

BREAKWATER BAY ECO ESTATE HOME OWNERS ASSOCIATION

CONSTITUTION

1. DEFINITIONS

- 1.1 In this constitution and unless the context indicates otherwise the following words and expressions shall have the following meanings:
- 1.1.1 "authorised representative" means a person authorised to act as the representative of any natural person, body corporate, company or an association of persons as the case may be;
 - 1.1.2 "architectural and development guidelines" means the Architectural, Environmental and Development Guidelines embodied in Annexure "B" hereto in respect of the development approved by the local authority, as it may be amended from time to time;
 - 1.1.3 "ASSOCIATION" means the BREAKWATER BAY ECO ESTATE Home Owners Association;
 - 1.1.4 "Auditors" means the auditors appointed by the DEVELOPER or any other auditor appointed from time to time by the ASSOCIATION;
 - 1.1.5 "chairman" means the chairman for the time being of the board of trustees appointed in terms of article 12.5 below;
 - 1.1.6 "common property" means the whole of the development area or township and all improvements thereon, including any access road and/or servitудal right of access, but excluding residential erven and units and the associated storm water system.
 - 1.1.7 "Companies Act" means the Companies Act No 61 of 1973 and any amendment or modification thereof or substitution thereof from time to time;
 - 1.1.8 "constitution" means the constitution of the ASSOCIATION (with all annexures thereto) approved by the relevant local authority in terms of Section 29 of the Land Use Planning Ordinance No. 15

of 1985 and any amendments thereto effected in terms of this constitution;

- 1.1.9 “Council” means the Municipality of George and its successor/s in title;
- 1.1.10 “DEVELOPER” means SAMANDEV (PROPRIETARY) LIMITED REGISTRATION NO: 1997/016762/07 and includes its successor in title or assigns;
- 1.1.11 “developer trustee” means a trustee appointed by the DEVELOPER;
- 1.1.12 “development area” means the land comprising Portion A as indicated on annexure "D" and such adjoining land as may be incorporated into the township;
- 1.1.13 “development period” means the period from the establishment of the ASSOCIATION until completion of the whole proposed BREAKWATER BAY ECO ESTATE development in accordance with the approved master plan or subsequent amendments thereto;
- 1.1.14 “erf” means any erf, portion or subdivision of the development area and includes all improvements thereon;
- 1.1.15 “facilities” means all and any facilities or amenities of whatsoever nature which may be provided within the development area and forming part of the common property;
- 1.1.16 “financial year” means the financial year of the ASSOCIATION which shall run from the first day of March in each year until the last day of February in the subsequent year;
- 1.1.17 “levy” means the levy or levies referred to in articles 6 below;
- 1.1.18 “estate manager” means the estate manager appointed by the DEVELOPER or trustees from time to time in terms of article 28 below;
- 1.1.19 “member” means a member of the ASSOCIATION;

- 1.1.20 “member trustee” means a trustee appointed by the members;
- 1.1.21 “minutes” means the minutes of a general meeting or a trustees’ meeting, as the case may be;
- 1.1.22 “person” means a natural person, juristic person and includes a close corporation, company, trust or an association of persons, as the case may be;
- 1.1.23 “registered owner” means a registered owner of an erf as registered in the relevant Deeds Office;
- 1.1.24 “design review committee” means, until the development period has lapsed, the DEVELOPER acting alone, and after such period a committee of at least three persons appointed by the trustees;
- 1.1.25 “services” means such utilities and amenities as may be provided by or on behalf of the ASSOCIATION for the registered owners and residents within the township and/or the development area;
- 1.1.26 “township” means the township to be known as BREAKWATER BAY ECO ESTATE comprising the development area;
- 1.1.27 “trustees” means the trustees of the ASSOCIATION consisting of the DEVELOPER trustee/s and member trustee/s.

2. INTERPRETATION

In this constitution:

- 2.1 the clause headings are for convenience and shall be disregarded in construing this constitution.
- 2.2 unless the context clearly indicates a contrary intention
 - 2.2.1 the singular shall include the plural and vice versa;
 - 2.2.2 a reference to any one gender shall include the other genders; and
 - 2.2.3 a reference to natural persons includes legal persons and vice versa.

- 2.3 words and expressions defined in any clause herein shall, for the purpose of that clause and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in the clause in question.
- 2.4 When any number of days is prescribed in this constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 If any provision of this constitution is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this constitution.
- 2.7 if any provision in a definition in this constitution is a substantive provision conferring rights or imposing obligations on any of the members then, notwithstanding that it is only in the definition clause of this constitution, effect shall be given to it as if it were a substantive provision in the body of this constitution.
- 2.8 the annexures to this constitution are deemed to be incorporated in and form part of this constitution.
- 2.9 All references to the provisions of the Companies Act is in respect of procedural and accounting matters of the ASSOCIATION only and should be read with any changes required by the context.

3. COMMENCEMENT DATE AND STATUS

- 3.1 The ASSOCIATION will be established as a legal persona in accordance with Section 29 of the Land Use Planning Ordinance No 15 of 1985 with the registration of the first transfer of an erf in the township to a third party other than the ASSOCIATION
- 3.2 Pursuant to its constitution the ASSOCIATION shall :
- 3.2.1 be a legal entity and exist independently of its members.

- 3.2.2 enjoy perpetual succession.
- 3.2.3 be capable of being sued or to sue with reference to any agreement entered into by the ASSOCIATION, any damage caused to any property of the ASSOCIATION or any matter arising from this constitution;
- 3.2.4 not operate for profit but for the benefit of the members;
- 3.2.5 no member in his personal capacity shall have any right, title or interest to or in the funds or assets of the ASSOCIATION, which shall vest in and be controlled by the trustees.

4. OBJECTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 4.1 It is recorded that the Development of the whole township is of a homogenous nature and that notwithstanding the fact that members hold title to their erven individually the ASSOCIATION, through its trustees, shall have all the powers that are necessary to accomplish the fulfilment of all objectives of the ASSOCIATION, including, but not limited to the powers specifically contained in this constitution.
- 4.2 The ASSOCIATION shall have the following objectives:
 - 4.2.1 to act as a Home Owners Association established in terms of Section 29 of Land Use Planning Ordinance 15/1985 for the township which is being developed on the development area, and in particular to procure that the matters referred to in Sections 29(2)(b) and (c) of Land Use Planning Ordinance 15 of 1985 be adhered to and complied with;
 - 4.2.2 to take transfer of those portions of the common property that are to be owned by the ASSOCIATION for the benefit of its members;
 - 4.2.3 to enter into agreements of servitude for the benefit of its members or any adjacent property development;
 - 4.2.4 to manage, oversee and control all security aspects of the township;
 - 4.2.5 to enter into agreements for the provision of any services with any competent authority or any other third party, *inter alia* including the provision of access to the township, water, electricity and sewerage

services to the ASSOCIATION and where required to supply such services to the various members of the ASSOCIATION;

- 4.2.6 to administer and enforce the architectural and development guidelines, and the estate rules;
 - 4.2.7 to control the registration of transfer of erven in the township and ensure compliance within the township with all conditions imposed by any competent authority when approving the rezoning and / or subdivision of the property / ies comprising the development area.
- 4.3 The ASSOCIATION shall be responsible and liable to ensure compliance with, implementation and enforcement of any approval and condition imposed by any competent authority in respect of the Township imposed in terms of the Land Use Planning Ordinance 15/1985, the Environment Conservation Act 73/1989, the National Environmental Management Act of 1998 or any other planning - or environmental law, including any Environmental Management Plan approved in respect of the township as well as any responsibility imposed by the Council in terms of the services agreement entered into between the DEVELOPER and the Council. The ASSOCIATION herewith indemnifies the DEVELOPER or any Successor in Title against any liability and/or responsibility imposed on the DEVELOPER or any Successor in Title by virtue of any official approval or condition or other responsibility referred to in terms of this Clause.
- 4.4 Without limiting the generality of 4.2.1 to 4.2.7, the ASSOCIATION shall have the following powers and functions:-
- 4.4.1 The responsibility to maintain, repair, improve and keep in good order and condition the common property which includes private open space, roads and associated storm water drainage and the responsibility for the payment of all rates and taxes, all services charges and other taxes and/or levies charged and payable to the Council or any authority in respect of the common property and/or for payment of the salaries and/or wages of the employees of the ASSOCIATION and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the ASSOCIATION, and the ASSOCIATION's affairs, including all and any expenses reasonably or necessarily incurred in

the attainment of the objects of the ASSOCIATION or the pursuit of its business.

- 4.4.2 The right to impose levies upon the members of the ASSOCIATION for the purpose of meeting all the expenses that the ASSOCIATION has incurred or to which the trustees reasonably anticipate the ASSOCIATION will incur in the attainment of the objects of the ASSOCIATION or the pursuit of its business.
- 4.4.3 To ensure that all provisions of this constitution are complied with by all members/parties bound thereby.
- 4.4.4 To promote, advance and protect the township and the interests of the ASSOCIATION and all members.
- 4.5 The responsibility for the management, control and ownership of the common property shall be transferred from the DEVELOPER to the ASSOCIATION upon completion of the infrastructure services in respect of a phase or phases to the satisfaction of the Council and when transfer of such responsibility is tendered to the ASSOCIATION by the DEVELOPER and accepted by the ASSOCIATION. The DEVELOPER will however remain obliged and responsible to complete the development programme in accordance with the conditions of approval imposed by the relevant authorities.
- 4.6 The ASSOCIATION must establish a commuter system enabling access to the Herolds Bay beach for members of the ASSOCIATION to the satisfaction of the Council.
- 4.7 In the event of a greater conservancy area being established of which the Development Area forms a part, the ASSOCIATION shall commit to incorporate the "nature area" into the proposed conservancy.

5. MEMBERSHIP OF THE ASSOCIATION

- 5.1 Membership of the ASSOCIATION shall be compulsory for every registered owner of an erf in the development area.
- 5.2 Membership shall commence simultaneously with registration of transfer of an erf into the name of the transferee.

5.3 Membership of the ASSOCIATION shall be limited to the registered owners of erven in the township provided that:

5.3.1 the DEVELOPER shall be deemed to be a member of the ASSOCIATION during the development period;

5.3.2 where any such registered owner is more than one person, all the registered owners of the erf shall be deemed jointly and severally to be one member of the ASSOCIATION and shall nominate one of them to represent them and to vote at meetings of the ASSOCIATION.

When a member ceases to be the registered owner of an erf, he shall *ipso facto* cease to be a member of the ASSOCIATION, save for the DEVELOPER who shall remain a member of the ASSOCIATION during the development period.

5.4 The rights and obligations of the members shall rank in accordance with the provisions of this constitution.

5.5 Anything to the contrary herein before contained or implied notwithstanding, the cessation of his membership shall in no way release a member from any obligation undertaken by him prior to the cessation of his membership pursuant to:

5.5.1 any provision of the constitution of the ASSOCIATION; or

5.5.2 any further or ancillary guarantee, commitment or obligation, which such member may have undertaken.

5.6 Membership shall be personal to the person in question and may not be assigned or transferred by them to any other natural person or entity.

5.7 The ASSOCIATION shall maintain at their office a register of members, which shall be open to inspection by members.

5.8 The trustees may by regulation provide for the issue of a membership certificate, which certificate shall be in such form as may be described by the trustees;

5.9 The trustees may by regulation further prescribe appropriate application documentation including *inter alia* the following:

- 5.9.1 an application to register as a member of the ASSOCIATION;
- 5.9.2 an undertaking by a proposed member to comply with all the obligations imposed on members in terms of the constitution, which undertaking must be signed by the proposed member and deposited with the ASSOCIATION prior to the ASSOCIATION issuing a clearance certificate or consent to transfer an erf in favour of such a proposed member from any existing member, provided always that this paragraph will not apply in respect of the transfer or alienation by the DEVELOPER of an erf in favour of a proposed member.
- 5.10 The registered owner of an erf shall not be entitled to resign as a member of the ASSOCIATION.
- 5.11 Every member is obliged to comply with:
 - 5.11.1 the provisions of this constitution and any rules or regulations passed by the ASSOCIATION in terms hereof;
 - 5.11.2 the provisions of the architectural and development guidelines and the estate rules;
 - 5.11.3 any agreement concluded by the ASSOCIATION insofar as such agreement may directly or indirectly impose obligations on a member in its capacity as a member;
 - 5.11.4 any directive given by the trustees in enforcing the provisions of this constitution.
 - 5.11.5 The rights and obligations of a member are not transferable and every member shall to the best of his ability further the objects and interests of the ASSOCIATION.
 - 5.11.6 The members shall be jointly liable for expenditure incurred in connection with the ASSOCIATION. If a member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations of a member in terms of this constitution.
 - 5.11.7 A member shall not sell, alienate or give transfer of an erf unless:
 - 5.11.7.1 the proposed transferee has irrevocably bound himself to become a member of the ASSOCIATION and to

- observe the provisions of the constitution for the duration of his ownership of the erf;
- 5.11.7.2 the ASSOCIATION acting through the trustees or the estate manager has issued a prior written clearance that all outstanding levies and all amounts of whatever nature owing to the ASSOCIATION by such member have been paid and that the member is not in breach of any of the provisions of this constitution including any management or conduct rule and the provisions contained in clause 5.11.7.6; and
- 5.11.7.3 the proposed transferee acknowledges that upon the registration of transfer of the erf and/ into his name, he shall *ipso facto* become a member of the ASSOCIATION.
- 5.11.7.4 the conditions set out above are incorporated in the relevant Deed of Sale in terms whereof the transferee acquires the erf in question.
- 5.11.7.5 For the avoidance of doubt it is recorded that the provisions of this clause do not apply to the DEVELOPER, that there will be no restriction whatsoever on the ability of the DEVELOPER to pass transfer of any erf and that accordingly the DEVELOPER does not need a clearance certificate from the ASSOCIATION before it will be entitled to alienate or transfer any erf to any person or entity.
- 5.11.7.6 the member of the ASSOCIATION has complied with all provisions contained in this constitution and any annexure thereto or any rule or regulation made in terms of this constitution relating to the architectural and development guidelines of the township and with all rules and regulations in relation to the approval and compliance with approved building plans.
- 5.11.8 An ordinary member shall not without the prior written consent of the ASSOCIATION, who in granting or refusing such consent shall act in

its absolute discretion, apply to the local authority or any other relevant authority for the subdivision or rezoning of an erf owned by the member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof. For the avoidance of doubt it is recorded that this clause does not apply to the DEVELOPER who does not need the consent of the ASSOCIATION in respect of the aforesaid or any other applications.

5.11.9 A member is required to ensure that the occupant of his erf, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of this constitution and the regulations. Without detracting from the foregoing the member shall remain bound by this constitution notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his obligations under this constitution.

5.11.10 To ensure compliance with Clause 5.11.9 each member shall, if it leases out any property:

5.11.10.1 enter into a written lease with the tenant in which the tenant is required to accept compliance with this constitution, the estate rules, and to give an undertaking that he will abide thereto, and in which the tenant is required to report to the ASSOCIATION and register his full details for security reasons prior to the taking of occupation;

5.11.10.2 be responsible to ensure that the tenant does thus register himself with the ASSOCIATION prior to taking occupation.

6. LEVIES

6.1 The ASSOCIATION shall establish and maintain a levy fund for the purposes of meeting all expenses of the ASSOCIATION in respect of:

6.1.1 the control, management and administration of the township;

- 6.1.2 in general the attainment of its main objects as described in its constitution;
 - 6.1.3 the maintenance of common property and the costs of services such as electricity, water and sewerage consumed or used on the common property;
 - 6.1.4 the supply of any services rendered by the ASSOCIATION;
 - 6.1.5 payment of all expenses necessary or reasonably incurred in connection with the management of the ASSOCIATION;
 - 6.1.6 the costs of the provision of security to the township; and
 - 6.1.7 in general the cost of fulfilling any of the obligations of the ASSOCIATION;
 - 6.1.8 to act as bulk supplier of services to the township.
- 6.2 The trustees shall estimate the amount which will be required by the ASSOCIATION to meet the expenses referred to in 6.1 during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;
- 6.3 The ASSOCIATION shall be entitled to require members, to make contributions to such levy fund (in the form of levies), for the purposes of satisfying the expenses referred to in clause 6.1.
- 6.4 The procedure for raising and collecting levies shall be as follows:
- 6.4.1 The trustees shall submit the estimated expenditure referred to in 6.2 to the annual general meeting of the ASSOCIATION for consideration. It is recorded that:
 - 6.4.1.1 the meeting shall be obliged to approve the following items of expenditure that are charged to the ASSOCIATION by outside third parties:
 - 6.4.1.1.1 all rates and taxes payable by the ASSOCIATION to the local authority in respect of the common property, as well as any service

charges payable, including those for bulk services, by the ASSOCIATION to the local authority in respect of the township;

6.4.1.1.2 the costs of the DEVELOPER's nominated provider of security services, including security guards, monitoring and surveillance;

6.4.1.1.3 the fee payable to any estate manager with whom the ASSOCIATION has entered into an agreement.

6.4.1.2 The ASSOCIATION shall have a discretion in regard to approval of the level of services, and the cost thereof that the ASSOCIATION requires in respect of e.g. cleaning, gardening, general maintenance, etc.

6.4.2 The ASSOCIATION shall have its annual general meeting at least 60 days prior to the financial year-end of the ASSOCIATION and, subject to 6.4.1 above, decide on proposed increases of the levies and the amounts to be charged to members in respect thereof.

6.5 The ASSOCIATION may, from time to time by a resolution adopted by the trustees, make special levies upon members effective from the date of passing of the applicable resolution in respect of such expenses referred to in clause 6.1 which have not been included in the levies approved by the annual general meeting in terms of 6.4, and such levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the trustees may determine in its resolution. The decision of the trustees in calculating such special levies shall be final and binding on all members.

6.6 Any amount due by a member by way of a levy shall be a debt due by him to the ASSOCIATION payable on such time or times as determined by the trustees. The trustees may determine that a levy is payable annually in advance in respect of the year for which it is calculated or in such monthly instalments as it may determine.

6.7 Until such time as a new levy pertaining to a forthcoming year has been determined pursuant to the provisions of this clause 6 above, every member of the ASSOCIATION shall continue to pay the existing levy currently in force, on account of the new levy yet to be determined.

- 6.8 The obligation of a member to pay a levy shall cease upon his ceasing to be a member, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a member.
- 6.9 No levies paid by a member shall be repayable by the ASSOCIATION upon cessation of the member's membership.
- 6.10 A member's successor in title to an erf shall be liable, as from the date upon which he becomes a member pursuant to registration of transfer of such erf in his name, to pay the levies attributable to that erf .
- 6.11 A member shall be obliged to pay interest on any levy not paid on the due date at the Prime Rate plus 3 percentage points per annum calculated on the levies due from time to time from the due date until the date that the arrear levies have been paid in full to the ASSOCIATION.
- 6.12 The ASSOCIATION shall be entitled to require a member to sign a debit order authority to allow the ASSOCIATION or its authorised agent to collect levies directly from an operating bank account.
- 6.13 If any member fails to make payment on due date of levies and/or other amounts payable by such member including interest, the ASSOCIATION may give notice to such member requiring him to remedy such failure within such period as the ASSOCIATION may determine and should he fail timeously to make such payments, the ASSOCIATION may disconnect and / or discontinue any services to the property of such member and furthermore may institute legal proceedings against such member without further notice and such member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the ASSOCIATION in recovering such amounts.
- 6.14 No member shall (unless otherwise determined by the trustees) be entitled to any of the privileges of membership including:
- 6.14.1 his right of access to and use of any of the facilities on the common property;
- 6.14.2 his right to vote

until he shall have paid every levy and interest thereon and any other amount which may be due and payable by him to the ASSOCIATION.

- 6.15 The ASSOCIATION shall not be entitled to undertake on behalf of its members any permanent works of major capital nature without the sanction of a resolution of the members adopted during a general meeting of members. In this sub-clause "works of a major capital nature" means works that will cost more than R250 000,00 (Two Hundred and Fifty thousand rand) (excluding Value Added Tax).
- 6.16 In calculation of the levy payable by any member, the trustees shall as far as reasonably practical:
- 6.16.1 Apportion those costs relating to the common property to the owners of all erven equally, provided however that the trustees may in any case where it considers it equitable to do so, apportion to any member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 6.17 The ASSOCIATION may come to agreement with the DEVELOPER for the repayment by the ASSOCIATION to the DEVELOPER of ongoing costs or expenses incurred by the DEVELOPER for the provision of services to the erven/owners.
- 6.18 The trustees may enter into an agreement or agreements with the DEVELOPER for the provision of a capital sum and/or the transfer of land and/or equipment to the ASSOCIATION in lieu of levies.
- 6.19 Should any dispute arise at any time between the members and the trustees in regard to the determination or calculation of the levies, the decision of the auditors for the time being of the ASSOCIATION (acting as experts and not as arbitrators) in regard to such dispute shall be final and binding on the members and the trustees.
- 6.20 In the event of any dispute arising in regard to the determination or calculation of any levy, every member shall until the determination of such dispute continue to pay the levies determined by the trustees.
- 6.21 Notwithstanding anything contained in this clause, the Developer shall only be liable for half of the amount of levies in respect of serviced erven that remains unsold.

7. ENTRENCHED PROVISIONS

7.1 The DEVELOPER, during the development period and thereafter the ASSOCIATION have a continuing and permanent interest to ensure that certain basic provisions are entrenched to ensure the success of the development of the township. Accordingly none of the following provisions of clauses 7.1.1 to 7.1.9 (both inclusive) may be deleted or varied in any way in terms of this constitution, without the prior written consent of the DEVELOPER during the development period and thereafter the ASSOCIATION:

- 7.1.1 the DEVELOPER during the development period and thereafter the ASSOCIATION may register, in their entire and sole discretion and where necessary, services servitudes, including those referred to in clause 9.3.6 below, in favour of the local authority, the DEVELOPER, the ASSOCIATION, and/or any adjacent property development or property over any separate erf in the township or any part of the common property;
- 7.1.2 the DEVELOPER or the ASSOCIATION (after the development period) shall be entitled to incorporate adjacent immovable property into the development area in which event all persons who become owners of erven in such development shall be entitled to or subject to as the case may be to the benefits, rights or obligations of members of the ASSOCIATION;
- 7.1.3 no member shall be entitled to object to the subdivision and/or development of any part of the development area provided that such subdivision and/or development is not inconsistent with the development plan approved by the relevant authorities for that part of the development area, nor shall they be entitled to object to any such new development.
- 7.1.4 ownership of an erf does not confer any right, including that of access, in respect of property owned by the DEVELOPER, including any right of way or access across such property;
- 7.1.5 the members acknowledge and agree that the DEVELOPER, its successor/s in title and its employees have certain rights, including rights of access across the common property.

- 7.1.6 all building contractors and architects must be approved by the DEVELOPER (and after the development period by the ASSOCIATION) before construction of any building or dwelling commences;
- 7.1.7 all estate agents marketing and / or selling property in the BREAKWATER BAY ECO ESTATE development must be approved by the DEVELOPER and after the development period by the ASSOCIATION before such estate agents commences any marketing or sales initiatives at BREAKWATER BAY ECO ESTATE development.
- 7.1.8 The provisions of this CONSTITUTION referred to in clause 10 under architectural and development guidelines shall be considered as part of this clause as entrenched provisions.
- 7.2 In the event of any member deciding to sell his erf, the DEVELOPER or its nominee shall as long as the member remains of the intention to sell his erf have a mandate to sell the property of such member on similar terms and conditions as mandated to any estate agent. The aforesaid member shall forthwith inform the DEVELOPER or its nominee of his intention to sell his erf and let the DEVELOPER or its nominee have the written particulars of any mandate given to any other estate agent, which particulars shall then be considered as a written mandate to the DEVELOPER or its nominee.
- 7.3 The DEVELOPER shall be the only person entitled to market and sell properties from any premises in the development area.

8. RESPONSIBILITY FOR PAYMENT OF RATES, TAXES AND SERVICES

8.1 RATES AND TAXES:

- 8.1.1 The ASSOCIATION shall be responsible to pay all rates and taxes in respect of the common property to the Council;
- 8.1.2 All other members as owners of erven shall be responsible to pay rates and taxes in respect of their property to the Council.

8.2 SERVICES:

8.2.1 The responsibility for payment of services and the method of service supplies shall be as regulated in clause 9 below.

8.2.2 The supply of any services to the township by the ASSOCIATION shall be subject to all such terms and conditions as imposed by the ASSOCIATION from time to time.

9. SERVICES

9.1 The responsibility in respect of the construction, supply, maintenance and upkeep of services and infrastructure to the Development area shall be as set out in the services agreement between the DEVELOPER and the George Municipality. All responsibilities and liabilities envisaged in the services agreement to be that of the ASSOCIATION shall be responsibilities and liabilities of the ASSOCIATION as if the ASSOCIATION was a contracting party to the services agreement when entered into between the DEVELOPER and the George Municipality, which agreement is incorporated as an integral part into this Constitution by reference thereto.

9.2 Should any further or additional agreements be entered into between the DEVELOPER and/or the ASSOCIATION on the one side and the George Municipality as the other contracting party, the terms and conditions of such agreement shall likewise be deemed to be an integral part to this agreement.

9.3 General

9.3.1 The DEVELOPER will provide the necessary connections to the infrastructure services to the boundary of each erf;

9.3.2 Each member of the ASSOCIATION shall from date of transfer be responsible for any connection charges to the infrastructure of the township, including the costs of any metering device and installation thereof as well as the maintenance and replacement of any such device;

9.3.3 The ASSOCIATION and/or the Council shall be entitled to call for deposits in respect of any connection to be undertaken by it, the interest on which deposits shall be for the credit of the ASSOCIATION.

- 9.3.4 The DEVELOPER during the development period and thereafter the ASSOCIATION shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, security communication, and any other services over any erf or building or any other portion of the township, whosoever is the owner thereof, and shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.
- 9.3.5 The members of the ASSOCIATION will allow reasonable access and provide their co-operation to employees or representatives of the DEVELOPER, the ASSOCIATION or the Council (as the case may be) into the buildings or erven for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above.
- 9.3.6 Without limiting the generality of the provisions of clause 7.1.1 the DEVELOPER during the development period and thereafter the ASSOCIATION shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The members accept and shall be bound by and consents to the registration of the servitudes referred to in this clause and clause 7.1.1.
- 9.3.7 Notwithstanding anything contained in this constitution it is hereby recorded that the repayment of any capital expenditure incurred by the DEVELOPER in respect of the installation of infrastructure services incidental to the estate shall be paid to and accrue to the DEVELOPER for its sole benefit.

10. ARCHITECTURAL AND DEVELOPMENT GUIDELINES

- 10.1 The architectural and development guidelines constitute an integral part of this constitution. It is recorded that the architectural and development

guidelines contain the procedures, requirements and guidelines to be adhered to by every member who wishes to effect construction, improvements or alterations to or undertake any renovation of any erf. The architectural and development guidelines that will be in force and effect are those contained in Annexure "B" hereto.

- 10.2 All improvements shall be of sound construction and shall comply with the provisions of the architectural and development guidelines contained in this constitution;
- 10.3 No construction or erection of any improvements or alterations to and no renovation of any erf or demolition or removal of any feature which constitutes an original portion of the township that is undertaken by any party other than the DEVELOPER or any landscaping on any property may commence prior to the due and proper approval of plans for such construction, improvements, alterations, renovation, demolition or removal by both the design review committee and, where required, the local authority, in accordance with the following provisions:
 - 10.3.1 the member shall submit to the design review committee for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;
 - 10.3.2 the member shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the design review committee;
 - 10.3.3 after the approval of such plans by the design review committee the plans shall be submitted to the local authority for approval. No plan shall be submitted to the local authority unless it bears the endorsement of approval of the design review committee, clearly dated, certifying that the plan complies with both the architectural and development guidelines;
 - 10.3.4 any construction, improvements, alteration, renovation, demolition or removal done in terms of this clause shall be done to municipal standards and to municipal building regulations.

- 10.4 When effecting the construction, improvements or alterations or renovations contemplated in 10 the member shall at all times comply strictly with the architectural and development guidelines as well as all conditions and standards imposed by the local authority insofar as these may be additional to the provisions of the architectural and development guidelines. No member shall be entitled to deviate in any manner whatsoever from any plan approved by the design review committee and the local authority unless the prior written approval of both the design review committee and the local authority for such proposed deviation has been obtained.
- 10.5 Any communal portion of a supporting wall, roof, pipe, gutter, fencing or other structure or object on such unit shall be maintained by the owner of the erf or unit;
- 10.6 Each portion of such supporting wall, roof, pipe, gutter, fencing or other structure or other object on such erf or unit shall likewise be maintained by the owner of the erf or unit;
- 10.7 Access to such erf or unit shall be allowed for the purpose of maintenance, cleaning, renovations, repair, renewal, alteration of and in addition to such wall, roof, pipe, gutter, fencing or other structure or object and nothing shall be done which may prevent access to or hinder such access;
- 10.8 Should the ASSOCIATION resolve to approve any such alterations and or additions, they shall be of such a nature as to be applicable to all erf or unit owners and all erf or unit owners shall be permitted without exception to affect similar alterations and additions;
- 10.9 A plan shall be provided showing the proposed location of the alterations and / or additions in relation to all erf or units within the direct vicinity of the erf or unit. (This does not imply that all erf or unit owners should necessarily also affect such additions and alterations. The said plan is required only to enable an evaluation to be made of the total effect of a proposal on the aesthetic appearance of the scheme);
- 10.10 Should it be proposed to alter the colour scheme of the complex a indication must be given of the period in which the scheme in its totality of colour

scheme will be altered and such period shall not be later than one year from the date of commencement of the alteration of the colour scheme

10.11 No member shall be entitled to challenge or contest any of the provisions of the architectural and development guidelines. No application for the amendment of the architectural and development guidelines shall be made to the local authority unless prior written consent of the DEVELOPER in the developing phase and thereafter the design review committee has been obtained thereto.

10.12 The design review committee may amend the architectural and development guidelines from time to time.

11. ESTATE RULES

11.1 The estate rules of the ASSOCIATION constitute an integral part of this constitution.

11.2 The estate rules in force on establishment of the ASSOCIATION shall be those annexed hereto as Annexure "C". The aforesaid rules shall constitute framework rules for the estate rules to be developed as provided herein and after the ASSOCIATION has commenced.

11.3 Subject to this constitution and to any restriction imposed or direction given at a general meeting of the ASSOCIATION and subject to any condition imposed by the local authority, the trustees may from time to time make estate rules, and vary or modify these rules, in regard to:

11.3.1 the code of conduct applicable to all builders, contractors (including sub-contractors) and suppliers within the development or any building, construction or any other work carried on within the township;

11.3.2 the preservation of the natural environment, vegetation and fauna within the township including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any erven;

- 11.3.3 the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
 - 11.3.4 the conduct of any persons within the township and the use of his property for the prevention of nuisance of any nature to any member;
 - 11.3.5 the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;
 - 11.3.6 the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping within the township;
 - 11.3.7 the control of the number of occupants or residents permitted on any one erf;
 - 11.3.8 the admission of any person within the township, and the eviction of any person not entitled to be thereon;
 - 11.3.9 the furtherance and promotion of any of the objects of the ASSOCIATION and/or for the better management of the affairs of the ASSOCIATION and/or for the advancement of the interests of the members and/or the residents within the township;
 - 11.3.10 a Water Demand Management Policy. This policy is to be approved by the City Engineer before implementation and all measures are to be included in building plans submitted for approval. Approval of plans and occupation certificates may be withheld if measures indicated on such plans and/or as incorporated in the policy have not been implemented.
 - 11.3.11 Only contractors who have signed the prescribed contractors agreement with the ASSOCIATION shall be entitled to undertake any construction at BREAKWATER BAY ECO ESTATE.
- 11.4 For the enforcement of any of the rules made by the trustees in terms of clause 11, or of any of the provisions of this constitution generally, the trustees may:

- 11.4.1 give notice to the member concerned requiring him to remedy such breach within such period as the trustees may determine; and/or
 - 11.4.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the ASSOCIATION; and/or
 - 11.4.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 11.5 Should the trustees institute any legal proceedings against any member or resident within the township for the enforcement of any of the rights of the ASSOCIATION in terms hereof, the ASSOCIATION shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 11.6 In the event of any breach of the rules by the members or any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the trustees may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 11.7 If any member disputes the fact that he has committed a breach of any of the provisions of the rules made by the trustees in terms of clause 11 or any provisions of this constitution, a committee of three (3) trustees appointed by the chairman shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the chairman may direct.
- 11.8 Notwithstanding anything to the contrary herein contained, the trustees may in the name of the ASSOCIATION enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.
- 11.9 The ASSOCIATION may in a general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the trustees from time to time.

- 11.10 All rules shall be reasonable and shall apply equally to all owners of erven put to substantially the same use.

12 TRUSTEES

- 12.1 The trustees of the ASSOCIATION shall for the development period be divided into two classes, namely DEVELOPER trustees and member trustees. Upon expiry of the development period there shall only be member trustees.
- 12.2 There shall be not more than five (5) trustees of the ASSOCIATION of whom, during the development period:
- 12.2.1 two (2) shall be member trustees appointed by the members; and
- 12.2.2 the remaining trustees shall be DEVELOPER trustees appointed by the DEVELOPER. Provided that the DEVELOPER shall during the development period be one of the aforesaid trustees.
- 12.3 After termination or expiration of the development period all the trustees shall be appointed by the members.
- 12.4 A trustee shall be a natural person and shall not necessarily be a member of the ASSOCIATION. A trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this constitution.
- 12.5 The trustees shall appoint one of their number to act as chairman for such term as they think fit, but not for longer than such person's tenure as a trustee. During the development period, the chairman shall be one of the DEVELOPER trustees, unless the trustees otherwise agree.
- 12.6 Notwithstanding anything contained in this Constitution to the contrary the DEVELOPER shall have the right to attend the first meeting of the ASSOCIATION and on behalf of and to the exclusion of all members of the Association to vote at the meeting on their behalf in respect of the appointment of Trustees and other matters incidental to the establishment of the Association.

13 REMOVAL AND ROTATION OF TRUSTEES

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

14 TRUSTEES EXPENSES AND REMUNERATION

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

15 POWERS OF TRUSTEES

- 15.1 Subject to the express provisions of this constitution, the trustees shall manage and control the business and affairs of the ASSOCIATION, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of any estate manager, may exercise all such powers of the ASSOCIATION and do all such acts on behalf of the ASSOCIATION as may be exercised and done by the ASSOCIATION and as are not by this constitution required to be exercised or done by the ASSOCIATION in general meeting, subject however to such rules as may have been made by the ASSOCIATION in general meeting or as may be made by the trustees from time to time.
- 15.2 Save as specifically provided in this constitution, the trustees shall at all times have the right to engage on behalf of the ASSOCIATION the services of accountants, auditors, attorneys, architects, engineers, town planners, estate manager or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the trustees on such terms as the trustees shall decide.
- 15.3 The trustees shall, after the development period, further have the power:
- 15.3.1 to require that any construction of any nature within the township shall be supervised to ensure that the provisions of this constitution and the rules are complied with and that all such construction is performed in a proper and workmanlike manner;
- 15.3.2 to issue architectural and development guidelines from time to time and to ensure that such manual is complied with at all times;

- 15.4 The trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 15.5 The trustees shall be entitled to appoint committees consisting of such number of their members and such outsiders, including an estate manager, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the trustees may from time to time deem necessary.
- 15.6 The trustees shall appoint an architectural design review committee to exercise the powers set out above which may, but shall not necessarily, consist of the following persons:
- 15.6.1 a practising professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa;
- 15.6.2 one or more trustees;
- 15.6.3 such other members as the trustees may determine.
- 15.7 members of the architectural design review committee shall not be required to be members of the ASSOCIATION.
- 15.8 For the duration of the development period the DEVELOPER will be the sole member of the Design review committee.

16 PROCEEDINGS OF TRUSTEES

- 16.1 The trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this constitution.
- 16.2 The quorum necessary for the holding of all meetings of the trustees shall be three (3) trustees present personally, provided that during the development period at least one (1) DEVELOPER trustee shall be present at all meetings of trustees to form a quorum. If no quorum is present within fifteen (15) minutes after the time for commencement of the meeting then it shall stand adjourned for seven (7) days, or if that is not a business day, then to the next

business day thereafter, and those trustees present at the adjourned meeting shall constitute a quorum.

- 16.3 At any meeting of the trustees, each member trustee shall have one (1) vote and each DEVELOPER trustee shall have three (3) votes: Provided that during the development period the DEVELOPER shall be entitled to three times the total number of votes of all the other trustees.
- 16.4 Any resolution of the trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the chairman of the trustees shall have a second or casting vote.
- 16.5 The trustees shall cause minutes to be kept of every trustees meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman. All minutes of trustees' meetings shall, after certification, be placed in a trustee's minute book to be kept in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies. The trustees' minute book shall be open for inspection at all reasonable times by any trustee, the auditors, the members and the estate manager.
- 16.6 A resolution signed by all the trustees shall be valid in all respects as if it had been duly passed at a meeting of the trustees.

17 GENERAL MEETINGS OF THE ASSOCIATION

- 17.1 The ASSOCIATION shall within six (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, and shall specify the meeting as such in the notices in terms of section 179 of the Companies Act.
- 17.2 Such annual general meeting shall be held at such time and place as the trustees shall decide from time to time.
- 17.3 All meetings of the members other than annual general meetings shall be called general meetings.
- 17.4 The trustees may, whenever they think fit, convene a general meeting. A general meeting may also be convened by the trustees on a requisition made in terms of section 181 of the Companies Act, or should the trustees not do

so, may be convened by the requisitionists as provided for by and subject to the provisions of that section.

18 NOTICES OF MEETINGS

18.1 An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than twenty one (21) clear days' notice in writing and any other general meeting shall be called by not less than fourteen (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 hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the ASSOCIATION in general meeting, to such persons as are, under this constitution, entitled to receive such notices from the ASSOCIATION: provided that a meeting of the ASSOCIATION shall notwithstanding the fact that it is called by shorter notice than that specified in this clause, be deemed to have been duly called if it is so agreed by not less than fifty one percent (51%) of the members having a right to attend and vote at the meeting.

18.2 The annual general meeting shall deal with and dispose of all matters prescribed by the Companies Act, the consideration of the annual financial statements, the election of trustees, the noting of the levy for the financial year during which such annual general meeting takes place, the appointment of an auditor and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

19 PROXIES

19.1 A member may be represented at a general meeting by a proxy, who must be a member of the ASSOCIATION or a director, member, partner or trustee of that member, save for the DEVELOPER whose proxy need not necessarily be a member.

19.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the ASSOCIATION at least twenty four (24) hours before the commencement of the meeting or adjourned meeting concerned but the trustees may from time to time determine that such documents:

19.2.1 are to be lodged at a particular place; or

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

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

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

19.3 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period. The instrument appointing a proxy shall be in the form as prescribed by the ASSOCIATION. A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

20 QUORUM

20.1 No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, members holding in the aggregate not less than 10% (ten percent) of the total votes of all members entitled to attend the meeting and vote thereat, who are present in person or by proxy shall constitute a quorum, provided that at least three (3) members are present in person at such meeting and provided that during the development period, at least one (1) representative of the DEVELOPER is present at such meeting.

20.2 If within fifteen (15) minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairman of the board or, in his absence, the deputy chairman, may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time on the same day of the next week (or if that day is not a business day, the first business day following that non-business day) or to such other place, time and day as the board may determine. If a quorum is not present at such adjourned meeting, the members present shall constitute a quorum.

21. ADJOURNMENT BY CHAIRMAN WITH CONSENT OF MEETING

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

22. VOTING RIGHTS OF MEMBERS

- 22.1 members shall be entitled to vote only on the matters raised at every general meeting.
- 22.2 At every general meeting:
- 22.2.1 each member, present in person or by proxy and entitled to vote, shall have one vote for each erf registered in his name;
- 22.2.2 if an erf is registered in the name of more than one (1) person, then all such co-owners shall jointly have only one vote;
- 22.2.3 during the development period, the DEVELOPER shall be entitled to three times the total number of votes of all the other members of the ASSOCIATION;
- 22.2 Save as expressly provided for in this constitution, no person other than a member and who shall have paid every levy and other sum (if any) which shall be due and payable to the ASSOCIATION in respect of or arising out of his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting.
- 22.3 Voting at general meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded according to law.

- 22.4 Resolutions shall be passed by simple majority vote, save with respect to amendments to this constitution, as provided for in clause 29 hereof.
- 22.5 If a poll is duly demanded it shall be taken in such manner as the chairman of the meeting may direct either at once or after an interval or adjournment.
- 22.6 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by the chairman whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 22.7 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
- 22.8.1 written notice of the revocation is received by the ASSOCIATION prior to the meeting concerned; or
- 22.8.2 the chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 22.9 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.
- 22.10 A declaration made in good faith by the chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed, as the case may be.
- 22.11 Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a trustee or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.

23. ACCOUNTING RECORDS

- 23.1 The trustees shall cause such accounting records as are prescribed by section 284 of the Companies Act to be kept. Proper accounting records shall

not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the ASSOCIATION and to explain the transactions and financial position of the trade or business of the ASSOCIATION.

- 23.2 The accounting records shall be kept at the registered office of the ASSOCIATION or at such other place or places as the trustees think fit, and shall always be open to inspection by the trustees.
- 23.3 The trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the ASSOCIATION or any of them shall be open to inspection by members not being trustees, and no member (not being a trustee) shall have any right of inspecting any accounting records or documents of the ASSOCIATION except as conferred by the Companies Act or authorised by the trustees.
- 23.4 The trustees shall from time to time cause to be prepared and laid before the ASSOCIATION in general meeting such financial statements as are referred to in sections 286 and 288 of the Companies Act.
- 23.5 A copy of the annual financial statements which are to be laid before the ASSOCIATION in annual general meeting shall, not less than twenty one (21) days before the date of the meeting, be sent to every member of the ASSOCIATION: provided that this clause shall not require a copy of those documents to be sent to any person of whose address the ASSOCIATION is not aware.

24. SERVICE OF NOTICES

- 24.1 The ASSOCIATION may give notices to any member either personally, or by sending it by post in a prepaid letter addressed to such member at his registered address or at the address (if any) within the Republic of South Africa supplied by him to the ASSOCIATION for the giving of notices to him.
- 24.2 Notice of every general meeting shall be given:
- 24.2.1 to every member of the ASSOCIATION;
- 24.2.2 to the auditors for the time being of the ASSOCIATION;

provided that no other person shall be entitled to receive a notice of general meetings.

- 24.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 24.4 The signature to any notice given by the ASSOCIATION may be written or printed, or partly written and partly printed.
- 24.5 When a given number of days' notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.

25. INDEMNITY

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

26. GENERAL

- 26.1 Whenever the trustees consider that the appearance of any erf or building in the township vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the township generally, they may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the member fail within a reasonable time, to be specified in such notice, to comply therewith, the trustees may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member

concerned, which costs shall be deemed to be a debt owing to the ASSOCIATION.

The trustees shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the trustees acted unreasonably.

- 26.2 Any member as registered owner of an erf zoned for residential purposes shall construct and complete the construction of a dwelling house thereon within a period of four (4) years which period shall be calculated from the date on which such property was transferred for the first time by the Developer to a third party.
- 26.3 Should any member fail to comply with the provisions of clause 26.2 or fail to commence construction within a period of 3 (three) years after the date of first registration of the erf by the Developer into the name of a third party as determined in clause 26.2, the ASSOCIATION shall be entitled to impose ten times the amount of levies due by such member in terms of clause 6.
- 26.4 After the four (4) year period referred to in clause 26.2 and in the interest of protecting the infrastructure of the township the ASSOCIATION shall be entitled to restrict access of construction vehicles to the township and/or any erf or unit. In pursuance of the rationale of the aforesaid restriction it shall be in the entire discretion of the ASSOCIATION to define a "construction vehicle" for purposes of this clause which definition may be changed or amended by the ASSOCIATION from time to time in their discretion.
- 26.5 The ASSOCIATION may enter into agreements with any third party for the provision of facilities and services to or for the members and may levy charges in respect of the provision thereof, or may pass on such costs direct to the members.
- 26.6 Any person using any of the services, land or facilities of the ASSOCIATION does so entirely at his own risk.
- 26.7 The ASSOCIATION may at its pleasure permit the members subject to the provisions of this constitution to use the open space and roads, and shall do so unless by special resolution taken at an extraordinary general meeting called for the purposes, it is otherwise resolved for good reason.

26.8 The ASSOCIATION may from time to time and whenever they deem it necessary, limit, restrict, or suspend such use in relation to any part or such roads and open space for good reason.

26.9 No member shall operate or conduct a time share scheme as contemplated in the Time Share Control Act No. 71 of 1983 in respect of any property owned by him save where such scheme arises from co-ownership or syndication involving not more than 2 (two) members per bedroom per dwelling.

27. DISPUTES

27.1 Any dispute arising out of or in connection with this constitution must be determined in terms of this clause, except when an interdict is sought for urgent relief, which may be obtained from a court of competent jurisdiction.

27.2 On a dispute arising, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within fourteen (14) days of such notice, either of the parties may refer the dispute to determination in terms of this clause.

27.3 If a party exercises his right in terms of this clause to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of ten (10) years experience in their field:

27.3.1 if the dispute is primarily an accounting matter, a practising chartered accountant;

27.3.2 if the dispute is primarily a legal matter, a practising attorney or advocate;

27.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;

27.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer;

27.3.5 if the dispute relates to any other matter, such other independent and suitably qualified person.

27.4 If the parties are unable to agree either on the person referred to in this clause or on the classification of the dispute within a period of seven (7) days of

either party having given notice to the other, proposing an appointee or alternative appointees, then the person in question shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope or its successor/s.

- 27.5 Any person agreed upon and nominated as aforesaid ("the expert"), shall in all respects act as an expert and not as an arbitrator.
- 27.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 27.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within twenty one (21) days or so soon thereafter as possible, after it has been demanded.
- 27.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 27.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between party and party or as between attorney and client.
- 27.10 The provisions of this clause constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.
- 27.11 The provisions of this clause shall be deemed to be severable from the rest of this constitution and shall remain binding and effective as between the parties notwithstanding that this constitution may otherwise be cancelled or declared of no force and effect for any reason.

28. ESTATE MANAGER

- 28.1 The DEVELOPER shall for the duration of the development period and thereafter the trustees be entitled to appoint an estate manager to control, manage and administer the development and the common property and to exercise such powers and duties as may be entrusted to the estate manager, including the right to collect levies.

28.2 The terms and conditions of the appointment of the estate manager shall be in the discretion of the DEVELOPER or the trustees as the case may be.

29. AMENDMENT

29.1 Notwithstanding the provisions of this clause the DEVELOPER shall during the development period have the right to effect reasonable amendments to this constitution by simply giving written notice of such amendments to all members and shall further have the right to veto any proposed amendment of this constitution if there is a reasonable apprehension that such amendment could detrimentally affect the DEVELOPER's ability to complete the development in accordance with its development plans. The DEVELOPER shall not have the right to vary the provisions relating to qualification for membership of the ASSOCIATION, the proportionate liability of members for the payment of levies or the voting rights of members.

29.2 Subject to the provisions of 29.1, every amendment of this constitution of whatever nature including any addition thereto, deletion therefrom or substitution thereof shall require the approval of at least 75% (seventy-five per centum) of the total number of votes allocated to members of the ASSOCIATION which majority shall be expressed at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to comply with the requirements for the convening of a meeting, set out in specific terms the proposed amendment.