CONSTITUTION

OF

DIAZ ESTATE

MUNICIPALITY MOSSEL BAY
MUNISIPALITEIT MOSSELBAAI
22-10-2026
Privaatsak / Private Bag X29
Mosselbaai , Bay 6500

Ho/gl

1. DEFINITIONS

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

1.1 **"ACT"** means the Sectional Titles Act, 1986 (Act No 95 of 1986) as amended from time to time, and any regulations made and in force thereunder;

1.2 **"AGM"** means the Annual General Meeting of the Association held in terms of the provisions of this Constitution;

1.3 **"ALIENATE"** means alienate or sale of any erf or part thereof and includes by way of sale, exchange, donation, deed, intestate succession, will, cessions, assignment, court order, insolvency or liquidation, irrespective of whether such alienation or sale is subject to a suspensive or resolution condition and **"ALLIENATION"** shall have a corresponding meaning. This definition shall include the transfer of shares and/or Membership in a Company or Close Corporation;

1.4 **"AMENITIES"** means the facilities designated or constructed to meet the communal needs of the Members of this Association including but not limited to private roads, security walls and fences, open areas, guardhouse and the like;

1.5 **"ARCHITECTURAL GUIDELINES"** means the Architectural Guidelines composed by the Developer and/or the Association, as the case may be, as be amended from time to time, which document will regulate all aspects in relation to alterations and/or additions to houses and/or Sectional Title Units;

1.6 **"ASSOCIATION"** means the Diaz Estate Home Owner's Association which is established in terms of clause 4 and which is bound by the provisions of this Constitution;

1.7 **"AUDITORS"** means the auditors of the Association for the time being and from time to time;

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1.8 **"BOARD OF TRUSTEES"** means all the Trustees of the Association duly appointed in terms of the provisions of this Constitution;

1.9 **"BODIES CORPORATE"** means the various bodies corporate established in terms of STSMA in respect of any Residential Erf;

1.10 **"BUSINESS DAY"** means weekdays other than Saturdays, Sundays and public holidays;

1.11 **"CHAIRPERSON"** means the Chairperson of the Trustees;

1.12 "**THE COMMON AREAS"** means the private roads and private spaces as approved by all relevant authorities;

1.13 **"CONSTITUTION"** means this document with the annexures hereto and includes all/any amendments made hereto from time to time hereof;

1.14 **"DEVELOPER"** means Diaz Boulevard Pty Ltd, registration number 2014/080944/07, a duly registered company, or its successor/s in title or assigns;

1.15 **"DEVELOPER TRUSTEE"** means a trustee appointed by the Developer;

1.16 **"DEVELOPMENT"** means Erf 3991, Hartenbos, by the subdivision and rezoning thereof to create the Development to be known as Diaz Estate, developed in accordance with the approval on the Municipality of Mossel Bay, dated the 3rd of October 2023, comprising *inter alia* of the following:

1.16.1 59 (fifty nine) group housing erven;
1.16.2 54 (fifty four) town housing erven;
1.16.3 235 (two hundred and thirtyfive) Sectional Title units;
1.16.4 various open spaces and roads.

The composition of the Development is subject to amendment by the Developer.

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1.17 **"DEVELOPMENT PERIOD"** means the period commencing from the date of establishment of the Association and terminating upon the transfer of the last Residential Erf, whether improved or unimproved, in the Development from the Developer, or such earlier date on which the Developer notifies the Association in writing that it terminates the Development Period, subject, however, to the terms and conditions of the Constitution of the Association;

1.18 **"ERF"** means an erf or erven, registered in the Deeds Office as such, within the Development;

1.19 **"ESTATE RULES"** means the estate rules, firstly compiled by the Developer and thereafter subject to amendment by the Trustees;

1.20 **"GENERAL RESOLUTION"** means, as consistent with the context, either a resolution passed at an annual general meeting or any other general meeting of the Association by an ordinary majority of the total votes represented at such meeting by Members present in person or by proxy passed in compliance with the applicable provisions hereof;

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1.21 **"IMPROVEMENTS"** means any structure of whatever nature constructed or erected or to be constructed or erected on an erf and includes changes or alterations to existing buildings and/ or structures on an erf;

1.22 **"LEVY"** means any one or more or all the levies referred to in clause 14 hereof;

1.23 **"MANAGING AGENT"** means any person or body appointed by the Association from time to time as an independent contractor to undertake any of the functions of the Association;

1.24 **"MEMBER"** means a Member of the Association being a Registered Owner of a Dwelling Unit;

1.25 **"MEMBER'S PROPERTY"** means an erf or Sectional Title Unit (as applicable) registered in the name of a Member;

1.26 **"MEMBER TRUSTEE"** means a trustee elected by the Members;

1.27 **"MINUTES"** means the minutes of a Annual General Meeting or any other meeting held by the Members or Trustees;

1.28 **"MUNICPALITY"** means the Mossel Bay Municipality;

1.29 **"OWNER"** means the registered owner of an erf and/ or a Sectional Title Unit;

1.30 **"PROPERTY"** means an erf unless such erf forms part of a scheme in which event "**PROPERTY**" means a Sectional Title Unit;

1.31 **"REPRESENTATIVE"** means a person authorised by a company, close corporation, trust or other corporate entity, as well as a person authorised by a body corporate of a scheme to act as its representative at any general meeting of the Association;

1.32 **"SCHEME"** means a Sectional Title Scheme registered in terms of the Act, in respect of an erf and buildings thereon;

1.33 **"SDP"** means a Site Development Plan approved by the Municipality in respect of the Development and include any amendment thereto;

1.34 **"SECTIONAL TITLE UNIT"** means a residential section defined in the Act and STMA, as amended from time to time and duly demarcated on a Sectional Title Plan as drafted by an architect or land surveyor and accepted by the Land Surveyor General;

1.35 "**SERVICES"** means such facilities, utilities, services and amenities as may be provided on the Estate, which include, but not limited to potable water supply, drainage, sewerage, stormwater disposal, electricity supply and similar services;

1.36 **"SPECIAL GENERAL MEETING"** means all Special General Meetings held by the Association as provided for and in terms of the provisions of this Constitution;

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1.37 **"SPECIAL RESOLUTION"** means a majority of no less than 75% (seventy five percent) of the total voting Members who are present in person and who is entitled to vote;

1.38 **"STMA"** means the Sectional Title Schemes Management Act, Act 8 of 2011, as amended from time to time;

1.39 **"TRUSTEES"** means the Developer Trustees and the Member Trustees of the Association, collectively from time to time and includes alternate and co-opted Trustees;

1.40 **"UNANIMOUS RESOLUTION"** means a resolution passed unanimously by all the Members, who are present or represented by proxy or by a representative recognized by law at a General Meeting of the Association of which at least 30 (thirty) days' notice, specifying the proposed Unanimous Resolution, has been given, and at which meeting at least 80% (eighty percent) of all the Members are present or represented, or agreed to in writing by all the Members of the Association personally or by proxy or by a representative of any such Member recognized by law;

1.41 **"VALUATION"** means the valuation of each property current from time to time as recorded on the valuation roll of the Municipality for the assessment of property rates in accordance with applicable legislation.

2. INTERPRETATION

2.1 The clause headings are for convenience and shall be disregarded in construing this Constitution.

2.2 Unless the context clearly indicates a contrary intention:

2.2.1 words importing:

2.2.1.1 the singular shall include the plural and *vice versa;* and

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2.2.1.2 a reference to any one gender shall include the other genders; and

2.2.1.3 a reference to natural persons includes legal persons and *vice versa.*

2.2.2 words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part bear the meaning assigned to such words and expressions in such sub-clause;

2.2.3 when any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

2.2.4 if any provision of this Constitution is in conflict or inconsistent with any Law, then the provisions of such Law shall take precedence and be implemented and if this results in the invalidity of any such provision this shall not affect the validity of the remainder of the provisions of this Constitution;

2.2.5 if any provision is a definition in this Constitution and is a substantive provision conferring rights or imposing obligations on any of the Members then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution;

2.2.6 the annexures to this c are deemed to Constitution be incorporated in and form part of this Constitution.

3. ESTABLISHEMENT OF HOMEOWNERS' ASSOCIATION

3.1 The Association is a Juristic Person;

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3.2 The Association shall be a legal entity separate from the Members thereof and shall exist in perpetuity.

3.3 The Association may sue and be sued in its own name.

3.4 All assets, liabilities, rights and obligations of the Association shall vest in it independently of its Members.

3.5 All income and assets of the Association shall be applied solely for the promotion of the objectives of the Association and for investment.

4. COMMENCEMENT DATE

The Association, established as a legal *persona* in terms of section 15 of the Mossel Bay By-Law on Municipal Land Use Planning, 2021, will come into existence and be deemed to be formally constituted and this Constitution shall become of force and effect, simultaneously with the first registration of transfer of an erf from the Developer to an owner.

5. STATUS

5.1 The Association shall:

5.1.1 have legal personality and be capable of suing and being sued in its own name; and

5.1.2 not operate for profit but for the benefit of the Members.

5.2 No Member in his/her personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees.

5.3 Save as referred to herein, no Member shall incur any personal liability in respect of acts done or liability incurred by or on behalf of the Association.

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6. PHASES

6.1 The Developer intends and is entitled to develop and market the development in phases as the Developer deems fit. For as long as the Developer is a Member of the Association, the Developer shall enjoy unrestricted rights with regard to the marketing of the development and, in particular, the right to erect signage within the development.

6.2 The Developer shall, in its absolute discretion, be entitled to apply for and subject to approval by the Municipality, vary the layout and/or zoning and/or size and/or boundaries of erven and/or the extent and position of streets comprising the development and Members shall be bound thereby and shall have no claim of whatever nature against the Developer arising therefrom. Insofar as the consent of a Member is required for any of the aforegoing, the Developer (represented by any one of its Directors) is irrevocably granted a power of attorney to grant any/all such consents on behalf of Members, as may be required and, without detracting from the generality of the aforegoing, including any consent required from Members to any re-zoning application, road closure, re-design or any other application which may be submitted by the Developer and/or its authorised agent/s to the Municipality or to any other body to which such application may be made in respect of any portion of the development.

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7. OBJECTS AND FUNCTIONS OF THE ASSOCIATION

The Association shall have as its objects and functions:

7.1 Establish and maintain a levy fund which is reasonably sufficient to cover the estimated annual operating costs for the replacement, repair, maintenance, management and administration of the amenities, common property and services, including payment of rates and taxes and other municipal charges, insurance premiums relating to the amenities, common property and services, and in general to discharge any duty or fulfilment of any other financial obligation of the Association;

7.2 To manage the collective interests common to all its Members which includes, without limiting the generality of the aforegoing, expenditure applicable to

common areas such as private open spaces and the collection of levies for which Members are liable;

7.3 To regulate and control the harmonious development of the development;

7.4 To promote a high standard of improvements on the development;

7.5 To administer and enforce the Architectural Guide;

7.6 To control the transfer of erven and Sectional Title Units and the conditions imposed by the Municipality and conditions imposed by the Developer in the Agreement of Sale between the Developer and the first owner of an erf which becomes binding on all subsequent owners;

7.7 To take transfer of the streets, Common Area/s and improvements thereon from the Developer at no consideration as and when the Developer elects to hand over same to the Association, it being recorded that:

7.7.1 such hand over may take place on a piece meal basis, and not all at once;

7.7.2 will be subject to the Common Area/s and/or improvements having been completed to industry norms and that as at the date of handover, such Common Area/s and/or improvements have been exposed to the usual wear and tear since the date of completion.

7.8 To enter into service agreements with the Municipality or any other supplier of services;

7.9 To implement and maintain security measures and systems for controlled access to the Estate;

7.10 To prescribe measures for the landscaping in respect of gardens and landscaped areas located on the Estate after such areas have been established by the Developer and to prescribe measures for the maintenance of such standards of development;

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7.11 To appoint a Managing Agent to manage the affairs of the Association and Bodies Corporate and as such, delegate the management of the Association's and Bodies Corporate affairs to an outside agency;

7.12 To open and operate bank accounts, invest money, pay for services and goods, and generally act in such a manner so as to give effect to the provisions of this Constitution;

7.13 To establish and maintain a reserve fund in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of the common property but not less than the amount prescribed by the Board;

7.14 The Association shall have the power to do all such acts as are necessary to accomplish the fulfilment of the aforegoing objects including, but not restricted, to powers specifically contained in this Constitution;

8. MEMBERSHIP

8.1 The Association shall have as its Members:

8.1.1 The Developer for as long as the Developer remains an owner of any portion of the development and, without detracting from the generality of the aforegoing, specifically including any erf or Sectional Title Unit;

8.1.2 Every owner upon registration of transfer of an erf and/or a Sectional Title Unit into his/her name, which Membership is automatic and mandatory;

8.1.3 Where an owner comprises more than one person, such persons shall be deemed jointly to be one Member of the Association and shall be responsible, jointly and severally, for the obligations of such Membership.

8.2 A title deed condition will be imposed by the Developer in favour of the Association in respect of each erf upon transfer thereof out of the name of the Developer as hereunder:

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"The Transferee and his/her successors in title shall at all times be subject to the Constitution of the Association and this property shall not be transferred without the written consent of the said Association."

8.3 An owner shall be a Member of the Association until he/she ceases to be an owner whereupon he/she shall, *ipso facto,* cease to be a Member of the Association.

8.4 The fact that a person ceases to be a Member of the Association as a result of the transfer of his/her erf or Sectional Title Unit to another person, shall not release such Member from any liability to the Association in respect of any levies owned to the Association prior to the transfer of such erf or Sectional Title Unit no otherwise relieve such erstwhile Member from any other obligations owned to the Association during the period of his/her Membership.

8.5 An owner of an erf or Sectional Title Unit shall not be entitled to resign as a Member of the Association.

8.6 Every Member is obliged to comply with:

8.6.1 the provisions of this Constitution and any Estate Rules passed by the Association;

8.6.2 any directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution;

8.6.3 the provisions of the Architectural Guidelines and the Estate rules; and

8.6.4 any agreement concluded by the Association insofar as such agreement may, directly or indirectly, impose obligations on a Member.

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8.7 No Member shall let or otherwise part with the occupation of his/her erf or Sectional Title Unit, whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by all applicable provisions of this Constitution. The Member shall, nonetheless, remain bound by this Constitution and is required to ensure compliance therewith by such occupier.

8.8 The registered owner of a property shall be responsible, vis-à-vis the Association , for any non-compliance of the terms of this Constitution and/or the Estate Rules by an occupier and/or visitor of his/her property.

9. FURTHER OBLIGATIONS OF MEMBERS

Each Member shall:

9.1 maintain in a neat and tidy condition and in a state of good repair all improvements on his/her erf or Sectional Title Unit;

9.2 be responsible for the maintenance of external and boundary walls/ palisades fencing inclusive of regular painting thereof (where applicable);

9.3 not park any commercial type vehicle, boat, caravan, trailer or any vehicle not in good working order on any roadway in the development and such vehicle/ boat/ caravan/trailer shall be parked on the Member's erf;

9.4 not do or suffer to be done on any erf or in any Unit anything which, in the opinion of the Trustees is excessively noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or unreasonable disturbance to any Member, tenant or occupier of any erf or Sectional Title Unit in the development;

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9.5 where the erection of structures to house animals or birds or the construction/ erection of garden/ tool shed/s is permitted by the Architectural Review Committee, such structures shall be screened from the public view and the animals or birds so housed shall not constitute a disturbance or nuisance to Members or their tenants or occupiers and the Trustees shall, in their absolute discretion, be entitled to require the permanent removal form the development of any animals or birds which, in the opinion of the Trustees, constitute a disturbance or nuisance;

9.6 comply with all security procedures implemented from time to time; and

9.7 ensure that he/she and his/her invitees do not damage or destroy trees, vegetation and landscaping on open areas of the development in accordance with the Environmental Approval granted for Erf 3991, and will become and be held directly liable for any such damage. Planting on his/her erf does not interfere with pedestrian traffic or obscure the vision of motorists.

9.8 not be entitled to conduct any business or commercial activity from a residential Property.

10. ARCHITECTURAL GUIDELINES

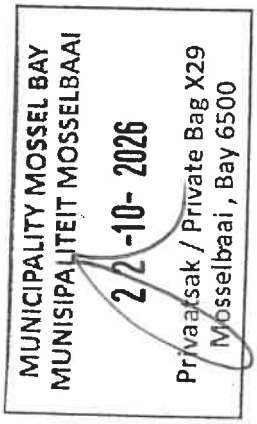
10.1 During the Development Period, the architect appointed by the Developer, will design all buildings and/or improvements in line with the architectural guidelines.

10.2 Any future building work and/or additions to erven and/or Sectional Title Units must be approved by the Architectural Review Committee in accordance with the prescribed procedures contained therein.

10.3 All buildings to be erected and/or additions thereto must at all times comply with the applicable zoning of the Property and be in accordance with the zoning regulations of the Municipality.

11. TRUSTEES OF THE ASSOCIATION

11.1 During the Development Period, the affairs of the Association shall be managed and controlled by the Board of Trustees (the "Trustees Committee") consisting of 5 (five) Trustees:



11.1.1 3 (three) of whom shall be representatives of the Developer nominated and appointed to the Board of Trustees by the Developer, as he deems fit, (and not at a general meeting of Members); and

11.1.2 The remaining 2 (two) elected by majority votes by Members of the Association at a general meeting, provided that one trustee is elected from the Sectional Title Unit Homeowners and one from the traditional erven homeowners.

11.2 After termination or expiration of the Development Period, all Trustees shall be appointed by the Members, provided that both the Residential property owners and Sectional Title Unit owners will at all times have at least one representative Trustee.

11.3 A general meeting of Members shall be called for the purpose of electing the Trustees as per clause 11.2 above.

11.4 The Trustees, except for the Developer Trustees during the Development Period, shall continue to hold office as such from date of his/her appointment to office for a minimum of 2 (two) years to the second annual general meeting following his/her appointment, at which meeting each Trustee shall be deemed to have retired from office as such, but shall be eligible for re-election.

11.5 The Trustees shall, as per clause 11.3 above, after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines) of those Members who attend the general meeting of the Association.

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11.6 Successive Trustees, after the period of 2 (two) years, shall be elected likewise at each successive annual general meeting provided that no Member shall be eligible for election unless he/she have been duly nominated and seconded in writing by other Members and such written nomination, duly endorsed by the nominee, shall have been handed to the secretary not later than the day preceding the meeting and provided further that such nominee's levies for the current year shall have been duly paid.

11.7 Should an insufficient number of nominations be received, further nominations may be called for at the general meeting with the consent of the persons nominated.

11.8 A Trustee need not be a Registered Owner.

11.9 The Trustees, other than Developer Trustees, shall cease to hold office:

11.9.1 by notice to the Trustee Committee if he/she resigns his/her office;

11.9.2 if he/she is removed from the office by an ordinary resolution of the Members;

11.9.3 if he/she absents himself/herself from 3 (three) consecutive meetings of the trustees without leave of absence;

11.9.4 upon his/her Estate being sequestrated, whether provisionally or finally;

11.9.5 upon the commission by him/her of any act of insolvency; or

11.9.6 upon proof and/or conviction of any offence involving dishonesty.

11.10 No Trustee shall be liable to the Association or any Member thereof or to any other person whomsoever, for any act or omission by himself/herself, the Association or its servants or agents. Every Trustee is indemnified by the Association against any loss suffered by him/her in consequence of any purported liability provided that such Trustee has, upon the basis of information known to him/her, acted in good faith, without intent and without gross negligence and/or without dishonesty.

12. FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

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

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12.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land

surveyors, Managing Agents, Operational Manager, Employees, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.

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

12.4 The Trustees shall have the right to co-opt any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustee but no co-opted Trustee shall have any vote at any meetings of Trustee and such co-opted Trustee shall only serve until the next annual general meeting.

12.5 The Trustee shall be entitled to appoint committees consisting of Members and/or outsiders, including a Managing Agent, 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 Trustee may from time to time deem necessary.

12.6 The Trustee may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution in such reasonable manner as they shall decide from time to time.

12.7 The Trustee may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting:

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12.7.1 as to the resolution of disputes in general;

12.7.2 for the furtherance and promotion of any of the objects of the Association;

12.7.3 for the better management of the interests of Members;

12.7.4 for the advancement of the interests of Members;

12.7.5 for the conduct of Trustee at meetings of the Trustee and meetings of the Association;

12.7.6 to levy and collect contributions from Members in accordance with clause 14;

12.7.7 to levy and recover from Members moneys which are necessary to defray the necessary expenses of the Municipality in the event of the Municipality imposing any levies and imposts against the Association;

12.7.8 to assist it in administering and governing its activities generally, and shall be entitled to cancel, vary or modify any of the aforegoing from time to time;

12.7.9 it is recorded that the Body Corporate of the Sectional Title Units will be entitled to make their own rules pertaining to the keeping of pets within the confined area of its registered owners. For the avoidance of doubt it is recorded that on the rest of the Development, outside the boundary of the Sectional Title Units Body Corporate area, the rules applicable to the Estate must be adhered to by all the owners

12.8 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:

12.8.1 entering into agreements with third parties on behalf of the Association for any purposes of the Association;

12.8.2 the employment on behalf of the Association of agents, servants and any other party and the payments of such persons;

12.8.3 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable;

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12.8.4 the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose;

12.8.5 require that any alterations of or additions to the units after they have been completed by the Developer and/or additions or modifications on erven are supervised to ensure that the provisions of this Constitution and the Estate rules are complied with and that all such construction is performed in a proper and workmanlike manner;

12.8.6 issue architectural and landscape design manuals, environmental management plans and contracts or instructions in respect of the Estate, and to ensure that these documents and instructions are complied with at all times;

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12.8.7 determine the criteria for the accreditation of architects, builders, estate agents and other service providers or contractors employed by owners or the Association;

12.8.8 enter into agreements with other developments located in close proximity to the Estate with regard to the sharing of facilities or services or with a view of sharing the costs of services, including but not being limited to security.

13. PROCEEDINGS OF TRUSTEES

13.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.

13.2 Meetings of the Trustees shall be held at least once every 3 (three) months.

13.3 The Chairman always has the right to convene meetings of the Trustees.

13.4 A Trustee may, provided that he/she has the support in writing of 2 (two) other Trustees, at any time convene a meeting of Trustees by giving to the other trustees not less than 14 (fourteen) days written notice of a meeting proposed by him/her, which notice shall specify the reason for calling such meeting, provided that in case of urgency, such shorter notice as is reasonable in the circumstances may be given.

13.5 A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and convened.

13.6 The Trustees shall from their ranks elect a Chairman, provided that the Chairman and Vice-Chairman shall for the duration of the Development Period be Developer Trustees.

13.7 A quorum for any meeting of the Trustee Committee shall consist of 3 (three) Trustees, of which 2 (two) shall comprise Developer Trustees during the Development Period. Should a quorum not be formed as aforesaid the meeting shall stand adjourned until a time to be decided upon by the Chairman.

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13.8 All matters at any meeting shall be determined by a majority of those present and voting. In the event of an equality of votes, the chairman of any meeting shall have a casting vote. If no quorum is present within 30 (thirty) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the trustees then present shall be a quorum provided that 1 (one) of the trustees present is a developer trustee.

13.9 At meetings of the trustees, each trustees present shall have 1 (one) vote save that the developer trustee/s present shall collectively have votes equal in number to the aggregate of the Member trustees plus 1 (one) additional vote. The majority of the votes of the trustees present at a meeting of trustees constitutes the resolution of the trustees.

13.10 The Chairman shall preside as such at all meetings of the trustees provided that, should at any meeting of trustees the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the trustees shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

13.11 The trustees shall:

13.11.1 ensure that minutes are taken of every meeting of trustees, although not necessarily verbatim, which minutes shall be reduced to writing

without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;

13.11.2 cause such certified minutes to be kept of all meetings of the trustees in a minute book of meetings of trustees;

13.11.3 keep all books of meetings of trustees in perpetuity;

13.11.4 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.

13.12 All resolution recorded in the minutes of any meeting of trustees shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of trustees shall be of any force or effect or shall be binding upon the Members or any of the trustees unless such resolution is competent within the powers of the trustees.

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13.13 Save as otherwise provided in this Constitution, the proceedings at any meeting of trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

14. LEVIES, RESERVE FUND, AND ONCE-OFF CONNECTION FEE

14.1 The trustees may from time to time, impose levies upon the Members for the purposes of meeting all the expenses in relation to the common property and facilities and for the payment of all expenses and services necessarily or reasonably incurred in connection with the management of the Association and its affairs. In calculating the amount of the levies, the trustees shall take into account income (if any) earned by the Association.

14.2 The trustee committee shall estimate the amount which shall be required by the Association to meet the expenses during each financial year, together with such estimated deficiency (if any) as shall result from the preceding financial year, and shall impose a levy upon the Members equal as near as is reasonably practical to such estimated amount. The trustee committee may include in such levies, an amount to be held in reserve to meet anticipated future expenditure

not of an annual nature. Every such levy shall be payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such financial year.

14.3 Levies in respect of each erf and/or Sectional Title Unit shall be calculated as follows:

DEFINITIONS:	
A	FULL TITLE ERVEN SIZE (ERVEN LESS THAN 230 SQM) x 65% COVERAGE + 100
B	FULL TITLE ERF SIZE (ERVEN GREATER THAN 250 SQM) x 65% COVERAGE + 60
C	SECTIONAL TITLE UNIT PQ SQM
Y	$\sum(C)$
X	$\sum(A) + \sum(B) + Y$
Z	TOTAL LEVY AMOUNT REQUIRED BY THE ASSOCIATION
65%	BEING THE MAX COVERAGE ALLOWED ON GROUP-HOUSE FULL TITLE ERVEN

GROUPHOUSE ERF LEVY FOR ERVEN LESS THAN 230 SQM = $\frac{A}{X} \times Z$

GROUPHOUSE ERF LEVY FOR ERVEN GREATER THAN 250 SQM = $\frac{B}{X} \times Z$

SECTIONAL TITLE UNIT = $\frac{C}{X} \times Z$

14.4 In terms of the Sectional Title Units, a conventional Body Corporate Levy will also be payable according to its participation quota.

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14.5 The trustees shall not less than 30 (thirty) days prior to the end of each financial year give every Member at the address chosen by him/her a written notice of the contribution payable by that Member to such expenses and reserve fund.

14.6 In the event of the trustees for any reason whatsoever failing to prepare and timeously give notice of the estimate referred to in clause 14.3, every Member shall until served with such estimate, continue to pay the levy previously imposed and shall after such notice pay such levy as may be specified in the notice, in the manner specified in the notice referred to in clause 14.3, together with any arrear levies.

14.7 The trustees may from time to time impose special levies upon the Members in respect of all such expenses as are mentioned in clause 12.1 above (which are not included in any estimate made in terms of clause 12.3), and such levies

may be imposed in the sum or by such instalments and at such times as the trustees shall deem fit.

14.8 In calculating the levy payable by each Member, the trustees shall as far as reasonably practical :

14.8.1 assign those expenses attributable to a particular erf or Sectional Title Unit itself, to the owner thereof;

14.8.2 assign those expenses attributable to a particular Sectional Title development to the owners of units in such development *pro rata* to their participation quota in terms of the particular Sectional Title scheme;

14.8.3 assign those expenses attributable to a particular town house development or group housing development to the Registered Owners of all erven in such development equally;

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14.8.4 assign those expenses attributable to any other development node (including a single residential development node) to the owners of all erven in such development node equally; and/or

14.8.5 assign those expenses relating to the development generally and/or any other expenses not assigned in accordance with clauses 14.1, 14.2, 14.3 or 14.4 above, to the owners of all erven or Sectional Title Units

14.9 Any amount due by any Member by way of any levy shall be a debt due by that Member to the Association. The obligation of a Member to pay a levy shall cease upon that Member ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon that Member ceasing to be a Member. A Member's successor in title to an erf or a Sectional Title Unit shall be liable as from the date upon which he/she becomes a Member pursuant to the transfer of that erf or Sectional Title Unit into his/her name, to pay the levy attributable to that erf or Sectional Title Unit.

14.10 No Member shall be entitled to any of the privileges of Membership of the Association unless and until he/she shall have paid every levy, subscription or other sum (if any) which shall be due and payable to the Association in respect of his/her Membership thereof.

14.11 The trustees shall be empowered to impose fines in respect of non-compliance with the provisions of these clauses and/or to charge interest on any arrear levies and to determine the rate of interest from time to time chargeable upon such arrear levies, which shall be in addition to such other rights as the Association may have in law against the Members.

14.12 The trustees may enter into an agreement or agreements with the Developer for the provision of a capital sum and/or the transfer of land and/or equipment to the Association in lieu of levies.

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14.13 Should any dispute arise at any time between the Members and the trustees in regard to the determination or calculation of the levies, the decision of the auditors for the time being of the Association (acting as experts and not as arbitrators) in regard to such dispute shall be final and binding on the Members and the trustees.

14.14 In the event of any dispute arising in regard to the determination or calculation of any levy, every Member shall until the determination of such dispute, pay the levies determined by the trustees.

14.15 Municipal rates and taxes will be payable to the Municipality in accordance with applicable legislation by the owner.

14.16 It is recorded that the Developer will not be obliged to pay levies in respect of each undeveloped erf within the Development. An erf will be regarded as developed by the Developer once the top structure on the particular erf has been completed to the extent that an occupation certificate can be issued by the municipality from which date the Developer shall be obliged to pay levies in respect of such erf The Developer will however fund any reasonable shortfall during the development period in order for the Association to function properly. Such amounts shall be regarded and recorded as a loan by the Developer to the Association. The loan shall be re-payable from the first available funds in

the reserve fund levy (clause 14.17 below). Any outstanding amount in respect of the loan shall bear interest at prime plus 2%.

14.17 The trustees may enter into any agreement with the Developer in respect of expenses incurred by the Developer on behalf of the Association in respect of any expenses on its behalf, the construction of any infrastructure to be utilised by the Association within the Development.

14.18 Upon the Alienation or Deemed Alienation of a property in the Diaz Estate Development, the transferor or the owner of the property shall pay a Capital Contribution Levy against registration of transfer to the Association for the credit of the reserve fund controlled by the Association, which levy shall be equal to 1% (one percent) of the higher amount of the selling price or the Fair Market Value of the property at the time of the Alienation or Deemed Alienation, subject to the exemptions specified in 14.18 and 14.19 below. This amount will not be payable in the instance of a sale in execution.

14.19 Where a property is transferred from the estate of the transferor of from the joint estate of the transferor and his/her heirs, such reserve fund levy shall not be payable.

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14.20 For the avoidance of doubt it is recorded that the Developer will not have any obligation to pay such reserve fund levy to the Association as this levy is only applicable to the on-sale of properties.

14.21 The Association will be entitled to withhold its consent to transfer a property until such time as this contribution has been paid, alternatively secured to the satisfaction of the Trustees of the Association.

14.22 In the event that a Member is requested to pay a one-off amount, i.e., a connection fee to an internet provider and/or any other service provider, such amount shall be paid by the Member upon request from either the Trustees or the service provider.

15. RESTRICTIONS

15.1 A Member shall not be entitled to alienate or transfer an erf or Sectional Title Unit without the written consent of the Association (represented by the

trustees), which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this Constitution.

15.2 A Member shall not be entitled to consolidate two or more erven into one erf or two or more units or subdivide his/her erf or Sectional Title Unit without the prior written consent of the Developer.

15.3 No Member shall without the prior written comment of the Association apply for any deviation from the zoning and development parameters of his/her erf or Sectional Title Unit with a view to procuring a variation or amendment or substitution of use rights or parameters and shall not be entitled to use his/her erf or Sectional Title Unit for any purpose other than the permitted in terms of the relevant planning legislation and approvals.

16. BREACH

16.1 The trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions hereof.

16.2 If any Member fails in the observance of any of the provisions of this Constitution with regard to improvements and/or fails to comply with any Estate Rules made in terms thereof, the trustees may on behalf of and in the name of the Association serve notice on such Member calling upon him/her to remedy such breach within a time specified in such notice on such Member calling upon him/her to remedy such breach within a time specified in such notice and, failing timeous compliance:

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16.2.1 enter upon the erf or Sectional Title Unit (as the case may be) to take such action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand; and

16.2.2 call upon such Member, in writing, to remove or alter within a specified period any portion of the improvements or any addition erected contrary to the provisions of this Constitution, failing which, institute proceedings in any court of competent jurisdiction for such relief as the

trustees may consider necessary and such Member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.

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

16.4 Nothing in the aforegoing shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any Member/entity arising from any cause of action whatsoever or for any other relief.

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16.5 In the event of any breach of this Constitution by the Members of any Member's household or his/her invitees or lessees, such breach shall be deemed to have been committed by the Member himself/herself but, without prejudice to the aforegoing, the trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Member.

17. MANAGING AGENT

17.1 The trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, appoint in terms of a written contract, a Managing Agent to control, manage and administer the development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the trustees notify the Managing

Agent to the contrary, such appointment will be automatically renewed from year to year.

17.2 The trustees shall ensure that there is included in the contract of appointment of a Managing Agent a provision to effect that if the Managing Agent is in breach of any of the provisions of his/her/it's contract or if he/she/it is guilty of conduct which at common law would justify the termination of a contract between master and servant, the trustees may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the trustees and/or the Association as a result of such cancellation.

17.3 With effect from the date of commencement of the Association, the Developer is empowered to nominate and appoint the Managing Agent during the development period.

18. GENERAL MEETINGS OF THE ASSOCIATION

18.1 The Association shall, within 12 (twelve) months of the date of commencement of the Association hold a general meeting as its first annual general meeting and a copy of the minutes of such meeting shall be sent by the Association to the Municipality within 2 (two) weeks of the holding of the meeting. Thereafter, within 6 (six) months of the financial year end of the Association it shall hold its second and subsequent annual general meetings.

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18.2 Such annual general meeting shall be held at such time and place, subject to the aforegoing provisions, as the trustees shall decide from time to time.

18.3 The trustees may, whenever they deem fit, convene a special general meeting and a special general meeting shall also be convened on a requisition made by not less than 25% (twenty five per centum) of Members or should the trustees fail to do so, such meeting may be convened by the requisitionists themselves provided that notice thereof be given in terms hereof.

19. NOTICE OF MEETINGS

19.1 An annual general meeting shall be called by not less than 21 (twenty one) days notice and a special general meeting for passing of a special resolution by not

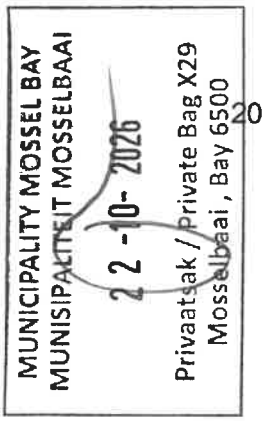
less than 14 (fourteen) days notice. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to the aforegoing, the general nature of that business and of proposed resolutions, provided that a special general meeting or an annual general 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 agreed to by not less than 75% (seventy five per centum) of Members having a right to attend and vote at the meeting.

19.2 The accidental omission to give notice of any proposed resolution shall not invalidate the proceedings at or any resolution passed at any meeting.

19.3 The non-receipt of notice of a meeting by any Member shall not invalidate the proceedings of that meeting.

20. VENUE OF MEETING

20.1 General meetings or special general meetings of the Association shall take place at such place as shall be determined by the trustees from time to time.



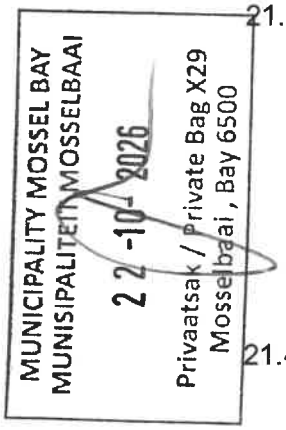
20.2 This Constitution does not limit or restrict the authority of the Association to conduct any meeting by way of electronic communication, or to provide for the participation in such a meeting by electronic communication, provided that the electronic communication employed ordinarily shall enable all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effective therein.

21. PROXIES

21.1 A Member may be represented at an annual general meeting and/or special general meeting by a proxy who need not be a Member of the Association.

21.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his/her duly authorised agent in writing but need not be in any particular form provided that where a Member is more than one person any one of those persons may sign the instrument appointing a proxy on such Member's

behalf. Where a Member is a company, the proxy may be signed by any person authorised by resolution of the board of directions of the company or by its secretary and, where a close corporation, by any Member of such close corporation and, where an Association of persons, by the secretary thereof and, where a trust, by a person duly authorised by the trustees of such trust.



21.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy thereof shall be lodged with the Association at least 6 (six) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjourned thereof.

21.4 Notwithstanding the aforegoing, the Chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

22. QUORUM

No business shall be transacted at any annual general meeting or special general meeting unless a quorum is present when the meeting proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any meeting shall be 25% (twenty five per centum) of the total Members entitled to attend and vote thereat.

23. AGENDA AT MEETINGS

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

23.1 the consideration of the Chariman's report;

23.2 the election of Member trustees;

23.3 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;

23.4 the consideration of the report of the auditors;

23.5 the consideration of the budget as presented by the trustees and confirmation of levies as currently levied by the trustees;

23.6 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting;

23.7 the determination of the *domicilium citandi et executandi* of the Association;

23.8 any other business pertinent to such meeting, including any resolutions proposed for adoption by such meeting and the voting upon any such resolutions.

24. PROCEDURE AT MEETINGS

24.1 The Chairman may, with the consent of any meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. No notice need to be given of the adjournment meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as for the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

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24.2 Save as specifically required by this Constitution, all general meetings shall be conducted in accordance with generally accepted practice.

25. VOTING

At every annual general meeting or special general meeting every Member, in person or by proxy and entitled to vote shall, where a poll is demanded, be allocated and entitled to exercise voting rights as follows:

25.1 Every Member in good standing present in person or by proxy at any meeting of the Association shall be entitled to vote and shall have one vote for each Property registered in his/her name, provided that where such Property is registered in the name of more than one person, they shall jointly have one vote.

25.2 At any meeting of Members a resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Member entitled to vote at such meeting. If a poll is duly demanded, it shall be taken in such manner as the Chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The Developer shall, for as long as the Developer is a Member (unless it in writing abandons its rights as referred to in clause 1.17), have the same number of votes as the total number of votes of all the other Members present entitled to vote in person or by proxy at any annual general meeting or special general meeting plus 1 (one) vote.

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25.3 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/her Membership and who is not under suspension, shall be entitled to be present and to vote on any question either personally or by proxy, at any annual general meeting or special general meeting.

25.4 An ordinary resolution (that is a resolution other than a special or unanimous resolution) shall be carried on a simple majority of all the votes cast thereon. A special resolution shall be carried by a majority of no less than 75% (seventy five percent) of the total votes of Members who are present in person or represented and who are entitled to vote. An abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the Chairperson of the general meeting shall be entitled to a casting vote in addition to its deliberative vote.

25.5 Voting on any question of adjournment shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereat present in person or by proxy.

25.6 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.

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

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26. FINANCIAL YEAR END

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

27. ACCOUNTS

27.1 The trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association including:

27.1.1 a record of the assets and liabilities of the Association;

27.1.2 a record of all sums of money received and expended by the accosiation and the matters in respect of which such receipt and expenditure occur;

27.1.3 a register of Members showing in each case their addresses;

27.1.4 individual ledger accounts in respect of each Member.

27.2 Subject to clause 27.4 on the application of any Member, the trustees shall make all or any of the books of account and records available for inspection by such Member.

27.3 The trustees shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.

27.4 The Association in a general meeting, or the trustees, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by Members of the accounts and books of the 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 time during normal business hours.

27.5 At each annual general meeting the trustees shall lay before the Association audited annual financial statements for the immediate preceding financial year of the Association or, in the case of the first period since the date of commencement of the Association, made up for that period. Such financial statement shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the trustees.

28. DEPOSIT AND INVESTMENT OF FUNDS

28.1 The trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.

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28.2 Any funds not immediately required for disbursements may be invested in a savings or similar account in the name of the Association with any financial institution or any other registered deposit receiving institution approved by the trustees from time to time.

28.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

29. AUDIT

29.1 At least once a 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.

29.2 The duties of the auditors shall be regulated in accordance with general practise and applicable professional standards.

30. INDEMNITY

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

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30.2 A trustee shall not be liable for the acts, or omission of the auditors or of any of the other trustees whether in their capacities as trustees or as Chairman or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgement or oversight on his/her part or for any loss, damage or misfortune of whatsoever

nature occurring in the execution of his/her duties or in relation thereto unless occurring as a result of *mala fides,* breach of duty or breach of trust.

31. DEFAMATION PRIVILEGE

Every Member of the Association and every trustee shall be deemed by virtue of his/her Membership or, as the case may be, him/her holding office as a trustee, to have waived as against every other Member, the Chairman, every other trustee, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the Association, or the trustees, or any sub-committee, all claims and rights of action which such Member or trustee might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee, or any reference to such Member or trustee, made at any meeting of trusees, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference (the "statement"), defamatory to such Member or trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or trustee, whether such statement be true or false unless such statement was made *mala fides* or being false was made as a result of gross negligence.

32. OWN RISK

Any person using any of the services, land or facilities of the Association does so entirely at his/her own risk.

33. TRANSFER OF PRIVATE ROADS AND PRIVATE OPEN SPACES

33.1 The Developer shall, free of consideration, transfer to the Association all private roads and private open spaces (if any) within the development as determined from time to time by the Developer in consultation with its professional advisers and the Municipality, the risk wherein passes to the Association upon formation of the Association and in respect whereof the maintenance and upkeep thereof is the responsibility of the Association as well as liability for rates and taxes and all charges attaching thereto.

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33.2 Property transferred into the name of the Association shall not be disposed of/ alienated/ transferred or mortgaged without a special resolution at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirement for the convening of a meeting, set out the specific terms of the proposed alienation/ disposal/ transfer/ mortgage.

34. ARBITRATION

34.1 Should any dispute, question or difference arise between Members or between a Member and the trustees out of or in regard to:

34.1.1 the interpretation of;

34.1.2 the effect of;

34.1.3 their respective rights or obligations under;

34.1.4 a breach of (save for non-payment of levies or any other amount due by a Member in terms hereof)

this Constitution, such dispute shall be decided by arbitration in the manner set out in this clause 34.

34.2 In respect of any claim arising from non-payment of levies or any other amount due by a Member to the Association in terms of this Constitution, the Association and trustees shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceeding in any court of competent jurisdiction.

34.3 The arbitration referred to in clause 34.1 shall:

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

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

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

34.4 The arbitrator shall be a practising senior counsel of not less than 5 (five) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointed and failing agreement on such appointment within the 7 (seven) day period, appointed by the President of the Cape Town Attorneys Association or the successor to that Association.

34.5 The arbitrator shall in giving his award have regard to the principles contained in this Constitution and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

34.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:

34.6.1 shall be final and binding on each of them; and

34.6.2 shall be carried into effect immediately; and

34.6.3 may be made an order of any Court to whose jurisdiction the parties are subject.

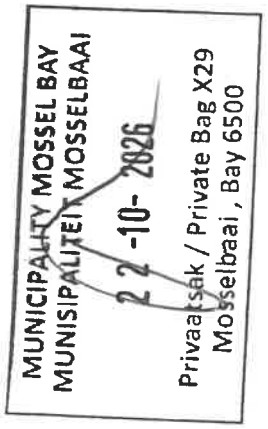
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34.7 Notwithstanding anything to the contrary contained in this clause 34, the trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution.

35. DOMICILIUM

35.1 At each annual general meeting of the Association, the address constituting the *domicilium citandi et executandi* of the Association will be determined, subject to the following:



35.1.1 such address shall be the address of the Chairman or of a resident trustee nominated by the trustees or the address of any duly appointed Managing Agent;

35.1.2 the trustees shall, if deemed necessary, be entitled to change such address prior to the following annual general meeting, provided that the trustees shall give notice to all Members of change of such address.

35.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Member's erf of Sectional Title Unit.

35.3 It shall be competent to give notice by telefax or electronic mail where the Member's telefax number or e-mail address (as applicable) is recorded with the trustees.

35.4 A Member may by notice in writing to the trustees, alter his *domicilium* provided such new address may not be a post office box or post restante and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.

35.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member shall be adequate written notice or communication to such Member notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi.*

35.6 Any notice to a Member:

35.6.1 sent to him/her by prepaid registered post in a correctly addressed envelope at his/her *domicilium citandi et executandi* shall be deemed to have been received on the 7th (seventh) day after posting (unless the contrary is proved); or

35.6.2 delivered by hand to a responsible person at his/her *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

35.6.3 succesfully transmitted by telefax or electronic mail to his/her chosen telefax number or e-mail address shall be deemed to have been received on the 1st (first) day after the date of transmission, unless the contrary is proved.

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36. AMENDMENT

36.1 This Constitution can be amended, unilaterally, by the Developer up until the first annual general meeting.

36.2 Thereafter, no provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of the Developer for as long as the Developer is a Member, such amendment to be adopted by a special resolution at a special general meeting called specifically for such purpose, and the notice of such meeting shall, in addition to complying with the requirements for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.

36.3 In the event that the Developer is no longer a Member, such addition, amendment, substitution or repeal shall require the approval of the Members of the Association adopted by a special resolution at a special general meeting called specifically for such purpose, and the notice of such meeting shall, in addition to complying with the requirements for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.

37. SALES

Owners who wish to appoint an Estate Agent to sell their erf or Sectional Title Unit, the said owner shall be obliged to use the service of an Estate Agent who has been accredited by the Association.

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