



M Z U R I

# MZURI ESTATE PROPERTY OWNERS' ASSOCIATION CONSTITUTION

A statutory body established in terms of sections 61 and 62 of the

City of Cape Town Municipal Planning By-Law, 2015

JUNE 2022

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## 1. INTERPRETATION

1.1. In this Constitution the following terms shall, unless the context requires otherwise, have the meanings assigned to them and cognate expressions shall have corresponding meanings, namely:

1.1.1. "**AGM**" means the annual general meeting of the Association, held once during each Financial Year at such date and venue as the Committee may decide;

1.1.2. "**Association**" means the MZURI Property Owners' Association which is established under the Municipal Planning By-Law and regulated by the provisions of this Constitution;

1.1.3. "**Auditors**" means the auditors of the Association as appointed from time to time;

1.1.4. "**Architectural Guideline**" means the Mzuri Estate Property Owners' Association Architectural Guideline (MEPOAAG) referred to in clause 29 a copy of which is attached as Annexure 5 and which is also available on the Mzuri website [www.mzuri.co.za](http://www.mzuri.co.za).

1.1.5. "**Business Unit(s)**" means any Erf or Unit zoned in terms of the Town Planning Scheme for commercial or business purposes or which is used for business purposes with the consent of the Local Authority;

1.1.6. "**Chairman**" means the chairperson of the Committee, from time to time;

1.1.7. "**Committee**" means the executive management committee of the Association from time to time, as contemplated in clause 5;

1.1.8. "**Committee Member**" means a member of the Committee, elected, appointed or co-opted, as the case may be, in terms of this Constitution and the procedures set out in clause 8, and who shall be an Individual;

1.1.9. "**Common Property**" means:

1.2.8.1 any portion of the Land registered in the name of the Association;

1.2.8.2 any portion of the Land within the Estate which is not subject to an exclusive right in favour of a Member; and

including private open space, private streets, internal engineering services arising from the sub-division of the Land, all entrances, communal Roads, public open

areas, gardens, all visitors' parking bays and any other such areas as may be determined by the Committee from time to time as being common property;

- 1.1.10. **"CSOS Act"** means the Community Scheme Ombud Service Act 9 of 2011, as amended from time to time, and any regulations made and in force thereunder
- 1.1.11. **"Companies Act"** means the Companies Act, 71 of 2008;
- 1.1.12. **"Constitution"** means this Constitution as amended from time to time in accordance with clause 50;
- 1.1.13. **"Council"** means the City of Cape Town, or its successors;
- 1.1.14. **"Deeds Registries Act"** means the Deeds Registries Act, 47 of 1937;
- 1.1.15. **"Developer"** means Coltrade West Proprietary Limited (Registration No. 2021/400243/07) and Lazercor Developments (Pty) Ltd (Registration No. 2003/006164/07, or its successor in title;
- 1.1.16. **"Development"** means the subdivision and development of the Estate on the Land as determined by the Developer with the approval of the Council, as set out in Council's Approval and substantially in accordance with the Site Development Plan, which development may be implemented in phases;
- 1.1.17. **"Development Period"** means the period commencing on the creation of the Association and which period shall endure:
  - 1.1.17.1. up to the date that all the Erven have been transferred from the Developer to third parties and all Erven have been improved by the erection of dwellings and/or buildings thereon, including all such additional area(s) as may be incorporated by the Developer in further phases into the Development; or
  - 1.1.17.2. until the date when the Developer, in its sole discretion, notifies the Association in writing that the development period has ceased, whichever occurs first);
- 1.1.18. **"Dwellings"** means such residential dwellings as are erected on any Erf, as the Developer in its discretion shall designate, and being differentiated according to the respective design, Facilities, rights and obligations attaching to each, and as dealt with more fully in the Estate Rules applicable to each;

- 1.1.19. **"Erf/Erven"** means the erf/erven in the Estate within the Estate, arising from subdivision of the Land, together with, if applicable, the Dwelling(s), buildings and structures erected thereon, and on which is or may be established, *inter alia*, but not limited to residential Dwellings, as depicted and designated on subdivision plan FP/0522/1045/P1 and on the Site Development Plan;
- 1.1.20. **"Estate"** means the estate known as "MZURI" to be established on the Land and which includes (1) the Erven (2) the Common Areas and (3) the Facilities;
- 1.1.21. **"Estate Manager"** means the Person appointed to manage the affairs of the Association and the Estate, as more fully dealt with in clause 41;
- 1.1.22. **"Estate Rules"** means those rules, as, established and maintained in terms of clause 28;
- 1.1.23. **"Facilities"** means all and any Facilities, Services or amenities of whatsoever nature which may be provided within the Estate, including such facilities relating to entertainment, recreation or otherwise, clubhouses, the provision of water, sewerage, electricity, drainage, telecommunications, refuse removal, firefighting and transport, which may be provided for the benefit of the Members within the Estate;
- 1.1.24. **"Finance Committee"** means the finance committee as more fully described in clause 22;
- 1.1.25. **"Financial Year"** means the financial year of the Association, being the year ended on the last day of April each year, or such other date as is determined by the Committee from time to time;
- 1.1.26. **"Individual"** means a natural person;
- 1.1.27. **"Land"** means erven 18371, 18372, 18373 [and any other erf or erven which the Developer may wish incorporate into the Association in terms of clause 47 of this Constitution], Somerset West, situate in the City of Cape Town, Western Cape Province, being the land on which the Development is to be established;
- 1.1.28. **"Landscaping Plan"** means the landscaping plan for the Estate, as approved by the Council from time to time, a copy of which is available on the Estate web page;

- 1.1.29. **"Levies"** means the Association levies to be recovered from Members and raised by the Finance Committee in terms of clause 22. A draft budget of the initial Levies is annexed as Annexure 3;
- 1.1.30. **"Local Authority"** means the local authority having jurisdiction over the Estate, meaning a Municipality or any other statutory local authority;
- 1.1.31. **"Member(s)"** means the member(s) of the Association, and includes the trustee of an insolvent Member and the executor of a deceased Member;
- 1.1.32. **"Municipal Planning By-Law"** means the Cape Town Municipal Planning By-Law, 2015;
- 1.1.33. **"Ordinary Resolution"** means a resolution adopted with the support of more than 50% of the Members present at a meeting, in person, or by proxy, and entitled to vote;
- 1.1.34. **"Operational Management Plan"** means the Mzuri Estate Operational Management Plan submitted to and approved by the Executive Director: Energy, Environment & Spatial Planning, dealing with the ongoing management and maintenance of the public and private open space areas, tree retention, stormwater attenuation pond, and the Sustainable Urban Drainage Systems, within the Estate, a copy of which is available on the Estate web page;
- 1.1.35. **"Person"** means any individual or juristic person;
- 1.1.36. **"Registered Office"** means the registered office of the Association, which shall be at the Association's offices situate on the Estate, or such other address as the Committee shall determine from time to time;
- 1.1.37. **"Registered Owner"** means the registered owner of an Erf or a share thereof who is, in terms of the Deeds Registries Act, reflected in the records of the Deeds Registry concerned as a registered owner of the Erf or a share thereof;
- 1.1.38. **"Resident"** means any Person(s) occupying an Erf or Unit;
- 1.1.39. **"Roads"** means such roads, including driveways as may be constructed in the Estate, inclusive of right of way servitudes
- 1.1.40. **"Services"** means all services to the Estate including for the provision of water, sewerage, electricity, drainage, storm water drainage, telecommunications,



refuse removal, firefighting, security, transport, surveillance and all other utilities and amenities serving the Estate;

- 1.1.41. **"Servitudes"** means such servitudes as may be registered over the Land in terms of the conditions of approval of the Development, as indicated on the Site Development Plan, including as set out in the Council's Approval;
  - 1.1.42. **"Site Development Plan"** means the plan indicating the subdivision of the Land and various land use portions in respect of the Land and as approved by Council from time to time;
  - 1.1.43. **"Special Resolution"** means a resolution passed by 75% (seventy five percent) of Members present, in person, or by proxy, at a meeting and entitled to vote;
  - 1.1.44. **"Town Planning Committee"** means the town planning committee consisting of 1 (one) Committee Member, 1 (one) professional architect and 2 (two) representatives (who need not be Members) all of whom are appointed by the Developer during the Development Period, and after the Development Period, the whole town planning committee shall be appointed by the Committee;
  - 1.1.45. **"Town Planning Scheme"** means an operative town planning scheme applicable to the Land and the Estate from time to time; and
- 1.2. the intention of this Constitution is to give effect that all Erven and Units which form part of this Association are managed in terms of this Constitution and where any conflict arises in the interpretation of any aspect of this Constitution and any other legislation which may impact on Erven and Units, the conflict must be resolved to give effect to this Constitution taking precedence in such interpretation;
  - 1.3. references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
  - 1.4. references to Members entitled to vote present at a meeting or acting in person shall include juristic persons represented by duly authorised representative/s, including juristic persons represented by proxy;
  - 1.1. references to any statute or any regulation issued thereunder shall be references to that statute or regulation as modified, amended or substituted from time to time, or to any legislation or regulation which replaces it;

- 1.5. references to any statute or any regulation issued thereunder shall be references to that statute or regulation as modified, amended or substituted from time to time, or to any legislation or regulation which replaces it;
- 1.6. the headings are for reference purposes only and shall not affect the interpretation of this Constitution;
- 1.7. the terms defined in this Constitution shall bear the same meanings in any annexures, if applicable;
- 1.8. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.9. if any term is defined within the context of any particular clause in the Constitution, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Constitution, notwithstanding that that term has not been defined in this interpretation provision;
- 1.10. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;
- 1.11. any reference to "writing" includes electronic communication as defined in the Electronic Communications and Transactions Act, 2002 and "written" shall have a corresponding meaning;
- 1.12. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this Constitution;
- 1.13. where any consent or approval is required to be furnished by the Association to a Member, such consent or approval shall:
  - 1.13.1. be in writing and signed by the Association or its authorised agent;
  - 1.13.2. not be unreasonably withheld; and
  - 1.13.3. be given prior to the Member taking the relevant action requiring the consent;
- 1.14. the onus of proof with regard to the receipt of any notice given or payment made by a Member, shall be on the giver of the notice or the maker of the payment;

- 1.15. in the event of a Member consisting of more than one Person, they shall be jointly and severally liable *in solidum* for all their obligations in terms of this Constitution; and
- 1.16. if any provision of this Constitution is unenforceable for any reason whatsoever, then such provision shall be deemed to be separate and severable, without in any way affecting the validity of the remaining provisions.

## **2. CREATION OF THE ASSOCIATION**

- 2.1. The Association is hereby created with effect from the date on which the transfer of the first Erf arising from the sub-division of the Land or part thereof occurs.
- 2.2. The Association is constituted as a Property Owners' Association in terms of section 61 of the Municipal Planning By-Law, in accordance with conditions imposed by Council's Approval.
- 2.3. This Constitution, and any amendment made in terms of clause 50, shall be lodged with the Council, and the latest copy duly lodged with the Council, and which the Council has certified in terms of section 62(2) or 62(4) of the Municipal Planning By-Law, is presumed to contain the operative provisions of the Constitution.

## **3. STATUS OF THE ASSOCIATION**

- 3.1. The Association will:
  - 3.1.1. have legal personality and be capable of suing and being sued in its own name;
  - 3.1.2. have perpetual succession; and
  - 3.1.3. operate for the benefit of the Members.
- 3.2. No Member shall have any right, title or interest in or to the funds or assets of the Association in his personal capacity, all of which shall vest in the Association.

## **4. MAIN OBJECT AND POWERS OF THE ASSOCIATION**

- 4.1. The main objects of the Association are the matters referred to in section 62 of the Municipal Planning By-Law and generally to promote, advance, protect and act in accordance with the communal interests of the Members, and in so promoting such communal interests to provide, promote and maintain essential and community services, amenities, Facilities, Services and activities within the Estate.
- 4.2. The Association shall have the power and responsibility generally to:

- 4.2.1. act as the Property Owners' Association (established in terms of section 62 of the Municipal Planning By-Law) of the Estate, and in particular to procure that the matters referred to in this Constitution and the Municipal Planning By-Law be adhered to and complied with;
- 4.2.2. implement and enforce this Constitution and the Rules and shall be responsibility for all administration and management required in respect thereof and to this end has the power to impose and recover fines and penalties;
- 4.2.3. may open and close a bank account in the name of the Association with a registered financial institution;
- 4.2.4. may institute and defend legal actions in the name of the Association;
- 4.2.5. read with clause 22, must determine and collect levies to defray the expenses of the Association;
- 4.2.6. may enter into contracts for the furtherance of the main objects and purposes of the Association; provided that no contract concluded on behalf of the Association shall be valid and binding unless it is signed by the Chairperson of the Committee;
- 4.2.7. control the design and construction of any alterations to all buildings, and/or structures erected or to be erected in the Estate in accordance with the Architectural Guidelines, the conditions of approval of sub-division of the Land, the Site Development Plan, the Landscaping Plan and any other plan, manual, guidelines, policy, contract and the like of any authority and to which the Development may be subject or which may hereafter be imposed, and in accordance with the requirements of the Council or any other authority;
- 4.2.8. comply with, and to monitor and ensure compliance by Members with, the conditions imposed by the Council pursuant to the Council's Approval, and the Site Development Plan, the Maintenance Management Plan, the Maintenance Agreement, the Operational Management Plan, any sub-division approvals or any other management plan, including but not limited to the monitoring and enforcement of compliance thereof by Members, and by the Association itself for the ongoing management of the Estate;
- 4.2.9. control, administer and manage private open space, private streets, the Facilities, the Services, any other services and amenities within the Estate arising from the subdivision of the Land and buildings situated thereon which fall under its control for the benefit of the Members;

- 4.2.10. control, manage and maintain the structures, Services and Facilities situated within the Estate;
- 4.2.11. promote, advance and protect the communal and group interests of the Members generally;
- 4.2.12. implement and maintain security measures and systems for controlled access to the Estate;
- 4.2.13. maintain all internal Roads, parking areas, private open spaces and internal Services;
- 4.2.14. enter into service agreements with the Council or any other authority or supplier of Services;
- 4.2.15. by resolution at the first AGM, to accept the cession of any rights and delegation of any duties to the Association under any other agreement(s) entered into by the Developer for the benefit of the Association prior to the creation of the Association, including the Maintenance Agreement;
- 4.2.16. landscape the remainder of the Land as required in terms of Council's Approval, prescribe measures for the landscaping and development of the Estate, including in accordance with the Landscaping Plan and ensure the ongoing maintenance of and compliance with the Landscaping Plan after the Developer has implemented same;
- 4.2.17. prescribe measures for the architectural design and building of improvements on the Estate, to update and amend when necessary, the Architectural Guidelines, subject to clause 29.3 so as to ensure the harmonious and aesthetic development of the Estate, to prescribe measures for the maintenance of such standards of development, and to comment to the local authority on whether any proposed building plans comply with the Architectural Guidelines;
- 4.2.18. register, where necessary, various services or other Servitudes over Common Areas including in favour of the local authority/Public Works Department and/or similar developments or neighbouring properties located in close proximity to the Estate and to register services (including the Services) and/or Servitudes in favour of the Local Authority, Erven in the Estate or over any Erven or other land owned by the Association such as may from time to time be required. All overland storm water escape routes are to be maintained and kept free of all obstruction and protected by servitudes where they traverse private property;

- 4.2.19. acquire and hold servitudes in the Association's favour for access to the Estate and also for the supply of Services;
- 4.2.20. formulate, enforce, modify, amend, add and delete the Estate Rules;
- 4.2.21. appoint an Estate Manager to manage the affairs of the Association;
- 4.2.22. include in the Title Deeds of the Common Areas, whether transferred to the Association or not, that all such Common Areas shall not be sold, alienated, otherwise disposed of or transferred to any other party, nor mortgaged other than is permitted in terms of this Constitution;
- 4.2.23. accredit architects and builders to be utilised by Members in respect of any design and construction work to be conducted within the Estate from time to time, in accordance with such criteria as the Association may stipulate from time to time;
- 4.2.24. accredit Estate Agents appointed by Members in respect of the resale of their Erven, in accordance with such reasonable criteria as the Association may stipulate from time to time;
- 4.2.25. if applicable, enter into agreements with the Developer and/or third parties and/or relevant authorities located in close proximity to the Estate or with the owners of neighbouring properties, with regard to the use of and/or the sharing of land, Facilities or Services of any nature whatsoever, including but not being limited to security, landscaping, gardening, agricultural services, water, sewerage, electricity, Roads, whether or not for the purposes of sharing the cost thereof;
- 4.2.26. perform garden and other maintenance, repairs, landscaping and upkeep in respect of the Common Areas;
- 4.2.27. accredit service providers or contractors in respect of services to be rendered to Members;
- 4.2.28. grant or refuse a Member consent to transfer his Erf depending as to whether or not there has been compliance with this Constitution, the Estate Rules, or such other rules and/or determinations made by the Association and/or the Committee from time to time;
- 4.2.29. ensure the inclusion in the Title Deeds of Erven that no Erf may be alienated without prior written consent of the Association;

- 4.2.30. bind Members to contribute by way of subscriptions and Levies towards the funds of the Association and to enforce payment of and to collect and receive from Members such subscriptions and Levies (including, if necessary, to institute legal action to do so);
- 4.2.31. enforce compliance with its Constitution, including with the Estate Rules and any regulations made by the Committee, in such manner as it may deem fit and in particular by means of a system of fines or such other penalties as it may see fit to prescribe;
- 4.2.32. deal with all matters set out in the Council's Approval and to ensure ongoing compliance, where applicable, with the Council's Approval; and
- 4.2.33. do anything necessary or desirable for or incidental, supplementary or ancillary to achieve the objects set out above.

## **5. REGULATION OF THE ESTATE**

- 5.1. The Association may, in its discretion, permit the Members, subject to the provisions of this Constitution, to use the Common Areas, open spaces and Roads, and shall do so unless by Special Resolution taken at an extraordinary general meeting called for the purpose, it is otherwise resolved for good reason.
- 5.2. The Committee may from time to time and whenever it deems necessary, limit, restrict, or suspend such use in relation to any part of such Common Areas, Roads and open spaces for good reason.
- 5.3. Notwithstanding that Erven may be held either individually or in undivided shares by Members, Members shall be obliged at all times to allow any Persons lawfully within the Estate access over any Erf by means of any formed or paved access way including drive-ways, parking areas and pathways.
- 5.4. Notwithstanding that Members hold title to their Erven individually, it is recorded that the development of the Estate is of a homogeneous nature and that the Association shall be vested with the overall control of all matters affecting the Estate. To this end, the Members agree:
- 5.5. No Member may undertake any planting, landscaping or gardening activities on any Erf, save to the extent permitted in the Estate Rules;

- 5.6. No Member shall be entitled to subdivide or rezone any Erf during the Development Period without the prior written consent of the Developer and thereafter without the prior written consent of the Committee;
- 5.7. No Member or other Person shall be entitled to sink or use any boreholes within the Estate during the Development Period without the prior written consent of the Developer and thereafter without the prior written consent of the Committee;
- 5.8. nothing contained in clause 34.3 shall be construed as preventing the Developer from:
  - 5.8.1. building upon any Erven owned by it, any buildings of whatsoever nature which it may be entitled to erect in terms of the Town Planning Scheme and as depicted on the Site Development Plan, and as may be approved by the Local Authority; and
  - 5.8.2. erecting upon the Land owned by the Developer such improvements as may be permitted in terms of the Town Planning Scheme and approved by the Local Authority.

## 6. INDEMNITY

- 6.1. The Committee Members and the Auditors shall be indemnified out of the funds of the Association against any liabilities *bona fide* and reasonably incurred by them in their respective said capacities and in the case of a Committee Member, in his capacity as Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such Person/s by the Court.
- 6.2. Every Committee Member, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such Person or Persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such Person or Persons in the discharge of any of his/their respective duties, including in the case of a Committee Member, his duties as Chairman . Without prejudice to the generality of the above, the Association shall specifically indemnify every such Person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 6.3. A Committee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Committee Members, whether in their capacities as members



of the Committee or as Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of *bona fides* or breach of duty or breach of trust.

## **7. EXCLUSION OF LIABILITY**

- 7.1. Any Member or other Person using or accessing any of the Facilities or Common Areas, does so entirely at his own risk, and no Member or other Person shall have any claim against the Developer, the Association, the Estate Manager or any of their agents, employees or contractors, of whatsoever nature arising from use.
- 7.2. The Association, the Developer, the Estate Manager or any of their agents, employees or contractors shall not be liable for loss (including consequential loss), injury, loss of life or damage to Person or property of any nature whatsoever which any Member, and Resident, any lessee, visitor or occupier of any buildings and/or structures in the Estate, any member of his/their family(ies), or his/their employee, agent, contractor, servant, invitee, visitor, guest or any other person whomsoever may sustain:
- 7.2.1. by reason of any defect in or state of disrepair of the Common Areas, the Facilities, Services, any communal building, communal facility, or any part thereof, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein, notwithstanding that such defect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Developer, the Estate Manager, or any of their agents, employees or contractors; or
- 7.2.2. directly or indirectly, in or about the Estate (including, without limiting the generality of the foregoing, the Common Areas, the Facilities and the Erven), whether such injury, loss or damage be due to theft, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire, water, leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other services to the Estate (irrespective of the cause thereof), or be due to or occasioned wholly or in part by any act or

omission (whether negligent or otherwise) of the Association, the Developer, the Estate Manager, or any of their agents, employees or contractors, or be due to riots, strikes, civil commotion or any other cause whatsoever.

- 7.3. Every Member individually hereby indemnifies and holds harmless the Association, the Developer, and the Estate Manager against all claims of whatsoever nature which may be brought against the Association, the Developer, or the Estate Manager by that Member, members of his family or any Person within the Estate at the invitation of or under the control of the Member concerned, whatsoever the nature of such claim and howsoever arising.
- 7.4. Every Member individually, and the Association, hereby indemnifies and holds harmless the Council for any damage or loss which may be caused by its certification of this Constitution or any amendment made in terms hereof or by the loss of this Constitution by the Council.

## **8. APPOINTMENT, REMOVAL AND ROTATION OF THE COMMITTEE MEMBERS**

- 8.1. The Developer shall appoint the first members of the Committee who shall hold office until the first meeting of the Association as envisaged in clause 15.1.1. The Members shall at the first meeting of the Association elect the Committee Members.
- 8.2. The Committee shall consist of:
  - 8.2.1. three Committee Members;
- 8.3. With effect from the first meeting of the Association and during the Development Period, at least 3 (three) Committee Members shall be appointed by the Developer. The Developer appointees need not be Members and may be removed and replaced by the Developer such as it in its discretion determines, upon written notice to the Committee from time to time.
- 8.4. After the Development Period, all Committee Members shall be elected by Members.
- 8.5. The election of the Committee Members in terms of clause 8 are only for the vacancies in terms of clause 8.2.1.
- 8.6. Nominations for the appointment of Committee Members (save for those appointed by the Developer) shall be in writing proposed by 2 (two) Members, which written nomination, together with the nominees written acceptance of the nomination, shall be delivered not later than 14 (fourteen) clear days prior to the AGM, failing which the nomination will be invalid.
- 8.7. Save as set forth in clause 8.8 and save for the Committee Members appointed by the Developer who shall not be obliged to rotate, each Committee Member shall continue to hold office as such from the date of this appointment to office until the AGM next following his said

appointment, at which meeting each Committee Member shall be deemed to have retired from office as such, but will be eligible for re-election to the Committee at such next meeting.

- 8.8. Any vacancy occurring on the Committee may be filled by the Committee, but so that the total of the Committee Members shall not at any time exceed the maximum number, provided that if the Committee Member who vacates his office was the appointee of the Developer, the Developer shall be entitled to appoint a Committee Member in his stead and if the vacating Committee Member was a nominee of the Members, the remaining Committee Members nominated by the Members shall be entitled to nominate a Committee Member in his stead.
- 8.9. If the number of Committee Member falls below the minimum number pursuant to this Constitution, the vacancies must be filled in accordance with clause 8.8 or at a special general meeting called specifically for the purpose of filling the vacancies, as soon as possible and, in any event, not later than 3 (three) months from the date that the number of Committee Members falls below the minimum. After the expiry of the aforesaid 3 (three) month period, and should the vacancies not be filled, the continuing Committee Members may act only for the purpose of summoning a special general meeting for the purposes of filling vacancies, and until such time as the vacancies are filled.
- 8.10. No person shall be elected as a Committee Member if he is Ineligible or Disqualified (as such terms are understood in terms of the Companies Act) and any such election shall be a nullity.
- 8.11. If any Developer appointee vacates his position, the Developer shall be entitled, but not obliged, to appoint another appointee to replace him.
- 8.12. Save as set out in clause 8.13 below and subject to clauses 8.2 and 8.11, each elected Committee Member shall continue to hold office until the AGM next following his appointment or election, as the case may be, at which meeting each elected Committee Member shall be deemed to have resigned from office as such, and shall be eligible for re-election to the Committee at such meeting.
- 8.13. The Committee Members shall, after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines, and failing which, as determined by the Chairman from time to time) of those Members who attend the AGM, and successive Committee Members shall be elected likewise at each successive AGM, provided that no Member shall be eligible for election unless he shall have been duly nominated and seconded in writing by other Members and such written nomination, duly endorsed by the nominee, has been handed to the Chairman not later than the day preceding the meeting and provided further that such nominee's Levies for the current year have been duly paid and such nominee is not in breach of any of the Estate Rules or any provision of this Constitution. The provisions of this clause

8.13 shall apply to any election of Committee Members taking place at a special general meeting called for that purpose.

8.14. A Committee Member shall be deemed to have vacated his office as such and shall be required to resign upon:

8.14.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

8.14.2. his making any arrangement or compromise with his creditors;

8.14.3. his conviction for any offence involving dishonesty;

8.14.4. his becoming of unsound mind or being found mentally ill;

8.14.5. every AGM, but, subject to this clause 8.14, shall be eligible for re-election;

8.14.6. him absenting himself from 3 (three) consecutive meetings of the Committee without leave of absence;

8.14.7. his resignation from such office in writing delivered to the Chairman of the Association;

8.14.8. his death;

8.14.9. being an elected Member, his being removed from office by an Ordinary Resolution of the Members;

8.14.10. being an elected Member, in the event of him being disentitled to exercise a vote;  
or

8.14.11. being an elected Member, his ceasing to be a Registered Owner; or

8.14.12. his becoming Ineligible or Disqualified (as such terms are understood in terms of the Companies Act).

8.15. A Committee Member, save for the Developer appointees, shall, subject to clause 8.16, be a Registered Owner of an Erf.

8.16. If a Registered Owner is a juristic person (as that term is defined in the Companies Act), the duly authorised representative thereof, who is an Individual, shall be eligible to serve on the Committee.

- 8.17. Any act performed in the capacity of a Committee Member in good faith, by a person who ceases to be a Committee Member, shall be valid until the fact that he is no longer a Committee Member has been recorded in the minute book of the Committee.
- 8.18. Where any elected Committee Member vacates his office, during any Financial Year, for any reason whatsoever, then the remaining Committee Members shall be entitled to co-opt new members to the Committee, to fill such vacancy, who shall hold office until the next AGM. Clause 8.11 shall apply during the Development Period.

## **9. THE COMMITTEE**

- 9.1. Within 7 (seven) days of the holding of an AGM the Committee shall meet and shall elect from its own number a Chairman, who shall hold their respective offices until the next AGM, provided that the office of the Chairman shall automatically be vacated upon his ceasing to be a Committee Member for any reason. No one Committee Member shall be appointed to more than one of the aforesaid offices. If any vacancy occurs in any of the aforesaid offices at any time, the Committee shall immediately meet to appoint one of their number as a replacement in such office.
- 9.2. During the Development Period the Chairman shall be one of the Committee Members appointed by the Developer in terms of clause 8.3.
- 9.3. Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Committee or Members, and shall allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 9.4. Committee Members shall be entitled to be repaid all reasonable and *bona fide* direct expenses incurred by them respectively and only after these being approved in writing by the Committee, in or about the performance of their duties as Committee Members 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.

## **10. FUNCTIONS AND POWERS OF THE COMMITTEE**

- 10.1. The Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association including as set out in clause 4.2, and as are not in terms of this Constitution required to be exercised or done by the Association in a general meeting. Notwithstanding the

aforegoing, the Association in general meeting may, from time to time, prescribe certain regulations concerning the powers conferred upon the Committee, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Committee which would have been valid if such regulation had not been made.

- 10.2. The Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 10.3. Subject to the provisions of clause 5, and in addition to any Committee Members co-opted in terms of clause 8.8, the Committee shall have the right to co-opt 1 (one) additional Member chosen by it onto the Committee. A co-opted Committee Member (including as co-opted in terms of clause 8.8) shall enjoy all the rights and be subject to all the obligations of the Committee Members.
- 10.4. The Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Committee Member of this Constitution, in such reasonable manner as it shall decide from time to time.
- 10.5. The Committee may make regulations, by-laws and Estate Rules, binding on Members, not inconsistent with this Constitution:
  - 10.5.1. as to disputes generally;
  - 10.5.2. for the furtherance and promotion of any of the objects of the Association;
  - 10.5.3. for the better management of the affairs of the Association;
  - 10.5.4. for the advancement of the interests of Members;
  - 10.5.5. for the conduct of Committee meetings and general meetings; and
  - 10.5.6. to assist it in administering and governing the Association's activities generally;and shall be entitled to cancel, vary or modify any of the same from time to time.
- 10.6. The Committee and Town Planning Committee shall further:
  - 10.6.1. have the power to require that any construction on the Estate shall be supervised to ensure that the provisions of this Constitution, the Architectural Guidelines and the Estate Rules are complied with and that all such construction is performed in a proper and workmanlike manner;

- 10.6.2. subject to clause 29.3, be entitled from time to time to update and amend the Architectural Guidelines, and to ensure that the Architectural Guidelines are complied with at all times;
  - 10.6.3. ensure compliance with the Landscaping Plan, and contracts or instructions in respect of the Estate, and ensure that these documents and instructions are complied with at all times; and
  - 10.6.4. ensure that the conditions of the Council's Approval are properly complied with.
- 10.7. The Committee shall have the right to appoint committees consisting of such number of their members and such outsiders, including the Estate Manager, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Committee Members may from time to time deem necessary.
- 10.8. Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer on the Land and the Common Areas, all plans for buildings, out-buildings, structures, additions and alterations shall be approved by the Committee or Township Planning Committee (if so appointed), or any Person designated by them for such purpose prior to such plans being submitted to the Council for approval, if required.

## **11. PROCEEDINGS OF THE COMMITTEE**

- 11.1. The Committee may meet together for the dispatch of business, adjourn, postpone and otherwise regulate its meetings as they deem fit, subject to any provisions of this Constitution.
- 11.2. Meetings of the Committee shall be held at least once every quarter, provided that if all the Committee Members have waived in writing the above requirement in respect of a particular quarter, then no meeting of the Committee needs be held for that quarter.
- 11.3. Any Committee Member may convene a meeting at any time, by providing notice to the other Committee Members, and to the Estate Manager who shall be entitled to attend the meeting, but not vote thereat.
- 11.4. The quorum necessary for the holding of any meeting of the Committee shall be 50% (fifty percent) of the Committee Members holding office at any time and present in person or electronically, and in the event that there are 3 (three) Committee Members the quorum shall be 2 (two) Committee Members holding office at any time and present in the country as at the date of the meeting, provided that during the Development Period, at least 1 (one) Developer appointed Committee Member shall be present in person to establish a quorum.

- 11.5. The Chairman shall preside as such at all meetings of the Committee, provided that should at any meeting of the Committee, the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then those present of the Committee Members shall vote to appoint a Chairman for the meeting, and that Chairman so appointed shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 11.6. A Committee Member shall take minutes of every Committee meeting, although not necessarily *verbatim*, which minutes shall be reduced to writing, without undue delay, after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Committee meetings, after such certification, shall be placed in a Committee minute book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Committee minute book shall be open for inspection at all reasonable times by any Committee Member, the Auditors and the Members.
- 11.7. All competent resolutions recorded in the minutes of any Committee meeting 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 Committee shall be of any force or effect, or shall be binding upon the Members or any of the Committee Members unless such resolution is competent within the powers of the Committee.
- 11.8. The proceedings at any Committee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 11.9. A written resolution signed by all the Committee Members, and being not less than is required to form a quorum, shall be valid in all respects as if it had been duly passed at a meeting of the Committee duly convened. The resolution may consist of several documents, each signed by one or more Committee Members.
- 11.10. Resolutions put to the vote at meetings of the Committee shall be carried by a simple majority of those present and entitled to vote.
- 11.11. In the case of an equality of votes, the Chairman of the Committee shall not have a casting vote.
- 11.12. All acts done by the Committee Members or by any committee of the Committee shall, even if it be discovered that there was some defect in the appointment of that Committee Member or any of them, be as valid as if every person had been duly appointed and was qualified.



## 12. MEMBERSHIP

- 12.1. The Members of the Association shall be:
- 12.1.1. the Developer in its capacity as such during the Development Period;
  - 12.1.2. all Registered Owners of any Erf in the Estate;
- 12.2. Any Person reflected in the records of the Deeds Registry concerned as the registered owner or joint registered owner of any Erf shall be deemed to be the Registered Owner of such Erf and shall further be deemed, *ipso facto*, to be a Member of the Association.
- 12.3. Where any Erf is owned by more than one Registered Owner, all such owners of that Erf shall together be deemed to be 1 (one) Member of the Association, subject to clause 21.4, as to voting.
- 12.4. When a Member ceases to be the Registered Owner or joint Registered Owner of an Erf, he shall *ipso facto* cease to be a Member of the Association.
- 12.5. No Registered Owner or joint Registered Owner of any Erf may resign as a Member of the Association for so long as he remains a Registered Owner or a joint Registered Owner.
- 12.6. For the duration of the Development Period or for so long as the Developer owns the Land, any portion thereof or the remainder thereof from time to time, the Developer shall be a Member of the Association.
- 12.7. As per section 61(3) of the Municipal Planning By-Law, Membership shall commence, in the case of:
- 12.7.1. a Registered Owner, simultaneously with the transfer of an Erf into the name of a Registered Owner;
  - 12.7.2. the Developer, as soon as the Association is established in terms of clause 2;
- 12.8. When a Member ceases to be a Registered Owner, he shall automatically cease to be a Member of the Association.
- 12.9. The rights and obligations of a Member shall not be transferable, and every Member shall:
- 12.9.1. to the best of his ability further the objects and interests of the Association; and
  - 12.9.2. observe Estate Rules, all by-laws and regulations made by the Association and/or the Committee, from time to time.

- 12.10. No Member shall let or otherwise part with the occupation of his Erf without complying with the requirements of clause 32 and obtaining the prior written consent of the Committee, which may impose any condition to such consent in its discretion, including requiring the written agreement of the proposed occupier that the proposed occupier will be bound by the provisions of this Constitution.
- 12.11. The Member shall be liable and accountable for the acts or omissions of all Persons occupying or having access to his Erf, or any other part of the Association as the case may be, whether lawfully or unlawfully.
- 12.12. Nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the mortgagee of that Member's Erf.
- 12.13. Any Member who is in breach of any provision of this Constitution, or who is in arrears with respect to any amount payable to the Association, shall not be entitled to the rights and powers provided to him in terms of this Constitution, for so long as he remains in breach or arrears, which includes to the avoidance of doubt, the right to vote, which shall be suspended for so long as the Member remains in breach or arrears.

### **13. CESSATION OF MEMBERSHIP**

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

### **14. CO-OWNERSHIP**

- 14.1. No Erf shall be held in co-ownership by more than 2 (two) Persons.
- 14.2. No time-sharing agreement or scheme as contemplated in the Property Time-Sharing Control Act, No. 75 of 1983 may be entered into or created in the Estate and no share block scheme as contemplated in the Share Blocks Control Act, No. 59 of 1980 shall be permitted in the Estate.
- 14.3. No juristic person may be so structured or utilised as to permit its members or shareholders to occupy at pre-determined times any Erf owned by it.

## **15. GENERAL MEETINGS OF THE ASSOCIATION**

- 15.1. The Association shall hold its AGM, in addition to any other general meetings during that year, as soon as possible after the end of each Financial Year, it being the intention that each AGM shall take place not later than 6 (six) months after each Financial Year. Notwithstanding the foregoing:
- 15.1.1. the first meeting of the Association shall be called within 60 (sixty) days once 60% (sixty percent) of the Erven have been transferred or within 2 (two) years of the transfer of the first Erf (whichever occurs first). The Developer shall notify the Council that this first meeting has taken place and shall submit minutes of such meeting to the Council and the Director: Planning and Development Management within 60 (sixty) days of such meeting taking place; and
  - 15.1.2. in addition, a first AGM must be held within 12 (twelve) months from the date of the approval of this Constitution by the Council; and
  - 15.1.3. the Association shall specify the meetings as such in the notices, in terms of clause 16.1 below, calling it.
- 15.2. Any meetings of the Association shall be held at such time and place, subject to the foregoing provisions, as the Committee shall decide from time to time.
- 15.3. The Committee, may, whenever it deems fit, convene a general meeting.
- 15.4. Where the Members who hold at least 51% (fifty-one percent) of the total votes deliver a written request to the Committee to call a general meeting, the Committee shall be obliged to call such meeting.

## **16. NOTICE OF MEETINGS**

- 16.1. An AGM and a general meeting called for the passing of a Special Resolution, shall be called by 21 (twenty-one) days' notice in writing, and a general meeting, other than one called for the passing of a Special Resolution, shall be called by 14 (fourteen) days' notice in writing.
- 16.2. Any notice in respect of an AGM or a general meeting shall, in each case, be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and the general nature of the business of the general meeting, and in the case of a resolution, the terms and effect of the resolution and the reasons for it.
- 16.3. A notice of a Members' Meeting must be in writing, in plain language and must include –

- 16.3.1. the date, time and place for the Members' Meeting;
- 16.3.2. the general purpose of the Members' Meeting, and any specific purpose, if applicable; and
- 16.3.3. a copy of any proposed resolution which is to be considered at the Members' Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information / explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Members' Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing
- 16.3.4. a reasonably prominent statement that:
  - 16.3.4.1. a Member entitled to attend and vote at the Members' Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote;
  - 16.3.4.2. a proxy need not be a Member;
  - 16.3.4.3. the proxy may delegate the authority granted to him/her/it as proxy, subject to any restriction in the proxy itself;
  - 16.3.4.4. if applicable, participants in a Members' Meeting are required to furnish satisfactory identification in order to reasonably satisfy the Chairman presiding at the Members' Meeting; and
  - 16.3.4.5. whether participation in the Members' Meeting by electronic communication is available, and if so, provide any necessary information to enable Members entitled to vote or their proxies to access the available medium or means of electronic communication and advise that access to the medium or means of electronic communication is at the expense of the Member entitled to vote or proxy, except to the extent that the Association determines otherwise.

16.4. Notices shall be delivered to all Members, the Auditors, and to the Estate Manager.

- 16.5. A general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:
- 16.5.1. in the case of a meeting called as the AGM, by all the Members entitled to attend and vote thereat (as well as the Developer for the duration of the Development Period); and
- 16.5.2. in the case of a general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy five percent) of the total number of votes (as provided for in clause 21.1) of all Members (and by the Developer for the duration of the Development Period).
- 16.6. The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any Member or other Person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.
- 16.7. A notice shall be in writing and shall be given or served by the Association upon any Member, either personally, via email or by post in a prepaid registered letter, properly addressed to the Member, subject to the provisions of clause 16.8 below, at the address of the Erf owned by him, or at such other address as is given by the Member in writing to the Association.
- 16.8. No Member shall be entitled to have a notice served on him personally at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 16.9. Any notice given by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted. Any notice sent by e-mail to a party's chosen e-mail address shall be deemed to have been received on the date of despatch, unless the contrary is proved.
- 16.10. Where a notice is to be given to a Member, which comprises more than one Person, then any notice provided to the Person mentioned first in the register of Members shall be deemed as validly delivered.
- 16.11. In the event of the death, legal disability, or insolvency (which shall include the liquidation or placing under business rescue of a company or other body corporate) of a Member, the

Association shall be entitled to give any notice required by this Constitution in any manner in which the same may have been given if the death, legal disability, insolvency or business rescue had not occurred. Notwithstanding the foregoing, as soon as proof of the appointment of any representative of such Member has been given to the Association, such notices shall thereafter be given by the Association to any such representative addressed to such Person by name and at the address provided, and failing the provision of such address, at the address of the Erf of the Member concerned.

## **17. QUORUM**

- 17.1. No business shall be transacted at any general meeting unless a quorum is present at the beginning of the meeting.
- 17.2. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent 20% (twenty percent) of the total votes of all Members of the Association entitled to vote, for the time being, save that not less than 3 (three) Members must be personally present or present by proxy, and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.
- 17.3. The quorum necessary for the holding of any special general meeting shall be such of the Members entitled to vote, as together for the time being, represent 20% (twenty percent) of the total votes of all Members of the Association entitled to vote, for the time being, save that not less than 3 (three) Members must be personally present or present by proxy, and provided that, for the duration of the Development Period, the Developer is present in person or by proxy.
- 17.4. If within 30 (thirty) minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for holding the meeting, the Members present shall be a quorum, provided that, for the duration of the Development Period, the Developer is present in person or by proxy.

## **18. AGENDA AT MEETINGS**

In addition to any other matters required by this Constitution to be dealt with at an AGM, the following matters shall be dealt with at every AGM:

- 18.1. confirm proxies, nominees and other persons representing Members;



- 18.2. determine that there is a quorum;
- 18.3. elect a person to chair the meeting, if necessary;
- 18.4. approve the agenda;
- 18.5. the confirmation of the minutes of the preceding AGM and of any extraordinary general meetings held subsequently;
- 18.6. deal with matters arising from these minutes and any unfinished business;
- 18.7. the consideration of the Chairman's report to the Committee;
- 18.8. the consideration of the Estate Manager(s)'s report (if applicable) to the Members;
- 18.9. the consideration of any matters raised at the meeting, including any resolution proposed for adoption by the meeting and the voting upon any such resolution;
- 18.10. the consideration of the balance sheet and income statement of the Association for the last Financial Year of the Association preceding the date of such meeting;
- 18.11. the consideration of the report of the Auditors;
- 18.12. confirmation of the Auditor's appointment;
- 18.13. the consideration of the total Levy, for the financial year during which such AGM takes place, the total Levy being the sum of all the Levies to be collected from Members in terms of clause 22; and
- 18.14. to consider and approve the various insurances for the Association; including, but not limited to:
  - 18.14.1. the determination of the extent of fidelity cover required in terms clause 6 and 7.
- 18.15. the election of the Committee and any other office bearers;
- 18.16. the consideration of any regulations in terms of clause 10.1 concerning the powers conferred upon the Committee;
- 18.17. any other matters as may be required to be dealt with by the Members or the Committee;
- 18.18. dissolve the meeting.

## **19. PROCEDURE AT GENERAL MEETINGS**

- 19.1. The Chairman shall preside as such at all general meetings, provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 19.2. The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 10 (ten) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 19.3. All general meetings shall be conducted in accordance with best practice as relates to meetings of this nature.

## **20. PROXIES**

- 20.1. A Member may be represented at a general meeting by a proxy, who need not be a Member. The proxy shall be entitled to vote at a general meeting on behalf of that Member, on condition that no proxy may be entitled to represent more than 5 members.
- 20.2. The instrument appointing a proxy shall be in writing and signed by the Member concerned or his duly authorised agent or representative, also confirmed in writing, provided that where a Member is more than 1 (one) Person, any 1 (one) of those Persons may sign the instrument appointing a proxy on such Member's behalf.
- 20.3. The said proxy shall be deposited to the Association management or Chairman prior to the time appointed for the commencement of the meeting.
- 20.4. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months calculated from the date of its execution.
- 20.5. A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.



20.6. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

<b>MZURI PROPERTY OWNER'S ASSOCIATION</b>			
A Statutory body established in terms of section 61 of the City of Cape Town's Municipal Planning By-Law, 2015 (" <b>Association</b> ")			
<u>PROXY</u>			
I, _____ of _____ being a Member of the Association hereby appoint _____ of _____ or failing him, _____ of _____ or failing him, _____ of _____ as my proxy to vote for me on my behalf at the Annual General Meeting/general meeting (as the case may be) of the Association to be held on the ____ day of _____ and at any adjournment thereof as follows:			
	In favour of	Against	Abstain
Resolution No. .....			
Resolution No. .....			
Resolution No. .....			
<p>(indicate instruction to proxy by way of a cross in space provided above)</p> <p>Unless otherwise instructed, my proxy will vote or abstain as he thinks fit.</p> <p>Signed this _____ day of _____ 20__</p> <p><b>NOTE:</b> A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his place. Such proxy need not be a member of the Association.</p> <div style="text-align: right; margin-top: 20px;">           _____  <b>SIGNATURE</b> </div>			

## 21. VOTING

- 21.1. At every general meeting, the following provisions shall apply in regard to voting:
- 21.1.1. every Member, including the Developer, in person or by proxy and entitled to vote shall have 1 (one) vote in respect of each Erf registered in his name;
  - 21.1.2. in addition to the votes in terms of clause 21.1.1 and 21.1.3, during the Development Period, the Developer, in person or by proxy, shall have 1 (one) vote for each Erf or Unit registered in the name of all the other Members and shall have 1 (one) additional vote;
  - 21.1.3. in the event of any Member including the Developer holding undeveloped land in the Estate, such Member shall, in person or by proxy, have 1 (one) vote for each separate piece of land depicted as an Erf or a portion on the Site Development Plan and registered in his name; and
  - 21.1.4. if an Erf is registered in the name of more than 1 (one) Person then all such co-owners, in person or by proxy, shall jointly have 1 (one) vote.
- 21.2. No Person other than a Member, and who shall have paid every Levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 21.3. Where a Member is a juristic person, such Member shall be represented by such representative as the Member may determine provided that the Chairman may disallow the vote of such representative unless the representative is able to produce sufficient proof to the satisfaction of the Chairman as to his right to represent the Member.
- 21.4. Where a Member comprises more than one Person, such Member shall be represented by such representative as the Member may determine provided that:
- 21.4.1. the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member;
  - 21.4.2. if such Persons cannot so decide unanimously, then the Person whose name stands first in the register of Members shall be entitled to cast the vote; and

- 21.4.3. the vote(s) cast to the satisfaction of the Chairman shall be final and binding upon all Persons constituting the relevant Member, irrespective of any error or absence of authority.
- 21.5. At any general meeting, unless a poll is requested, a resolution put to the vote of the meeting shall be decided on a show of hands.
- 21.6. Voting on the election of a Chairman of a general meeting (if necessary), or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, subject however to the Developer's rights in clause 21.10.
- 21.7. 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.
- 21.8. A Special Resolution or the amendment of a Special Resolution, shall be carried by 75% (seventy five percent) of Members present at a meeting and entitled to vote.
- 21.9. An Ordinary resolution or the amendment of an Ordinary Resolution shall be carried on a simple majority of all the votes cast thereon by Members present at a meeting and entitled to vote.
- 21.10. For the duration of the Development Period, the Developer shall have the right to veto any resolution, if the impact of such resolution, in the opinion of the Developer should the resolution be carried into effect, would affect the image of the Development, alter the aesthetic nature of the improvements on the Land or be prejudicial to the ongoing marketing of the Development, be prejudicial to the marketing and operations of the Estate and/or to sales of Erven and/or to the successful completion of the Development and/or be in contravention of any conditions of approval and/or the Council's Approval.
- 21.11. An abstention shall be counted for the purposes of establishing a quorum but shall not be counted as a vote for or against the resolution in question.
- 21.12. In the case of an equality of votes, the Chairman of the general meeting shall not be entitled to a casting vote in addition to its deliberative vote.
- 21.13. Unless any Member present, in person or by proxy, at a general meeting, before closure of the meeting objects 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 to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

- 21.14. No objection shall be raised to the admissibility of any vote except at the meeting or postponed or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.
- 21.15. If any difficulty or dispute arises regarding the admission or rejection of a vote, or regarding any other matter, such difficulty or dispute is to be determined by the chairperson, whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive

## **22. FINANCE COMMITTEE AND LEVIES**

- 22.1. There shall be established a Finance Committee which shall consist of the Estate Manager and 2 (two) Committee Members, of which 1 (one) Committee Members shall be appointed by the Developer during the Development Period.
- 22.2. The Finance Committee shall from time to time make Levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Finance Committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in good order and condition of the Roads, open spaces, Facilities, Services, Common Property, Facilities and/or the exterior of any buildings, structures, erections and improvements in the Estate, including Dwellings and/or for payment of all rates and other charges payable by the Association in respect of the Erven vested in it and/or for the services rendered to it and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, the Estate, and the Association's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Association or the pursuit of its business, insurance and any reserves which the Committee may deem necessary
- 22.3. At the first meeting of this Finance Committee, the initial budget and levy must be approved at a meeting, which is to be held within 30 (thirty) days of the establishment of the Association.

- 22.4. In calculating the amount of the Levies, the Finance Committee shall take into account income, if any, earned by the Association.
- 22.5. In computing and allocating the Levy, the Finance Committee shall take into account all expenses.
- 22.6. The Finance Committee shall, not less than 30 (thirty) days prior to the end of each Financial Year, prepare and serve upon every Member at the address chosen by him an estimate in reasonable detail of the amount which shall be required by the Association to meet the expenses during the ensuing Financial Year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding Financial Year. The Finance Committee may include in such estimate an amount to be held in an Investment Account in the name of the Association to meet anticipated future expenditure not of an annual nature.
- 22.7. Each notice to Members shall specify the contribution and Levies payable by that Member to such expenses and any fund for future expenditure and the Association bank accounts into which such payments must be made.
- 22.8. Every Levy shall be payable in equal monthly instalments due in advance on the 1st (first) day of each and every month of each Financial Year or in such a manner as may be determined by the Finance Committee from time to time.
- 22.9. In the event of the Finance Committee for any reason whatsoever failing to prepare and serve the estimate referred to in clause 22.6 timeously, every Member shall notwithstanding lack of service of such estimate continue to pay the Levy and any contributions previously imposed and shall once such notice is served, pay such Levy as may be specified.
- 22.10. The Finance Committee may from time to time make special Levies upon the Members in respect of all such expenses as are mentioned in clause 22.2, which were not included in any estimate made in terms of clause 22.6 and the Finance Committee may in imposing such Levies further determine the terms of payment thereof.
- 22.11. The Finance Committee shall be empowered, in addition to such other rights as the Association may have in law as against its Members, to impose fines against Members in respect of non-compliance with any of the provisions of this Constitution and to determine the rate of interest from time to time chargeable upon arrear Levies, provided that such rate of interest shall not exceed such rate laid down as is legally permissible and provided further that nothing contained in this Constitution shall derogate from any other remedies available to the Association.

- 22.12. Any amount due by a Member by way of Levies and interest shall be a debt due by him to the Association. The obligation of a Member to pay future Levies and interest shall cease upon his ceasing to be a Member without prejudice to the Association's right to recover arrear Levies and interest. No Levies or interest paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member shall be liable as from the date upon which he becomes a Member pursuant to the transfer of an Erf, to pay the Levies and interest thereon attributable. No Member shall transfer his Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association and furnished the Member with a clearance certificate.
- 22.13. In calculating the Levies payable by any Member, the Finance Committee shall as far as reasonably practical:
- 22.13.1. assign those costs arising directly out of the Erf itself to the Member owning such Erf;
  - 22.13.2. assign those costs relating to the Estate generally to the owners of all Erven equally provided however that the Finance Committee may in any case where it considers it equitable so to do:
    - 22.13.2.1. assign to any Business Unit such greater share of the costs and expenses mentioned in this clause 22 as it may consider reasonable in the circumstances;
    - 22.13.2.2. assign to any Member any greater or lesser share of the costs and expenses as it may consider to be reasonable in the circumstances; and
    - 22.13.2.3. assign to any Member any greater or lesser share of the costs and expenses as it may consider to be reasonable in the circumstances.
- 22.14. The Association may come to agreement with the Developer for the repayment by the Association to the Developer of ongoing costs or expenses incurred by the Developer for the provision of services and the Facilities and Services within the Estate.
- 22.15. No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every fine, Levy, interest and any penalty interest thereon in terms of clauses 22.11, and any other sum (if any) which may be due and payable to the Association from whatsoever cause arising.

- 22.16. The Committee or the Finance Committee shall be entitled to undertake on behalf of the Association any works of a capital nature to an aggregate limit of R1 000 000.00 (one million Rand) per Financial Year, without the sanction of a resolution of the Members at a Member's Meeting, but which is subject to ratification at the annual general meeting.
- 22.17. The Finance Committee shall for the period from the date of commencement of business of the Association raise Levies in accordance with the principles set out above.
- 22.18. Levy income will be exempt from tax in terms of the provisions of Section 10(1)(e) of the Income Tax Act 58 of 1962, provided that:
- 22.18.1. the sole object of the Association is to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property, the Facilities and the collection of Levies for which Members are liable; and
- 22.18.2. the Association is not permitted to distribute its funds to any Person other than to a similar association of Persons.
- 22.19. The Finance Committee's decision in calculating the Levy, the allocation thereof to Members and imposing any annual escalation thereon shall be final and binding on all Members.
- 22.20. Any amounts paid by a Member in respect of Levies shall be apportioned first towards outstanding interest and costs of recovery, and thereafter towards any Levies and amounts due by the Member to the Association.
- 22.21. For so long as the Developer is the registered owner of the Land or any portion thereof or the remainder thereof, the Developer shall not be required to pay Levies. The Developer shall, however, for the duration of the Development Period pay the difference between the actual expenses incurred by the Association but excluding any provisions for a reserve fund, and the aggregate of the Levies payable jointly by the Members who are Registered Owners each month from time to time, including any other income received by the Association (e.g. penalties). For the avoidance of any doubt it is recorded that in determining the aggregate of individual Levies payable by Members who are Registered Owners from time to time for the purposes of this clause 22.21, the aggregate shall include all Levies payable by such Members, irrespective of whether or not such Levies have actually been paid by those Members. In the event that there is a dispute as to the actual costs incurred by the Association at any time, then the matter shall be referred to the Association's auditor who, acting as an expert and not as an arbitrator, shall issue a certificate which shall be final and binding on the parties and who shall be entitled for this purpose to have access to all the records and books

of account of the Association as and when required. The costs of the said auditor shall be borne by the Association.

## **23. MAINTENANCE FUND ADMINISTRATION LEVY**

- 23.1. Upon the transfer of any Erf (except for the first transfer from the Developer), [or portion thereof], an administration levy equal to 1% (one percent) of the total consideration paid to the Member in respect of the Erf, [or portion thereof] (or if there is no consideration paid or payable, then an administration levy equal to 1% (one percent) of the fair market value of the Erf, [or portion thereof]) shall be paid to the Association.
- 23.2. The Finance Committee will administer and control the administrative levy which will be paid into maintenance fund accounts established for such purposes by the Finance Committee and determine what amounts may be paid from this fund.
- 23.3. The alienation by a shareholder of his shares, [or portion thereof] in a company owning an Erf, or by a Member of his member's interest [or portion thereof] in a Close Corporation owning an Erf; or by a beneficiary of his interest [or portion thereof] in a Trust owning an Erf, shall be deemed to be the Alienation of an Erf or Unit and the provisions of clause 23.1 shall apply *mutatis mutandis*.
- 23.4. Payment of the 1% (one percent) administration levy is however exempted in the event of a transfer from a deceased Member to the surviving spouse, child or a trust created for the benefit of the respective surviving spouse, child or trust of such deceased Member. This exemption will apply should the Committee be satisfied that the respective relatives of the deceased Member remain Members of the Association.

## **24. INSURANCE**

- 24.1. The Committee shall take steps to insure all buildings and improvements on Erven registered in the name of the Association, all common areas, Facilities, Services and all movable property of the Association to the full replacement value thereof against such risks as the Committee may determine and shall take out such additional insurance as it considers necessary.
- 24.2. The Members may by Special Resolution direct the Committee to insure against such other risks as the Members may determine.

## **25. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 25.1. The Association shall maintain the necessary accounting records which shall be accessible to Members from its Registered Office.



- 25.2. The Association shall have its annual financial statements audited.
- 25.3. The Committee Members, or the Members at a Members' Meeting, shall from time to time determine at what times and places (save in the case of accounting records which shall be accessible from the Registered Office during business hours) and under what conditions, the documents which the Members are entitled to inspect and take copies of.
- 25.4. Apart from the Members, no other Person shall be entitled to inspect any of the documents of the Association unless expressly authorised by the Committee or by Ordinary Resolution.
- 25.5. The Association shall notify the Members of the publication of any annual financial statements of the Association, setting out the steps required to obtain a copy of those financial statements. If a Member demands a copy of the annual financial statements, the Association shall make same available to such Member at a fee which covers any incidental costs.
- 25.6. At each Annual General Meeting, the Committee shall lay before the Association the Audited annual financial statements for the immediately preceding Financial Year of the Association. A summary of such annual financial statements shall be attached to the notice sent to Members convening the AGM.
- 25.7. Where the Association is required to provide a Person with annual financial statements of the Association, it shall be sufficient to provide a summarised version of such annual financial statements, provided that the notification also includes instructions as to how the Person may obtain the complete version of such annual financial statements.

## **26. AUDIT**

Once at least in every year, the accounts of the Association shall be examined, audited and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

## **27. INCOME TAX**

- 27.1. The sole object of the Association is to manage the collective interest common to all its Members, which includes expenditure applicable to the common property, security measures and development control and the collection of Levies for which such Members are liable, and as set out in this Constitution.
- 27.2. The income and property of the association whence-so-ever derived from shall, be applied solely towards the promotion of its main objects and, subject to clause 30.1.3, no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever, to any Member, Committee Member.

- 27.3. The Association may not knowingly be a party to or knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under legislation administered by the Commissioner for the South African Revenue Services.
- 27.4. The Association shall submit annual returns of income tax together with financial statements to the Tax Exemption Unit of the South African Revenue Services.
- 27.5. The Association is not permitted to distribute its funds to any person other than to a similar association of persons and may not make loans or advances to Members, Committee Members. The distributing of funds to a similar association or person may only take place upon authority of a Special Resolution.

## **28. ESTATE RULES**

- 28.1. The Developer, the Committee and/or the Association shall have the power to make and enforce the Estate Rules from time to time, to provide for the use and enjoyment of the Common Areas by Members and Residents, and to promote the harmonious co-existence of all Members and Residents in the Estate, which rules are binding on Members and are subject to change at the discretion of the Developer, the Committee and/or the Association, as the case may be, and may contain provisions governing *inter alia*:
- 28.1.1. the relationship between the Members and the Association, Committee Members and the Members and the Committee Members and the Association;
  - 28.1.2. the use, maintenance, renovations, upkeep, installations and repairs of the Estate, including the Common Areas and the Facilities, subject at all times to the zoning of the Land and the conditions imposed in the Council's Approval;
  - 28.1.3. the harmonisation of the aesthetic upmarket appearance of the Estate;
  - 28.1.4. the preservation of the natural environment, vegetation and fauna in the Estate;
  - 28.1.5. the use of parking areas;
  - 28.1.6. the use and control of business premises and Business Units;
  - 28.1.7. the authorisation of permitted Persons on the Estate;
  - 28.1.8. the keeping of flammable substances;

- 28.1.9. the conduct of any Persons within the Estate for the prevention of nuisance of any nature to any Member;
  - 28.1.10. a Code of Conduct for Builders and Service Providers;
  - 28.1.11. the use by the Members and their guests, lessees and Residents, of Common Property, the Facilities, Dwellings, Roads, driveways and/or open spaces, including the right to prohibit, restrict or control such use of the Roads and open spaces or any portion thereof as may from time to time be necessary or expedient;
  - 28.1.12. the right to control, restrict and prohibit the keeping of pets in and upon the Estate and restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
  - 28.1.13. the permissibility of activities on the Estate, subject at all times to the zoning of the Land and the conditions contained in the Council's Approval;
  - 28.1.14. the establishment and management of sporting and social clubs for the benefit of the Members; and
  - 28.1.15. any such other rules as the Committee in its discretion considers fit and proper for the proper management of the Estate, the Association, the different categories of Dwellings, and Business Units, provided such rules are fair and reasonable and do not conflict with any provisions of this Constitution.
- 28.2. In enforcing this Constitution and any of the Estate Rules, the Committee may:
- 28.2.1. take or cause to be taken such steps as it may consider necessary to remedy any breach of the said Estate Rules of which a Member may be guilty, and debit the costs of so doing to the Member concerned, which costs shall be deemed to be a debt due and payable by the Member concerned to the Association, on demand; and/or
  - 28.2.2. impose a system of fines or penalties; and/or
  - 28.2.3. take such other action including legal proceedings as they may deem fit and, to this end, employ such legal representatives as it deems necessary.
- 28.3. In the event of any breach of the Estate Rules by members of a Member's household or by his Residents, guests, invitees, or lessees, such breach shall be deemed to have been committed by such Member himself but, without prejudice to the foregoing, the Committee may take or

cause to be taken such steps against the Person actually committing the breach as it in its discretion may deem fit.

- 28.4. If any Member disputes the fact that he has committed a breach of any of the Estate Rules, a committee of 3 (three) Committee Members appointed by the Chairman shall adjudicate upon the issue, in such manner and according to such procedure as the Chairman may direct, subject always to the observance of the precepts of natural justice.
- 28.5. Any fine or penalty imposed upon any Member in terms of clause 28.2.2 shall be deemed to be a debt due and payable by the Member to the Association, payable on demand and recoverable by ordinary civil process.
- 28.6. If any Member is in persistent or flagrant breach of any of the provisions of this Constitution or any of the Estate Rules, or being in breach thereof fails to remedy such breach, the Committee may discontinue any service provided to such Member and/or to the Member's Erf for such period as the Committee may deem fit, provided that the Committee shall have given to the Member concerned not less than 7 (seven) days prior written notice of its intention to do so.
- 28.7. The Estate Manager or such other Person as may be empowered by the Committee shall ensure compliance with the Estate Rules by the Members, their guests, invitees, Residents, learners, their lessees and all other Persons within the Estate and to this end issue such notices, impose and collect such fines and do such things as may be necessary in this regard.
- 28.8. Every Member hereby undertakes to the Association that he shall comply (and shall ensure that his guests, invitees, learners and lessees comply) with any Estate Rules made in terms of this clause 28.
- 28.9. The Association shall publish a copy of any Estate Rules, as amended from time to time after being accepted by CSOS, on the Association's website, unless in making any Estate Rules, the Association determines that any other method of publication shall be used.

## **29. ARCHITECTURAL GUIDELINE**

- 29.1. The Architectural Guideline have been compiled by the Developer.
- 29.2. All Members are required to comply at all times with the Architectural Guideline.
- 29.3. The Architectural Guideline may, after establishment of the Association, and before the first AGM, be updated and amended by the Developer, in its discretion, subject to Council's approval, if necessary. After the first AGM, the Architectural Guideline may be updated and amended by the Committee, only as follows:

- 29.3.1. with the prior written approval of the Council, if applicable, and to the extent necessary;
- 29.3.2. with the prior written approval of the Developer during the Development Period, who may in its sole discretion, give or withhold such approval, or give such approval with such conditions attached as it deems appropriate in its sole discretion; and
- 29.3.3. after consultation with the Town Planning Committee, and with the advice of the professional architect appointed as a member of the Township Planning Committee.

### **30. RESERVED MATTERS**

- 30.1. In addition to specific clauses where a Special Resolution is required, the following decisions of the Association (and the Committee) may only be taken with the approval of a Special Resolution:
  - 30.1.1. the raising of any special Levy for unbudgeted expenditure in excess of R1,000,000 (One Million Rand) in any Financial Year, which will be adjusted each year in January in accordance with the annual rate of change expressed as a percentage in the Consumer Price Index;
  - 30.1.2. the institution or defence of any legal proceedings other than those arising in the ordinary course of the Associations' activities;
  - 30.1.3. the remuneration, or any change in remuneration, payable to any Committee Member for services rendered or any loans to Committee Members;
  - 30.1.4. the inclusion of any additional land into the Estate, other than as is contemplated in clause 47;
  - 30.1.5. loans to any third party; and
  - 30.1.6. the disposal or encumbrance of any asset or other investment, otherwise than in the ordinary course of activity of the Association.

### **31. OTHER PROFESSIONAL OFFICERS**

The Committee shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, property managers, architects, engineers, advisors any

other professional Person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Committee and on such terms as the Committee shall decide.

## **32. OCCUPATION**

32.1. No Member shall be entitled to take occupation or allow any other Person to take occupation of an Erf until such time as the construction and/or renovations of buildings and/or structures on such Erf have been fully completed and the architect appointed by the Developer during the Development Period and after the Development Period the architect appointed by the Committee has issued a certificate of completion thereof. In the event that a Member should take occupation or allow occupation to be taken of his Erf or part thereof, without first obtaining a certificate of completion from the architect appointed above, then and in such event the Association shall be entitled, without prejudice to any other rights that it may have, to have the Member, Residents and/or all Persons occupying the dwelling or part thereof, evicted therefrom or to refuse the Member, any Resident and/or all Persons occupying the buildings and/or structures on the Erf or part thereof access to the Estate.

32.2. Notwithstanding the foregoing, no Member shall be entitled to take occupation or allow any other Person to take occupation of his Erf or part thereof until such time as the Council has issued either an occupancy certificate or temporary occupation certificate in terms of the prevailing statutes and regulations.

## **33. BUILDING ON THE PROPERTY**

33.1. All Members undertake that the erection of a Dwelling will commence within 24 (twenty four) months after the date of registration of transfer of the Erf to the first Registered Owner thereof, and will be completed within 36 (thirty six) months from such date of registration of transfer of the Erf into the name of the first Registered Owner thereof. Completion shall have occurred only upon the issue of a completion certificate by the Association which shall only be issued after the lodgement with the Association of a copy of the occupancy certificate issued by the local authority and after the Association's representative is satisfied that the buildings and landscaping on the Erf comply with the Mzuri Estate Architectural Guideline and the Mzuri Estate Landscaping Guideline respectively.

The trustees of the Association may impose sanctions or penalties on Members who fail to commence or complete construction of a Dwelling within the time limits prescribed above, which penalties will be calculated at staggered rates in accordance with the provisions of the Constitution from the date of first transfer of the relevant Property to the first Registered Owner thereof until the date of issue by the Association of a completion certificate as envisaged in clause 33.1 above.

## 34. APPROVAL FOR PROPOSED WORK

- 34.1. A Member desiring to make any alterations, improvements, additions, modifications or renovations to such buildings and/or structures ("**Proposed Work**") on his Erf, shall submit a full set of proposed building and landscaping plans (if applicable), which indicate both construction and design details, to the Town Planning Committee, or any Person nominated by the Town Planning Committee, for written approval, prior to submission of such plans to the Council.
- 34.2. The Town Planning Committee shall only give written approval for the Proposed Work:
- 34.2.1. requests for architectural design review shall be done in accordance with the Mzuri Estate Architectural Guideline;
  - 34.2.2. if it complies with the Architectural Guideline;
  - 34.2.3. after detailed plans of the Proposed Work as prepared by an architect registered with the South African Council for the Architectural Profession and who has been accredited by the Association, have been submitted to the Association;
  - 34.2.4. if the Proposed Work complies with the documents and requirements set out in clause 4.2.6 and has been approved with the advice of the architect appointed by the Town Planning Committee; and
  - 34.2.5. the Member has made payment of all costs which may be incurred in obtaining this approval, including the costs of the Town Planning Committee Members or their nominee(s) and any scrutiny fees as determined by the Town Planning Committee from time to time.
- 34.3. No Member shall, without the prior written consent of the Town Planning Committee or in the absence of a Town Planning Committee, the Committee:
- 34.3.1. change the colour of the exterior walls of any building, nor the colour of the exterior of the doors and window frames thereof, nor any fixture or fitting excluding however door and window handles, locks, knockers and similar ornaments upon the exterior thereof;
  - 34.3.2. replace any appurtenances, including pergolas, blinds, shutters, awnings or ornaments upon the exterior walls or surfaces of any building, save only to renew such items as may initially have been so placed upon construction of the building, with such items of the same nature and of similar appearance;

- 34.3.3. make any additions or extensions to any buildings or erect any further buildings or structures or fences whether of a temporary or permanent nature;
- 34.3.4. remove any fixtures, fittings, doors or windows nor demolish any portion of the exterior of any building without the consent of the Town Planning Committee; and/or
- 34.3.5. in the event of the destruction of any Dwelling (or part thereof), and the owner thereof deciding to rebuild same, the plans for such rebuilding shall prior to such rebuilding taking place, be submitted to the Association which shall within 21 (twenty-one) days of such submission to it, submit any comments which it may have in connection therewith to the Town Planning Committee for approval. The decision of the Town Planning Committee in regard to the proposed rebuilding shall be final and binding. The proposed rebuilding may not commence without the prior written approval of the Town Planning Committee and, if applicable, the Local Authority,

and which in all instances shall require that the Member complies with the content of the Architectural Guideline and which has been approved by the architect appointed by the Town Planning Committee from time to time.

- 34.4. After obtaining the written approval of the Town Planning Committee Members for the Proposed Work, the Member shall submit the building and landscaping plans (if applicable) to the Council for approval, with the approval of the Town Planning Committee Members evidenced by an endorsement of the relevant plans.
- 34.5. After obtaining the approval of the Council for the Proposed Work, the Member shall comply with all conditions, standards and requirements imposed by the Council and the Association.
- 34.6. The provisions of this clause 33 shall not apply to the Developer provided that the Developer shall comply with the Architectural Guideline and the conditions imposed by the Council when approving the Development.
- 34.7. The Town Planning Committee shall be entitled to determine a damages deposit and a builder's management fee payable by the Registered Owner which deposit and fee shall be payable by the Registered Owner concerned in such amount, for such purposes and on such terms and conditions as may be determined by the Town Planning Committee from time to time. The Developer shall not be obliged to pay any such damages deposit or builder's management fee.



## 35. MAINTENANCE

- 35.1. Every Member shall be obliged to maintain in good order and repair and in a clean and tidy condition, up to the high standards of the Estate, the exterior of all buildings under the ownership and/or control and/or management of the Member including the Common Property, private Roads, public open space areas, boundary walls and fencing, falling within their jurisdiction.
- 35.2. Whenever the Committee considers that the appearance of any portion of the Estate, which for the purpose of this clause 35 means and includes any Erf and all structures and buildings thereon and all gardens forming part thereof, vested in a Member is such as to be unsightly or injurious to the amenities of the surrounding area or the Estate generally, the Committee shall be entitled to serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious conditions:
- 35.2.1. the Member to whom such notice is given may within 21 (twenty-one) days of receipt of such notice refer the matter to the Town Planning Committee which shall either uphold the notice or declare it to be of no force or effect. In the event of the Town Planning Committee upholding the notice, it shall specify a period within which the steps referred to in the notice should be taken and in the event of the Member failing to take such steps within the time specified, the Town Planning Committee or the Committee may instruct the Estate Manager(s) to take such steps as may be necessary and to recover the cost thereof from the Member concerned, which cost shall be deemed to be a debt owing to the Association; and
- 35.2.2. in the event of the Member failing, without referring the matter to the Town Planning Committee, to comply with such notice within a reasonable time to be specified in such notice, the Committee may instruct the Estate Manager(s) to take such steps as may be necessary and to recover the cost thereof from the Member concerned, which costs shall be deemed to be a debt owing to the Association.
- 35.3. The Association shall be entitled to determine the routine maintenance requirements of the exterior of each and every building within the Estate and to instruct the Estate Manager(s) to attend to such requirements from time to time. The Members hereby agree that the Estate Manager(s) shall be entitled, whenever the Committee decides such routine maintenance is required, to proceed therewith and to recover the costs thereof from the Association which shall in turn recover the costs thereof by way of Levy from the Members concerned.

35.4. The Committee shall be entitled from time to time to determine the routine maintenance requirements:

35.4.1. of all open spaces and Roads in the Estate;

35.4.2. of the Common Property;

35.4.3. the Facilities;

35.4.4. of all other ground within the Estate not covered by buildings whether held by the Association or by Members,

and to instruct the Estate Manager(s) to attend to such maintenance requirements from time to time. The Members hereby agree that the Estate Manager(s) may when so instructed by the Committee, take such action as may be required by the Committee and recover the cost from the Association, which shall in turn be entitled to recover the costs from the Members concerned by way of Levies.

35.5. The Committee or Town Planning Committee shall be entitled to reasonable access to any Erf or building thereon at all reasonable times in pursuance of the purposes of this clause 35.

35.6. In the event of any portion of the exterior of any building requiring repair, the Estate Manager(s) shall advise the Member thereof in writing of the required repair. The Member may thereupon either affect the repair himself or instruct the Estate Manager(s) to do so at the Member's cost. In the event of the Member failing to make the necessary repair within 21 (twenty-one) days of the written notice referred to above, the Estate Manager(s) shall be empowered to effect such repair himself, and to recover the cost either from such Member or direct from the Association, in which event the Association may recover such costs from the Member concerned either by way of Levies or otherwise as it deems fit.

## **36. FACILITIES**

The Committee has control of all Facilities within the Estate and may set down such rules as it may consider necessary from time to time for the use of any such Facilities by the Members, including the charging of such fee as they may deem necessary or desirable. The Committee may delegate to committees such powers, duties and functions as to enable the committee to co-ordinate the activities and requirements of each Facility, particularly in relation to the orderly use of the Facilities. No Persons other than Members may use or enjoy such Facilities, save on such basis as is set out in the Estate Rules or any other rules relating thereto, or as may be permitted by the Committee from time to time.

**37. SERVITUDES**

- 37.1. It is recorded that Servitudes may be registered by the Developer at its cost against the title deed of the Land (or title deeds applicable once subdivision has taken place) and as more fully set out in Council's Approval.
- 37.2. The Association will bear responsibility for the cost, maintenance, upkeep and repair of such Servitudes, if any, and such costs shall be included in the Levies payable by Members in terms of clause 22.

**38. SERVICES**

- 38.1. With effect from the date upon which the Association is created in terms of clause 2, the obligation to maintain and repair the Services shall pass from the Developer to the Association.
- 38.2. The Association shall accordingly be responsible for maintenance of the Services on the Estate, and shall abide with Council's Approval and the relevant Council by-laws and regulations in this regard, including:

- 38.2.1. Urban Storm Water Impacts Policy;
- 38.2.2. Noise Control Regulations 2013 (P.N 200/2013);
- 38.2.3. Environmental Authorisation Record of Decision dated 2013-06-10;
- 38.2.4. Water By-law,

and as amended from time to time.

**38.3. FIBRE CONNECTIVITY**

- 38.3.1. The following provisions shall apply in respect of the use of the transmission and reception of telecommunication (voice, broadband and data), multimedia signals and services to Members and Residents, occupiers and visitors to the Association: -

- 38.3.1.1. The Developer shall appoint a suitable service provider to deploy and operate a fibre based, open access network for the purposes of carrying the telecommunications and internet signals and services.
- 38.3.1.2. The Developer shall grant the suitable service provider an exclusive right to indefinitely use the ducts connecting each Erf to the network,

and the owners hereby irrevocably consent thereto, as far as needs be.

38.3.1.3. The suitable service provider will deploy the network to each Erf connection point. All equipment up to an Erf connection point is the sole property of the suitable service provider which equipment remains immovable property and will not accede to the land and / or the common property.

38.3.1.4. Members will be responsible for the cost of connection to the network and complying with all of the requirements of their selected internet service providers (ISP's) for the scheme in respect of telecommunications and internet signals and services.

### **39. CONTRACTS AND REGULATIONS**

39.1. The Committee may from time to time:

39.1.1. make regulations governing, inter alia:

39.1.1.1. the Members' rights of use, occupation and enjoyment of the Common Areas;

39.1.1.2. the external appearance of and the maintenance of the Common Areas and the building or other improvements erected on the Common Areas;

39.1.1.3. the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures within the Estate, subject always to the Architectural Guidelines, the Council's Approval and the requirements of the Council from time to time;

39.1.1.4. compliance with the Council's Approval;

39.1.1.5. the conduct of Members generally;

39.1.2. enter into agreement(s) with the Local Authority governing the matters set out in clause 39.1 and any other incidental matters;

39.1.3. enter into agreement(s) with the Local Authority and other parties for the provision of Services on the Estate;

- 39.1.4. impose penalties which it considers appropriate in its sole discretion against Members who are in default of any of their obligations in terms of this Constitution, including the terms of payment of such penalties; and
  - 39.1.5. enter into agreements to lease, alienate or purchase land.
- 39.2. Each Member undertakes to the Association that he shall comply with:
- 39.2.1. the provisions of this Constitution;
  - 39.2.2. any regulations made in terms of clause 39.1.1; and
  - 39.2.3. any agreements referred to in clause 39.1.2 and 39.1.3 insofar as those agreements either directly or indirectly impose obligations on him.
- 39.3. Each Member undertakes to the Association that he shall not object to any application for land use rights, including but not limited to an application for rezoning, such as may be necessary and in order to implement the Development and/or for the Developer to incorporate additional land as is envisaged in clause 47 below.

#### **40. WASTE WATER TREATMENT WORKS**

- 40.1. The Estate will deal with waste water and effluent in two parts:
- 40.1.1. Phase 1A will be connected and will dispose of wastewater and effluent via the Municipal Wastewater System.
  - 40.1.2. As soon as the first of the remaining phases is completed the Wastewater Treatment Works on the Estate will also be completed.
  - 40.1.3. As soon as the Wastewater Treatment Works is completed, the units in Phase 1A will be redirected from the Municipal Wastewater System to the Wastewater Treatment Works on the Estate.
  - 40.1.4. The remainder of phases will be connected to and will dispose of wastewater and effluent via the Wastewater Treatment Works on the Estate.
- 40.2. The Association is responsible for the maintenance, repair and replacement of this plant.
- 40.3. This plant will provide recycled non-potable water to all properties in the Estate.

40.4. The costs of connecting to the Municipal Waste Water system and the costs of operating the plant and the costs of the maintenance, repair and replacement of this plant will from part of the levy as determined in clause 22.2 above.

#### **41. ESTATE MANAGER**

41.1. Subject to the provisions of clause 41.4, during the Development Period the Developer, and thereafter, the Committee, shall be entitled to appoint an Estate Manager and any employees or contractors to manage the affairs of the Association, so as to ensure that the obligations of the Association in terms of this Constitution are properly satisfied.

41.2. Any fees and/or remuneration payable to the Estate Manager shall be paid by the Association and not the Developer.

41.3. The appointment of the Estate Manager shall be capable of termination on reasonable notice.

41.4. The affairs of the Association shall at all times be entrusted to a professional Estate Manager with appropriate executive powers, suitable qualifications and relevant experience, so as to conform to the requirements of good corporate governance.

41.5. Subject to this Constitution, and the terms of his appointment, the Estate Manager shall have the full power to manage and control the business and affairs of the Association, and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised by the Association itself.

41.6. The Developer shall be entitled to appoint the Managing Agent and estate manager for the Development during the Development Period, which appointment shall be valid and binding on the members of the Association for a period of 3 (three) years following the termination of the Development Period.

41.7. Any contract concluded with an Estate Manager shall include a provision which shall allow for the appointment to be revoked if:

41.7.1. he is in breach of any of the provisions of the contract or he is guilty of any conduct which at common law would justify the termination of a contract between master and servant; and

41.7.2. where the Estate Manager is a juristic person:

41.7.2.1. an order is made for its provisional or final liquidation or it is placed in business rescue, or compromises with any of its creditors; or

- 41.7.2.2. any director or member of the Estate Manager is convicted of an offence involving an element of dishonesty or fraud;
- 41.7.3. where the Estate Manager is a natural person:
  - 41.7.3.1. he applies for the surrender of his estate as insolvent, or his estate is sequestrated, either provisionally or finally; or
  - 41.7.3.2. he is convicted of an offence involving an element of dishonesty or fraud; or
- 41.7.4. a Special Resolution of the Members is passed to that effect, provided that in such event the Estate Manager so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.

## **42. TRANSFER OF ERVEN AND RESTRICTION ON ALIENATION**

- 42.1. In terms of Council's Approval, ownership of common property Erven, as depicted on the Site Development Plan, shall be transferred to the Association simultaneously with the transfer, or separate registration, of the first deducted portion of Land.
- 42.2. Any land (including Servitudes) in the Estate held by the Association, whether owned, leased or a servitude, shall not be disposed of, mortgaged, alienated or transferred to any third party and this restriction shall be carried forward into the title deeds (where applicable) of the applicable land. This clause 42 may not be amended without the written consent of the Developer during the Development Period, and without the consent of Council, to the extent required.
- 42.3. Where an Erf is owned by a company, close corporation or trust, should the shareholder/s or member/s or trustee/s or beneficiaries, as the case may be, wish to alienate or transfer any shares or Membership or beneficial interest in such entity he shall not be entitled to do so unless he complies with the requirements of this clause 42.
- 42.4. The Association shall not furnish consent to any sale envisaged in this clause 42 during the Development Period, without the Developer's prior written consent.
- 42.5. All sale agreements disposing of any Erf, all title deeds to Erven, and all powers of attorney to pass transfer of Erven, shall include the following conditions, which shall be carried forward into the relevant title deeds:

*"The subject property may not be alienated without the prior written consent of the Mzuri Property Owner's Association of which the within transferee or any of his successors in title shall become a member."*

42.6. No Member shall be entitled to transfer his Erf or apply to the Registrar of Deeds for registration thereof, and the Registrar of Deeds may not register an Erf, unless the Association has granted its prior written consent to such transfer, which consent may not be unreasonably withheld. No such consent shall be granted unless:

42.6.1. such Member is not indebted to the Association in any way in respect of Levies or other amounts which the Association may be entitled to claim from him in terms of this Constitution;

42.6.2. the proposed transferee has agreed in writing to become a Member of the Association, and to be subject to this terms and conditions contained in this Constitution; and

42.6.3. the Association is satisfied that the relevant sale agreement and relevant power of attorney to pass transfer contains the conditions set out in clause 42.5; and

42.6.4. the 1% (one percent) administration fee payable in terms of clause 23 has been paid, or a satisfactory undertaking to pay against transfer has been furnished to the Association.

42.7. The Association shall be entitled to levy a charge, to be determined by the Committee from time to time, for the granting of the written consent referred to in clause 42.6 above.

42.8. The provisions of this Constitution shall be binding upon all Members and, insofar as they may be applicable, to all Persons and Residents occupying any Erf by, through or under any Member, whatever the nature of such occupation.

#### **43. ERVEN FORMING ROADS AND OPEN SPACES**

43.1. Neither the whole nor any portion of the Land designated as Common Property, Roads and open spaces shall be sold, let, Alienated, otherwise disposed of, sub-divided or transferred except in the circumstances laid down in the conditions of establishment of the Township.

43.2. No such Erven shall be:

43.2.1. mortgaged; or



43.2.2. subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation and servitude, save as specified in the said conditions of establishment, and save as such rights as are enjoyed by the Members in terms hereof, without the sanction of a Special Resolution of the Association.

43.3. Nothing contained in this Constitution shall prevent the Developer from erecting, at its own cost, such buildings, or making such other improvements upon the said Erven as may be permitted in terms of the Town Planning Scheme and in terms of the aforesaid conditions of establishment.

43.4. The road known as Summerhill Road, which forms part of the Estate, will be transferred back to the Council at some point during the Development and the Developer, or if after the Development period, the Committee, may do all things necessary to give effect to the transfer of the road to Council, such road reverting to a Public Road.

#### **44. BREACH**

44.1. Should any Member:

44.1.1. fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation made in terms of this Constitution and remain in default for more than 7 (seven) days after being notified in writing to do so by the Committee; or

44.1.2. commit any other breach of the provisions of this Constitution or any Estate Rule or regulation made in terms of the Constitution and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Committee and complete the remedying of such breach within a reasonable time,

then and in either such event, the Committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Committee or the Association or any other Member may have in law, including the right to claim damages:

44.1.3. to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made in terms of the Constitution, as the case may be; or

- 44.1.4. in the case of clause 44.1.2 to remedy such breach or rectify such condition and immediately recover the total costs incurred by the Association in so doing from such Member.
- 44.2. Should the Committee institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any Estate Rule or regulation, then without prejudice to any other rights which the Committee or any other Member may have in law, the Committee shall be entitled to recover from such Member all legal costs incurred by the Association, including attorney/client charges reckoned on the non-litigious tariff recommended by the Cape Law Society (or its successors), tracing fees and collection commission.
- 44.3. Without prejudice to all or any of the rights granted to the Committee under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest on the amount outstanding from time to time, in accordance with the provisions of clause 22.11.

#### **45. DISPUTE RESOLUTION**

- 45.1. Any dispute, question or difference arising at any time between a Member or between Members and the Committee out of or in regard to:
- 45.1.1. any matters arising out of this Constitution; or
- 45.1.2. the rights and duties of any of the parties mentioned in this Constitution; or
- 45.1.3. the interpretation of this Constitution,
- shall be submitted to and decided by mediation on notice given by any party to the other parties who are interested in the matter in question.
- 45.2. Notwithstanding clause 45.1, a party declaring a dispute in respect of payment of Levies, subject to clause 22, is not obliged to refer the dispute to mediation and may institute court proceedings.
- 45.3. Upon written notice from any party to the other (the "**Dispute Notice**") the dispute shall be referred to a suitably qualified independent mediator, whose identity shall be agreed between the parties in writing, within 7 (seven) days of receipt of the Dispute Notice, and failing agreement as aforesaid, to a suitably qualified independent mediator appointed by the President for the time being of the Cape Law Society (or its successor body in the Western Cape). The mediator shall be an Africa Centre for Dispute Settlement accredited mediator.

- 45.4. The mediation shall be held at a venue in Cape Town. The parties shall agree on the mediation procedure and failing agreement within 14 (fourteen) days of receipt of the Dispute Notice or such longer period of time as may be agreed to in writing, then, the mediation shall take place in accordance with relevant procedures as is deemed necessary by the mediator, having regard to the nature of the dispute.
- 45.5. If for any reason, including lack of co-operation by the parties, a dispute is not settled by mediation within 30 (thirty) days of receipt of the Dispute Notice or such longer period of time as may be agreed to in writing, then the dispute shall be settled by arbitration in accordance with the following provisions:
- 45.5.1. the arbitrator shall, if the dispute is agreed in writing by the parties to be:
- 45.5.1.1. primarily an accounting matter, be an independent practising accountant of not less than 10 (ten) years' standing as such;
- 45.5.1.2. primarily a legal matter, be an attorney of not less than 10 (ten) years' standing as such or a practising senior counsel;
- 45.5.1.3. any other matter be a suitably qualified independent Person, agreed upon in writing by the parties; provided that if the parties do not, within 14 (fourteen) days of the 30-day period contemplated in clause 45.5, agree in writing as to the identity of the arbitrator, the arbitrator shall, irrespective of the nature of the dispute, be appointed by the Registrar of the Arbitration Foundation of Southern Africa upon request by any party to make such appointment;
- 45.5.2. the arbitration shall be held at a venue in Cape Town and shall be conducted in accordance with the rules of the Arbitration Foundation of Southern Africa;
- 45.5.3. immediately after the arbitrator has been appointed, any party shall be entitled to call upon the arbitrator to fix a date and place when and where to meet with the arbitrator to settle the manner in which the arbitration proceedings will be held;
- 45.5.4. subject to clause 45.6, any order or award that may be made by the arbitrator:
- 45.5.4.1. shall be final and binding, subject to a right of appeal;
- 45.5.4.2. shall be carried into effect; and
- 45.5.4.3. may be made an order of any competent court.

45.6. Nothing in this clause 45 shall preclude any party from seeking interim and/or urgent relief from a court of competent jurisdiction or approaching the Community Schemes Ombud Service in terms of the CSOS Act.

#### **46. DEVELOPER'S RIGHTS AND OBLIGATIONS**

46.1. If the Developer, in one transaction alienates all its rights and all undeveloped Land vested in it from time to time in respect of the Estate, it shall be entitled to cede and assign to the transferee thereof all its rights and obligations in terms of this Constitution and the transferee shall be entitled to exercise all such rights and shall be responsible for all such obligations.

46.2. The Developer may at any time after the construction of such number of Dwellings as it may determine, abandon in whole or in part the particular rights conferred upon it during the Development Period, provided that nothing hereinbefore contained shall be construed as depriving the Developer of any rights it may have in terms hereof as an ordinary Member of the Association.

#### **47. EXTENSION OF DEVELOPMENT**

47.1. The Developer has the right at any time during the Development Period to extend or subtract or alter the area or composition of the Land at no cost to Members or to the Association by requiring the Association to incorporate into the Land, such property contiguous to the Land which the Developer in its sole discretion shall determine ("**Additional Development Land**"), provided that the aggregate area of such Additional Development Land shall be limited in size to an area equal to the aggregate area of the Land.

47.2. Should the said Additional Development Land be incorporated into the Land, the Developer shall be entitled to require that first and all subsequent owners of the same, or parts thereof, become members of the Association in respect of any erven within such Additional Development Land, from such date as the Developer may determine, and on the same terms and conditions as are applicable to other Members of the Association. The Members shall be bound by such requirement of the Developer.

47.3. The provisions of clauses 47 may not be amended at any time without the prior written consent of the Developer.

#### **48. DEVELOPER'S POWERS AND DUTIES**

48.1. The Developer shall for the duration of the Development Period enjoy unrestricted rights with regard to the marketing of the Development and, in particular, the right to erect signage within

the Development and to perform all activities normally associated with Development and building operations in a reasonable manner.

48.2. The Developer shall, where applicable and free of consideration, transfer ownership of the Common Property to the Association. Upon registration of such transfer the risk in and of the Common Property shall pass to the Association and the Association shall become responsible for the maintenance and upkeep thereof as well as for the rates and taxes and all charges attaching thereto.

48.3. During the Development Period:

48.3.1. the Developer may apply to Council to change the land use of any portion of the Mzuri Estate at its own cost;

48.3.2. the Developer may register servitudes within the Development in favour of any statutory authority, the Developer and/or the Association, whether across land, Common Property or land held under full title, in order to comply with Council's Approval or where required for purposes of the Development;

48.3.3. all proposed Levies and expenditure of the Association must be approved in writing by the Developer; and

48.3.4. all amendments to existing Estate Rules and all new rules need to be approved by the Developer.

#### **49. TRANSITION FROM DEVELOPER TO ASSOCIATION**

The responsibility for the day-to-day management of the Association's affairs shall, subject to such restrictions as may be contained in this Constitution, automatically be transferred from the Developer to the Association on date that the first Committee Members are elected to serve on the Committee; provided that if the Facilities on the Common Property transferred are incomplete at the date of transfer, the Developer shall retain responsibility for the completion thereof, which it shall undertake as soon as practically possible.

#### **50. AMENDMENTS TO CONSTITUTION**

50.1. This Constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new clauses shall be made, save by a Special Resolution adopted at an AGM or at a general meeting of the Members called especially for that purpose.

- 50.2. All amendments to this Constitution shall be made in accordance with this clause 50 provided that an amendment concerning a matter in section 62(1)(a) of the Municipal Planning By-Law becomes effective only when certified by the Council.
- 50.3. Further to clause 50.1 above, any deletion, amendment or alteration of clause 43 and clause 10.6.4 and any other clause which has any effect on the Council's rights, benefits and obligations or as contained in Council's Approval shall also be subject to the prior written consent of the Council.
- 50.4. During the Development Period, neither the Constitution nor the Estate Rules may be amended in any respect at all, unless such amendment is made with the Developer's prior written consent.

## **51. DISSOLUTION OF THE ASSOCIATION**

- 51.1. If the Association fails to meet an obligation or ceases to function or if the Association fails to meet any obligations in this Constitution respectively and the Council believes that the community is adversely affected by the failure, the Council may take appropriate action to rectify the failure.
- 51.2. The Council may recover any expenditure in respect of the action contemplated above from the Association or its Members, who are jointly liable.
- 51.3. The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.
- 51.4. If the Association ceases to function effectively or to carry out its obligations, the Council may give the Association a binding instruction to:
- 51.4.1. hold a meeting and to reconstitute itself; or
  - 51.4.2. dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed.
- 51.5. In determining whether to act in terms of the above, the Council must have regard to:
- 51.5.1. the purpose of the Association;
  - 51.5.2. who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;

- 51.5.3. the costs of upgrading the internal engineering services and other infrastructure if the Council is to take over the infrastructure;
- 51.5.4. the impact of the dissolution of the Association on its Members and the community;
- 51.5.5. any written representations from the Association and its Members;
- 51.6. If the Association is dissolved, the Members must jointly pay the costs of:
  - 51.6.1. the transfer to the Council of the Association's property which contains the internal engineering services and private open spaces; and
  - 51.6.2. the upgrading of the internal engineering services to the standards of the Council.
- 51.7. In the event that the Association has ceased to function, and an owner wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% (sixty percent) of the members of the Association, which consent is deemed to be the consent of the Association.

**Council approval signature and stamp**

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- ANNEXURE 1 – MZURI ESTATE RULES
  - ANNEXURE 2 – COUNCIL'S APPROVAL
  - ANNEXURE 3 – MZURI ESTATE LEVY BUDGET
  - ANNEXURE 5 – MZURI ESTATE ARCHITECTURAL GUIDELINES
  - ANNEXURE 6 – MZURI ESTATE LANDSCAPING GUIDELINES
  - ANNEXURE 7 – MZURI ESTATE SITE DEVELOPMENT PLAN
  - ANNEXURE 8 – MZURI ESTATE LANDSCAPING PLAN
  - ANNEXURE 9 – MZURI ESTATE STORM WATER MAINTENANCE MANAGEMENT PLAN
  - ANNEXURE 10 – MZURI ESTATE STORM WATER MAINTENANCE MANAGEMENT AGREEMENT
  - ANNEXURE 11 – MZURI ESTATE OPERATIONAL MANAGEMENT PLAN