

MOUNT ROYAL GOLF AND COUNTRY ESTATE

(11 Sept 08 - 9th Edition)

HOME OWNERS' ASSOCIATION CONSTITUTION

1. NAME

The name of the Association is:

MOUNT ROYAL HOME OWNERS ASSOCIATION

(A Home Owners' Association established as an association not for profit to promote the communal interest of members of the Association)

2. DEFINITIONS AND INTERPRETATION

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

"Architectural Guide and Building Conduct Rules" – the development guide lines and building conduct rules of the Association, prescribed by the Developer;

2.1.1 **"Alienate"** - the alienation of any Erf or part thereof whether by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order, insolvency or otherwise, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and means the alienation of any Erf or part thereof and **"Alienation"** shall have a corresponding meaning;

2.1.2 **"Amenities"** - any facilities in Mount Royal already existing or constructed by the Developer or allowed by the Developer to be constructed for the enhancement of Mount Royal, whether in the commercial, residential or private open space zones of which members of the Association get preferential use.

2.1.3 **"Association"** - Mount Royal Home Owners' Association whose area of jurisdiction will include the whole Development Area, including Private Areas and all sectional title developments in terms of the Sectional Titles Act, Act 95 of 1986, but excluding the Golf Course.

2.1.4 **"Auditors"** - the Auditors of the Association;

2.1.5 **"Business day"** - any day other than a Saturday, Sunday or officially recognized public holiday in South Africa

2.1.6 **"CEMP"** - the Construction Phase Environmental Management Program of Mount Royal;

2.1.7 **"the Club"** - the Malmesbury Golf Club;

2.1.8 **"the Club House"** - the communal buildings serving the Golf Course;

2.1.9 **"the Commercial Village"** - the portion of Mount Royal zoned for commercial purposes;

2.1.10 **"Common Areas"** - those parts of Mount Royal not forming part of the Golf Course and not subject to private ownership or to an exclusive right of use by a Member but including all private roads and private open spaces on Mount Royal;

2.1.11 **"the Constitution of the Association"** or **"the Constitution"** - the Constitution of the Mount Royal Home Owners' Association;

2.1.12 **"the Department"** - the Department of Environmental Affairs and Development Planning;

2.1.13 **"Developer"** - Mount Royal Golf and Country Estate (Proprietary) Limited (Registration Number 2005/000961/07), duly incorporated in terms of the laws of the Republic of South Africa and/or Proprietary Trust (Number IT1845/1996) or their successors in title or assigns;

2.1.14 **"Development Area"** - the area on which the Developer will develop Mount Royal with the exclusion of the Golf Course.

2.1.15 **"Development Period"** - the period from the establishment of the Association until the Developer notifies the Association that the development period is at an end or until the registration of transfer of the last saleable Erf within the final phase of Mount Royal whichever shall first occur;

2.1.16 **"the Directorate"** - the Directorate: Integrated Environmental Management (Region B) of the Department of Environmental Affairs and Development Planning;

2.1.17 **"EMS"** - the Environmental Management System for Mount Royal and the Golf Course, compiled by the Association in collaboration with the Developer;

2.1.18 **"Erf"** - any residential Erf resulting from the subdivision of Mount Royal, including consolidated erven, a subdivision of an erf and also including any sectional title unit and the exclusive use area(s) linked thereto;

2.1.19 **"Executive Officer"** - the Executive Officer of the Management Committee appointed in terms of Section 13.5;

- 2.1.20 "**Financial Year**" - the Financial Year of the Association which shall run from the 1st day of March in each year until the last day of February in each succeeding year, save for the first Financial Year which shall run from the date of establishment of the Association until the last day of February in the succeeding year;
- 2.1.21 "**Fund**" – the Mount Royal Treasury Fund;
- 2.1.22 "**the Golf Course**" - the golf course of Malmesbury Golf Club as well as all other areas under its control;
- 2.1.23 "**Levies**" - the Levies referred to in section 7;
- 2.1.24 "**Local Authority**" - the Swartland Municipality or its successors in title within whose jurisdiction Mount Royal is situated;
- 2.1.25 "**Management Committee**" - the management committee of the Association as constituted according to Section 13 hereof;
- 2.1.26 "**Maintenance**" - the upkeep and/or repair of the Services which shall be the responsibility of the Association in terms of the conditions of approval of the subdivision by the Local Authority;
- 2.1.27 "**Member**" - a Member of the Association in terms of section 3;
- 2.1.28 "**Mount Royal**" - Mount Royal Golf and Country Estate, Malmesbury, being a portion of the Farm No 696, Malmesbury adjoining the Golf Course as depicted on the General Plans or Diagrams approved in respect of any subdivisions thereof, or any extension thereof or addition thereto relating to Mount Royal Golf and Country Estate;
- 2.1.29 "**Occupier**" - any person in occupation or in possession of an Erf or physically upon an Erf for any reason whatever and whether that person is lawfully or unlawfully so in occupation or in possession or otherwise thereon, and for any purpose whatever;
- 2.1.30 "**OEMP**" - the Operational Environmental Management Program for Mount Royal and the Club;
- 2.1.31 "**Owner**" - the registered owner from time to time of an Erf or any interest therein or thereto registered as such in the relevant Deeds Registry, his heirs, executors, administrators, successors in title or assigns;
- 2.1.32 "**ROD**" - Record of Decision issued by the Department of Environmental Affairs and Development Planning in terms of Section 22 of the Environment Conservation Act No 73 of 1989 authorising the upgrade of the Golf Course together with the development of Mount Royal;
- 2.1.33 "**Services**" - the roads, verges, parking bays, water supply, sewerage pipes, stormwater pipes and drains, electricity cables and all other services within the Common Areas or on or in respect of any Erf;
- 2.1.34 "**Subcontractors**" - any person or body of persons or bodies appointed by the Management Committee as independent professional contractors or subcontractors or agents or managing agents to undertake all or any of the functions or obligations of the Association.
- 2.2 Unless the context otherwise indicates, any words importing the singular shall also include the plural and vice versa, words importing any one gender shall include the other or others, and any reference to a person shall include a company incorporated or registered as such under any law, any body of persons corporate or unincorporate and any trust whether testamentary or inter vivos.
- 2.3 The heading to the respective sections are inserted for reference purposes only and shall not be taken into account in the interpretation of this Constitution.
- 2.4 If an Erf is registered in the names of two or more persons then they shall be jointly and severally liable in solidum for all the obligations of the Owner of that Erf in terms of this Constitution.

3. MEMBERSHIP

- 3.1 Membership of the Association shall be limited to the Developer in its capacity as such and to every Owner.
- 3.2 During the Development Period membership shall be divided into two separate classes of Members namely A Members and B Members. The Developer's nominee/s shall be the B Member/s and shall continue as such for the Development Period.
- 3.3 Every Owner shall ipso facto be and become a Member of the Association upon registration of transfer of the Erf into his name, which condition must be registered against the title deed of every Erf and every Owner shall remain a Member of the Association and be entitled to use the Amenities until he ceases to be an Owner when his membership shall ipso facto cease. During the Development Period the Owners shall be classified as A Members.
- 3.4 Where an Erf is owned by more than one natural person or legal person or trust, all the registered Owners or shareholders, members or beneficiaries shall together be deemed to be one Member of the Association and shall have the rights and obligations of a single Member of the Association and the provisions of section 23.4 shall apply as to voting by such persons, legal persons or trusts.
- 3.5 Upon the termination of the Development Period:
- 3.5.1 the Developer and/or its nominee(s) shall cease to be B Members and the B class of Members shall thereupon cease to exist; and
- 3.5.2 the A Members shall thenceforth be redesignated as Members;
- 3.5.3 the Developer shall be a Member as long as it is the registered Owner of an Erf.

- 3.6 A reference herein to Members of the Association shall during the Development Period include both the A and the B Members, or if so required by the context, only one of such classes.

4. ALIENATION, SUB-DIVISION, ETC.

- 4.1 A Member shall not make any application for the rezoning, consolidation or sub-division of an Erf without the prior written consent of the Association.
- 4.2 The transfer of an Erf or any interest therein or any sub-division or consolidation thereof shall not take place without the transferor thereof first –
- 4.2.1 having submitted the agreement of alienation to the Association for inspection so that the latter can ensure that the relevant terms and conditions of the Constitution and the relevant conditions of the deed of sale between the Developer and the first purchaser of the relevant Erf are contained in such agreement; and
- 4.2.2 having either rectified the deed of sale in order to comply with the Association's requisites in terms of section 4.2.1 or having arranged for the proposed transferee in terms of which he binds himself to the conditions required by the Association in terms of section 4.2.1; and
- 4.2.3 having obtained the Association's written consent to the alienation, which consent will not unreasonably be withheld; and
- 4.2.4 having obtained the Association's clearance certificate that all amounts owing to the Association by such Member have been paid or that arrangements to the satisfaction of the Association have been made for compliance with all outstanding obligations towards the Association; and
- 4.2.5 having submitted to the Association a written acknowledgement by the proposed transferee that upon registration of transfer of the Erf into his name, he shall *ipso facto* become a member of the Association, subject to all the rights, obligations and duties of a Member; and
- 4.2.6 having submitted to the Association a written acknowledgement by the proposed transferee that he has read the Constitution and Rules of the Association, that he understands it and that he is bound thereby.
- 4.3 The provisions of this section 4 shall *mutatis mutandis* apply to any alienation of an undivided share in an Erf.
- 4.4 This Constitution shall also bind all persons occupying an Erf and no Member shall let or otherwise part with the occupation or possession of his Erf whether temporarily or otherwise unless the proposed Occupier has agreed in writing to be bound by this Constitution in all respects. The Owner shall however always remain bound by this Constitution and be required to ensure due and proper compliance therewith by an Occupier.
- 4.5 An Owner may not at any time resign as a Member of the Association.
- 4.6 Restrictions will be registered against the title deed of each Erf in order to give effect to the terms of this section. A Member shall be bound by this Constitution, whether or not such restrictions are registered against the Erf or not, and shall remain a member of the Association for as long as he is the owner of an Erf.
- 4.7 It is hereby recorded that it is part of the social ethos of the Association to maintain a dynamic policy of good neighbourliness with surrounding communities, irrespective of class, race or the politics of the day. The Association will establish the Mount Royal Treasury Fund and shall empower it to undertake projects jointly with neighbouring communities as a means of engagement with them (see section 30). Consequently it will also be a pre-requisite for the issuing of a clearance certificate by the Association in the event of a sale of an Erf that the selling member shall pay to the Association on date of registration of transfer of the relevant Erf, either an amount equal to 2% (two percent) of the selling price of the Erf or the difference between the selling price of the Erf and the purchase price thereof by the Member selling the Erf, whichever amount is the lower. The Member selling the Erf, shall furnish the Association with an acceptable guarantee for payment of the aforesaid amount on date of registration of transfer. This amount will be paid by the Association to the Mount Royal Treasury Fund for the aforesaid purposes. The right and obligation of the Association to demand payment of a portion of the selling price of an Erf as aforementioned, shall cease only on date of termination of the Mount Royal Treasury Fund in terms of section 30.4.

5. ARCHITECTURAL GUIDE AND BUILDING CONDUCT RULES AND IMPROVEMENTS

- 5.1 A Member who is an owner of a residential Erf (but not including sectional title units) shall be obliged within 2 (two) years after the date of registration of transfer of that Erf from the Developer to the first owner, to commence with the erection of a dwelling house and to complete such dwelling house within 12 (twelve) months thereafter. Should the Developer, or the Developer and the Association together, deem it to be in the interest of Mount Royal and/or the Members, it/they may enter into a written agreement with a Member/s in terms of which an extension of the aforementioned commencement date and/or completion date is granted. In the event where the Developer re-acquired an undeveloped Erf after the sale by the Developer to the first owner and the Developer then re-sells the Erf, then the period of 2 (two) years and the further period of 12 (twelve) months referred to above, shall

- be calculated from the date of registration of transfer of the Erf by the Developer to the new Member. The dwelling house shall be regarded as being completed upon the issue of an Occupational Certificate by both the Local Authority and the Association.
- 5.2 In the event of a Member failing to comply with the provisions of section 5.1 hereof, the Association endorses the Developer's right in terms of the standard agreement of sale . which provided as follows:
- 5.2.1 Should the Member fail or neglect to erect a dwelling within the period stipulated in section 5.1 hereof, the Developer or its nominee shall have the right at any time after the expiry of the prescribed period and before the erection of a dwelling house on the Erf, to re-purchase the Erf from the Member on the following terms and conditions:
- 5.2.1.1 The Developer shall exercise its right by written notice to the Member's chosen domicilium;
- 5.2.1.2 Should there be no improvements on the Erf, the purchase price shall be an amount equal to the purchase price at which the Member acquired the Erf;
- 5.2.2 Should the Erf have been improved, the purchase price shall be an amount equal to the purchase price at which the Member acquired the Erf plus the cost to the Member of the improvements or the value of the improvements as they stand, whichever is the lower, less the costs of transferring the Erf to the Developer. The cost or the value of the improvements shall be determined by a quantity surveyor appointed by the Developer, whose decision shall be final and binding on the parties and who, in arriving at such decision, shall have acted as an expert and not an arbitrator.
- 5.3 The full purchase price will be paid to the Member on registration of transfer of the Erf to the Developer.
- 5.3.1 The profit realised by the Developer on the resale of the Erf after deduction of its expenses, shall be paid into the banking account of the Association for the benefit of its Members;
- 5.3.2 Transfer of the Erf shall be registered by the Developer's Attorneys as soon as possible after the Developer has exercised its rights in terms of section 5.1.
- 5.3.3 All risk, benefit and occupation of the Erf will, in this case, be given to the Developer on transfer of the Erf to it. All rates, taxes, levies and other outgoings on the Erf shall be borne and paid by the Member until the transfer of the Erf to the Developer.
- 5.3.4 The Member agrees to give his full co-operation in all such things as may be necessary or incidental or conducive for the implementation of the terms, conditions and import of this clause 5.3. The Member hereby irrevocably and in rem suam appoints the Developer with power of substitution as his attorney and agent on his behalf, to sign all documents and do all things necessary to give effect to this section 5.3.4 and to appoint conveyancers on his behalf to transfer the Erf to the Developer.
- 5.4 Should the Member sell the Erf before the erection of a dwelling house thereon in terms of section 5.1 above, the Developer shall have a pre-emptive right to purchase the Erf from the Member at the price offered by the third party.
- 5.5 Notwithstanding the provisions of section 5.1 hereof, the Developer shall not be obliged at any stage to develop, or construct a dwelling on any residential Erf registered in its name and he shall not be liable for any sanctions or penalties as a result thereof.
- 5.6 All building work within the area of jurisdiction of the Association is subject to and must be done in accordance with the Architectural Guide and Building Conduct Rules of the Association.
- 5.7 A Member shall be obliged to submit all building plans in respect of an Erf to the Association and the latter must consider whether such building plans comply with the Architectural Guide and Building Conduct Rules of the Association. If such building plans comply with the provisions of the Architectural Guide and Building Conduct Rules and are acceptable to the Association it shall make a written recommendation to the Local Authority, after which the Member may submit the building plans together with the recommendation of the Association to the Local Authority for its consideration and approval.
- 5.8 Any amendment to the Architectural Guide and Building Conduct Rules of the Association must be done in accordance with Ordinance 15 of 1985 and will be subject to the prior written approval of the Local Authority and the Developer.
- 5.9 The Association shall have the right after having obtained the written approval of the Developer, to nominate a project architect or a panel of project architects and/or designers from time to time and to require that the plans for any improvements to be erected on an Erf are prepared by a member of the panel to ensure that the special character and quality of Mount Royal is maintained.
- 5.10 A Member shall be obliged to accept the authority of the Association or its appointee as final regarding any problem whatsoever with the building being erected on an Erf and shall execute immediately any order by the Association or its appointee to solve such problem.
- 5.11 Members shall be obliged to repair to the satisfaction of the Association any damage that he or his agents or contractors may cause to the Common Areas in the course of construction.
- 5.12 A Member shall have the right to select a building contractor of his own choice to erect any improvements on an Erf, provided that the contractor qualifies in terms of the Architectural Guide and Building Conduct Rules and further provided that the contractor undertakes in writing that he will be subject to all the provisions of the Architectural Guide and Building Conduct Rules and the relevant Member shall ensure that the building contractor so complies with the Architectural Guide and Building Conduct Rules.

- 5.13 No signage shall be erected on the Erf or on Mount Royal, apart from those provided for in the Architectural Guide and Building Conduct Rules.

6. ALIENATION OF COMMON AREAS

- 6.1 Neither the whole nor any portion of the Common Areas may be:
- 6.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 6.1.2 mortgaged; or
- 6.1.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude other than servitudes in favour of the Local Authority for services;
without the sanction of a special resolution of the Association and the prior written consent of the Local Authority.

7. LEVIES

- 7.1 The Management Committee, may from time to time impose Levies upon every Member for the purpose of meeting all the expenses in relation to the provision of services and the general maintenance, security and upkeep of Mount Royal, the Common Areas, the Amenities and for the payment of all expenses necessarily or reasonably incurred in connection with the management and operations of the Association and its affairs.
- 7.2 The Management Committee may, from time to time also impose special Levies upon a Member in respect of all such expenses as are mentioned in section 7.1 and the amount of such Levies and the manner of payment thereof by Members shall be as determined by the Management Committee. The provisions of sections 7.4, 7.5 and 7.6 shall *mutatis mutandis* apply to special Levies.
- 7.3 The Developer will only be liable for Levies attributable to each Erf (if any) still registered in its name after the date of termination of the Development Period.
- 7.4 Any amount due by a Member by way of Levies shall be a debt due by him to the Association. The obligation of a Member to pay Levies shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear Levies from such Member. No Levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to an Erf shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of that Erf into his name, to pay the Levies attributable to that Erf.
- 7.5 In calculating the Levies payable by each Member, the Management Committee shall, subject to the provisions of section 7.3, so far as reasonably practical apportion the costs relating to Mount Royal generally to the Owners of all erven equally, provided, however, that the Management Committee may in any case where it considers it equitable so to do, assign to any Member a greater or lesser share of the costs as the Management Committee may consider reasonable in the circumstances. The Management Committee may further in its discretion rebate Levies for consolidated and subdivided erven and may impose different Levies for sectional title units and linked exclusive use areas, or for Erven held under any other scheme for common use or ownership.
- 7.6 The Management Committee's decision in calculating the Levies shall be final and binding on every Member.
- 7.7 No Member shall be entitled to any of the privileges of membership including, without limitation, the use of any or all of the Amenities and the same shall be suspended until he shall have paid all levies and other sums (if any) which shall be due and payable to the Association in respect of his membership thereof or in terms of this Constitution.
- 7.8 No Member shall be entitled to be appointed or to remain in office as a member of the Management Committee unless he shall have paid all Levies and other sums (if any) which shall be due and payable to the Association in respect of his membership thereof or in terms of this Constitution.

8. MUNICIPAL SERVICES

- 8.1 Every Member shall provide and maintain a refuse bin at a place, as directed by the Association, from time to time.
- 8.2 The Association shall from time to time determine whether the refuse removal from Mount Royal is to be undertaken by the Local Authority or by a private contractor.
- 8.3 The Association and the Local Authority may classify refuse and prescribe in which way refuse must be separated before removal.
- 8.4 Every Member shall, if at any time requested by the Association or the Local Authority to do so, measure his water consumption by means of a pre-paid or conventional water meter, pre-approved by the Local Authority.
- 8.5 Each Erf shall be provided with a 60A single phase 230 V 50 Hz electricity supply on the side boundary thereof. Should a Member require a larger single phase supply or a three phase supply, then all costs to upgrade the supply shall be for such Member's account. The Member's electrician shall liaise with the electricity supply authority regarding the accommodation requirements for the pre-payment electricity meters and load control relays.
- 8.6 Every –
- 8.6.1 Member shall install a pre-paid electricity meter which has been pre-approved by the Local Authority; and

- 8.6.2 Electrical installation on every Erf shall make provision for the accommodation and connection of a load control relay for geysers which the Local Authority may provide and install.
- 8.7 The Association shall be responsible for the maintenance and upkeep of:
 - 8.7.1 the internal storm water system on the Development Area which shall vest in the Association;
 - 8.7.2 all Common Areas, as well as all improvements thereon, excluding the Golf Course, which Common Areas must be transferred to the Association.
 - 8.7.3 all traffic signs and refuse bins on private streets in the Development Area
 - 8.7.4 the security fencing of and entrance to the Development Area.
- 8.8 Should any road surface or internal storm water system be damaged as a result of necessary repairs done to municipal services by the Local Authority, the Association shall be responsible to pay the Local Authority's account for such repairs.

9 COSTS

A Member shall be liable for and pay all costs, including legal costs as between attorney and own client, collection commission, expenses and all other charges incurred by the Association in recovering any arrear Levies or other amounts due and owing by such Member to the Association including interest thereon at a rate to be determined by the Association from time to time. This includes costs relating to enforcing compliance with any rules issued by the Association from time to time.

10 ENTRENCHED PROVISIONS

- 10.1 The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity to guarantee the success of the development of Mount Royal. Accordingly none of the provisions of this section 10 may be deleted or altered or varied in any way in terms of section 28, without the prior written consent of the Developer (which consent shall be required both before, during and after the Development Period).
- 10.2 The management and development of the flora on Mount Royal as well as the establishment of a fire management contingency plan, shall at all times accord with EMS and shall be executed in conjunction with Cape Nature Conservation Authorities.
- 10.3 The Association shall be entitled to order the removal of alien vegetation as well as water absorbing vegetation, from any Erf and shall itself be obliged to do so on Common Areas or areas over which a servitude operates in its favour.
- 10.4 The Association may register, where necessary, service servitudes over Mount Royal in favour of the Local Authority and whether In respect of any separate Erf or the Common Areas and may accept such servitudes in its favour or in favour of any portion of Mount Royal to enable the Association to carry out all or any Maintenance or Services which it is obliged to perform in terms hereof.
- 10.5 It is hereby recorded that it is of the utmost importance to the ASSOCIATION that the marketing of properties in Mount Royal shall be conducted by agencies with specialist knowledge of all aspects of the development planning of Mount Royal. Consequently, until 80% (eighty percent) of all the properties in MOUNT ROYAL have been improved with habitable dwellings, Uniview Properties CC and Ari Malan Properties shall be the only agents allowed to engage in the sale and resale of Erven in Mount Royal. A Member shall, however, retain the right to market his property personally without making use of the services of any estate agent.

11 RULES

- 11.1 Subject to the provisions of this Constitution and to any condition imposed by the Local Authority in approving the rezoning and subdivision of Mount Royal, the Management Committee may from time to time make rules and vary or modify those rules, all of which shall be binding upon every Member. These rules shall, *inter alia*, relate to:
 - 11.1.1 the standards and guidelines for the architectural design and finishes of all buildings and outbuildings, structures of any nature, swimming pools, tennis courts and all additions and alterations to any such buildings, out-buildings or structures erected or to be erected on Mount Royal and in particular the control over the design and colour of the exterior of such buildings, out-buildings or structures and the materials to be used on such exteriors to ensure an attractive and aesthetically pleasing and harmonious character to all buildings on Mount Royal, which rules must distinguish between the development criteria and restrictions on land use between a single residential housing zone and a general group housing zone.
 - 11.1.2 the siting of all buildings, out-buildings, structures of any nature, swimming pools, tennis courts and all additions and alterations to any thereof and the imposition of controls for safety purposes in respect of all or any of the aforesaid;
 - 11.1.3 the preservation of the natural environment, vegetation and flora and fauna on Mount Royal, including the right to control and if necessary order the removal of vegetation;
 - 11.1.4 and the prohibition of the erection of fences and walls whether upon or within the boundaries of any Erf and the prohibition of any interference with Mount Royal landscaping, including the indigenous vegetation planted on any sidewalk;
 - 11.1.5 the imposition of sanctions or penalties on Owners who failed to commence construction of improvements thereon or fail to complete the same within the time limits, if any, prescribed by the Association or this Constitution, including the right to require the

- Owner at his cost to clear the site and to plant grass or other vegetation and thereafter to maintain the same in good order and condition so as not to detract from the aesthetic appearance of Mount Royal;
- 11.1.6 the control over the planting, landscaping or gardening activities on any Erf;
 - 11.1.7 the control over the keeping of any animals which the Management Committee may regard as dangerous or a nuisance.
 - 11.1.8 the conduct of any person on Mount Royal for the prevention of nuisance of any nature to any Member;
 - 11.1.9 the use of Services and Amenities, including the right to charge a reasonable fee for the use thereof;
 - 11.1.10 the maintenance or appearance of any Erf, garden, sidewalk or of any buildings, out-buildings, structures, improvements of any nature on any Erf and landscaping on Mount Royal;
 - 11.1.11 the regulation of the number of Occupiers permitted on any one Erf;
 - 11.1.12 the right to require the Owner at his cost to clear his Erf and to plant grass or other vegetation and thereafter to maintain the same in good order and condition so as not to detract from the aesthetic appearance of Mount Royal;
 - 11.1.13 the security and access control of Mount Royal and the eviction of any person not entitled to be thereon. It is hereby recorded that access to the Development Area shall be gained through a controlled security entrance;
 - 11.1.14 the reasonable access to the Development Area for meter readers, inspectors, maintenance personnel, refuse removal and any other purpose related to the Local Authority's activities, subject however to security measures as prescribed from time to time by the Association;
 - 11.1.15 the conditions under which any person may enter upon Mount Royal or participate in any activity on Mount Royal;
 - 11.1.16 for the prevention of the conduct of any business activity whatsoever on any Erf except as may be permitted by the Association;
 - 11.1.17 generally, 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 Occupiers of any Erf;
- 11.2 The rules shall not be in conflict with any condition imposed by the Developer upon any Member or purchaser of an Erf in terms of the agreement of sale whereby the Member acquires an Erf.
 - 11.3 The rules as well as any variation or modification hereof, shall be subject to the approval of the Local Authority.
 - 11.4 For the purposes of the enforcement of the rules made by the Management Committee in terms of this section or for purposes of the enforcement of any of the provisions of this Constitution generally, the Management Committee may:
 - 11.4.1 give notice to the Member concerned requiring him to remedy any breach of the rules within such period as the Management Committee may determine; and/or
 - 11.4.2 take or cause to be taken such steps as it 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 a debt owing by the Member concerned to the Association; and/or
 - 11.4.3 take such action against a Member including the imposition of a fine, penalty levy or proceedings in court, as it may deem fit.
 - 11.5 It shall be the responsibility of the Association to enforce the conditions of the Constitution and any rules in terms thereof and it is hereby specifically recorded that it shall not be the responsibility of the Local Authority to enforce the conditions of the Constitution and any rules in terms thereof.
 - 11.6 Should the Management Committee institute any legal proceedings against any Member or Occupier on Mount Royal 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 Occupier concerned as between attorney and client, including tracing fees and collection commission.
 - 11.7 Should any member of a Member's household or any of his guests or lessees or Occupiers or invitees or licensees breach the rules, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Management Committee may take or cause to be taken such steps against the person who in fact committed the breach as it may in its discretion deem fit.
 - 11.8 If any Member disputes the fact that he has committed a breach of any of the rules, a committee appointed by the Executive Officer shall adjudicate upon the issue at such time and in such manner and according to such procedures (provided that natural justice and equity shall be observed) as the Executive Officer may direct.
 - 11.9 Notwithstanding anything to the contrary herein contained, the Management Committee may in the name of the Association enforce the provisions of the Constitution or any rules in terms thereof by civil proceedings or action or application to any court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.
 - 11.10 The Association may in 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 Management Committee from time to time.
 - 11.11 All rules must be reasonable and must apply equally to every Owner of an Erf put to substantially the same use.

12 AMENITIES AND GOLF COURSE

- 12.1 Amenities that are designated exclusively for the benefit of the Members shall be owned and maintained by the ASSOCIATION.
- 12.2 Amenities that are publicly owned such as those in the Commercial Village shall be used by the Members subject to the rules and conditions that apply to each Amenity.
- 12.3 Should the Association at any time take over the management and control of an Amenity, then the Association shall be empowered and authorized to:
 - 12.3.1 appoint professional subcontractors for the management and control of the whole or any part or parts of the Amenities, upon such terms and subject to such conditions as may be determined by the Management Committee;
 - 12.3.2 let out or hire all or any Amenity or all or any part of Mount Royal upon which the Amenity may be situated, or all or any part of any buildings pertaining to the Amenities, all upon such conditions and terms as the Management Committee may deem appropriate in their discretion;
 - 12.3.3 prescribe all rules and regulations governing the use by Members, Occupiers or the general public of such Amenities and the management and upkeep of those facilities.
- 12.4 It is hereby recorded that the Golf Course falls under the jurisdiction of the Club, and that the Club and the Association, although committed to each other's interests, are nevertheless financially and legally autonomous. It is further recorded that the members of the Association may apply to become members of the Club and exercise the rights attending such membership, including voting rights and eligibility for bearing office.

13 MANAGEMENT COMMITTEE

- 13.1 During the Development Period the B Members shall:
 - 13.1.1 perform the function of the Association until such time as the first members of the Management Committee are appointed;
 - 13.1.2 retain the right to promulgate and constitute rules for the Association and to vary, add to and repeal any provision of this Constitution or any decision of the Management Committee;
 - 13.1.3 take into consideration advice from time to time given by the Management Committee, and remain cognizant of the desires of the Members;
 - 13.1.4 remain in full control over Mount Royal until the end of the Development Period;
 - 13.1.5 be solely entitled to appoint, remove and replace all the members of the Management Committee and the A Members shall have no rights in this regard; and
 - 13.1.6 have the right to cede any of its rights in terms of this agreement to the Association at any time.
- 13.2 During the Development Period there shall be 2 (two) members of the Management Committee and after the Development Period this number shall increase to 5 (five) members of the Management Committee who shall jointly be solely and exclusively responsible and authorised and obliged to manage and control the entire business affairs and undertakings of the Association in whatever form and/or to appoint appropriate professional managers, operators or Subcontractors to undertake these functions.
- 13.3 On the termination of the Development Period all the members of the Management Committee then in office, shall resign and shall be replaced by members of the Management Committee nominated and elected by the Members in accordance with this Constitution.
- 13.4 A member of the Management Committee shall be an individual who shall not necessarily be a Member of the Association. A member of the Management Committee, by accepting his appointment to office, shall be bound by all the provisions of this Constitution.
- 13.5 The Management Committee shall appoint one of their members to act as Executive Officer for such term as they think fit, but not for longer than such person's tenure as a member of the Management Committee.
- 13.6 After the Development Period the responsibility for managing and carrying out the day to day functions of the Association shall in all respects be delegated, subject to such limitations and restrictions as may from time to time be imposed by the Management Committee, to the Executive Officer.

14 REMOVAL AND ROTATION OF MEMBERS OF THE MANAGEMENT COMMITTEE

- 14.1 Save as set out in section 13.1.5 above, each member of the Management Committee shall continue to hold office as such from the date of his appointment to office until the annual general meeting following his said appointment, at which meeting each member of the Management Committee shall be entitled to elect whether to retire from office or to renew his position as member of the Management Committee until the next annual general meeting. At the next annual general meeting each member of the

Management Committee who has elected to extend his term of office for a further period of one year as aforesaid shall be deemed to have retired from office as such but will be eligible for re-election to the Management Committee at such meeting.

- 14.2 A member of the Management Committee shall be deemed to have vacated his office as such upon him having -
- 14.2.1 become disentitled as a member of the Association to exercise a vote in terms of section 23.5;
 - 14.2.2 his estate being sequestrated, whether provisionally or finally;
 - 14.2.3 commissioned any act of insolvency;
 - 14.2.4 been convicted of any offence involving dishonesty;
 - 14.2.5 become unsound of mind or being found to be a lunatic; or
 - 14.2.6 resigned from such office in writing,
- provided that anything done in good faith, in the capacity of a member of the Management Committee, by a person who has ceased to be a member of the Management Committee shall be valid until the fact that he is no longer a member of the Management Committee has been recorded in the Management Committee's minute book.
- 14.3 Subject to section 13.1.5, upon any vacancy occurring in the Management Committee prior to an annual general meeting, the vacancy in question shall be filled by a person nominated by the remaining members of the Management Committee who shall hold office as set out in section 13.

15 **EXPENSES AND REMUNERATION OF MEMBERS OF THE MANAGEMENT COMMITTEE**

- 15.1 The members of the Management Committee shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as members of the Management Committee.
- 15.2 The members of the Management Committee shall be entitled to remuneration in respect of the performance of their duties as may be determined by the Association at a general meeting.

16 **POWERS OF MANAGEMENT COMMITTEE**

- 16.1 Subject to the express provisions of this Constitution, including the provisions of section 13, the Management Committee shall manage and control the entire business and affairs of the Association and shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any subcontractor and 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 required by this Constitution to be exercised or done by the Association at a general meeting, subject however to such rules as may have been made by the Association at a general meeting or as may be made by the Management Committee from time to time.
- 16.2 The Management Committee shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, managing agents, Subcontractors or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Management Committee on such terms as the Management Committee shall decide.
- 16.3 The Management Committee shall further have the power:
 - 16.3.1 to require that any construction of any sort on Mount Royal shall be supervised to ensure that the provisions of this Constitution and Mount Royal rules are complied with and that all such construction is performed in a proper and workmanlike manner; and
 - 16.3.2 to issue an architectural, landscape and environmental manual in respect of Mount Royal and to ensure that such manual is complied with at all times.
- 16.4 The Management Committee shall have the right to vary, rescind or modify their decisions or resolutions from time to time.
- 16.5 The Management Committee shall be entitled, in their sole discretion, to appoint committees, such as Garden Home Committees or a suitably qualified person or persons consisting of such number of their members and such outsiders, including a Subcontractor 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 Management Committee may from time to time in their sole discretion deem necessary.
- 16.6 The Management Committee may appoint an architectural review committee or a suitably qualified person to exercise the powers set out above in section 16.3 which committee or person may, but shall not necessarily, consist of or be:
 - 16.6.1 a practising professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa;
 - 16.6.2 one member of the Management Committee; and
 - 16.6.3 such other person as the Management Committee may determine.
- 16.7 A member of the architectural review committee shall not be required to be a Member.
- 16.8 Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer, all plans for buildings, out-buildings, structures, additions and alterations on Mount Royal shall be approved by the Management Committee, or

any person designated by them for the purpose which, after the Development Period, shall include the architectural review committee, should one have been appointed.

- 16.9 In the execution of their duties the Management Committee shall be entitled to enter into a services agreement or agreements for upkeep and Maintenance purposes.
- 16.10 Should a Member fail to comply with and be in breach of any of the provisions of this Constitution, the Architectural Guide and Building Conduct Rules and/or the rules referred to in section 11, the Management Committee shall have the right to impose such sanctions, penalties and/or fines on such Member which it deems fit In the circumstances.

17 PROCEEDINGS OF MANAGEMENT COMMITTEE

- 17.1 The Management Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 17.2 The quorum necessary for the holding of all meetings of the Management Committee, shall, during the Development Period be 2 members of the Management Committee present personally or after the Development Period, 3 members of the Management Committee. If no quorum is present within 5 minutes after the time for commencement of the meeting then it shall stand adjourned for 7 days, or if that is not a Business day, then to the next Business day thereafter and those members of the Management Committee present at the adjourned meeting shall constitute a quorum.
- 17.3 All resolutions of the Management Committee shall be carried by a simple majority of votes cast. In the case of an equality of votes for and against a resolution, the Executive Officer shall have a second or casting vote.
- 17.4 The Management Committee shall cause minutes to be kept of every Management Committee meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified as correct by the Executive Officer. All minutes of the Management Committee meeting shall, after certification, be placed in a Management Committee minute book, to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Management Committee minute book shall be open for inspection at all reasonable times by any member of the Management Committee and the Auditors.
- 17.5 A resolution signed by all the members of the Management Committee shall be valid in all respects as if it had been duly passed at a properly convened meeting of the Management Committee.

18 GENERAL MEETINGS OF THE ASSOCIATION

- 18.1 The Association shall within 6 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.
- 18.2 Such annual general meeting shall be held at such time and place as the Management Committee shall decide from time to time.
- 18.3 All meetings other than annual general meetings shall be called general meetings.
- 18.4 The Management Committee may, whenever they think fit, convene a general meeting.

19 NOTICES OF MEETINGS

- 19.1 An annual general meeting and a general meeting called for the passing of a special resolution shall be called by not less than 21 clear days' notice in writing. Any other general meeting shall be called by not less than 14 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 time 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 section be deemed to have been duly called if it is so agreed by not less than 95% of the Members having the right to attend and to vote at the meeting.
- 19.2 The annual general meeting shall deal with and dispose of all matters prescribed by the Constitution, the consideration of the annual financial statements, the noting of the levy for the Financial Year during which such annual general meeting takes place, the appointment of the auditor and after the Development Period the election of members of the Management Committee.

20 PROXIES

- 20.1 A Member may be represented at a general meeting by a proxy who must also be a Member.
- 20.2 To be effected 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 or resolution under which it is signed, must be lodged with the Association at least 24 hours before the commencement of the meeting or adjourned meeting concerned but the Management Committee may from time to time determine that such documents:
- 20.2.1 are to be lodged at a particular place; or

20.2.2 are to be lodged a certain number of hours, not exceeding 48 in all before the meeting; or

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

Notwithstanding the foregoing the Chairman of the meeting may in his absolute discretion agree to accept a proxy tendered at any time before or during the meeting.

20.3 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.

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

21 QUORUM

21.1 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, a quorum shall consist of 10% of the total number of Members of the Association. Such persons shall be present in person or by proxy at the meeting, provided that during the Development Period one of such persons must be the representative of the B Members, provided further that there shall always be at least three Members present in person.

21.2 If within 15 minutes after the time appointed for the commencement of a general meeting or within such extended period as the Executive Officer or, in his absence, the deputy Executive Officer, 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 Executive Officer may determine. If a quorum is not present at such adjourned meeting, the Members present shall constitute a quorum, provided that during the Development Period one of such persons must be the representative of the B Member(s).

22 ADJOURNMENT BY EXECUTIVE OFFICER WITH CONSENT OF MEETING

22.1 The Executive Officer 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:

22.1.1 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 days or more in which event notice is to be given in the same manner as for the original meeting);

22.1.2 Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

23 VOTING RIGHTS OF MEMBERS

23.1 Members shall be entitled to vote only on the matters before the meeting concerned.

23.2 At every general meeting during the Development Period:

23.2.1 each A Member, present in person or by proxy and entitled to vote, shall have 1 (one) vote for each Erf registered in his name;

23.2.2 the B Members present in person or by proxy shall have 2000 votes, and in addition shall have 1 (one) vote as an A Member for each Erf registered in its name.

23.3 At every general meeting after the termination of the Development Period, each Member present in person or by proxy and entitled to vote shall have 1 (one) vote for each Erf registered in his name.

23.4 If an Erf is registered in the name of more than one person or in the name of a legal person or trust, then all such co-owners, members, shareholders and/or beneficiaries shall jointly have only 1 (one) vote.

23.5 Save as expressly provided for in this Constitution, no person other than a Member, who shall have paid every levy, building damages deposit, building penalty fee and other sum, if any, which shall be due and payable to the Association in respect of or arising out of his membership, shall be entitled to be present and to vote, either personally or by proxy, at any general meeting.

23.6 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.

23.7 All resolutions shall be passed by simple majority vote, save with respect to amendments of this Constitution as provided for in section 28 hereof.

23.8 If a poll is duly demanded it shall be taken in such manner as the Executive Officer of the meeting may direct either immediately or after an interval or adjournment.

23.9 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 Executive Officer whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.

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

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

- 23.10.2 the Executive Officer of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 23.11 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 Executive Officer of the meeting, whose decision shall be final and conclusive.
- 23.12 A declaration made in good faith by the Executive Officer 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.

24 ACCOUNTING RECORDS

- 24.1 The Management Committee shall cause proper accounting records to be kept. Proper account records shall be deemed not to have been kept if they do not fairly present the state of affairs and business of the Association and adequately explain the transactions and financial position of the trade or business of the Association.
- 24.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Management Committee think fit and shall always be open to inspection by the members of the Management Committee.
- 24.3 The Management Committee 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 members of the Management Committee and no Member who is not a member of the Management Committee shall have any right of inspecting any accounting records or documents of the Association unless authorised by the Management Committee.
- 24.4 The Management Committee 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 sections 286 and 288 of the Companies Act No 61 of 1973..
- 24.5 The Management Committee shall submit copies of such financial statements together with annual returns of income to the Receiver of Revenue, Cape Town.
- 24.6 A copy of the annual financial statements which are to be laid before the Association in annual general meeting shall, not less than 21 days before the date of the meeting, be sent to every Member of the Association; provided that this section shall not require a copy of those documents to be sent to any person of whose address the Association is unaware.
- 24.7 The Auditors must be properly appointed on an annual basis.

25 SERVICE OF NOTICES

- 25.1 Notices may be given by the Association 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 supplied by him to the Association for the giving of notices to him.
- 25.2 Notice of every general meeting shall be given:
- 25.2.1 to every Member of the Association;
- 25.2.2 to the secretary for the time being of the Association.
- No other person shall be entitled to receive notices of general meetings.
- 25.3 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.
- 25.4 The signature to any notice given by the Association may be written or printed or partly written and partly printed.
- 25.5 When a given number of days' notice or notice extending over any other period is required to be given, the day of service shall not be counted in such number of days or period.

26 INDEMNITY

- 26.1 All the members of the Management Committee shall be and are hereby indemnified by the Association against all liabilities bona fide incurred by them in their respective capacities in the defense or institution of any proceedings, civil, criminal or otherwise.
- 26.2 Every member of the Management Committee, servant, agent and employee of the Association and the Auditors, shall be and is hereby indemnified by the Association against (and it shall be the duty of the Management Committee out of the funds of the Association to pay) all costs, losses and expenses (including traveling expenses) which such person or persons may incur or for which they may become liable 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.
- 26.3 Any person using any of the services, land, sporting or recreational facilities of the Association does so entirely at his own risk and no person shall have any claim against the Association of whatsoever nature arising from such use, nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise.

- 26.4 Each and every Member individually shall indemnify and hold harmless the Association against all and any claims of whatsoever nature which may be brought against the Association by any Member, members of his family or any person within Mount Royal at the invitation of or any person within Mount Royal at the invitation of or under the control of the Member concerned, whatsoever the nature of such claim and howsoever arising.

27 GENERAL

- 27.1 Whenever it considers that the appearance or condition of any Erf or building on any Erf of Mount Royal causes a nuisance or is unsightly or is in an injurious condition, the Management Committee may serve notice on such Owner to take such steps as may be specified in the notice, to eliminate such nuisance or unsightly or injurious condition. Should the Owner fail within a time specified in such notice, to comply therewith, the Management Committee may enter upon the Erf or buildings concerned and take such steps as may be necessary to rectify the situation and the Management Committee shall be entitled to recover the costs thereof from the Owner concerned which costs shall be deemed to be a debt owing by the Owner to the Association. The Management Committee shall be obliged to act in a reasonable manner. In the event of any dispute, the onus shall be on the Member to prove that the Management Committee acted unreasonably.
- 27.2 It shall be the duty of all Members to acquaint themselves and to comply with the provisions of all laws, regulations, by-laws and the like insofar as they may apply to the ownership or occupation of any Erf, and each Member shall indemnify and hold harmless the Association and the Management Committee jointly and severally against all and any financial loss or damage or costs or expenses incurred by them or any of them in consequence, directly or indirectly of the failure to so comply with any such laws, regulations, by-laws, rules and the like.
- 27.3 No person ceasing to be a Member of the Association, for any reason whatsoever, shall have any claim to or interest in or right to the funds or assets of the Association.
- 27.4 Neither the Association nor the Management Committee nor the B Members referred to in Clause 3.2 nor the Developer shall be responsible or may be held liable for any loss, damage or injury, including direct or indirect consequential loss or damage suffered by or caused to any person or property anywhere on Mount Royal, whether or not such loss, damage or injury is occasioned by any act or omission of the Association or the Management Committee or anyone else for whose actions they or any of them would be liable in law, or by reason of *vis major, casus fortuitus*, rain or other water, riots, strikes, theft or burglary with or without forcible entry, or by reason of any condition on or in or of any part of Mount Royal, or any defective facilities of the Association or caused by any sporting activity carried out on Mount Royal or the Golf Course or by any other cause of whatsoever nature and howsoever arising. Each Member hereby indemnifies the Association and the Management Committee and holds it and them harmless in respect of all or any such claims for loss, injury or damage of whatsoever nature and howsoever arising whether made by that Member himself or by any member of his family, or by any Occupier.
- 27.5 It is recorded that the Owners are and will be jointly liable to reimburse the Local Authority for expenditure incurred by the latter in relation to any steps taken by it to rectify any failure by the Association to meet any of the Association's obligations under section 29(2) read with section 29(4) of the Land Use Planning Ordinance (Cape Ordinance) No 15 of 1985.
- 27.6 No Owner or his tenant shall do or suffer to be done on any erf anything which is in the opinion of the Management Committee noisy, unsightly, injurious, hazardous, objectionable or detrimental or is a public or private nuisance or a source of damage to any other Owner, tenant or occupier.
- 27.7 The Association may only dissolve after having obtained the written consent of the Local Authority.
- 27.8 No indulgence or extension granted by the Association to a Member, shall constitute an estoppel or a waiver of any of the Association's rights under this Constitution, nor shall it prejudice in any way the rights of the Association nor shall it create new rights.

28 CONSTITUTION AND AMENDMENT THEREOF

- 28.1 A copy of this constitution must be submitted to the Local Authority for approval and to be countersigned;
- 28.2 Subject to section 13.1.2, all and any amendments or variations or additions to this Constitution will require the approval on a poll of at least 66,67% of the total number of votes of the Members, given at a general meeting convened specifically for such purpose and also, in the case of any amendments, variations or additions to sections 2, 3, 4.2, 4.3, 4.4, 4.6, 5.4, 5.5, 5.6, 6, 8, 10, 11.1.14, 27.5 and 28 of this Constitution, the prior written approval of the Local Authority. Furthermore, no amendment, variation or addition to any of the provisions of sections 5.7, 7.8 and 10 shall be valid, unless it shall have received the prior written approval of the Developer as provided in section 10.
- 28.3 The notice of such meeting shall, in addition to complying with section 19 hereof, set out in specific terms the proposed amendment variation or addition to this Constitution.

29. RECORD OF DECISION

- 29.1 The Department gave its approval to the development of Mount Royal and the upgrading of the Golf Course, subject to the following conditions and/or requirements contained in the ROD, which are applicable to and binding upon the Association and its Members:
- 29.1.1 The establishment of a home owners association whose constitution must incorporate the relevant conditions of the ROD.
- 29.1.2 The Association shall play an advisory role to the Directorate and the Local Authority reviewing future detailed development proposals to ensure that they comply with the conditions of the ROD.
- 29.1.3 The Association shall play an advisory role in the environmental management of Mount Royal during the entire construction phase for the whole development and thereafter.
- 29.1.4 A conservation area shall be established in the Northern section of the development in the area identified by the specialist botanist and shall be appropriately rezoned and incorporated as a contractual nature reserve into Cape Nature's Stewardship Programme before construction of any dwellings of Phase 3 in Mount Royal commences.
- 29.1.5 A sustainable Renosterveld Management Trust Fund shall be established and shall be used for the management of conservation areas within the development as well as other renosterveld sites within the Swartland Municipal area. The trust fund shall be used to finance the ongoing management of the conservation area in Mount Royal as well as the following other renosterveld areas:
- 29.1.5.1 Erf 4847 Driehoekspad, North-East of Malmesbury;
- 29.1.5.2 Erf 327, Die Koppie, South of Malmesbury;
- 29.1.5.3 The Remainder of the Farm No 1054 Malmesbury, West of the N7 and opposite the entrance to Abbotsdale, South-West of Malmesbury.
- 29.1.6 The Renosterveld Management Trust Fund shall be administered by a Conservation Organisation with experience in administering trust funds and should include representatives from CapeNature, the Association, the Developer, the Club and the Local Authority.
- 29.1.7 The Association shall, in consultation with CapeNature and the other representatives compile a document on the management and administration and structure of the Renosterveld Management Trust Fund to be presented and adopted by the appropriate conservation organisation.
- 29.1.8 The OEMP shall make provision for the minimum amount of funding in its annual budget required to manage the conservation areas for the first 4 years which funding shall be re-evaluated when the OEMP is revised every 5 years.
- 29.1.9 Up to 10% of the annual budget for the management of the conservation areas can be sourced from the conservation trust fund while the rest of the required funds shall be generated from Levies from the Association.
- 29.1.10 A sustainable public benefit fund shall be established to implement any public benefit scheme that may be imposed on Mount Royal by any current or future organ of the State, to provide amongst others, for the training and skills development to equip the unemployed for gainful employment and to facilitate existing initiatives to eradicate poverty.
- 29.1.11 The Developer in co-operation with the Association and the Local Authority shall administer the public benefit fund.
- 29.1.12 The Developer in consultation with the Association and the Club shall implement the EMS for Mount Royal and the Golf Course. The EMS must be based on the best practice approach for such system and shall incorporate the conditions of authorisation given in this ROD as appropriate to the construction and operational phases of the project.
- 29.1.13 The EMS shall include the following components but is not limited to –
- 29.1.13.1 an environmental policy and objectives/targets;
- 29.1.13.2 the identification and allocation of environmental management responsibilities within the organisation;
- 29.1.13.3 environmental procedures which include but is not limited to –
- 29.1.13.3.1 construction activities for every phase of the development (construction Environmental Management Programme) pertaining to major services (roads, water sewerage and electricity);
- 29.1.13.3.2 construction activities for the construction of the golf course (including the landscaping of the existing course);
- 29.1.13.3.3 architectural guidelines for the construction of all buildings (including residential dwellings, built infrastructure related to the golf course and commercial elements);
- 29.1.13.3.4 operating activities (Operational Environmental Management Programme) which includes but is not limited to –
- 29.1.13.3.4.1 management of the built environment;
- 29.1.13.3.4.2 management of public open space;
- 29.1.13.3.4.3 management of landscaped areas;
- 29.1.13.3.4.4 management of the golf course;
- 29.1.13.3.4.5 management of ecological corridors and conservation areas;
- 29.1.13.3.4.6 environmental training of staff, including contractors/service providers both for the construction phase and in relation to ongoing operations;

- 29.1.13.3.4.7 procedures for communication and reporting on environmental performance;
- 29.1.13.3.4.8 corrective action procedure.
- 29.1.14 The EMS shall be submitted to the Directorate for approval and shall be implemented by the Association and the management body for the Club.
- 29.1.15 Amendments to the EMS or elements thereof (e.g. one of the Environmental Management Programme) can be made as part of the continuous improvement of the EMS. However, the Department must approve any amendments that will have a detrimental impact on the environment.
- 29.1.16 The CEMP shall be compiled and shall be endorsed by the Association and the management body of the Club after which it shall be approved by the Directorate prior to the commencement of any land clearing and construction.
- 29.1.17 The CEMP shall, *inter alia*, contain the following elements:
- 29.1.18 An adequate description of the different stages of each construction phase of the development with adequate detail on the various environmental aspects, allocation of resources, responsibilities and time. It is emphasized that this phase include the establishment of major services (roads, water sewerage and electricity) but exclude construction of dwellings on individual erven;
- 29.1.19 Address all areas within the development area to be landscaped, other than individual erven;
- 29.1.20 Address the landscaping of the new additional nine holes of the golf course, as well as the landscaping of the existing golf course to introduce indigenous vegetation in areas between the existing fairways and greens;
- 29.1.21 Ensure that all landscaping must make use of predominantly indigenous vegetation. No Kikuyu grass shall be allowed in private or public gardens that border on the renosterveld. A list of appropriate plant species to be used in the landscaping must be compiled by a botanical specialist and included in the CEMP. The removal of the existing exotic tree species on the existing golf course must be phased in over a period of 15 (fifteen) years. Exotic trees younger than 5 (five) years must be replaced during the construction phase;
- 29.1.22 Ensure that appropriate environmental control measures and procedures are put in place to ensure that adequate environmental protection is exercised during the construction phase (e.g. demarcation and access control into sensitive areas, pollution control measures, plant search and rescue measures, treatment of topsoil, penalties, etc.);
- 29.1.23 Ensure that these procedures (environmental conditions) are formalised by means of a legal environmental contract and be included as environmental specifications as part of the tender call documents to contractors;
- 29.1.24 A qualified environmental control officer approved by the Developer will be responsible to the Association and the management body of the Club where issues related to Mount Royal and the golf course is concerned;
- 29.1.25 The Developer will be responsible for the implementation of the CEMP and all landscaping and re-vegetation must be completed within 6 (six) months after the sale of the first erven in phase 3 of the development whereafter the responsibility of the management of these areas shall revert to the Association in accordance with the OEMP for the development, excluding the golf course which will be managed by the entity responsible for the ongoing management of the Club in accordance with the OEMP for the golf course;
- 29.1.26 The Developer shall ensure that an environmental audit be undertaken every 6 (six) months during the construction phase of the development which audit shall be submitted to the Association and the Local Authority for comment.
- 29.1.27 After the construction phases have been completed the Association and the management body of the Club shall undertake an environmental audit annually. Every Member of the Association and every member of the Club must be informed of the findings of the audit reports. The audit report shall be made available to the public on request.
- 29.1.28 The OEMP as part of the EMS shall be prepared for Mount Royal excluding the golf course by an environmental practitioner in consultation with the Association and shall be approved by the Directorate;
- 29.1.29 The operational OEMP shall, *inter alia*, address the following:
- 29.1.29.1 management recommendations to identify, manage and address environmental aspects in these areas e.g. water saving, efficient use of energy, eradication of exotic vegetation, rehabilitation of degraded environments (including the riparian ecosystem), monitoring storm water quality entering into aquatic habitats, refuse dumping, fires, access control, etc.;
- 29.1.29.2 ensure public access to the conservation area;
- 29.1.29.3 outline an organisational structure which clearly identifies and allocates responsible parties for implementing the OEMP. This shall clearly outline how budgets are going to be provided and allocated;
- 29.1.29.4 ensure that locally occurring indigenous plant species are used for re-vegetation/rehabilitation in this area;
- 29.1.29.5 if so required for the effective management and administration of the trust fund for the conservation area, an Environmental Management Plan for the conservation area can be compiled as a separate entity within the OEMP.

- 29.1.29.6 All improvements on any Erf shall be constructed in accordance with the Mount Royal Architectural Design and Conduct Rules and shall include inter alia –
- 29.1.29.6.1 the use of appropriate plant species for water-wise gardening;
- 29.1.29.6.2 the use of water saving devices and technologies (e.g. dual flush toilets, low-flow shower heads and taps, etc.) be implemented in all buildings;
- 29.1.29.6.3 the use of energy saving devices and technologies be implemented in all buildings;
- 29.1.29.6.4 these guidelines shall be included in the contractual documentation linked to the sale and re-sale of all properties/dwellings.
- 29.1.30 All infrastructure shall be situated above the 1:100 year flood line of the river, as well as maintaining a 30 (thirty) meter buffer between any development and the center of the wetland. A buffer of 15 (fifteen) meters shall be maintained for the drainage lines. Silt tapes shall be used on all storm water point sources entering directly or indirectly into aquatic habitats (i.e. the river, wetland and drainage lines).
- 29.1.31 A buffer strip of at least 15 (fifteen) meters shall be maintained along the N7. A berm (average height of 3 meters) must be constructed within this buffer and must be landscaped with indigenous vegetation.
- 29.1.32 No water may be abstracted from the Platteklip River.
- 29.1.33 The golf course shall be irrigated with treated effluent that is subject to any conditions that may be set by the Department of Water Affairs and Forestry. No water earmarked for domestic use may be used for irrigation of the golf course.
- 29.1.34 All internal services and infrastructure within Mount Royal shall be maintained by the Association.
- 29.1.35 Mount Royal must have a recycling program with an integrated waste management approach that is based on waste minimization and must incorporate reduction, recycling, re-use and disposal where appropriate. This recycling program shall be submitted to the Directorate for approval. Any solid waste shall be disposed of at a landfill licensed in terms of Section 20 of the Environment Conservation Act No 73 of, 1989.
- 29.1.36 No surface or ground water may be polluted due to any activity on Mount Royal. The relevant requirements of the National Water Act No 36 of 1998 shall be complied with at all times.
- 29.1.37 Should any heritage remains be exposed during excavations for the water main, or related activities, these shall immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape (in terms of the National Heritage Resources Act No 25 of 1999). Heritage remains uncovered or disturbed during earthworks shall not be disturbed until inspected and verified by a professional archaeologist.
- 29.1.38 A reasonable fee structure shall be maintained for the golf course to ensure that the upgraded golf course will remain accessible to local golf players.
- 29.1.39 No building or restriction lines along Trunk Road 11/2 (Malmesbury – Moorreesburg) and Main Road 174 (Malmesbury – Klipheuwel) may be encroached. The relevant requirements set by the Department of Transport and Public Works must be adopted and implemented.
- 29.1.40 All outdoor advertising associated with this activity, whether on or off the property concerned, shall comply with the applicable local authority by-law for the control advertising or in the absence of local legislative controls shall comply with the South African Manual for Outdoor Advertising Control. Officials of the Department shall be given access to Mount Royal for the purpose of accessing and/or monitoring compliance with the conditions contained in the ROD at all reasonable times.

MOUNT ROYAL TREASURY FUND

- 30.1 The aim and objects for which the Fund has been established are to utilise the capital and income from the assets of the Fund in order to establish and maintain good neighbourliness with the other communities and groups in Malmesbury and its immediate vicinity, irrespective of class, race or politics of the day and for that purpose it shall engage in such projects and/or actions in cooperation with such other communities and groups as it, in its sole discretion may deem a beneficial platform of engagement with those communities. Without in any manner limiting the scope of the projects and/or actions which may be undertaken by it, it may, for example, assist in the establishment of educational and/or recreational and/or medical amenities for the benefit of communities in the vicinity of Mount Royal. The only limitation on the activities of the Fund is that such activities shall be undertaken in full cooperation with the communities that are intended to benefit from them.
- 30.2 The Fund shall be managed and administered by the Treasury Fund Committee ("TFC"). The TFC shall be constituted as follows:
- 30.2.1 Two (2) TFC Members shall be elected at each Annual General Meeting of the Association from its Member and unless re-elected, serve until the Annual General Meeting of the second year from election. Thus from the second year of operation of the TFC, at any time there will be 2 (two) members serving from the previous year and 2 (two) new members serving. In the first year where only 2 (two) TFC members are serving, the function of the TFC shall be to make contact with other communities in the vicinity and explore possible projects to be undertaken jointly with those communities in following years.

- 30.2.2 The TFC shall meet from time to time as required, but not less than once per month.
- 30.2.3 Three of the four TFC Members shall constitute a quorum, although any other Members of the Association who are interested in making a positive contribution to carrying out the aims of the Fund shall be encouraged to attend the TFC meetings, save that such other members will not have voting rights.
- 30.2.4 All decisions of the TFC will be carried by a vote of at least 3 (three) TFC members present. A resolution signed by 3 (three) TFC members will have the same force as a resolution taken by a properly constituted meeting of the members.
- 30.2.5 The term of office of a TFC Member may be terminated by the Mount Royal Management Committee at any time if in its sole discretion the TFC member is not acting in the interests of the Association.
- 30.2.6 Subject to section 13.1.5, upon any vacancy occurring in the TFC prior to the expiry of a TFC member's term of office, the vacancy in question shall be filled by a Member of the Association nominated by the remaining members of the TFC, which member shall hold office until the expiry of the term of the member so replaced.
- 30.3 The TFC shall have general control over the assets of the Fund and shall strive to reach the objects for which the Fund is established. The TFC shall have all such powers as may be necessary to enable them to administer the Fund and, without limiting its general powers in any way, it shall also have the following powers:
- 30.3.1 to open a bank account in the name of the Fund and to operate thereon;
- 30.3.2 to invest the capital amount and all such income of the Fund which may not be immediately required for the purposes of the Fund, in secured investments with banking institutions; and
- 30.3.3 to pay all expenses incurred in connection with the administration of the Fund; and
- 30.3.4 to appoint an agent or agents to represent it for any specific purpose, including the power to employ accountants and other professional persons for any specific purpose and to remunerate such persons at the usual professional or business rates; and
- 30.3.5 to generally to do all such other things as may be expedient to further the interests of the Fund or which are incidental or conducive to the attainment of the above aims and objects of the Fund.
- 30.4 The Fund shall endure for an indefinite period subject to the condition that it may be terminated on a poll of at least 80% (Eighty percent) of the total number of votes of the Members given at a general meeting convened specifically for such purpose by the Management Committee, provided that it cannot be terminated before 31st December 2012 or before termination of the Development Period, whichever date shall be the later.
- 30.5 Notwithstanding anything to the contrary herein contained, the Fund cannot be terminated until all its funds shall have been expended in the manner set out in section 30.1.
- 30.6 It is hereby recorded that the Fund will be under no obligation to contribute towards any of the projects and/or funds referred to in the Record of Decision of the Department of Environmental Affairs and Development Planning, contained in section 29.