



OWNERS' ASSOCIATION

CONSTITUTION

1. DEFINITIONS

- 1.1 In this Constitution and unless the context indicates otherwise the following words and expressions shall have the following meanings:
- 1.1.1 **"Approvals"** means the statutory Approvals and conditions thereof granted or imposed by any competent authority with jurisdiction at the approval of the Development (Sysie Square) in terms of the applicable legislation, including the rezoning, subdivisional and extension of validity granted by the Municipality in terms of the By-Law;
 - 1.1.2 **"Architectural and Development Guidelines"** means the Architectural Guidelines embodied in **Annexure "A"** hereto and which will herein be referred to as the **AAC**, as it may be amended from time to time by the Association;
 - 1.1.3 **"Association"** means the Sysie Square Owners' Association established in terms of Section 29 of the By-law;
 - 1.1.4 **"Authorised Representative"** means a person authorised to act as the representative of any natural person, company, close corporation, trust or an association of persons as the case may be;
 - 1.1.5 **"By-Law"** means the Knysna Municipality: Standard Municipal Planning By-Law as published in Western Cape Provincial Gazette No. 7565 of 12 February 2016;
 - 1.1.6 **"Chairman"** means the chairman for the time being of the board of Trustees appointed in terms of **Clause 12** below;
 - 1.1.7 **"Common Property"** means Erf 5065 as indicated on General Plan No 1256/2021 and any other portion of Erf 5059 Sedgefield to be appropriately owned by the Association;
 - 1.1.8 **"Companies Act"** means the Companies Act, 71 of 2008 and any amendment or modification thereof or substitution thereof from time to time;
 - 1.1.9 **"Constitution"** means this Constitution of the Association (with all annexures hereto or documents incorporated into this Constitution by reference thereto) approved by the Municipality in terms of Section 29 of the By-Law (being an Owners' Association) and any amendments thereto effected in terms of this Constitution;
 - 1.1.10 **"CSOS Act"** means the Community Schemes Ombud Service Act No.9 of 2011;
 - 1.1.11 **"Developer"** means GM PROJECTS (PROPRIETARY) LIMITED, Registration Number 2024/710307/07 and includes its successor in title or assigns;
 - 1.1.12 **"Development Property"** means Erf 5059 Sedgefield, indicated on **Annexure "B"** hereto;
 - 1.1.13 **"Development Period"** means the period of 10 years calculated from the date of establishment of the Association;
 - 1.1.14 **"Developer Trustee"** means a trustee appointed by the Developer;

- 1.1.15 **"Dispute"** means any dispute and / or grievances arising out of this Constitution between members or any member/s of the Association or any dispute as defined by Section 1 of the CSOS Act;
- 1.1.16 **"Dispute Resolution Mechanism"** means the Dispute Resolution Mechanism as envisaged in terms of **Clause 27**;
- 1.1.17 **"Erf"** means any Erf, portion or subdivision of the Development Property and includes all improvements thereon;
- 1.1.18 **"Estate Manager"** means the Estate Manager appointed by the Developer or Trustees from time to time in terms of **Clause 28** below;
- 1.1.19 **"Estate Rules"** means the Management and Conduct Rules of the Association and in force at the establishment of the Association, attached hereto as **Annexure "C"**;
- 1.1.20 **"Financial year"** means the Financial Year of the Association which shall run from the first day of March in each year until the last day of February in the subsequent year;
- 1.1.21 **"Levy"** means the Levy or levies referred to in **Clause 7** below;
- 1.1.22 **"Managing Agent"** means a person or persons appointed by the Developer or Trustees to fulfil any function of the Trustees on their behalf;
- 1.1.23 **"Member"** means a Member of the Association;
- 1.1.24 **"Member Trustee"** means a trustee appointed by the Members;
- 1.1.25 **"Minutes"** means the minutes of a general meeting or a Trustees' meeting, as the case may be;
- 1.1.26 **"Sysie Square"** means the whole development to be undertaken on Erf 5059 Sedgefield as approved by the competent authorities with jurisdiction;
- 1.1.27 **"Sysie Square Aesthetics Committee"** means the Sysie Square Aesthetics Committee (herein referred to as SSAC) appointed in terms of Association which will be, until the Development Period has lapsed and in the entire discretion of the Developer, the Developer acting alone, and after such period a committee of at least three, but not more than five persons appointed by the Trustees of the Association;
- 1.1.28 **"Municipality"** means the Knysna Municipality or its successor in title within whose boundaries and jurisdiction the Development Property is situated; "Council" shall bear a similar meaning;
- 1.1.29 **"Person"** means a natural person, juristic person and includes a close corporation, company, trust or an association of persons, as the case may be;
- 1.1.30 **"Registered Owner"** means a Registered Owner of an Erf or Unit as registered in the relevant Deeds Office;

- 1.1.31 **“Site Development Plan”** means the Site Development Plan approved by the Municipality attached hereto as **Annexure ‘B’**.
- 1.1.32 **“Trustees”** means the Trustees of the Association consisting of the Developer Trustee/s and Member trustee/s;
- 1.1.33 **“Unit”** means a dwelling Unit to be erected on any Erf within Sysie Square.

2. INTERPRETATION

In this Constitution:

- 2.1 The clause headings are for convenience and shall be disregarded in construing this Constitution.
- 2.2 unless the context clearly indicates a contrary intention
 - 2.2.1 the singular shall include the plural and vice versa;
 - 2.2.2 a reference to any one gender shall include the other genders; and
 - 2.2.3 a reference to natural persons includes legal persons and vice versa.
- 2.3 Words and expressions defined in any clause herein shall, for the purpose of that clause and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in the clause in question.
- 2.4 When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 If any provision of this Constitution is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 2.7 If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members then, notwithstanding that it is only in the Definition Clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 2.8 The AAC and the Estate Rules of the Association as they exist on establishment of the Association are incorporated as an integral part to this Constitution by reference thereto.
- 2.9 All references to the provisions of the Companies Act are in respect of procedural and accounting matters of the Association only and should be read with any changes required by the context.
- 2.10 The duties, powers and functions of the Association shall be as set out in this Constitution.

3. COMMENCEMENT DATE AND STATUS

- 3.1 The Association has been established as a legal persona as envisaged in terms of Section 29 of the By-Law with effect from the date on which the Developer transferred the first Erf or Unit to a Purchaser.
- 3.2 The Association shall be responsible for the enforcement of the terms and conditions of this Constitution, the control, administration, management, maintenance and upkeep of Sysie Square, including the Common Property for the benefit of all Members, to the extent that these matters are not the responsibility of the Municipality.
- 3.3 Pursuant to its Constitution the Association shall have perpetual succession and shall be capable of suing and being sued in its corporate name in respect of:
 - 3.3.1 any contract made by it;
 - 3.3.2 any damage done to the Common Property;
 - 3.3.3 any matter in connection with Sysie Square and Common Property for which the Association is responsible, and any matter arising out of the exercise of its powers or the performance or non-performance of its functions under this Constitution;
 - 3.3.4 no Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees.

4. OBJECTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 4.1 It is recorded that Sysie Square is of a homogenous nature and that notwithstanding the fact that Members may hold title to their Erven or Units individually, the Association, through its Trustees, shall have all the powers that are necessary to accomplish the fulfilment of all objectives of the Association, including, but not limited to the powers specifically contained in this Constitution.
- 4.2 The Association shall have the following objectives, duties, powers and functions:
 - 4.2.1 to enter into agreements of servitude for the benefit of its Members or any adjacent property development;
 - 4.2.2 to manage, oversee and control all security aspects of Sysie Square;
 - 4.2.3 to enter into agreements for the provision of any services with any competent authority or any other third party, *inter alia* including the provision of access to Sysie Square, optic fibre, water, electricity and sewerage services to the Association and where required to supply such services to the various Members of Association;
 - 4.2.4 to administer and enforce the AAC and the Estate Rules in Sysie Square;
 - 4.2.5 to control the registration of transfer of Erven in Sysie Square and ensure compliance within Sysie Square with all conditions imposed by any competent authority when approving the rezoning and/or subdivision of the property/ies comprising the Development Property;

- 4.2.6 to control and manage the Development Property in accordance with the Approvals as well as any environmental management plan/s approved by the competent environmental authority.
- 4.3 As far as the Approvals or any conditions thereof are to be complied with during the operational phase of Sysie Square or is in terms of the Approvals envisaged to be the responsibility of the Association, they shall be obliged to comply with the Approvals and enforce compliance therewith by its Members.
- 4.4 To the extent that the Municipality will not take over the responsibility in respect any infrastructure services in respect of Sysie Square, including the maintenance and upkeep thereof, the Developer shall be entitled to transfer such responsibility and/or the ownership of such services to the Association by means of the registration of transfer of the relevant land portion to the Association in the Deeds Registry or in any other manner and the Association shall be obliged to receive such transfer when tendered to it by the Developer. The Developer shall assume the responsibility for the installation of all internal services and as far as the construction phase thereof is concerned;
- 4.5 Without limiting the generality of **Clauses 4.2.1 to 4.2.6**, the Association shall have the following responsibilities, obligations, powers and functions:-
 - 4.5.1 The responsibility to maintain, repair, improve and keep in good order and condition the Common Property which includes private open space, roads and associated storm water drainage and the responsibility for the payment of all rates and taxes, all service charges and other taxes and/or levies charged and payable to the Municipality or any authority in respect of the Common Property and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, and the Association's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Association or the pursuit of its business.
 - 4.5.2 The right to impose levies upon the Members of the Association for the purpose of meeting all the expenses that the Association has incurred or to which the Trustees reasonably anticipate the Association will incur in the attainment of the objectives of Association or the pursuit of its business.
 - 4.5.3 To ensure that all provisions of this Constitution are complied with by all Members/parties bound thereby.
 - 4.5.4 To promote, advance and protect Sysie Square and the interests of the Association and all Members.
 - 4.5.5 The responsibility for the management, control and ownership of the Common Property shall be transferred from the Developer to the Association upon completion of the infrastructure services to the satisfaction of the Municipality and when transfer of such responsibility is tendered to the Association by the Developer. The Developer will however remain obliged and responsible to complete the development programme in accordance with the conditions of approval imposed by the relevant authorities.
 - 4.5.6 For purposes of upkeep and maintenance of municipal services, the Municipality, its employees, nominees or any duly authorised contractor, shall have unrestricted access to Sysie Square which access shall be exercised in a reasonable manner and with reasonable notice as may be required by the circumstances.

5. CONTROL OF THE ASSOCIATION BY DEVELOPER

- 5.1 The responsibility for the management and control of the Common Property shall be transferred from the Developer to the Association upon transfer of the first erf and/or unit in Sysie Square. The Developer will however remain obliged and responsible to complete the Sysie Square programme in accordance with the conditions of approval imposed by the relevant authorities.
- 5.2 It is recorded that, with regard to the objectives, purpose and aim of the Association set out in this Constitution, it is considered imperative for the successful execution and implementation of Sysie Square that the Developer should retain effective control of the Association during the Development Period.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership of the Association shall be compulsory for every Registered Owner of an Erf or a Unit in Sysie Square.
- 6.2 Membership shall commence simultaneously with registration of transfer of an Erf or Unit into the name of a member.
- 6.3 Membership of the Association shall be limited to the Registered Owners of Erven or Units in Sysie Square provided that:
- 6.3.1 the Developer shall be deemed to be a Member of the Association during the Development Period;
- 6.3.2 where any such Registered Owner is more than one person, all owners shall be deemed jointly and severally to be one Member of the Association and shall nominate one of them to represent them and to vote at meetings of the Association;
- 6.4 When a Member ceases to be the Registered Owner of an Erf or an Unit, he shall *ipso facto* cease to be a Member of the Association, save for the Developer who shall remain a Member of the Association during the Development Period.
- 6.5 The rights and obligations of the Members shall rank in accordance with the provisions of this Constitution.
- 6.6 Notwithstanding anything to the contrary hereinbefore contained or implied, the cessation of a Member's membership shall in no way release a Member from any obligation undertaken by such Member prior to the cessation of his / her / its membership pursuant to:
- 6.6.1 any provision of the Constitution of the Association; or
- 6.6.2 any further or ancillary guarantee, commitment or obligation which such Member may have undertaken.
- 6.7 Membership shall be personal to the natural persons or entities in question and may not be assigned or transferred by them to any other natural person or entity.

- 6.8 The Association shall maintain at their office a register of Members, which shall be open to inspection by Members.
- 6.9 The Trustees may by regulation provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustees;
- 6.10 The Trustees may by regulation further prescribe appropriate application documentation including inter alia the following:
 - 6.10.1 an application to register as a Member of the Association;
 - 6.10.2 an undertaking by a proposed Member to comply with all the obligations imposed on Members in terms of the Constitution, which undertaking must be signed by the proposed Member and deposited with the Association prior to the Association issuing a clearance certificate or consent to transfer a Unit or Erf in favour of such a proposed Member from any existing Member, provided always that this paragraph will not apply in respect of the transfer or alienation by the Developer of an Erf or Unit in favour of a proposed Member.
- 6.11 A Member shall not be entitled to resign as a Member of the Association.
- 6.12 Every Member is obliged to comply with:
 - 6.12.1 the provisions of this Constitution and any rules or regulations passed by the Association in terms hereof;
 - 6.12.2 the provisions of the AAC and the Estate Rules;
 - 6.12.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member in its capacity as a Member;
 - 6.12.4 any directive given by the Trustees in enforcing the provisions of this Constitution.
 - 6.12.5 The rights and obligations of a Member are not transferable and every Member shall to the best of his ability further the objects and interests of the Association.
 - 6.12.6 The Members shall be jointly liable for expenditure incurred in connection with the Association. If a Member consists of more than one person such persons shall be jointly and severally liable in solidum for all obligations of a Member in terms of this Constitution.
 - 6.12.7 An ordinary Member shall not sell, alienate or give transfer of an Erf or Unit unless:
 - 6.12.7.1 the proposed transferee has irrevocably bound himself to become a Member of the Association and to observe the provisions of the Constitution for the duration of his ownership of the Erf and/or Unit;
 - 6.12.7.2 the Association acting through the Trustees has issued a prior written clearance that all outstanding levies and all amounts of whatever nature owing to the Association by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution; and

- 6.12.7.3 the proposed transferee acknowledges that upon the registration of transfer of the Erf and/or Unit into his name, he shall ipso facto become a Member of the Association;
- 6.12.7.4 the Association acting through the Trustees has granted written consent for the transfer of any Unit provided that such consent shall only be granted if the transferee of such Unit has agreed in writing to be bound by the Constitution of the Association and the rules thereof and has agreed in writing to be bound by the terms and conditions in force from time to time as far as it may be applicable to the transferee directly or indirectly;
- 6.12.7.5 In the event that the Association ceases to function for whatever reason, the consent for the transfer of any Erf and/or Unit shall, during the Development Period, be granted by the Developer and thereafter by the Estate Manager.
- 6.12.7.6 the conditions set out in **Clauses 6.12.7.1 to 6.12.7.4** above are incorporated in the relevant Deed of Sale in terms whereof the transferee acquires the Erf or Unit in question.
- 6.12.7.7 For the avoidance of doubt, it is recorded that the provisions of this **Clause 6** do not apply to the Developer, that there will be no restriction whatsoever on the ability of the Developer to pass transfer of any Erf or Unit and that accordingly the Developer does not need a clearance certificate from the Association before it will be entitled to alienate or transfer any Erf or Unit to any person or entity.
- 6.12.8 An ordinary Member shall not without the prior written consent of the Association, who in granting or refusing such consent shall act in its absolute discretion, apply to the local authority or any other relevant authority for the subdivision or rezoning or consolidation of an Erf or Unit owned by the Member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof. For the avoidance of doubt it is recorded that this **Clause 6** does not apply to the Developer who does not need the consent of the Association in respect of the aforesaid or any other applications.
- 6.12.9 A Member is required to ensure that any occupant of his Erf or Unit, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of this Constitution. A Member shall not be entitled to rent out any Erf or Unit or allow any occupation thereof unless a contractual arrangement, to the satisfaction of the Developer, during the Development Period, and thereafter the Association, has been put in place to ensure that such lessee or occupant is bound by the provisions of this Constitution. Without detracting from the foregoing the Member shall remain bound by this Constitution notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his obligations under this Constitution.
- 6.12.10 To acknowledge specifically that he has been appraised of the abovementioned and that each Member shall, if it leases out any Unit:
 - 6.12.10.1 enter into a written lease with the tenant in which the tenant is required to accept compliance with the Constitution and Estate Rules, and to give an

undertaking that he will abide by the Constitution and Estate Rules and in which the tenant is required to report to the Association and register his full details for security reasons prior to the taking of occupation;

- 6.12.10.2 be responsible to ensure that the tenant does thus register himself with the Association prior to taking occupation.

7. LEVIES

- 7.1 The Association shall establish and maintain a Levy fund for the purposes of meeting all expenses of the Association in respect of:

- 7.1.1 the control, management and administration of Sysie Square;
- 7.1.2 in general the attainment of its main objects as described in its Constitution;
- 7.1.3 the maintenance of Common Property and the costs of Services such as electricity, water and sewerage consumed or used on the Common Property;
- 7.1.4 the supply of any Services rendered by the Association;
- 7.1.5 payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
- 7.1.6 the costs of the provision of security to Sysie Square; and
- 7.1.7 in general the cost of fulfilling any of the obligations of the Association.

- 7.2 The Trustees shall estimate the amount which will be required by the Association to meet the expenses referred to in **Clause 7.1** during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;

- 7.3 The Association shall be entitled to require all Members, in accordance with the procedures set out in **Clause 7.4** below, to make contributions to such Levy fund (in the form of levies), for the purposes of satisfying the expenses referred to in **Clause 7.1**.

- 7.4 The procedure for raising and collecting Association Levies shall be as follows:

- 7.4.1 The Trustees shall submit the estimated expenditure referred to in **Clause 7.2** to the annual general meeting of the Association for consideration. It is recorded that:

- 7.4.1.1 the meeting shall be obliged to approve the following items of expenditure that are charged to the Association by outside third parties:

- 7.4.1.1.1 all rates and taxes payable by the Association to the local authority, as well as any service charges payable to the local authority in respect of Sysie Square;

- 7.4.1.1.2 the costs of the Developer's nominated provider of security services, including security guards, monitoring and surveillance, security fencing, gates and booms;
 - 7.4.1.1.3 the fee payable to any Estate Manager with whom the Association has entered into an agreement.
 - 7.4.1.1.4 All costs incurred or to be incurred by the Association in respect of the provision of Services and/or Infrastructure Services.
 - 7.4.1.2 The Association shall have a discretion in regard to approval of the level of services, and the cost thereof, that the Association requires in respect of *inter alia* cleaning, gardening, landscape development, general maintenance, and the like.
- 7.4.2 The Association shall, within 6 (six) months after the end of the Financial Year, hold an annual general meeting in addition to any other general meetings during that year and, subject to **Clause 7.4.1** above, decide on proposed increases of the levies and the amounts to be charged to Members in respect thereof.
- 7.5 The Association may, from time to time by a resolution adopted by the Trustees, make special levies upon Members effective from the date of passing of the applicable resolution in respect of such expenses referred to in **Clause 7.1** which have not been included in the levies approved by the annual general meeting in terms of **Clause 7.4**, and such levies may be imposed and shall be payable in one sum or by such installments and at such time or times as the Trustees may determine in its resolution.
- 7.6 Any amount due by a Member by way of a Levy shall be a debt due by him to the Association payable on such time or times as determined by the Trustees. The Trustees may determine that a Levy is payable annually in advance in respect of the year for which it is calculated or in such monthly installments as it may determine.
- 7.7 Until such time as a new Levy pertaining to a forthcoming year has been determined pursuant to the provisions of this **Clause 7** above, every Member of the Association shall continue to pay the existing Levy currently in force, on account of the new Levy yet to be determined.
- 7.8 The obligation of a Member to pay a Levy shall cease upon his ceasing to be a Member, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member.
- 7.9 No levies paid by a Member shall be repayable by the Association upon cessation of the Member's membership.
- 7.10 A Member's successor in title to an Erf or Unit shall be liable, as from the date upon which he becomes a Member pursuant to registration of transfer of such Erf or Unit in his name, to pay the levies attributable to that Erf or Unit.
- 7.11 A Member shall be obliged to pay interest on any Levy not paid on the due date at the Prime Rate plus 5 percentage points per annum calculated on the levies due from time to time from the due date until the date that the arrear levies have been paid in full to the Association.

- 7.12 The Association shall be entitled to require a Member to sign a debit order authority to allow the Association or its authorised agent to collect levies directly from an operating bank account.
- 7.13 If any Member fails to make payment on due date of levies and/or other amounts payable by such Member including interest, the Association may give notice to such Member requiring him to remedy such failure within such period as the Association may determine and should he fail timeously to make such payments, the Association may institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in recovering such amounts.
- 7.14 No Member shall (unless otherwise determined by the Trustees) be entitled to any of the privileges of membership including:
- 7.14.1 his right of access to and use of the Common Property;
- 7.14.2 his right to vote;
- until he shall have paid every Levy and interest thereon and any other amount which may be due and payable by him to the Association.
- 7.15 The Association shall not be entitled to undertake on behalf of its Members any reasonable and necessary permanent works of major capital nature without the sanction of a resolution of the Members adopted during a general meeting of Members. In this clause, "*works of a major capital nature*" means works that will cost more than R10 000.00 (Ten Thousand Rand) excluding VAT.
- 7.16 The Trustees shall impose levies upon the Members for the purpose of meeting all the expenses which the Association has incurred or which the Trustees reasonably anticipate the Association will incur in the attainment of the objectives of the Association or in pursuit of its business and generally for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association.
- 7.17 Each notice to each Member shall specify the contribution payable by that Member to such expenses and Levy fund.
- 7.18 Every Levy shall be payable in equal monthly installments due in advance on the first day of each and every month of each Financial Year.
- 7.19 In calculation of the levy payable by any member, the Trustees shall as far as reasonably practical:
- 7.19.1 Apportion those costs relating to the common property to the owners of all erven and units equally. Provided however that the Trustees may in any case where it considers it equitable to do so, apportion to any member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 7.20 The Association may come to agreement with the Developer for the repayment by the Association to the Developer of ongoing costs or expenses incurred by the Developer for the provision of Services to the Members during the Development Period.
- 7.21 The Trustees may enter into an agreement or agreements with the Developer for the provision of a capital sum and/or the transfer of land and/or equipment to the Association in lieu of levies.

- 7.23 Notwithstanding anything to the contrary contained in this Constitution, the Developer shall only pay levies in respect of an Erf until a dwelling unit has been constructed on the relevant Erf and sufficiently completed for purposes of utilisation of the Erf.

8. ENTRENCHED PROVISIONS

- 8.1 The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched during the Development Period to ensure the success of the development of Sysie Square. Accordingly, none of the following provisions of **Clauses 8.2 to 8.10** (both inclusive) may be deleted or varied in any way in terms of **Clause 29**, without the prior written consent of the Developer;
- 8.2 The Association may register, where necessary, various service servitudes across the Development Property in favour of the local authority, the Developer and/or the Association, whether in respect of any separate Erven or the Common Property;
- 8.3 The Association shall at all times be entitled to draw electricity from erven adjacent to sprinkler heads in road reserves for the purposes of powering the irrigation system for the verges of such road reserve. The cost thereof shall be borne by the Association but recovered as part of the levy upon Members;
- 8.4 No Member shall be entitled to object to the subdivision and/or development of any part of the larger development provided that such subdivision and/or development is not inconsistent with the development plan approved by the relevant authorities for that part of the larger development;
- 8.5 The Developer (and after the Development Period the Association) shall be entitled to incorporate adjacent immovable property into the development area in which event all persons who become owners of erven in such development shall be entitled or subject to, as the case may be, the benefits, rights or obligations of Members of the Association.
- 8.6 No Member shall subdivide, rezone or consolidate any Erf or Unit during the Development Period without the prior written consent of the Developer and without the prior written consent of the Association after the termination of the Development Period. It is recorded that the aforementioned provision does not apply to the Developer in that no prior written consent is required should the Developer wish to subdivide, rezone or consolidate any Erf or Unit;
- 8.7 Ownership of an Erf or Unit does not confer any right, including that of access, in respect of property owned by the Developer, including any right or way or access across such property;
- 8.8 The Members acknowledge and agree that the Developer, its successor/s in title and its employees have certain rights, including rights of access across the Common Property;
- 8.9 All building contractors and architects must be approved by the Developer (and after the Development Period by the Association) before construction of any building or dwelling commences;
- 8.10 All estate agents marketing and / or selling Property in Sysie Square must be approved by the Developer and after the development period by the Association before such estate agents commences any marketing or sales initiatives at Sysie Square.

- 8.11 In the event of any member deciding to sell his Erf, the Developer or its nominee shall, as long as the member remains of the intention to sell his Erf, have a mandate to sell the Property of such member on similar terms and conditions as mandated to any estate agent. The aforesaid member shall forthwith inform the Developer or its nominee of his intention to sell his Erf and let the Developer or its nominee have the written particulars of any mandate given to any other estate agent, which particulars shall then be considered as a written mandate to the Developer or its nominee.

9. SERVICES

9.1 General:

- 9.1.1 The Association shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, optic fiber, security communication, and any other services over any Erf or Building or any other portion of Sysie Square, whosoever is the owner thereof, and shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.
- 9.1.2 The Members of the Association will allow reasonable access to employees or representatives of the Association into the Buildings, Units or Erven for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above.
- 9.1.3 Furthermore, and without derogating from the aforesaid all Members of the Association will be obliged to provide their co-operation and to allow reasonable access to employees or representatives of the Association to enable them to install, implement and maintain any pipes or other modes of conveyancing of the services referred to above.
- 9.1.4 The Developer during the Development Period and thereafter the Association shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, fiber optic, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use over any Erf, Unit, Building or Common Property in favour of the Association or in favour of any adjoining Erf or any other part of Sysie Square that in the opinion of the Developer or Association is reasonably necessary for the proper functioning of the whole or any part of Sysie Square. In particular it is recorded that the servitudes of right of way will be registered in favour of the Association for the benefit of its Members over portions or Common Property as defined in this Constitution along routes that will be delineated by the Developer or the Association on any Plan or on other servitude diagrams. The Members of the Association accept and shall be bound by and consent to registration of such reciprocal servitudes between Members of the Association and the Association as are provided for herein.

10. ARCHITECTURAL AND DEVELOPMENT GUIDELINES

- 10.1 The AAC constitutes an integral part of this Constitution. It is recorded that the AAC contains the procedures, requirements and guidelines to be adhered to by every Member who wishes to effect construction, improvements or alterations to or undertake any renovation of any Erf or Unit. The AAC that will be of force and effect are those contained in **Annexure "A"** hereto.

- 10.2 All improvements shall be of sound construction and shall comply with the provisions of the AAC as contained in **Annexure "A"**;
- 10.3 No construction or erection of any improvements or alterations to and no renovation of any Erf or Unit that is undertaken by any party other than the Developer may commence prior to the due and proper approval of plans for such construction, improvements, alterations or renovation by both the SSAC and, where required, the local authority, in accordance with the following provisions:
- 10.3.1 30 (Thirty) days prior to the submission of building plans to the Municipality, the Member shall submit to the SSAC for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;
- 10.3.2 the Member shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the SSAC as determined from time to time by the SSAC. In the event of any building plans having to be revised and resubmitted to the SSAC, the Member shall, in addition to the aforementioned scrutiny and examination cost, be liable to pay a resubmission fee;
- 10.3.3 the SSAC shall be entitled to levy a builder's deposit from time to time upon submission of building plans to cover the cost of repairing any sidewalk or damages the Member or its contractors and/or agents may cause to Sysie Square (including any damages to roads, infrastructure services, the environment and other properties), where the Member or building contractor may fail to repair such damage;
- 10.3.4 Members or their contractors shall, prior to approval of building plans by the SSAC, pay a builder's deposit to be determined by the SSAC from time to time;
- 10.3.5 no Member shall be entitled to submit any building plans with the Municipality prior to official approval of such plans by the SSAC;
- 10.3.6 after the approval of such plans by the SSAC the plans shall be submitted to the local authority for approval. No plan shall be submitted to the local authority unless it bears the endorsement (official stamp) of approval of the SSAC, clearly dated, certifying that the plan complies with the AAC.
- 10.4 When effecting the construction, improvements or alterations or renovations contemplated in **Clause 10.3**, the Member shall at all times comply strictly with the AAC as well as all conditions and standards imposed by the local authority insofar as these may be additional to the provisions of the AAC. No Member shall be entitled to deviate in any manner whatsoever from any plan approved by the SSAC and the local authority unless such deviation has been recommended to the Trustees by the SSAC and the prior written approval of both the Trustees and the local authority for such proposed deviation has been obtained.
- 10.5 No Member shall be entitled to challenge or contest any of the provisions of the AAC. No amendment to the AAC shall be effected without the prior written consent of the SSAC having been obtained thereto.
- 10.6 If the Association or AAC at any stage temporarily or permanently ceases to function and any permission for the transfer of a property or for any other reason is required, the Developer shall be authorized to grant such permission.

11. MANAGEMENT AND CONDUCT RULES (ESTATE RULES)

- 11.1 The management and conduct rules of the Association constitute an integral part of this Constitution.
- 11.2 The management and conduct rules in force on establishment of the Association shall be those annexed hereto as **Annexure "C"**.
- 11.3 Subject to this Constitution and to any restriction imposed or direction given at a general meeting of the Association and subject to any condition imposed by the local Municipality, the Trustees may from time to time make management and conduct rules, and vary or modify these rules, in regard to:
 - 11.3.1 the code of conduct applicable to all builders, contractors (including sub-contractors) and suppliers within Sysie Square or any building, construction or any other work carried on within Sysie Square.
 - 11.3.2 the preservation of the natural environment vegetation and fauna within Sysie Square including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any Erven;
 - 11.3.3 the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
 - 11.3.4 the conduct of any persons within Sysie Square for the prevention of nuisance of any nature to any Member;
 - 11.3.5 the use of services and the Common Property, including the right to charge a reasonable fee for the use thereof;
 - 11.3.6 the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping within Sysie Square;
 - 11.3.7 the control of the number of occupants or residents permitted on any one Erf or Unit;
 - 11.3.8 the admission of any person within Sysie Square, and the eviction of any person not entitled to be thereon;
 - 11.3.9 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the Members and/or the residents within Sysie Square.
- 11.4 For the enforcement of any of the rules made by the Trustees in terms of **Clause 11.3**, the AAC or of any of the provisions of this Constitution generally, the Trustees may:
 - 11.4.1 give notice to the Member concerned requiring him to remedy such breach within such period as the Trustees may determine; and/or
 - 11.4.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Association; and/or

- 11.4.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit. The Trustees shall, in their sole discretion, be entitled to delegate their powers to impose fines.
- 11.5 Should the Trustees institute any proceedings against any Member or resident within Sysie Square for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 11.6 In the event of any breach of the rules by the Members or any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 11.7 Notwithstanding anything to the contrary herein contained, the Trustees may in the name of the Association enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.
- 11.8 The Association may in a general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the Trustees from time to time.
- 11.9 All rules shall be reasonable and shall apply equally to all owners of Erven or Units put to substantially the same use.

12. TRUSTEES

- 12.1 The Trustees of the Association shall for the Development Period be divided into two classes, namely Developer Trustees and Member Trustees. Upon expiry of the Development Period there shall only be Member Trustees.
- 12.2 There shall be not more than five (5) Trustees of the Association of whom, during the Development Period:
 - 12.2.1 two (2) shall be Member Trustees appointed by the Members; and
 - 12.2.2 the remaining Trustees shall be Developer Trustees appointed by the Developer. Provided that the Developer shall, during the Development Period, be one of the aforesaid trustees.
- 12.3 After termination or expiration of the Development Period all the Trustees shall be appointed by the Members.
- 12.4 From date of commencement of the Association until the first general meeting of Members the Trustees of the Association shall consist of Developer Trustees. Provided that the Developer shall be entitled to appoint the Developer Trustees for the aforesaid period at any time and in any manner.
- 12.5 A trustee shall be a natural person and shall not necessarily be a Member of the Association. A trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.

- 12.6 The Trustees shall appoint one of their number to act as chairman for such term as they think fit, but not for longer than such person's tenure as a trustee. During the Development Period, the chairman shall be one of the Developer Trustees, unless the Trustees otherwise agree.

13 REMOVAL AND ROTATION OF TRUSTEES

- 13.1 Save as set out in this clause, each trustee, except for the Developer Trustees who shall not be required to rotate on an annual basis, 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 such but will be eligible for re-election to the board of Trustees at such meeting.
- 13.2 A trustee shall be deemed to have vacated his office as such upon:
- 13.2.1 having become disqualified to act as a director in terms of the provisions of the Companies Act;
 - 13.2.2 his estate being sequestrated, whether provisionally or finally;
 - 13.2.3 the commission by him of any act of insolvency;
 - 13.2.4 conviction for any offence involving dishonesty or any other serious criminal offence;
 - 13.2.5 becoming of unsound mind or being found lunatic;
 - 13.2.6 resigning from such office in writing;
- 13.3 Provided that anything done in the capacity of a trustee in good faith by a person who ceases to be a trustee, shall be valid until the fact that he is no longer a trustee has been recorded in the minute book of the Association.
- 13.4 Upon any vacancy occurring in the Trustees 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 Trustees. Whilst Developer Trustees are in office the remaining Developer Trustees shall nominate a person to fill any such vacancy in their number.
- 13.5 The Developer may remove and replace any Developer Trustee at any time upon written notice to the remaining Trustees.

14 TRUSTEES EXPENSES AND REMUNERATION

- 14.1 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees as may be approved by the board of Trustees.
- 14.2 Trustees shall be entitled to remuneration in respect of the performance of their duties as determined by the Association at a general meeting of the Association.

15 POWERS OF TRUSTEES

- 15.1 Subject to the express provisions of this Constitution, the Trustees 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 including the right of appointment and dismissal of any Estate Manager may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by this Constitution required to be exercised or done by the Association in general meeting, subject however to such rules as may have been made by the Association in general meeting or as may be made by the Trustees from time to time.
- 15.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, Estate Manager, Managing Agent or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 15.3 The Trustees shall further have the power:
- 15.3.1 to require that any construction of any nature within Sysie Square shall be supervised to ensure that the provisions of this Constitution and the rules are complied with and that all such construction is performed in a proper and workmanlike manner;
 - 15.3.2 to issue architectural guidelines and architectural rules from time to time and to ensure that such manual is complied with at all times;
 - 15.3.3 to impose penalty levies, in their entire discretion, on Members in the event of a contravention of **Clause 10.3**;
- 15.4 The Trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 15.5 The Trustees shall be entitled to appoint committees consisting of such number of their Members and such outsiders, including an Estate Manager as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Trustees may from time to time deem necessary.
- 15.6 The Trustees shall appoint the SSAC to exercise the powers set out above in **Clause 10** which may, but shall not necessarily, consist of the following persons:
- 15.6.1 a practising professional architect duly qualified to practice as such for his own account in the Republic of South Africa;
 - 15.6.2 one or more Trustees;
 - 15.6.3 such other Members as the Trustees may determine.
- 15.7 Members of the SSAC shall not be required to be Members of the Association.
- 15.8 The Developer shall, during the Development Period, be entitled to nominate any architect or third party as co-members of the SSAC subject to such terms and conditions as the Developer deems fit.

- 15.9 Subject to **Clause 7.15**, the Trustees shall be entitled to undertake on behalf of the Association any works of a capital nature, without the sanction of a resolution of the Association at a general meeting.
- 15.10 The Trustees shall be entitled to borrow money on behalf of the Association and to offer any asset of the Association as security for any such loan provided that the Trustees shall not be entitled to enter into any loan agreement, in terms of which an amount of more than R10 000.00 (Ten Thousand Rand) is borrowed, without the sanction of a resolution of the Members adopted during a general meeting of Members. The Trustees shall not be obliged to stand surety for any of the aforementioned or other obligations of the Association.

16 PROCEEDINGS OF TRUSTEES

- 16.1 The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 16.2 The quorum necessary for the holding of all meetings of the Trustees shall be (3) three Trustees present personally, provided that during the Development Period at least 1 (one) Developer Trustee shall be present at all meetings of Trustees to form a quorum. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for 7 (seven) days, or if that is not a business day, then to the next business day thereafter, and those Trustees present at the adjourned meeting shall constitute a quorum.
- 16.3 At any meeting of the Trustees, each Member trustee shall have 1 (one) vote and each Developer Trustee shall have 3 (three) votes. Provided that during the Development Period the Developer shall be entitled to three times the total number of votes of all other Trustees.
- 16.4 Any resolution of the Trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the chairman of the Trustees shall have a second or casting vote.
- 16.5 The Trustees shall cause minutes to be kept of every Trustees meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman. All minutes of Trustees' meetings shall, after certification, be placed in a trustee's minute book to be kept in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies. The Trustees' minute book shall be open for inspection at all reasonable times by any trustee, the auditors, the Members and the Estate Manager.
- 16.6 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustees.

17 GENERAL MEETINGS OF THE ASSOCIATION

- 17.1 The Association shall within 6 (six) months after the end of the Financial 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 Chapter 2 of Part F of the Companies Act.
- 17.2 Such annual general meeting shall be held at such time and place as the Trustees shall decide from time to time.
- 17.3 All meetings of the Members other than annual general meetings shall be called general meetings.

- 17.4 The Trustees may, whenever they think fit, convene a general meeting. A general meeting may also be convened by the Trustees on a requisition made in terms of Chapter 2 of Part F of the Companies Act, or should the Trustees not do so, may be convened by the requisitionists as provided for by and subject to the provisions of that section.

18 NOTICES OF MEETINGS

- 18.1 An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than 21 (twenty one) clear days' notice in writing and any other general meeting shall be called by not less than 14 (fourteen) clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under this Constitution, entitled to receive such notices from the Association: provided that a meeting of the Association shall notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by not less than 51% (fifty one percent) of the Members having a right to attend and vote at the meeting.
- 18.2 The annual general meeting shall deal with and dispose of all matters prescribed by the Companies Act, the consideration of the annual financial statements, the election of Trustees, the noting of the Levy for the Financial Year during which such annual general meeting takes place, the appointment of an auditor and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business and shall not be in conflict with any stipulation of this Constitution.

19 PROXIES

- 19.1 A Member may be represented at a general meeting by a proxy, who must be a Member of the Association or a director, Member, partner or trustee of that Member, save for the Developer whose proxy need not necessarily be a Member.
- 19.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the Association at least 24 (twenty four) hours before the commencement of the meeting or adjourned meeting concerned but the Trustees may from time to time determine that such documents:

19.2.1 are to be lodged at a particular place; or

19.2.2 are to be lodged a certain number of hours, not exceeding 48 (forty eight) in all, before the meeting; or

19.2.3 may be lodged at any time before or during the meeting.

Notwithstanding the foregoing the chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

- 19.3 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period. The instrument appointing a proxy shall be in the form as prescribed by the

Association. A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

20 QUORUM

- 20.1 No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, 10% (ten percent) of the Members present in person or by proxy shall constitute a quorum, provided that at least 3 (three) Members are present in person at such meeting and provided that during the Development Period, at least 1 (one) representative of the Developer is present at such meeting.
- 20.2 If within 15 (fifteen) minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairman of the board or, in his absence, the deputy chairman, may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time on the same day of the next week (or if that day is not a business day, the first business day following that non-business day) or to such other place, time and day as the board may determine. If a quorum is not present at such adjourned meeting, the Members present shall constitute a quorum.

21 ADJOURNMENT BY CHAIRMAN WITH CONSENT OF MEETING

- 21.1 The chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by majority vote. In the event of such an adjournment:
- 21.1.1 no notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting (unless the meeting is to be adjourned for 30 (thirty) days or more in which event notice is to be given in the same manner as for the original meeting);
- 21.1.2 only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

22 VOTING RIGHTS OF MEMBERS

- 22.1 Members shall be entitled to vote only on the matters raised on the agenda of every general meeting.
- 22.2 At every general meeting:
- 22.2.1 each Member, present in person or by proxy and entitled to vote, shall have one vote for each Erf or Unit held or registered in his name;
- 22.2.2 if an Erf is registered in the name of more than 1 (one) person, then all such co-owners shall jointly have only one vote;
- 22.2.3 during the Development Period, the Developer shall be entitled to three times the total number of votes of all the other Members of the Association;
- 22.3 Save as expressly provided for in this Constitution, no person other than a Member and who shall have paid every Levy and other sum (if any) which shall be due and payable to the Association in respect of

or arising out of his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting.

22.4 Voting at general meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands, a poll is demanded according to law.

22.5 Resolutions shall be passed by simple majority vote, save with respect to amendments to this Constitution, as provided for in **Clause 29** hereof.

22.6 If a poll is duly demanded it shall be taken in such manner as the chairman of the meeting may direct either at once or after an interval or adjournment.

22.7 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by the chairman whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.

22.8 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:

22.8.1 written notice of the revocation is received by the Association prior to the meeting concerned; or

22.8.2 the chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.

22.9 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.

22.10 A declaration made in good faith by the chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed, as the case may be.

22.11 Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a trustee or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the Members entitled to vote.

23 ACCOUNTING RECORDS

23.1 The Trustees shall cause such accounting records as are prescribed by Section 284 of the Companies Act to be kept. 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 trade or business of the Association.

23.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Trustees think fit and shall always be open to inspection by the Trustees.

- 23.3 The Trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by Members not being Trustees, and no Member (not being a trustee) shall have any right of inspecting any accounting records or documents of the Association except as conferred by the Companies Act or authorised by the Trustees.
- 23.4 The Trustees shall from time to time cause to be prepared and laid before the Association in general meeting such financial statements as are referred to in Part C of Chapter 2 of the Companies Act.
- 23.5 A copy of the annual financial statements which are to be laid before the Association in annual general meeting shall, not less than twenty one (21) days before the date of the meeting, be sent to every Member of the Association: provided that this clause shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

24 SERVICE OF NOTICES

- 24.1 The Association may give notices to any Member either personally, or by sending it by post in a prepaid letter addressed to such Member at his registered address or at the address (if any) within the Republic of South Africa supplied by him to the Association for the giving of notices to him.
- 24.2 Notice of every general meeting shall be given:
- 24.2.1 to every Member of the Association;
 - 24.2.2 to the auditors for the time being of the Association;
 - 24.2.3 to the Estate Manager or his nominated representatives;
- provided that no other person shall be entitled to receive a notice of general meetings.
- 24.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 24.1 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 24.2 When a given number of days' notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.

25 INDEMNITY

- 25.1 All Trustees and the auditors shall be indemnified against any liabilities *bona fide* incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a court.
- 25.2 Every trustee, servant, agent and employee of Association, and the auditors, shall be indemnified by the Association against (and it shall be the duty of the Trustees out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties.

- 25.3 The Trustees shall ensure that appropriate insurance cover remains in place as far as the abovementioned risks are concerned.

26 GENERAL

- 26.1 Whenever the Trustees consider that the appearance of any Erf or building in Sysie Square vested in a Member is such as to be unsightly or injurious to the amenities of the surrounding area or Sysie Square generally, they may serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Member fail within a reasonable time, to be specified in such notice, to comply therewith, the Trustees, Estate Manager of the Association may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the Member concerned, which costs shall be deemed to be a debt owing to the Association. The Trustees shall be obliged in giving such notice to act reasonably. In the event of any dispute, the Member shall bear the onus of establishing that the Trustees acted unreasonably.
- 26.2 The Association may enter into agreements with any third party for the provision of Services to or for the Members and may levy charges in respect of the provision thereof or may pass on such costs direct to the Members.
- 26.3 Any person using any of the Services or land of the Association does so entirely at his own risk.
- 26.4 The Association may at its pleasure permit the Members subject to the provisions of this Constitution to use the open space and roads and shall do so unless by special resolution taken at an extraordinary general meeting called for the purposes, it is otherwise resolved for good reason.
- 26.5 The Association may from time to time and whenever they deem it necessary, limit, restrict, or suspend such use in relation to any part of such roads and open space for good reason.
- 26.6 No Member shall operate or conduct short term renting, including a bed and breakfast or air bnb, without the written consent of the Association.

27 DISPUTE RESOLUTION MECHANISM

Non-Compliance

- 27.1 In the event of a Member failing to strictly comply with his duties as contained in **Clause 6.12**, the Committee may exercise the following powers by means of written notice:
- 27.1.1 To fine a Member; and/or
- 27.1.2 To issue a compliance notice to any Member; and/or
- 27.1.3 To issue a directive to any Member, including a directive to demolish and remove any structure which has been erected in contravention of the Constitution and/or the Architectural and Development Guidelines.
- 27.2 Should the Member not adhere to the notice or directive, the matter will be dealt with as a dispute in terms of the Dispute Resolution Mechanism.

Goal of Dispute Resolution Process

- 27.3 The primary goal of the Dispute Resolution Process is to give a Member(s) the chance to resolve any dispute, difference of opinion or claim between the Association and any Member(s) or between any members which arises from this Constitution, Conduct Rules or policy documents (hereinafter referred to as "the dispute") by means of negotiation as set out in this Clause 27 and to eliminate unnecessary costs and delays.
- 27.4 Notwithstanding the provisions of **Clause 27.3**, a dispute between a Member and his/her Contractor or the Local Authority shall not be subject to the dispute resolution process.

Mediators

- 27.5 The Members shall elect not less than 2 (two) Mediators on the first Annual General Meeting after establishment of this Association.
- 27.6 A Mediator shall be a natural person.
- 27.7 The Chairman of the Committee shall have the power to refer any dispute, referred to in this Clause, to any one of the 2 (two) Mediators for mediation.
- 27.8 The Mediators shall occupy their office for a 2 (two) year term and shall qualify for re-election. After expiry of the office term of the first members, election of new members shall take place at the Annual General Meeting of the Association.

Internal Dispute Resolution Mechanism

- 27.9 Should any dispute, difference of opinion or claim arise from this Constitution, Conduct Rules or policies between the Association and any Member(s) or between any members (hereinafter referred to as "the dispute"), the parties shall attempt to resolve the dispute by means of negotiation. This entails that one party invites the other in writing to a meeting to attempt to resolve the dispute within 14 (fourteen) days from the date of the written invitation. The party who initiates the meeting must inform the Chairman in writing of the dispute between the parties at least 3 days before the meeting takes place and after the meeting has taken place, such party must inform the Chairman in writing of the outcome of the meeting.
- 27.10 Should the dispute not be resolved by such negotiation within 14 (fourteen) days after the written invitation, the dispute shall be referred to conciliation, which shall be administered by the Mediator.
- 27.11 Should the Mediator, to whom the dispute has been referred by the Chairman, have a conflict of interest in respect of the dispute, such conflict must be made known to the Chairman by the Mediator within 3 days after referral of the dispute for conciliation. For purposes of this clause, it will be deemed to be a conflict of interest if the Mediator is a party to the dispute or has a substantial interest therein. In such a case, the Chairman will refer the particular dispute to one of the other two Mediators within 3 days after he has been informed of the conflict of interest.
- 27.12 Should both Mediators have a conflict of interest in the same matter, the Chairman will appoint an alternative Mediator for that particular matter within 3 days after he has been informed of the conflict of interest by the last Mediator to whom the matter was referred.

- 27.13 The Mediator must attempt to resolve the dispute through conciliation within 30 (thirty) days from the date on which the Mediator received the referral.
- 27.14 The parties may however agree to extend the 30 (thirty) day period.
- 27.15 The Mediator must determine a process whereby to attempt to resolve the dispute, which may include:
- 27.15.1 mediating the dispute;
 - 27.15.2 conducting a fact-finding exercise; and
 - 27.15.3 making a recommendation to the parties, which may take the form of an advisory award.
- 27.16 When conciliation has failed or at the end of the 30 (thirty) day period or any further period agreed between the parties:
- 27.16.1 the Mediator must issue a certificate stating whether or not the dispute has been resolved;
 - 27.16.2 the Mediator must serve a copy of such certificate on the involved parties to the dispute.
- 27.17 During the Internal Dispute Resolution Process the parties are not entitled to have legal representation.

External Dispute Resolution Mechanism

- 27.18 Should the conciliation between the parties be unsuccessful and after a certificate as referred to in **Clause 27.16.1** has been issued, such dispute shall be dealt with in terms of Chapter 3 to 5 of the Community Schemes Ombud Service Act 9 of 2011.
- 27.19 Should the Internal Dispute Resolution Mechanism not be successful the Committee shall, in terms of **Clause 15.2**, be entitled to appoint any professional person to represent the Association and to provide advice in the dispute resolution process referred to in **Clause 27.18**. The appointment shall continue until such time as the dispute has been resolved.
- 27.20 All costs incidental to the appointment of any professional will be recovered from Members by means of levies or any special levy imposed for such purpose. After the dispute a special levy will be imposed on the party who was substantively unsuccessful in the CSOS case. Should the Association or the Committee be substantively unsuccessful in the dispute, the special levy will be imposed on all Members. All costs in respect of the dispute, including the costs of the appointed professional person will be recovered in this way.

28 ESTATE MANAGER

- 28.1 The Developer shall, for the duration of the Development Period and thereafter the Trustees, be entitled to appoint an Estate Manager to control, manage and administer Sysie Square and the Common Property and to exercise such powers and duties as may be entrusted to the Estate Manager, including the right to collect levies.

- 28.2 The terms and conditions of the appointment of the Estate Manager shall be in the discretion of the Developer or the Trustees as the case may be.
- 28.3 The remuneration and costs of the Estate Manager shall be borne by the Association.

29 AMENDMENT

- 29.1 Notwithstanding the provisions of this Clause the Developer shall during the Development Period have the right to effect reasonable amendments to this Constitution by giving written notice of such amendments to all Members and shall further have the right to veto any proposed amendment of this Constitution if there is a reasonable apprehension that such amendment could detrimentally affect the Developer's ability to complete Sysie Square in accordance with its development plans. The Developer shall not have the right to vary the provisions relating to qualification for membership of the Association, the proportionate liability of Members for the payment of levies or the voting rights of Members.
- 29.2 Subject to the provisions of **Clause 29.1**, every amendment of this Constitution of whatever nature including any addition thereto, deletion therefrom or substitution thereof shall require the approval of at least 75% (seventy-five per centum) of the total number of votes allocated to Members of the Association which majority shall be expressed at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to comply with the requirements for the convening of a meeting, set out in specific terms the proposed amendment.