

ANNEXURE C

CONSTITUTION OF EARLS COURT HOMEOWNERS ASSOCIATION

1. DEFINITIONS

In this constitution and unless inconsistent with the context the following words and expressions shall have the meanings hereby assigned to them:

- 1.1. **ALIENATE** means alienate any **ERF** or part thereof and includes by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, prescription court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolute condition and "**ALIENATION**" shall have a corresponding meaning.
- 1.2. **ARCHITECT** means Any **ARCHITECT** or **ARCHITECTURAL DESIGNER** on the list compiled by the Developer.
- 1.3. **AUDITORS** means the auditors of the **HOA**
- 1.4. **CHAIRMAN** means the Chairman of the **TRUSTEES**.
- 1.5. **CONSTITUTION** this document as amended from time to time with the means
means annexures hereto.
- 1.6. **CONDUCT**
AGREEMENT means an agreement in which the **MEMBER** and the **MEMBER's** contractor, inter alia, undertake to the **DEVELOPER** and/or **HOA** that all construction on the **ERF** will be done in a manner acceptable to the **DEVELOPER** and/or **HOA**.
- 1.7. **CONTRACTOR**
means **Earp Construction (PTY) LTD**, Registration number 1973/000442/07
- 1.8. **DESIGN**
GUIDELINES means the guidelines which shall direct the design and construction requirements prepared for and applicable to **EARLS COURT** and includes all/any amendments made thereto from time to time.

- 1.9. **DEVELOPER** means **Earp Construction (PTY) LTD**, Registration number 1973/000442/07
- 1.10. **DEVELOPER TRUSTEE** means a trustee appointed by the **DEVELOPER**.
- 1.11. **ERF** means every **ERF** in **EARLS COURT** which in terms of the subdivision of **EARLS COURT** enjoys single and/or general residential use rights.
- 1.12. **ERVEN** means every erf in **EARLS COURT** collectively and includes immovable property transferred or to be transferred in accordance with the provisions hereto to the **HOA**.
- 1.13. **HOA** means the Earls Court Homeowners Association which is bound by the provisions of this **CONSTITUTION**.
- 1.14. **IMPROVEMENTS** means any work undertaken on an **ERF** and/or in respect of a **UNIT** including the erection or alteration of any structures, landscaping and planting.
- 1.15. **LEVY** means the levy referred to in clause 16 hereof.
- 1.16. **LOCAL AUTHORITY** means the local authority having jurisdiction over **EARLS COURT** which, at date of approval of **EARLS COURT**, was George Municipality, Western Cape Province.
- 1.17. **LUPO** means the Land Use Planning Ordinance No.15/1985 (as amended) and includes any substituting legislation.
- 1.18. **MANAGING AGENT** means any person or body appointed by the **HOA** as an independent contractor to undertake any of the functions of the **HOA**.
- 1.19. **MEMBER** means every registered **OWNER** of an **ERF** and/or a **UNIT**. If a **MEMBER** consists of more than one person such persons shall be jointly and severally liable in solidum for all obligations in terms of this **CONSTITUTION**.
- 1.20. **MEMBER TRUSTEE** means a trustee appointed by the **MEMBERS**.
- 1.21. **OPERATIONAL MANAGEMENT** the operational portion of the Environmental Management Plan produced for the Earls Court development.

- PLAN** means
- 1.22. **OWNER** means the registered **OWNER** of an **ERF** and/or a **UNIT**.
- 1.23. **RESOLUTION** means a resolution passed at an annual general meeting or any other general meeting of the **HOA** by an ordinary majority of the total votes represented at such meeting by members present in person or by proxy.
- 1.24. **EARLS COURT** means the residential portion of the development of Earls Court township by the **DEVELOPER** of certain immovable property being a portion of erf 464 George in accordance with approval obtained from the **LOCAL AUTHORITY** and includes all/any extension/s of the township approved by the **LOCAL AUTHORITY** upon application by the **DEVELOPER**.
- 1.25. **TRUSTEES** means the **DEVELOPER TRUSTEES** and the **MEMBER TRUSTEES** of the **HOA**, collectively from time to time and includes alternate and co-opted **TRUSTEES**.
- 1.26. **UNIT** means a unit constituting an apartment in a sectional title scheme established in terms of the Sectional Titles Act No. 95 of 1986, as amended, in respect of buildings and an **ERF**.

2 INTERPRETATION

- 2.1 The clause headings are for convenience and shall be disregarded in construing this **CONSTITUTION**.
- 2.2 Unless the context clearly indicates a contrary intention
- 2.2.1 words importing :
- 2.2.1.1 the singular shall include the plural and vice versa and
- 2.2.1.2 any one gender shall include the other genders; and
- 2.2.1.3 reference to natural persons includes created entities (corporate or non-corporate) and vice versa;
- 2.2.2 words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless

inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause;

- 2.2.3 when any number of days is prescribed in this **CONSTITUTION**, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.2.4 where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail;
- 2.2.5 if any provision of this **CONSTITUTION** is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this **CONSTITUTION**;
- 2.2.6 if any provision in a definition in this **CONSTITUTION** is a substantive provision conferring rights or imposing obligations on any of the **MEMBERS** then, notwithstanding that it is only in the definition clause of this **CONSTITUTION**, effect shall be given to it as if it were a substantive provision in the body of this **CONSTITUTION**.

3 **RECORDAL**

- 3.1 The **LOCAL AUTHORITY** when approving the application for subdivision to allow for **EARLS COURT** imposed a condition in terms of section 29(1) of **LUPO** whereby the **OWNER** of each subdivided portion of the immovable property comprising **EARLS COURT** and all successors in title shall be members of a homeowners association in respect of **EARLS COURT**.
- 3.2 The **DEVELOPER** is desirous of regulating and controlling harmonious development of **EARLS COURT**.

4 **COMMENCEMENT DATE**

The **HOA**, as contemplated in terms of section 29 of **LUPO**, will come into existence simultaneously with the first registration of transfer of an **ERF** from the **DEVELOPER** to an **OWNER**.

5 **STATUS**

- 5.1 The **HOA** shall
- 5.1.1 have legal personality and be capable of suing and being sued in its own name;
and

5.1.2 not operate for profit but for the benefit of the **MEMBERS**.

5.2 No **MEMBER** in his personal capacity shall have any right, title or interest to or in the funds or assets of the **HOA** which shall vest in and be controlled by the **TRUSTEES**.

6 OBJECTS

The **HOA** shall have as its objects:

6.1 the matters referred to in section 29(2)(b) and (c) of **LUPO** and without detracting from the generality thereof to ensure compliance with the conditions for subdivision imposed by the **LOCAL AUTHORITY** when approving **EARLS COURT** and, more specifically

6.1.1 to oversee, maintain and control **EARLS COURT**;

6.1.2 ensure the general high standard of **EARLS COURT**;

6.1.3 generally to promote, advance and protect **EARLS COURT** and the interests of the **HOA**.

6.2 The regulation and control of harmonious development of **EARLS COURT**.

6.3 To promote a high standard of **IMPROVEMENTS** in **EARLS COURT**.

6.4 To administer and enforce the **DESIGN GUIDELINES**.

6.5 To control the transfer of **ERVEN** in **EARLS COURT** and the conditions imposed by the **LOCAL AUTHORITY** and conditions imposed by the **DEVELOPER** in the Agreement of Sale between the **DEVELOPER** and the first **OWNER** of an **ERF**.

6.6 To promote environmental awareness responsibility amongst **MEMBERS** and to administer the relevant aspects of the **OPERATIONAL MANAGEMENT PLAN**.

6.7 The **HOA** shall have the power to do all such acts as are necessary to accomplish the fulfilment of the foregoing objects including, but not restricted, to powers specifically contained in this **CONSTITUTION**.

7 MEMBERSHIP

7.1 The **HOA** shall have as its **MEMBERS**

7.1.1 the **DEVELOPER** for as long as the **DEVELOPER** remains an owner of any portion of **EARLS COURT**, specifically including any **ERF**;

7.1.2 every **OWNER** upon registration of transfer of an **ERF** and/or a **UNIT** (as may be applicable) into his name provided that where an **OWNER** comprises more than one person, such persons shall be deemed jointly to be one **MEMBER** of the **HOA**

and shall be responsible jointly and severally for the obligations of such membership.

7.2 An **OWNER** of an **ERF** shall be a member of the **HOA** until he ceases to be the registered owner of such **ERF** and/or a **UNIT**.

7.3 When a **MEMBER** ceases to be an **OWNER** he shall ipso facto cease to be a **MEMBER** of the **HOA**.

8 PHASES

8.1 The **DEVELOPER** intends to develop and market **EARLS COURT** in phases as the **DEVELOPER** deems fit and, for as long as the **DEVELOPER** is a **MEMBER** of the **HOA**, the **DEVELOPER** shall enjoy unrestricted rights with regard to the marketing of **EARLS COURT** and, in particular, the right to erect signage within **EARLS COURT**.

8.2 The **DEVELOPER** shall, in its absolute discretion, be entitled to apply for and subject to approval by the **LOCAL AUTHORITY**, vary the layout and/or zoning and/or size and/or boundaries of **ERVEN** and/or the extent and position of streets comprising **EARLS COURT** and **MEMBERS** shall be bound thereby and shall have no claim of whatever nature against the **DEVELOPER** arising therefrom. Insofar as the consent of a **MEMBER** is required for any of the foregoing, the **DEVELOPER** (represented by its authorised representative) is irrevocably granted a power of attorney to grant any/all such consents on behalf of **MEMBERS**, as may be required.

9 MEMBERS OBLIGATIONS

9.1 Every **MEMBER** is obliged to comply with :

9.1.1 the provisions of this **CONSTITUTION** and all rules or regulations passed by the **HOA** or the **TRUSTEES**;

9.1.2 the provisions of the **DESIGN GUIDELINES**;

9.1.3 any agreement concluded by the **HOA** insofar as such agreement may directly or indirectly impose obligations on a **MEMBER**;

9.1.4 any directive given by the **HOA** and/or the **TRUSTEES** in enforcing the provisions of this **CONSTITUTION**.

9.2 The rights and obligations of a **MEMBER** are not transferable and every **MEMBER** shall

9.2.1 to the best of his ability, further the objects and interests of the **HOA**;

9.2.2 observe all directives made or given by the **HOA** and/or the **TRUSTEES**.

- 9.3 The **MEMBERS** shall be jointly liable for expenditure incurred in connection with the **HOA** referred to in this **CONSTITUTION**.
- 9.4 A **MEMBER** shall not be entitled to **ALIENATE** or transfer an **ERF** and/or a **UNIT** without the written consent of the **DEVELOPER** for as long as the **DEVELOPER** is a **MEMBER** and, thereafter, by the **TRUSTEES** which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this **CONSTITUTION**.
- 9.5 A **MEMBER** shall not consolidate an **ERF** with one or more erven without the written consent of the **DEVELOPER** for as long as the **DEVELOPER** is a **MEMBER** and, thereafter, of the **TRUSTEES**.
- 9.6 A **MEMBER** shall not **ALIENATE** an **ERF** and/or a **UNIT** unless
- 9.6.1 the proposed transferee has irrevocably bound himself in writing to become a member of the **HOA** and to observe the **CONSTITUTION** for the duration of his ownership of the **ERF**;
- 9.6.2 the **HOA** has issued a clearance that all amounts owing to the **HOA** by such **MEMBER** have been paid and that the **MEMBER** is not in breach of any of the provisions of this **CONSTITUTION**;
- 9.6.3 the proposed transferee acknowledges in writing that upon the registration of transfer of the **ERF** and/or a **UNIT** into his name, he shall ipso facto become a **MEMBER** of the **HOA**.
- 9.7 No **MEMBER** shall let or otherwise part with the occupation of his **ERF** and/or **UNIT** whether temporarily or otherwise unless the proposed occupier has agreed in writing to be bound by the relevant provisions of this **CONSTITUTION** and all rules and regulations applicable to **EARLS COURT**.
- 9.8 A **MEMBER** may not resign from the **HOA**.
- 9.9 Each **MEMBER** shall
- 9.9.1 maintain his **ERF** and all **IMPROVEMENTS** in a neat and tidy condition and in a state of good repair;
- 9.9.2 in respect of his **ERF** establish and maintain a garden to a standard acceptable to the **TRUSTEES** and in compliance with the **DESIGN GUIDELINES** where applicable;
- 9.9.3 not park any commercial type vehicle, boat, caravan, trailer or any vehicle not in good working order on any road, pavement, parking area or parkland in **EARLS**

COURT and such vehicle/boat/caravan/trailer shall be parked on the **MEMBER's ERF** so as not to be visible from a street

- 9.9.4 not do or suffer to be done on any **ERF** or **UNIT** anything which, in the opinion of the **TRUSTEES**, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any **MEMBER**, tenant or occupier of any **ERF** or **UNIT** in **EARLS COURT**;
- 9.9.5 not erect or permit the erection of any advertising boards on any **ERF** without the written approval of the **DEVELOPER** for as long as the **DEVELOPER** is a **MEMBER** and, thereafter, of the **TRUSTEES**;
- 9.9.6 ensure that animals or birds housed on his **ERF** or in his **UNIT** (if so permitted in terms of Body Corporate rules applicable to such **UNIT**) shall not constitute a disturbance or nuisance to **MEMBERS** or their tenants or occupiers and the **TRUSTEES** shall, in their absolute discretion, be entitled to require the permanent removal from **EARLS COURT** of any animals or birds which, in the opinion of the **TRUSTEES**, constitute a disturbance or nuisance.
- 9.9.7 comply with all security procedures implemented from time to time;
- 9.9.8 ensure that his dog is kept on a leash in all road reserves, parkland and open areas within **EARLS COURT** and is properly controlled and, in particular, that no nuisance is caused by such dog and that the dog does not cause uncleared fouling of sidewalks within **EARLS COURT** or on open spaces within **EARLS COURT**;
- 9.9.9 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of **EARLS COURT** and that planting on his **ERF** does not interfere with pedestrian traffic or obscure the vision of motorists;
- 9.10 No **MEMBER** shall apply for the subdivision or rezoning of his **ERF** with a view to procuring a variation or amendment or substitution of use rights.
- 9.11 No **MEMBER** shall conduct any business on an **ERF** having single residential use rights or from a **UNIT** or use such **ERF** or a **UNIT** for purposes other than those for which it is zoned unless the **TRUSTEES** have, in writing, approved the use to which the **ERF** or **UNIT** (as applicable) is to be put; and the **LOCAL AUTHORITY** has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations. The **TRUSTEES** shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the **TRUSTEES** deem necessary. The **TRUSTEES** shall not

be entitled to grant approval if such proposed business involves visits by non-residents of **EARLS COURT**.

- 9.12 Should any **MEMBER** to whom permission has been granted for the conduct of a business change any aspect of such business then such **MEMBER** shall submit a fresh application in accordance with the provisions hereof to continue such business.
- 9.13 No **MEMBER** to whom approval has been granted for the conduct of a business shall be entitled to erect any sign or advertisement on his **ERF** or on any of the common areas in **EARLS COURT** in connection with such business
- 9.14 No **MEMBER** shall permit the number of occupants of his **ERF** or **UNIT** to exceed 2 (two) persons per bedroom. The word "occupants" shall include but shall not be limited to any person who resides or stays on such **ERF** or **UNIT** on a regular or occasional basis irrespective of whether such person is related to or is financially dependant upon the **OWNER** or whether such person pays rental or gives any other form of consideration in respect of such **ERF** or any portion thereof.
- 9.15 No **MEMBER** shall be permitted to conduct a guesthouse, "bed-and-breakfast" establishment or any other form of accommodation facility from a residence situated on any **ERF** or from a **UNIT**.
- 9.16 For as long as the **DEVELOPER** remains a **MEMBER** of the **HOA**, it will have the right to zone all **ERVEN** directly adjacent to the Links Golf Course to Business zone.

10 **IMPROVEMENTS**

- 10.1 As appears more fully from the **DESIGN GUIDELINES**, a list of approved architects has been compiled in connection with **EARLS COURT** and **MEMBERS** may mandate any one of the architects on the list to design and supervise the construction of **IMPROVEMENTS**.
- 10.2 **MEMBERS** are precluded from utilising the services of architects that are not included on the list.
- 10.3 **MEMBERS** shall not
- 10.3.1 be entitled to deviate from any plan approved by the **DEVELOPER**, or its authorised representative, unless the **DEVELOPER's**, or its authorised representative's, written approval for such proposed deviation has been obtained;
- 10.3.2 submit plans in respect of **IMPROVEMENTS** to the **LOCAL AUTHORITY** unless such plans have been prepared by an architect referred to in 10.1 hereof and approved of by the **DEVELOPER** or its duly authorised representative;

- 10.3.3 be entitled to challenge or contest any of the provisions of the **DESIGN GUIDELINES**;
- 10.3.4 have any claim of whatsoever nature against the **DEVELOPER**, or its duly authorised representative, and/or the **HOA** and/or any architect, as referred to in 10.1 hereof, arising from any refusal of approval of plans and/or conditional approval and, in that regard, the discretion of the **DEVELOPER** or its duly authorised representative is absolute;
- 10.3.5 breach any restrictions applicable to the **MEMBER's ERF** and, in particular, coverage, floor area, height and building line restrictions applicable to **IMPROVEMENTS** on such **ERF**.
- 10.4 The **DEVELOPER**, or its duly authorised representative, shall be entitled to add to or reduce the number of architects, referred to in 10.1 hereof, including the right to remove any one or more of the architects on such list.
- 10.5 The construction or implementation of **IMPROVEMENTS** shall be undertaken only by the **CONTRACTOR** for as long as the **DEVELOPER** is a **MEMBER**.
- 10.6 If a **MEMBER** fails to timeously complete, in the judgment of the **DEVELOPER**, the erection of a house in accordance with the foregoing, the **DEVELOPER** shall be entitled, but not obliged, to repurchase the **ERF** from the **MEMBER** who shall be obliged to sell the **ERF** to the **DEVELOPER** at a price equal to the purchase price paid by the initial purchaser of the **ERF** from the **DEVELOPER** less Value-Added Tax and further less estate agent's commission paid by the **DEVELOPER** arising out of the sale to such initial purchaser (the "net price") upon notification to that effect received from the **DEVELOPER**. Transfer from the **MEMBER** to the **DEVELOPER** of such **ERF** shall be effected by attorneys nominated by the **DEVELOPER** and the **MEMBER** shall be liable for payment of the costs of registration of such transfer upon request. The **MEMBER** shall not be entitled to any compensation for completed or incomplete structures erected on the **ERF** as at the date of receipt by the **MEMBER** of the said notice from the **DEVELOPER**, which shall be the date of sale by the **MEMBER** to the **DEVELOPER** of the said **ERF**. The **MEMBER** and any occupier shall vacate the **ERF** and possession thereof shall pass to the **DEVELOPER** on the 5th (fifth) day after the said date of sale. The net price shall be payable by the **DEVELOPER** to the **MEMBER** on registration of transfer of the **ERF** in the name of the **DEVELOPER**, which transfer shall be effected as soon as reasonably possible after delivery of the said notice to the **MEMBER**. If the **MEMBER** fails to sign the transfer documents upon request made by the **DEVELOPER's** conveyancers he shall be deemed to have granted to the **CHAIRMAN** for the time being

of the **HOA** a power of attorney to act on his behalf in that regard and signature of documents by the said **CHAIRMAN** on his behalf shall be valid and effective as though signed by the **MEMBER**.

- 10.7 The provisions of 9.4 hereof are imposed amongst other reasons to ensure compliance with the provisions of this clause 10.
- 10.8 Should the **DEVELOPER** take steps against a **MEMBER** pursuant to a breach of this clause 10, the **DEVELOPER** shall further be entitled to recover from such **MEMBER** who shall be liable to the **DEVELOPER** for payment of all the **DEVELOPER's** legal costs incurred on the scale as between attorney and own client.
- 10.9 With effect from the date on which the **DEVELOPER** ceases to be a **MEMBER** all the rights of the **DEVELOPER** in 10.1 to 10.5 hereof (inclusive) and 10.8 and 11 hereof shall automatically vest in the **TRUSTEES** who shall substitute for the **DEVELOPER** for all purposes in terms of the said clauses.

11 THE DESIGN GUIDELINES

- 11.1 The broad concepts of the **DESIGN GUIDELINES** constitute an integral part of this **CONSTITUTION** and may not be changed. Minor amendments may be made from time to time by the **DEVELOPER** for as long as the **DEVELOPER** is a **MEMBER** and thereafter by the **TRUSTEES**.
- 11.2 All **IMPROVEMENTS** shall comply with the provisions of the **DESIGN GUIDELINES**.
- 11.3 No construction, erection or implementation of **IMPROVEMENTS** on an **ERF** may commence prior to the approval of plans for such **IMPROVEMENTS** and, in this regard
- 11.3.1 a full set of proposed plans prepared in accordance with the **DESIGN GUIDELINES** shall be submitted to the **DEVELOPER** or its duly authorised representative for approval. The **DEVELOPER** or its duly authorised representative shall be the sole judge as to whether the plans and specifications conform to the **DESIGN GUIDELINES** and its decision shall be final and binding upon the **MEMBER**;
- 11.3.2 the **DEVELOPER** or its duly authorised representative, shall be entitled to withhold approval subject to compliance with such modifications or amendments as the **DEVELOPER** or its duly authorised representative proposes to the plans submitted and/or such other conditions as may reasonably be imposed;

- 11.3.3 the **MEMBER** shall be liable for all costs in respect of the scrutiny and consideration of plans submitted by the **MEMBER** to the **DEVELOPER** or its duly authorised representative;
- 11.3.4 thereafter, the approved building plans shall be submitted to the **LOCAL AUTHORITY** for approval;
- 11.3.5 having obtained the approval of the **LOCAL AUTHORITY**, the **MEMBER** shall comply with all conditions and standards imposed by the **LOCAL AUTHORITY** insofar as these may be additional to the requirements of the **DESIGN GUIDELINES** read with the plans.
- 11.4 Any plans, notwithstanding approval by the **LOCAL AUTHORITY**, which have not been prepared and/or submitted and/or approved in compliance with the above, shall be invalid.
- 11.5 If a **MEMBER** fails to comply with any obligation contained in clauses 10 and clause 11, the **DEVELOPER** or its duly authorised representative may :
- 11.5.1 impose a daily financial penalty, the amount of which shall be determined from time to time by the **DEVELOPER** or its duly authorised representative, on notice to the **MEMBER**;
- 11.5.2 enter upon the **ERF** in order to inspect the **ERF** and/or **IMPROVEMENTS**;
- 11.5.3 appoint an independent contractor at the **MEMBER'S** expense to ensure compliance with the obligations contained in clause 11.3 hereof;
- 11.5.4 institute legal proceedings against the **MEMBER** who shall be liable to the **DEVELOPER** for legal costs on the scale as between attorney and own client.

12 TITLE DEED CONDITIONS AND FURTHER OBLIGATIONS OF MEMBERS

- 12.1 The following condition will be embodied in the deed of transfer relating to each **ERF** in **EARLS COURT** as a condition of title:

"The within property shall not be transferred without the written consent of the Earls Court Homeowners Association of which the within transferee and his successors in title shall automatically become a member."

and the **DEVELOPER** shall be entitled, in its discretion, to embody in the deed of transfer relating to each **ERF** in **EARLS COURT** such further condition/s of title as it considers necessary with particular reference to implementation of or arising from agreements of sale of **ERVEN**.

- 12.2 The **HOA** may withhold the written consent referred to in clause 12.1 hereof if the **OWNER** has not complied with all provisions of this **CONSTITUTION** or his obligations (whether financial or otherwise) in terms thereof or in terms of applicable rules or regulations.
- 12.3 A member shall not be entitled to **ALIENATE** his **ERF** and/or **UNIT** unless it is a condition of the sale and transfer that the transferee acknowledges that he becomes a **MEMBER** of the **HOA** upon registration of such transfer and that he agrees to abide by the terms of this **CONSTITUTION** and the **DESIGN GUIDELINES**.

13 **SERVICES : TAKEOVER/MAINTENANCE**

- 13.1 In respect of water, electrical and sewerage systems for the entire **EARLS COURT** the following shall apply :
- 13.1.1 upon completion by the **DEVELOPER** at its cost of such services, to the satisfaction of the **LOCAL AUTHORITY**, who shall act reasonably in that regard, ownership in such services shall automatically vest in the **LOCAL AUTHORITY** free of charge;
- 13.1.2 the **LOCAL AUTHORITY** shall at all times, at its cost, be solely responsible, up to the consumer side of water meters, the electricity connection cable and the sewer connection up to the individual property boundary, for the maintenance of such services, as well as the reading of meters and the issuing of accounts to the individual property owners;
- 13.1.3 electricity and water meters shall remain the property of the **LOCAL AUTHORITY** which retains ownership thereof;
- 13.1.4 all usual and normal conditions and fees for connections of water, sewer and electricity in terms of applicable by-laws shall apply;
- 13.1.5 the **LOCAL AUTHORITY** shall enjoy reasonable access to **EARLS COURT** for the maintenance and inspection of the services and for the reading of meters, subject to compliance with the security requirements from time to time of the **HOA**; and
- 13.1.6 no persons other than the authorised agents of the **LOCAL AUTHORITY** shall interfere with or connect to any municipal service or meter.
- 13.2 In respect of all other services including but not limited to maintenance and control of roads, pavements and parks disposal (i.e. only excluding electrical and sewer systems and centralised refuse removal) for the entire **EARLS COURT**, the following shall apply :

- 13.2.1 upon completion by the **DEVELOPER** at its cost of such services to the satisfaction of the **LOCAL AUTHORITY**, who shall act reasonably in that regard, ownership in such services shall automatically vest in the **HOA** free of charge;
- 13.2.2 initially the **DEVELOPER** and, upon establishment of the **HOA** and its operating structures, the **HOA** shall be responsible for the maintenance of such services, as well as the ongoing implementation of environmental protection procedures.
- 13.3 Refuse removal will be undertaken by the **LOCAL AUTHORITY** at standard refuse collection tariffs applicable from time to time, from a central collection point situate in close proximity to the security entrance to **EARLS COURT**. The service provided by the **LOCAL AUTHORITY** in respect of refuse removal from the said central collection point will be at the **LOCAL AUTHORITY**'s normal service levels with regard to frequency and related aspects. The **HOA** shall be responsible for ensuring that refuse is conveyed from the **ERVEN** in **EARLS COURT** to such central point.
- 13.4 The **DEVELOPER** shall be responsible for the maintenance of any temporary services during development until replaced by permanent services which shall vest in the **LOCAL AUTHORITY**.

14 **COMMUNAL AREAS AND FACILITIES**

- 14.1 The **DEVELOPER** shall, free of consideration and at the cost of the **DEVELOPER**, transfer to the **HOA** the following communal areas in each phase :
- 14.1.1 Road reserves (being roads, pavements, parking areas and planted areas);
- 14.1.2 Parks and parkland areas;
- 14.1.3 Erven designated by the **DEVELOPER** for **HOA** use;
- 14.1.4 Any other areas designated as Private Open Space;
- and includes any structures or facilities erected upon any of the above, the risk wherein passes to the **HOA** upon formation of the **HOA** and in respect whereof the maintenance and upkeep thereof is the responsibility of the **HOA** as well as liability for rates and taxes and all charges attaching thereto;
- 14.2 The **DEVELOPER** remains the owner of all portions of **EARLS COURT** not transferred to **MEMBERS** or the **HOA**.
- 14.3 Save as referred to in 13 hereof, the **LOCAL AUTHORITY** bears no responsibility for the infrastructure.

15 **LEVIES**

- 15.1 The **TRUSTEES** shall
- 15.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the **HOA** for the control, management and administration of **EARLS COURT** and for charges for the supply of any services required by the **HOA** and any rates or levies which may from time to time be imposed by the **LOCAL AUTHORITY** and/or other competent authority and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the **HOA** and the maintenance, repair and renewal of common areas and facilities;
 - 15.1.2 estimate the amount which will be required by the **HOA** to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and must include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;
 - 15.1.3 require **MEMBERS** whenever necessary to make contributions to such fund for the purposes of satisfying the expenses referred to in clauses 15.1.1 and 15.1.2, equal as nearly as is reasonably practical to such estimated amount.
- 15.2 The **TRUSTEES** may, from time to time, make special levies upon **MEMBERS** effective from the date of passing of the applicable **RESOLUTION** in respect of such expenses referred to in clause 15.1 (which are not included in any estimate made in terms of clause 15.1.2) and such levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the **TRUSTEES** shall deem fit.
- 15.3 Any amount due by a **MEMBER** by way of a levy shall be a debt due by him to the **HOA** payable within such time as determined by the **TRUSTEES**. The obligation of a **MEMBER** to pay a levy shall cease upon his ceasing to be a **MEMBER** save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a **MEMBER**. No levies paid by a **MEMBER** shall be repayable by the **HOA** upon his ceasing to be a **MEMBER**. A **MEMBER's** successor in title to an **ERF** and/or a **UNIT** shall be liable as from the date upon which he becomes a **MEMBER** pursuant to the transfer of such **ERF** or **UNIT** (as the case may be) to pay the levies attributable to that **ERF** or **UNIT**. No **MEMBER** shall be entitled to transfer his **ERF** and/or **UNIT** until the **TRUSTEES** have certified that the **MEMBER** has, at the date of transfer, paid all amounts owing by him to the **HOA**.
- 15.4 In calculating levies, the **TRUSTEES** shall take into account income, if any, earned by the **HOA** and the allocation of voting rights to **MEMBERS** as recorded herein.

- 15.5 The decision of the **TRUSTEES** in calculating the levies shall be final and binding on all **MEMBERS**.
- 15.6 The levy payable by a **MEMBER** shall bear the same proportion to the total levy imposed on **MEMBERS** as that **MEMBER**'s voting right bears to the aggregate of voting rights of all **MEMBERS**.
- 15.7 No **MEMBER** shall be entitled to vote or to enjoy any of the other privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the **HOA** in respect of his membership thereof.
- 15.8 All levies are due and payable by **MEMBERS** on the first day of the month immediately following the month in which such liability arose and, thereafter, on the first day of each and every following month.
- 15.9 **MEMBERS** shall be liable for payment of interest on outstanding amounts at a rate determined by the **TRUSTEES** from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.

16 **BREACH**

- 16.1 The **TRUSTEES** may on behalf of and in the name of the **HOA** institute legal proceedings in accordance with the provisions of this clause 16.
- 16.2 If any **MEMBER** fails in the observance of any of the provisions of this **CONSTITUTION**, or any rules or regulations made in terms thereof, and/or fails to comply with the provisions of the **DESIGN GUIDELINES**, the **TRUSTEES** may on behalf of and in the name of the **HOA** serve notice on such **MEMBER** calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:
- 16.2.1 enter upon the **ERF** to take such action as may be reasonably required to remedy the breach and the **MEMBER** concerned shall be liable to the **HOA** for all costs so incurred, which costs shall be due and payable upon demand;
- and/or
- 16.2.2 call upon such **MEMBER** in writing to remove or alter within a specified period any portion of the **IMPROVEMENTS** or any addition erected contrary to the provisions of this **CONSTITUTION** read with the **DESIGN GUIDELINES** and,

failing which, the matter shall be referred to a special meeting of the **HOA** convened to afford **MEMBERS** the opportunity to give directions to the **TRUSTEES**. The **RESOLUTION** of the **HOA** at such meeting shall be binding upon such defaulting **MEMBER** and shall be implemented by the **TRUSTEES**;

and/or

16.2.3 institute proceedings in any court of competent jurisdiction for such relief as the **TRUSTEES** may consider necessary and such **MEMBER** shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief;

and/or

16.2.4 impose a daily financial penalty, the amount of which shall be determined from time to time by the **TRUSTEES**, on notice to the **MEMBER**.

16.3 If any **MEMBER** fails to make payment on due date of levies or other amounts payable by such **MEMBER**, the **TRUSTEES** may give notice to such **MEMBER** requiring him to remedy such breach within such period as the **TRUSTEES** may determine and should he fail to timeously remedy his breach, the **TRUSTEES** may, on behalf of the **HOA**, institute legal proceedings against such **MEMBER** without further notice and such **MEMBER** will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the **HOA** in obtaining recovery.

16.4 Nothing in the foregoing shall derogate from or in any way diminish the right of the **HOA** to institute proceedings in any court of competent jurisdiction for recovery of any money due by any **MEMBER** arising from any cause of action whatsoever or for any other relief.

16.5 In the event of any breach of this **CONSTITUTION** by the members of any **MEMBER**'s household or his invitees or lessees, such breach shall be deemed to have been committed by the **MEMBER** himself but, without prejudice to the foregoing, the **TRUSTEES** shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the **MEMBER**.

17 TRUSTEES

17.1 The **TRUSTEES** of the **HOA** shall comprise 3 (three) **DEVELOPER TRUSTEES** until the first annual general meeting of the **HOA** whereupon the number shall be 5 (five) **TRUSTEES** comprising 3 (three) **DEVELOPER TRUSTEES** and 2 (two) **MEMBER**

TRUSTEES for as long as the **DEVELOPER** is a **MEMBER**. Upon the **DEVELOPER** ceasing to be a **MEMBER** all 5 (five) **TRUSTEES** shall be **MEMBER TRUSTEES**. The **HOA** shall in a general meeting held after the **DEVELOPER** has ceased to be a **MEMBER** be entitled to increase or decrease the number of **TRUSTEES**.

- 17.2 A **TRUSTEE** shall be an individual but need not himself be a **MEMBER** provided that the majority of **MEMBER TRUSTEES** shall be **MEMBERS**.
- 17.3 A **TRUSTEE** shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this **CONSTITUTION**.
- 17.4 The **DEVELOPER** shall appoint the first **DEVELOPER TRUSTEES** upon formation of the **HOA**.
- 17.5 Subject to the provisions of clause 17.6, each **MEMBER TRUSTEE** shall continue to hold office until the annual general meeting of the **HOA** following his appointment, at which meeting each **MEMBER TRUSTEE** shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The **DEVELOPER** shall, by written notice to the **TRUSTEES**, be entitled to remove any **DEVELOPER TRUSTEE** appointed by the **DEVELOPER** and upon such removal or upon any **DEVELOPER TRUSTEE** ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.
- 17.6 A **TRUSTEE** shall be deemed to have vacated his office as such upon:
- 17.6.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
 - 17.6.2 him making any arrangement or composition with his creditors;
 - 17.6.3 his conviction for any offence involving dishonesty;
 - 17.6.4 him becoming of unsound mind or being found lunatic;
 - 17.6.5 him resigning from such office in writing;
 - 17.6.6 his death;
 - 17.6.7 him being removed from office by a resolution of **TRUSTEES**;
 - 17.6.8 his being disentitled to exercise a vote in terms of this **CONSTITUTION** provided he is a **MEMBER TRUSTEE**.
- 17.7 Notwithstanding the fact that a **TRUSTEE** shall be deemed to have vacated his office as provided in clause 17.6, anything done by such **TRUSTEE** in the capacity of a **TRUSTEE** in good faith shall be valid until the fact that he is no longer a **TRUSTEE** has been

recorded in the Minute Book of the **TRUSTEES**. Should the office of a **TRUSTEE** fall vacant prior to the next annual general meeting of the **HOA**, the vacancy in question may be filled by the **DEVELOPER** if the vacancy is in respect of a **DEVELOPER TRUSTEE** and by the remaining **MEMBER TRUSTEES** if the vacancy is in respect of a **MEMBER TRUSTEE** and the person so appointed shall hold office until the next annual general meeting.

- 17.8 The first **CHAIRMAN** shall be appointed by the **DEVELOPER** and shall hold office until the first annual general meeting provided that such office shall ipso facto be vacated by the **TRUSTEE** who was appointed **CHAIRMAN** upon his ceasing to be a **TRUSTEE** for any reason.
- 17.9 Within 7 (seven) days of the holding of each annual general meeting of the **HOA** the **TRUSTEES** shall meet and shall elect from their own number the **CHAIRMAN** who shall hold office until the annual general meeting held next after his appointment, provided that the office of **CHAIRMAN** shall ipso facto be vacated by the **TRUSTEE** holding such office upon his ceasing to be a **TRUSTEE** for any reason. In the event of any vacancy occurring in the aforesaid office the **TRUSTEES** shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 17.10 Save as otherwise provided in this **CONSTITUTION**, the **CHAIRMAN** shall preside at all meetings of the **TRUSTEES** and all general meetings of the **HOA** and shall perform all duties incidental to the office of **CHAIRMAN** and such other duties as may be prescribed by the **TRUSTEES** or by **MEMBERS** and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a **MEMBER's** spouse shall be entitled to speak at any meeting.
- 17.11 If the **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.
- 17.12 If any **CHAIRMAN** vacates his office as **CHAIRMAN** or no longer continues in office for any reason, 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**.
- 17.13 A **TRUSTEE** shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the **HOA**, by virtue of any interest he may have therein.

17.14 No contract concluded on behalf of the **TRUSTEES** shall be valid and binding unless it is signed by the **CHAIRMAN** and one **TRUSTEE**, the latter specifically appointed as authorised signatory in terms of the **RESOLUTION** of **TRUSTEES** whereby the **TRUSTEES** bind the **HOA**.

17.15 **TRUSTEES** shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as **TRUSTEES** and/or **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.

17.16 **TRUSTEES** may not make loans on behalf of the **HOA** to **MEMBERS** or to themselves.

18 **FUNCTIONS, POWERS AND DUTIES OF TRUSTEES**

18.1 Subject to the express provision of this **CONSTITUTION**, the **TRUSTEES** shall manage and control the business and affairs of the **HOA**, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any **MANAGING AGENT**, may exercise all such powers of the **HOA** and do all such acts on behalf of the **HOA** as may be exercised and done by the **HOA** and as are not by this **CONSTITUTION** required to be exercised or done by the **HOA** in general meeting subject however to such regulations as may have been made by the **HOA** in general meeting provided that no regulation made by the **HOA** in general meeting shall invalidate any prior act of the **TRUSTEES** which would have been valid if such regulation had not been made.

18.2 Save as specifically provided in this **CONSTITUTION**, the **TRUSTEES** shall at all times have the right to engage on behalf of the **HOA** the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the **TRUSTEES** on such terms as the **TRUSTEES** shall decide.

18.3 The **TRUSTEES** shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.

18.4 The **TRUSTEES** shall have the right to co-opt any person or persons chosen by them. A co-opted **TRUSTEE** shall enjoy all the rights and be subject to all the obligations of the **TRUSTEES** provided that such co-opted **TRUSTEE** shall only serve until the next annual general meeting.

- 18.5 The **TRUSTEES** may, should they so decide, investigate any suspected or alleged breach by any **MEMBER** or **TRUSTEE** of this **CONSTITUTION** in such reasonable manner as they shall decide from time to time.
- 18.6 The **TRUSTEES** may make regulations and rules not inconsistent with this **CONSTITUTION** or any regulations or rules prescribed by the **HOA** in general meeting
- 18.6.1 as to the resolution of disputes generally;
- 18.6.2 for the furtherance and promotion of any of the objects of the **HOA**;
- 18.6.3 for the better management of the affairs of the **HOA**;
- 18.6.4 for the advancement of the interests of **MEMBERS**;
- 18.6.5 for the conduct of **TRUSTEES** at meetings of **TRUSTEES** and meetings of the **HOA**;
- 18.6.6 to levy and collect contributions from **MEMBERS** in accordance with clause 16;
- 18.6.7 to levy and recover from **MEMBERS** moneys which are necessary to defray the necessary expenses of the **LOCAL AUTHORITY** in the event of the **LOCAL AUTHORITY** imposing any levies and imposts against the **HOA**;
- 18.6.8 to assist it in administering and governing its activities generally.
- 18.7 Without in any way limiting the powers granted, the duties and powers of the **TRUSTEES** shall further specifically include:
- 18.7.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and **IMPROVEMENTS** of all **ERVEN** in **EARLS COURT** in strict accordance with the provisions of the **DESIGN GUIDELINES** which shall be additional to the powers of the **DEVELOPER** for as long as the **DEVELOPER** is a **MEMBER**. The **TRUSTEES** shall be entitled to require any **MEMBER**, who shall be obliged, to repaint or renovate his **IMPROVEMENTS** if in the reasonable opinion of the **TRUSTEES** such **IMPROVEMENTS** require essential repairs or have become dilapidated;
- 18.7.2 entering into of agreements with third parties on behalf of the **HOA** for any purposes of the **HOA**;

- 18.7.3 the employment on behalf of the **HOA** of agents, servants and any other party and the payment of such persons;
- 18.7.4 the taking of steps in all matters of common interest in respect of the **HOA** and, without detracting from the generality thereof, such as common sewage, electricity supply, landscaping and maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable;
- 18.7.5 the institution or defence of actions and/or applications in the name of the **HOA** and to appoint legal representatives for such purpose.

19 **PROCEEDINGS OF TRUSTEES**

- 19.1 The **TRUSTEES** may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this **CONSTITUTION**.
- 19.2 Meetings of the **TRUSTEES** shall be held at least once every 6 (six) months.
- 19.3 The **CHAIRMAN** always has the right to convene meetings of **TRUSTEES**.
- 19.4 A **TRUSTEE** may, provided he has the support in writing of 2 (two) other **TRUSTEES**, at any time convene a meeting of **TRUSTEES** by giving to the other **TRUSTEES** not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice 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.
- 19.5 A **RESOLUTION** in writing signed by all the **TRUSTEES** shall be valid and effectual as if it had been passed at a meeting of **TRUSTEES** duly called and constituted.
- 19.6 The quorum necessary for the holding of any meeting of **TRUSTEES** shall be 3 (three) **TRUSTEES** present personally provided that, for as long as the **DEVELOPER** is a **MEMBER**, no less than 2 (two) **TRUSTEES** present are **DEVELOPER TRUSTEES**. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the **TRUSTEES** then present shall be a quorum.
- 19.7 Any **RESOLUTION** of the **TRUSTEES** shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a **RESOLUTION**, the **CHAIRMAN** shall have a second or casting vote.

- 19.8 The **CHAIRMAN** shall preside as such at all meetings of **TRUSTEES** provided that, should at any meeting of **TRUSTEES** the **CHAIRMAN** not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, 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.
- 19.9 A **TRUSTEE** may be represented at a meeting of **TRUSTEES** by a proxy provided such proxy is a **TRUSTEE**.
- 19.10 The instrument appointing a proxy shall be in writing and signed by the **TRUSTEE** concerned but need not be in any particular form. The proxy shall be deposited with the **CHAIRMAN** at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.
- 19.11 The **TRUSTEES** shall
- 19.11.1 ensure that minutes are taken of every meeting of **TRUSTEES**, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the **CHAIRMAN** of the meeting;
 - 19.11.2 cause such minutes to be kept of all meetings of the **TRUSTEES** in a minute book of meetings of **TRUSTEES** kept for that purpose;
 - 19.11.3 keep all minute books of meetings of **TRUSTEES** in perpetuity;
 - 19.11.4 on the written application of any **MEMBER**, make all minutes of their proceedings available for inspection by such **MEMBER**.
- 19.12 All **RESOLUTIONS** recorded in the minutes of any meeting of **TRUSTEES** shall be valid and of full force and effect as therein recorded with effect from the passing of such **RESOLUTIONS** and until varied or rescinded, but no **RESOLUTION** or purported **RESOLUTION** of **TRUSTEES** 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 **TRUSTEES**.
- 19.13 Save as otherwise provided in this **CONSTITUTION**, the proceedings at any meeting of **TRUSTEES** shall be conducted in such reasonable manner and form as the **CHAIRMAN** of the meeting shall decide.

20 MANAGING AGENT

- 20.1 The **TRUSTEES** shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a

MANAGING AGENT to control, manage and administer **EARLS COURT** and to exercise such powers and duties as may be entrusted to the **MANAGING AGENT**, including the power to collect levies, provided that a **MANAGING AGENT** shall be appointed for a year at a time, and unless the **TRUSTEES** notify the **MANAGING AGENT** to the contrary, such appointment will be automatically renewed from year to year.

- 20.2 The **TRUSTEES** shall ensure that there is included in the contract of appointment of a **MANAGING AGENT** a provision to the effect that if the **MANAGING AGENT** is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the **TRUSTEES** may, without notice, cancel such contract of employment and the **MANAGING AGENT** shall have no claim whatsoever against the **TRUSTEES** and/or the **HOA** as a result of such cancellation.
- 20.3 With effect from the date of commencement of the **HOA**, the **DEVELOPER**, in its sole discretion, is entitled to appoint the first **MANAGING AGENT** for a period of 12 (twelve) months or until the first annual general meeting of the **HOA**, whichever first occurs.

21. **GENERAL MEETINGS OF THE HOA**

- 21.1 The **HOA** shall, within 12 (twelve) months of the date of commencement of the **HOA** hold a general meeting as its first annual general meeting. Thereafter, within 4 (four) months of each financial year end of the **HOA** it shall hold second and subsequent annual general meetings.
- 21.2 Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the **TRUSTEES** shall decide from time to time.
- 21.3 The **TRUSTEES** may, whenever they deem fit, convene a general meeting and a general meeting shall also be convened on a requisition made by not less than 25% (twenty five per centum) of **MEMBERS** or should the **TRUSTEES** fail to do so such meeting may be convened by the requisitionists themselves provided that notice thereof be given in terms of clause 22.

22. **NOTICE OF MEETINGS**

- 22.1 An annual general meeting shall be called by not less than 21 (twenty one) days written notice and a general meeting by not less than 14 (fourteen) days written notice, as provided in clause 37. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements

contained in this **CONSTITUTION**, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the **TRUSTEES** to such persons as are, under this **CONSTITUTION**, entitled to receive such notices from the **HOA**; provided that a general meeting or an annual general meeting of the **HOA** shall, notwithstanding that it is called by shorter notice than that specified in this **CONSTITUTION**, be deemed to have been duly called if it is agreed to by not less than 60% (sixty per centum) of **MEMBERS** having a right to attend and vote at the meeting.

- 22.2 The accidental omission to give notice of any **RESOLUTION** or to present any document required to be given or sent in terms of this **CONSTITUTION**, shall not invalidate the proceedings at or any **RESOLUTION** passed at any meeting.
- 22.3 Notice of the annual general meeting and/or a general meeting shall be placed in 2 (two) issues of the highest circulation English language newspaper distributed in George.
- 22.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

23 **PROXIES**

- 23.1 A **MEMBER** may be represented at an annual general meeting and/or general meeting by a proxy who must be a **MEMBER** of the **HOA**.
- 23.2 The instrument appointing a proxy shall be in writing signed by the **MEMBER** concerned or his duly authorised agent in writing but need not be in any particular form provided that where a **MEMBER** is more than one person any one of those persons may sign the instrument appointing a proxy on such **MEMBER**'s behalf. Where a **MEMBER** is a company, the proxy may be signed by any person authorised by resolution of the board of directors of the company or by its secretary and, where a close corporation, by any member of such close corporation and, where an association of persons, by the secretary thereof and, where a trust, by a person duly authorised by the trustees of such trust.
- 23.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy thereof shall be lodged with the **HOA** at least 24 (twenty four) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.

24 **QUORUM**

- 24.1 No business shall be transacted at any annual general meeting or general meeting unless a quorum is present when the meeting proceeds to business and when any

RESOLUTION is to be passed. The quorum necessary for the holding of any meeting shall be 20% (twenty per centum) of the total **MEMBERS** entitled to attend and vote thereat.

- 24.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of **MEMBERS**, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the **MEMBERS** present shall constitute a quorum.

25 **AGENDA AT MEETINGS**

In addition to any other matters required by legislation or by this **CONSTITUTION** to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 25.1 the consideration of the **CHAIRMAN**'s report;
- 25.2 the election of **MEMBER TRUSTEES**;
- 25.3 the consideration of the financial statements of the **HOA** for the last financial year of the **HOA** preceding the date of such meeting;
- 25.4 the consideration and approval, with or without amendment, of the budget as presented by the **TRUSTEES** and confirmation of levies as currently levied by the **TRUSTEES**;
- 25.5 any other business pertinent to such meeting, including any **RESOLUTIONS** proposed for adoption by such meeting and the voting upon any such **RESOLUTIONS**.

26 **PROCEDURE AT MEETINGS**

- 26.1 The **CHAIRMAN** shall preside as such at all meetings provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the **TRUSTEES** present at such meetings 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.
- 26.2 The **CHAIRMAN** may, with the consent of any 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 that might have been transacted at the meeting from which the adjournment took place. No notice need be given of the adjourned meeting save for an announcement

at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as for the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

27 **VOTING**

- 27.1 At every annual general meeting or general meeting every **MEMBER** in person or by proxy and entitled to vote shall be allocated one vote for every **ERF** of **UNIT** registered in his name.
- 27.2 If an **ERF** or **UNIT** is registered in more than one person's name, the owners shall jointly have one vote as aforesaid.
- 27.3 At any meeting of **MEMBERS** a **RESOLUTION** put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any **MEMBER**. If a poll is duly demanded it shall be taken in such manner as the **CHAIRMAN** directs exercising voting rights in terms of clause 27.1 and the result of the poll shall be deemed to be the **RESOLUTION** of the meeting at which the poll was demanded.
- 27.4 Save as expressly provided for in this **CONSTITUTION**, no person other than a **MEMBER** duly registered and who shall have paid every levy and other sum (if any) which shall be due and payable to the **HOA** in respect of or arising out of his membership, shall be entitled to be present and to vote on any question either personally or by proxy.
- 27.5 At any annual general meeting or general meeting a **RESOLUTION** put to the vote at the meeting shall be decided on an ordinary majority of votes represented by **MEMBERS** entitled to attend and vote thereon present in person or by proxy in accordance with the value of votes recorded in clause 27.1.
- 27.6 Voting on any question of adjournment shall be decided on an ordinary majority of votes represented by **MEMBERS** entitled to attend and vote thereat present in person or by proxy.
- 27.7 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.
- 27.8 Unless any **MEMBER** present in person or by proxy at a 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, or to the propriety or 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 of the **HOA** 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 **RESOLUTION** 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.

28 **MINUTES OF MEETINGS OF THE HOA**

28.1 The **TRUSTEES** shall

28.1.1 ensure that minutes are taken of every meeting of the **HOA**, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the **CHAIRMAN** of the meeting;

28.1.2 cause such minutes to be kept of all such meetings of the **HOA** in a minute book of meetings of the **HOA** kept for the purpose.

28.2 The **TRUSTEES** shall keep all minute books of meetings of the **HOA** in perpetuity.

28.3 On the written application of any **MEMBER** the **TRUSTEES** shall make all minutes of the proceedings and/or meetings of the **HOA** available for inspection by such **MEMBER**.

28.4 All **RESOLUTIONS** recorded in the minutes of any meetings of the **HOA** shall be valid and of full force and effect as therein recorded, with effect from the passing of such **RESOLUTIONS**, and until varied or rescinded, but no **RESOLUTION** or purported **RESOLUTION** of the **HOA** 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 **HOA**.

28.5 Save as otherwise provided in this **CONSTITUTION**, the proceedings at any meeting of the **HOA** shall be conducted in such reasonable manner and form as the **CHAIRMAN** of the meeting shall decide.

29 **FINANCIAL YEAR END**

The financial year end of the **HOA** is the last day of February of each year.

30 **ACCOUNTS**

30.1 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 **HOA** including:

- 30.1.1 a record of the assets and liabilities of the **HOA**;
 - 30.1.2 a record of all sums of money received and expended by the **HOA** and the matters in respect of which such receipt and expenditure occur;
 - 30.1.3 a register of **MEMBERS** showing in each case their addresses;
 - 30.1.4 individual ledger accounts in respect of each **MEMBER**.
- 30.2 On the application of any **MEMBER** the **TRUSTEES** shall make all or any of the books of account and records available for inspection by such **MEMBER**.
- 30.3 The **TRUSTEES** shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.
- 30.4 The **HOA** in general meeting or the **TRUSTEES** may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by **MEMBERS** of the accounts and books of the **HOA**, or any of them, and subsequent to such conditions and regulations, the accounts and books of the **HOA** shall be open to the inspection of **MEMBERS** at all reasonable times during normal business hours.
- 30.5 At each annual general meeting the **TRUSTEES** shall lay before the **HOA** financial statements for the immediately preceding financial year of the **HOA** or, in the case of the first period since the date of commencement of the **HOA**, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the **TRUSTEES**.

31 **DEPOSIT AND INVESTMENT OF FUNDS**

- 31.1 The **TRUSTEES** shall cause all moneys received by the **HOA** to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the **HOA** and, subject to any direction given or restriction imposed at a general meeting of the **HOA**, such moneys shall only be withdrawn for the purpose of payment of the expenses of the **HOA** or investment.
- 31.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the **TRUSTEES** from time to time.
- 31.3 Interest on moneys invested shall be used by the **HOA** for any lawful purpose in the interest of the **HOA**.

32 **AUDIT**

32.1 Once at least in every year, the accounts of the **HOA** shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the **AUDITORS**.

32.2 The duties of the **AUDITORS** shall be regulated in accordance with general practise and applicable professional standards.

33 INDEMNITY

33.1 All the **TRUSTEES** are indemnified by the **HOA** against any liabilities bona fide incurred by them in their capacities as such and in the case of the **CHAIRMAN** in his capacity as **CHAIRMAN**, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.

33.2 A **TRUSTEE** shall not be liable for the acts, or omission of the **AUDITORS** or of any of the other **TRUSTEES** whether in their capacities as **TRUSTEES** or as **CHAIRMAN** or for any loss or expense sustained or incurred by the **HOA** through the insufficiency or deficiency of any security in or upon which moneys of the **HOA** are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of mala fides, breach of duty or breach of trust.

34 DEFAMATION PRIVILEGE

Every **MEMBER** of the **HOA** and every **TRUSTEE** shall be deemed by virtue of his membership or, as the case may be, his holding office as a **TRUSTEE**, to have waived as against every other **MEMBER**, the **CHAIRMAN**, every other **TRUSTEE**, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the **HOA**, or the **TRUSTEES**, or any sub-committee, all claims and rights of action which such **MEMBER** or **TRUSTEE** might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such **MEMBER** or **TRUSTEE**, or any reference to such **MEMBER** or **TRUSTEE**, made at any meeting of **TRUSTEES**, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this **CONSTITUTION**, being a statement, report, complaint, notice or reference defamatory to such **MEMBER** or **TRUSTEE**, or otherwise injurious to the

dignity, reputation, business or financial interest of such **MEMBER** or **TRUSTEE**, whether such statement be true or false.

35 **OWN RISK**

Any person using any of the services, land or facilities of the **HOA** does so entirely at his own risk.

36 **ARBITRATION**

36.1 Should any dispute, question or difference arise between **MEMBERS** or between a **MEMBER** and **TRUSTEES** or the **HOA** out of or in regard to:

36.1.1 the interpretation of;

36.1.2 the effect of;

36.1.3 their respective rights or obligations under;

36.1.4 a breach of (save for non-payment of levies or any other amount due by a **MEMBER** in terms of this **CONSTITUTION**)

this **CONSTITUTION**, such dispute shall be decided by arbitration in the manner set out in this clause 36.

36.2 In respect of any claim arising from non-payment of levies or any other amount due by a **MEMBER** to the **HOA** in terms of this **CONSTITUTION**, the **HOA** and **TRUSTEES** shall continue to enjoy common law rights and the remedies stipulated in this **CONSTITUTION** and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

36.3 The arbitration referred to in clause 36.1 shall:

36.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and

36.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and

36.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.

- 36.4 The arbitrator shall be a practising senior counsel of not less than 5 (five) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing agreement on such appointment within the 7 (seven) day period, appointed by the President of the Law Society of the Western Cape or the successor to that Society.
- 36.5 The arbitrator shall in giving his award have regard to the principles contained in this **CONSTITUTION** and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by both in such proportion as he may determine or by the **HOA** as he in his sole discretion may deem fit.
- 36.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 36.6.1 shall be final and binding on each of them; and
 - 36.6.2 shall be carried into effect immediately; and
 - 36.6.3 may be made an order of any Court to whose jurisdiction the parties are subject upon application by any party or the **HOA**.
- 36.7 Notwithstanding anything to the contrary contained in this clause 36, the **TRUSTEES** shall be entitled to institute legal proceedings on behalf of the **HOA** by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this **CONSTITUTION**, including the **DESIGN GUIDELINES**.

37 **DOMICILIUM**

- 37.1 The **TRUSTEES** shall from time to time determine the address constituting the domicilium citandi et executandi of the **HOA**, subject to the following:
- 37.1.1 such address shall be the address of the **CHAIRMAN** or of a resident **TRUSTEE** nominated by the **TRUSTEES** or the address of any duly appointed **MANAGING AGENT**;
 - 37.1.2 the **TRUSTEES** shall give notice to all **MEMBERS** of any change of such address.

- 37.2 The domicilium citandi et executandi of each **MEMBER** shall be the street address of the **MEMBER's** **ERF** or **UNIT**.
- 37.3 It shall be competent to give notice by telefax where the **MEMBER's** telefax number is recorded with the **TRUSTEES**.
- 37.4 A **MEMBER** may by notice in writing to the **TRUSTEES** alter his domicilium provided such new address may not be a post office box or post restante and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.
- 37.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a **MEMBER** shall be adequate written notice or communication to such **MEMBER** notwithstanding that it was not sent to or delivered at his domicilium citandi et executandi.
- 37.6 Any notice to a **MEMBER**
- 37.6.1 sent to him by prepaid registered post in a correctly addressed envelope at his domicilium citandi et executandi shall be deemed to have been received on the 7th (seventh) day after posting (unless the contrary is proved); or
- 37.6.2 delivered by hand to a responsible person at his domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
- 37.6.3 successfully transmitted by telefax to his chosen telefax number shall be deemed to have been received on the 1st (first) day after the date of transmission, unless the contrary is proved.

38 **AMENDMENT**

- 38.1 No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of
- 38.1.1 the **LOCAL AUTHORITY**, and
- 38.1.2 the **DEVELOPER** for as long as the **DEVELOPER** is a **MEMBER**.
- 38.2 Subject to the provisions of clause 38.1, such addition amendment, substitution, or repeal shall require the approval of at least 67% (sixty seven per centum) of the total number of votes of **MEMBERS** of the **HOA** given at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the

requirement for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.