

## ANNEXURE G

### TRIPLE POINT LOCALISED HOME OWNERS ASSOCIATION

#### CONSTITUTION

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#### PREAMBLE:

##### **WHEREAS:**

The purposes and objects of the Home Owners Association are, *inter alia*:

- The TRIPLE POINT PROPERTY DEVELOPMENT comprises residential, commercial and hotel development which is hereinafter described as the TRIPLE POINT COMPLEX.
- The complex will be governed by the TRIPLE POINT LOCALISED HOME OWNERS ASSOCIATION which will be created as a Body Corporate in terms of the provisions of section 29 of the land use planning ordinance No. 15 of 1985.
- It will function in terms of its constitution and the rules and regulations issued by the Management Committee in respect of the complex .

NOW THEREFORE THE FOLLOWING SHALL CONSTITUTE THE CONSTITUTION OF TRIPLE POINT LOCALISED HOME OWNERS ASSOCIATION:

#### 1. ESTABLISHMENT IN TERMS OF STATUTE

The Triple Point Localised Home Owners Association is constituted as a Body Corporate in terms of Section 29 of the Land Use Planning Ordinance No. 15 of 1985. It will function in terms of the constitution and the rules and regulations issued by the Management Committee in respect of the Triple Point Complex.

#### 2. INTERPRETATION

In these presents :-

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

- **“these presents”** means this Constitution and Regulations and by-laws of the Association from time to time in force;
- **“the Association”** means the Triple Point Localised Home Owners Association;
- **“the Architect”** means Fjord Jordaan of the firm of architects IMBONA FJA .or any other architect appointed by the developer from time to time for the purposes of the development;

- **“the Code of Conduct”** means the rules and regulation which the Association will either provide and/or approve in respect of the various development components in the Triple Point complex. Triple Point Estates and the Triple Point Sectional Development are attached hereto having been adopted of the Triple Point Home Owners Association and the Triple Point Body Corporate.
  - **“the Office”** means the registered office of the Association from time to time;
  - **“month”** means calendar month;
  - **“year”** means calendar year;
  - **“in writing”** means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in visible form;
  - **“the erven”** means:
    - 1 the erven in the Triple Point Township Estate being erven numbers 6667 to 6701 inclusive.
    - 2 the sectional developments to be developed on erven 6664, 6665 and 6666 and the respective sectional units are for approval of the sectional titles scheme
    - 3 any further erven or sectional units as established by the developer upon the complex from time to time;
  - **“the Developer”** means Lavender Valley Developments (Pty) Ltd Registration number 2005/023037/07
  - **“the Member(s)”** means a Member or the Members of the Association who qualify as such in terms of 6 hereunder by reason of their ownership of erven in the Development;
  - **“the Management Committee”** means the Management Committee of the Association;
  - **“Chairperson”** means the Chairperson of the Management Committee;
  - **“Vice-Chairperson”** means the Vice-Chairperson of the Management Committee;
  - **“Auditors”** means the Auditors of the Association;
  - **“the Council”** means the Local Municipality of Buffalo City;
  - **“Business Day”** means weekdays other than Saturdays, Sundays and Public Holidays;
  - **“the Development”** means the development to be constructed on the property known as TRIPLE POINT DEVELOPMENT
  - **“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 which resolution is passed, on a show of hands, by not less than three-fourths of the number of Members (or Contributing Members, as the case may be) entitled to vote at that meeting who are present in person or by proxy;
  - **“Ordinary Resolution”** means a resolution passed at a general meeting of the Association or, where applicable, a general meeting of the Contributing Members.
- 2.2 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

The main business of the Association is to ensure the proper governance of the properties and owners of properties in the Triple Point complex dealing more specifically with entrances and exits on the complex, the utilization of road ways in the complex, the perimeter walling or fencing of the complex, internal fencing or walling of individual portions of the erf in the complex, the control of sectional units in the complex and the aesthetic appearance of all buildings, walls and other structures in the complex, neatness of portions of the erf in the complex, the control of sound in the complex and generally such other matters as the committee in its unfettered discretion deems advisable or appropriate and the interest of owners of erven in the complex..

#### **4. MAIN OBJECTS**

The main objects of the Association shall be:

- 4.1 in relation to all Members, the control over and maintenance of all buildings (including the aesthetic appearance of all buildings) erected on erven as well as any alterations to such buildings so as to ensure proper compliance with the Design Manual;
- 4.2 the care, maintenance, upkeep and control of the complex, including the care, maintenance and upkeep of all services constructed within the complex; and
- 4.3 the promotion, advancement and protection of the communal and group interests of the Members generally.

#### **5. FINANCIAL YEAR END**

The financial year-end of the Association is the end of February of each year.

#### **6. MEMBERSHIP**

- 6.1 Membership of the Association shall be compulsory for every registered owner of an Erf.
- 6.2 Membership of the Association shall be limited to the registered owners of the Erven and to the Triple Point Body Corporate, the Triple Point Home Owners Association and any other Bodies Corporate or Home Owners Associations created in respect of further developments in the complex provided that:
  - 6.2.1 a person who is entitled to obtain a certificate of registered title to any such erf 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 in the event that the registered owner of an erf is a juristic person, the juristic person shall appoint a designated representative to serve the interests of the said juristic person.
- 6.3 When a Member ceases to be the registered owner of an erf, he shall ipso facto cease to be a Member of the Association.
- 6.4 A Member shall not be entitled to sell or transfer an erf unless it is a condition of the sale and transfer that:
  - 6.4.1 the transferee becomes a Member of the Association;
  - 6.4.2 the registration of transfer of that erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association;
  - 6.4.3 he first obtains the written consent of the Association which consent shall not be unreasonably withheld provided the purchaser of such erf agrees in writing to abide by the rules of the Constitution of the Association.
- 6.5 The registered owner of an erf may not resign as a Member of the Association.
- 6.6 The Management Committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Management Committee.
- 6.7 The rights and obligations of a Member shall not be transferable.
- 6.8 Every Member shall:
  - 6.8.1 to the best of his ability further the objects and interests of the Association;
  - 6.8.2 pay to the Association such amount as the Management Committee may require as a scrutiny fee to defray the costs of the Association pertaining to the scrutiny and examination of the Member's building plans to be submitted in accordance with the provisions of clause
  - 6.8.3 be obliged to submit any building plan, whether such plan is for new construction, renovations, alterations or additions, to the Management Committee and the Architect for examination and approval prior to the submission of such plan to the Council or other local authority for approval, subject to the proviso that the Developer shall not be

obliged to submit any building plans for the construction, renovation, alteration or addition to any building erected or to be erected on any erf still to be transferred into the name of a third party;

6.9 Every Member shall:

6.9.1 observe all by-laws and regulations made by the Association or the Management Committee;

6.9.2 be jointly liable with all the Members for all expenditure incurred by the Association in advancing and promoting the joint interests of the Members;

6.10 No member shall be entitled to subdivide any of the erven already transferred to that Member;

6.11 Provided that nothing contained in these presents shall prevent a Member from ceding his rights in terms of these presents as security to the Mortgagee of that Member's erf.

## 7. LEVIES

7.1. The Management Committee shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Association has properly incurred, or to which the Management Committee reasonably anticipates the Association will necessarily or reasonably incur by reason of maintenance, repair, improvement and keeping in order and condition of the complex, maintenance and improvements erected on the complex, and/or for payment of all rates and other charges payable by the Association in respect of the complex, and/or for the services rendered to it, and/or for payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and the Association's affairs. In calculating levies the Management Committee shall take into account income, if any, earned by the Association.

7.2 The Management Committee shall estimate the amount which shall necessarily or reasonably be required by the Association to meet its expenses during each year, together with such estimated deficiency, 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 Management Committee may include in such levies an amount to be held in reserve to meet necessary or reasonably anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly installments due in advance on the first day of each and every succeeding month of such year.

7.3 The Management Committee may propose, from time to time, special levies upon the Members in respect of all expenses, and such levies may be made in the sum or by such installments and at such time or times as the Management Committee shall think fit.

7.4 Any amount due by a Member by way of a levy shall be a debt due by him to 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. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to an 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. No member shall transfer his erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.

7.5 The total levy payable by Members shall be borne in equal shares by each Member.

7.6 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) that shall be due and payable to the Association in respect of his membership thereof.

## 8. CONTRACTS AND REGULATIONS

8.1 The Management Committee shall from time to time:

8.1.1 make regulations governing *inter alia*:

8.1.1.1 the Members' rights of use, occupation and enjoyment of the Triple Point complex which are set out the code of conduct ;

8.1.1.2 the external appearance of and the maintenance of the Triple Point complex and the buildings or other improvements erected thereon;

8.1.2 Inspect and if appropriate approve with or without such modification or amendments as the committee may

determine, conduct rules adopted by either Bodies Corporate of sectional developments or Home Owners Associations in respect of townships, in the Triple Point complex.

- 8.1.3 enter into agreement(s) with the local authorities governing the matters set out in 8.1 and any other incidental matters;
- 8.2 Each Member undertakes to the Association that he shall comply with:
  - 8.3.1 the provisions of these presents;
  - 8.3.2 any regulations made in terms of 8.1.1;
  - 8.3.3 any agreements referred to in 8.1.2 insofar as those agreements may directly or indirectly impose obligations on him.

## 9. BREACH

- 9.1 Should any Member:
  - 9.1.1 fail to pay on due date any amount due by that Member in terms of these presents or any regulation made thereunder and remain in default for more than 7 days after being required in writing to do so by the Management Committee; or
  - 9.1.2 commit any other breach of any of the provisions of these presents or any regulation made hereunder, and fail to commence remedying that breach within a period of 7 days after the receipt of written notice to that effect by the Management Committee, or to complete the remedying of such breach within a reasonable time;

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

  - 9.1.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of these presents or any regulation made thereunder, as the case may be; or
  - 9.1.4 in the case of clause 9.1.2, to remedy such breach and immediately recover the total cost incurred by the Management Committee or the Association in so doing from such Member.
- 9.2 In the event the Management Committee institutes any legal proceedings against any Member pursuant to a breach by that Member of these presents or any regulation made thereunder, then without prejudice to any other rights which the Management Committee or the Association or any other Member may have in law, the Management Committee shall be entitled to recover from such Member all legal costs incurred by the Management Committee or the Association, including attorney/client charges, tracing fees and collection commission.
- 9.3 Without prejudice to all or any of the rights the Management Committee or the Association granted under these presents, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date for payment until the actual date of payment of such amount, and such interest rate to be determined as at the date for payment.

## 10. CESSATION OF MEMBERSHIP

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

## 11. MANAGEMENT COMMITTEE

- 11.1 There shall be a Management Committee of the Association that shall consist of 4 (four) Members, two of whom shall be appointed by the developer in terms of 11.3 until such time as all the erven in the development have been sold and transferred.

- 11.2 All Members, including the designated representative of a juristic person shall be eligible to become a Management Committee Member.
- 11.3 Until such time as all the properties in the development have been sold by the developer and transferred to the purchasers, the developer shall be entitled to appoint two representatives to the management committee as two of the members of the committee in terms of 11.1

## **12. REMOVAL & ROTATION OF MANAGEMENT COMMITTEE MEMBERS**

- 12.1 Each Management Committee Member other than members appointed by the Developer in terms of 11.1 and 11.3, shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each Member shall be deemed to have retired from office as such, but will be eligible for re-election to the Management Committee at such meeting.  
A nominee of the developer shall continue to hold office until:
- 12.1.1 The Developer replaces him with another nominee
- 12.1.2 All the erven in the development have been sold at which time the Developers right to appoint a nominee to the committee shall cease.
- 12.2 A Management Committee Member shall be deemed to have vacated his office as such upon:
- 12.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 12.2.2 his making any arrangement or compromise with his creditors;
- 12.2.3 his conviction for any offence involving dishonesty;
- 12.2.4 his becoming of unsound mind or being found lunatic;
- 12.2.5 his resigning from such office in writing delivered to the Secretary;
- 12.2.6 his death; or
- 12.2.7 his being removed from office by a Special Resolution of the Members.
- 12.2.8 his sale and transfer to a Purchaser in respect of the erf/erven owned by him in the complex resulting in him no longer owning an erf in the complex provided that anything done in the capacity of a Management Committee Member in good faith, by a person who ceases to be a Management Committee Member, shall be valid until the fact that he is no longer a Management Committee Member has been recorded in the Minute Book of the Management Committee.
- 12.3 Upon any vacancy occurring on the Management Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Management Committee.

## **13. OFFICE OF MANAGEMENT COMMITTEE**

- 13.1 The Management Committee shall appoint from amongst themselves, a Chairperson and Vice-Chairperson.
- 13.2 Within 7 (seven) days of the holding of the first Annual General Meeting, or any subsequent annual general meeting, the Management Committee shall meet and shall elect from its own number the Chairperson and Vice-Chairperson, who shall hold their respective offices until the Annual General Meeting held next after their said appointment.
- 13.3 The office of the Chairperson and Vice-Chairperson shall ipso facto be vacated by the Management Committee Member holding such office upon his ceasing to be a Management Committee Member for any reason. No one Management Committee Member 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 Management Committee shall immediately meet to appoint one of their number as a replacement in such office.

- 13.4 Save as otherwise provided in these presents, the Chairperson shall preside at all meetings of the Management Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Management Committee 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.
- 13.5 The Vice-Chairperson shall assume the powers and duties 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 or the Management Committee.
- 13.6 The Management Committee 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 Management Committee Members and/or Chairperson, Vice-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.

#### **14. FUNCTIONS & POWERS OF THE MANAGEMENT COMMITTEE**

- 14.1 Subject to the express provisions of these presents, the Management Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, 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 these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Management Committee which would have been valid if such regulation had not been made.
- 14.2 The Management Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 14.3 The Management Committee, should it so decide, may investigate any suspected or alleged breach by any Member or Management Committee Member of these presents, in such reasonable manner as it shall decide from time to time. This power shall extend to members subject to the control of Bodies Corporate or Home Owners Associations, whether or not such Bodies Corporate or Home Owners Associations have themselves taken action against such member.
- 14.4 The Management Committee may propose regulations and by-laws, not inconsistent with these presents, or any regulations or by-laws prescribed in the Association in general meeting:
- 14.4.1 as to disputes generally;
  - 14.4.2 for the furtherance and promotion of any of the objects of the Association;
  - 14.4.3 for the better management of the affairs of the Association;
  - 14.4.4 for the advancement of the interests of Members;
  - 14.4.5 for the conduct of Management Committee meetings and general meetings; and
  - 14.4.6 to assist it in administering and governing its activities generally and shall be entitled to make proposals to cancel, vary or modify any of the same from time to time.

#### **15. PROCEEDINGS OF THE MANAGEMENT COMMITTEE**

- 15.1 The Management Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provision of these presents.
- 15.2 Meetings of the Management Committee shall be held at least once every quarter, provided that if all the Management Committee Members shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Management Committee need be held for that quarter.
- 15.3 The quorum necessary for the holding of any meeting of the Management Committee shall be 3 (three) Management Members.
- 15.4 A Management Committee Member shall take minutes of every Management Committee meeting, although not necessarily

verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairperson of the meeting. All minutes of Management Committee meetings shall after certification as aforesaid be placed in an Management Committee Minute Book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Management Committee Minute Book shall be open for inspection at all reasonable times by a Management Committee Member, the Auditors, the Association Members and Local Authority.

- 15.5 All competent resolutions recorded in the minutes of any Management Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Management Committee shall be of any force or effect, or shall be binding upon the Members of any of the Management Committee unless such resolution is competent within the powers of the Management Committee.
- 15.6 Save as otherwise provided in these presents, the proceedings at any Management Committee meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 15.7 A resolution signed by all the Management Committee shall be valid in all respects as if it had been duly passed at a meeting of the Management Committee duly convened.

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

- 16.1 The Association shall before 31st 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, in terms of 17.1 below calling it.
- 16.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Management Committee shall decide from time to time.
- 16.3 All general meetings other than Annual General Meetings shall be called special general meetings.
- 16.4 The Management Committee, may, whenever they think fit, convene a special general meeting.

## **17. NOTICE OF MEETINGS**

- 17.1 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 these presents, 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 Management Committee to such persons as are under these presents 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 these presents, be deemed to have been duly called if it is so agreed:
- 17.2 In the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and
- 17.3 In the case of a special general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy five per centum) of the total voting rights of all Members.
- 17.4 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at any meeting.

## **18. VENUE OF MEETINGS**

General Meetings of the Association shall take place at such place/s as shall be determined by the Management Committee from time to time.

## **19. QUORUM**

- 19.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as represent one-half of the total votes of all Members of the Association entitled to vote.
- 19.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairperson of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

## **20. AGENDA AT MEETINGS**

- 20.1 In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following, matters shall be dealt with at every Annual General Meeting:
- 20.1.1 the consideration of the Chairperson's report to the Management's Committee;
- 20.1.2 the election of the Management Committee;
- 20.1.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 20.1.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 20.1.5 the consideration of the report of the Auditors;
- 20.1.6 the consideration of the total levy (as referred to in 12) for the calendar year during which such Annual General Meeting takes place; and
- 20.1.7 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

## **21. VOTING**

- 21.1 At every general meeting, every Member present in person and entitled to vote shall have one vote for each erf registered in his name provided that if an erf is registered in more than one name, then they shall jointly have one vote.
- 21.2 Save as expressly provided for in these presents, 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 vote on any question at any general meeting.
- 21.3 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.
- 21.4 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 and entitled to vote.
- 21.5 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.
- 21.6 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 an abstention shall not be counted as a vote for or against the

resolution in question. Provided that the Chairperson of the general meeting shall not be entitled to a casting vote in addition to his deliberative vote.

- 21.7 Unless any Member present in person 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 procedure 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 respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

## **22. OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in these presents, the Management Committee, shall at all times have the right 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 Management Committee and on such terms as the Management Committee shall decide, subject to any of the provisions of these presents, provided that any expenditure incurred in respect of the above, shall not exceed 5% (five per centum) of the total annual levy for the year in question unless authorised by a Special Resolution.

## **23. ACCOUNTS**

- 23.1 The Association in general meeting or the Management Committee, 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.
- 23.2 At each Annual General Meeting the Management Committee 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 made up as at the last financial year end of the Association. The financial statements referred to shall be accompanied by proper and extensive reports of the Management Committee and the Auditors, together with a budget for the income and expenditure for the next financial year, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in 17 above, copies of such accounts, balance sheet reports and budget and of any other documents required by Law to accompany the same.

## **24. AUDIT**

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.

## **25. SERVICE OF NOTICES**

- 25.1 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 erf owned by him, alternatively an address referred to in clause 70, as the case may be.
- 25.2 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 that shall be deemed to be his address for the purpose of the service of notices.
- 25.3 Any notice by post shall be deemed to have been served 4 (four) days after the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted by registered mail.
- 25.4 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.

## **26. INDEMNITY**

- 26.1 All Management Committee Members shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Management Committee Member, in his capacity as Chairperson, Vice-Chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 26.2 Every Management Committee Member, every servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the Management Committee 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 person or persons in the discharge of any of his/their respective duties, including in the case of a Management Committee Member, his duties as Chairperson or Vice-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.
- 26.3 A Management Committee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Management Committee Members, whether in their capacities as Management Committee Members or as Chairperson or Vice-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 Management Committee for and 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 in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

## **27. PRIVILEGE IN RESPECT OF DEFAMATION**

Every Member of the Association and every Management Committee Member shall be deemed by virtue of his membership or, as the case may be, his holding office as a Management Committee Member, to have waived as against every other Member, the Management Committee, the Chairperson or Vice-Chairperson, every other Management Committee Member, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Management Committee, or any sub-committee, all claims and rights of action which such Member or Management Committee Member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Management Committee Member, or any reference to such Member or Management Committee Member, made at any Management Committee meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory to such Member or Management Committee Member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Management Committee Member, whether such statement be true or false.

## **28. DISPUTE RESOLUTION**

- 28.1 Any dispute, question or difference arising at any time between Members or between Members and the Management Committee out of or in regard to:
- 28.1.1 any matters arising out of these presents; or
- 28.1.2 the rights and duties of any of the parties mentioned in these presents; or
- 28.1.3 the interpretation of these presents shall be submitted for determination to a person nominated by the Chairman for the time being of the East London Attorneys' Association and the person so nominated shall act not as an arbitrator but as an expert and shall determine in his sole discretion the procedure to be followed in arriving at his determination and shall not be bound by any rules, formality or procedure save that he shall make his decision as expeditiously as possible.
- 28.2 Notwithstanding anything to the contrary contained herein, the Management Committee 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 these provisions, or to recover levies due to the Association.

## **29. EFFECTIVE DATE**

The provisions hereof shall come into force simultaneously with the adoption of these presents at a special general meeting of the Association to be convened by the Developer and shall require for its adoption a majority of not less than three-fourths of the number of Members entitled to vote at that meeting who are present in person.

## **30. AMENDMENTS TO CONSTITUTION**

These presents, or any part thereof, as contained herein, with the specific exception of the provisions of clause 32 below, shall not be repealed or amended, and no new rules shall be made, save by a Special Resolution adopted at an Annual General Meeting or General Meeting of the Members.

## **31. CONSENT BY COUNCIL**

The provisions of clauses 4 and 6 shall not be added to, amended or repealed without the consent in writing of the Council.

## **32. STATUS OF DEVELOPER**

32.1 Until such time as all erven in the Development have been sold and transferred by the Developer, the following provisions shall apply in addition to the conditions in these presents:

32.1.1 The Developer shall be entitled:

32.1.1.1 to a number of votes equal to the number of remaining unsold erven at any time;

32.1.1.2 to require that the Management Committee enforces the rights granted to it in terms of these presents against any Member who, in the sole opinion of the Developer, is not complying with his obligations as a Member, and in particular, within restricting the generality of the foregoing, has failed to maintain the exterior and aesthetic appearance of the dwelling constructed on his erf by giving such Member written notice in which his failure to comply with the particular provisions of these presents is detailed and calling upon him to remedy such failure within a prescribed period of not more than 30 (thirty) days, failing which, the Developer shall be entitled at the sole cost of that Member to carry out all such work as may be required to maintain the exterior and aesthetic appearance of the dwelling;

32.2 Neither the Management Committee nor any Member of the Association shall prevent or hinder in any way the Developer from:

32.2.1 gaining access to and egress from the Development;

32.2.2 continuing its building operations at the Development;

32.2.3 marketing and selling any of the unsold erven;

32.2.4 generally from carrying on its business operations; provided that the provisions of this clause 32 shall not be interpreted as allowing the Developer access onto any of the erven already transferred to a Member unless 48 (forty-eight) hours prior written notice has been given to the Member concerned. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the Member. No Member shall be entitled to refuse the Developer access if the required notice has been given.

32.3 Upon the transfer of the last erf from the Developer to a Member, the rights of the Developer in terms of the provisions of this clause 32 shall immediately terminate ipso facto and no longer be of any force and effect.