

HOMEOWNERS ASSOCIATION

HOPEWELL CONSERVATION ESTATE

A Statutory body established in terms of Section 29(1) as read with Section 42 of the Land use
Planning Ordinance 15 of 1985

ANNEXURES

“A” Proxy Form

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1. PREAMBLE

It is recorded that the Hopewell Conservation Estate Homeowners Association is constituted as a statutory body in terms of Section 29 of LUPPO, in accordance with the conditions imposed by the Nelson Mandela Bay Metropolitan Municipality in their subdivision and rezoning approval dated 6 October 2009.

2. INTERPRETATION

In this Constitution:

- 2.1. The following words shall, unless the context otherwise requires, have the meanings assigned to them below:
 - 2.1.1. "the Architectural Guidelines" means the architectural guidelines and landscape design manual, as amended from time to time, for the development of improvements on the Residential Erven, annexed to this Constitution marked Annexure "A";
 - 2.1.2. "the Association" means the Hopewell Conservation Estate Homeowners' Association;
 - 2.1.3. "the Auditors" means the Auditors of the Association as appointed from time to time;
 - 2.1.4. "the Board" means the Board of Trustees of the Association from time to time;
 - 2.1.5. "Business Day" means weekdays other than Saturdays, Sundays and public holidays;
 - 2.1.6. "Chairman" means the Chairman of the Board;
 - 2.1.7. "Common Property" means any part of the Estate which is not a Residential Erf;
 - 2.1.8. "Conduct Rules" means the conduct rules, as amended from time to time by the Association and/or Trustees, pertaining to the Estate, annexed to this Constitution marked "D";
 - 2.1.9. "Constitution" means this Constitution, regulations, rules and by-laws of the Association in force from time to time, and shall include all annexures;

- 2.1.10. "the Developer" means Hopewell Conservation (Proprietary) Limited (Registration No. 2008/022884/07) or its successors in title as owner of the Land and Portions 1-6 of Farm 719 Uitenhage or the remainder thereof from time to time;
- 2.1.11. "Development Period" means the period commencing on the creation of the Association and terminating on the date when the Developer notifies the Association in writing that the Development Period is at an end or until all of the Residential Erven have been registered in the names of the first owners; whichever shall first occur;
- 2.1.12. "the Estate" means the housing scheme called "Hopewell Conservation Estate" which will initially comprise the 16 (sixteen) Residential Erven and related common areas which are depicted on Annexure "B", together with an additional portion of the Land on which the Developer envisages that an additional 25 (twenty-five) Residential Erven should be located;
- 2.1.13. "the EMP" means the Environmental Management Plan applicable to the Hopewell Conservation Estate as approved by the relevant authorities;
- 2.1.14. "the Hopewell Nature Reserve" means the nature reserve within which the Residential Erven are situated and which comprises Portions 2, 3 and 5 of Farm 719 Uitenhage;
- 2.1.15. "the Land" means the land in respect of which approval has been granted for the subdivision of 41 Residential Erven from Portion 3 of Farm 719 Uitenhage, whether or not the exact location of all such erven has been identified or the erven have been registered;
- 2.1.16. "LUPO" means the Cape Land Use Planning Ordinance, No. 15 of 1985;
- 2.1.17. "Member(s)" means a member(s) of the Association as described in 12;
- 2.1.18. "month" means a calendar month;
- 2.1.19. "Registered Owner" means the registered owner, other than the Developer, of any of the Residential Erven;
- 2.1.20. "the Residential Erven" means the 41 nature reserve erven of the Land (including the dwellings and other improvements constructed on each such erf) and which erven are numbered erven and "Residential Erf" shall mean any one such erf;

- 2.1.21. "Services" means such facilities, utilities, services and amenities as may be provided on, or in connection with, the Estate, including (but not limited to) electricity, stormwater, water, waste removal, security, perimeter fencing and roads, including the access road from the entrance of the Hopewell Nature Reserve to the entrance of the Estate, and the water pipe-line and electricity supply lines to the Estate which will traverse portions of the Hopewell Nature Reserve;
- 2.1.22. "Site Development Plan" means a plan depicting the initial cluster of 16 (sixteen) Residential Erven and which may be amplified to depict the location of the further 25 (twenty-five) Residential Erven, annexed to this agreement marked Annexure "B";
- 2.1.23. "Special Resolution" means a Resolution which is passed by a 75% majority vote of the Members who constitute a quorum, in respect of a Resolution pertaining to any of the following matters:
- 2.1.23.1. the repeal or amendment of any part of this Constitution;
 - 2.1.23.2. an amendment or addition to the Conduct Rules;
- 2.1.24. "Trustees" means the Trustees from time to time of the Association;
- 2.1.25. "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; and
- 2.1.26. "year" means a calendar year.
- 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.
- 2.3. Reference to the Constitution means this Constitution and all annexures thereto.
- 2.4. The terms defined in this Constitution shall bear the same meanings in the annexures.
- 2.5. The head notes to the paragraphs to this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.6. If the provisions of this Constitution are in any way inconsistent with the provisions of any law, the provisions of such law shall prevail and this Constitution shall be read in all respects subject to that law.

- 2.7. When any number of days is prescribed in this Constitution, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

3. **CREATION OF ASSOCIATION**

The Association is hereby created with effect from the date on which the first transfer of a Residential Erf is registered in the Deeds Office.

4. **STATUS OF THE ASSOCIATION**

4.1. The Association will:

4.1.1. have legal personality and be capable of suing and being sued in its own name; and

4.1.2. operate for the benefit of the Members.

4.2. No Member shall have any right, title or interest in or to the funds or assets of the Association in his personal capacity, all of which shall vest in the Association.

5. **MAIN OBJECT**

The main objects of the Association are the matters referred to in section 29(2)(b) and (c) of LUPO and more specifically:

5.1. to exercise the control over, and the maintenance of, the Services, amenities and buildings pertaining to the Common Property;

5.2. to control the design and construction of all buildings and any alterations to all buildings, and/or structures erected or to be erected on the Residential Erven in accordance with the Architectural Guidelines, the EMP, the conditions of approval of sub-division of the Land, any applicable landscape management plan and any other plan, manual, guidelines, policy, contract and the like of any authority and to which the development of the Land may be subject or which may hereafter be imposed, and the requirements of the Council or other authority;

5.3. to implement and maintain security measures and systems;

5.4. to enter into service agreements with the Council or any other authority or supplier of Services;

5.5. at the first special general meeting, by written resolution, to accept the cession of any rights and delegation of any duties to the Association under any other agreement(s)

entered into by the Developer for the benefit of the Association prior to the creation of the Association;

- 5.6. to prescribe measures for the architectural design and building of improvements to Residential Erven on the Estate so as to ensure a harmonious and aesthetic development of the Estate, and to prescribe measures for the maintenance of such standards of development;
- 5.7. to formulate, enforce, modify, amend, add and delete Conduct Rules;
- 5.8. to accredit architects and builders to be utilised by Registered Owners in respect of any design and construction work to be conducted on Residential Erven from time to time, in accordance with such criteria as the Association may stipulate from time to time;
- 5.9. to enter into agreements with other developments and/or relevant authorities located in close proximity to the Estate or with the owners of neighbouring properties with regard to the sharing of facilities or services of any nature whatsoever, including but not being limited to security, landscaping, gardening, agricultural services, water, sewerage, electricity, roads, whether or not for the purposes of sharing the cost thereof;
- 5.10. to accredit service providers or contractors in respect of services to be rendered to members of the Association;
- 5.11. to grant or refuse a Registered Owner consent, in terms of clause 29, to transfer his Residential Erf;
- 5.12. to include in the Title Deeds of Residential Erven that transfer of such erven shall be subject to the Association granting its written consent in respect of such transfer;
- 5.13. to bind Members to contribute by way of subscriptions and levies towards the funds of the Association and to enforce payment of and to collect and receive from Members such subscriptions and levies; and
- 5.14. to enforce compliance with its Constitution in such manner as it may deem fit and in particular by means of a system of fines or such other penalties as it may see fit to prescribe.

6. **FINANCIAL YEAR END**

The financial year-end of the Association is the end of February of each year.

7. **APPOINTMENT, REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

- 7.1. The Developer shall appoint the first Trustees of the Association.

- 7.2. The Developer shall be entitled to appoint 2 (two) Trustees from time to time during the Development Period.
- 7.3. Save as set forth in clause 7.6 below, each Trustee shall continue to hold office until the annual general meeting next following his appointment or election, at which meeting each Trustee shall be deemed to have resigned from office as such, and shall be eligible for re-election to the Board at such meeting, subject however to the Developer's rights as set out in clause 7.2.
- 7.4. The Board shall consist of not fewer than 3 (three) and not more than 10 (ten) Trustees from time to time. Save for the Trustees who are appointed in terms of 7.2, the remaining Trustees shall be Members or spouses of Members, or the Trustees or Directors of Trusts and Bodies Corporate which are Members;
- 7.5. The Board shall consist of a chairman, vice-chairman and Trustees.
- 7.6. Save for the Trustees who are appointed by the Developer in terms of 7.2, the Trustees shall after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines) of those members who attend the general meeting of the Association, and successive Trustees shall be elected likewise at each successive annual general meeting of the Association, provided that no Member shall be eligible for election unless he shall have been duly nominated and seconded in writing by other Members and such written nomination, duly endorsed by the nominee, shall have been handed to the Chairman not later than the day preceding the meeting and provided further that such nominee's levies for the current year shall have been duly paid.
- 7.7. A Trustee shall be deemed to have vacated his office as such upon:
- 7.7.1. his estate being sequestered, whether provisionally or finally, or his surrendering his estate;
 - 7.7.2. his making any arrangement or compromise with his creditors;
 - 7.7.3. his conviction for any offence involving dishonesty;
 - 7.7.4. his becoming of unsound mind or being found mentally ill;
 - 7.7.5. every annual general meeting, but shall be eligible for re-election;
 - 7.7.6. him absenting himself from 3 (three) consecutive meetings of the Trustees without leave of absence;

- 7.7.7. his resignation from such office in writing delivered to the Chairman of the Association;
 - 7.7.8. his death;
 - 7.7.9. his being removed from office by a ordinary resolution of the Members;
 - 7.7.10. in the event of him being disentitled to exercise a vote as a Registered Owner (or if he is the representative of the Registered Owner, such Registered Owner becoming disentitled to exercise a vote); or
 - 7.7.11. his alienating his Residential Erf in the event that he was a Registered Owner.
- 7.8. Any act performed 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 Board.
- 7.9. Where a Trustee vacates his office, during any financial year, for any reason whatsoever, then such a vacancy on the Board may be filled by co-option at the instance of the majority vote of the Board, for the remainder of the financial year, and until the next annual general meeting of the Association. In the event that more than 3 (three) Trustees vacate their office, during any financial year, for any reason whatsoever, then the remaining Trustees shall summon a general meeting for the purpose of appointing new Trustees.
- 7.10. Where the number of Trustees falls below the minimum required level as set out in clause 7.4, the remaining Trustees may act only:
- 7.10.1. to increase the number of Trustees to the required minimum set out in clause 7.4 by appointing casual vacancies as envisaged in clause 7.9; or
 - 7.10.2. to summon a general meeting for the purpose of appointing new Trustees, provided that if there is no Trustee, any Member may call a meeting for such purpose.

8. **OFFICE OF TRUSTEES**

- 8.1. Subject to clause 8.2, the Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.

- 8.2. The Chairman shall, for such time as the Developer is the beneficial owner of at least 50% (fifty percent) of the Residential Erven, be the Trustee appointed by the Developer in terms of clause 7.2.
- 8.3. Subject to clause 8.2, the Chairman and Vice-Chairman 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.
- 8.4. Subject to the rights of the Developer as set out in clause 8.2 above, within seven (7) days of the holding of such annual general meeting, the Board shall meet and shall elect from its own number the Chairman and Vice-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 or Vice-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 Board shall immediately meet to appoint one of their number as a replacement in such office, subject however to the rights of the Developer as set out in clause 8.2 above.
- 8.5. Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Board, 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 Board or Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 8.6. The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Board.
- 8.7. 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 and/or Chairman, Vice-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.

9. **FUNCTIONS AND POWERS OF THE BOARD**

- 9.1. Subject to the express provisions of this Constitution, the Board 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 and, save as may be expressly

provided in this Constitution, may exercise all such powers of the Association, and as are not in terms of this Constitution required to be exercised or done by the Association in general meeting. Notwithstanding the foregoing, the Association in general meeting may, from time to time, prescribe certain regulations concerning the powers conferred upon the Board, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.

- 9.2. The Board shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 9.3. Subject to the provisions of clause 7.4, the Board shall have the right to co-opt onto the Board any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 9.4. The Board may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 9.5. The Board may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association in general meeting:
 - 9.5.1. for the furtherance and promotion of any of the objects of the Association;
 - 9.5.2. for the better management of the affairs of the Association;
 - 9.5.3. for the advancement of the interests of Members;
 - 9.5.4. for the conduct of Board meetings and general meetings; and
 - 9.5.5. to assist it in administering and governing the Association's activities generally;and shall be entitled to cancel, vary or modify any of the same from time to time.
- 9.6. The Trustees shall further:
 - 9.6.1. have the power to require that any construction of any sort on the Estate shall be supervised to ensure that the provisions of this Constitution and the Estate rules are complied with and that all such construction is performed in a proper and workmanlike manner;
 - 9.6.2. subject to the Council's approval of same, issue architectural guidelines, and ensure that such architectural guidelines are complied with at all times;

- 9.6.3. have the power to issue landscape design manuals, environmental management plans and contracts or instructions in respect of the Estate, and to ensure that these documents and instructions are complied with at all times;
 - 9.6.4. have the power to determine the criteria for the accreditation of architects, builders, estate agents and other service providers or contractors employed by Registered Owners or the Association, provided that any such criteria shall not apply to any service providers or contractors appointed by the Developer for the Development Period; and
 - 9.6.5. have the power to enter into agreements with other developments located in close proximity to the Estate with regard to the sharing of facilities or services, or with a view of sharing the cost of services, including but not being limited to security, landscaping, gardening and agricultural services.
- 9.7. The Trustees shall have the right to appoint committees consisting of such number of their members and such outsiders 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.
 - 9.8. The Trustees may appoint an architectural review committee to exercise the powers set out above in clause 9.6. Members of the architectural review committee shall not be required to be Members of the Association.
 - 9.9. Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the Developer, all plans for buildings, out-buildings, structures, additions and alterations shall be approved by the Trustees or architectural review committee (if so appointed), or any person designated by them for the purpose prior to such plans being submitted to the Council for approval in terms of the Council's plan approval processes in place from time to time.

10. CONDUCT RULES

- 10.1. The Trustees and/or the Association shall have the power to make and enforce the Conduct Rules which rules are annexed hereto marked Annexure "D" , which rules are subject to change at the discretion of the Trustees and/or the Association and may contain provisions governing *inter alia*:
 - 10.1.1. the relationship between the Members and the Association, Trustees and the Members and the Trustees and Association;

- 10.1.2. the harmonisation of the aesthetic upmarket appearance of the Estate;
 - 10.1.3. the authorisation of permitted persons on the Estate; and
 - 10.1.4. the permissibility of activities on the Estate, subject at all times to the zoning of the land comprising the Estate and the regulations imposed by the Council in approving the Development.
- 10.2. For the enforcement of any of the Conduct Rules made by the Trustees in terms of clause 10.1 above, the Trustees may:
- 10.2.1. take or cause to be taken such steps as they may consider necessary to remedy any breach of the said Conduct Rules of which a Member may be guilty, and debit the costs of so doing to the Member concerned, which costs shall be deemed to be a debt due and payable by the Member concerned to the Association; and/or
 - 10.2.2. impose a system of fines or penalties; and/or
 - 10.2.3. take such other action including legal proceedings as they may deem fit and, to this end, employ such legal representatives as they deem necessary.
- 10.3. In the event of any breach of the aforesaid Conduct Rules by members of a Member's household or by his guests or lessees, such breach shall be deemed to have been committed by such 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 in their discretion may deem fit.
- 10.4. In the event of any Member disputing the fact that he has committed a breach of any of the said Conduct Rules, a committee of three Trustees appointed by the Chairman shall adjudicate upon the issue at such time, in such manner and according to such procedure as the Chairman may direct, subject always to the observance of the precepts of natural justice.
- 10.5. Any fine imposed upon any Member in terms of clause 10.2.2 above shall be deemed to be a debt due and payable by the Member to the Association, recoverable by ordinary civil process.
- 10.6. In the event of any Member being in persistent or flagrant breach of any of the aforesaid Conduct Rules, or being in breach thereof and failing to remedy such breach, the Trustees may, in addition to the other remedies which are provided for in

this Constitution, institute legal proceedings against such Member for an interdict or other appropriate relief, in accordance with clause 30.

- 10.7. The Trustees shall ensure compliance with the aforesaid Conduct Rules by the Members, their guests, their lessees and all other persons within the Estate and to this end issue such notices, impose and collect such fines and do such things as may be necessary in this regard.
- 10.8. Every Member hereby undertakes to the Association that he shall comply with any Conduct Rules made in terms of this clause 10.

11. **PROCEEDINGS OF THE BOARD**

- 11.1. The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this Constitution.
- 11.2. Meetings of the Board shall be held at least once every quarter, provided that if all the Trustees shall, in writing, have waived the above requirement in respect of a particular quarter, then no meeting of the Board needs be held for that quarter.
- 11.3. Any Trustee may convene a meeting at any time, by providing notice to the other Trustees.
- 11.4. The quorum necessary for the holding of any meeting of the Board shall be 50% (fifty percent) of the Trustees holding office at any time and present in the country as at the date of the meeting, and in the event that there are 3 (three) (or less than 3 (three) Trustees), the quorum shall be 2 (two) of Trustees holding office at any time and present in the country as at the date of the meeting.
- 11.5. The Chairman shall preside as such at all meetings of the Board, provided that should at any meeting of the Board, the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as chairman at such meeting, provided further that should the Vice-Chairman also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, and that chairman so appointed shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 11.6. A Trustee shall take minutes of every Board meeting, 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. All minutes of Board meetings, after such certification, shall be placed in a

Board minute book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Board minute book shall be open for inspection at all reasonable times by a Trustee, the Auditors and the Members.

- 11.7. All competent resolutions recorded in the minutes of any Board meeting 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 Board 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 Board.
- 11.8. Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 11.9. A resolution signed by all the Trustees present in the country, and being not less than is required to form a quorum, shall be valid in all respects as if it had been duly passed at a meeting of the Board duly convened. The resolution may consist of several documents, each signed by one or more Trustees.
- 11.10. Resolutions put to the vote at meetings of the Board shall be carried by a simple majority of the Trustees who are present at a meeting of the Board at which a quorum is present.
- 11.11. In the case of an equality of votes, the Chairman of the Board shall have a casting vote.
- 11.12. All acts done by the Trustees or by any committee of Trustees shall, notwithstanding that it be discovered that there was some defect in the appointment of that Trustee or any of them, be as valid as if every person had been duly appointed and was qualified.

12. **MEMBERSHIP**

- 12.1. It is recorded that that there are two categories of members, the first being constituted by the Developer until such time as all of the Residential Erven have been transferred to purchasers thereof; and the second category will comprise Registered Owners other than the Developer.
- 12.2. For the duration of the Development Period or for so long as the Developer owns the Land, or any portion thereof, the Developer shall be a Member of the Association.

- 12.3. Membership of the Association shall be compulsory for the Registered Owners. For this purpose:
- 12.3.1. a person who is entitled to obtain a certificate of registered title to any Residential Erf shall be deemed to be the Registered Owner of such Residential Erf ; and
- 12.3.2. where any such Registered Owner is more than one person, all the Registered Owners of that Residential Erf shall be deemed jointly and severally to be one Member.
- 12.4. Membership in terms of clause 12.3 shall commence simultaneously with the transfer of the Residential Erf into the name of the Registered Owner.
- 12.5. When a Member ceases to be the Registered Owner, he shall *ipso facto* cease to be a Member of the Association.
- 12.6. A Registered Owner may not resign as a Member of the Association.
- 12.7. The rights and obligations of a Member shall not be transferable and every Member shall:
- 12.7.1. to the best of his ability further the objects and interests of the Association referred to in clause 5 above; and
- 12.7.2. observe all by-laws and regulations made by the Association and/or the Board, from time to time.
- 12.8. No Member shall let or otherwise part with the occupation of his Residential Erf, whether temporarily or otherwise, without complying with the requirements of clause 22 and obtaining the prior written consent of the Board, which may impose any condition to such consent in its discretion, including requiring the written agreement of the proposed occupier that the proposed occupier will be bound by the provisions of this Constitution together with the Member.
- 12.9. The Member shall be liable and accountable for the acts or omissions of all persons occupying his Residential Erf, whether lawfully or unlawfully, including but not limited to lessees, guests, employees, invitees, contractors and agents.
- 12.10. Save in those instances where the Developer passes first transfer to a Registered Owner, in all other instances where a Registered Owner wishes to alienate or transfer his Residential Erf or in the event that the said erf is owned by a company, close corporation or Trust, should the shareholder/s or member/s or Trustee/s or Beneficiaries

wish to alienate all their shares or membership or beneficial interest in such entity he shall not be entitled to do so unless he complies with the requirements of clause 29.

- 12.11. The registration of transfer of that Residential Erf into the name of the transferee shall *ipso facto* constitute a transferee as a Member of the Association.
- 12.12. Any Member which is in breach of any provision of this Constitution, or who is in arrears with respect to any amount payable to the Association or any related committee, shall not be entitled to attend, or exercise a vote at, a Meeting of the Association.

13. **CESSATION OF MEMBERSHIP**

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executor, curators, 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.

14. **GENERAL MEETINGS OF THE ASSOCIATION**

- 14.1. The Association shall hold a general meeting as its annual general meeting, in addition to any other general meetings during that year, as soon as possible after the end of each financial year, it being the intention that each annual general meeting shall take place not later than 6 (six) months after each financial year. Notwithstanding the foregoing, the first annual general meeting of the Association is only required to take place by no later than the end of the financial year following which the Association comes into existence. The Association shall specify the meeting as such in the notices, in terms of clause 15.1 below, calling it.
- 14.2. Any meetings of the Association shall be held at such time and place, subject to the foregoing provisions, as the Board shall decide from time to time.
- 14.3. All general meetings, other than annual general meetings, shall be called special general meetings.
- 14.4. The Board, may, whenever they think fit, convene a special general meeting.
- 14.5. Where the Members who hold at least 51% (fifty-one percent) of the total votes resolve to call a special general meeting, the Board shall be obliged to call such meeting.

15. NOTICE OF MEETINGS

- 15.1. An annual general meeting and a meeting called for the passing of a Special Resolution, shall be called by twenty one (21) days' notice in writing, and a special general meeting, other than one called for the passing of a Special Resolution, shall be called by fourteen (14) days' notice in writing.
- 15.2. Any notice in respect of an annual general meeting or a special general meeting shall, in each case, 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 (and in addition to any other requirements contained in this Constitution) 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.
- 15.3. Notices of meetings shall be provided to all Members and the Auditors.
- 15.4. 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:
 - 15.4.1. in the case of a meeting called as the annual general meeting, by all the Members entitled to attend and vote thereat (as well as the Developer for the duration of the Development Period); and
 - 15.4.2. in the case of a special general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy five percent) of the total number of votes (as provided for in clause 20.1 below) of all Members (and by the Developer for the duration of the Development Period).
- 15.5. 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 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.
- 15.6. A notice 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, subject to the provisions of clause 15.7 below, at the address of the Residential Erf owned by him. Alternatively notice can be given by email or fax as long as a return email or fax acknowledging receipt has been recorded.

- 15.7. No Member shall be entitled to have a notice 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.
- 15.8. Any notice given 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.
- 15.9. Where a notice is to be given to a Member, which comprises more than one person, then any notice provided to the person mentioned first in the register of members shall be validly delivered.
- 15.10. In the event of the death, legal disability, or insolvency (which shall include the liquidation of placing under judicial management of a company or other body corporate) of a Member, the Association shall be entitled to give any notice required by this Constitution in any manner in which the same may have been given if the death, legal disability, or insolvency had not occurred. Notwithstanding the foregoing, as soon as proof of the appointment of any representative of such Member has been given to the Association, such notices shall thereafter be given by the Association to any such representative addressed to such person by name and at the address provided, and failing the provision of such address, at the address of the Residential Erf of the Member concerned.

16. **QUORUM**

- 16.1. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 16.2. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent one-half of the total votes of all Members of the Association entitled to vote, for the time being, and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.
- 16.3. If within $\frac{1}{2}$ (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 within half an hour

from the time appointed for holding the meeting, the Members present shall be a quorum.

17. **AGENDA AT MEETINGS**

In addition to any other matters required by this Constitution, to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 17.1. the confirmation of the minutes of the preceding annual general meeting and of any extraordinary general meetings held subsequently;
- 17.2. the consideration of the Chairman's report to the Trustee's Committee;
- 17.3. the election of the Board, the Auditors, and any other office bearers;
- 17.4. the consideration of any matters raised at the meeting, including any resolution proposed for adoption by the meeting and the voting upon any such resolution;
- 17.5. the consideration of the balance sheet and income statement of the Association for the last financial year of the Association preceding the date of such meeting;
- 17.6. the consideration and approval of the report of the Auditors;
- 17.7. the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the annual general meeting;
- 17.8. the consideration and approval of the total levy, for the calendar year during which such annual general meeting takes place, the total levy being the sum of all the levies to be collected from Members; and
- 17.9. any other matters as may be required to be dealt with by the Members or the Trustees.

18. **PROCEDURE AT GENERAL MEETINGS**

- 18.1. The Chairman shall preside as such at all general meetings, provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, 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.
- 18.2. 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 10 (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 adjourned meeting.

18.3. Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

19. **PROXIES**

19.1. A Member may be represented at a general meeting by a proxy, who must be a Member or spouse of a Member, or a trustee or director of a trust or body corporate which is a Member. The proxy shall be entitled to vote at a general meeting on behalf of that Member.

19.2. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, provided that where a Member is more than 1 (one) person, any 1 (one) of those persons may sign the instrument appointing a proxy on such Member's behalf, and where a Member is a juristic person, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where the Member is an association of persons, by the secretary thereof.

19.3. The said proxy shall be deposited to the Association Secretary at least 24 (twenty four) hours prior to the time appointed for the commencement of the meeting.

19.4. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months calculated from the date of its execution.

19.5. The instrument appointing a proxy shall be in the form of proxy provided in Annexure "C" or as near thereto as circumstances permit:

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

20. **VOTING**

20.1. At every general meeting, the following provisions shall apply in regard to voting:

20.1.1. the Developer shall, during the Development Period, have 1 (one) vote for each Residential Erf, not as yet transferred by the Developer to a purchaser

or any other party. A representative of the Developer shall in person or by proxy be entitled to pass such votes; and

- 20.1.2. every Member in person or by proxy and entitled to vote shall have 1 (one) votes in respect of each Residential Erf registered in his name, provided that if a Residential Erf is registered in more than one person's name, then they shall jointly exercise such votes; and
- 20.1.3. a Member who is in default with the payment of any levy or other amount which is owing by the Member to the Association shall not be entitled to attend a general meeting nor to exercise a vote thereat.
- 20.2. 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.
- 20.3. Where a Member is a juristic person, such Member shall be represented by such representative as the Member may determine provided that the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member;
- 20.4. Where a Member comprises more than one person, such Member shall be represented by one of those persons as the Member may determine provided that:
 - 20.4.1. the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member;
 - 20.4.2. if such persons cannot so decide unanimously, then the person whose name stands first in the register of members shall be entitled to cast the vote; and
 - 20.4.3. the vote(s) cast to the satisfaction of the Chairman shall be final and binding upon all persons constituting the relevant Member, irrespective of any error or absence of authority.
- 20.5. At any general meeting, unless a poll is requested, a resolution put to the vote of the meeting shall be decided on a show of hands.
- 20.6. Voting on the election of a Chairman of a general meeting (if necessary), or on any question of adjournment, shall be decided on a show of hands by a majority of the

Members present in person or by proxy, subject however to the Developer's rights in clauses 8.2 and 20.10.

- 20.7. 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.
- 20.8. A Special Resolution or the amendment of a Special Resolution, shall be carried where 75% (seventy five percent) of the total number of Members shall vote in favour of such resolution.
- 20.9. 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.
- 20.10. For the duration of the Development Period, the Developer shall have the right to veto any resolution if the impact of such resolution, in the reasonable opinion of the Developer, should such resolution be carried into effect, would negatively affect the image of the Estate, alter the aesthetic nature of the improvements on the Estate or be prejudicial to the ongoing marketing of the Residential Erven and/or to sales of Residential Erven.
- 20.11. An abstention shall not be counted as a vote for or against the resolution in question.
- 20.12. In the case of an equality of votes, the Chairman of the general meeting shall be entitled to a casting vote in addition to its deliberative vote.
- 20.13. 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 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.

21. **OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in this Constitution, the Board shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys,

advocates, property managers, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Board and on such terms as the Board shall decide.

22. **OCCUPATION**

No Member shall be entitled to take occupation or allow any other person to take occupation of any dwelling or part thereof erected upon his Residential Erf until such time as the construction of such dwelling has been fully completed and the architect appointed by the Developer has issued a Certificate of Completion in respect of such dwelling. In the event that a Member should take occupation or allow occupation to be taken of his dwelling or part thereof, without first obtaining a Certificate of Completion from the Developer, then and in such event the Association shall be entitled, without prejudice to any other rights that it may have, to have the Member and/or all persons occupying the dwelling or part thereof, evicted therefrom or to refuse the Member and/or all persons occupying the dwelling or part thereof access to the Estate. Notwithstanding the foregoing, no Member shall be entitled to take occupation or allow any other person to take occupation of any dwelling or part thereof erected upon his Residential Erf until such time as the Council has issued a certificate of completion in terms of the prevailing statutes and regulations.

23. **LEVIES**

- 23.1. Subject to clause 23.11, levies shall be allocated *pro-rata* between the actual number of Residential Erven which exist from time to time upon the Land. The levy shall in each instance, be payable by the owner of that Residential Erf.
- 23.2. The Board shall from time to time, determine the total amount of levies payable by the Members for the purpose of meeting all the expenses which the Association has incurred, or which the Board reasonably anticipates the Association will incur in respect of:
- 23.2.1. facilities and services (including the Services) in connection with the Estate;
 - 23.2.2. the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs; and
 - 23.2.3. any reserves which the Board may deem necessary.
- 23.3. In calculating levies, the Board shall take into account income and other revenues if any, earned by the Association.
- 23.4. A Member shall be liable to pay levies with effect from the date upon which the Member becomes a Registered Owner, pro-rated where applicable.

- 23.5. The Board shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall determine an annual levy payable by the Members equal to or as near as is reasonably practical to such estimated amount. The Board may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year and shall be paid by way of a debit order in favour of the Association or by any other method as determined by the Board from time to time.
- 23.6. The Board, may from time to time, determine the special levies payable by the Members in respect of all such expenses as are mentioned in clause 23.2, and such levies may be made in the sum or by such instalments and at such time or times as the Board shall think fit.
- 23.7. The Board shall not less than thirty (30) days prior to the end of each financial year of the Association give every Member at the address chosen by it a written notice of the monthly contribution payable by that Member to such expenses and reserve fund.
- 23.8. In the event of the Board for any reason whatsoever failing to prepare and timeously give notice of the estimate referred to in clause 23.7 above, every Member shall until served with such estimate, continue to pay the levy previously imposed and shall after such notice pay such levy as may be specified in the notice, in the manner specified above, together with any arrear levies, which may be owing by the Member.
- 23.9. 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 Member of the Association, without prejudice to the Association's right to recover arrear levies. 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 a Residential 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. No Member shall transfer his Residential Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association and furnished the Member with a clearance certificate.
- 23.10. The Board's decision in calculating the levy and imposing any annual escalation thereon shall be final and binding on all Members.
- 23.11. For so long as the Developer is the Registered Owner of the Land or any portion thereof or the remainder thereof, the calculation of any levies which are payable by the Developer shall exclude any provisions for a reserve fund.

- 23.12. No Member shall be entitled to any of the privileges of membership unless and until he shall have paid all levies and any other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 23.13. The Board shall be empowered to impose fines in respect of non compliance with the provisions of this Constitution and/or to charge interest on any arrear levies and to determine the rate of interest from time to time chargeable upon such arrear levies, which shall be in addition to such other rights as the Association may have in law against the Members, provided that such interest shall not exceed the rate laid down in terms of the Usury Act, No 73 of 1968, or the National Credit Act, No 34 of 2005, or any statutory modification or re-enactment thereof, and provided further that nothing contained in this clause shall derogate from any other legal remedies of the Association.
- 23.14. Any amounts paid by a Registered Member in respect of levies shall be apportioned first towards outstanding interest and thereafter towards any levies and amounts due by the Member to the Association.

24. **RATES AND TAXES**

- 24.1. Each Member shall be responsible for and shall pay such rates and taxes and other municipal charges as are levied in respect of the Residential Erf which is owned by that Member.

25. **APPROVAL FOR PROPOSED WORK**

- 25.1. A Member desiring to undertake the construction of or alterations, additions, modifications or renovations to such buildings and/or structures ("the proposed work") on his Residential Erf shall submit a full set of proposed building and landscaping plans (if applicable), which indicate both construction and design details, to the Board, or any person nominated by the Board, for written approval, prior to submission of such plans to the Council.
- 25.2. The Trustees shall only give written approval for the proposed work:
- 25.2.1. after detailed plans of the proposed work as prepared by an architect registered with the South African Council for the Architectural Profession and who has been accredited by the Association, have been submitted to the Association;
- 25.2.2. if the proposed work complies with the documents and requirements set out in clause 5.2 above; and

- 25.2.3. the Member has made payment of all costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee(s) and any scrutiny fees as determined by the Trustees from time to time.
- 25.3. No Member may:
- 25.3.1. change the colour of the exterior walls other than to a colour which is approved in the Architectural Guidelines from time to time.
- 25.3.2. construct or remove any appurtenances upon the exterior walls or surfaces of the dwelling constructed on the Residential Erf, including pergolas, blinds, shutters, awnings or ornaments, save to renew what may have initially been placed there;
- 25.3.3. make any alterations, additions or extensions to any dwelling constructed on the Residential Erf, whether of a temporary or permanent nature; or
- 25.3.4. erect any boundary wall or plant any vegetation which would achieve the same effect as a boundary wall,
- without the prior written consent of the Trustees, which in all instances shall require that the Member complies with the content of the Architectural Guidelines.
- 25.4. After obtaining the written approval of the Trustees for the proposed work, the Member shall submit the building and landscaping plans (if applicable) to the Council for approval, with the approval of the Trustees evidenced by an endorsement of the relevant plans.
- 25.5. After obtaining the approval of the Council for the proposed work, the Member shall comply with all conditions, standards and requirements imposed by the Council and the Association.
- 25.6. The provisions of this clause 25 shall not apply to the Developer provided that the Developer shall comply with the Architectural Guidelines and the conditions imposed by the Council when approving the development of the Land.
- 25.7. The Board shall be entitled to determine a deposit and a fee payable by a Registered Owner so as to provide for the repairs of damage caused by the Registered Owner's builder as well as for the management and control of the building process on his erf, which deposit and fee shall be payable by the Registered Owner concerned in such amount and on such terms and conditions as may be determined by the Board from time to time.

26. **SERVITUDES**

- 26.1. It is recorded that a servitudinal right of way, water pipe-line and electricity supply lines, in favour of the Registered Owner(s) of the Residential Erven will be registered against the title deeds of the Land and the Residential Erven.
- 26.2. The Association will bear responsibility for the cost, maintenance, upkeep and repair of said servitudes, if any and such costs shall be included in the levies payable by Members in terms of clause 23.

27. **SERVICES**

- 27.1. With effect from the date upon which the Association is created in terms of clause 3, the obligation to maintain and repair the Services shall pass from the Developer to the Association.
- 27.2. The Association shall accordingly be responsible for maintenance of the Services on the Estate.

28. **CONTRACTS AND REGULATIONS**

- 28.1. The Board may from time to time:
- 28.1.1. make regulations governing, inter alia:
 - 28.1.1.1. the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on Residential Erven, subject always to the Architectural Guidelines;
 - 28.1.1.2. the conduct of Members generally;
 - 28.1.2. enter into agreement(s) with the local authorities governing the matters set out in clause 28.1 and any other incidental matters;
 - 28.1.3. enter into agreement(s) with the Council and other parties for the provision of the Services; and
 - 28.1.4. impose penalties which it considers appropriate in its sole discretion against Members who are in default of any of their obligations in terms of this Constitution, including the terms of payment of such penalties.
- 28.2. Each Member undertakes to the Association that he shall comply with:

- 28.2.1. the provisions of this Constitution;
- 28.2.2. any regulations made in terms of this Constitution.

29. **TRANSFER OF RESIDENTIAL ERVEN**

- 29.1. No Member shall be entitled to transfer his Residential Erf, unless the Association has granted it prior written consent to such transfer. No such consent shall be granted unless:
 - 29.1.1. such Member is not indebted to the Association in any way in respect of levies or other amounts which the Association may be entitled to claim from him in terms of this Constitution;
 - 29.1.2. the proposed transferee has (in accordance with the provisions of clause 12.8) agreed in writing to become a Member of the Association, and to be subject to this terms and conditions contained in this Constitution;
- 29.2. The Association shall be entitled to levy a charge, to be determined by the Board from time to time, for the granting of the written consent referred to in clause 29.1 above.

30. **BREACH**

- 30.1. Should any Member:
 - 30.1.1. fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation made in terms of this Constitution and remain in default for more than seven (7) days after being notified in writing to do so by the Trustees; or
 - 30.1.2. commit any other breach of the provisions of this Constitution or any regulation made in terms of the Constitution and fail to commence remedying that breach within a period of seven (7) days after the receipt of written notice to that effect by the Board and complete the remedying of such breach within a reasonable time; or
 - 30.1.3. fail to maintain his Residential Erf so that it is unsightly, or in a bad state of repair or so that it detracts from the amenities of the surrounding area of the Estate in general,

then and in either such event, the Board shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Board or the Association or any other Member may have in law, including the right to claim damages:

- 30.1.4. to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made in terms of the Constitution, as the case may be; or
- 30.1.5. in the case of clause 30.1.2, to remedy such breach or rectify such condition and immediately recover the total costs incurred by the Trustees or the Association in so doing from such Member.
- 30.2. Should the Board institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation, then without prejudice to any other rights which the Board or the Association or any other Member may have in law, the Board shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Association, including attorney/client charges reckoned on the non-litigious tariff recommended by the Cape Law Society (or its successors), tracing fees and collection commission.
- 30.3. Without prejudice to all or any of the rights granted to the Board under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest on the amount outstanding from time to time, in accordance with the provisions of clause 23.13.

31. **ACCOUNTS**

- 31.1. The Association in general meeting or the Board, 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.
- 31.2. At each annual general meeting the Board shall lay before the Association an audited income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Board and the Auditors, and there shall be attached to the notice sent to Members convening each annual general meeting, as set forth in clause 15.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law or resolution of the Members to accompany the same.

32. AUDIT

Once at least 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.

33. INDEMNITY

- 33.1. All Trustees and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide and reasonably incurred by them in their respective said capacities and in the case of a Trustee, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 33.2. 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 Board 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 or Vice-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.
- 33.3. 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 Trustees 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 Board for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement 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.

34. EXCLUSION OF LIABILITY

- 34.1. Any Member or other person using any of the services, sporting or recreational facilities of the Association does so entirely at his own risk, and no Member or other person shall have any claim against the Association, the Developer or any of their agents, employees or contractors, of whatsoever nature arising from use.
- 34.2. The Association, the Developer or any of their agents, employees or contractors shall not be liable for loss (including consequential loss), injury loss of life or damage to person or property of any nature whatsoever which any Member, the lessee or occupier of any Residential Erf, any member of his/their family(ies), or his /their employee, agent, contractor, servant, invitee, guest or any other person whomsoever may sustain:
- 34.2.1. by reason of any defect in or state of disrepair of any communal building, communal facility, sporting or recreational facility or individual Residential Erf in the Estate, or any part thereof, or any fittings, fixtures, equipment or appurtenances of whatsoever nature therein, notwithstanding that such defect or state of disrepair may be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association, the Developer, or any of their agents, employees or contractors; or
- 34.2.2. directly or indirectly, in or about the Estate (including, without limiting the generality of the foregoing, the Residential Erven), whether such injury, loss or damage be due to theft, fauna of any kind, the action of rain, wind, hail, lightning, explosion, spontaneous combustion, gas, fire, water, leakage, seepage, cessation or interruption of or defect in any electric, gas, fuel, water, sanitary, telephone, air conditioning or other services to the Estate (irrespective of the cause thereof), or be due to or occasioned wholly or in part by any act or omission (whether negligent or otherwise) of the Association.
- 34.3. Every Member individually hereby indemnifies and holds harmless the Association and the Developer against all claims of whatsoever nature which may be brought against the Association or the Developer by that Member, members of his family or any person within the Estate at the invitation of or under the control of the Member concerned.

35. ARBITRATION

- 35.1. Subject to clause 35.7, any dispute, question or difference arising at any time between a Member or between Members and Trustees out of or in regard to:

- 35.1.1. any matters arising out of this Constitution; or
- 35.1.2. the rights and duties of any of the parties mentioned in this Constitution; or
- 35.1.3. the interpretation of this Constitution;

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.

35.2. Arbitration shall be held in Port Elizabeth 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 twenty one (21) Business Days after it has been demanded.

35.3. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

- 35.3.1. primarily an accounting matter - an independent accountant;
- 35.3.2. primarily a legal matter - a practising counsel or attorney of not less than ten (10) years' standing;
- 35.3.3. any other matter - an independent and suitably qualified person appointed by the Auditors;

as may be agreed upon between the parties to the dispute.

35.4. If agreement cannot be reached on whether the question in dispute falls under clauses 35.3.1, 35.3.2, 35.3.3 or upon a particular arbitrator in terms of clause 35.3.3, within three (3) Business Days after the arbitration has been demanded, then:

- 35.4.1. the Chairman for the time being of the Eastern Cape Society of Advocates (Port Elizabeth Branch) shall determine whether the question in dispute falls under sub-clauses 35.3.1, 35.3.2, 35.3.3; or
- 35.4.2. the Chairman for the time being of the Eastern Cape Society of Advocates (Port Elizabeth Branch) shall nominate the arbitrator in terms of clause 35.4 within seven (7) Business Days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the twenty one (21) Business Days referred to in clause 35.2.

35.5. The arbitrator shall make his award within seven (7) 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.

- 35.6. The decision of the arbitrator shall be final and binding and may be made an Order of the Eastern Cape High Court, Port Elizabeth (or its successors) upon the application of any party to the arbitration.
- 35.7. Notwithstanding anything to the contrary contained in clauses 35.1 to 35.6 inclusive, 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 the provisions of this Constitution, and for the recovery of any amounts which are claimed by the Association from a Member.

36. **AMENDMENTS TO CONSTITUTION**

- 36.1. This Constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new clauses shall be made, save by a Special Resolution adopted at an annual general meeting or general meeting of the Members.
- 36.2. During the Development Period, neither the Constitution nor the Conduct Rules may be amended in any respect at all, unless such amendment is made with the Developer's written consent.

HOPEWELL CONSERVATION ESTATE

A Statutory body established in terms of Section 29(1) as read with Section 42 of the Land Use Planning Ordinance 15 of 1985 ("the Association")

PROXY

I, _____ of _____ being a member of the Association hereby appoint _____ of _____ or failing him, _____ of _____ or failing him, _____ of _____ as my proxy to vote for me on my behalf at the annual general meeting (as the case may be) of the Association to be held on the ____ day of _____ and at any adjournment thereof as follows:

	In Favour or	Against	Abstain
Resolution No.			
Resolution No.			
Resolution No.			

(indicate instruction to proxy by way of a cross in space provided above)

Unless otherwise instructed, my proxy will vote or abstain as he thinks fit.

Signed this _____ day of _____ 20__

(NOTE: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead. Such proxy need not be a member of the Association).

SIGNATURE

