

6/11/11

PROPOSED AMENDMENTS

7.3 **BREACH:-**

1. Add a new article 7.3.1 reading as follows:-

"7.3.1 Any member who fails to make payment to the Association on due date therefore of any monthly subscription, levy or other amount payable by such member shall be liable to pay to the Association interest on such arrear amounts calculated at the prescribed rate of interest from due date until payment, both dates inclusive together with all legal costs necessarily incurred by the Association in taking action for the recovery of such payment".

2. Renumber 7.3.1 as "7.3.2" and amend to read as follows:-

"7.3.2 Any member who breaches or fails in the observance of any of the provisions of this Constitution or the rules made hereunder, may, if so determined by a resolution passed by all the trustees:-"

3. Renumber 7.3.1.1 and 7.3.1.2 as "7.3.2.1" and "7.3.2.2" respectively.

4. Renumber 7.3.2 as "7.3.3".

5. Amend 6.1.4 by adding in the 9th line after the words "arrear levies" the following:-

"together with interest and costs in terms of article 7.3.1" and delete in the last line the word "true" and insert in its place the word "due".

Mnre Havenga & Smith-Symms
Posbus 1520
SOMERSET-WES
7130

AH/tdk Erf 409

Mev A Klue
9 Augustus 1990

Menere

DIAZ VILLAGE HUISEIENAARSVERENIGING

Vorige korrespondensie in die bogenoemde verband verwys.

Goedkeuring word hiermee ingevolge artikel 29(2)(iii) van Grondgebruikbeplanningordonnansie Nr. 15 van 1985 aan u verleen vir die Konstitusie van die Huiseienaarsvereniging van Diaz Village.

Die uwe


STADSKLERK

DIVISION OF CONSTITUTION

This Constitution is divided as follows :-

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- 2.2 Membership
- 2.3 Designation & Legal capacity
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PART 1.

DEFINITIONS AND INTRODUCTORY

DEFINITIONS :-

1.1. In this Constitution the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them :-

<u>WORDS</u>	<u>MEANINGS</u>
ACCOUNTANT	an Accountant appointed by the Board from time to time, being a person entitled to be appointed as accounting officer of a Close Corporation in terms of the Close Corporations Act;
ANNUAL GENERAL MEETING	means an annual general meeting as contemplated in Part 4 and "general meeting" has a corresponding meaning;
ASSOCIATION	The Diaz Village Home Owner's Association established in terms of Section 29 (1) of the Ordinance read with Clause 2.1 of this Constitution;
AUDITOR	the Auditor appointed by the Board;
BOARD	the Board of Trustees established under Part 3 of this Constitution;
CHAIRMAN	the Chairman of the Board of Trustees elected and appointed as such in terms of this Constitution;

COMMON PROPERTY	any land in the subdivision concerned not included in a land unit and in respect of which the ownership as such vests in the Association in terms of Clause 5.1;
CONDUCT RULES	means the rules referred to in clause 2.7 with the exclusion of management rules;
COUNCIL	the Town Council of Somerset West Municipality;
DEVELOPER	the person who is the registered owner of the property on which a development scheme is or has been undertaken in terms of the Ordinance;
DEVELOPMENT	a group housing scheme as contemplated in the Provincial Administration's Group Housing Code and in terms of which buildings will be erected on the property for the purpose of selling, letting or otherwise dealing therewith;
FINANCIAL YEAR	the period extending from the first day of July in each year up to and including the thirtieth day of June of the following year;
LAND UNIT	a residential group erf resulting from the subdivision of the property and registered or capable of being registered in a Deeds Registry;
MAINTENANCE	includes repairs, renewal, replacements, cleansing, and clearing and "maintain" has a corresponding meaning;

MANAGEMENT	
RULES	means the rules referred to in Clause 2.7 relating to the procedure and preservation of order at meetings and in respect of the management of the affairs of the Association generally;
MEMBER	an owner who shall in terms of Section 29 of the Ordinance, automatically become a member on registration of a land unit into his name;
ORDINARY	
RESOLUTION	a resolution carried by a simple majority of the votes cast by the members present, entitled to vote and voting or, in the event of an equality of votes, carried by the casting vote of the Chairman (an abstention shall not be counted as a vote for or against the resolution in question);
ORDINANCE	the Land Use Planning Ordinance No. 15 of 1985, as amended;
OWNER	in relation to a land unit comprised in the development scheme, means the person in whose name the unit is registered in the Cape Town Deeds Registry or in whom the ownership is vested by virtue of any law and may include any successors in title of such a person or the person in whom the administration of such land unit is vested as Executor, Administrator, Trustee; Assignee, Curator, Liquidator or Judicial Manager, as the case may be;
PARITICIPA-	
TION QUOTA	in relation to a land unit or the owner of a land unit means the percentage determined in accordance with the provisions of Part 6 hereof and "quota"

has a corresponding meaning;

PROPERTY	the property, described as the consolidated Erf 9306 Somerset West situated in the Municipality of Somerset West and on which a group housing development is to be undertaken;
RULES	means the management rules and conduct rules referred to in Clause 2.7 for the control, management, administration, use and enjoyment of the section and common property made and in force under this Constitution;
SPECIAL	
RESOLUTION	means, subject to Sub-clauses 1.2 and 1.3, a resolution passed by a majority of not less than three-fourths of the votes (reckoned in number) of the members of the Association who are present or represented by proxy or by a representative recognised by law at a general meeting of which at least 21 days written notice, specifying the proposed resolution, has been given to all members of the Association, or a resolution agreed to in writing by at least 75% of all the members of the Association (reckoned in number) personally or by a representative of any such member recognised by law;
TRUSTEES	trustees elected in terms of this Constitution;
UNANIMOUS	
RESOLUTION	means, subject to Sub-clause 1.2 and 1.3, a resolution passed unanimously by at least 80% of all the members of the Association (reckoned in number) and who are present or represented by proxy or by a representative recognised by law as a

general meeting of the Association of which at least 21 days written notice, specifying the proposed resolution, has been given to all the members of the Association, or agreed to in writing by all the members of the Association personally or by proxy or by a representative of any such member recognised by law.

AND

words importing the singular shall include the plural, and vice versa, words importing the masculine gender shall include female and vice versa.

- 1.2. For the purpose of the definition of "special resolution" and "unanimous resolution" in Clause 1.1, a notice contemplated in that definition shall be deemed adequate if :-
 - 1.2.1. it has been delivered by hand to a member not less than 21 days prior to the relevant general meeting; or
 - 1.2.2. it was dispatched by prepaid registered post not less than 21 days prior to such meeting to the address of a member's unit in the scheme, or to such other address as a member may have indicated in writing for the purpose of such notice.
- 1.3. For the purpose of the definition of "special resolution" and "unanimous resolution" in clause 1.1, a member present or represented at a meeting contemplated in that definition, who himself, or through a proxy or representative, as the case may be, abstains from voting on the resolution in question, shall be regarded as having voted in favour of the resolution.

INTRODUCTORY :-

INTERPRETATION : The headings to clauses of this Constitution are for the purpose of easy reference only, do not form part of this Constitution and are therefore not to be taken into consideration in interpreting this Constitution.

1.4. COMPUTATION OF PERIODS :

1.4.1. Whenever any act, event or thing is by this Constitution required to be done or performed or to take place on or before a certain day, at or before a certain time or during a certain period and such day or time falls or such period expires on a Saturday, Sunday or public holiday, such day, time or period shall be deemed to fall or expire on the next succeeding day which is not a Saturday, Sunday or public holiday.

1.4.2. When a given number of days' notice or notice extending any other period is required to be given, the day of service shall be counted in such number of days in period.

PART 2.

HOME OWNERS' ASSOCIATION

INCORPORATION OF ASSOCIATION :-

2.1. With effect from the date on which any person other than the developer becomes an owner of a land unit, there shall be deemed to be established for the development scheme an Association of which the developer and such person are members.

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2.2. MEMBERSHIP :-

2.2.1. Every person who becomes an owner of a land unit shall be a member of the Association. A person who is entitled to obtain a certificate of registered title to any such land unit shall for the purposes of this Constitution be deemed to be the registered owner thereof. 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.

2.2.2. The developer shall cease to be a member of the Association when he ceases to own a land unit in the development scheme. An owner may not resign as a member of the Association and any such member shall only cease to be a member of the Association when he ceases to be the owner of a land unit in the development scheme. The registration of transfer of a land unit into the name of a transferee shall ipso facto constitute that transferee as a member of the Association.

2.2.3. No member ceasing to be a member of the Association for any reason shall, (nor shall any such member's executor, curator, trustee or liquidator) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such member or his estate any arrears of subscriptions or other sums due by him to the Association at the time of him so ceasing to be a member.

2.2.4. The rights and obligations of a member shall not be transferable and every member shall to his best

ability further the objects and interests of the Association and observe the rules made in terms hereof; provided that nothing contained in the Constitution shall prevent a member from ceding his rights in terms hereof as security to the Mortgagee of that member's land unit.

DESIGNATION AND LEGAL CAPACITY :-

2.3. The Association shall be designated as "the Diaz Village Home Owners Association", shall be a body corporate with perpetual succession, shall have as its main object the control over and the maintenance of buildings in the development scheme, services and amenities arising out of the subdivision concerned and shall, subject to the provisions of this Constitution or any law, by such name be capable in law :-

2.3.1. of suing and being sued in respect of any contract made by it, any damage to the common property, any matter in connection with the land for which the Association is liable or for which the owners are jointly liable and any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties under this Constitution or any rule;

2.3.2. of purchasing, holding and alienating land, or entering into contracts

and generally of doing and performing such acts and things as bodies corporate may by law do and perform.

GENERAL RESPONSIBILITY :-

2.4. The Association shall, subject to the provisions of this

Constitution, be responsible for the enforcement of the rules referred to in Clause 2.7, and for the control, administration and management of the common property for the benefit of all the owners.

FUNCTIONS :-

2.5. The Association shall perform the functions entrusted under this Constitution or the rules, and such functions shall include :-

2.5.1. to establish for administrative expenses a fund sufficient in the opinion of the Association for the repair, upkeep, control, management and administration of the common property (including reasonable provision for future maintenance and repairs), for payment of rates and taxes and other local authority charges for the supply of electric current, water and sanitary and other services to the land units and common property to the extent that the Association may be held responsible for such taxes and charges, and any premiums of insurance, and for the discharge of any duty or fulfilment of any other obligation of the Association;

2.5.2. to require the owners, whenever necessary, to make contributions to such fund for the purpose of satisfying any claims against the Association;

2.5.3. to determine from time to time the amounts to be raised for the purposes aforesaid;

2.5.4. to raise the amounts so determined by levying contributions on the owners in proportion to the quotas of their respective land units as determined

under Part 6 hereof;

- 2.5.5. to open and operate an account or accounts with a banking institution or a building society;
- 2.5.6. to insure the land units and keep it insured to the replacement value thereof against fire and such other risks as may be determined by the Association in annual general meeting;
- 2.5.7. to insure against such other risks as the owners may by special resolution determine in general meeting;
- 2.5.8. to apply any insurance money received by it in respect of damage to a building or buildings, in rebuilding and reinstating the building or buildings in so far as this may be effected;
- 2.5.9. to pay the premiums on any policy of insurance effected by it;
- 2.5.10. properly to maintain the common property and to keep it in a state of good and serviceable repair;
- 2.5.11. to comply with any notice or order by a competent authority requiring any repairs or work in respect of the relevant land or buildings;
- 2.5.12. to notify the Council of its domicilium citandi et executandi, which shall be its address for service of any process;
- 2.5.13. to ensure compliance with any law relating to the common property or to any improvement of land comprised in the common property;

2.5.14. to keep in a state of good and serviceable repair and properly maintain the plant, machinery, fixtures and fittings used in connection with the common property;

2.5.15. subject to the rights of the Council to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one land unit or for the common property or in favour of one land unit over the common property;

2.5.16. in general, to control, manage and administer the common property for the benefit of all owners.

POWERS OF THE ASSOCIATION :-

2.6. The Association may exercise the powers conferred upon it by or under this Constitution, and such powers shall include the power :-

2.6.1. to appoint such agents and employees as it may deem fit;

2.6.2. when essential for the proper fulfilment of its duties, to purchase or otherwise acquire, take, transfer of, mortgage, sell, give transfer of, or hire or let land or land units;

2.6.3. to purchase, hire or otherwise acquire movable property as the owners may by unanimous resolution determine in general meeting for the use of the owners for their enjoyment or protection, or in connection with the enjoyment or protection of the common property;

2.6.4. where practicable, to establish and maintain on the common property suitable lawns and gardens and recreational facilities;

2.6.5. to borrow moneys required by it in the performance of its functions or the exercise of its powers;

2.6.6. to secure the repayment of moneys borrowed by it and the payment of interest thereon;

2.6.7. to invest any moneys of the fund referred to in Clause 2.5.1;

2.6.8. to enter into an agreement with the local authority or any other person or body for the supply to the land of services;

2.6.9. to enter into an agreement with any owner or occupier of a section for the provision of amenities or services by it to such section or to the owner or occupier thereof; and

2.6.10. to do all things reasonably necessary for the enforcement of the rules and for the control, management and administration of the common property.

2.7. RULES :-

2.7.1. The development scheme shall as from date of incorporation of the Association be controlled and managed, subject to the provisions of this Constitution, by means of rules. The rules shall comprise management rules and conduct rules;

2.7.2. The Association may make rules in general meeting,

not inconsistent with this Constitution or any law, generally for the better carrying out of the objects and provisions of this Constitution, the maintenance of good rule and the convenience, safety and comfort of the residents in the development scheme and in particular, but without prejudice to the generality of the aforesaid, relating to :-

- 2.7.2.1. the procedure and preservation of order at meetings of the Association or Board including the exclusion of offending members and to assist in the administering and governing its activities generally and for the better management of the affairs of the Association.
- 2.7.2.2. the keeping and accommodation of animals, poultry, reptiles and insects and/or the bringing onto premises for a temporary purpose or otherwise of animals, poultry, reptiles and insects;
- 2.7.2.3. the erection, maintenance and demolition of buildings or structures, including fences;
- 2.7.3. the occupation and use of buildings and common open space, including conditions of sub-lease and overcrowding;
- 2.7.3.1. the prevention, abatement and suppression of nuisance and the definition of what shall constitute a nuisance, and as to disputes generally;
- 2.7.3.2. the use in or upon a land unit so as to be audible beyond the boundaries of such land

units of loud- speakers and other devices for the amplification or reproduction of sound and of instruments and other conduct which causes or may cause annoyance, discomfort or inconvenience to residents; and

2.7.3.3. for the advancement of the interest of members and for the furtherance and promotion of any of the objects of the Association.

2.7.4. The Association may in a rule made in terms of Clause 2.7.2 provide for any matter which, in its opinion, is necessary for or incidental, supplementary or ancillary to the proper and effectual exercise of the powers contemplated in that clause and in particular, but without prejudice to the generality to the aforesaid, may :-

2.7.4.1. prohibit, restrict, regulate and control any act, conduct or thing;

2.7.4.2. prescribe requirements and standards to be complied with;

2.7.4.3. impose duties and obligations;

and shall be entitled to cancel, vary or modify any rule from time to time.

2.7.5. Management rules shall be made by unanimous resolution and may be added to, amended or repealed from time to time by the Association; provided that the Association shall lodge with the Council a notification of such addition to or amendment or repeal of the rules. Conduct rules shall be made

by special resolution and may be added to, amended or repealed from time to time by the Association.

2.7.6. Any management or conduct rule made by the Association shall be reasonable, and shall apply equally to all owners of land units.

2.7.7. The management rules contained in this constitution shall be in force in respect of the land and buildings concerned from date of incorporation of the Association and shall bind the Association and all the owners and any person occupying a land unit. The conduct rules in force at date of incorporation of the Association shall be the rules contained in Annexure A hereto.

2.7.8. The Association shall, on the application of any owner or any person authorised in writing by such owner, make any rules then in force available for inspection to such owner or authorised person.

PART 3.

BOARD OF TRUSTEES

REPRESENTATION BY TRUSTEES :-

3.1. From and after date of incorporation of the Association and subject to the provisions hereof and decisions of the Association in general meeting, the Association shall be governed, managed and represented by a Board of Trustees constituted as hereinafter provided and all acts of any such Board of Trustees shall be deemed to be acts of the Association.

3.2. CONSTITUTION OF THE BOARD :-

3.2.1. The Board of Trustees shall consist of five members to be appointed annually at the annual general meeting. Until trustees are appointed, the developer and every member shall be deemed to be a trustee of the Association and the developer shall act as Chairman.

3.2.2.  The Trustees shall hold their offices until the first Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by a trustee upon his ceasing to be an owner. Unless the owners otherwise determine in general meeting, any casual vacancy occurring on the Board of Trustees may be filled by the Board, but the trustees so appointed shall be subject to retirement at the next annual general meeting.

3.2.3. If at any meeting at which an election of trustees ought to take place, the offices of trustees are not filled, the Council may appoint an Administrator as contemplated in Part 8 who shall cease to hold office whenever the Council is satisfied that trustees have been appointed as aforesaid and that the Board is functioning properly.

3.3. FUNCTIONS AND POWERS :-

3.3.1. The functions and powers of the Association shall, subject to the provisions of this Constitution, the rules and any restriction imposed or direction given at a general meeting of the owners of the land units, be performed and exercised by the

Trustees of the Association holding office in terms of the rules.

- 3.3.2. The Board shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 3.3.3. The Board shall have the right to co-opt onto the Board any person to assist or advise it. A co-opted member shall enjoy all the rights and be subject to all the obligations of an elected trustee.
- 3.3.4. The Board may, should it so decide, investigate any suspected or alleged breach by any owner or trustee of this Constitution or rules made thereunder, in such reasonable manner as it shall decide from time to time.

FIDUCIARY POSITION :-

- 3.4. Each trustee of the Association shall stand in a fiduciary relationship to the Association without prejudice to the generality of the expression "fiduciary relationship", the provisions of this shall imply that a trustee :-
 - 3.4.1. shall in relation to the Association act honestly and in good faith, and in particular :-
 - 3.4.1.1. shall exercise such powers as he may have to manage or represent the Association in the interest and for the benefit of the Association; and
 - 3.4.1.2. shall not act without or exceed the powers

aforesaid; and

3.4.2. shall avoid any material conflict between his own interests and those of the Association, and in particular :-

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

3.4.2.2. shall notify every other trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he may have in any contract of the Association.

3.5. LIABILITY :-

3.5.1. A trustee whose mala fide or grossly negligent act or omission has breached any duty arising from his fiduciary relationship, shall be liable to the Association for :-

3.5.1.1. any loss suffered as a result thereof by the Association;

3.5.1.2. any economic benefit derived by the trustee by reason thereof.

3.5.2. When a trustee fails to comply with the provisions of clause 3.4.2 and it becomes known to the Association that the trustee has an interest

referred to in that sub-clause in any contract of the Association, the contract in question shall, at the option of the Association, be voidable.

3.5.3. Except as regards his duty referred to in sub-clause 3.4.1 any particular conduct of a trustee shall not constitute a breach of a duty arising from his fiduciary relationship to the Association, if such conduct was preceded or followed by the written approval of all the members of the Association where such members were or are cognizant of all the material facts.

3.6. PROCEEDINGS :-

3.6.1. The trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting of the Board shall, except where otherwise provided, be decided by a majority of votes of trustees present. In the event of an equality of votes, the chairman shall have a second or casting vote.

3.6.2. All trustees present at any meeting of the Board shall vote, and any trustee who refuses or fails to vote on any question shall, when so directed by the chairman, absent himself from such meeting and leave the room in which such meeting is being held until the voting on such question has been completed.

3.6.3. Meetings of the Board shall be held at least every quarter, provided that if all the trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of

the Board need be held for that quarter.

3.7. QUORUM :-

3.7.1. The quorum necessary for the transaction of the business of the Board shall be three.

3.7.2. If within fifteen minutes after the time appointed for the meeting a quorum is not present and an owner has not been nominated in circumstances as contemplated in clause 3.7.4, the meeting shall stand adjourned to a day not earlier than seven days and not later than fourteen days after the date of the meeting and if at such adjourned meeting a quorum is not present within fifteen minutes after the time appointed for the meeting the trustees present shall be a quorum.

3.7.3. Where a meeting has been adjourned as aforesaid, the chairman shall, as soon as may be necessary after the adjournment send a written notice to each trustee stating :-

3.7.3.1. the date, time and place to which the meeting has been adjourned;

3.7.3.2. the matter before the meeting when it was adjourned and the grounds for the adjournment;

3.7.4. If at any time there shall not be present and capable of acting a sufficient number of trustees to form a quorum, the trustees capable of acting or, if there shall be no such trustees, then any two owners may convene a general meeting in the same manner as nearly as possible as that in which

general meetings may be convened by the trustees, and the Association at such meeting shall have power to elect trustees so as to satisfy the provisions of this Constitution.

WRITTEN RESOLUTIONS :-

3.8. A resolution in writing, signed by all trustees, shall be as valid and effectual as if it has been passed at a meeting of the trustees duly constituted and held.

3.9. CHAIRMAN AND SECRETARY :-

3.9.1. Within seven days of the holding of an Annual General Meeting, the Board shall meet and shall elect from its own number a trustee as Chairman and appoint a Secretary, who shall hold their offices until the date of the next Annual General Meeting provided that the office of the Chairman shall ipso facto be vacated upon his ceasing to be a trustee or upon the Board revoking his appointment. In the event of any vacancy occurring in the aforesaid offices at any time, the Board shall immediately meet to appoint one of their number as a replacement in such office.

3.9.2. Save as otherwise provided in this Constitution, the Chairman shall preside as such at all meetings of the Board and general meetings; provided that should at any meeting of the Board the Chairman not be present within five (5) minutes after the time appointed for the holding thereof, those present of the Board 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.

3.9.3. The Chairman shall perform all duties incidental to the office of Chairman and may allow or refuse to permit invitees to speak at any meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.

3.9.4. The trustees may from time to time entrust to or confer upon a Chairman and/or Secretary such of the powers and authorities vested in them as they may think fit, and may confer such powers and such authorities for such time and to be exercised for such purposes and upon such terms and conditions and with such restrictions as they may think expedient and may from time to time revoke or vary all or any of such powers and authorities.

3.10. VACATING OFFICE :-

3.10.1. Save as set out in clause 3.10.2 below, each trustee shall continue to hold office as such from the date of his appointment to office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as trustee, but will be eligible for re-election to the Board at such meeting.

3.10.2. The office of trustee shall be vacated upon :-

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

3.10.2.2. his making any arrangements or composition with his creditors; or

3.10.2.3. his conviction for any offends involving dishonesty; or

3.10.2.4. his becoming of unsound mind or being found lunatic; or

3.10.2.5. receipt of his written resignation from such office by the Chairman or Secretary; or

3.10.2.6. his death or when he ceases to be owner of a land unit; or

3.10.2.7. is he is absent for more than four months from meetings of trustees held during such period without reason acceptable to the Board; or

3.10.2.8. is found to be in breach of his fiduciary relationship with the Association,

provided that anything done in the capacity of a Board member in good faith, by a person who ceases to be a Board member, shall be valid until the fact that he is no longer a Board member has been recorded in the Minute Book of the Board.

3.11. MINUTES :-

3.11.1. The trustees shall through the Secretary cause minutes to be kept of all its proceedings and in particular :-

3.11.1.1. of the names of trustees present at every meeting of the Board; and

3.11.1.2. of all appointment of officers and employees;

and

3.11.1.3. of all expenditure approved.

3.11.2. Such minutes shall, after confirmation of the correctness thereof, be signed by the Chairman at the next succeeding meeting. Certified minutes shall be retained by the Secretary in a Trustee Minute Book and shall be open for inspection at all reasonable times by a trustee, the Accountant, the Auditor and Council.

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

PART 4.

GENERAL MEETINGS

4.1. GENERAL MEETINGS :-

4.1.1. The developer shall convene a meeting of the members of the Association not later than 60 days after the incorporation of the Association, at which meeting he shall furnish the members with :-

4.1.1.1. a copy of the approved layout plan;

4.1.1.2. a certificate from the local authority to the

effect that all rates due by the developer up to the date of the incorporation of the Association have been paid; and

4.1.1.3. proof of revenue and expenditure concerning the management of the development scheme from the date of the first sale or occupation of any land unit until the date of the meeting convened in terms of this clause.

4.1.2. The Association shall hold its second annual general meeting within twelve months after the date of the meeting contemplated in clause 4.1 above and shall thereafter in each year hold an annual general meeting; provided not more than fifteen months shall elapse between the date of one annual general meeting and that of the next and that an annual general meeting shall be held within nine months after the expiration of the financial year of the Association.

4.1.3. All general meetings other than Annual General Meetings shall be called special general meetings. The trustees may, whenever they think fit, and they shall upon a requisition made in writing to the Chairman by the majority of owners, convene a general meeting. If the Trustees default, the requisitionists may convene such meeting mutatis mutandis in accordance with the provisions of clause 4.2 hereof.

4.1.4. General meetings shall be held at such time and place, subject to the aforesaid provisions, as the Committee shall decide from time to time.

4.2.2.2. In the case of a special general meeting, by a majority of the members having a right to attend and vote at the meeting.

4.2.3. The accidental omission to give notice of a meeting or of any resolution or to give any other information, or present any document required to be given or sent in terms hereof, or the non-receipt of any such notice, notification or document by any member or person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

4.3. AGENDA :-

4.3.1. In addition to any other matters required by this Constitution or the management rules to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting :-

4.3.1.1. the consideration of the Chairman's report to the Board;

4.3.1.2. the election of the trustees;

4.3.1.3. the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;

4.3.1.4. the consideration of the report of the Accountant;

4.3.1.5. the consideration of the total estimated income and expenditure for the current or

4.2. NOTICE OF AND VENUE :-

4.2.1. General Meetings shall be called by 21 days notice in writing at least, such notice to be given to :-

4.2.1.1. every owner registered as required in terms of clause 7.4 hereof and with an address in the Republic of South Africa; and

4.2.1.2. to the Auditor for the time being of the Association.

No other person shall be entitled to receive notice of general meetings.

4.2.2. 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 as appointed by the Board and, in the case of special business, in addition to other requirements in terms hereof, the general nature of that business, and in the case of a special resolution, the terms and the 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 Board to such persons as are in terms hereof 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 terms hereof, be deemed to have been duly called if it is agreed :-

4.2.2.1. In the case of a meeting called as the Annual General Meeting, by all the members entitled to attend and vote thereat; and

forthcoming financial year, as the case may be, for purposes of Part 6 hereof;

4.3.1.6. the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

4.4. PROCEDURE AT GENERAL MEETINGS :-

4.4.1. The annual general meeting shall deal with and dispose of all matters prescribed by this Constitution and management rules, including the consideration of the annual financial statements, the election of trustees and the appointment of an auditor, and may deal with any other business laid before it; providing that no such other business shall be voted on unless set out in the agenda sent out with the notice of the meeting.

4.4.2. If the chairman of the Board is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as Chairman, the owners present and entitled to vote, shall elect one of their number to be Chairman, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

4.4.3. The Chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of

clause 4.5.3 shall mutatis mutandis apply to such adjournment.

4.4.4. Save as otherwise provided in this Constitution or the rules made thereunder, the proceedings at any general meeting shall be conducted in such reasonable manner and form as the Chairman at the meeting shall decide and in accordance with generally accepted practice.

4.4.5. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands. Unless any member present in person or by proxy at a general meeting shall before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting or to the propriety of 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 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 or against such motion, shall be conclusive evidence of the vote so recorded of such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

4.4.6. In the case of an equality of votes the chairman of the meeting at which the show of hands take place shall be entitled to a casting vote.

4.5. QUORUM :-

4.5.1. No business shall be transacted at any general

meeting unless a quorum of members is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such number of the members entitled to vote, as together for the time being, represent one-half of the total votes of all members of the Association entitled to vote.

4.5.2. 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 the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present in person or by proxy shall be a quorum.

4.5.3. Where a meeting has been adjourned as aforesaid, the Association shall, as soon as may be necessary after the adjournment send a written notice to each owner stating :-

4.5.3.1. the date, time and place to which the meeting has been adjourned;

4.5.3.2. the matter before the meeting when it was adjourned and the grounds for the adjournment.

4.6. VOTING OF OWNERS :-

4.6.1. At every annual meeting every member present in

person or by proxy and entitled to vote shall have one vote for each land unit registered in his name. In the case of joint owners the vote of the owner whose name appears first in the relevant title deed and who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint owners.

4.6.2. Save as expressly provided for in this Constitution no person other than a member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

4.6.3. 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 Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

4.6.4. Notwithstanding the provisions of clause 4.6.3 voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote.

4.6.5. 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.

4.6.6. Except where otherwise provided all questions before a meeting of the Association shall be decided by ordinary resolution and in the event of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

4.6.7. The rescission of any ordinary resolution within six months from the taking thereof shall be by special resolution. The rescission or variation of special or unanimous decisions shall only be respectively by special or unanimous resolution.

4.7. PROXIES :-

4.7.1. A member may, save as otherwise provided, be presented at a general meeting by a proxy. The instrument appointing a proxy shall be in writing under the hand of the appointed or his agent duly authorised in writing. In the case of joint owners the vote of the person whose name appears first in the relevant title deed as per the register kept in terms of clause 7.4 hereof and who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint owners.

4.7.2. The holder of a general or special power of attorney, whether he is himself a member or not, given by an owner shall be entitled to attend meetings and to take part in the proceedings of the meeting, including to vote on matters placed before the meeting, if duly authorised under power to attend and take part in the proceedings of the meetings.

4.7.3.

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 of such power or authority shall be deposited at the chairman's office not less than forty eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote and where in default herewith, the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

4.7.4.

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

DIAZ VILLAGE HOME OWNER'S ASSOCIATION

I of
..... being the registered
owner of
hereby appoint or
failing him as my
proxy to participate in the proceedings of the
meeting and to vote for me and on my behalf at the
meeting of the Association to be held on the
day of and at any adjourn-
ment thereof as follows :-

IN FAVOUR/AGAINST/ABSTAIN

Resolution to
Resolution to
Resolution to

(Indicate instruction to proxy by way of a cross in the space provided)

Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed thisday of

.....

SIGNATURE

4.8. MINUTES :-

The provisions of sub-clauses 3.11.1, 3.11.2 and 3.11.3 shall mutatis mutandis apply in respect of minutes to be kept in respect of general meetings of the Association.

PART 5.

COMMON PROPERTY

5.1. OWNERSHIP :-

The common property, private open space and private road shall be owned by the owners jointly in undivided shares proportionate to the number of land units in the development scheme and shall vest in the Association for purposes of this Constitution.

5.2. DEALINGS WITH :-

5.2.1. Neither the whole or any portion of the Common Property shall be :-

5.2.1.1. sold, let, alienated, otherwise disposed of, subdivided or transferred; or

5.2.1.2. mortgaged; or

5.2.1.3. subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude (save those enjoyed by the members of the Association in terms hereof); or

5.2.1.4. built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, the cost of which directly or indirectly to the Association exceeds R2 000,00;

without the sanction of the Special Resolution of the Association and thereupon the Association shall have power to deal with such common property or such part thereof in accordance with such resolution, and to execute any deal required for the purpose.

5.2.2. Any transaction in pursuance of a resolution referred to in clause 5.2.1 shall be accompanied by a copy of the relevant resolution, certified by the trustees of the Association; provided that where the transaction in question requires to be notarially executed, such resolution so certified shall be produced to the notary public concerned and be retained by him in his protocol.

PART 6.
FINANCIAL MATTERS

6.1. LEVIES :-

6.1.1. The Board shall from time to time, make levies upon the members for the purpose of meeting all the

expenses which the Association has incurred, or to which the Board reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the Common Property, and/or for payment of the services rendered to it, and/or for payment of the salaries and/or wages of the employees of the Association, and generally for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Common Property and the Association's affairs. In calculating levies the Board shall take into account, income, if any, earned by the Association.

6.1.2. The Board shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency 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 Board 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 made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.

6.1.3. The Board may from time to time make special levies upon the members of all such expenses as are mentioned in clause 6.1.1 (which are not included in any estimate made in terms of clause 6.1.2, and such levies may be made in the sum or by such instalments and at such time or times as the Board

shall think fit.

6.1.4. Any contribution levied under any provision hereof, shall be due and payable on the passing of a resolution to that effect by the trustees of the Association. 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 rights to recover arrear levies by action in any court of competent jurisdiction from the persons who were owners of the land units at the time when such contributions became true.

6.1.5. 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 successors in title to a land unit shall be liable as from date upon which he becomes a member pursuant to the transfer of that unit, to pay the levy apportioned to that unit. No member shall transfer his land unit until the Association has certified that the member has at the date of transfer fulfilled all his financial obligations to the Association.

6.1.6. No owner shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum .(if any) which shall be due and payable to the Association in terms hereof.

6.2. DETERMINATION OF QUOTA :-

The levy payable by a member shall be the total levy imposed on members divided by the number of land units

on the property multiplied by the number of land units owned by such member.

6.3. INSURABLE INTEREST :-

The Association shall, for the purposes of effecting any insurance under clause 2.5.6, be deemed to have an insurable interest for the replacement value of the building and shall, for the purpose of effecting any other insurance under that clause, be deemed to have an insurable interest in the subject matter of such insurance.

6.4. RECOVERY OF MONEY :-

Any rates, charges, fees, expenses, costs or other moneys due and payable to or recoverable by the Association may be recovered in a competent court.

6.5. BOOKS OF ACCOUNT :-

6.5.1. The trustees shall cause proper accounting records to be kept as may be necessary to maintain a detailed record of all its assets, liabilities and financial transactions, showing inter alia capital and revenue transactions separately. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the Association.

6.5.2. The books of account shall be kept in the custody of the Accountant or at such other place as the trustees think fit, and shall be open to inspection

at all reasonable times during normal business hours by the trustees. Any member (not being a trustee) shall have the right of inspecting the accounting records or documents of the Association subject to such reasonable conditions as may be imposed by the Trustees.

6.6. FINANCIAL STATEMENTS :-

At each Annual General Meeting the Board shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Board and the Accountant. There shall be attached to the notice sent to members convening each Annual General Meeting, as set forth in clause 4.2 above, copies of such accounts, balance sheets and reports (all of which shall be framed in accordance with the provisions of the Close Corporation Act) and of any other documents required by law to accompany the same.

6.7. EXPENSES AND AUDIT :-

6.7.1. The owners of land units arising from the subdivision concerned shall be jointly liable for expenditure incurred in connection with the Association.

6.7.2. Trustees shall be entitled to be repaid all

reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as members of the Board and/or Chairman or Secretary, 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.

6.7.3. Once at least 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 Accountant. The duties of the Accountant shall be regulated in accordance with the Close Corporation Act.

PART 7.
OWNERS

7.1. DUTIES OF OWNERS :-

An owner shall :-

7.1.1. permit any person authorised in writing by the Board of Trustees, at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his land unit for purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the land unit and capable of being used in connection with the enjoyment of any other land unit or common property, or for ensuring that the provisions of this Constitution and rules are being observed;

7.1.2. forthwith carry out all work that may be ordered by any competent public or local authority in respect

of his land unit;

7.1.3. repair and maintain his land unit in a state of good repair and keep it in a clean and neat condition;

7.1.4. use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by the owners or other persons lawfully on the premises;

7.1.5. not use his land unit or permit it to be used, in such a manner or for such purpose as shall cause a nuisance to any occupier of a land unit in the development scheme;

7.1.6. notify the Association forthwith of any change of ownership in or other dealing in connection with his land unit.

7.2. **COMPELLING ORDERS**

If the Board of Trustees is of the opinion that any refusal or failure by an owner to comply with the provisions of clause 7.1 is unfairly prejudicial, unjust or inequitable to any other owner, it may within two weeks after written notification to the offending owner of its intention, make application to the Court for a competent order and all costs incurred by the Association in this regard shall be for the offending owner's account and shall be regarded as a special levy as contemplated in clause 6.1.3 for purposes hereof.

7.3. **BREACH** :-

7.3.1. Any member who fails to make payment to the Association on due date therefore of any monthly

subscription or other amount payable by such member, or who otherwise breaches or fails in the observance of any of the provisions of this Constitution or the rules made hereunder, may, if so determined by a resolution passed by all the trustees :-

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

7.3.1.2. be ordered to pay to the Association or any member or other person aggrieved by the breach or failure in question, such sum in compensation;

as in each case shall have been determined at such Board meeting.

7.3.2. The member concerned shall be invited to attend such Board meeting by notice in writing to such member not less than 7 days prior to the holding thereof, and such member shall be given the right to speak thereat, and to be represented legally, but not to be present at the voting or to take part in such proceedings, other than allowed by the Chairman of such meeting.

7.4. REGISTER :-

7.4.1. Every owner shall in writing furnish to the Chairman an address within the Republic to which communications may be sent. The Association shall maintain a register of members of the Association and the address recorded in such register of any owner, shall be regarded as the registered address of such owner for purposes of serving notices in

terms hereof.

7.4.2. In the case of joint owners, only the relevant particulars of the owner whose name appears first in the relevant title deed shall be recorded in the register.

PART 8.
ADMINISTRATION

8.1. APPOINTMENT :-

8.2. If the Association fails to meet obligations resting on it by virtue of the provisions of Section 29(2)(b)(i) or (c) of the Land Use Ordinance, 1985, and the Council is of the opinion that the owners are adversely affected by such failure, the Council (not the Council's delegatee) may in its discretion appoint an Administrator for an indefinite period on such terms and conditions as to remuneration as it deems fit.

8.3. POWERS AND DUTIES :-

The Administrator shall, to the exclusion of the Association and the Board, exercise the powers and perform duties and functions of the Association and Board.

8.4. REMOVAL FROM OFFICE :-

An Administrator shall hold office at the pleasure of the Council; provided that a competent Court may in its discretion and on application of any owner remove from the office or replace the Administrator.

(Note : If the Association fails to meet any

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obligations resting on it in respect of the control over and the maintenance of buildings, services and amenities arising from the subdivision concerned or as regards liability for expenditure incurred in connection with the Association and should the community concerned in the opinion of the Council be adversely affected by such failure, the Council is empowered in terms of Section 29(4)(a) of the Land Use Ordinance, 1985, to take all steps required to rectify that failure, and recover to take from the owners the amount of expenditure incurred by it in relation to such steps.)

PART 9.

MISCELLANEOUS POWERS

9.1. SELLING / LETTING OF UNITS

9.1.1. An owner may only sell and/or let a land unit subject to and in accordance with the standard "Deed of Sale" or "Lease Agreement", as the case may be, approved by the Board.

9.2. BEACON AND BOUNDARY AGREEMENTS :-

For the purpose of an Agreement in respect of the beacons and boundaries of the common property required in terms of the Land Survey Act, 1927 (Act No. 9 of 1927), the trustees shall be deemed to be the owner of the land.

PART 10.

GENERAL AND SUPPLEMENTARY

10.1. ARBITRATION :-

10.1.1. Any dispute, question or difference arising at any

time between members or between members and the Board out of or in regard to :-

10.1.1.1. any matters arising out of this Constitution;
or

10.1.1.2. the rights and duties of any of the parties mentioned in this Constitution; or

10.1.1.3. the interpretation of this Constitution;

shall be submitted to and decided by arbitration on notice given by any party to the other parties concerned.

10.1.2. Arbitration shall be held in Somerset West informally and otherwise in accordance with the provisions of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time), it being intended that if possible it shall be held and concluded within 21 days after it has been demanded.

10.1.3. Save as otherwise specifically provided in this Constitution, the Arbitrator shall be, if the question in dispute is :-

10.1.3.1. primarily an accounting matter - an independent accountant;

10.1.3.2. primarily a legal matter - a practising attorney of not less than 10 years standing;

10.1.3.3. any other matter - an independent and suitably qualified person appointed by the Accountant;

as may agreed upon between by the parties to the dispute.

10.1.4. If agreement cannot be reached on whether to question in dispute falls under clause 10.1.3.1, 10.1.3.2 or 10.1.3.3 or upon a particular arbitrator in terms of clause 10.1.3.3 within 3 days after the arbitration has been demanded, then :-

10.1.4.1. the President for the time being of the Law Society of the Cape of Good Hope shall determine whether the question in dispute falls under clause 10.1.3.1, 10.1.3.2 or 10.1.3.3; or

10.1.4.2. the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of 10.1.3 with 7 week days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 weeks days referred to in clause 10.1.2.

10.1.5. The Arbitrator shall make his award within 7 days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The Arbitrator may determine that the cost of the arbitration may be paid either by one or other if the disputing parties or by the Association as he in his discretion may deem fit.

10.1.6. The decision of the arbitrator shall be final and binding and may be made an Order of the Cape

Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.

10.1.7. Notwithstanding anything to the contrary contained in clauses 10.1.1 to 10.1.6, the Board shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purpose of restraining or interdicting breach of any of these clauses.

10.2. INDEMNITY :-

10.2.1. All trustees and the Accountant 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 trustee, in his capacity of Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person(s) by the Court.

10.2.2. Every trustee, every servant, agent and employee of the Association, and the Accountant shall be indemnified by the Association against (and it shall be the duty of the Board out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by any reason of any contract entered into, or any act or deed done, by such person or persons in the discharge or any of his/their respective duties, including in the case of a trustee, his duties as Chairman. Without prejudice to the generality of the above, the Association shall specifically

indemnify every such person against 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.

10.2.3. A trustee shall not be liable for the acts, receipts, neglects or defaults of the Accountant or of any of the other trustees whether in their capacities as trustees or as Chairman, or for the loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Board for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested or for the loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any 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.

10.3. EMPLOYEES AND PROFESSIONAL OFFICES :-

Save as specifically provided otherwise in this Constitution, the Board shall at all times have the rights to appoint on behalf of the Association such employees and to engage the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers or

any other professional person or firm as may be considered necessary by the Board, upon such terms and conditions as it may from time to time decide.

10.4. CUSTODY OF DOCUMENTS :-

Except where otherwise provided, all records and documents of the Association shall be in the custody of the Chairman and no person shall, unless the Board or the Chairman so directs, have access to or be entitled to inspect any such records or documents, subject however to the provisions of Part 8 hereof.

10.5. SERVICE OF DOCUMENTS AND PROCESS :-

Whenever any notice, order, demand or other document is by this Constitution authorised or required to be served on a person it shall be deemed to have been effectively and sufficiently served on such person :-

- 10.5.1.1. when it has been delivered to him personally;
- 10.5.1.2. when it has been posted by registered or certified mail to his address in the Republic registered in terms of clause 7.4 and an acknowledgement of the posting thereof from the Department of Posts and Telecommunication is produced;
- 10.5.1.3. when his address in the Republic is unknown, when it has been affixed to a conspicuous place on the land unit to which it relates.

ANNEXURE "A"
CONDUCT RULES

In this Annexure the word "Section" shall mean "a land unit".

ANIMALS, REPTILES AND BIRDS

1. (1) An owner or occupier of a section shall not, without the consent, in writing of the trustees, which approval may not be unreasonably withheld, keep any animal, reptile or bird in a section or on the common property.
(2) When granting such approval, the trustees may prescribe any reasonable condition.
(3) The trustees may withdraw such approval in the event of any breach of any condition prescribed in terms of sub-rule (2).

REFUSE DISPOSAL

2. (1) An owner or occupier of a section shall—
 - (a) maintain in an hygienic and dry condition, a receptacle for refuse within his section, his exclusive use area or on such part of the common property as may be authorised by the trustees in writing;
 - (b) ensure that before refuse is placed in such receptacle it is securely wrapped, or in the case of tins or other containers, completely drained;
 - (c) for the purpose of having the refuse collected, place such receptacle within the area and at the times designated by the trustees;
 - (d) when the refuse has been collected, promptly return such receptacle to his section or other area referred to in paragraph (a).

VEHICLES

3. (1) No owner or occupier shall park or stand any vehicle upon the common property, or permit or allow any vehicle to be parked or stood upon the common property, without the consent of the trustees in writing.
(2) The trustees may cause to be removed or towed away, at the risk and expense of the owner of the vehicle, any vehicle parked, standing or abandoned on the common property without the trustees' consent.
(3) Owners and occupiers of sections shall ensure that their vehicles, and the vehicles of their visitors and guests, do not drip oil or brake fluid on to the common property or in any other way deface the common property.
(4) No owner or occupier shall be permitted to dismantle or effect major repairs to any vehicle on any portion of the common property, an exclusive use area or in a section.

DAMAGE ALTERATIONS OR ADDITIONS TO THE COMMON PROPERTY

4. (1) An owner or occupier of a section shall not mark, paint, drive nails or screws or the like into, or otherwise damage, or alter, any part of the common property without first obtaining the written consent of the trustees.
(2) Notwithstanding sub-rule (1), an owner or person authorised by him, may install—
 - (a) any locking device, safety gate, burglar bars or other safety device for the protection of his section; or
 - (b) any screen or other device to prevent the entry of animals or insects:

Provided that the trustees have first approved in writing the nature and design of the device and the manner of its installation.

APPEARANCE FROM OUTSIDE

5. The owner or occupier of a section used for residential purposes shall not place or do anything on any part of the common property, including balconies, patios, stoops, and gardens which, in the discretion of the trustees, is aesthetically displeasing or undesirable when viewed from the outside of the section.

SIGNS AND NOTICES

6. No owner or occupier of a section, used for residential purposes, shall place any sign, notice, billboard or advertisement of any kind whatsoever on any part of the common property or of a section, so as to be visible from outside the section, without the written consent of the trustees first having been obtained.

LITTERING

7. An owner or occupier of a section shall not deposit, throw, or permit or allow to be deposited or thrown, on the common property any rubbish, including dirt, cigarette butts, food scraps or any other litter whatsoever.

LAUNDRY

8. An owner or occupier of a section shall not, without the consent in writing of the trustees, erect his own washing lines, nor hang any washing or laundry or any other items on any part of the building or the common property so as to be visible from outside the buildings or from any other sections.

STORAGE OF INFLAMMABLE MATERIAL AND OTHER DANGEROUS ACTS

9. An owner or occupier shall not store any material, or do or permit or allow to be done, any other dangerous act in the building or on the common property which will or may increase the rate of the premium payable by the body corporate on any insurance policy.

LETTING OF UNITS

10. All tenants of units and other persons granted rights of occupancy by any owner of the relevant unit are obliged to comply with these conduct rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy.

ERADICATION OF PESTS

11. An owner shall keep his section free of white ants, borer and other wood destroying insects and to this end shall permit the trustees, the managing agent, and their duly authorised agents or employees, to enter upon his section from time to time for the purpose of inspecting the section and taking such action as may be reasonably necessary to eradicate any such pests. The costs of the inspection, eradicating any such pests as may be found within the section, replacement of any woodwork or other material forming part of such section which may be damaged by any such pests shall be borne by the owner of the section concerned.