



FIG TREE
Lifestyle Estate

CONSTITUTION

HOMEOWNERS' ASSOCIATION

March 2022 Revision 1

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1. ESTABLISHMENT

- 1.1 The FIG TREE Home Owners Association is constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance (Ord 15 of 1985) (as amended) in accordance with the conditions imposed by the Kouga Municipality when approving, in terms of sections 25(1) and 42 of the said ordinance, the subdivision of **ERF 875 JEFFREYS BAY**, and shall come into existence simultaneously with the registration in the deeds office of the first transfer of an Erf and / or unit from the Developer to an Owner.
- 1.2 The Association is further bound by the conditions imposed by DEDEAT (Department of economic development, environmental affairs and tourism) in the Environmental Authorisation dated 24 October 2016.
- 1.3 It is a condition that each owner of an erf and/or unit in the development known as **FIGTREE DEVELOPMENT** and all successors in title shall be members of the home owners association as more fully described in clause 6 hereof.
- 1.4 The Association shall have legal personality and be capable of suing and being sued in its own name and will not operate for profit but for the benefit of the Members. No member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees.

2. INTERPRETATION

- 2.1 In this Constitution, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:
 - 2.1.1 "**Architectural Review Panel**" means a subcommittee of the Board of Trustees constituted for the purposes of monitoring all design, landscaping and construction in relation to the Development;
 - 2.1.2 "**Association**" means the **FIGTREE DEVELOPMENT** Home Owners Association;
 - 2.1.3 "**Auditors**" means the auditors or accountants of the Association;
 - 2.1.4 "**Annex**" means an annex to this Constitution;
 - 2.1.5 "**Board of Trustees**" means all the trustees elected to the office of Trustee by either the Developer or the Members;
 - 2.1.6 "**Business Day**" means a weekday other than Saturdays, Sundays and public holidays;
 - 2.1.7 "**Chairperson**" means the chairperson of the Board of Trustees;
 - 2.1.8 "**Common Areas**" means the following:
 - 2.1.8.1 all the private roads within the Development;
 - 2.1.8.2 all the private open spaces within the Development;
 - 2.1.8.3 any other area/s which the Board of Trustees may designate as common areas from time to time;

- 2.1.9 **"Consolidated Erf"** means 2 (two) or more Erven which are consolidated into 1 (one) Erf;
- 2.1.10 **"Council"** means the Kouga Municipality established in terms of Notice No 6770 of 2000, promulgated by virtue of Section 12(1) of the Local Government Structures Act No 117 of 1998, as amended, with its place of business at the Municipal Offices, Da Gama Road, Jeffreys Bay or its successor/s in title;
- 2.1.11 **"Constitution"** means this document, the written constitution of the Association and all rules, regulations and by-laws of the Association from time to time enforced;
- 2.1.12 **"Contractors Agreement"** means the agreement to be entered into between the Association and any contractor appointed to construct an improvement on an Erf;
- 2.1.13 **"Design Guidelines"** means the design guidelines to control all aspects of design and landscaping of the Development as amended from time to time in terms of this Constitution or as required by the Council or the Developer from time to time;
- 2.1.14 **"Developer"** means Almost Home Construction, a trust duly created under the laws of the Republic of South Africa;
- 2.1.15 **"Developer Trustee"** means a Trustee appointed by the Developer;
- 2.1.16 **"Development"** means the Development known as FIGTREE DEVELOPMENT indicated on the plan of the Development;
- 2.1.17 **"Development Period"** means the period from the incorporation of the Association until all Single Residential Erven in the Development have been sold, transferred and/or ceded (as the case may be) by the Developer, including all such erven, units and rights as may be incorporated in the Development;
- 2.1.18 **"Erven"** mean the erven in the development, and **"Erf"** means any one of them;
- 2.1.19 **"Estate Rules"** mean the rules imposed by the Developer or the Trustees from time to time relating to the management of the Development;
- 2.1.20 **"FIGTREE LIFESTYLE ESTATE DEVELOPMENT"** means the residential development of FIGTREE DEVELOPMENT by the Developer of certain immovable property known as Erf 875 Jeffreys Bay, in the Kouga Municipality, Division Humansdorp, Eastern Cape province;
- 2.1.21 **"Managing Agent"** means any person or body appointed by the Association as an independent contractor to undertake any of the functions of the Association as more fully defined in clause 16 hereof;
- 2.1.22 **"Member"** means every registered Owner of an erf and/or unit and includes the Developer in its capacity as such during the Development Period. (If a Member consists of more than one person such persons shall be jointly and severally liable in solidum for all obligations in terms of the Consitution);
- 2.1.23 **"Member Trustee"** means a Trustee appointed by the Members;

- 2.1.24 **"Membership Certificate"** means a certificate issued by the Board of Trustees which acts as prima facie proof that the possessor of such certificate is a Member of the Association;
- 2.1.25 **"Office"** means the registered office of the Association;
- 2.1.26 **"Prime Rate"** means a rate of interest per annum which is equal to the published minimum lending rate of interest per annum charged by First National Bank of South Africa, compounded monthly in arrears on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time. (In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose certificate shall be final and binding on the parties);
- 2.1.27 **"Single Residential Erf"** means an Erf in the Development on which only one dwelling is lawfully permitted;
- 2.1.28 **"Special Resolution"** means a resolution passed at a special general meeting in accordance with the provisions of clause 31 below;
- 2.1.29 **"Subdivded Erf"** means Erf 875 Jeffreys Bay divided as provided for in the Subdivision SG Diagram into several erven;
- 2.1.30 **"Trustee"** means a member of the Board of Trustees elected to manage the Development, exercise powers and perform duties as provided for by this Constitution;
- 2.1.31 **"Vice-Chairperson"** means the vice-chairperson of the Board of Trustees;
- 2.2 In this Constitution:
- 2.2.1 clause headings are for convenience and shall be disregarded in construing this Constitution;
- 2.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 2.2.3 references to a **"person"** include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.2.4 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 2.2.5 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;

- 2.2.6 where consent or approval of the Association is required for any act by a Member, such consent or approval shall be in writing and duly signed by the Association, and shall be given prior to the Member taking action;
- 2.2.7 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (ie the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.

3. MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of the interests of the Members from time to time and the maintenance and control of the Common Areas.

4. MAIN OBJECT

The main object of the Association is:

- 4.1 the control over:
- 4.1.1 all buildings and/or structures erected or to be erected in the Development;
 - 4.1.2 the maintenance of all buildings and/or structures within the common area of the Development;
 - 4.1.3 the maintenance of all buildings, roads, services, common landscaping, irrigation and amenities on the Common Areas;
 - 4.1.4 the compliance with the Design Guidelines;
 - 4.1.5 all Common Areas;
- 4.2 the promotion, advancement and protection of the communal and group interests of the Members generally, including safety and security;
- 4.3 to take title of the Common Areas simultaneously with the first separate registration of an Erf;
- 4.4 to enter into services agreements with the local authority or any other authority or supplier of services in regard to the supply of services in the Development, including refuse removal and security services.
- 4.5 to control the transfer of erven and/or units in the development and compliance of the conditions imposed by the Developer in the Agreement of Sale between the Developer and the first owner of the erf and/or unit.

5. FINANCIAL YEAR END

The financial year end of the Association shall be determined after the first General Meeting by the Property Owner's Association or such other date as the Board of Trustees may decide from time to time.

6. MEMBERSHIP OF THE ASSOCIATION

6.1 Membership of the Association shall be compulsory for every registered owner of an Erf and/or unit.

6.2 Such membership shall commence simultaneously with registration of such an Erf and/or unit.

6.3 Membership of the Association shall be limited to:

6.3.1 the registered owners of an Erf and/or unit provided that:

6.3.1.1 a person who is entitled to obtain a certificate of registered title to any Erf and/or unit shall be deemed to be the registered owner thereof; and

6.3.1.2 where any such owner is more than one person, all the registered owners of a Single Residential Site shall be deemed jointly and severally to be one Member and nominate one owner to represent them and vote at meetings of the Association; and

6.3.2 the Developer in its capacity as such during the Development period.

6.4 When a Member ceases to be the registered owner of an Erf and/or unit, he shall *ipso facto* cease to be a Member.

6.5 A Member shall not be entitled to:

6.5.1 sell or transfer an Erf and/or unit, unless it is a condition of the sale and transfer that:

6.5.1.1 such Member makes payment of 0.5% of the gross sales price of such sale or transfer (excluding value-added tax, if applicable, and including agents commission) to the FIGTREE Members Trust (Home owners association)

6.5.1.2 the transferee becomes a Member;

6.5.1.3 the registration of transfer (or cession, as the case may be) of such Erf and / or unit into the name of that transferee shall *ipso facto* constitute the transferee as a Member;

6.5.1.4 such Member first obtains the written consent of the Association which consent shall be given provided that the purchaser, transferee or cessionary (as the case may be) of such Erf and/or unit agrees in writing to abide by the provisions of the Constitution including all rules made by the Trustees and/or the Developer in terms of this Constitution, and provided further that such Member has paid all levies and any other amounts owing by him to the Association and/or the FIGTREE Members Trust (Home owners association) as at the date of transfer or cession (as

the case may be) of such Erf and/or unit, and that such Member has complied with all his obligations in terms of the Constitution;

6.5.2 without the prior written approval of the Trustees and without signature of the Contractors Agreement having regard to the Design Guidelines:

6.5.2.1 erect any new buildings and/or structures of any nature whatsoever on any Erf in the Development;

6.5.2.2 make any changes or alterations to existing buildings and/or structures on any Erf and/or unit in the Development, including changes to the external colour scheme.

6.6 The approval of the Trustees as contemplated in 6.5.2 shall only be given:

6.6.1 after detailed plans of the proposed work have been submitted to the Architectural Review Panel or any other competent person(s) as nominated by such panel from time to time (who may be an architect or architects registered with the South African Council of Architects or the Institute of South African Architects); and

6.6.2 the Architectural Review Panel or its nominee/s are satisfied that the proposed work is in accordance with the Design Guidelines for the purposes of which the Trustees, Architectural Review Panel or such other nominee/s shall be the sole arbiter and their decision shall be final and binding on the Member, subject to the right of such Member to refer their decision to arbitration in terms of clause 36 below; and

6.6.3 the Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee/s;

6.6.4 the Member has paid to the Trustees a deposit in such amount as the Trustees may from time to time determine in their sole discretion, as security for any damage to any of the Common Areas which amount shall be held in trust by the Trustees subject to the provisions of clause 9 below; and provided the aforesaid shall not be interpreted as detracting from the sole and final responsibility of the Council to approve or reject building plans.

6.7 A Member shall not without the prior written approval of the Trustees be entitled to:

6.7.1 consolidate 2 (two) or more Erven into 1 (one) Erf; a Member shall remain liable for the payment of levies in respect of each of the Erven which form part of the Consolidated Erf;

6.7.2 subdivide an Erf into 2 (two) or more portions; a Member shall be liable for the payment of levies in respect of each new Erf which shall come into existence as a result of the subdivision of the Erf.

6.8 The registered owner of a Single Residential Erf and/or unit may not resign as a Member and shall remain a Member for as long as such owner is the registered owner of such Single Residential Erf and/or unit.

- 6.9 The Board of Trustees may, by regulation, provide for the issue of a Membership Certificate, which certificate shall be in such form as may be prescribed by the Board of Trustees.
- 6.10 The rights and obligations of a Member shall not be transferable and every Member shall:
- 6.10.1 to the best of such Member's ability, further the objects and interests of the Association; and
- 6.10.2 observe the constitution, rules and regulations and by-laws and regulations made by the Association or the Board of Trustees; provided that nothing contained in this Constitution shall prevent a Member from ceding such Member's rights in terms of this Constitution as security to the mortgagee of the Single Residential Erf and/or unit of such Member, as the case may be.
- 6.11 The Developer or its nominee/s shall be entitled on behalf of the Association to sign all such documents as may be necessary in order to enable the Developer to give transfer of Erven and/or units sold by the Developer to the purchaser thereof.
- 6.12 No Member ceasing to be a Member for any reason (nor any such Member's executor, curators, trustees or liquidators) shall have any claim upon or interest in the funds or other property of the Association, but this 6.12 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 by him to the Association and/or FIGTREE DEVELOPMENT Members Trust (Home owners association) at the time of his so ceasing to be a Member.

7. LEVIES PAYABLE BY THE MEMBERS

- 7.1 The Board of Trustees shall from time to time, impose levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Board of Trustees reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the Common Areas including, but not limited to, landscaping, all township services, sewage treatment, the security systems to be installed on the Common Areas and/or for payment of all rates, refuse collection and other charges payable by the Association in respect of the Common Areas, and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Common Areas and the Association's affairs. In calculating levies, the Board of Trustees shall take into account, income, if any, earned by the Association.
- 7.2 The Board of Trustees 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 impose a levy upon the Members equal as nearly as is reasonably practical to such estimated amount. The Board of Trustees 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 made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.

- 7.3 The Board of Trustees may from time to time impose special levies upon the Members in respect of all such expenses as are mentioned in clause 7 (which are not included in any estimate made in terms of clause 7.2), and such levies may be made in the sum or by such instalments and at such time or times as the Board of Trustees shall think fit.
- 7.4 Any amount due by a Member by way of a levy shall be a debt due by such Member to the Association. The obligation of a Member to pay a levy shall cease upon such Member ceasing to be a Member, 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 an Erf and / or unit shall be entitled to benefit from the levy paid in advance by the previous Member but liable as from the first day of the month following the date upon which he becomes a Member pursuant to the transfer thereof, to pay the levy attributable thereto.
- 7.5 A Member shall make payment of the monthly levies by virtue of a debit order drawn on the Member's banker.
- 7.6 The Developer shall not be liable for the payment of levies in respect of any unsold Erven and / or units.
- 7.7 The Board of Trustees shall at all times ensure that the maintenance and control of the Common Areas and the expenditure incurred in respect thereof is carried out in a manner which is fair and equitable to all the Members.
- 7.8 No Member shall be entitled to any of the privileges of membership including voting at any meeting unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

8. DESIGN GUIDELINES

- 8.1 The Trustees may in liaison and with the consent of the Council amend, amplify, clarify or add to the provisions of the Design Guidelines.
- 8.2 In the event of the provisions of the Design Guidelines being amended or added to and such amendment or addition will materially affect any further Development of any of the Erven and / or units, the Trustees shall by written

notice inform all Members of the amendment or addition to the Design Guidelines.

- 8.3 All buildings and other structures erected on any Erf shall comply with the provisions of the Design Guidelines.
- 8.4 Any Member who fails to complete the dwelling, such that the dwelling is ready for occupation, as per the approved plans on such Member's Erf, within 2 (TWO) years after the date of registration of transfer of such Erf into the name of such Member, such Member shall pay in respect of each month of delay of completion of the dwelling, a monthly penalty levy to the Association in an amount equal to 1% of the Purchase price of the property for the FIRST year and 1.5% of the Purchase price for the SECOND year and yearly thereafter until date of completion of the residential house.
- 8.5 The penalty levy shall be paid in addition to the levy payable by the Member in terms of clause 7, and in the event of a dispute arising as to whether a dwelling is completed for purposes of the provisions of this clause, the Chairperson shall determine such dispute and his decision shall be final and binding.
- 8.6 The Trustees shall be entitled to:
- 8.6.1 perform such acts as are necessary to accomplish the purposes expressed or implied herein, which acts shall include, *inter alia*, the examination and endorsement of the relevant building plans as are necessary for any construction, renovation and/or alterations within the scheme;
- 8.6.2 appoint such advisors as are necessary to scrutinize the relevant plans referred to herein;
- 8.6.3 impose a scrutiny fee on Members for the services as mentioned herein.
- 8.7 The provisions of this clause shall not be applicable in relation to any of the works to be undertaken by the Developer prior to the completion of the scheme.

9. DEPOSIT FOR DAMAGE

- 9.1 Each Member shall, when submitting to the Architectural Review Panel for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements in the Development in terms of clause 6.6.1 above, pay to the Trustees a deposit (the "**Building Deposit**") in an amount to be determined from time to time by the Trustees which amount shall be retained by the Trustees in trust until completion by the Member and/or its contractors of such work, the interest on which It accrue to the Association.
- 9.2 Upon completion of all such building and other activities, the Trustees shall if they are satisfied that no damage has been effected by the Member or any of its

contractors to the Common Areas and/or landscaped areas within the Development and that the work has been constructed in accordance with duly approved plans, release the Building Deposit to the Member, excluding any interest thereon which will accrue to the Association, less any fines or penalties payable in terms of the Contractors Agreement.

- 9.3 In the event of any landscaped area and/or the Common Areas having suffered damage due to such work, the Member shall within 15 (fifteen) days of having been requested to do so in writing by the Trustees, rectify the damage to the satisfaction of the Trustees, failing which the Trustees shall be entitled to appoint an independent contractor or contractors to repair the damage and the Building Deposit shall be utilised to pay all costs of such repair. If the Building Deposit is not sufficient to cover the cost of such repairs, the Trustees shall be entitled to recover the shortfall from the Member.

10. DEALING WITH THE COMMON AREAS

Neither the whole nor any portion of the Common Areas shall:

- 10.1 without the specific prior written consent of the Council and the sanction of a Special Resolution (and no Member shall be entitled to unreasonably vote against any such Special Resolution which may be proposed), be:
- 10.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
 - 10.1.2 mortgaged; or
 - 10.1.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, (save those enjoyed by the Members in terms hereof or granted by the Developer during development and any servitudes in favour of the Council as required in terms of any condition of subdivision); or
- 10.2 be built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a Special Resolution, save and except for the construction of the gatehouse, any storeroom/s, and/or any construction relating to an electrical substation or transformer, the construction of the private road and the landscaping of the private open spaces.

11. RESPONSIBILITY FOR THE COMMON AREAS

- 11.1 The Developer shall, free of consideration and at the cost of the Developer, transfer to the Association the Common Areas and the Association shall take title to the Common Areas simultaneously with the registration of the transfer of the first Erf and / or unit.
- 11.2 The Association acknowledges that the Association shall be solely responsible, to the exclusion of the Council, for the care, repair, maintenance, cleaning, upkeep, improvement and property control of the Common Areas, all services

therein and any structure or thing erected on or contained therein, including the private road and parking thereon.

- 11.3 The Association further acknowledges that the Council and/or DEDEAT (Department of Economic Development Environmental Affairs and Tourism) is not required to implement or authorise / approve any activities to safeguard the development in the event of any damage resulting from erosion or accretion of sand.

12. VERGES AND CULVERT DRIVEWAY

The registered owner/s of each Erf shall at such owner's cost construct and maintain at all times:

- 12.1 the culvert driveway between his or her Erf and the road;
- 12.2 the landscaping, grass, plants and flowers on the verge between such owner's Erf and the road and/or any other adjacent Common Area/s; and
- 12.3 the culvert driveway crossing and the verge in a clean, neat and tidy condition.

13. ENCROACHMENTS

- 13.1 It is recorded that the Erven which are situated on the outer perimeter of the Development shall be subject to the following encroachments in favour of the Association:

- 13.1.1 the erection of outer perimeter walls/fences within the boundary of the Erven; and/or
- 13.1.2 the installation of security communication ducts and/or other on the outer perimeter walls/fences and the installation of manholes.

- 13.2 The Association shall have the right of access to the Erven referred to in clause 13.1 for the purpose of the installation, upkeep, repair and maintenance of the encroachments referred to in clauses 13.1.1 and 13.1.2 above.

14. ESTATE RULES

- 14.1 The Trustees and/or the Developer, shall be obliged to, from time to time make rules relating to the management of the Development, all of which rules shall be binding on the Members.
- 14.2 The Trustees and/or the Developer are empowered to amend, amplify, substitute or repeal any such rule (*inter alia* the rules relating to the Management, Design Guidelines and the Contractors Agreement) with the approval of not less than three fourths of the Trustees once the Development exceeds fifty percent occupancy of the proposed units or flats. In the absence of such approval, any Trustee shall be entitled to call a general meeting where the proposed change to such rules shall be voted upon in terms of clause 30 below.

15. SIGNAGE

No Member other than the Developer and/or Association shall be entitled at any time(s) to erect any signage, flagpole, message and/or other form of notices or advertising within the Development (whether on such Member's Erf or at any other place)

15.1 during the Development period, without the prior written consent of the Developer which may withhold its consent for any reason; and thereafter

15.2 without the prior written consent of the Association.

16. MANAGING AGENT

16.1 The Trustees shall appoint a Managing Agent from time to time to control, manage and administer the common property and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies and to appoint a supervisor.

16.2 The Developer shall be entitled to appoint the Managing Agent for the Development period or for a period of 4 (Four) years after the establishment of the Association, whichever period is the longest, which appointment shall be valid and binding on the Association.

17. CONTRACTS, REGULATIONS AND ACCESS

17.1 The Board of Trustees may from time to time:

17.1.1 make regulations governing inter alia:

17.1.1.1 the Members' rights of use, occupation and enjoyment of the Common Areas;

17.1.1.2 the external appearance of and the maintenance of the Common Areas and the buildings or other improvements erected thereon;

17.1.1.3 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation of such buildings and/or structures in the Development,

17.1.2 enter into agreement(s) with the local authorities governing the matters set out in clause 17.1.1 and any other incidental matters.

17.2 Each Member undertakes to the Association that such Member will comply with:

17.2.1 the provisions of this Constitution;

17.2.2 any regulations made in terms of clause 17.1.1 above;

17.2.3 any agreement(s) referred to in clause 17.1.2 insofar as those agreements may directly or indirectly impose obligations on him.

17.3 All officials, employees and contractors employed by the Association, the Council and/or any public service company shall, at all times, have reasonable access to the Erven and Common Areas for purposes of inspecting and/or maintaining all services supplying and/or traversing any part thereof.

18. BREACH

18.1 Should any Member:

18.1.1 fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation made thereunder and remain in default for more than 7 (seven) days after being notified in writing to do so by the Trustees; and/or

18.1.2 commit any other breach of any of the provisions of this Constitution and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect from the Trustees and complete the remedying of such breach within a reasonable time;

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

18.1.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of that Member's obligations in terms of this Constitution, as the case may be;

18.1.4 to suspend all or any services to the Erf and / or unit owned by that Member; and/or

18.1.5 in the case of clause 18.1.2 above, to remedy such breach and immediately recover the total cost incurred by the Trustees or the Association in so doing from such Member.

18.2 Should the Trustees institute any legal proceedings against any Member pursuant to a breach by such Member of this Constitution, then without prejudice to any other rights which the Trustees or the Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Association, including attorney/client charges, tracing fees and collection commission.

18.3 Without prejudice to all or any of the rights of the Trustees or the Association granted under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon at the publicly quoted Prime Overdraft Rate plus 4%, calculated from the due date for payment until the actual date of payment of such amount.

19. THE BOARD OF TRUSTEES

19.1 The Board of Trustees shall consist of not less than 3 (three) and not more than 7 (seven) Trustees.

19.2 Every Trustee must be a Member or an authorised representative of the Member where the Member is not a natural person.

- 19.3 The Trustees shall for the Development Period be divided into two classes, namely Developer Trustees who need not be Members' and Member Trustees. Upon expiry of the Development Period there shall only be Member Trustees.
- 19.4 During the Development Period, the majority of the Trustees shall be appointed by the Developer and the remainder of the Trustees shall be appointed by the Members provided that after the Development Period, all Trustees shall be appointed by the Members.
- 19.5 Until the first Trustees are appointed, the Developer shall be entitled to carry out all the functions and duties of the Trustees in terms of this Constitution.

20. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 20.1 Without derogating from clause 19.3 above, each Trustee, except for the Developer Trustees who shall not be required to rotate on an annual basis, 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, subject to such Trustee being duly eligible for re-election to the Board of Trustees at such meeting.
- 20.2 A Trustee shall be deemed to have vacated his office as such upon:
- 20.2.1 his estate being sequestrated, whether provisionally or finally, or surrendering his estate;
- 20.2.2 his making any arrangement or compromise with his creditors;
- 20.2.3 his conviction for any offence involving dishonesty;
- 20.2.4 his becoming of unsound mind;
- 20.2.5 his resigning from such office by means of a written notice of resignation delivered to the Chairperson or Vice-Chairperson;
- 20.2.6 his death;
- 20.2.7 his being removed from office by a Special Resolution of the Members, provided that anything done in the capacity of a Trustee in good faith shall be valid, provided that no act performed by a Trustee or former Trustee in his capacity as such shall be valid if such act was performed after the recordal of the fact that he is no longer a Trustee in the minute book of the Board of Trustees.
- 20.3 Upon any vacancy occurring on the Board of Trustees prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board of Trustees. Whilst Developer Trustees are in office the remaining Developer Trustees shall nominate a person to fill any such vacancy in their number.
- 20.4 The Developer may at any time and from time to time remove and replace any Developer Trustee on written notice to the remaining Trustees.

21. OFFICE OF TRUSTEES

- 21.1 The Trustees shall appoint from amongst themselves, a Chairperson and Vice-Chairperson.
- 21.2 The first Chairperson and the first Vice-Chairperson 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.
- 21.3 Within 14 (fourteen) days of the holding of an annual general meeting, the Board of Trustees shall meet and shall elect from its own number the Chairperson and Vice-Chairperson, who shall hold their respective offices until the annual general meeting held next after their said appointment, provided that the office of the Chairperson or Vice-Chairperson shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one 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 of Trustees shall meet to appoint one of their number as a replacement in such office.
- 21.4 Save as otherwise provided in this Constitution, the Chairperson shall preside at all meetings of the Board of Trustees, and all general meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Board of Trustees or Members, and shall be entitled 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.
- 21.5 The Vice-Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson, and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the Board of Trustees.
- 21.6 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 Chairperson, Vice-Chairperson, 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.

22. FUNCTIONS AND POWERS OF THE BOARD OF TRUSTEES

- 22.1 Subject to the express provisions of this Constitution, the Board of 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 this Constitution, may exercise all such

powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this Constitution required to be exercised or done by the Association in general meeting, subject 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 Board of Trustees which would have been valid if such regulation had not been made.

- 22.2 The Board of Trustees shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 22.3 The Board of Trustees shall have the right to co-opt onto the Board of Trustees, any Member or Members chosen by it, provided that no more than 3 (three) Members shall be so co-opted. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 22.4 The Board of Trustees may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution, in such reasonable manner as it shall decide from time to time.
- 22.5 The Board of Trustees may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association in general meeting:
 - 22.5.1 as to disputes generally;
 - 22.5.2 for the furtherance and promotion of any of the objects of the Association;
 - 22.5.3 for the better management of the affairs of the Association;
 - 22.5.4 for the advancement of the interests of Members;
 - 22.5.5 for the conduct of Board of Trustees meetings and general meetings; and
 - 22.5.6 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.

23. PROCEEDINGS OF THE BOARD OF TRUSTEES

- 23.1 The Board of Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 23.2 Meetings of the Board of Trustees shall be held at least twice, but usually four times, every 12 (twelve) months, provided that if the Board of Trustees shall in writing have waived the above requirement in respect of a particular 12 (twelve) months, then no meeting of the Board of Trustees need be held for that period.
- 23.3 The quorum necessary for the holding of any meeting of the Board of Trustees shall be 50% plus 1 (one) of the elected and co-opted Trustees with a minimum

of 3 (three) Trustees, provided that during the Development Period at least 2 (two) Developer Trustees shall be necessary at all meetings of Trustees to form a quorum.

- 23.4 The Chairperson shall preside as such at all meetings of the Board of Trustees, provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairperson shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson 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 Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 23.5 Minutes shall be taken at every Board of Trustees meeting. These minutes shall be reduced to writing without undue delay after the meeting and shall then be certified correct by the Chairperson of the meeting. All minutes of meetings of the Board of Trustees shall after certification as aforesaid be placed in a Board of Trustees minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Board of Trustees minute book shall be open for inspection at all reasonable times by a Trustee, the Auditors, and the Members.
- 23.6 All competent resolutions recorded in the minutes of any meeting of the Board of Trustees shall be valid and of full force and effect as recorded therein, with effect from the passing of such resolutions, and until varied or rescinded, provided that no resolution or purported resolution of the Board of 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 Board of Trustees.
- 23.7 Save as otherwise provided in this Constitution, the proceedings at any meeting of the Board of Trustees shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 23.8 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Board of Trustees duly convened.
- 23.9 The developer and only the developer retains the right for short term lease / short term rental / holiday rental until the the completion of the development period.

24. GENERAL MEETINGS OF THE ASSOCIATION

- 24.1 The Association shall within 3 (three) calendar months after each financial year end of the Association, hold a general meeting as its annual general meeting, in addition to any other general meetings, during such financial year, and shall specify the meeting as such in the notices in terms of clause 25.1 below.

- 24.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the Board of Trustees shall decide from time to time.
- 24.3 All general meetings other than annual general meetings shall be called special general meetings.
- 24.4 The Board of Trustees may, whenever they think fit, convene a special general meeting.
- 24.5 General meetings of the Association shall take place at such place/s as shall be determined by the Board of Trustees from time to time.

25. NOTICE OF MEETINGS OF THE ASSOCIATION

- 25.1 An annual general meeting and a meeting called for the passing of a Special Resolution, shall be called by not less than 21 (twenty-one) days' notice in writing, and a special general meeting, other than one called for the passing of a Special Resolution, shall be called by not less than 14 (fourteen) days' notice in writing. In each case, the notice shall be inclusive of the day on which it is dispatched, 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 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 shall be given in the manner hereinafter mentioned or in such other manner (if any) as may be prescribed by the Board of Trustees to such persons as are under this Constitution 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 this Constitution, be deemed to have been duly called if it is so agreed:
- 25.1.1 in the case of an annual general meeting, by all the Members present entitled to attend and vote at the annual general meeting; and
- 25.1.2 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% of the total voting rights of all Members.
- 25.2 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 this Constitution, 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.

26. QUORUM FOR GENERAL MEETINGS

- 26.1** 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 vote in person or by proxy, as together for the time being, represent 10% of the total votes of all Members entitled to vote, for the time being save that not less than 3 (three) Members must be personally present and provided further that during the Development Period, the Developer is represented at such meeting.
- 26.2** 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 such meeting shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairperson 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.

27. AGENDA AT ANNUAL GENERAL 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:

- 27.1** the consideration of the Chairperson's report;
- 27.2** the election of the Board of Trustees;
- 27.3** the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 27.4** the consideration of the financial statements and balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 27.5** the consideration of the report of the Auditors;
- 27.6** the consideration of the total levy (as referred to in clause 7) for the financial year for which such annual general meeting takes place; and
- 27.7** the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the annual general meeting.
- 27.8** the appointment of Auditors for the next financial year

28. PROCEDURE AT GENERAL MEETINGS

- 28.1** The Chairperson 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-Chairperson shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson 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 Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

28.2 The Chairperson 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.

28.3 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.

28.4 Except as otherwise provided for in this Constitution, all general meetings shall be conducted in accordance with generally accepted practice.

29. PROXIES FOR GENERAL MEETINGS

29.1 A Member may be represented at a general meeting by a proxy, who need not be a Member. The instrument appointing such proxy shall be in writing signed by the Member concerned or such Member's duly authorised agent in writing, but need not be in any particular form, provided that:

29.1.1 where a Member is more than one person, any one of those persons may sign the instrument appointing such proxy on such Member's behalf;

29.1.2 where a Member is a company, the same may be signed by the Chairperson of the board of directors of the company or by its secretary;
or

29.1.3 where a Member is an association of persons, by the secretary thereof.

29.2 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a copy thereof certified by a commissioner of oaths 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.

29.3 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 Board of Trustees at least 1 (one) hour before the time fixed for the holding of the meeting.

29.4 Should a Member be absent from the recorded domicilium address which the Trustees may have for such Member, for a continuous period in excess of 3 (three) weeks, a proxy must be appointed by such Member prior to such Member's absence in accordance with 29.1 and 29.2 above, failing which a Member shall not be entitled to vote at any special general meeting called during such Member's absence.

30. VOTING AT GENERAL MEETINGS

30.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have 1 (one) vote, regardless of whether such Member is registered owner of a Single Residential Erf or unit, provided that if a Single Residential Erf or unit is registered in the name of more than one person, then they shall jointly exercise such rights in respect thereof.

30.2 Save as expressly provided for in this Constitution, no person other than a Member duly registered, and who shall have paid every levy and other amount (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.

30.3 During the Development Period, the Developer shall be entitled on a poll to the same number of votes of all other Members plus one (1), in addition to the number of votes to which the Developer is entitled as a Member in terms of this Constitution.

30.4 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairperson of the result of the show of hands, a poll is demanded by:

30.4.1 any person entitled to vote at such meeting; and/or

30.4.2 by the Chairperson.

30.5 Notwithstanding the provisions of clause 30.4 above, voting on the election of a Chairperson 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, and entitled to vote, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairperson or any of the Members in terms of clause 30.6 below.

30.6 When a poll is demanded regard shall be had, in computing the majority on the poll, to the number of votes cast for and against the resolution.

30.7 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 votes,

whether on a show of hands or on a poll, the Chairperson of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

30.8 Unless any Member present in person or by proxy at a general meeting shall have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity of the procedure at such meeting, such declaration 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, provided such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting. The Chairperson of the meeting shall be obliged to announce the result of any voting either at the meeting or as soon as reasonably possible thereafter.

31. SPECIAL RESOLUTION

31.1 A resolution by the Association shall be a Special Resolution if at a general meeting of which not less than 21 (twenty-one) days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which Members holding in aggregate not less than one-fourth of the total votes of all the Members entitled to vote at the general meeting, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than three-fourths of the number of Members entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than three-fourths of the total votes to which the Members present in person or by proxy are entitled.

31.2 If less than one-fourth of the total votes of all the Members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a Special Resolution, the meeting shall stand adjourned to a date not earlier than 7 (seven) days and not later than 30 (thirty) days after the date of the meeting and the provisions of clause 28.3 shall apply in respect of such adjournment.

31.3 At the adjourned meeting, the Members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such Members shall be deemed to be a Special Resolution even if less than one-fourth of the total votes are represented at such adjourned meeting.

32. OTHER PROFESSIONAL OFFICERS

Save as otherwise provided in this Constitution, the Board of 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 professional person or firm, executives, general management and/or any other employee/s whatsoever, for any reasons deemed necessary by the Board of Trustees in their sole discretion and on such terms as the Board of Trustees shall decide, subject to any of the provisions of this Constitution, provided that any expenditure incurred in respect of the above, shall not exceed 15% of the total annual levy for the year in question unless authorised by a Special Resolution.

33. ACCOUNTS

33.1 The Association in general meeting or the Board of 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.

33.2 At each annual general meeting the Board of Trustees shall lay before the Association a proper 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 of Trustees and the Auditors, and there shall be attached to the notice sent to Members convening each annual general meeting, as set forth in clause 25.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

34. SERVICE OF NOTICES

34.1 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, electronic mail or facsimile properly addressed to the Member at the address of the Erf and / or unit owned by such Member.

34.2 No Member shall be entitled to have a notice served on him or her 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.

- 34.3** Any notice by post, electronic mail or facsimile shall be deemed to have been served at the time when the letter, e-mail or fax containing same was posted, sent or faxed respectively, and in proving the giving of the notice by post, electronic mail or facsimile, it shall be sufficient to prove that the letter, e-mail or fax containing the notice was properly addressed and posted, sent or faxed respectively.
- 34.4** 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.

35. INDEMNITY

- 35.1** All Trustees, whether in their capacity as Trustee, Chairperson or Vice Chairperson, shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.
- 35.2** Every Trustee, every servant, agent and employee of the Association, shall be indemnified by the Association against, and reimbursed for, 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 Chairperson or Vice-Chairperson.
- 35.3** Any costs, losses and expenditure incurred by a person contemplated in clause 35.2 shall be repaid to such person by the Board from the funds of the Association.
- 35.4** Without prejudice to the generality of the above, the Association shall specifically indemnify every person contemplated in clause 35.2 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.
- 35.5** 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 Chairperson or Vice-Chairperson, 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 of Trustees 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 delict of any person with whom any monies, 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.

35.6 No Member shall have any claim of any nature whatsoever against the Association for any loss, damage or injury which such Member may directly or indirectly suffer (even if such loss, damage or injury is caused through the negligence of the Association, the Trustees, or any of the Associations employees or appointees) by reason of any latent or patent defects on the Development (including the Common Areas), or fire on the Development, or theft from the Development, or by reason of any building, improvement or other structure within the Development being in a defective condition or state of disrepair or any particular repair not being effected by the Association timeously or at all, or reason of conduct by any person whatsoever, or for any purpose whatsoever, or arising from any other cause whatsoever including erosion or accretion of sand, and each Member is advised to take the necessary steps to insure his interest.

36. ARBITRATION

36.1 Any dispute, question or difference arising at any time between Member or between Members and Trustees out of or in regard to:

36.1.1 any matters arising out of this Constitution; or

36.1.2 the rights and duties of any of the parties mentioned in this Constitution;
or

36.1.3 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.

36.2 Arbitration shall be held in Jeffreys Bay informally and otherwise upon 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.

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

36.3.1 primarily an accounting matter, an independent accountant;

36.3.2 primarily a legal matter, a practising counsel or attorney with not less than 10 (ten) years' experience;

36.3.3 any other matter, an independent and suitably qualified person appointed by the Auditors; as may be agreed upon between the parties to the dispute.

- 36.4 If agreement cannot be reached on whether the question in dispute falls under clauses 36.3.1, 36.3.2 or 36.3.3 or upon a particular arbitrator in terms of clause 36.3.3 above, within 3 (three) Business Days after the arbitration has been demanded, then:
- 36.4.1 the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 36.3.1, 36.3.2 or 36.3.3 above; or
- 36.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 36.3.1 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 clause 36.2 above.
- 36.5 The arbitrator shall make his award within 7 (seven) 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.
- 36.6 The decision of the arbitrator shall be final and binding and may be made an order of the Eastern Cape High Court: Grahamstown or its successor/s upon the application of any party to the arbitration.
- 36.7 Notwithstanding anything to the contrary contained in clauses 36.1 to 36.7 (both 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 these provisions.

37. AMENDMENTS TO CONSTITUTION

This Constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a Special Resolution adopted at an annual general meeting or a general meeting of the Members and subject further to the prior written consent of the Council being obtained for the amendment of this clause 37 and clauses 1, 3, 4, 6, 7, 8, 9, 10, 11 and 39 of this Constitution and subject further to the prior written consent of the Developer during the Development Period being obtained for the amendment of this clause and clause 39 of this Constitution.

38. EFFECTIVE DATE

This Constitution shall come into force when the registration in the deeds office of the first transfer of an Erf and / or unit from the Developer to an Owner takes place.

39. STATUS OF DEVELOPER

During the Development Period, the following provisions shall apply in addition to the conditions in this Constitution:

39.1 the Developer shall be entitled:

39.1.1 to nominate and appoint the majority of the Trustees, who need not be Trustees to the Board of Trustees;

39.1.2 to a number of votes equal to the number of Erven and units registered in its name at any time plus the number of votes referred to in clause 30.3 at any meeting of Members or the Board of Trustees;

39.1.3 to require that the Board of Trustees enforces the rights granted to it in terms of this Constitution against any Member who in the opinion of the Developer is not complying with his obligations as a Member, and in particular, without restricting the generality of the foregoing, has failed to maintain all buildings and other improvements on its Erf by giving such Member written notice in which his failure to comply with the particular provisions of this Constitution is detailed and calling upon him to remedy such failure within a prescribed period of not more than 30 (thirty) days, failing which, the Developer shall be entitled at the sole cost of that Member to carry out all such work as may be required to maintain such building and other improvements on its Erf;

39.2 the Developer shall be entitled to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the Development including the Common Areas, the private road area and/or the exterior walls (if any) of the Development, subject to the regulations and by-laws of the Council pertaining to signage from time to time;

39.3 neither the Board of Trustees nor any Member shall prevent or hinder in any way the Developer from:

39.3.1 gaining access to and egress from the Development;

39.3.2 continuing any building operations at the Development;

39.3.3 marketing and selling any of its unsold Erven and / or units, including the advertisement of the sale of such Erven and / or units on the Common Areas and/or at the Development; provided that the provisions of this clause 39 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless 48 (forty-eight) hours prior written notice has been given to the Member concerned. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the Member. No Member shall be entitled to refuse the Developer access if the required notice has been given;

- 39.4 no consent shall be given by the Board as contemplated in clause 6.5.2 unless the Developer Trustees have voted in favour of such consent granted;
- 39.5 upon the transfer of the last Erf and / or unit from the Developer to a Member, the rights of the Developer in terms of the provisions of this clause 39 shall immediately terminate *ipso facto* and no longer be of any force and effect.

40. **JOINT MANAGEMENT COMMITTEE**

- 40.1 The FIGTREE DEVELOPMENT Home Owners Association and the Body Corporate/s for the sectional title units in the development will form a joint management committee (JMC).
- 40.2 This joint management committee (JMC) shall be jointly responsible for the operation, maintenance and management of the entire development, inclusive of all Common Areas and Private open space areas.

41. **PHASED DEVELOPMENT**

- 41.1 The developer intends to develop and market the development in phases as the developer deems fit and, for the duration of the development period, the developer shall enjoy unrestricted rights with regards to the marketing of the development and, in particular, the rights to erect signage within the development and to perform all activities normally associated with development and building operations.
- 41.2 The developer shall, where applicable and free of consideration, transfer to the Association the open spaces and roads demarcated as such on the approved surveyor diagrams in respect of the development from time to time. Where applicable, the developer shall procure the registration of reciprocal rights of way and other servitudes on behalf of the Association, in respect of the various portions of the development. Upon registration of transfer to the Association and/or registration of the servitudes, the risk in and of such open spaces and open roads shall pass to the Association and the Association becomes responsible for the maintenance and upkeep thereof as well as for the rates and taxes and all charges attaching thereto. The developer shall further be obliged to comply with any Planning Conditions Imposed by any Authority