

Constitution of The De Tijger Estate Home Owners Association

(A statutory Home Owners Association established in terms of Section 61
of the City of Cape Town Municipal Planning By-Law, 2015)

As amended and resolved by the SGM of De Tijger Estate Home Owners Association
on 30 May 2018



Signed on 31 May 2018 by Prof G S Cloete, Chair.

Be it registered by the Municipal Authority as approved by the Members of the Association by a special resolution at a Special General Meeting on 18 June 2015.

To amend certain clauses of the original, 1999 Home Owner's Association Constitution, the amendments being necessary for current and future development and general management of the Association.

ESTABLISHMENT IN TERMS OF STATUTE

The De Tijger Estate Home Owners Association is a statutory Home Owners Association established in terms of Section 61 of the City Of Cape Town, 2015, By-Law.

The De Tijger Estate Home Owners Association (the Association) came into existence upon the transfer of the first unit arising from the subdivision or part thereof and it includes any further development forming part of the subdivision

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1 INTERPRETATION

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

“**Association**” means De Tijger Estate Home Owners Association;

“**Auditors**” means the Auditors of the Association;

“**Business Day**” means weekdays other than Saturdays, Sundays and Public Holidays;

“**Chairperson**” means the Chairperson of the Trustee Board;

“**Common Area**” means:

(a) that portion remaining after Erf 21887 Parow has been subdivided into Unit Erven and which portion represents common open spaces, natural embankments and the storm water dam with regards to clause 4.1 as will appear on General Plan LG No. 8697/95 annexed hereto;

(b) as well as the remainder of any portion (after the deduction of such portion or residential erven being Unit Erven) of any adjoining or nearby property in respect of which the Developers or owners thereof decide to become part of the Association, including but not limited to erf 22607 embankment;

“**Deputy Chairperson**” means the Deputy Chairperson of the Trustee Board;

“**Development**” means the Unit Erven and the Common Area;

“**In writing**” means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

“**Legislation**” means the City of Cape Town Municipal Planning By-Law;

“**Local Authority**” means the City of Cape Town (the City), any other local authority established or to be established to succeed in whole or in part such Council in exercising control of the local area of which the Development forms part;

“**Member**” means a member of the Association;

“**Month**” means calendar month;

“**Office**” means the registered office of the Association;

“**Original Erf**” means Erf no. 21887, Parow or any part of it;

“**Registered Owner**” means the name of the person as registered in the Deeds Office;

“**Special Resolution**” means a resolution passed at a Special General Meeting of which not less than 21 clear days’ notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it, and passed on a show of hands, by not less than three-fourths of the number of members entitled to vote at that meeting who are present in person or by proxy;

“This Constitution” means this Constitution, regulations, by-laws, rules, protocols, charters, codes of conduct and guidelines of the Association from time to time in force;

“Trustee” means a member of the Trustee Board;

“Trustee Board” means the Board of Trustees of the Association;

“Unit Erven” means the residential erven resulting from the subdivision of Erf 21887 Parow as well as the Residential erven resulting from the subdivision of any adjoining or nearby property in respect of which the Developers or owners thereof decide to become part of the Association;

“Year” means calendar year;

2 PLURAL AND GENDER

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

3 PURPOSE DESCRIBING THE MAIN BUSINESS

3.1 The Association is a juristic person, has a perpetual succession and is capable of suing and being sued.

3.2 The main business of the Association is the promotion, advancement and protection of the members of the Association as owners of Unit Erven through the enforcement of the provisions of this Constitution.

4. MAIN OBJECTIVES AND DUTIES

4.1 The main objectives and duties of the Association are:

4.1.1 The care, maintenance, upkeep and control of the Common Area, the storm water dam and other improvements and services installed on the Common Area which will include natural embankments and retaining structures (if any) outside unit erven and the promotion, advancement and protection of the communal and group interest of the Members generally to the satisfaction of the Local Authority.

4.1.2 The control over the maintenance of buildings and other improvements, including retaining structures erected on the unit erven.

4.1.3 To promote acceptable aesthetic, environmental and architectural styles and design criteria in respect of the Common Area and the Erven in order to achieve harmonious development thereof and to control the design and the development of all the parts thereof.

- 4.1.4 To take ownership of common open spaces, private streets and internal engineering services arising out of the subdivision.
- 4.1.5 To enforce certain conditions of subdivision approval or management plans listed in the conditions of approval.
- 4.2. The Association, acting through the Trustees, will have the power and obligation to do all things as are necessary to accomplish these objectives in accordance with this Constitution and the Rules and Architectural Guidelines of De Tijger Estate.
- 4.3 The main objects and duties of the Local Authority are:
 - 4.3.1 The care of the road system, storm water system, water reticulation network, sewer system and street lighting outside unit erven and outside the Private area.
 - 4.3.2 To enforce certain conditions of subdivision approval or management plans listed in the conditions of approval.
- 4.4. Without limiting the generality of foregoing, the following special conditions shall further apply:
 - 4.4.1 The maintenance of and repairs to the Common Area shall be the sole responsibility of the Association.
 - 4.4.2 The maintenance and servicing of, and repairs to the water supply piping on the units side of the water meter, foul sewers upstream of the individual sewer connections manholes and electrical wiring on the units' side of the electrical connections shall be the responsibility of the owners of the units.
 - 4.4.3 Drainage systems installed by the Developer crossing multiple unit erven (e.g. erven 22598 through 22605) as well as drainage systems through unit erven to drain retaining structures on the embankments be it on unit erven or not, shall be maintained by the Association in and as to their original condition.
 - 4.4.4 The maintenance of the inlet and outlet structures and concrete dry weather flow channel of the storm water dam will be maintained by the Local Authority, whilst the maintenance of the sides and bottom shall be maintained by the Association
 - 4.4.5 The storm water system on the eastern embankment of erf 22607 shall be maintained by the City.
- 4.5 The Association's failure to meet its obligations or ceasing to function shall result in the following:
 - 4.5.1 If the Association fails to meet any of its obligations in this constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.

- 4.5.2 The City may recover any expenditure in respect of the Action contemplated from the Association or its members, who are jointly liable. 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.
- 4.5.3 If the Association ceases to function effectively or carry out its obligation, the city will give the association a binding instruction to:
 - 4.5.3.1 Hold a meeting and to reconstitute itself; or
 - 4.5.3.2 Dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an association and the removal of relevant provisions in the title deed.
- 4.5.4 In determining whether to act in terms of the above, the city must have regard to:
 - 4.5.4.1 The purpose of the association;
 - 4.5.4.2 Who will take over the maintenance of internal engineering and other obligations which the association is responsible for if at all;
 - 4.5.4.3 The cost of upgrading the internal engineering services and other infrastructure if the city is to take over infrastructure;
 - 4.5.4.4 The impact of the dissolution of the Association on its members and the community;
 - 4.5.4.5 Any written representation from the Association and its members.
- 4.5.5 If the Association is dissolved, the members must jointly pay the cost of:
 - 4.5.5.1 The transfer to the City of the Association's property which contains the internal engineering services and common open spaces;
 - 4.5.5.2 The upgrading of the internal engineering services to the standard of the city.
- 4.5.6 In the event that the Association has ceased to function and an owner wishes to transfer a land unit, the owner must obtain the consent of at least 60% of the members of the Association, which consent is deemed to be the consent of the Association.

5 FINANCIAL YEAR END AND DOMICILIUM

- 5.1 The financial year end of the Association is the end of February of each year.
- 5.2 The trustees shall, from time to time, determine the Domicilium Citandi et Executandi provided that:
 - 5.2.1 Such address shall be a physical address and situated within The Magisterial District in which The Association is located and will be either-

5.2.1.1 The address of the Chairperson of the Board of Trustees or the address of any other duly elected resident trustee, duly appointed in general meeting or alternatively,

5.2.1.2 The address of any duly appointed Managing Agent.

6 MEMBERSHIP

6.1 The owner of a unit erf arising from the subdivision becomes a member of the Association upon taking transfer of the land unit and may not resign from the Association. Therefore, membership of the Association shall be compulsory for every registered owner of a Unit Erf.

6.2 Membership of the Association shall be limited to the registered owners of the Unit Erven provided that:

6.2.1 A person is entitled to have any such unit registered in his name and shall be deemed to be the registered owner thereof;

6.2.2 Where any such owner is more than one person, all the registered owners of that Erf shall be deemed jointly and severally to be one Member of the Association.

6.2.3. When a Member ceases to be the registered owner of a Unit Erf, he shall ipso facto cease to be a Member of the Association.

6.3. A Member shall not be entitled to sell or transfer a Unit Erf unless:

6.3.1. All amounts due by the member to the Association have been fully paid to the Association or provision has been made for the payment of such amounts to the satisfaction of the Trustees Board; and

6.3.2. There is a further condition of the sale or the transfer that:

6.3.2.1 No person may apply to the Registrar of Deeds and the Registrar of Deeds may not register, a unit erf arising from the subdivision without the consent of the Association, which consent may not be unreasonably withheld;

6.3.2.2 The transferee becomes a Member of the Association and agrees in writing to abide by the rules of the Constitution of the Association, and agrees in writing to adhere to the Architectural Guidelines; The Estate Rules (conduct rules); Regulations and Code of Conduct Governing Building Contractor Activity.

6.3.2.3. The registration of transfer of the Unit Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association.

6.3.2.4. The registered owner of a Unit Erf may not resign as a member of the Association.

- 6.4. The Trustee Board may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Board.
- 6.5. The rights and obligations of a Member shall not be transferable and every Member shall:
- 6.5.1. To the best of their ability further the objects and interests of the Association;
- 6.5.2. Observe all by-laws and regulations made by the Association or the Trustee Board, provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of that member's Unit Erf.

7 RECORD OF RULES AND AVAILABILITY

- 7.1. The Association shall keep a complete record of all rules in force from time to time and shall ensure that any amendment, substitution, addition or repeal of such rules constitute part of that record.
- 7.2. The trustees shall on the application of-
- (a) an owner of a unit Erf;
 - (b) an occupant of a unit Erf;
 - (c) the prospective purchaser of a unit Erf;
 - (d) the holder of any registered Erf mortgage bond;
 - (e) the managing agent; and
 - (f) the auditor or the accounting officer,
- supply to such person a copy of all rules in force, and may require them to pay a reasonable charge therefor.

8 LEVIES

- 8.1 The Association 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 Trustee Board reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the Common Area, and/or for payment of all rates and other charges payable by the Association in respect of the Common Area, and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Common Area and the Association's affairs. In calculating levies the Association shall take into account income, if any, earned by the Association.
- 8.2 Before every annual general meeting, the trustees shall cause to be prepared an itemised estimate of the anticipated income and expenses of the Association during

the ensuing financial year, which estimate shall be laid before the annual general meeting for consideration.

- 8.3 The estimate of expenses referred to in clause 8.2 shall include a reasonable provision for contingencies and the maintenance of the Common Area.
- 8.4 At every annual General Meeting the Association must consider an itemised estimate of the anticipated income and expenditure of the Estate prepared by the Trustees. The Association shall estimate the amount which shall be required by the Association to meet the budget during each year, together with such estimated deficit, if any, as shall result from the preceding year, and shall make a levy upon the Members, equal as nearly as is reasonably practical to such estimated amount. The Association may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 8.5 The Trustee Board may from time to time impose special levies upon the members in respect of all such expenses as are mentioned in clause 8.1 (which are not included in any estimate made in terms of clause 8.2), and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Board shall think fit. The Trustees may only raise a special levy that was not included in the budget if it is sanctioned by the Annual general Meeting or the Special General Meeting called for the express purpose of raising a special levy. While they can allow Owners to pay a special levy in a number of instalments they cannot provide for an on-going special levy over an extended period of time.
- 8.6 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. No levy due by a member shall be held back, not paid or any amount whatsoever deducted from such a due levy in respect of any dispute between an owner and the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a member of the Association, without prejudice to the Association's right to recover arrear levies. A Member's successor in title to a Unit Erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf, to pay the levy attributable to that erf. 8.5. The total levy contribution payable by the members shall be divided equally amongst all owners of the Unit Erf/Erven registered in the name of those owners in terms of the approved budget.
- 8.7 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

- 8.8 Notwithstanding the foregoing, the aggregate levy imposed in any year shall not exceed any reasonable amount with regard to any obligation of the Association.
- 8.9 Within fourteen days after each annual general meeting the trustees shall advise each owner in writing of the amount payable by him.
- 8.10 In the event that the Association institutes action against any member for recovery of any levy, special levy or other contribution properly due by that member to the Association then the Association will be entitled to all legal costs on the scale as between attorney and own client together with collection commission, tracing fees, expenses, and other charges, administrative or otherwise.
- 8.11 No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a member provided that, in the event that a members account with the Association may, on the termination of his membership, stand in credit, then the amount of such credit shall be refunded to the member within 21 days of the termination of his membership.

9 DEALING WITH THE COMMON AREA

- 9.1. Neither the whole nor any portion of the Common Area shall be:
- 9.1.1. Sold, let alienated, otherwise disposed of, subdivided or transferred; or
Mortgaged;
- 9.1.2. Subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude, other than the general servitude in favour of the local authority for service (save those enjoyed by the Members of the Association in terms hereof);
- 9.1.3. Built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities;
- without the sanction of a special resolution and with the consent of the local authority.
- 9.2. The trustees may, subject to the sanctioning of the AGM or SGM resolution, effect improvements of a luxurious nature on the Common Area.
- 9.3. Should the trustees wish to effect any improvements to the Common Area, other than luxurious improvements referred to in clause 9.4, they shall first give written notice of such intention to all owners such notice shall-
- 9.3.1 Indicate the intention of the trustees to proceed with the improvement upon the expiry of a period of not less than thirty days reckoned from the date of posting such notice; and
- 9.3.2 Provide details of the improvements as to-
- 9.3.2.1 the estimated costs thereof; and

9.3.2.2 the manner in which it is to be financed and the effect upon levies paid by owners; and

9.3.2.3 the need, desirability and effect thereof.

9.3.3 Any member of the association, in good standing, is entitled to request the Trustee Board to convene a special general meeting in order to discuss and to deliberate upon the proposals contained in the notice, at which meeting the owners may approve, with or without amendments, such proposals by way of special resolution.

9.3.4 In the event of such a special general meeting being called, the trustees shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any special resolution ensuing there from.

10 **CONTRACTS AND REGULATIONS**

10.1. The Trustee Board may from time to time:

10.2. Make regulations and guidelines governing inter alia-

10.2.1. The Member's rights of use, occupation and enjoyment of the Common Area;

10.2.2. The number of persons who may occupy any Unit Erf;

10.2.3. the external appearance of and the maintenance of the dwellings, buildings, or other improvements erected on the Unit Erven as well as the Common Area; in this respect it is recorded that in terms of the provisions of the Deed of Sale in terms of which each Unit Erf was sold to the first Purchaser such Purchaser and his successors in title were bound by the following condition: Any permanent dwelling as well as all other improvements to be erected on the Property shall;

10.2.3.1 Strictly comply with the architectural guidelines attached to the deed of sale or as amended;

10.2.3.2 All building plans to alter or to erect other improvements to the building must be designed by a registered architect of the owner's choice in which event such plans as drawn by such architects will be vetted by a Trustee Board to ensure that it complies with the Architectural Guidelines of De Tijger Estate.

10.2.3.3 The Seller shall for as long as any residential erf in the De Tijger Estate is still registered in its name have the responsibility to ensure compliance with the architectural guidelines. Thereafter, the above condition shall be binding on the purchaser and every successor in title.

10.2.3.4 Each registered owner and other possessor or occupier of a Unit Erf shall be subject to the above condition.

10.2.4. The height and type of trees on Unit Erven as well as the Common Area;

10.3. Enter into agreements(s) with the local authorities governing the matters set out in this Constitution, and any other incidental matters.

10.4. Any new or amended regulation, guideline or contract referred to in this clause shall be tabled in the next AGM or SGM for notification.

11 UNDERTAKING

Each Member undertakes to the Association that he shall comply with:

11.1. The provisions of this Constitution;

11.2. Any regulations made in terms of clause 10.2;

11.3. Any agreements referred to in clause 10.3 insofar as those agreements may directly or indirectly impose on him.

12. BREACH

12.1. Any Member who fails to make payment to the Association on the due date of any monthly levy or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of this Constitution, or of the architectural guide lines may, if so determined by a resolution passed by not less than 4 (four) of the Trustees present at a meeting of the Trustee Board shall:

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

12.1.2. be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question, such sum as a fine or compensation; as in each case shall have been determined in the approved Rules or Architectural Guidelines of the Association, or at such Trustee Board meeting.

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

12.3. Should the Trustees institute any legal proceedings against any member pursuant to a breach by that Member of this Constitution, the Conduct Rules or any Regulation then, without prejudice to any other rights which the Trustees or The Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or The Association, including

attorney/and own client costs, tracing fees, collection commission, expenses, and other charges, administrative or otherwise.

- 12.4. Without prejudice to any of the rights the Trustees or The Association may have in terms of the provision of these presents, should any Member fail to pay any amount due by him or her on the due date, then such Member shall pay interest at such rate determined by the trustees from time to time

13. TERMINATION OF MEMBERSHIP

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

14. TRUSTEE BOARD

- 14.1 There shall be a Board of the Trustees of the Association which shall consist of not less than 4 (four) and not more than 7 (seven), provided that if there are any Members of the Association who are not registered owners of Original Erven then at least one half of the Members of the Trustee Board shall be registered owners of Original Erven.

14.2. Each trustee of the Association shall stand in a fiduciary relationship to the Association.

14.3. Without prejudice to the generality of the expression "fiduciary relationship", the provisions of clause 14.2 shall imply that a trustee:

14.3.1 Shall in relation to the Home Owners Association act honestly and in good faith, and in particular:

14.3.1.1 shall exercise such powers as he may have to manage or represent the Association, in the interest and for the benefit of the Association; and

14.3.1.2 shall not act without or exceed the powers aforesaid; and

14.3.1.3 shall avoid any material conflict between his own interests and those of the Association;

14.3.2. shall not derive any personal economic benefit to which he is not entitled by reason of his office as trustee of the Association, from the Association or from any other person in circumstances in which that benefit is obtained in conflict with the interests of the Association; and

- 14.3.3. shall notify every other trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he may have in any contract of the Association.
- 14.4. A trustee of the Association whose mala fide or grossly negligent act or omission has breached any duty arising from his fiduciary relationship, shall be liable to the Association for:
- 14.4.1 any loss suffered as a result thereof by the Association; or
- 14.4.2. any economic benefit derived by the trustee by reason thereof.
- 14.5. Where a trustee fails to comply with the provisions of clause 13.2 and it becomes known to the Association that the trustee has an interest referred to in that subsection in any contract of the Association, the contract in question shall, at the option of the Association, be voidable: Provided that where the Association chooses not to be bound, a Court may on application by any interested person, if the Court is of the opinion that in the circumstances it is fair to order that such contract shall nevertheless be binding on the parties, give an order to that effect, and may make any further order in respect thereof which it may deem fit.
- 14.6. Except as regards his duty referred to in clause 14.2, any particular conduct of a trustee shall not constitute a breach of a duty arising from his fiduciary relationship to the Home Owners Association, if such conduct was preceded or followed by the written approval of all the members of the Association where such members were or are cognizant of all the material facts.
- 14.7. Every Trustee must be a Member of the Association, provided that the spouse of a Member may be a Trustee.

15. NOMINATION AND ELECTION OF TRUSTEE BOARD MEMBERS

- 15.1 Any registered owner of a unit erf in the Association is eligible to be verbally nominated at the AGM as a Trustee, except;
- 15.1.1 if such a person is at the time in persistent breach of any of the Association's Rules (notwithstanding a written warning to refrain from same); or
- 15.1.2 is indebted to the Association; or
- 15.1.3 is the managing agent or any of his or her employees or employee of the Association, unless he or she is an owner.
- 15.2 Any nomination as Trustee must be seconded by at least one other member at the meeting who have the vote.
- 15.3 A nominee for the Trustee Board must verbally accept the nomination if he/she is present at the meeting where the nomination is made, or his/her written and signed

acceptance of a nomination if he/she is not present at that meeting must be provided to the Chairperson when the nomination is made.

- 15.4 The election of trustees takes place through a show of hands by members who are not indebted to the Association.

16 **REMOVAL AND ROTATION OF TRUSTEES**

- 16.1 Save as set forth in clause 15, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, but will be eligible for re-election to the Trustee Board at such meeting.

- 16.2. A Trustee shall be deemed to have vacated his office as such upon:

16.2.1. His falling in debt towards the Association for longer than 30 days after payment is due;

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

16.2.3. His making any arrangement or compromise with his creditors;

16.2.4. His conviction for any offence involving dishonesty;

16.2.5. His becoming of unsound mind;

16.2.6. His resignation from such office in writing delivered to the Chairperson;

16.2.7. His death;

16.2.8. His removal from office by a Special Resolution of the members, provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact he is no longer a Trustee has been recorded in the Minute Book of the Trustee Board.

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

17. **OFFICE OF TRUSTEES**

The Trustees shall appoint from amongst themselves, a Chairperson and Deputy Chairperson.

- 17.1. The first Chairperson, and Deputy Chairperson, shall be appointed by the Registered Owner, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be the Trustee for any reason. First Chairperson referred to here is at Registration of the Estate when Developer handed over

- 17.2. The trustees shall elect a Chairperson from among their number who shall hold office as such until the end of the next annual general meeting of the members of the Association and who shall have a casting as well as a deliberative vote, save where there are only 4 trustees. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Board shall immediately meet to appoint one of their number as a replacement in such office.
- 17.3. Save as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Trustee Board, and all general meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties may be prescribed by the Trustee Board or of Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 17.4. The Deputy Chairperson shall assume the powers of the Chairperson in the absence of the Chairperson or his inability or refusal to act as Chairperson, and shall perform such other duties as may from time to time be assigned to him by the Chairperson of the Trustee Board.
- 17.5. The Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairperson, Deputy Chairperson, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.
- 17.6. If any Chairperson vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the trustees present at such meeting shall choose another Chairperson for such meeting who shall have the same rights of voting as the Chairperson.

18. **FUNCTIONS AND POWERS OF THE TRUSTEE BOARD**

- 18.1 Subject to any restriction imposed or direction given at a General Meeting of the Association, the powers of the trustees shall include the following:
 - 18.1.1 To manage and control the business and affairs of the Association;
 - 18.1.2. To appoint on behalf of the Association such agents and employees as they deem fit to assist with-
 - 18.1.2.1 the control, management and administration of the Common Area; and
 - 18.1.2.2 the exercise and performance of any or all of the powers and duties of the Association;

- 18.2. To delegate to one or more of the trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation.
- 18.3. The trustees may not make loans on behalf of the Association to owners of units or to themselves.
- 18.4. The Trustee Board shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 18.5. The trustees shall do all things reasonably necessary for the control, management and administration of the common property in terms of the powers conferred upon them in this document, including
 - 18.5.1 the power of co-optation of a maximum of two co-optees as deemed necessary, and
 - 18.5.2 the establishment of one or more standing or ad hoc advisory subcommittees under the leadership of a trustee, comprising of other trustees and/or owners and/or tenants for specific tasks. A sub-committee of the Trustee Board must report regularly to the Trustee.
- 18.6. The trustees shall do all things reasonably necessary for the enforcement of the rules in force.
- 18.7. The Trustees shall have the power to appoint, on behalf of the Association, a Managing Agent as they deem fit; to assist, upon the instruction of the Trustee Board, with the control, management and administration of the affairs of The Association and the exercise and performance of any or all of the powers and duties of The Association. Such Managing Agent must be registered with the Estate Agency affairs Board and shall hold a Fidelity Fund Certificate issued by that board. The Trustees shall have the power to determine the remuneration of such Managing Agent and shall, subject to the provisions hereunder, conclude a written agreement with the Managing Agent incorporating all such terms and conditions they deem fit.
- 18.8. The contract appointing any managing agent shall include a provision to the effect that if he is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of such, the trustees, will have a right to cancel such contract of appointment, and that the Managing Agent shall have no claim whatsoever against the Association or any of the Members as a result of such cancellation.
- 18.9. The contract with the Managing Agent shall further provide for the appointment to be revoked, and such managing agent shall cease to hold office, if-
 - 18.9.1. Where the Managing Agent is a juristic person, an order is made for its provisional or final liquidation or, where the Managing Agent is a natural person, he applies for the surrender of his estate as insolvent or his estate

- is sequestrated either provisionally or finally or, where the Managing Agent is a company, it is placed under judicial management; or
- 18.9.2. the Managing Agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the Managing Agent is a company or a close corporation, any of its directors or members are convicted of an offence involving an element of fraud or an element of dishonesty, or;
- 18.9.3. a special resolution of the members of the Association is passed to that effect.
- 18.10. The Trustees shall from time to time furnish the Managing Agent with copies of all minutes of Trustees' meetings and of the Association.
- 18.11. The Trustee Board may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution, in such reasonable manner as it shall decide from time to time.
- 18.12. The Trustee Board may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association in general meeting:
- 18.12.1. As to disputes generally;
- 18.12.2. Or the furtherance and promotion of any of the objects of the Association;
- 18.12.3. Or the better management of the affairs of the Association; No document signed on behalf of this Association, shall be valid and binding unless it is signed by at least two members of the Trustee Board or the Managing Agent, upon a written authority by the Trustee Board.
- 18.12.4. For the advancement of the interest of Members;
- 18.12.5. For the conduct of Trustee Board Meetings and general meetings; and
- 18.12.6. To assist it in administering and governing its activities generally, and shall be entitled to cancel, vary or modify any of the same from time to time.

19. **PROCEEDINGS OF THE TRUSTEE BOARD**

- 19.1. The Trustee Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 19.2. Meetings of the Trustee Board shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Board need be held for that quarter.
- 19.3. The quorum necessary for the holding of any meeting of the Trustee Board shall be 4 (four) trustees.

- 19.4. The Chairperson shall preside as such at all meetings of the Trustee Board, provided that should at any meeting of the Trustee Board the Chairperson not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Deputy Chairperson shall act as Chairperson of such meeting, provided further that should the Deputy Chairperson also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those present of the Trustee shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 19.5. The Trustee Board shall take minutes of every Trustee Board 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 Chairperson of the meeting. All minutes of Trustee Board meetings shall after certification of aforesaid be placed in a Trustee Board 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 Trustee Board Minute Book shall be open for inspection at all reasonable times by a trustee, the Auditors, the Association Members and Local Authority.
- 19.6. All competent resolutions recorded in the minutes of any Trustee Board meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolution, and until varied or rescinded. No resolution or purported resolution of the Trust Board shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Board and decided upon unanimously or by means of a majority vote of the Trustees present.
- 19.7. Save as otherwise provided in this Constitution, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 19.8. A resolution of a trustee meeting signed by the elected Chairperson of the Trustee Board, provided there is no objection as to the correctness of such resolution, shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Board duly convened.

20 **ROUND ROBIN RESOLUTION**

- 20.1 A resolution in writing agreed to by a majority of the trustees, and being not less than 4, are sufficient to form a quorum and shall be as valid and effective as if it had been passed at a meeting of the trustees duly convened and held, provided that at least 5 days' notice of the envisaged resolution has been given to all trustees.

21 MEETINGS OF THE ASSOCIATION

- 21.1 The Association shall preferably before 31 May in each calendar year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices.
- 21.2. Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Board shall decide from time to time.
- 21.3. All general meetings other than Annual General Meetings shall be called Special General Meetings.
- 21.4. The Trustee Board may, whenever they think fit, convene a Special General Meeting. The Trustee Board shall also convene a special general meeting if requested to do so in writing by at least 25% of the Members of the Association.

22. NOTICE OF MEETINGS

- 22.1. An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by 21 (twenty one) days' notice in writing at the least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by 14 (fourteen) days' notice in writing at the least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any as may be prescribed by the Trustee Board to such persons as are under this Constitution entitled to receive such notices from the Association, provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed:
 - 22.1.1 In the case of a meeting called as the Annual General Meeting, by a majority of the Members present and entitled to attend and vote thereat; and
 - 22.1.2. In the case of a special general meeting, by a majority of not less than 75% of the Members present and entitled to attend and vote at that meeting.
 - 22.1.3. 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 this Constitution, 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.

23 VENUE OF MEETINGS

- 23.1. Meetings of the Association shall take place at such place(s) as shall be determined by the Trustee Board from time to time.

24. QUORUM

- 24.1. No business shall be transacted at any Annual or Special General Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any Annual or Special General Meeting shall be at least 20 per cent of Members entitled to vote, who are present in person or by proxy or by representative recognised by law and entitled to vote. 24.2. If within half an hour from the time appointed for the holding of an Annual or Special General Meeting a quorum is not present, the members present will represent a quorum, provided a proper notice has been served in terms of clause 30.

25 AGENDA AT ANNUAL GENERAL MEETING

- 25.1. In addition to any other matters required by this Constitution to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- 25.1.1. the considerations of the Chairperson's report to the Trustee Board;
 - 25.1.2. the election of the Trustee Board;
 - 25.1.3. the consideration of any other matters raised at the meeting including any resolution proposed for adoption by such meeting, and the voting upon any such resolutions;
 - 25.1.4. the consideration of the income and expenditure of the Association for the last financial year of the Association preceding the date of such meeting;
 - 25.1.5. The consideration of the report of the Auditors;
 - 25.1.6. The consideration of the total levy for the calendar year during which such Annual General Meeting takes place; and
 - 25.1.7. The considerations of the appointment and fixing of the remunerations of the Auditors for the financial year of the Association following the Annual General Meeting.

26 PROCEDURE AT MEETINGS

- 26.1. The Chairperson shall preside as such at all general meetings, provided that should he not be present within five minutes of the time appointed for the holding thereof, then the Deputy Chairperson, shall act as Chairperson at such meeting, provided further that should the Deputy Chairperson also not be present within five minute of the time

appointed for the holding of such meeting, then the members present at such meeting entitled to vote shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

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

27 PROXIES

- 27.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorized agent in writing, but need not be in any particular form provided that where a Member is a company, the same may be signed by the Chairperson of the Board of Directors of the Company or by its secretary, and where an association of persons, by the secretary thereof.
- 27.2. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.
- 27.3. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Board at least one hour before the time fixed for the holding of the meeting.

28 VOTING

- 28.1. At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Unit Erf registered in the name provided that if a Unit Erf is registered in more than one name, then they shall jointly have one vote.

- 28.2. Save as expressly provided for in this Constitution, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to participate in the proceedings or to vote on any question, either personally or by proxy, at any general meeting.
- 28.3. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 28.4. Notwithstanding the provisions of clause 28.3, voting on the election of a Chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote.
- 28.5. Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 28.6. An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereon, and on abstention shall not be counted as a vote for or against the resolutions in question. In the case of equality of votes, whether on a show of hands or on a poll, the Chairperson of the general meeting shall be entitled to a casting vote in addition to his deliberate vote.
- 28.7. A special resolution or any amendment of such a special resolution shall be carried as specified in the definition of a special resolution in clause 1.
- 28.8. Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity of the procedures at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respect be deemed to have been properly and validly constituted and conducted, and on 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 votes so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

29. **APPOINTMENT OF PROFESSIONAL OFFICERS**

- 29.1. Save as specifically provided otherwise in this Constitution, the Trustee Board shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee(s) whatsoever, for any reasons thought necessary by the Trustee Board and on such terms as the Trustee Board shall decide, subject to any of the provisions of this Constitution, provided that any expenditure incurred in respect of the above, that was not provided for in the budget, with the exception of expenditure related to the services of a Managing Agent, shall not exceed 10% (ten per centum) of the total annual levy for the year in question,[unless] and if exceeded in any amount, to be authorised by a resolution of an Annual General Meeting or a Special Resolution of a Special General Meeting called for this purpose .

30. **BOOKS OF ACCOUNT**

- 30.1. The Association in general meeting or the Trustee Board, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 30.2. The trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association, including-
- 30.2.1 a record of the assets and liabilities of the Association;
 - 30.2.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
 - 30.2.3 a register of owners and of registered mortgagees of erven and of all other persons having real rights in such erven, including tenants (which information must be provided in writing to the trustee Board by such owners, mortgagees or other persons) containing inter alia in each case their full names,~~identity numbers,~~ physical and postal addresses, telephone numbers and electronic mail addresses; and
 - 30.2.4 Individual ledger accounts in respect of each owner.
- 30.3. On the application of any owner, registered mortgagee or of the managing agent the trustees shall make all or any of the books of account and records available for inspection by such owner, mortgagee or managing agent.

- 30.4. The trustees shall cause all books of account and records to be retained for a period of six years after completion of the transactions, acts or operations to which they relate: Provided that minute books shall be retained for so long as the scheme remains registered.
- 30.5. At each Annual General Meeting the Trustee Board shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet shall be accompanied by proper and extensive reports of the Trustee Board and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth, copies of such reports, balance sheet and reports and of any other documents required by law to accompany the same.
- 30.6. The Home Owners Association's Trustees are responsible for the preparation and fair presentation of these annual financial statements in accordance with the International Financial Reporting Standards for small and medium sized Entities, and for such internal control as the Trustees determine necessary to enable the preparation of annual financial statements that are free from material misstatements, whether due to fraud or error.

31. **AUDIT**

- 31.1. Once at least in every year the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.
- 31.2. The duties of the Auditors shall be regulated in accordance with the applicable legislation.

32. **SERVICE OF NOTICES**

- 32.1. Subject to clause 32.5, a notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the Unit Erf owned by him.
- 32.2. No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 32.3. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall

be sufficient to prove that the letter containing the notice was properly addressed and posted.

- 32.4. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 32.5. Notice of an Annual General Meeting or a Special General Meeting can be served in writing via post, or electronic transmission, as preferred by the Association; the aforesaid is strictly subject to an accurate Registry of Owners as prescribed by the applicable legislation.

33 INDEMNITY

- 33.1. All Trustees and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide and in the absence of gross negligence incurred by them in their respective capacities and in the case of a Trustee member, in his capacity as Chairperson, Deputy Chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person(s) by the Court.
- 33.2. Every Trustee, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association and it shall be the duty of the Trustee Board out of the funds of the Association to pay all costs, losses and expenses (including traveling 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 a person or persons in the discharge of any of his/their respective duties, including the case of a Trustee, his duties as Chairperson, or Deputy Chairperson. 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 and without gross negligence.
- 33.3. A Trustee shall not be liable for the acts, receipts, neglects and defaults of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairperson or Deputy Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Board for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight

on his part, or for any other loss, damage or misfortune whatever which shall happen through lack of bona fides, gross negligence or breach of duty or breach of trust.

[34 PRIVILEGES IN RESPECT OF DEFAMATION] --

35. DISPUTE RESOLUTION

- 35.1. Any dispute, question or difference arising at any time between Members and Trustees out of or in regard to:
- 35.1.1. The interpretation of this Constitution, or any matter arising out of this Constitution; or
- 35.1.2. The rights and duties of any of the parties mentioned in this Constitution; may be referred to and resolved by the Community Schemes Ombud Service (CSOS) in terms of the provisions of the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011), as amended from time to time.
- 35.2. If the CSOS is not available for such dispute resolution referred to in clause 35.1, or if all parties to the dispute agree that the dispute should not be referred to it for resolution, the dispute, question or difference may be referred to a private arbitration on notice given by any party to the other parties who are interested in the matter in question.
- 35.3. Arbitration shall be held in Cape Town and/or Parow formally and otherwise upon the provisions of the Arbitration Act 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty one) business days after it has been demanded.
- 35.4. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 35.4.1. Primarily an accounting matter – an independent accountant;
- 35.4.2. Primarily a legal matter – a practicing counsel or attorney duly admitted as such;
- 35.4.3. Any other matter – an independent and suitably qualified person appointed by the Auditors, as may be agreed upon between the parties to the dispute.
- 35.5. If agreement cannot be reached on whether the question in dispute falls under 33.4.1, 35.4.2 or upon a particular arbitrator in terms of clause 35.4, within 3(three) business days after the arbitration has been demanded, then:
- 35.6. The President for the time being of the Law Society of the Cape of Good Hope shall determine whether the question in dispute falls under clause 35.4; or
- 35.7. The President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 35.4 within 7 (seven) business days after the

parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) business days referred to in clause 35.4.

- 35.8. The arbitrator shall make his award within 14 (fourteen) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 35.9. The decision of the arbitrator shall be final and binding and may be made an order of the Western Cape High Court of South Africa upon application of any party to the arbitration.
- 35.10. Notwithstanding anything to the contrary contained in clauses 35.1 to 35.9 of this Constitution inclusive, the Trustee Board shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches or any of these provisions.
- 35.11. The Trustee Board may also (and as per the 2005 Annual General Meeting decision of the members) and as required, apply through an admitted attorney, for a court order where members are in breach of any of the De Tijger Estate Home Owners Association Constitution or Regulations.
- 35.12. The legal action may include legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches or any of these provisions.

36. **WATER**

- 36.1. The respective owners shall be obliged to make their own arrangements with the local authority for the payment of the costs thereof provided that if the local authority is not prepared to agree thereto, then such costs shall be made by the Association which will then submit accounts on a monthly basis to the relevant owners in respect thereof.

37. **JOINT LIABILITY OF MEMBERS**

- 37.1. Every member shall be jointly liable for expenditure incurred in connection with the Association and approved or authorized by the Trustee Board. The Association will recover expenditure incurred in connection with the Association from its members.

38. **AMENDMENT TO THE CONSTITUTION**

- 38.1 This Constitution may be amended by a Special Resolution as defined in this Constitution, provided that an amendment concerning a matter in section 62(1) (a) of the By-Law becomes effective only when certified by the City.
- 38.2 This constitution or any of its amendments will be lodged with the City and the latest copy duly lodged and certified by the City in terms of section 62(2) or 62(4) of the By-Law, is presumed to contain the operative provisions of the constitution.
- 38.3. The City is exempt from liability for any damage which may be caused by its certification of a constitution lodged with the City.