80% of more of erven in a particular phase Group Housing has been registered in the names of the first new Owners. When the above percentage has been reached, the Developer shall pay levies as if he is the individual Owner of each and every Erf in that particular phase or Group Housing. Other than the above, the Developer shall pay levies for Erven registered or deemed to be registered in his name. This clause shall not apply retrospectively.

10.6.3 The individual owners of erven in Villa Cortona, inclusive of the Sectional Title Owners in Villa Cortona, shall not be liable to Association for payment of levies, inclusive of special levies other than the contribution which the Villa Cortona Home Owners' Association shall make to the Association as set out in paragraph 10.10 underneath, for so long as the Villa Cortona Home Owners Association is making regular payments of the amount as set out above.

10.7 At every annual general meeting the Association shall approve, with or without amendment, the estimate of income and expenditure referred to in clause 10.22.

10.8 Within fourteen (14) days after each annual general meeting the trustees shall advise each Owner in writing of the amount payable by him or her in respect of the estimated levy referred to in clause 10.6.1 whereupon such amount shall become payable in instalments, as determined in clause 10.12.

10.9 The trustees may from time to time, when necessary determine and charge special levies upon the Owners or call upon them to make special contributions to comply fully with the main object and to make provision for contingencies and such levies and contributions may be made payable in one (1) sum or by such instalments and at such time or times as the trustees shall deem fit.

10.10 The Owners of erven in Villa Cortona inclusive of the sectional title Owners in Villa Cortona, shall make a monthly contribution to Graanendal Home Owners'

Association of R 20 000.00 plus VAT, if applicable, in lieu of levies and shall be paid by Villa Cortona Home Owners' Association to Graanendal Home Owners' Association.

- 10.10.1 The aforesaid amount will be subject to the Consumer Price Index and shall increase according to the aforesaid Consumer Price Index on a yearly basis with the anniversary date being the 1st of September 2014.
- 10.10.2 In the event of default of payment by Villa Cortona Home Owners Association, Graanendal Home Owners Association shall be entitled to collect the contributions as referred to above, jointly and severally from Villa Cortona Home Owners' Association and the individual Owners inclusive of the sectional title Owners of Villa Cortona from the date of such default, be entitled to collect normal levies from the Owners in Villa Cortona as individual members, calculated pro rata participation quota of the Owners.
- 10.10.3 If Villa Cortona Home Owners' Association defaults in any way at any time to make due payment of the amount as set out above, then the privilege of making payments in terms of the above paragraph, shall fall away permanently and the individual owners of Villa Cortona shall become liable as per clause 10.10.4 as set out hereunder.
- 10.10.4 The parties agree that the formula to be used to determine the contributions of Owners in Villa Cortona, which will include sectional title owners and the owners of free standing houses in Villa Cortona, shall be the number of units in the Sectional Title Scheme (78) plus the number of free standing houses (106) in Villa Cortona, divided by the total number of members of Graanendal, which shall include sectional title members and other members of Villa Cortona plus current and further future members of Graanendal, times the approved budget of the Association, times the individual members in Villa Cortona's participation quota. The aforementioned participation quota shall be expressed as total square meterage of the particular unit of free standing houses divided by 19080.3 (the total square meters of the sectional title units and free standing houses in Villa Cortona). See list F as to the square meterage per sectional unit or free standing house attached hereto. The said monthly contributions so calculated shall be the amount so determined, divided by 12 or the remaining months in the financial year, whichever is the smaller, and shall be payable on demand, but calculated for the remainder of the budget period from date of default.
- 10.11 An Owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such Owners to the Association or in enforcing compliance with the Constitution, which may include fines, the Regulations or obligations of the Association as defined in section 29 of the Ordinance.
- 10.12 All levies payable in terms of the Constitution other than levies payable in terms of clause 10.9, shall be paid in equal monthly instalments monthly in advance on or before the seventh (7th) day of each month and levies and special levies as determined in clause 10.9, and any other arrear amount that may be raised or charged in terms of clause 10.11 above, not paid on due date, shall carry interest from due date until date of payment both days inclusive at the prime overdraft rate plus 5 percentage points.

Regulations and its availability

- 10.13 The trustees shall keep a complete record of all Regulations in force from time to time.
- 10.14 The trustees shall on the application of
- (a) an Owner of an Erf;
 - (b) the prospective purchaser of an Erf;
 - (c) the holder of any registered mortgage bond;
 - (d) the managing agent, and;
 - (e) the auditor;
- supply to any such person a copy of all Regulations in force, and may require them to pay a reasonable charge therefor.

Minutes

- 10.15 The trustees shall:
- (a) keep minutes of their proceedings;
 - (b) cause minutes to be kept of all meetings of the Association in a minute book of the Association kept for this purpose;
 - (c) include in the minute book of the Association records of every unanimous resolution, special resolution and any other resolution of the Association.
 - (d) keep record of the Regulations and Rules in force.
- 10.16 The trustees shall keep all minute books in perpetuity.
- 10.17 Upon the written application of any Owner or registered mortgagee of an Erf, the trustees shall make all minutes of their proceedings and the minutes of the Association available for inspection by such Owner and/or mortgagee, or supply to such person a copy of the minutes and may require such person to pay a reasonable charge therefor.

Books of account and records

- 10.18 The trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association, including:-
- (a) A record of the assets and liabilities of the Association;
 - (b) A record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
 - (c) A register of Owners of erven and of all other persons having real rights in such erven (insofar as written notice shall have been given to the trustees by such Owners or other persons) showing in each case their addresses; and

(d) Individual ledger accounts in respect of each Owner.

- 10.19 On the application of any Owner or the managing agent the trustees shall make all or any of the books of account and records available for inspection by such Owner or managing agent at the Association's chosen *domicilium*.
- 10.20 The trustees shall cause all books of account and records to be retained for a period of six years after completion of the transactions.

Annual financial estimate, financial statement and report

- 10.21 The 31st of August of each year, shall be the financial year end of the Association.
- 10.22 It shall be compulsory for the Association to have at least one yearly meeting of its Members.
- 10.23 Before every annual general meeting, the trustees shall cause to be prepared an itemised estimate of the anticipated income and expenses of the Association during the ensuing financial year, which estimates shall be laid before the annual general meeting for consideration in terms of clause 12.2 hereof.
- 10.24 The estimate of expenses referred to in clause 10.23 shall include a reasonable provision for contingencies.
- 10.25 The trustees shall cause to be prepared, audited financial statements, which statement shall fairly present the state of affairs of the Association and its finances and transactions as at the end of the financial year concerned.
- 10.26 The trustees shall cause copies of the schedules (which shall include the Chairman's report, audited financial statements, estimate of income and expenditure and insurance schedule), estimated and audited statement referred to in clauses 10.23, 10.24 and 10.25, to be delivered to each Owner and to any mortgagee which has advised the Association of its interest at least fourteen (14) days before the date of the annual general meeting at which they are to be considered.
- 10.27 Delivery under the last preceding sub-clause shall be deemed to have been effected if the documents referred to are sent by post addressed to the Owner at his chosen address, which shall include a fax or email address as reflected in the records of the Association

Deposit and investment of funds

- 10.28 The trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a financial institution in the name of the Association and subject to any direction given or restriction imposed at a general meeting of the Association. Such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association in terms of clause 10.7 or Trustee approved ad hoc expenditure or for investment purposes and transfer such money from the investment account to the current account if and when necessary.

11. Meeting of Owners - General Meeting

When to be held

- 11.1 The first meeting of Owners shall be held within sixty (60) days of the establishment of the Association, at least seven (7) days' notice of which shall be given in writing by the Chairman, and which notice shall be accompanied by a copy of the agenda of such meeting and details of the items referred to in clause 11.2.
- 11.2 The agenda for the meeting convened under clause 11.1 shall comprise at least the following:
- (i) The consideration, confirmation or variation of the insurance effected by the Developer or the Association.
 - (ii) The consideration, confirmation or variation of an itemised estimate of the anticipated income and expenses of the Association for the ensuing financial year.
 - (iii) The consideration and approval, with or without amendment, of the financial statements relating to the management, control and administration of the Development from date of establishment of the Association to the date of notice of the meeting referred to in clause 11.1.
 - (iv) The taking of cession of such contracts relating to the management, control and administration of the Development as may have been entered into by the Developer for the continual management, control and administration of the Private Areas and in respect of which the Developer shall be obliged to submit such contracts to the meeting.
 - (v) The appointment of an auditor.
 - (vi) Determination of the financial year of the Association.
- 11.3 An annual general meeting shall be held within four (4) months after the Association's financial year end.
- 11.4 The trustees may whenever they deem fit and shall upon a request in writing made by a minimum of twenty five (25) percent of the Owners convene a general meeting. If the trustees fail to call a meeting so requested within fourteen (14) days of the request the Owners shall be entitled themselves to call the meeting.

Notice of General Meeting

- 11.5 Unless otherwise provided for, at least fourteen (14) days written notice of every general meeting specifying the place, the date and the hour of the meeting and in the case of special business, the general nature of such business shall be given.
- (a) To all Owners;
- 11.6 The holders of registered mortgage bonds shall have the right to attend the meeting herein referred to and to speak at such meetings, but shall not be entitled to vote thereat.
- 11.7 The notice referred to in clause 11.5 shall be deemed to have been sufficiently given and delivered if delivered in accordance with clause 10.26.

- 11.8 The notice referred to in clause 11.5 shall be accompanied by the documents referred to in clause 10.25 except in the case of a meeting contemplated in clause 11.4.
- 11.9 Inadvertent omission to give the notice referred to in clause 11.5 to any person entitled to such notice or the non-receipt of such notice by such person shall, not invalidate any proceedings at any such meeting.
- 11.10 A general meeting of the Association may be called on shorter notice than that specified in clause 11.5, provided it is so agreed by all persons entitled to attend at such meeting.

12. Proceedings at General Meetings

Ordinary and Special Business

- 12.1 All business at any general meeting other than business referred to in clause 12.2(a), (b), and (c) shall be special business.

Annual General Meeting

- 12.2 The following business shall be transacted at an annual general meeting:
- (a) the consideration of the financial statement referred to in clause 10.24 and the Chairman's report
 - (b) the approval with or without amendment of
 - (i) replacement values in respect of clauses 10.3 and 10.4
 - (ii) the estimate of income and expenditure referred to in clause 10.22
 - (c) the appointment of an auditor;
 - (d) any special business of which due notice has been given.

Quorum

- 12.3 No business shall be transacted at any general meeting unless a quorum of persons is present in person or by proxy at the time when the meeting proceeds to business.
- (i) A quorum at a general meeting shall be:
 - (a) the number of Owners holding at least fifty (50) percent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote, in Developments where there are ten (10) or less;
 - (b) the number of Owners holding at least thirty (30) percent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote in the case of Developments with less than fifty (50) but more than ten (10) or less; and

- (c) the number of Owners holding at least twenty (20) percent of the votes present in person or by proxy or by representative recognised by law and entitled to vote, in the case of Development with fifty (50) or more erven.

12.4 If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time and if a quorum is not present within half an hour of the time appointed for the meeting, the Owners present in person or by proxy and entitled to vote shall form a quorum.

Chairman

12.5 The Chairman of the trustees shall preside as Chairman at every general meeting of the Association, unless otherwise resolved by Members of the Association at such meeting.

12.6 If, at any meeting, the Chairman of the trustees is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, or if he is unwilling or unable to act as Chairman, the Members present will elect one (1) of the trustees to be a Chairman. If the Trustees present are unwilling or unable to act as a Chairman, the Trustees may appoint a Member as Chairman for that meeting or the meeting may be adjourned and the Trustees shall then have the right to appoint an independent third party to act as Chairman.

13. Voting at General Meetings

13.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands; Provided that the Chairman shall be entitled in his discretion, to change the manner of voting to one by poll and not by show of hands. A poll shall be taken in such a manner as the Chairman thinks fit.

13.2 A declaration by the Chairman that a resolution has on the show of hands been carried, shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

Votes

13.3 On a show of hands the Owner or Owners of an Erf, or if the Owner is a juristic person, its proxy, shall have one (1) vote.

No vote in certain circumstances

13.4 An Owner shall not be entitled to vote at any general meeting if:

- (a) any contributions payable by him is not up to date, or
- (b) he persisted in breach of any of the Regulations of the Association notwithstanding written warning by the trustees to refrain from breaching such regulation.

Joint Voters

13.5 When two (2) or more persons are entitled to exercise one (1) vote jointly, that vote shall be exercised by only one person, who may not be one of them, but jointly appointed by them as their proxy.

Proxies

- 13.6 Votes at a general meeting may be cast either personally or by proxy, whether on a poll or on a show of hands.
- 13.7 A proxy shall be appointed in writing under the hand of the appointer, or his agent duly appointed in writing, and shall be handed to the Chairman prior to the commencement of the meeting.

14. Duties of Owners

Statutory and General

14.1 An **Owner**:

- (i) shall not use his Erf or permit it to be used, in such a manner or for such purpose as shall be injurious to the reputation of the Development;
- (ii) shall not contravene, or permit the contravention, of any law, by-Jaw, ordinance, proclamation or statutory regulation, or the conditions of any licence, relating to or affecting the occupation of the Erf, or the carrying on or business on the property, or so contravene or permit the contravention of the conditions of title applicable to his Erf or any other Erf.
- (iii) shall not make alterations which are likely to impair the use and enjoyment of other erven or the Private Area;
- (iv) shall not do anything to his Erf which is likely to prejudice the harmonious appearance of the Development.
- (v) shall not use any Common or Private Area or portion thereof for any purpose other than intended in terms of its zoning and by resolution of the Association.
- (vi) shall not construct or place any structure or building improvement on his Erf without the prior written consent of the trustees and the Local Authority.
- (vii) shall be bound by the Architectural Designs for any erections or additions or amendments to any structure including covering and enclosure of patios and Regulations and rules.
- (viii) shall comply with the provisions of this Constitution or any Regulation or Rules made or to be made by the Trustees in terms of clause 9.3(a) and 9.3(b).

Architectural Design Guidelines

- 14.2 All buildings or improvements constructed on any Erf must comply with the provisions of the Architectural Design Guidelines.
- 14.3 No Member will be entitled to demolish, paint or change or in any way decorate or add to any part or portion of the Common or Private Area and that shall include any wall or fence that surrounds the Development.

- 14.4 The Trustees as trustees, will be the only persons entitled to perform any of the actions referred to in 14.3 above to or in respect of such wall or fence.

Colour scheme

- 14.5 No alteration or addition or change to the colour scheme may be made to any building or structure on the Erf without the consent of the Trustees.

Binding nature

- 14.6 The provisions of the Constitution and of the Regulations, and the duties of the Owner in relation to the use and occupation of sections and common property shall be binding on the Owner of any Erf and any lessee or other occupant of any such property and it shall be the duty of the Owner to ensure compliance with the Constitution and regulations by his lessee or occupant, including employees, guests and any Member of his family.

Owner's failure to maintain

- 14.7 If an Owner fails to repair or maintain his Erf or any building on the Erf, in a state of good repair and any such failure persists for a period of thirty (30) days after the giving of written notice to repair or maintain given by the trustees or the managing agent on their behalf, the Association shall be entitled to remedy the Owner's failure and to recover the reasonable costs of doing so from such Owner.

Arbitration

- 14.8 A dispute between the Association and an Owner or between Owners shall be determined in terms of the following sub-clauses.

- 14.9 If such dispute arises at any time between Members or between Members and trustees out of or in regard to:

- (a) any matters arising out of this Constitution; or
- (b) the rights and duties of any of the parties mentioned in this Constitution; or
- (c) the interpretation of this Constitution, or
- (d) the Regulations.

the aggrieved party shall notify the other interested party or parties in writing and copies of such notifications shall be served on the trustees. Should the dispute or complaint not be resolved within fourteen (14) days of such notice, the matter shall be submitted to and decided by Arbitration on written notice given by any party to the other interested parties.

- 14.10 Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties shall appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.

- 14.11 If agreement cannot be reached between the parties to the dispute on the appointment of the arbitrator, the Auditors shall appoint an independent and suitably qualified person as the arbitrator.

- 14.12 Arbitration shall be held informally or otherwise as the arbitrator may determine. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. Where possible the arbitration shall be concluded within twenty one (21) days after the matter has been referred to for arbitration in terms of sub-clause (10) or security for costs has been furnished.
- 14.13 The arbitrator shall make his or her award within seven (7) days from the date of the completion of the arbitration and shall in making his or her award, have regard to the principles laid down in terms of these clauses. The arbitrator may determine that the costs of the arbitration be paid by any of the disputing parties or any of them jointly or in such shares as he or she may determine and as he or she in his or her discretion may deem appropriate having regard to the outcome of the arbitration.
- 14.14 The decision of the arbitrator shall be final and binding and may be made an order of the High Court upon application of any party to be affected by the arbitration.

15. Status of the Association

The Association shall be an Association:

- 15.1 with legal personality, capable of suing and being sued in its own name and notwithstanding anything to the contrary, the trustees shall be entitled to institute legal proceedings on behalf of the Association by way of Application, Notice or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches or compliance of any of these provisions;
- 15.2 and has as its members all the owners in the Association's area who are jointly liable for the expenditure incurred in connection with the Association;
- 15.3 and must recover expenditure incurred in connection with the Association from its Members;
- 15.4 none of whose Members in their personal capacity shall have any right or title to or in the funds and assets of the Association, which shall vest in and be controlled by the committee of trustees in terms hereof; and
- 15.5 not for profit but for benefit of the Owners and occupants of properties in the Development.

16. General

- 16.1 This Constitution shall come into force simultaneously with the first registration of an Erf in the Development as THE GRAANENDAL HOME OWNERS' ASSOCIATION.

17. Special Conditions

- 17.1 Where two (2) or more attached dwellings are to be held under separate title, or a dwelling is erected on the Erf boundary, the Owner of each Erf directly involved in the subdivision will:

- 17.1.1 maintain such part of any retaining wall, roof, pipe, gutter, wiring or other structure or thing as is common to such Erf and any other Erf;
- 17.1.2 maintain every part of such wall, roof, pipe gutter, wiring or other structure or thing which is on or traverses such Erf;
- 17.1.3 permit access to such Erf for the purposes of maintaining, cleaning, renovating, repairing, renewing, altering and adding to any wall, roof, pipe, gutter, wiring or other structure or thing, and will not do anything which will prevent or hinder any such access or work from being done, and
- 17.1.4 not make any alterations or additions to or demolish any part of the building erected on such Erf, including boundary walls and fences or change the exterior colour scheme or materials of such buildings without the written consent of the Trustees, or permit the exterior of the building to deteriorate and become untidy or dirty.

18. Local Authority

The Association agrees to and acknowledges the following power and duties of the Local Authority:-

- 18.1 If, for whatever reason, the Association becomes dysfunctional, the Local Authority may take over the duties and obligations of the Association.
- 18.2 In such an event, the Local Authority may take such steps as it deems necessary and appoint competent persons to fulfil the functions of the Association. Any costs in this regard will be for the account of the Members.
- 18.3 The Local Authority may at all times gain access to the Development in order to maintain the public roads and services.

19. Security gate and Access Control

- 19.1 The security gate(s) must be manned at all times and the Local Authority's employees must have vehicular access twenty four (24) hours a day for maintenance and repair work to the civil services in the Development.
- 19.2 The entrance facilities to the Development must be manned at all time and may not be electronically replaced. In the event of a failure to control the access to the Development by man and the Association shall be obliged to remove the security gates.
- 19.3 The Local Authority shall be entitled to register a servitude of a right of way in its favour over Erven 232 and 233 shown on the Subdivisional Plan.
- 19.4 Any person who wishes to enter the Development via the main entrances and security gates may not be denied access to the Development. It is recorded that information with regards to name, residential address, telephone number, car registration number, purpose of visit to the Development, time in and time out at the security gate may be recorded by the security guard at the main access gate.
- 19.5 The Association may install a biometric and/or CCTV cameras or a number plate recognition system or any other security system inclusive of electronic security

equipment and any person who wishes to enter the Development via the aforesaid systems, may be requested to comply with the necessary requirements.

20. Amendment

- 20.1 This Constitution may only be amended by way of a Special Resolution adopted by a general meeting of Members.
- 20.2 This Constitution may not be amended without the written consent of the Local Authority.

21. Dealing with the Private Area and Common Areas

Neither the whole nor any portion of the aforesaid Areas shall be:-

- 21.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 21.2 mortgaged; or
- 21.3 subject to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude, other than the general servitude in favour of the controlling Local Authority for services, (save those enjoyed by the Members of the Association in terms hereof), without the sanction of a Special Resolution of the Association (and no Member shall be entitled to unreasonably vote against Special Resolution which may be proposed); or
- 21.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a Special Resolution and without the consent of the Cape Provincial Administration or relevant Local Authority; or
- 21.5 the maintenance and repairs to the Private Area shall be the sole responsibility of the Association, including the maintenance and repair, to the satisfaction of the Local Authority, of the boundary wall and fence on the perimeter of the Development.

22. Regulations

- 22.1 Subject to this Constitution, to any restriction imposed or direction given at a general meeting of the Association and subject to any condition imposed by the Local Authority in approving the rezoning and subdivision of the land, the Trustees may from time to time make Regulations and vary or modify these clauses, in regard to *inter alia*:
 - 22.1.1 The standards and guidelines for the architectural designs of all buildings and out-buildings, structures of any nature and all additions or alterations of any such buildings, out-buildings or structures and the materials to be used on such exteriors to ensure an attractive and aesthetically pleasing character to all buildings on the estate;
 - 22.1.2 The purpose of the Architectural Design Guidelines is to ensure adherence to a particular architectural design for a particular phase and can differ from phase to phase, but within a particular phase, there must be adherence to the architectural guidelines of each phase. No building

will be erected or constructed on an Erf or any addition or improvement to an existing building will be effected, unless the Owner or prospective owner has received the necessary written approval thereof from the Trustees.

- 22.1.3 The siting of all buildings, out-buildings, structures of any nature and all additions or alterations to any thereof and the erection of statues and works of art;
- 22.1.4 The preservation of the natural environment, vegetation and fauna and flora on the Development including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences and walls whether upon or within the boundaries of any erven;
- 22.1.5 The right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
- 22.1.6 The conduct of any persons within the property for the prevention of nuisance of any nature to any Member;
- 22.1.7 The use of services or recreation areas, amenities and facilities including the right to charge a reasonable fee for the use thereof;
- 22.1.8 The furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interest of the use thereof;
- 22.1.9 The maintenance of all buildings, out-buildings, structures, improvements of any nature and landscaping on the estate;
- 22.1.10 The control of the number of occupiers permitted on any one Erf;
- 22.1.11 The purchase by the Association or the Developer of any Erf should the registered Owner thereof fail to commence construction of improvements thereto or fail to complete the same within the time limits prescribed by the Association for these purposes, and generally for the determination of the price and conditions upon which such purchase may be made;
- 22.1.12 The admission of any person to the estate, and the eviction of any person not entitled to be thereon.
- 22.2 The clause shall not be in conflict with any condition imposed by the Developer upon any Member or purchaser of any Erf in terms of the deed of sale whereby the Member acquires an Erf.
- 22.3 Any variation, amendment, addition or deletion to any Regulation shall only take effect and be enforceable once it has been approved by the Members at a General Meeting and sanctioned, if necessary by the City of Cape Town or any other local authority.
- 22.4 For the enforcement of any of the Regulations made by the Trustees in terms of this clause, or of any of the provisions of this constitution generally, the Trustees may:

- 22.4.1 give notice to the Member concerned requiring him to remedy such breach within such period as the trustee committee may determine; and/or
 - 22.4.2 take or cause to be taken such steps, as they may consider necessary to remedy the breach of the Regulation or provision of which the Member may be guilty, and debit the costs of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Association; and/or
 - 22.4.3 take such action including the imposition of a fine, but only after the person has been found guilty by the Trustees, or proceedings in court, as they may deem fit.
- 22.5 Should the Trustees institute any legal proceedings against any Member or resident on the Development 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 Member or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 22.6 In the event of any breach of the Regulations by the Members of any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 22.7 If any Member disputes the fact that he has committed a breach of any of the Regulations, an appeal committee made up of three Members drawn by lot from a panel of ten Members willing to fulfil this function, appointed by the Trustees shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as such appeal committee may direct. The discretion of the appeal committee shall be final and binding.
- 22.8 Notwithstanding anything to the contrary herein contained, the Trustees may in the name of the Association enforce the provisions of any clauses by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as they may deem fit.
- 22.9 The Association may in general meeting itself make any Regulations in regard to any matter and may also vary or modify any Regulations made by it or by the Trustees from time to time.
- 22.10 All Regulations must be reasonable and must apply equally to all Owners of erven put to substantially the same use.
- 22.11 All builders will be required to sign the Builder's Code of Conduct, before they will effect any improvement or alteration, construction or erection on any Erf.
- 23. Special conditions to comply with the City of Cape Town Municipal Planning By-law, 2015**
- 23.1 If the Association fails to meet any obligation in Section 61 (5)(d) or Section 62(1)(a)(ii) of the aforementioned by-law and the City of Cape Town (City) believes that the members are adversely affected by the failure, the City may take appropriate action to rectify the failure.

- 23.2 The City may recover any expenditure in respect of the action contemplated in sub-clause 23.1 from the Association or its members, who are jointly liable.
- 23.3 The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purpose of Section 61(5)(d) of the by-law as referred to above.
- 23.4 If the Association cease to function effectively or to carry out its obligations, the City may give the Association a binding instruction to -
 - 23.4.1 Hold a meeting and to reconstitute itself; or
 - 23.4.2 Dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish a home owners' association and the removal of the relevant provisions in the title deed.
- 23.5 In determining whether to act in terms of clauses 23.4.1 and 23.4.2, the City must have regard to -
 - 23.5.1 The purpose of the Association;
 - 23.5.2 Who will take over the maintenance of internal engineering services and other which the Association is responsible for, if at all;
 - 23.5.3 The costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
 - 23.5.4 The impact of the dissolution of the Association on its members and the community;
 - 23.5.5 Any written representation from the Association and its members.
- 23.6 If the Association is dissolved, the members must jointly pay the costs of-
 - 23.6.1 The transfer to the City of the Association's property which contains the internal engineering service and private open space;
 - 23.6.2 The upgrading of the internal engineering services to the standards of the City.
- 23.7 In the event that the Association has ceased to function and its Constitution does not provide for an owner who wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% of the members of the Association, which consent is deemed to be the consent by the Association, unless the Constitution provides for another procedure.
- 23.8 Save for the provision in clause 20.2, this Constitution may be amended in accordance with the provisions of the Constitution, provided that an amendment concerning a matter in Section 61(1)(a) of the City of Cape Town Municipal Planning By-Law, 2015, only becomes effective when certified by the City of Cape Town.
- 23.9 The amended Constitution must be lodged with the City of Cape Town and the latest copy duly lodged at the City of Cape Town, and which the City of Cape Town has certified in terms of subsection 2 or 4 of the aforementioned by-law, is presumed to contain the operative provisions of the Constitution.

- 23.10. The City of Cape Town is exempt from liability for any damage which may be caused the certification of this constitution or an amendment thereof or the loss of a constitution lodged by the City of Cape Town.

24. Boreholes

- 24.1 *Owners must apply in writing to the Trustees for permission to sink a borehole on a private erf. Such applications may not be approved by the Trustees if and when Level 2 or higher water restrictions have been imposed by the Local Authority. (Moratorium on sinking of boreholes).*

25. Building period and building penalties

- 25.1 *A registered owner of an erf shall be obliged to erect a dwelling on the property within 2 (two) years from transfer date and further to have it completed within 1 (one) year after commencement.*
- 25.2 *Any owner who has not completed the dwelling on his property within the 36 (thirty six) months period as contemplated aforesaid, shall be liable to pay the Association a monthly penalty equal to 2 (two) months levies for each month or part thereof for which the dwelling remains uncompleted, after expiry of the 36 (thirty six) months period. This penalty levy shall be paid in addition to the levy payable by the member in terms of this constitution.*
- 25.3 *In the event of a dispute arising as to whether a dwelling is "completed" for the purposes of the provisions of this clause, the aesthetics committee shall determine such dispute and their ruling shall be final and binding.*
- 25.4 *Erven registered in the name of the developer are excluded from the above provisions.*

APPROVED