



CONSECUTIVE CLEAN AUDITS



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Sibumba ikamva elingcono!*

Lêer verw/ File ref: 15/3/3-8/17

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29 June 2021

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By Registered Mail

Sir/ Madam


AMENDMENT OF CONSTITUTION : MOUNT ROYAL HOME OWNERS ASSOCIATION

Your application received by email on 8 April 2021 regarding the subject refers.

By virtue of the authority delegated to the Senior Manager: Built Environment in terms of Council Decision No. 4.1 dated 28 March 2019, as determined by Section 79(1) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), the application for the amendment of the constitution of the Mount Royal Home Owners Association, is approved in terms of Section 39(6) of the By-Law as follows:

The amendments to sections 2.1, 4.2.1, 4.7, 10.5 and 30.1 as presented in the application.

Yours faithfully


MUNISIPALE BESTUURDER
per Departement Ontwikkelingsdienste
AJB/ds

MOUNT ROYAL GOLF AND COUNTRY ESTATE

(11th 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 guidelines and building conduct rules of the Association;
- 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;



- 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 having first obtained the written consent of the Association. Such consent shall not be unreasonably withheld after compliance by the Owner with the following requirements:
- 4.2.1 the conditions of paragraph 10.5 having been fulfilled, and the agreement of alienation having been submitted to the Association for inspection, which agreement shall be the relevant current sales document downloadable from the Mount Royal website, it being recorded that any deviation thereof is subject to approval by the Association before being signed by the Owner; and
- 4.2.2 having satisfied the Association that -
- 4.2.2.1 all amounts owing to the Association by such Member have been paid or provided for to the satisfaction of the Association, including any amounts that may become due to the Association in the event of the proposed transfer itself, and
- 4.2.2.2 all outstanding obligations towards the Association in terms of this Constitution have been met; and
- 4.2.3 the identity and contact details of the transferee having been provided to the Association, and
- 4.2.4 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
- 4.2.5 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 has established the Mount Royal Treasury Fund and has empowered 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 or Property that the selling Member shall make payment to the Mount Royal Treasury Fund on date of registration of transfer of the relevant Erf or Property as follows –
- 4.7.1 where the Member is selling an 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; or
- 4.7.2 where the Member is selling a Property, either an amount equal to 0,5% (zero comma five per percent) of the selling price of the Property or the difference between the selling price of the Property and the purchase price thereof by the Member selling the Property, whichever amount is the lower; and
- 4.7.3 The Member selling the Erf or Property, shall furnish the Association with an acceptable guarantee for payment of the applicable amount in terms of this paragraph 4.7 on date of registration of transfer. This amount will be paid directly 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 or Property, 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.



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 conventional and pre-payment electricity meters and load control relays.

- 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.



- 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.



- 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.

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.

- 29.1.18 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.

- 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.

