

KENTON ECO ESTATE HOMEOWNERS ASSOCIATION

CONSTITUTION:

INTRODUCTION:

- 1.1 Kenton Eco Estate was established as a private residential estate with the primary goal being to create an upmarket and aesthetically pleasing and secure eco estate and secure living environment. A primary objective of establishing Kenton Eco Estate is to procure wildlife and fauna and flora in its natural undisturbed state in respect of the common property surrounding the residential development.
- 1.2 The Kenton Eco Estate Homeowners Association, a Section 21 company, was established to administer the common interest of its residents and empowered to plan, implement and uphold a "secure family lifestyle" inclusive of the protection of wildlife, fauna and flora in its natural undisturbed state on the common property. The Kenton Eco Estate Homeowners Association has established in terms of its constitution, jointly with the Developer and the conditions contained in the respective Deeds of Sale of individual properties, various controls on development to ensure that quality housing and landscaping is established and is maintained. In this manner, the objectives of the Homeowners Association were created to protect the financial investment of each homeowner and to furthermore protect the natural environment on the common property as aforesaid.
- 1.3 Kenton Eco Estate was designed as an estate with single residential occupation of each individual stand. Planning Engineers used criteria, based on this principle, in order to design the infrastructure such as roads, water supplies, drainage, electrical services and the like. The development was established with certain capacities in mind and the infrastructure was designed accordingly. The Articles of Association of Kenton Eco Estate Homeowners Association (Association incorporated under Section 21) shall be applied accordingly.

2. IN THIS CONSTITUTION:

- 2.1. The following words shall, unless the context otherwise require, have the meanings hereinafter assigned to them:

"Association" means the Kenton Eco Estate **HOMEOWNER'S ASSOCIATION;**

"Business day"	means weekdays other than Saturdays, Sundays and Public Holidays;
"Chairman"	means the Chairman of the TRUSTEES;
"Vice-Chairman"	means the Vice-Chairman of the TRUSTEES;
"Property"	means ERF Portions 1 to 330 for residential footprints and housing units in extent approximately 28,9 hectares and portion 331 for private nature reserve including access, roads and infrastructure in extent approximately 203,7 hectares as per the property diagram, annexed hereto marked "A";
"Developer"	means Blue Horizon Developments or its successor in title;
"Development"	means the Kenton Eco Estate Development;
"Erf" or "subdivision"	means one of the Erven;
"Erven" or subdivisions"	means the ERVEN resulting from the subdivision of the Remainder of the Farm Grants Valley No. 396, Ndlambe Municipality, Division of Bathurst, Province of Eastern Cape, In extent 377,4449 hectares;
"Local Authority"	means the Municipality of Ndlambe, or Local Authority for the time being;
"Member"	means a member of the Kenton Eco Estate HOMEOWNER'S ASSOCIATION;
"month"	means calendar month;
"office"	means the administrative office of the Association;
"Ordinance"	means the Land Use Planning Ordinance 15/1985;
"Public Area"	means those portions of the Development not registered in the name of individual owners and comprising, without detracting from the generality of the foregoing, roads, road verges and other areas, including private open spaces and any buildings thereon;
"Resolution"	means a Resolution other than a Special Resolution passed at an Annual General Meeting or any other General

Meeting by an ordinary majority of the total votes represented at such meeting by Members present in person or by proxy;

- "Special Resolution" means a Resolution:
- passed at an Annual General Meeting or any other General Meeting whereat Members present in person or by proxy represent not less than 10% (Ten PER CENTUM) of the total votes; and
 - passed by majority of at least 75% (SEVENTY FIVE PER CENTUM) of the total votes represented by Members present in person or by proxy;
- "Registered Owner" means the party or parties acquiring ownership and taking transfer of one or more erven in the Development resulting from the subdivision of the Remainder of the Farm Grants Valley No. 396, Ndlambe Municipality, Division of Bathurst, Province of Eastern Cape, In extent 377,4449 hectares;
- "these presents" means the Constitution and regulations and by-laws of the Association from time to time in force;
- "TRUSTEES" means the TRUSTEES of the Association from time to time and includes alternate and co-opted TRUSTEES;
- "in writing" means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- "year" means financial period of TWELVE (12) months ending June each year;
- "the Estate" Portions 1 – 330 for residential footprints and housing units in extent approximately 28,9 hectares and Portion 331 for private nature reserve including access, roads and infrastructure in extent approximately 203,7 hectares as per the property diagram, excluding the property on the northern side of the tar road, being in extent approximately 150 hectares, but including the sewerage plant and related infrastructure developed on this northern portion.

- “business or economic activity” means the conduct of any non-residential or commercial or business or professional activity, from any Erf within the Estate, whether for profit or not, and will exclude any manufacturing and/or retail and/or repair service and/or industrial or similar usages and/or any business use which may require a license in terms of the Business Act, 1979, in respect of which business consent will not be given. The phrase “business use” shall have a similar meaning.
- “employee” means any person employed by or working for any employer and receiving or entitled to receive any remuneration, and any other person whomsoever who in any manner assists in the carrying on or conducting of the business of an employer.

- 2.2. Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other gender.

3. MEMBERS OF THE ASSOCIATION

- 3.1 The ASSOCIATION which is hereby constituted is comprised initially of a single Member, namely, the Developer.
- 3.2 Every Registered Owner shall upon registration of transfer into his name of an Erf ipso facto become a Member subject to the terms contained herein and in particular in Par. 6 to 10 hereof.

4. MAIN OBJECT

- 4.1 The ASSOCIATION shall have as its main object the promotion and advancement of the Development, and the protection of the communal interests of the Members, as defined in the introduction hereof.

- 4.2 It is recorded that Kenton Eco Estate is a private residential estate with its primary land use being for residential purposes only.
- 4.3 Applications to deviate from this primary use may be considered by the Board of Trustees and each application will be treated and considered on its own merit.
- 4.4 No application for the rezoning of any Erf for any Business use will be considered and all such applications will be declined and/or objected to. Furthermore, no applications for medium and/or large scale home offices, as described in the Home Office Policy of the Ndlambe Town Planning Scheme, 1983, as amended, will receive favourable consideration.
- 4.5 Irrespective of the duration of any existing Business in operation in the Kenton Eco Estate, any and all owners conducting any Business within the Estate shall apply for consent in terms of this policy, before continuing or establishing such Business or Business use.
- 4.6 The Board of Trustees reserves the right in terms of the Articles of Association to approve or decline any application, subject to the rights of the Developer.
- 4.7 All commercial rights associated with the Estate belong to the Developer.

5. APPLICATION PROCEDURES

- 5.1 All applications for authority to conduct any Business use shall be submitted to the Board of Trustees, in writing, prior to the commencement of any Business use and shall contain, and not be limited to the following information:
 - 5.1.1 Name and proposed type of business to be conducted.
 - 5.1.2 Physical address.
 - 5.1.3 Number of employees to be employed (Direct and/or indirect)

- 5.1.4 Description of proposed operations including a site plan indicating the portions of any Erf which will be used for a business use, including the size thereof, the position thereof and the number of on-site parkings.
- 5.1.5 Anticipated number of visitors/clients (per month).
- 5.1.6 Any other information which should reasonably be provided to the Trustees for purposes of considering the application.
- 5.2 All Applicants accept that the Board of Trustees and/or its employees could inspect the property concerned to verify the particulars so supplied and, each application, will be considered, independently of other applications, by the Board of Trustees at their formal meetings which occur from time to time.
- 5.3 The Trustees shall have an unfettered right to refer any application to any immediate surrounding neighbours of the Erf concerned, for comments and, thereafter, the Board of Trustees' decision in respect of the application concerned shall be final and binding on all Members of the Kenton Eco Estate Homeowners Association, including such neighbours whether or not they furnished comment, objection or support. It is specifically provided that this decision shall not be subject to arbitration in terms of the Rules of the Kenton Eco Estate Homeowners Association.
- 5.4 Those applications for Business use which have been approved are subject to annual review by the Board of Trustees (presently on the 31st March each year) who shall be entitled to revoke such approval, or refuse to allow an annual renewal for any reason, whatsoever, within their sole discretion. If an approval is revoked or not renewed, the applicant will receive advice thereof in writing, and the conduct of a Business use on that Erf will thereafter be illegal. The Board of Trustees reserve the right to report such illegal activity to the Local Authority or take such other action as might be appropriate, including Court action or the imposition of fines and/or penalties in terms of the Articles and the Conduct Rules.
- 5.5 The consent granted by the Board of Trustees shall be of indefinite duration, save that the Trustees shall be entitled, at any time, and upon

reasonable notice, to the party concerned, to withdraw their consent for any reason which they might deem sufficient for such purposes.

- 5.6 No person may commence any Business use in the Area without first obtaining the written consent of the Trustees for such Business use in terms hereof.

6. CONDITIONS UNDER WHICH BUSINESS USES SHALL BE CONSIDERED

The Trustees shall apply, but not be limited to, the following principles in considering any application for permission to conduct a Business use:

- 6.1 No Business use, which is not compatible with the surrounding land use, or which may, in the opinion of the Trustees, cause an actionable nuisance to fellow residents or interference with the amenities of the neighbourhood, may be conducted. The existing character of the area should be maintained.
- 6.2 Without limitation thereto, no erf may be used for any retail purpose, including a shop, nor for a public garage, mechanical workshop, a manufacturing industry (including home industries) or a noxious industry or garden service.
- 6.3 No Erf may be used to publicly display goods, whether in a window or otherwise which can be viewed externally.
- 6.4 A maximum of 20% (twenty percent) of the Floor area of the structures on any Erf, including outbuildings, as per approved building plans, may be used for home office purposes.
- 6.5 A maximum of 2 employees (including “flexi time” “temporary” or “sales representative appointees”) can be employed on any Erf within the Area at any one time (excluding persons who ordinarily and permanently reside there).
- 6.6 No person may display any notice or sign on the buildings of the Erf permitted to conduct a Business use, other than a signboard as permitted in paragraph 4 of the Kenton Eco Estate Conduct Rules, indicating a name only, provided that such sign and the design thereof shall first be approved by the Board of Trustees in writing.

- 6.7 The employee(s) of any owner who has been granted consent for a Business use shall park their vehicles on the Erf concerned.
- 6.8 All employee(s), invitees or visitors to an approved Business shall comply with the Kenton Eco Estate Access Control Policy and Procedures, and any directions of the Board of Trustees or the Estate Manager. The Kenton Eco Estate Homeowners Association reserves the right to limit the number of entrants allowed for any business, or to determine a fee to be paid towards the operation of the access control systems which are in place.
- 6.9 Each member of the Kenton Eco Estate Homeowners Association shall be and remain liable and responsible for the conduct of any person, whether client, employee, invitee, or in any other capacity, who enters the Kenton Eco Estate for purposes of such business use.
- 6.10 A Business use may not generate any excessive noise of any nature.
- 6.11 If it is necessary to make any alterations to any Erf for purposes of a Business use, consent shall be sought for such alterations in terms of the Kenton Eco Estate Architectural Design and Building Regulations, which application shall be made simultaneously with the application for consent for a Business use. Should consent be granted for a Business use and an application to authorise any alterations to the Erf is made separately, then upon filing of the application for authority for the alterations, the Business use consent shall, *ipso facto*, and without notice whatsoever, lapse and be withdrawn. The Board of Trustees shall then consider both the application for Business use and the application for authority to perform alterations afresh.
- 6.12 Should a complaint be received regarding the conduct of a Business use, the Board of Trustees will investigate the complaint and refer such complaint for action and/or comment and/or decision in terms of the Articles of Association and/or Conduct Rules.

7. PENALTIES

Should the Board of Trustees establish that a Business use is conducted in contravention of this policy, the procedures as set out in the Conduct Rules and/or Articles of Association may be followed to rectify the situation, without prejudice to the Association's rights in terms of any Law.

8. MAIN BUSINESS

8.1 The main business of the ASSOCIATION shall be the general management and administration of the Development.

8.2. Such business shall include the services, public area and amenities situated in the Development, for the maintenance of which the Local Authority is not responsible in terms of the Land Use Planning Ordinance, and for the collection of levies in respect of expenditure incurred by members in the Development relating to all electricity charges, charges for sewerage, water and refuse removal, security and administration or such other charges that may arise in the running of the estate as determined by the AGM whether in respect of individual Erven or the Public Area.

9. THE PUBLIC AREA

9.1. Neither the whole nor any portion of the Public Area shall be :

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

9.1.2. mortgaged; or

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

without the sanction of a Special Resolution of the ASSOCIATION and subject to the Articles of the company (Kenton Eco Estate Limited).

9.2 9.2.1 The Estate has been defined as Portions 1 – 330 for residential footprints and housing units in extent approximately 28,9 hectares and Portion 331 for private nature reserve including access, roads and infrastructure in extent approximately 203,7 hectares as per the property diagram.

9.2.1.1 The Developer owns the Property on the northern side of the R72 National Road. It may be the intention of the Developer, in due course, to develop that portion of the Property on the northern side of the R72 or any other adjoining property to the Development.

9.2.1.2 The Developer has been granted the right, by the members of this Association, and more particularly in terms of clause 19 of the Deed of Sale entered into between the Developer and original Purchasers, which condition shall be enforceable against successors in title of original Purchasers, at the sole discretion of the Developer, to link any development as described hereinbefore, to Kenton Eco Estate including but not limited to linking associated infrastructural requirements into those of Kenton Eco Estate. The Association shall maintain the infrastructural developments, including but not limited to the sewerage plant, and in the event of an extension of the development, as aforesaid, then the Association shall levy a contribution in respect of the entire development (in respect of Kenton Eco Estate and any other Estate or Estates developed, adjoining Kenton Eco Estate) on a ratio calculated on the number of developed individual erven per Estate.

- 9.2.1.3 The Developer shall transfer the public area, excluding the portion on the northern side of the R72, to the Association. No compensation is payable by the Association for any such area.
- 9.2.2 The ASSOCIATION shall specifically authorise two TRUSTEES of the ASSOCIATION to sign all documents and perform all acts necessary to acquire ownership of the Erf or Erven comprising the Public Area, on behalf of the ASSOCIATION, by means of a Special Resolution.
- 9.2.3 The transfer of the Erf or Erven comprising the Public Area shall be effected by the Developer's Attorneys, and all costs relating to such transfer shall be borne by the Developer.

10. MEMBERSHIP

- 10.1 Membership of the ASSOCIATION shall be limited to the Developer and Registered Owners resulting from the Development, provided that where any such owner is more than one person, all the Registered Owners of that Erf shall be deemed jointly and severally to be one Member of the ASSOCIATION.
- 10.2. When a Member ceases to be the Registered Owner of an Erf, he shall ipso facto cease to be a Member of the ASSOCIATION except for the Developer who shall remain a member until it so chooses to no longer do so.
- 10.3. The following condition or such other similar condition as may be approved and/or required by the Registrar of Deeds, shall be embodied in the Deed of Transfer relating to each Erf resulting from the Development as a condition of title: "The Erf/Subdivision shall not be transferred without the written consent of the Kenton Eco Estate HOMEOWNERS ASSOCIATION of which the Transferee and his successors in title shall be a Member". Such consent shall not be withheld, provided that :
- 10.4 The Registered Owner of the Erf/Subdivision in question has fulfilled all his financial obligations to the ASSOCIATION in terms of this Constitution; and

- 10.5 The Agreement of Sale concluded between the Registered Owner and Purchaser of the said Erf/subdivision contains the following term: "The Purchaser shall, if he elects to take transfer of the Erf/Subdivision, be required to remain a member of an Association consisting of all Registered Owners of single residential Erven/subdivisions on the property and be subject to the Rules and Regulations of the Constitution governing the said Association. The Purchaser further acknowledges that his successors in title shall be similarly obliged to become and remain a member of the said Association."
- 10.6. A Registered Owner may not resign as a Member.
- 10.7 The rights and obligations of a Member shall not be transferable and every Member shall:
- 10.7.1. to the best of his ability further the objects and interests of the ASSOCIATION;
 - 10.7.2 observe all by-laws and regulations made by the ASSOCIATION or the TRUSTEES; provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of that Member's Erf.

11. LEVIES

- 11.1 The TRUSTEES shall establish and maintain a levy fund, to which end they shall from time to time make levies upon the Registered Owners in such amounts as are in their opinion sufficient for the control, management and administration of the Development and for the repair, upkeep and maintenance of the Public Area, for the payment of rates and taxes for common areas where applicable and any other Local Authority charges, and charges for the supply of any services required by the ASSOCIATION for recovering any losses suffered by the ASSOCIATION and for the discharge of any other obligation of the ASSOCIATION.

- 11.2 The TRUSTEES shall estimate the amount which shall be required by the ASSOCIATION to meet the aforesaid expenses during each operational year or any portion thereof, together with the estimated deficiency, if any, as may have resulted from the preceding operational year or portion thereof, and shall make a levy upon the Registered Owners, equal as nearly as is reasonably practical to such estimated amount. The TRUSTEES may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such expenses to be incurred for the Development. Every such levy shall be payable monthly at the discretion of the TRUSTEES.
- 11.3 The TRUSTEES, may from time to time, make special levies upon the Members in respect of all such expenses as are mentioned in Par. 11 (which are not included in any estimate made in terms of Par. 12), and such levies may be imposed and be payable in one sum or by such instalments and at such time or times as the TRUSTEES shall deem fit.
- 11.4 Any amount due by a Member by way of a levy shall be a debt due by him to the ASSOCIATION. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Registered Owner, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Registered Owner. 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, to pay the levy attributable to that Erf.
- 11.5 In calculating levies the TRUSTEES shall take into account income, if any, earned by the ASSOCIATION.
- 11.6 The levy payable shall be proportionate to the number of erven in the development of the total amount budgeted by the Trustees as contemplated herein. The ASSOCIATION may, however, by Special Resolution amend the basis on which the levies are paid, should the basis set out herein be inequitable or unreasonable, bearing in mind other relevant factors.

- 11.7 It is specifically recorded that any arrear levies shall bear interest at prime overdraft rate plus 3% (THREE PER CENTUM) per annum compounded monthly in advance which shall become immediately due and payable.
- 11.8 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the ASSOCIATION in respect of his membership thereof.

12. MEMBERS' OBLIGATIONS

The TRUSTEES may from time to time:

- 12.1. make regulations governing inter alia:
- 12.1.1.the Member's rights to use, occupation and enjoyment of the Public Area;
 - 12.1.2.The external appearance of and the maintenance of the Public Area and the buildings or other improvements erected thereon;
- 12.2 enter into agreement(s) with third parties on behalf of the ASSOCIATION, inter alia, the Local Authority, governing the matters set out in Par. 20.1 and any other matters incidental thereto.
- 12.3 Each Member undertakes to the ASSOCIATION that he shall comply with:
- 12.3.1.the provisions of this Constitution;
 - 12.3.2.any regulations made in terms of Par. 20.;
 - 12.3.3.that every building and/or structure to be erected in the Development shall be of approved design and of sound construction in accordance with the Homeowners' Association's building code and specifications;

12.3.4.any agreements entered into by the Trustees, duly authorized thereto, insofar as those agreements may directly or indirectly impose obligations on him.

12.4 Each Member further undertakes to the ASSOCIATION that he shall comply with, inter alia, the following specific regulations to be issued by the TRUSTEES:

12.4.1.That the Development shall be developed in accordance with a standard approved by the Developer, and after the Developer has ceased to be a Member, by the TRUSTEES;

12.4.2.That the Development and more particularly the Public Area shall be maintained in good and tidy condition in compliance with standards set from time to time by the TRUSTEES;

12.4.3.That no building operations shall be commenced in the Development and no additions or alterations to approved buildings shall be effected until the TRUSTEES have in writing approved the design and construction plans including material and colour specifications for the erection of any building or structure specifically including a dwelling house, outside buildings, fences or walls;

12.4.4.That the TRUSTEES shall be the judges as to the suitability of the design and/or construction method, material or colours and their decision shall be final;

12.4.5.That each Registered Owner shall care for any trees on the Erf registered in his name or in the relevant Public Area, and he shall not remove or cut down, or cause to be removed or cut down any trees situated as aforesaid, without the prior written consent of the TRUSTEES;

12.4.6.That each Registered Owner shall maintain in a neat and tidy condition all buildings and/or structures erected on the Erf registered in his name;

12.4.7. That each Registered Owner shall adequately insure all building and/or structures erected on the Erf registered in his name or the relevant Scheme (and if requested, to furnish proof of such insurance to the TRUSTEES) and in the event of total/partial destruction, shall within a reasonable time period make good such damage or reconstruct in accordance with the original approved plans or, in the event of total reconstruction, in accordance with the TRUSTEES' approval.

12.4.8. That no Registered Owner shall, without the prior written consent of the TRUSTEES:

12.4.8.1. alter the previously approved external colour scheme of buildings/structures erected on the Erf registered in his name or in the Public Area;

12.4.8.2. permit any commercial type vehicle, boat, caravan, trailer, or any derelict or abandoned vehicle to be parked on or in front of the Erf registered in his name or in the Public Area which, in the opinion of the TRUSTEES is unsightly;

12.4.8.3. do or suffer to be done on the Erf registered in his name or in the Public Area anything which in the opinion of the TRUSTEES is noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance or a source of damage or disturbance to any owner, tenant or occupier of any other property in the Estate in which the Erf is situated;

12.4.8.4. Let or allow his property to be let or in any manner occupied without such occupants agreeing in writing to be bound to the provisions of this Constitution and Rules;

12.4.8.5. Not allow his property to be occupied as a communal dwelling facility (a commune);

- 12.4.8.6. Conduct or allow any business of whatever nature to be conducted from his property;
- 12.4.8.7. Notwithstanding the provisions of the Town Planning Scheme erect or allow to be erected more than 1 (ONE) main dwelling on the property but shall be allowed in addition thereto to erect duly approved bona fide garages and outbuildings.
- 12.4.9. Each Registered Owner shall be obliged to obtain the approval of the Local Authority in respect of any buildings and/or structures to be erected on the Erf registered in his name and he shall further be obliged to comply with all conditions and standards imposed by such Local Authority.
- 12.4.10. In granting any approval in terms hereof the TRUSTEES shall have the right to determine the siting of all buildings and/or structures (including garden/boundary/link walls) to be erected on the Erf and to impose such conditions as the TRUSTEES deem necessary.
- 12.4.11. Where the TRUSTEES in special circumstances permit the erection of garden/tool shed(s) such structures/sheds shall be screened from public view.
- 12.4.12. The decision of the TRUSTEES in regard to the provisions of Par. 12.4.10 and 12.4.11 shall be final and binding on all parties.

12.5. If any Registered Owner, tenant or occupier of an Erf by act or omission commits a breach of any of these conditions and fails to remedy such breach after the TRUSTEES have given the Registered Owner written notice to make good such breach within a time specified in such notice then:

12.5.1. The TRUSTEES and/or the Developer and/or the owner of any erf in the development in which the Erf in question is situated shall be entitled without further notice to the Registered Owner to institute proceedings against the Registered Owner in any Court of competent jurisdiction to obtain redress against the Registered Owner and without detracting from the generality of the foregoing including obtaining of an interdict against the Registered Owner.

12.5.2. The TRUSTEES (or those employed by the TRUSTEES on behalf of the ASSOCIATION) may enter upon the Erven and Public Area to take such action as may be required (as determined in the discretion of the TRUSTEES) to remedy the breach and the Registered Owner concerned shall be liable to the ASSOCIATION for all costs so incurred which costs shall be due and payable upon demand. The foregoing action shall, without detracting from the generality of the foregoing, include the obtaining of the services of a garden service company.

13. BREACH

13.1. NOTWITHSTANDING Clause 11.7 hereof any Member who fails to make payment to the Association on due date of any subscription or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of **these presents**, may, if so determined by a Resolution passed by not less than 3 (THREE) of the TRUSTEES :

13.1.1. be fined by the ASSOCIATION in an amount not exceeding an amount equal to double the sum outstanding;

- 13.1.2. be ordered to pay to the ASSOCIATION or any Member or other person aggrieved by the breach or failure in question, such sum as the TRUSTEES after suitable enquiries shall deem fit;
 - 13.1.3. be liable for and pay all legal costs including costs as between attorney and client, including Value Added Tax thereon at the statutory rate, collection commission, expenses and charges incurred by the ASSOCIATION in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such Member to the ASSOCIATION; as in each case shall have been determined by the TRUSTEES as aforesaid.
- 13.2. The Member concerned shall be invited to attend such meeting of TRUSTEES by notice in writing delivered to such Member not less than 21 (TWENTY ONE) days prior to the holding thereof, and such Member shall be given the right to speak thereat, but not to be present at the voting or to take part in the proceedings, other than as allowed by the Chairman of such meeting.
- 13.3. The TRUSTEES shall be entitled to charge interest on arrear amounts at the rate referred to in Par. 11.7 or such other rate as they may from time to time determine.
- 13.4. Nothing in the foregoing shall derogate from or in any way diminish the right of the ASSOCIATION represented by an authorised TRUSTEE to institute proceedings in any Court of competent jurisdiction for recovery of any money due by a Member.

14. CESSATION OF MEMBERSHIP

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

15. TRUSTEES

- 15.1. There shall be a Board of TRUSTEES of the ASSOCIATION which shall consist of all members of the ASSOCIATION unless determined differently from time to time at the Annual General Meeting of the ASSOCIATION.
- 15.2. A TRUSTEE shall be an individual, but need not himself be a Member of the ASSOCIATION, provided that a majority of TRUSTEES shall be Members. A TRUSTEE, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of **these presents**.
- 15.3. For as long as the Developer is a Member it shall be entitled to nominate and appoint 3 (THREE) of the TRUSTEES.

16. APPOINTMENT AND ELECTION OF TRUSTEES

- 16.1. All the initial TRUSTEES shall be appointed by the Developer and until so appointed the Developer shall, notwithstanding Par. 15 be sole TRUSTEE.
- 16.2. Upon termination of the term of office of the TRUSTEES aforesaid, as set forth in Par. 17, TRUSTEES as set forth in Par. 15 shall be:
- 16.2.1. nominated;
- 16.2.2. elected to office, upon acceptance of such nominations, by Resolution, by Members of the ASSOCIATION present in person or by proxy at the first Annual General Meeting of the ASSOCIATION and at each Annual General Meeting held thereafter.

17. REMOVAL AND ROTATION OF TRUSTEES

- 17.1. Save as set forth in Par. 18, each TRUSTEE shall continue to hold 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 TRUSTEES at such meeting.
- 17.2. A TRUSTEE shall be deemed to have vacated his office as such upon:
- 17.2.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 17.2.2. his making any arrangement or composition with his creditors;
 - 17.2.3. his conviction for any offence involving dishonesty;
 - 17.2.4. his becoming of unsound mind or being found lunatic;
 - 17.2.5. his resigning from such office in writing delivered to the registered office of the ASSOCIATION;
 - 17.2.6. his death; or
 - 17.2.7. his being removed from office by a Resolution of the Members of the ASSOCIATION, requiring a simple majority, before the termination of his period of office; 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 TRUSTEES.
- 17.3. Should the office of a TRUSTEE fall vacant prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining TRUSTEES for the time being, and who shall hold office until the next General Meeting when he may be eligible for re-election.

18. OFFICE OF TRUSTEES

- 18.1. The first Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the TRUSTEE holding such office upon his ceasing to be a TRUSTEE for any reason.
- 18.2. At the First Annual General Meeting the TRUSTEES shall appoint from amongst themselves a Chairman.
- 18.3. Within 7 (SEVEN) days of the holding of such Annual General Meeting, the TRUSTEES shall meet and shall elect from their own number the Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman shall ipso facto be vacated by the TRUSTEE holding such office upon his ceasing to be a TRUSTEE for any reason. No one TRUSTEE shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the TRUSTEES shall immediately meet to appoint one of their number as a replacement in such office.
- 18.4. Save as otherwise provided in **these presents**, the Chairman shall preside at all meetings of the TRUSTEES, and all General Meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the TRUSTEES or by Members, and to allow or refuse to permit guests to speak at any such meetings, provided however, that any such guests shall not be entitled to vote at any such meetings.

19. TRUSTEES

Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as TRUSTEES and/or Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

20. FUNCTIONS AND POWERS OF TRUSTEES

- 20.1 Subject to the express provisions of **these presents**, the TRUSTEES shall manage and control the business and affairs of the ASSOCIATION, and shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in **these presents**, 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 **these presents** required to be exercised or done by the ASSOCIATION in General Meeting subject nevertheless to such regulations as may be prescribed by the ASSOCIATION in General Meeting from time to time, provided that no regulation made by the ASSOCIATION in General Meeting shall invalidate any prior act of the TRUSTEES which would have been valid if such regulation had not been made.
- 20.2. The TRUSTEES shall have the right to vary, cancel or modify any of their decisions and Resolutions from time to time.
- 20.3. The TRUSTEES shall have the right to co-opt any person or persons chosen by it. A co-opted TRUSTEE shall enjoy all the rights and be subject to all the obligations of the TRUSTEES, provided that such co-opted TRUSTEE shall only serve until the next Annual General Meeting.
- 20.4. The TRUSTEES may, should they so decide, investigate any suspected or alleged breach by any Member or TRUSTEE of **these presents**, in such reasonable manner as they shall decide from time to time.
- 20.5. The TRUSTEES may make regulations and by-laws, not inconsistent with **these presents**, or any regulations or by-laws prescribed by the ASSOCIATION in General Meeting:
- 20.5.1.as to disputes generally;
 - 20.5.2.for the furtherance and promotion of any of the objects of the ASSOCIATION;
 - 20.5.3.for the better management of the affairs of the ASSOCIATION;
 - 20.5.4.for the advancement of the interests of Members;

20.5.5.for the conduct of TRUSTEES at meetings of TRUSTEES and Meetings of the ASSOCIATION;

20.5.6.to levy and collect contributions from the Members in accordance with Par. 11 to 16 supra; and

20.5.7.to assist it in administering and governing its activities generally and shall be entitled to cancel, vary or modify any of the same from time to time.

21. PROCEEDINGS OF MEETINGS OF TRUSTEES

21.1. The TRUSTEES may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of **these presents**.

21.2. Meetings of the TRUSTEES shall be held at least once every SIX Months.

21.3 Three (3) TRUSTEES may at any time convene a meeting of TRUSTEES by giving to the other TRUSTEES not less than 21 (TWENTY ONE) days' written notice of a meeting proposed by them, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given. A resolution in writing signed by all the TRUSTEES and being not less than sufficient to form a quorum for a meeting of TRUSTEES shall be valid and effectual as if it had been passed at a meeting of TRUSTEES duly called and constituted.

21.4. Any mortgagee holding a first mortgage bond or bonds over the Erven shall, if he so requires of the TRUSTEES, be entitled to receive reasonable written notice of all meetings of TRUSTEES.

21.5. The quorum necessary for the holding of any meeting of TRUSTEES shall be 3 (THREE) TRUSTEES.

21.6. The Chairman shall preside as such at all meetings of TRUSTEES provided that should at any meeting of TRUSTEES the Chairman not be present within 5 (FIVE) minutes after the time appointed for the holding thereof, then those present of the TRUSTEES shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

- 21.7. A TRUSTEE may be represented at a Meeting of TRUSTEES by a proxy, who need not be a TRUSTEE of the ASSOCIATION.
- 21.8. The instrument appointing a proxy shall be in writing signed by the TRUSTEE concerned or his duly authorised agent in writing, but need not be in any particular form.
- 21.9. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is entitled to vote. No appointment of a proxy shall be valid after the expiration of 12 (TWELVE) Months from the date of its execution.
- 21.10. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the remaining TRUSTEES at least one hour before the time fixed for the holding of the meeting.
- 21.11 The TRUSTEES shall:
- 21.11.1. ensure that minutes are taken of every meeting of TRUSTEES, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be circularised to all TRUSTEES and approved by them at the next Meeting with or without amendments and signed by the Chairman and the Secretary of the meeting;
 - 21.11.2. cause such minutes to be kept of all meetings of the TRUSTEES in a Minute Book of Meeting of TRUSTEES kept for the purpose;
- 21.12. The TRUSTEES shall keep all Minute Books of Meetings of TRUSTEES in perpetuity.
- 21.13. On the written application of any Member, the TRUSTEES shall make all Minutes of their proceedings available for inspection by such Member.

21.14. All competent Resolutions recorded in the minutes of any meeting of TRUSTEES shall be valid and of full force and effect as therein recorded, with effect from the passing of such Resolutions, and until varied or rescinded, but no Resolution or purported Resolution of the TRUSTEES shall be of any force or effect, or shall be binding upon the Members or any of the TRUSTEES unless such Resolution is competent within the powers of the TRUSTEES.

21.15. Save as otherwise provided in **these presents**, the proceedings at any meeting of TRUSTEES shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

21.16. A Resolution signed by all the TRUSTEES shall be valid in all respects as if it had been duly passed at a meeting of TRUSTEES duly convened.

22. **OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise 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, Advocates, Architects, Engineers, any other person, professional or otherwise, firm and/or any other employee/s whatsoever, for any reasons thought necessary by the TRUSTEES and on such terms as the TRUSTEES shall decide, subject to any of the provisions of these presents.

23. **GENERAL MEETINGS OF THE ASSOCIATION**

23.1 The ASSOCIATION shall hold a General Meeting as its Annual General Meeting in each calendar year within 4 (FOUR) months of the end of the financial year ended on the 30th of June of that year in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices calling it.

23.2. Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the TRUSTEES shall decide from time to time.

23.3 The TRUSTEES may, whenever they deem fit, convene a General Meeting, and a General Meeting shall also be convened on a requisition made by not less than 50% (FIFTY PER CENTUM) of Members eligible to vote, or in default, may be convened by the requisitionists themselves, provided that notice thereof be given in terms of Par. 24 infra.

24. NOTICE OF MEETINGS

An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by 21 (TWENTY ONE) days' notice in writing at the least, and a General Meeting, other than one called for the passing of a Special Resolution, shall be called by at least 14 (FOURTEEN) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in **these presents**, the general nature of that business, and in the case of a Special Resolution, the terms and effect of the Resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the TRUSTEES to such persons as are under **these presents** entitled to receive such notices from the ASSOCIATION; provided that a General Meeting of the ASSOCIATION shall, notwithstanding that it is called by shorter notice than that specified in **these presents**, be deemed to have been duly called if it is so agreed:

- 24.1. in the case of a meeting called as the Annual General Meeting, by an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy, being a majority together holding not less than 50% (FIFTY PER CENTUM) of the total voting rights of all Members;
- 24.2. In the case of any other General Meeting, by an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy, being a majority together holding not less than 50% (FIFTY PER CENTUM) of a total voting rights of all Members.

- 24.3. The accidental omission to give notice of a meeting or of any Resolution, or to give any other notification, or present any document required to be given or sent in terms of **these presents**, or in terms of the Act, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any Resolution passed at, any meeting.

25. **SERVICE OF NOTICES OF MEETINGS**

- 25.1. A notice of a meeting shall be in writing and shall be given or served by the ASSOCIATION upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the street address of the Erf owned by him.
- 25.2. No Member shall be entitled to have a notice of a meeting served on him at any address not within the Republic of South Africa, but any Member may require the ASSOCIATION, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 25.3. Any notice of a meeting sent 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, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 25.4. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

26. **VENUE OF MEETINGS**

General Meetings of the ASSOCIATION shall take place at such place/s as shall be determined by the TRUSTEES from time to time.

27. **QUORUM**

27.1. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any General Meeting shall be such of the Members entitled to attend and vote thereat, as together for the time being represent 10% (TEN PER CENTUM) of the total votes of all Members of the ASSOCIATION entitled to vote for the time being.

27.2. If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present, the Members present shall be a quorum.

28. **AGENDA AT ANNUAL GENERAL MEETINGS**

In addition, to any other matters required by legislation or **these presents** to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 28.1. the consideration of the Chairman's report to the TRUSTEES;
- 28.2. the election of the TRUSTEES;
- 28.3. the consideration of the financial statement of the ASSOCIATION for the last financial year of the ASSOCIATION preceding the date of such meeting;
- 28.4. the consideration of the budget as presented by the TRUSTEES and confirmation of levies as currently levied by the TRUSTEES;

- 28.5. any other business pertinent to such meeting including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions;

29. **PROCEDURE AT GENERAL MEETINGS**

- 29.1. The Chairman shall preside as such at all General Meetings, provided that should he not be present within FIVE MINUTES after the time appointed for the holding thereof, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 29.2. The Chairman may, with the consent of any General Meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjournment meeting.
- 29.3. Except as otherwise set forth in **these presents**, all General Meetings shall be conducted in accordance with procedures to be stipulated by the TRUSTEES from time to time, which procedures shall be recorded in the Notices referred to in Par. 24 and 25.

30. **MINUTES OF MEETINGS OF THE ASSOCIATION**

- 30.1. The TRUSTEES shall :
- 30.1.1. ensure that minutes are taken of every meeting of the ASSOCIATION, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting;
- 30.1.2. cause such minutes to be kept of all meetings of the ASSOCIATION in a Minute Book of Meetings of the ASSOCIATION kept for the purpose;

- 30.2. The TRUSTEES shall keep all Minute Books of Meetings of the ASSOCIATION in perpetuity.
- 30.3. On the written application of any Member, the TRUSTEES shall make all Minutes of the proceedings and/or meetings of the ASSOCIATION available for inspection by such Member.
- 30.4. All competent Resolutions recorded in the minutes of any meeting of the ASSOCIATION shall be valid and of full force and effect as therein recorded, with effect from the passing of such Resolutions, and until varied or rescinded, but no Resolution or purported Resolution of the ASSOCIATION shall be of any force or effect, or shall be binding upon the Members or any of the TRUSTEES unless such Resolution is competent within the powers of the ASSOCIATION.
- 30.5. Save as otherwise provided in these presents, the proceedings at any meeting of the ASSOCIATION shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

31. PROXIES

- 31.1. A Member may be represented at a General Meeting by a proxy, who need not be a Member of the ASSOCIATION.
- 31.2. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of these persons may sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company, the same may be signed by the Chairman of the board of Directors of the Company or by its Secretary, and where an association of persons, by the Secretary thereof.

- 31.3. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed of a notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (TWELVE) Months from the date of its execution.
- 31.4. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the TRUSTEES at least one hour before the time fixed for the holding of the meeting.

32. VOTING

- 32.1. At every General Meeting every Member in person or by proxy and entitled to vote, shall be allocated 1 (ONE) vote per single residential ERF; provided that if a single residential Erf is registered in more than one person's name, then they shall jointly have 1 (ONE) vote.
- 32.2. At any meeting of Members a Resolution put to the vote of the meeting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Member. If a poll is duly demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded.
- 32.3. Save as expressly provided for in **these presents**, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the ASSOCIATION in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting.

- 32.4. At any General Meeting a Resolution put to the vote of the meeting shall be decided by an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy.
- 32.5. Voting on the election of a Chairman of a General Meeting as referred to in Par. 29 (if necessary) or on any question of adjournment, shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy.
- 32.6. Every Resolution and every amendment of a Resolution proposed for adoption by a General Meeting shall be seconded at the meeting, and if not seconded, shall be deemed not to have been proposed.
- 32.7. An ordinary Resolution (that is a Resolution other than a Special Resolution) or the amendment of an ordinary Resolution, shall be carried on a simple majority of all the votes cast thereon and an abstention shall not be counted as a vote for or against the Resolution in question. In the case of an equality of vote, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 32.8. Unless any Member present in person or by proxy at a General Meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the Minutes of the ASSOCIATION to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

33. FINANCIAL YEAR END

The Financial Year end of the ASSOCIATION is the end of JUNE of each year.

34. ACCOUNTS

34.1. The TRUSTEES shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the ASSOCIATION, including :

- 34.1.1. a record of the assets and liabilities of the ASSOCIATION;
- 34.1.2. a record of all sums of money received and expended by the ASSOCIATION and the matters in respect of which such receipt and expenditure occur;
- 34.1.3. a register of Members showing in each case their addresses;
- 34.1.4. individual ledger accounts in respect of each owner.

34.2. On the application of any Member the TRUSTEES shall make all or any of the books of account and records available for inspection by such Member.

34.3. The TRUSTEES shall cause all books of account and records to be retained for a period of SIX years after completion of the transactions, acts or operations to which they relate.

34.4. The ASSOCIATION in General Meeting of the TRUSTEES, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the ASSOCIATION, or any of them, and subject to such conditions and regulations, the accounts and books of the ASSOCIATION shall be open to the inspection of Members at all reasonable times during normal business hours.

34.5. At each Annual General Meeting the TRUSTEES shall lay before the Association audited financial statements for the immediately preceding financial year of the ASSOCIATION, or in the case of the first period since the date of incorporation of the ASSOCIATION made up for that period. Such financial statements shall have been drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the TRUSTEES and/or as recommended by Auditors, and shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in Par. 24 supra, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

35. DEPOSIT AND INVESTMENT OF FUNDS

- 35.1. The TRUSTEES shall cause all moneys received by the ASSOCIATION to be deposited to the credit of an approved attorney's trust account in the name of the ASSOCIATION and, subject to any direction given or restriction imposed at a General Meeting of the ASSOCIATION, such moneys shall only be withdrawn for the purpose of payment of the expenses of the ASSOCIATION or investment in terms of Par. 35.2. The attorneys of the ASSOCIATION, as appointed by the Trustees from time to time, shall co-authorize from the investment account to the operating bank account.
- 35.2. Any funds not immediately required for disbursements may be invested in a savings or similar account with any building society or any other registered deposit receiving institution approved by the TRUSTEES from time to time.
- 35.3. Interest on moneys invested shall be used by the ASSOCIATION for any lawful purpose.

36. AUDIT

- 36.1. At least once in every year, the accounts of the ASSOCIATION shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.
- 36.2. The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards in terms of the Public Accountants' and Auditors' Act.

37. INDEMNITY

- 37.1. All TRUSTEES and the Auditors shall be indemnified out of the funds of the ASSOCIATION against any liabilities bona fide incurred by them in their respective said capacities and in the case of a TRUSTEE in his capacity as Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 37.2. Every TRUSTEE, every 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, including in the case of a TRUSTEE, his duties as Chairman. Without prejudice to the generality of the above, the ASSOCIATION shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties provided that any such act, deed or letter has been done or written in good faith. A TRUSTEE shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other TRUSTEES, whether in their capacities as TRUSTEE or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the ASSOCIATION through the insufficiency or deficiency of title to any property acquired by the TRUSTEES for or on behalf of the ASSOCIATION, or for the insufficiency or deficiency of any

security in or upon which any of the moneys of the ASSOCIATION shall be invested, or for any loss or damage arising from the insolvency or delictual act of any person with whom any moneys, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

38. **PRIVILEGE IN RESPECT OF DEFAMATION**

Every Member of the ASSOCIATION and every TRUSTEE shall be deemed by virtue of his membership or, as the case may be, his holding office as a TRUSTEE, to have waived as against every other Member, the Chairman or Vice-Chairman, every other TRUSTEE, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the ASSOCIATION, or the TRUSTEES, or any sub-committee, all claims and rights of action which such Member or TRUSTEE might otherwise have had in law arising as a result of any statement, report complaint or notice of or concerning such Member or TRUSTEE, or any reference to such Member or TRUSTEE, made at any meeting of TRUSTEES, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of **these presents**, being a statement, report, complaint, notice or reference defamatory to such Member or TRUSTEE, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or TRUSTEE, whether such statement be true or false.

39. **ARBITRATION**

39.1 Any dispute, question or difference arising at any time between Members or between Members and TRUSTEES out of or in regard to:

39.1.1. any matters arising out of **these presents**; or

39.2.1. the rights and duties of any of the parties mentioned in **these presents**; or

- 39.2. The interpretation of **these presents**; shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.
- 39.3. Arbitration shall be held in KENTON-ON-SEA, at the offices of the attorneys appointed by the TRUSTEES, informally and otherwise in terms of the provisions of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (TWENTY ONE) Business Days after it has been demanded.
- 39.4. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 39.4.1. primarily an accounting matter - an independent chartered accountant;
 - 39.4.2. primarily a legal matter - a practising counsel or attorney of not less than 10 (TEN) years standing;
 - 39.4.3. any other matter - an independent and suitably qualified person appointed by the Auditors; as may be agreed upon between the parties to the dispute.
- 39.5. If agreement cannot be reached on whether the question in dispute falls under Par. 39.4.1, 39.4.2 or 39.4.3 or upon a particular arbitrator in terms of Par. 39.4, within 3 (THREE) Business Days after the arbitration has been demanded, then:
- 39.6. the President for the time being of the Law Society of the Eastern Cape shall determine whether the question in dispute falls under Par 39.4.1, 39.4.2. or 39.4.3; or
- 39.7. the President for the time being of the Law Society of the Eastern Cape shall nominate the arbitrator in terms of Par. 39 within 7 (SEVEN) Business Days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (TWENTY ONE) Business Days referred to in Par. 39.

- 39.8. The arbitrator shall make his award within 7 (SEVEN) Business Days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the ASSOCIATION as he in his sole discretion may deem fit.
- 39.9. The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.
- 39.10. Notwithstanding anything to the contrary contained in Par. 39, the TRUSTEES shall be entitled to institute legal proceedings on behalf of the ASSOCIATION by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

40. **DOMICILIUM CITANDI ET EXECUTANDI**

- 40.1. The TRUSTEES shall from time to time determine the address constituting the domicilium citandi et executandi of the ASSOCIATION, subject to the following :-
- 40.1.1. Such address shall be the address of the Chairman or other resident TRUSTEE duly appointed at a General Meeting, or the administrative office of the ASSOCIATION;
- 40.1.2. The TRUSTEES shall give notice to all Members of any change of such address.
- 40.2. The domicilium citandi et executandi of each Member shall be the street address of the Erf registered in his name; provided that he shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the ASSOCIATION at its domicilium.

41. BUILDING SPECIFICATION AND BUILDING CODE

- 41.1 Notwithstanding any building requirements or restrictions laid down by the Local Authority from time to time, the Home Owners' Association shall be bound to the Building Code and Specifications as contained in the KDRC Design Manual which may only be varied by special resolution of the Home Owners' Association and subsequent approval of such Plans by the Ndlambe Municipality.
- 41.2 The provisions hereof shall not be added to, amended or repealed without the consent in writing of the Local Authority or its assigns, which consent shall not be unreasonably withheld.

42. ARCHITECTURAL GUIDELINES AND ENVIRONMENTAL MANAGEMENT PLAN

- 42.1 Each member by virtue of its ownership will be bound to this Constitution and also to the architectural guidelines which have been established. In general terms these architectural guidelines and the Environmental Management Plan have been established in order to protect the pristine and environmentally sensitive area on which the member's property is situated. In this regard a member takes cognisance of the fact that this is a special and unique development and that the natural vegetation, habitat and trees will be preserved to an absolute maximum, hence these guidelines have, inter alia, limited the member to build only on the approved platform area and to leave the remainder of the property untouched and to preserve its natural state.
- 42.2. The TRUSTEES are to ensure that any consent to be obtained in terms of this Constitution and more specifically Clause 12, is subject to the aforementioned architectural and environmental guidelines, as detailed in the KDRC Design Manual.
- 42.3. The Environmental Management Plan, in place at the inception of the development of Kenton Eco Estate, shall be ongoing, and members , through their levy contributions to the Association, will contribute to such ongoing Environmental Management Plan.

- 42.4 Members/residents will be encouraged to establish natural and indigenous plants, from an approved list of plants available at the offices of the Association. Members/residents shall maintain their individual properties and pavements directly in front of and surrounding their immediate properties.
- 42.5. No indigenous trees shall be cut or removed without the prior written consent of the Association.
- 42.6. Owners/residents may not erect fences or walls of any nature whatsoever around individual erven, gardens or dwellings.
- 42.7. The common areas will be maintained by the Association.
- 42.8. The Developer has constituted a Design Review Committee (“KDRC”) in respect of the development. The KDRC will be responsible for the evaluation of all structures and granting of the requisite approvals so as to enable building plans to be submitted to Ndlambe Municipality. The KDRC will be tasked with maintaining, inter alia, visual aesthetics, ensuring complying with planning criteria, material selection and general design standards, in accordance with the Design Manual. The KDRC shall prepare a code which shall dictate all aspects of design and improvements on the Property. The KDRC shall have the right to veto any plans submitted. No building plans shall be submitted to Ndlambe for approval until same carry the approval of the KDRC.
- 42.9. The owner/member shall be liable for the costs of submission of any building plans to the KDRC in an amount of R3750-00 plus VAT for an initial submission and liable for the sum of R1000-00 plus VAT for any subsequent submission or variation. These amounts shall escalate at the rate of 7.5 percent per annum with effect from the first day of January in the year subsequent to the registration of the Township Register, and on the same day in each successive year or as determined by the Trustees from time to time.
- 42.10. The owner/member may only use an architect on the Architectural Design and Review Panel, appointed by the KDRC, or an architect approved by such panel. In the event of the Panel approving the Purchaser’s own architect, then all plans shall be submitted to the Panel for approval prior to commencement of construction and the costs of such architect and of approval shall be for the account of the Purchaser.

- 42.11. No construction work may be carried out on the Property within the Estate except by a Building Contractor appointed to the Panel of Builders approved by the Developer. There shall be no additions or alterations made without the express written approval of the Association and the KDRC, including but not limited to any non-permanent or permanent structures. Unapproved structures shall immediately be removed by the member/owner upon the request of the Association.
- 42.12. The Association shall at all material times have adequate public liability insurance cover.
- 42.13. The approved dwelling/structural improvements per individual Erf shall not exceed 60 percent of the extent of such Erf.

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