



SECURE COASTAL COUNTRY LIVING

RHEEBOK VILLAGE ESTATE

HOME OWNERS ASSOCIATION

CONSTITUTION

1. DEFINITIONS

- 1.1 In this Constitution and unless the context indicates otherwise the following words and expressions shall have the following meanings:
- 1.1.1 **“Annual General Meeting”** means the Annual General Meeting of the association;
 - 1.1.2 **“Authorised Representative”** means a person authorised in writing to act as the representative of any natural person, body corporate, company or an association of persons as the case may be.
 - 1.1.3 **"Architectural and Development Guidelines"** means the Architectural and Development Guidelines embodied in Annexure "A" hereto in respect of the development approved by the Council, as it may be amended from time to time;
 - 1.1.4 **"ASSOCIATION"** means the Rheebok Village Estate Home Owners Association;;
 - 1.1.5 **"Auditors"** means auditor appointed from time to time by the Association;
 - 1.1.6 **“Chairperson”** means the Chairperson for the time being of the board of Trustees appointed in terms of clause 12.1 below;
 - 1.1.7 **“Common Property”** means the whole of the Development Area or Township and all improvements thereon, including any access road and/or servitудal right of access, private open spaces and the conservation area in the development
 - 1.1.8 **"Companies Act"** means the Companies Act No 61 of 1973 and any amendment or modification thereof or substitution thereof from time to time;

- 1.1.9 **“Constitution”** means the Constitution of the Association (with all annexures thereto) approved by the relevant Council in terms of Section 29 of the Land Use Planning Ordinance No. 15 of 1985 and any amendments thereto effected in terms of this Constitution;
- 1.1.10 **“Council”** means the Municipality of Mosselbay and its successor/s in title;
- 1.1.11 **“Design Review Committee”** means, until the development period has lapsed, the Developer acting alone, and after such period a committee of at least three persons appointed by the Trustees;
- 1.1.12 **“Developer”** means **RHEEBOK VILLAGE ESTATE (PTY) LTD**, a company duly registered and incorporated in terms of the Companies Act under registration number 2012/103799/07 ;
- 1.1.13 **“Developer Trustee”** means a Trustee appointed by the Developer;
- 1.1.14 **“Development Area”** means the land comprising of the **REMAINDER ERF 1884 REEBOK**, as well as the **REMAINDER OF PORTION 4 OF RHEEBOKSFONTEIN NR 142** and such adjoining land as may be acquired by the Developer for the purposes of incorporation into the Township;
- 1.1.15 **“Development Period”** means the period from the establishment of the Association until completion of the whole proposed **RHEEBOK VILLAGE ESTATE** development in accordance with the development rights or subsequent amendments thereto;
- 1.1.16 **“Erf”** means any erf, portion or subdivision of the Development Area and includes all improvements thereon;
- 1.1.17 **“Estate Manager”** means the estate manager appointed by the Developer or Trustees from time to time in terms of clause 25 below;
- 1.1.18 **“Extraordinary General Meeting”** means an extraordinary general meeting convened in terms of this Constitution;
- 1.1.19 **“Estate Rules”** means the estate rules provided for in this Constitution;
- 1.1.20 **“Facilities”** means all and any facilities or amenities of whatsoever nature which may be provided within the development area and forming part of the common property;
- 1.1.21 **“Financial Year”** means the financial year of the Association which shall run from the first day of March in each year until the last day of February in the subsequent year;

- 1.1.22 **“General Meeting”** means any Annual General Meeting or Extraordinary General Meeting convened in terms of this Constitution;
- 1.1.23 **“Levy”** means the levy or levies referred to in Clause 6 below;
- 1.1.24 **“Member”** means a member of the Association;
- 1.1.25 **“Member Trustee”** means a trustee appointed by the Members;
- 1.1.26 **“Minutes”** means the minutes of a General Meeting or a Trustees’ meeting, as the case may be;
- 1.1.27 **“Person”** means a natural person, juristic person (whether incorporated or unincorporated) and includes a close corporation, company, trust or an association of persons, as the case may be.
- 1.1.28 **“Prime Rate”** means the prime overdraft rate levied by the Association’s bankers from time to time.
- 1.1.29 **“Registered Owner”** means a Registered Owner of an Erf or sectional title unit as registered in the relevant Deeds Office;
- 1.1.30 **“Rules”** means the rules provided for in this Constitution;
- 1.1.31 **“Sectional Titles Act”** means the Sectional Titles Act No 95 of 1986 and any amendment or modification thereof or substitution thereof from time to time;
- 1.1.32 **“Services”** means such utilities and amenities as may be provided by or on behalf of the Association for the Registered Owners and residents within the Township and/or the Development Area;
- 1.1.33 **“Township”** means the township to be known as RHEEBOK VILLAGE ESTATE comprising the Development Area;
- 1.1.34 **“Trustees”** means the Trustees of the Association consisting of the Developer Trustee/s and Member Trustee/s;
- 1.1.35 **“Unit”** means a section shown as such on an approved Sectional Plan together with an undivided share in the Common Property as determined in accordance with the participation quota applicable to such section (and, if relevant, together with any exclusive use of a defined area of the Common Property), and as defined more fully in terms of the Sectional Titles Act;
- 1.1.36 **“Writing” or “Written”** means written, printed, typewritten, lithographed, telefaxed, electronically mailed or any other process producing words in a visible form.
- 1.1.37 **“Rheebok Village Estate Stabilisation Levy Fund”** A Fund to be established and to be managed by the Home Owners

Association for the general maintenance and upkeep of the common property to support the Owners payments of levies and more specifically minimizing special levies which might be needed.

- 1.1.38 **“Conservation Area / Private Space Trust Fund”** means A Fund to be established and to be managed by the Home Owners Association for the general maintenance and upkeep of the Open Private Space / Conservation Area.

2. INTERPRETATION

In this Constitution:

- 2.1 the clause headings are for convenience and shall be disregarded in construing or interpreting this Constitution.
- 2.2 unless the context clearly indicates a contrary intention
- 2.2.1 the singular shall include the plural and vice versa;
- 2.2.2 a reference to any one gender shall include the other genders; and
- 2.2.3 a reference to natural persons includes legal persons and vice versa.
- 2.3 words and expressions defined in any clause herein shall, for the purpose of that clause and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in the clause in question.
- 2.4 when any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 if any provision of this Constitution is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 2.7 if any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the members then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 2.8 the annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.
- 2.9 any words defined in the Companies Act No. 61 of 1973 shall bear the same meanings in this Constitution and any words defined in the Sectional Titles Act 95 of 1986, as amended, shall bear the same meaning in this Constitution in relation to Sectional Title matters referred to herein.

3. COMMENCEMENT DATE AND STATUS

- 3.1 The Association will be established as a legal persona in accordance with Section 29 of the Land Use Planning Ordinance No 15 of 1985 with the registration of the first transfer of an Erf or Unit in the Township to a third party other than the Association
- 3.2 Pursuant to its Constitution the Association shall:
 - 3.2.1 be a legal entity and exist independently of its Members.
 - 3.2.2 enjoy perpetual succession.
 - 3.2.3 be capable of being sued or to sue with reference to any agreement entered into by the Association, any damage caused to any property of the Association or any matter arising from this Constitution;
 - 3.2.4 not operate for profit but for the benefit of the members;
 - 3.2.5 no Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association, which shall vest in and be controlled by the Trustees.

4. OBJECTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 4.1 It is recorded that the development of the whole Township is of a homogenous nature and that notwithstanding the fact that Members hold title to their Erven and/or Units individually the Association, through its Trustees, shall have all the powers that are necessary to accomplish the fulfilment of all objectives of the Association, including, but not limited to the powers specifically contained in this Constitution.
- 4.2 The ASSOCIATION shall have the following objectives:
 - 4.2.1 to act as a Home Owners Association established in terms of Section 29 of Land Use Planning Ordinance 15/1985 for the Township which is being developed on the Development Area.
 - 4.2.2 to take transfer of those portions of the Common Property that are to be owned by the Association for the benefit of its Members;
 - 4.2.3 to enter into agreements of servitude for the benefit of its Members or any adjacent property development;
 - 4.2.4 to manage, oversee and control all security aspects of the Township;
 - 4.2.5 to enter into agreements for the provision of any Services with any competent authority or any other third party, *inter alia* including the provision of access to the Township, water, electricity and sewerage services to the Association and where required to supply such Services to the various Members of the Association;
 - 4.2.6 to administer and enforce the Architectural and Development Guidelines, and the estate rules;
 - 4.2.7 to control the registration of transfer of Erven and Units in the Township and ensure compliance within the Township with all

conditions imposed by the Council when approving the rezoning and / or subdivision of the property(s) comprising the Development Area;

- 4.2.8 in general, to do all such things, and perform all such acts, as may be necessary or expedient to ensure that the Township is developed and maintained in the interests of all Members thereby ensuring that the Township will be and remain one of premier status.
- 4.3 The Association shall be responsible to ensure compliance, implementation, and enforcement, in respect of the Township, of any condition imposed by any authority in terms of the Land Use Planning Ordinance 15/1985, Environment Conservation Act 73/1989, the National Environmental Management Act of 1998 or any other planning - or environmental law, including any Environmental Management Plan approved in respect of the Township.
- 4.4 Without limiting the generality of 4.2.1 to 4.2.8, the Association shall have the following powers and functions:-
- 4.4.1 The responsibility to maintain, repair, improve and keep in good order and condition the Common Property and the responsibility for the payment of all rates and taxes, all Services charges and other taxes and/or Levies charged and payable to the Council or any authority in respect of the Common Property and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, and the Association's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Association or the pursuit of its business.
- 4.4.2 The right to impose Levies upon the Members of the Association for the purpose of meeting all the expenses that the Association has incurred or to which the Trustees reasonably anticipate the Association will incur in the attainment of the objects of the Association or the pursuit of its business.
- 4.4.3 To ensure that all provisions of this Constitution are complied with by all Members/parties bound thereby.
- 4.4.4 To promote, advance and protect the Township and the interests of the Association and all Members.
- 4.5 The responsibility for the management and control of the Common Property shall be transferred from the Developer to the Association upon completion of the infrastructure services in respect of a phase or phases to the satisfaction of the Council and when transfer of such responsibility is tendered to the Association by the Developer. The Developer will however remain obliged and responsible to complete the development programme in accordance with the conditions of approval imposed by the relevant authorities.
- 4.6 The sole object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Property of such Members and the collection of Levies for which such Members are liable.

- 4.7 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 4.8 On dissolution, the remaining assets of the Association must be distributed to a similar association of persons, which is also exempt from Income Tax in terms of Section 10 (1) (e) (iii) of the Income Tax Act.
- 4.9 Funds available for investment may only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990) or in any listed financial instrument of a company contemplated in paragraph (a) of the definition of a "listed company".

5. MEMBERSHIP OF THE ASSOCIATION

- 5.1 Membership of the Association shall be limited to any party who is in terms of the Deeds Registries Act (and if applicable the Sectional Titles Act) reflected in the records of the Deeds Registry concerned as the registered owner of a Unit or an Erf.
- 5.2 A person shall become a Member of the Association upon transfer of a Unit or Erf into his name and such membership shall *ipso facto* terminate when a Member ceases to be the owner of a Unit or an Erf, unless such Member owns any other Unit/s/Erf/Erven.
- 5.3 Membership of the Association shall be limited to the registered owners of Erven or Units in the township provided that:
- 5.3.1 the Developer shall be deemed to be a member of the Association during the development period;
- 5.3.2 that the body corporate of any Sectional Title Scheme shall be a member of the Association;

Where a Unit or Erf is owned by more than 1 (one) person all the registered owners of that Unit or Erf shall together be deemed to be collectively one Member of the Association and have the rights and obligations of one Member of the Association; provided however that all co-owners of any Unit or Erf shall be jointly and severally liable for the due performance of any obligation to the Association.

- 5.4 The rights and obligations of the Members shall rank in accordance with the provisions of this Constitution.
- 5.5 Anything to the contrary herein before contained or implied notwithstanding, the cessation of his membership shall in no way release a Member from any obligation undertaken by him prior to the cessation of his membership pursuant to:
- 5.5.1 any provision of the Constitution of the Association; or
- 5.5.2 any further or ancillary guarantee, commitment or obligation, which such Member may have undertaken.

The fact that a person ceases to be a Member of the Association as a result of the transfer of a Unit or Erf to another person, shall not release such Member from any liability to the Association in respect of any debt, the cause of which arose prior to the transfer of such Unit or Erf nor otherwise relieve

such erstwhile Member from any other obligations owed to the Association during the period of his membership.

- 5.6 Membership shall be personal to the person in question and may not be assigned or transferred by them to any other natural person or entity.
- 5.7 The Association shall maintain at its registered office, alternatively at the office of Management, a register of Members of the Association as provided in Section 105 of the Companies Act.
- 5.8 The Trustees may by regulation provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustees;
- 5.9 The Trustees may by regulation further prescribe appropriate application documentation including *inter alia* the following:
 - 5.9.1 an application to register as a Member of the Association;
 - 5.9.2 an undertaking by a proposed Member to comply with all the obligations imposed on Members in terms of the Constitution, which undertaking must be signed by the proposed Member and deposited with the Association prior to the Association issuing a clearance certificate or consent to transfer a Unit or Erf in favour of such a proposed Member from any existing Member, provided always that this paragraph will not apply in respect of the transfer or alienation by the Developer of an Erf or Unit in favour of a proposed member.
- 5.10 The registered owner of an Erf or a Unit shall not be entitled to resign as a Member of the Association
- 5.11 Every Member is obliged to comply with:
 - 5.11.1 the provisions of this Constitution and any rules or regulations passed by the Association in terms hereof;
 - 5.11.2 the provisions of the Architectural and Development Guidelines and the Estate Rules;
 - 5.11.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member in its capacity as a Member;
 - 5.11.4 any directive given by the Trustees in enforcing the provisions of this Constitution.
 - 5.11.5 The rights and obligations of a Member are not transferable and every member shall to the best of his ability further the objects and interests of the Association.
 - 5.11.6 The Members shall be jointly liable for expenditure incurred in connection with the Association. If a Member consists of more than one person such persons shall be jointly and severally liable in *solidum* for all obligations of that Member in terms of this Constitution.

- 5.11.7 A Member shall not transfer an Erf or Unit unless:
- 5.11.7.1 the proposed transferee has irrevocably bound himself to become a Member of the Association and to observe the provisions of the Constitution for the duration of his ownership of the Erf and/or Unit;
 - 5.11.7.2 the Association acting through the Trustees or the Estate Manager has issued a prior written clearance that all outstanding Levies and all amounts of whatever nature owing to the Association by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution including any management or conduct rule and the provisions contained in clause 5.11.7.6; and
 - 5.11.7.3 the proposed transferee acknowledges that upon the registration of transfer of the Erf and/or Unit into his name, he shall *ipso facto* become a Member of the Association.
 - 5.11.7.4 the conditions set out above are incorporated in the relevant Deed of Sale in terms whereof the transferee acquires the Erf or Unit in question.
 - 5.11.7.5 For the avoidance of doubt it is recorded that the provisions of this clause do not apply to the Developer, that there will be no restriction whatsoever on the ability of the Developer to pass transfer of any Erf or Unit and that accordingly the Developer does not need a clearance certificate from the Association before it will be entitled to alienate or transfer any Erf or Unit to any person or entity.
 - 5.11.7.6 the member of the Association has complied with all provisions contained in this Constitution and any annexure thereto or any rule or regulation made in terms of this Constitution relating to the Architectural and Development Guidelines of the Township and with all rules and regulations in relation to the approval and compliance with approved building plans.
- 5.11.8 A Member shall not without the prior written consent of the Association who in granting or refusing such consent, shall act in its absolute discretion, apply to the Council or any other relevant authority for the subdivision, consolidation or rezoning of an Erf or Unit owned by the Member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof, it being recorded that the Township is, primarily, a residential township and that subdivisions and rights pertaining to Erven have to be controlled by the Association to ensure that the primary character of the Township is not negatively affected. For the avoidance of doubt it is recorded that this clause does not apply to the Developer who does not need the consent of **the** Association in respect of the aforesaid or any other applications.

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

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

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

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

5.12 Each Member shall be required to provide the Association with written details of his postal address and if he so indicates, any facsimile number and/or email address to facilitate delivery, it being competent for any Member to alter any such details by written notice to the Association at its registered office or principal place of business. The Members acknowledge that the postal authority(ies) shall act as their agent and not as the agent of the Association.

5.13 Members who are in good standing (i.e. have paid all debts due and payable to the Association) shall have the right to vote at all meetings of the Association. Members who are not in good standing shall not be entitled to attend any meetings of the Association or to exercise any voting rights.

5.14 Members shall diligently and promptly comply with the obligations imposed in terms of this Constitution and observe all rules referred to in this Constitution, and shall be responsible for and obliged to ensure compliance therewith by their families, employees, agents, contractors, tenants (including any other occupiers of a Unit or Erf), visitors and guests (which shall include, in the case of any Member who conducts any form of business or profession on or from a Unit or Erf, his customers, clients and patients).

5.15 Members shall not interfere with nor give instructions to any officers, employees, agents or contractors of the Association and management, and any complaints shall be addressed in writing to management.

6. FINANCIAL AND LEVIES

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

6.1.1 the control, management and administration of the Township;

- 6.1.2 in general the attainment of its main objects as described in its Constitution;
 - 6.1.3 the maintenance of Common Property and the costs of Services such as electricity, water and sewerage consumed or used on the Common Property;
 - 6.1.4 the supply of any Services rendered by the Association;
 - 6.1.5 payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
 - 6.1.6 the costs of the provision of security to the Township; and
 - 6.1.7 in general the cost of fulfilling any of the obligations of the Association;
 - 6.1.8 the cost of the maintenance of the nature/conservation area
- 6.2 The Trustees shall not later than 14 (fourteen) days prior to each Annual General Meeting have prepared a draft budget in respect of the Levies payable during the affected Financial Year, indicating in detail the estimated amounts which shall be required by the Association to meet its necessary and other reasonably foreseeable expenses during the affected Financial Year (including a provision in respect of reserve funds catering for annual and otherwise non-recurring costs (including capital expenditure)) which budget shall further specify, separately, the estimated deficit, if any, carried forward from the preceding Financial Year.
- 6.3 The budget shall be available for collection at the offices of management 14 (fourteen) days prior to the date of the Annual General Meeting.
- 6.4 Subject to the hereinafter stated provisions, the Levies payable by the Members will be determined by dividing the budgeted expenditure (after deducting non-attributable Levy income including any deficit carried forward from the previous Financial Year) by the number of Units and Erven.
- 6.5 Notwithstanding the general principles applicable to the apportionment of the Levies as aforementioned, the Trustees shall be entitled to determine, in accordance with the criteria hereinafter referred to, a differentiated and/or weighted Levy with respect to any Units or Erven.
- 6.6 The Trustees shall advise each Member, in writing, as soon as practically possible after the Annual General Meeting, of the amount of the Levies payable by such Member for the affected Financial Year.
- 6.7 The budget shall be tabled at the Annual General Meeting for approval by the Members, in the form as tabled or with such amendments or modifications as the Members may resolve.

- 6.8 The Trustees shall, in their administration of the Association , not exceed the budget as approved, nor increase the Levies or impose any additional Levies and/or raise any special Levies (with respect to any unforeseen and/or extraordinary expenditure, special projects or otherwise) unless a due motivation accompanied by a detailed feasibility study has been made available to Members (on the same basis *mutatis mutandis* as referred to above) and such additional Levies and/or special Levies, as the case may be, have been approved by the Members at an Annual General Meeting or Extraordinary General Meeting.
- 6.9 Pending the approval of the budget (including any budget with respect to any additional Levies and/or special Levies, as the case may be), the Members shall continue to pay the Levies (on a monthly basis, as is hereinafter indicated) which were due and payable in terms of the previously approved budget/s.
- 6.10 With effect from the commencement of a new Financial Year of the Association, and pending the approval of the Levies in terms of the budget for the affected year, Members shall continue to pay the Levies as were payable in respect of the preceding Financial Year and shall be obliged to pay:
- 6.10.1 the newly imposed Levies with effect from the date stipulated in the written notice as delivered to the Member, consequent upon the approval of the budget; and
- 6.10.2 within 30 (thirty) days of receipt of such written notice, the deficit (comprising the difference between the Levies paid from the commencement of the (new) Financial Year and the newly imposed Levies, to the date on which such newly imposed Levies become payable), to the Association.
- 6.11 The annual Levies shall be payable in equal monthly instalments, due in advance on the first day of each and every month.
- 6.12 Additional Levies and special Levies imposed upon Members shall, unless otherwise stipulated by the Trustees, similarly be payable in monthly instalments over the period indicated by the Association in its written notice delivered to Members (after approval of such additional Levies and/or special Levies, as the case may be).
- 6.13 Members shall be liable for and shall pay interest on any debt due and payable to the Association (including but not limited to any arrear Levies of whatsoever nature), such interest to be calculated monthly in advance at the Prime Rate plus 3 (three percent) per month from the due date, to the date of actual payment, both days included.
- 6.14 The Levies (and any other debt) shall be payable to the Association free of exchange, deduction or commission..
- 6.15 The obligation of a Member to pay Levies shall terminate upon his ceasing to be a Member without prejudice to the Association's rights to recover any debt.
- 6.16 No Levies (or other debt) paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member.

- 6.17 A Member's successor in title (to a Unit or Erf) shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of that Unit or Erf to him, to pay the Levies attributable to that Unit or Erf with effect from the date of transfer.
- 6.18 In circumstances where a Member has sold or otherwise disposed of a Unit or Erf he shall be obligated to inform the management in writing of the impending transfer and shall furthermore similarly confirm the date on which such transfer is registered in the name of the Member's successor in title in order to enable the Trustees (and management) to determine the date of responsibility for payment of Levies and any other amounts comprising of a debt.
- 6.19 No Member shall be entitled to transfer a Unit or Erf without a Clearance Certificate first having been obtained from management on behalf of the Association, confirming that all Levies (including any other amounts comprising of a debt) have been paid up to and including the end of the month during which such contemplated registration of transfer of such Unit or Erf will take place.
- 6.20 Management shall be entitled to levy an administration fee (to be determined by the Trustees from time to time) in respect of the issue of each such Clearance Certificate and similarly in respect of any extended Clearance Certificate.
- 6.21 The principles applicable in terms of the Sectional Titles Act with regard to the issue of a Clearance Certificate shall apply *mutatis mutandis* to any Clearance Certificate required to be obtained in respect of the transfer of any Unit in the Township.
- 6.22 In keeping with the principles referred to in 6.21, the amount of any debt shall enjoy the preference accorded any similar debt due to the body corporate in terms of the Sectional Titles Act in conformity with the provisions of the Insolvency Act, No. 24 of 1936, as amended, and as otherwise apply in law.
- 6.23 Notwithstanding the above, the Developer will only be liable to pay levies on erven where a property has been erected and not on vacant erven.
- 6.24 The Association shall be entitled to require a Member to sign a debit order authority to allow the Association or its authorised agent to collect Levies directly from an operating bank account.
- 6.25 If any Member fails to make payment on due date of Levies and/or other amounts payable by such member, including interest, the Association may give notice to such Member requiring him to remedy such failure within such period as the Association may determine and should he fail timeously to make such payments, the Association may institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and client together with collection commission and any other expenses and charges incurred by the Association in recovering such amounts.
- 6.26 In addition to the levies as set out herein the Members agree to payment of an endowment to the Rheeboek Village Estate Home Owners' Association on disposal of the Erf / Unit by himself or nominee as set out hereunder, namely:

- 6.26.1 If the Member and/or registered owner, his/her heirs, executors, administrators, or successors in title, or assigns disposes of or alienates the Erf / Unit, the Member and/or registered owner of the Erf / Unit shall either on date of signature or, upon registration of transfer of the Erf / Unit into name of the new Member pay in cash towards the Stabilisation Funds as set out herein as an endowment, 2,5% (Two Comma Five Percent) of the re-sale price of the erf /Unit, which monies shall be allocated as set out herein. The endowment will be calculated on the re-sale value as set out in such agreement or at the fair market value of the Erf /Unit at the time as determined herein (whichever may be the greatest).
- 6.26.1.1 2,0% to the Rheeboek Village Estate Home Owners' Association Stabilisation Fund;
- 6.26.1.2 0.5% to the Private Space, Conservation area;
- 6.26.2 The Member, registered owner, his/her heirs, executors or administrators, or any other subsequent owner of the Unit, shall notify the Rheeboek Village Estate Home Owners' Association of the alienation of the Erf /Unit, as soon as same occurs, and should the Rheeboek Village Estate Home Owners' Association be of the opinion that the price allocated to the Erf /Unit is not a true reflection of the fair market value of such Erf /Unit, then a fair market value of the Erf/ Unit as at date of disposal, shall thereafter be agreed to, in writing, between the Rheeboek Village Estate Home Owners' Association on the one hand and the parties to the alienation on the other. In the absence of agreement, the fair market value shall be fixed by means of 2 (Two) sworn appraisements. The Rheeboek Village Estate Home Owners' Association shall have the right to nominate 1 (One) Sworn Appraiser and the said parties the other;
- 6.26.3 The purchase price or the value at which the Erf /Unit was acquired, referred to above, shall be utilised as the basis for calculating the endowment payable to the Stabilisation Funds in the circumstances set out herein above. Endowment payable on all subsequent dispositions shall be calculated 2,5% (Two Comma Five Percent) of the resale price of the Unit, or should the Rheeboek Village Estate Home Owners' Association so require, the fair market value as agreed or allocated thereto in perpetuity and be allocated as indicated above;
- 6.26.4 The provisions of this Clause shall apply *mutatis mutandis* to disposal of the Erf /Unit by the Member/registered owner thereof by way of donation, exchange, inheritance or any other method, but shall not apply if the Erf /Unit is acquired by the surviving spouse of the deceased to whom the Erf /Unit has accrued under the Laws of Testate or Intestate Succession;
- 6.26.5 The Member and/or registered owner, shall bind his/her successors in title, or assigns, to the same conditions as contained in this Clause and upon disposal of the Erf /Unit by them, they shall so bind their successors in title, or assigns, and so on in perpetuity;

6.26.6 This stipulation and more specifically the stipulation contained in clauses 6.26.1 to 6.26.5 will not be applicable on units sold by the Developer.

6.26.7 In addition to the levies and payments as set out above all members will contribute to the Telecommunication System via the Fibre Cable Network run by a Service Provider as appointed from time to time by the Home Owners Association. The payment of the connection fee is compulsory as well as the payment of the basic service fee to obtain a 2MB Uncapped Fibre with WiFi & Voip Phone.

6.27 DIFFERENTIATED AND WEIGHTED LEVIES:

6.27.1 Having regard to the nature, extent of occupation, type of Unit or Erf, use of the Unit or Erf (residential and/or business or recreational), the size /composition of the Erf and further taking into account such other relevant criteria as the Trustees shall in their sole discretion determine, the Trustees are entitled to differentiate with regard to the Levy responsibility attaching to any Unit or Erf and/or to weight the Levies payable in respect of any Unit or Erf (these rights extending to any additional levies and special levies).

6.27.2 In effecting a determination, the Trustees shall take into account and apply, to the extent deemed relevant, the following principles and prescriptions:

6.27.2.1 the allocation of costs directly attributable to a Unit or Erf, to the Member (as owner of such Unit or Erf) and which directly attributable costs shall include, but not be limited to, any municipal and/or other Council service charges and other expenses, and which such directly attributable expenditure shall be payable by the affected Member in addition to the levies;

6.27.2.2 assign a proportion of the costs relating to the Township generally to all Units and Erven (including unsold/undeveloped Erven) equitably; and

6.27.2.3 take into account and effect a weighting and/or differentiation where a Unit or Erf is occupied by more than one household/family and/or where any business is conducted on or from the Unit or Erf (and if necessary, to impose additional Levies in respect thereto).

6.27.3 A Member shall be entitled to deliver an objection in writing to the Trustees within not more than 30 (thirty) days after delivery of the written notification of the Levies payable by such Member (as the owner of the affected Unit or Erf) and the following further provisions shall apply in respect thereof:

- 6.27.3.1 the Trustees shall not entertain any objection which is not received within the aforementioned prescribed period.
- 6.27.3.2 the Trustees shall review the determination with respect to the affected Levy and take into account the objection received.
- 6.26.3.3 the complainant Member shall be entitled to be provided with the calculation and determination as effected by the Trustees.
- 6.27.3.4 the Trustees shall convene, as soon as reasonably possible, a meeting with the complainant Member (and should there be more than one complainant, those complainants collectively (who attend such meeting)) and hear such further representations as the complainant Member/s may wish to make.
- 6.27.3.5 the Trustees shall, in consequence of such processes, either reject the complaint (and confirm the determination of the effected Levies) or review the determination and deliver their written determination to the complainants within a reasonable period.
- 6.27.3.6 in all events the Trustees' determination (whether confirming the (original) determination or revising same), shall be final and binding upon the ASSOCIATION and the affected complainant Member/s.

7. ENTRENCHED PROVISIONS

- 7.1 The Developer, during the development period and thereafter the Association, have a continuing and permanent interest to ensure that certain basic provisions are entrenched to ensure the success of the development of the Township. Accordingly none of the following provisions of clauses 7.1.1 to 7.1.9 (both inclusive) may be deleted or varied in any way in terms of this Constitution, without the prior written consent of the Developer during the development period and thereafter the Association:
 - 7.1.1 the Developer will only be liable to pay levies on erven where a property has been erected and not on vacant erven.
 - 7.1.2 The Developer during the development period and thereafter the Association may register, in their entire and sole discretion and where necessary, services servitudes, in favour of the Council, the Developer, the Association, and/or any adjacent property development over any separate Erf in the township, the Common Property any Unit, building or common property in any sectional title scheme or any other part of the Township;

- 7.1.3 The Developer shall be entitled to incorporate adjacent immovable property into the Development Area and the Developer shall be entitled to develop the said property as it may deem fit, in which event all persons who become owners of erven or units in such development shall be entitled to or subject to as the case may be, to the benefits, rights or obligations of Members of the Association;
 - 7.1.4 No Member shall be entitled to object to the subdivision and/or development of any part of the Development Area provided that such subdivision and/or development is not inconsistent with the development plan approved by the relevant authorities for that part of the Development Area, nor shall they be entitled to object to any such new development.
 - 7.1.5 The Association shall at all times be entitled to draw electricity from Erven adjacent to sprinkler heads in road reserves for the purposes of powering the irrigation system for the verges of such road reserve. The cost thereof shall be borne by the Association but recovered as part of the Levy upon Members;
 - 7.1.6 Ownership of an Erf or Unit does not confer any right, including that of access, in respect of property owned by the Developer, including any right of way or access across such property
 - 7.1.7 The members acknowledge and agree that the Developer, its successor/s in title and its employees have certain rights, including rights of access across the Common.
 - 7.1.8 All building contractors and architects must be approved by the Developer (and after the development period by the Association) before construction of any building or dwelling commences;
 - 7.1.9 All estate agents marketing and / or selling property in RHEEBOK VILLAGE ESTATE must be approved by the Developer, and after the development period by the Association, before such estate agents commence any marketing or sales initiatives at the RHEEBOK VILLAGE ESTATE.
- 7.2 In the event of any Member deciding to sell his Erf or Unit, the Association or its nominee shall as long as the Member remains of the intention to sell his Erf or Unit, have a mandate to sell the property of such Member on similar terms and conditions as mandated to any estate agent. The aforesaid Member shall forthwith inform the Association of his intention to sell his Erf or Unit and let the Association or its nominee have the written particulars of any mandate given to any estate agent, which particulars shall then be considered as a written mandate to the Association or its nominee to sell the Erf or Unit and to be paid the commission which the estate agent would have received.

8. RESPONSIBILITY FOR PAYMENT OF RATES, TAXES AND SERVICES

8.1 Rates and Taxes:

- 8.1.1 The Association shall be responsible to pay all rates and taxes in respect of the Common Property to the Council;

8.1.2 The body corporate of any sectional title scheme in the Township shall be responsible to pay all rates and taxes in respect of the property comprising any sectional title scheme to the Council;

8.2 Services:

8.2.1 Members as owners of Erven, shall be responsible to pay services in respect of their property to the Council

8.2.2 The supply of Services to the Township shall be subject to all such terms and conditions as imposed by the Association.

9. SERVICES

9.1 Potable Water Supply:

9.1.1 Members as owners of Erven, shall be responsible to pay water in respect of their property to the Council

9.1.2 The Developer shall install the infrastructure for the water supply to the boundary of each Erf in the Township, including the body corporate of any Sectional Title Scheme. The Association will be responsible for the cost of maintenance and servicing of pipelines, pumps, meters, equipment and materials in respect of the internal potable water supply system up to the boundary of each Erf.

9.1.3 The Council will be responsible for the maintenance of the potable water supply system up to the bulk supply point at the boundary of the Township.

9.2 Electricity:

9.2.1 Members as owners of Erven shall be responsible to pay electricity in respect of. their property to the Council.

9.2.2 The liability of Members for such charges shall be in accordance with separate sub-meters serving the Erven of Members, including any Sectional Title Scheme

9.2.3 Lighting on the Common Property shall be supplied through separate electricity supply meters and the cost incurred by the Association in respect thereof shall be recovered from Members as part of the Levies imposed by the Association.

9.3 General:

9.3.1 The Association will provide the necessary connections to the infrastructure services to the boundary of each Erf in the Township, including the body corporate of any Sectional Title Scheme, by means of sub-meters or otherwise;

9.3.2 Each Member shall, from date of transfer, be responsible for any connection charges to the infrastructure of the Township,

including the costs of any metering device and the maintenance and replacement of any such device;

- 9.3.3 The Association shall be entitled to call for deposits in respect of any connection to be undertaken by it, the interest on which deposits shall be for the credit of the Association.
- 9.3.4 The Developer, during the development period, and thereafter the Association, shall have the right to convey water, electricity, sewerage, telephone information technology,
- 9.3.5 telecommunication, security communication, and any other services over any Erf or building or any other portion of the Township, whosoever is the owner thereof, and shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.
- 9.3.6 The Members and the body corporate of any Sectional Title Scheme will allow reasonable access to employees or representatives of the Developer or the Association (as the case may be) into the buildings, Units or Erven for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above.
- 9.3.7 Without limiting the generality of the provisions of 9.3.4, every Member shall allow gas mains, electricity, telephone and television cables and/or wires, and main and/or other waterpipes and the sewerage and drainage, including stormwater, of any other land unit or units to be conveyed across the relevant land unit, and surface installations such as mini-substations, metre kiosks and service pillars to be installed thereon, if considered necessary by the Association and/or the Developer (during the development period) and in such a manner and position as may from time to time be reasonably required. This shall include the right of access to the land unit at any reasonable time for the purposes of constructing, altering, removing or inspecting any works connected with the above.
- 9.3.8 Without limiting the generality of the provisions of clause 7.1.2 the Developer, during the development period and thereafter the Association, shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The Members accept and shall be bound by and consent to the registration of the servitudes referred to in this clause and clause 7.1.2.

10. ARCHITECTURAL AND DEVELOPMENT GUIDELINES

- 10.1 The Architectural and Development Guidelines constitute an integral part of this Constitution. It is recorded that the Architectural and Development Guidelines contain the procedures, requirements and guidelines to be

adhered to by every member who wishes to effect construction, improvements or alterations to or undertake any renovation of any Erf or Unit. The Architectural and Development Guidelines that will be in force and effect are those contained in Annexure "A" hereto and as may be amended from time to time by the Trustees.

- 10.2 All improvements shall be of sound construction and shall comply with the provisions of the Architectural and Development Guidelines contained in this Constitution;
- 10.3 No construction or erection of any improvements or alterations to and no renovation of any Erf or Unit that is undertaken by any party other than the Developer, or any landscaping on any property, may commence prior to the due and proper approval of plans for such construction, improvements, alterations or renovation by both the Design Review Committee and, where required, the council, in accordance with the following provisions:
 - 10.3.1 the Member shall submit to the Design Review Committee for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;
 - 10.3.2 the Member shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the Design Review Committee;
 - 10.3.3 after the approval of such plans by the Design Review Committee the plans shall be submitted to the council for approval. No plan shall be submitted to the council unless it bears the endorsement of approval of the Design Review Committee, clearly dated, certifying that the plan complies with both the Architectural and Development Guidelines.
- 10.4 When effecting the construction, improvements or alterations or renovations contemplated in 10.3, the Member shall at all times comply strictly with the Architectural and Development Guidelines as well as all conditions and standards imposed by the council insofar as these may be additional to the provisions of the Architectural and Development Guidelines. No Member shall be entitled to deviate in any manner whatsoever from any plan approved by the Design Review Committee and the council unless the prior written approval of both the Design Review Committee and the council for such proposed deviation has been obtained.
- 10.5 No Member shall be entitled to challenge or contest any of the provisions of the Architectural and Development Guidelines. No application for the amendment of the Architectural and Development Guidelines shall be made to the council unless prior written consent of the Developer, in the developing phase, and thereafter the Trustees has been obtained thereto.
- 10.6 No body corporate shall adopt any conduct rules in terms of Section 35(1)(b) of the Sectional Titles Act, which are in conflict with any of the Architectural and Development Guidelines, unless the prior written consent of the Developer, in the developing period, and thereafter the Trustees, has been obtained thereto.

- 10.7 the Trustees may amend the Architectural and Development Guidelines from time to time.

11. ESTATE RULES

- 11.1 In order to promote and implement the main business and main object of the Association, and to ensure the beneficial management and conduct of the business of the Association and to further advance the interests of Members, the Trustees shall formulate and enforce rules (and protocols) (collectively known as and referred to in this Constitution as "Rules/Estate Rules") as follows:
- 11.1.1 House Rules dealing with such matters pertaining to the Association and as more fully detailed hereunder (for convenience "the House Rules").
- 11.1.2 Rules applicable to the determination of Levies and matters relating thereto (as dealt with more fully above in this Constitution) (for convenience, "the Levy Rules").
- 11.1.3 Rules dealing with disciplinary matters, sanctions and fines (for convenience "the Disciplinary Code").
- 11.1.4 To the extent considered necessary and in addition to any provisions contained in the House Rules and Rules relating to safety and security (for convenience "the Security Code").
- 11.2 All Rules, including any amendment, addition or deletion thereto, shall require the approval of Members at an Annual General Meeting. In the period between two Annual General Meetings, the Trustees shall be entitled to amend, delete or substitute any rule if it is reasonably necessary to do so. All such amendments, deletions or substitutions must be submitted to the immediately following Annual General Meeting for ratification by the Members.
- 11.3 The House Rules shall deal with the following matters, without circumscribing the nature and extent of the Rules which may comprise thereof (including, if relevant, any matters which ought to be dealt with in any other Rules):
- 11.3.1 the conduct of Members and all persons within the Township, including the control of operations and movements of estate agents, building contractors, sub-contractors, project managers, other agents (e.g. architects, engineers, landscapers and the like), project managers and the employees and agents of the afore going.
- 11.3.2 the conduct of Members and all persons within the Township for the prevention of nuisance of whatsoever nature and in order to maintain good neighbourly relations, including the regulation of the use of any noise-making/generating equipment/appliances (e.g. lawnmowers, power tools, tv/radio).
- 11.3.3 All visitors to the Township including tenants, other occupiers of any Unit or Erf, customers, clients and patients of any business conducted on or from within the Township.

- 11.3.4 the operations and activities of all businesses whatsoever conducted on or from within the Township, including the methods of sale and advertising within the Township.
 - 11.3.5 the nature, method and location of any signage, posters or other form of advertising.
 - 11.3.6 in particular and without derogating from the generality of the other provisions herein contained, regulating the conduct of estate agents within the Township, show houses, the control and movement of the estate agents and prospective clients (purchasers).
 - 11.3.7 the maintenance and preservation of the natural environment and the protection of fauna and flora and the eradication of undesirable (encroaching/toxic) flora.
 - 11.3.8 the construction and material specification of all improvements and in particular, without derogating from the generality of the foregoing, structures of whatsoever nature, paving, pavements/sidewalks, installations of whatsoever nature (including without limiting the generality thereof, air-conditioning units, swimming pool pumps/filters, tv aerials/dishes, lighting, washing lines, refuse bins, carports, awnings, security systems and landscaping features) as well as the maintenance of all of the afore going.
 - 11.3.9 the control of vehicular traffic of whatsoever nature, including parking.
 - 11.3.10 access to and egress from the Township including any particular facilities or amenities within the Township.
 - 11.3.11 safety and other regulations applicable to the playing of any sport or engagement in any other recreational activity including, but not limited to, the use of balls and other sporting equipment, cycles, scooters, skateboards, etc.
 - 11.3.12 the control and recycling of refuse, littering and other safety and anti-pollution related measures.
 - 11.3.13 the keeping of any animals (including pets, birds, fish, reptiles or insects) and in addition, the control of pets in and about the Township, the prevention of foulment, the rights being further granted to the ASSOCIATION to enforce the removal of any animal which creates a nuisance and/or constitutes a danger.
 - 11.3.14 the use of any recreational facility or other amenities.
- 11.4 The Security Code shall, in addition to the House Rules, deal with the following:
- 11.4.1 all security related matters affecting any persons in or about the Township, access and egress to and from the Township.
 - 11.4.2 security installations affecting the Township, its perimeter and access points, and security installations (burglar alarms, CCTV, electrical fencing and other related equipment).

- 11.4.3 crime prevention and monitoring procedures.
- 11.4.4 fire prevention and control measures.
- 11.4.5 vehicle security.
- 11.4.6 the provision by all or any persons entering the Township of a written indemnity.

11.5 The Disciplinary Code:

11.5.1 the Trustees shall be responsible for the enforcement of all Rules including the Disciplinary Code.

11.5.2 the Trustees shall be entitled to impose upon Members fines in respect of non-compliance with or a breach of the Rules and/or with respect to a breach of the obligations imposed upon Members in terms of this Constitution.

11.5.3 the Disciplinary Code shall contain:

11.5.3.1 a protocol relating to warnings providing for the delivery of a written notice (demand) requiring offenders to remedy any stipulated breach of the Constitution and/or Estate Rules to be remedied within a reasonable period and failing which, a prescribed process of enforcement of sanctions (including the imposition of a fine/s) shall be implemented.

11.5.3.2 a schedule indicating the sanctions and specifying the fines or other penalties which shall be imposed or levied in the event of an unremedied breach, as specified, or otherwise to be imposed in the discretion of the Disciplinary Committee.

11.5.4 a process shall be prescribed whereby a Member who disputes that he has committed a breach of any obligation in terms of this Constitution and/or the Rules, shall be entitled:

11.5.4.1 to deliver a submission, in writing, to the Disciplinary Committee within a period of not more than 7 (seven) days from the date of expiry of the period of demand contained in the notice delivered to the affected Member.

11.5.4.2 providing for the convening of a sitting of the Disciplinary Committee (which shall comprise of not less than 3 (three) Members), one of whom shall be a Trustee (who shall function as the Chairperson of such Disciplinary Committee).

11.5.4.3 the Disciplinary Committee proceedings shall comply with the principles of natural justice.

11.5.4.4 the decision of the Disciplinary Committee shall be binding upon the Association and the affected Member, who shall, if he is aggrieved by the decision of the

Disciplinary Committee (and/or the sanction or fine imposed) be entitled, within 10 (ten) days of receipt of delivery of written notification of the Disciplinary Committee's decision, to require same to be reviewed by an arbitrator (who shall be an independent attorney or advocate of not less than 10 years standing, whose identity shall mutually be agreed between the Disciplinary Committee and the affected Member, and failing agreement appointed by the President for the time-being of the Law Society of the Cape of Good Hope).

- 11.5.4.5 such arbitration shall be dealt with in an informal manner in accordance with the format prescribed by the arbitrator.
 - 11.5.4.6 the arbitrator shall be entitled to make an award with respect to the costs of the arbitration.
 - 11.5.4.7 the arbitrator shall act as an expert and his decision shall be final and binding upon the parties.
 - 11.5.4.8 either party to the dispute (the Association or the affected Member) shall be entitled to make the arbitrator's award an order of a competent Court.
 - 11.5.4.9 notwithstanding the convening of a meeting of the Disciplinary Committee, in circumstances where the affected Member has delivered a written submission and/or the submission to arbitration (as hereinabove provided), neither the Association nor the affected Member shall be prevented from seeking any urgent or interim relief from a competent Court.
- 11.6 The provisions of this clause 11 shall continue to apply in circumstances where the affected Member ceases to be a Member at any time after receipt of the written notice referred to in clause 11.5.3.
- 11.7 Nothing to the contrary herein contained excepted, should a Member fail to remedy a breach of the Constitution and/or Rules despite written notice, it shall be competent for the Association to take such steps as are deemed necessary to remedy such breach (and where relevant, prevent any further recurrence) and to recover all reasonable costs incurred in connection therewith from the affected Member (and which amounts shall comprise of a debt).
- 11.8 The Member remains responsible and liable for any breaches committed by a family member, employee, agent, contractor, sub-contractor, visitor or guest (including any customer, client or patient) whilst in or about the Township.
- 11.9 The Trustees shall ensure that management delivers or otherwise publicises the Rules in a manner which brings same to the attention of the Members, each Member nevertheless being responsible for ensuring that he is in possession of a current set of all Rules.

11.10 Any fines levied against the Members shall be payable together with the Levies due at the commencement of the month following upon the month during which such fine was imposed.

11.11 The body corporate of any sectional title scheme shall not make any management or conduct rule applicable to the sectional title scheme which is in conflict with an Estate Rule applicable to the Association in terms of clause 11 of this Constitution.

12. TRUSTEES

12.1 There shall be a Board of Trustees of the Association consisting of 5 (five) Trustees who shall be nominated to the portfolios of Chairperson, Vice-Chairperson, Finances, Security and Environment/Building Standards, and elected by the Members at an Annual General Meeting. The Trustees of the Association shall, for the development period, be divided into two classes, namely Developer Trustees and Member Trustees. Upon expiry of the development period there shall only be Member Trustees. In addition to the elected Trustees, the Estate Manager and the Resort Manager shall, ex officio, serve as Trustees, but they shall not have any vote.

12.2 During the development period 2 (two) Trustees shall be Member Trustees appointed by the Members and the remaining Trustees shall be Developer Trustees appointed by the Developer.

12.3 After termination or expiration of the development period all the Trustees shall be appointed by the Members.

12.4 A Trustee shall be a natural person and shall not necessarily be a Member of the Association. A Trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.

13 REMOVAL AND ROTATION OF TRUSTEES

13.1 Each Trustee shall continue to hold office as such from the date of his election until the second Annual General Meeting following such election, at which meeting, and subject to the hereinafter set out provisions, each Trustee shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Trustees.

13.2 The principle as enunciated in clause 13.1 whereby elected Trustees shall hold office, as such, for a period of approximately 2 (two) years until the second Annual General Meeting following upon the Annual General Meeting at which such Trustee was elected, is qualified by the following further provisions:

13.2.1 A Trustee shall be deemed to have vacated his office as such upon:

13.3.1 his having become disqualified to act as a director in terms of the provisions of the Companies Act;

- 13.3.2 his estate being sequestrated, whether provisionally or finally;
- 13.3.3 the commission by him of any act of insolvency;
- 13.3.4 his conviction for any offence involving dishonesty or any other serious criminal offence;
- 13.3.5 his becoming of unsound mind or being found lunatic;
- 13.3.6 his resigning from such office in writing;

provided that anything done in the capacity of a Trustee in good faith by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the minute book of the Association.

- 13.4 The Developer may remove and replace any Developer Trustee at any time upon written notice to the remaining Trustees.
- 13.5 The Chairperson shall preside at all meetings of the Board of Trustees and all General Meetings of the Members and in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice-Chairperson shall act in his stead, or failing the Vice-Chairperson, a Chairperson shall be appointed by the meeting to act in his stead for such meeting and any adjournment thereof. This clause is subject thereto that the Trustees are entitled to nominate a person who need not be a Trustee or a Member to preside as Chairperson at a particular General Meeting of Members.
- 13.6 Trustees shall be entitled to be reimbursed in respect of all reasonable and vouched expenses necessarily incurred by them respectively in or about the performance of their duties as Trustees.

14. POWERS OF TRUSTEES

- 14.1 Unless otherwise resolved by way of a Special Resolution at any General Meeting, Trustees are authorised and empowered to:
 - 14.1.1 appoint and dismiss management.
 - 14.1.2 delegate powers to management (including the power to appoint and dismiss employees other than senior employees).
 - 14.1.3 co-opt onto the Board, in an advisory capacity, any persons who need not be a Member/s for such purpose and period (which shall not extend beyond the Annual General Meeting following upon such co-option) as may be determined.
 - 14.1.4 to institute and defend legal proceedings for the recovery of any debt and defend any legal proceedings brought against the Association; the institution of any legal proceedings (other than for the recovery of a debt) and engagement in any other legal proceedings, however, requires the approval of the Members at an Annual or Extraordinary General Meeting.
 - 14.1.5 to open and conduct a banking account/s for purposes of the Association's business.

- 14.1.6 to disburse, from the bank account/s such operational and capital expenditure as approved in the budget (and/or as raised by way of any additional and/or special Levies) and as otherwise may be authorised by a General Meeting.
- 14.1.7 to enforce compliance with the provisions of this Constitution and the Rules.
- 14.1.8 to enter into contracts necessary for the purposes of the main business and implementation of this Constitution.
- 14.1.9 to appoint Standing Committees with respect to Security, Environment, Disciplinary and such ad hoc Committees as deemed necessary, and to delegate to such Committees such powers and authorities as may be considered necessary, subject to any restrictions imposed or directives given at any General Meeting.
- 14.1.10 to terminate any Committee and/or revoke and/or amend any appointments to such committees and/or the delegations of authority to such Committee from time to time, as deemed necessary.
- 14.1.11 the Trustees may meet to attend to their business, adjourn, and otherwise regulate their meetings, as they think fit, subject to the provisions of this Constitution.
- 14.1.12 save as specifically provided in this Constitution, the Trustees shall, at all times, have the right to engage on behalf of the Association the services of Accountants, Auditors, Attorneys, Architects, Engineers, Town Planners, Estate Manager or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 14.1.13 the Trustees shall, after the development period, further have the power:
- 14.1.13.1 to require that any construction of any nature within the Township shall be supervised to ensure that the provisions of this Constitution and the Rules are complied with, and that all such construction is performed in a proper and workmanlike manner;
 - 14.1.13.2 to issue Architectural and Development Guidelines from time to time and to ensure that such guidelines are complied with at all times.
- 14.2.1 The quorum for any meeting of the Trustees shall be 3 (three) Trustees present personally.
- 14.2.2 A Trustee shall not be entitled to appoint any alternate to function in his stead for any purpose nor by proxy or otherwise appoint any other person to fulfil his functions and duties.

- 14.2.3 A Trustee may not otherwise delegate any of his obligations, save as approved by a majority of the (other) Trustees.
- 14.3 Any resolution passed by the Board of Trustees shall be carried by a simple majority.
- 14.4 Should there be an equality of votes for or against any resolution, the resolution shall be deemed to have been defeated.
- 14.5.1 The Trustees shall cause the minutes of each meeting to be kept in accordance with Section 204 of the Companies Act, which minutes shall be reduced to writing within 7 (seven) days and certified as correct by the Chairperson at the next meeting.
- 14.5.2 A copy of each minute shall be delivered by the Chairperson to each Trustee within 14 (fourteen) days of the meeting to which such minutes relate.
- 14.5.3 All minutes of Trustees meetings shall, after certification, be placed in the Trustees Minute Book which shall be kept by management in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies.
- 14.6 The Trustees' Minute Book shall be open for perusal at all reasonable times by any Trustee, the Auditors and Members.
- 14.7 Subject to the provisions of this Constitution, the proceedings of any Trustees meeting shall be conducted in such reasonable manner and form as the Chairperson shall direct.
- 14.8 A resolution signed by all the Trustees shall be valid in all aspects as if it had been duly passed at a meeting of the Board of Trustees.
- 14.9 The Trustees shall ensure that each Standing Committee is under the Chairpersonship of a Trustee or the Estate Manager.

15. PROCEEDINGS OF TRUSTEES

- 15.1 The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 15.2 The quorum necessary for the holding of all meetings of the Trustees shall be 3 (three) Trustees present personally (excluding ex officio Trustees), provided that during the development period at least 1 (one) Developer Trustee shall be present at all meetings of Trustees to form a quorum. If no quorum is present within 30 (thirty) minutes after the time for commencement of the meeting then it shall stand adjourned for 7 (seven) days, or if that is not a business day, then to the next business day thereafter, and those Trustees present at the adjourned meeting shall constitute a quorum.
- 15.3 At any meeting of the Trustees, each Member Trustee shall have one (1) vote and each Developer Trustee shall have three (3) votes.

16. MEMBERS MEETINGS

Types of meeting:

- 16.1.1 Annual General Meeting (AGM):

the Trustees shall use their best endeavours to convene and hold the AGM within 4 (four) calendar months of the end of each financial year of the Association.

16.1.1.2 the notice convening the AGM shall be delivered to the Members and shall contain an agenda of the business to be conducted as follows:

- tabling of the Chairperson's report.
- consideration of the annual financial statements (for the previous Financial Year) and the approval thereof.
- the budget for the affected Financial Year and the determination of Levies and the approval thereof.
- the appointment of the Association's Auditors and the remuneration payable to the Auditors.
- the election of the Trustees (to designated portfolios).
- the election of a Chairperson and a Vice-Chairperson.
- any other relevant business.

16.1.2 Extraordinary General Meeting (EGM):

The Association may convene an EGM for the passing of a Special Resolution dealing with special business not dealt with at the (preceding) AGM or in respect of matters which the Trustees (or requisitionists, as dealt with in clause 16.2) believe shall fall to be resolved by the passing of a Special Resolution (and which may further include any matters required to be dealt with by the Association which are considered to be *ultra vires* the powers of the Trustees, as referred to in this Constitution).

16.1.3 Informal meetings of an informative nature where no resolutions may be passed.

16.1.4 All such aforementioned Meetings shall be held at a date, time and place as the Trustees shall determine, subject to the provisions of the Companies Act read together with this Constitution.

16.2 Requisition by Members for the holding of an EGM.

16.2.1 The Trustees shall within 14 (fourteen) days of receipt of a written requisition signed by Members holding not less than 5% of the voting rights in the Association (and based on 1 (one) vote per Unit or Erf), convene an EGM, within not less than 21 (twenty one) and not more than 35 (thirty five) days from the date of such notice in conformity with the requirements set out in Sections 181 (1) (b), 181 (2) and 181 (3) of the Companies Act.

16.2.2 The provisions as set out in Sections 185 and 186 of the Companies Act shall otherwise apply thereto.

16.2.3 The written notice of the requisitionists shall set out in detail a draft of the Special Resolution/s required to be tabled at such EGM.

16.3 Notice of Meetings – Further Provisions:

- 16.3.1 Subject to the other provisions of this Constitution, each AGM and EGM shall be called by written notice at least 21 (twenty one) clear days before the date set for the meeting.
- 16.3.2 The notice convening each such meeting shall specify the place, the day and hour of the meeting and shall otherwise contain details of the business, including where relevant, special business, to be conducted at the meeting.
- 16.3.3 In the event that special business is to be conducted at a meeting, the notice convening the meeting shall contain adequate motivation and information to enable the Members to make an informed decision.
- 16.3.4 In the event that less than 21 (twenty one) clear days notice was provided in respect of the proposed passing of a Special Resolution, the majority of the Members having the right to attend and vote at such meeting (present in person or represented by proxy) shall be entitled, by way of a majority vote, to condone and consent to such shorter notice.

16.4 Quorum:

- 16.4.1 No business shall be transacted at any General Meeting unless a quorum is present within 30 (thirty) minutes of the commencement of the meeting.
- 16.4.2 The quorum necessary for the holding of the following meetings shall comprise the hereinafter set out percentages of the Members entitled to vote (on the basis of 1 (one) vote per unit or erf), present in person and by proxy:

16.4.2.1	AGM:	10% (ten percent).
16.4.2.2	EGM:	10% (ten percent).

- 16.4.3.1 Subject to the provisions of clause 16.5.1, if within half-an-hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time (or such other place as the Chairperson of the meeting shall direct), and if at the adjourned meeting a quorum is not present within half-an-hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.
- 16.4.3.2 If the same day in the next week is not a business day (any day other than a Saturday, Sunday or proclaimed public holiday), the adjourned meeting shall be held on the immediately succeeding business day.

16.5 Adjournment of Meetings – Further Provisions:

- 16.5.1 Subject to the provisions of clause 16.4.3, the Chairperson shall, with the approval of a majority of the Members at any General Meeting at which a quorum is present, adjourn the meeting from time to time and place to place.

- 16.5.2 No business shall be transacted at any adjourned meeting other than the business which fell to be transacted at the meeting from which the adjournment took place.
 - 16.5.3 Save where a meeting is adjourned for a period of 10 (ten) days or longer, notice of the adjourned meeting shall not be required to be given to the Members.
 - 16.5.4 Where notice of the adjourned meeting is required to be given as provided in this Constitution, same shall be given in the same manner as for a new meeting.
 - 16.5.5 Any General Meeting at which a Special Resolution is required to be passed shall, notwithstanding anything to the contrary contained in this Constitution, be adjourned to a day not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of such meeting.
- 16.6 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.

17. PROXIES

- 17.1 A Member may be represented at a General Meeting by a proxy, who need not be a Member.
- 17.2 The instrument appointing a proxy shall be in writing duly signed by the Member concerned (or his appointed agent duly authorised in writing), and be substantially in the form as set out in clause 17.5.
- 17.3 The original instrument appointing a proxy (and the power of attorney or any other authority under which it is signed) shall be delivered to the Trustees by no later than 17h00 on the last business day prior to the commencement of the meeting at which the person named in the proxy instrument proposes to vote, such instrument to be tabled at the meeting and filed with the Minutes thereof, in the Minute Book.
- 17.4 No instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date when it was signed, unless so specifically stated in the proxy itself.
- 17.5 In order to determine the authority and rights of the proxy holder, it is preferred that the proxy form be substantially in the following form and indicate the instructions to the proxy holder in an unambiguous manner:

PROXY FORM

I/We,, the undersigned the registered owner of (or duly authorised by the registered owner of, in which event a copy of the authorising power of attorney and where relevant, authorising resolution shall be attached to this proxy form) being a Member of the Rheebok Village Estate Home Owners Association, do hereby appointof or failing himof or failing himof as my proxy to vote for me and on my behalf at the General Meeting of the Association to be held on the day of 20....., and at any adjournment thereof as follows:

1. Motion to

(See attached draft resolution, if relevant)

In favour Against Abstain

2. Motion to

(See attached draft resolution, if relevant)

In favour Against Abstain

3. Motion to

(See attached draft resolution, if relevant)

In favour Against Abstain

* Where it has been indicated that the proxy may vote in favour of any of the resolutions, indicate further whether the proxy may vote in favour of any modification to any proposed resolution or not:

With modification Without modification

* If no indication has been made above as to how the proxy may vote, the proxy may vote as he thinks fit.

Signed this _____ day of _____ 20____

SIGNATURE

17.6 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the death or insolvency of the principal prior to the time at which the meeting was due to start, or subsequent revocation of the proxy, provided, however, that no intimation of the death or insolvency, or revocation shall have been received by the Trustees and the proxy at any time prior to the vote being taken in respect of which the proxy exercises such vote.

18. RESOLUTIONS

18.1 Every motion and every amended motion proposed for adoption as a resolution by a General Meeting shall be seconded at the meeting and if not so seconded, shall be deemed not to have been proposed.

18.2 An amendment proposed shall also require to be seconded, and if approved by the meeting, will replace the initial proposal, and such amended proposal must then be put to the vote.

18.3.1 An ordinary motion or the amendment of any ordinary motion shall be carried by a simple majority of all votes cast.

18.3.2 Should there be an equality of votes for or against any ordinary motion, the motion shall be deemed to have been defeated.

18.3.3 A Special Resolution shall be carried by 75% (seventy five percent) of the votes of Members (in good standing) present in person or by proxy at the General Meeting, and in the event of no quorum being present by 75% (seventy five percent) of the votes of the Members (in good standing) present in person or by proxy at any adjourned meeting in accordance with the provisions of clause 16.4.

18.4 Where less than 21 (twenty one) days' clear notice was provided in respect of the relevant General Meeting, the consent, if relevant, with respect to the waiver of due notice by a majority of the Members (as referred to in clause 16.4), shall be signed in the prescribed form (as required in terms of the Companies Act) together with a copy of the Special Resolution so passed (if relevant).

18.5 A copy of the notice convening the meeting together with the consent/waiver in respect of short notice, as referred to above, shall be kept in the Minute Book.

18.6 The Trustees shall deliver a copy of all Special Resolutions to the Members, alternatively ensure that the text thereof is accessible on the Association's website.

19. VOTING RIGHTS OF MEMBERS

At every General Meeting:

- 19.1 Every Member, who is in good standing (who is not in arrears with respect to any levies or other debt), shall be entitled to vote in person or by proxy and shall have 1 (one) vote for each erf or unit registered in his name at any General Meeting, subject to the provisions of Section 197 (1) and (2) of the Companies Act.
- 19.2 If a unit or erf is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.

Voting-Determination

- 19.3 At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded by the Chairperson or Members as provided in terms of Section 198 (1) (b) of the Companies Act.
- 19.4 Unless a poll is demanded before or on the declaration of the result of a show of hands, a declaration by the Chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, an entry to that effect in the Minute Book of the Association, shall be conclusive evidence of the fact, without proof, of the number or proportion of the votes recorded in favour of or against such resolution.
- 19.5 A demand for a poll may be withdrawn.
- 19.6 Should a poll be demanded, it shall be taken in such a manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 19.7 Scrutineers shall be elected by the meeting to determine the result of the poll.
- 19.8 Should there be an equality of votes for or against any resolution, the resolution shall be deemed to have been defeated.
- 19.9 A poll demanded with respect to the election of a Chairperson and/or a Trustee or on the issue of any adjournment shall be taken forthwith.
- 19.10 A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs.
- 19.11 The demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 19.12 Unless any Member present in person or by proxy at a General Meeting, prior to closure of the meeting, objects to any declaration made by the Chairperson, with regard to the result of any voting at the meeting, whether by show of hands or otherwise, or to the correctness or validity of the procedure at such meeting, such declaration by the Chairperson 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 Minute Book to the effect that the motion has been carried or defeated, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

19.13 This clause is subject thereto that during the development period, the Developer shall, in addition to its 1 (one) vote per erf or unit registered in its name, be entitled to three times the total number of votes of all the other members of the Association.

20. ACCOUNTING RECORDS

20.1 The Trustees shall cause such accounting records as are prescribed by section 284 of the Companies Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary to fairly present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.

20.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Trustees think fit, and shall always be open to inspection by the Trustees.

20.3 The Trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by Members not being Trustees, and no Member (not being a Trustee) shall have any right of inspecting any accounting records or documents of the Association except as conferred by the Companies Act or authorised by the Trustees.

20.4 The Trustees shall from time to time cause to be prepared and laid before the Association, in General Meeting, such financial statements as are referred to in sections 286 and 288 of the Companies Act.

20.5 A copy of the audited annual financial statements which are to be laid before the Association in Annual General Meeting shall, not less than seven (7) days before the date of the meeting, be available for members at the office of the Estate Manager. It shall not be necessary to circulate the said financial statements with a notice convening an Annual General Meeting.

21. SERVICE OF NOTICES

21.1 The Association may give notices to any Member either personally, or by sending it by post in a prepaid letter addressed to such Member at his registered address or at the address (if any) within the Republic of South Africa supplied by him to the Association for the giving of notices to him.

21.2 Notice of every General Meeting shall be given:

21.2.1 to every Member of the Association;
to the auditors for the time being of the Association;

provided that no other person shall be entitled to receive a notice of General Meetings.

21.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

- 21.4 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 21.5 When a given number of days' notice or notice extending over any other period is required to be given, the period shall be calculated by excluding the first day and including the last day.

22. INDEMNITY

- 22.1 Every Trustee, servant, agent and employee of the Association and management (and their employees), shall be indemnified by the Association against all costs, losses and expenses (inclusive of travelling expenses), which such person or persons may reasonably and necessarily incur or become liable for by reason of any contract entered into or by any act or deed done by such person or persons in the discharge of their respective duties and obligations to the Association, and in the case of a Trustee, including his duties as Chairperson or Vice-Chairperson and otherwise as a Member of any Committee.
- 22.2 The provisions as set out in clause 22.1 shall similarly apply insofar as every co-opted Trustee and member of any committee appointed by the Trustees are concerned and the Association indemnifies all such persons accordingly.
- 22.3 Without prejudice to the generality of the foregoing, the Association indemnifies every such Trustee or other 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.
- 22.4 Members conversely indemnify the Association (including management) and their respective officers, employees and agents in respect of any claims, damages or losses (including costs and interest) suffered or sustained as a result of any unlawful act, negligence (including any act or omission) and/or as a result of any breach of the provisions of this Constitution and/or the Rules, by the Member, his family, employees, agents, contractors, sub-contractors, tenants (and other occupiers of the Erf or Unit), guests and visitors (including any customer, client or patient) and which act, omission and/or breach occurs, if relevant, in and about the Township.
- 22.5 The Trustees shall be entitled in terms of the Rules to require that every person (other than a Member and his family who form part of the household) as a pre-condition to entry to the Township, complete and sign a written indemnity (in a form approved by the Trustees) in which the Association (and management) and their respective officers, employees and agents are indemnified and held harmless in respect of any claims, damages or losses including any personal injury or other harm occurring or arising in or about the Township.
- 22.6 The Trustees shall further be entitled to implement such measures and effect such insurances pertaining to all risks, whether insurable or otherwise and shall procure that the Association is covered by such short-term insurances (including, but not limited to, public liability cover) as is determined necessary from time to time, the right further being reserved to deal with the foregoing in terms of the Rules.

23. GENERAL

23.1 Whenever the Trustees consider that the appearance of any Erf or Unit or building in the Township vested in a Member is such as to be unsightly or injurious to the amenities of the surrounding area or the Township generally, they may serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Member fail within a reasonable time, to be specified in such notice, to comply therewith, the Trustees may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the Member concerned, which costs shall be deemed to be a debt owing to the Association.

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

23.2 Any Member as registered owner of an erf zoned for residential purposes shall construct and complete the construction of a dwelling house thereon within one (1) year after the first registration (irrespective of whether such transfer was into his name or into the name of any predecessor), unless an extension is allowed by the Developer or Association. After a period of 1 (one) year from the date on which the last of the erven have been sold by the Developer, the Association shall be entitled to close the contractor's gate and to refuse entry to the estate by heavy vehicles. This restriction will not be applicable on the Developer.

23.3 Should any Member fail to comply with the provisions of clause 23.2, the Association shall be entitled to impose double the amount of levies due by such Member in terms of clause 6.

23.4 The Association may enter into agreements with any third party for the provision of facilities and services to or for the Members and may levy charges in respect of the provision thereof, or may pass on such costs direct to the Members.

23.5 Any person using any of the Services, land or facilities of the Association does so entirely at his own risk.

23.6 The Association may at its pleasure permit the Members, subject to the provisions of this Constitution, to use the open space and roads, and shall do so unless by special resolution taken at an Extraordinary General Meeting called for the purposes, it is otherwise resolved for good reason.

23.7 The Association may from time to time and whenever it deems it necessary, limit, restrict, or suspend such use in relation to any part of such roads and open space for good reason.

23.8 No Member shall operate or conduct a time share scheme as contemplated in the Time Share Control Act No. 71 of 1983 in respect of any unit(s)/erf/erven owned by him save where such scheme arises from co-ownership or

syndication involving not more than 2 (two) Members per bedroom per unit or erf.

24. DISPUTES

- 24.1 Any dispute arising out of or in connection with this Constitution must be determined in terms of this clause, except when an interdict is sought for urgent relief, which may be obtained from a court of competent jurisdiction.
- 24.2 On a dispute arising, the party who wishes to have the dispute determined must notify the other party thereof in writing. Unless the dispute is resolved amongst the parties to that dispute within fourteen (14) days of such notice, either of the parties may refer the dispute to determination in terms of this clause.
- 24.3 If a party exercises his right in terms of this clause to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of ten (10) years experience in their field:
- 24.3.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
- 24.3.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
- 24.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
- 24.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising professional engineer;
- 24.3.5 if the dispute relates to any other matter, an independent and suitably qualified person.
- 24.4 If the parties are unable to agree either on the person referred to in this clause or on the classification of the dispute within a period of seven (7) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person in question shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope or its successor/s.
- 24.5 Any person agreed upon and nominated as aforesaid ("the expert"), shall in all respects act as an expert and not as an arbitrator.
- 24.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 24.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within twenty one (21) days or so soon thereafter as possible, after it has been demanded.

- 24.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 24.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between party and party or as between attorney and client.
- 24.10 The provisions of this clause constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.
- 24.11 The provisions of this clause shall be deemed to be severable from the rest of this Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled or declared of no force and effect for any reason.

25. ESTATE MANAGER

- 25.1 The Developer shall, for the duration of the development period, and thereafter the Trustees, be entitled to appoint an Estate Manager to control, manage and administer the development and the Common Property and to exercise such powers and duties as may be entrusted to the Estate Manager, including the right to collect Levies.
- 25.2 The terms and conditions of the appointment of the Estate Manager shall be in the discretion of the Developer or the Trustees as the case may be.

26. AMENDMENT

- 26.1 No amendment of whatever nature to this Constitution shall be effected without the prior written notice to the Council;
- 26.2 Notwithstanding the provisions of this clause the Developer shall during the development period have the right to amend this Constitution without the prior approval of the Council in terms of this clause and shall further have the right to veto any proposed amendment of this Constitution if there is a reasonable apprehension that such amendment could detrimentally affect the Developer's ability to complete the development in accordance with its development plans. Notwithstanding the provisions of this clause the Developer shall not have the right to vary the provisions relating to qualification for membership of the Association, the proportionate liability of Members for the payment of Levies or the voting rights of Members.
- 26.3 Subject to the provisions of the clause above, every amendment of this Constitution of whatever nature including any addition thereto, deletion therefrom or substitution thereof shall require the approval of at least 75% (seventy-five per centum) of the total number of votes allocated to Members which majority shall be expressed at a General Meeting called specifically for such purpose and the notice of such meeting shall, in addition comply with the requirements for the

convening of a meeting, set out in specific terms the proposed amendment.

27. ENVIRONMENTAL MANAGEMENT PROGRAM: MANAGEMENT OF THE NATURE AREA ASSOCIATED WITH THE DEVELOPMENT OF A SECURITY VILLIAGE ON A PORTION OF THE FARM RHEEBOKSFONTEIN NO 142

BACKGROUND

- 27.1.1 Application was made for the rezoning and subdivision of the above property in December 1997. It was approved by the Mossel Bay Municipality in June 1998 subject to a number of conditions. One of these was that “an environmental Management Plan” (EMP)” addressing both the development phase as well as long term management of open spaces had to be drawn-up and submitted to the relevant environmental authority.
- 27.1.2 An important feature of the approved layout is the identification of a substantial Nature Area within the development. The siting of this was finalised after protracted negotiations with the local office of Cape Nature Conservation (*now Cape Nature*).
- 27.1.3 Installation of services for various phases was done in terms of a “*Construction Phase Environmental Management Programme*”. Some aspects of “long term management were also implemented (e.g. removal of alien vegetation over the greater site) however although the Nature Area was retained in its natural state and a Trust Fund established for its management it was not rezoned from agriculture and phase. There was thus no formal entrenchment or routine management of the Nature Area as a reserve.
- 27.1.4 The intention of the present Phase of development of a security village is however to include the Nature Area and to formally rezone it to Private Open Space. This will have the specific aim of managing the site for the benefit and long-term maintenance of its natural flora and fauna and also the benefit of residents and property owners in the development.
- 27.1.5 This Environmental Management Programme (EMP) specifically addresses the long-term management of the “Nature Area” as a formally protected area.

27.2 SITE DESCRIPTION

- 27.2.1 The development area in general consists of a large north-facing property immediately to the south of the R102 linking Little Brak River and Great Brak River. It adjoins the “Fraai Uitsig” development to the west and various developments to the south in an area indicated in the (then) Mossel Bay / Riversdale sub-Regional Guide Plan for township development. Before approval of development the property was zoned and used for agricultural purposes, sand quarrying, etc..
- 27.2.2 Due to varying degrees of disturbance, much of the site was degraded and dense infestations of alien invasive vegetation occurred. This has been removed from most of the site --- and attempts were made to preserve prominent clumps of conservation-worthy and/or protected trees (mainly dominated by white milkwood trees (*Sideroxylon inerme*) and “White Cape Beech” (“Witboekenhout --- *Pittosporum viridiflorum*). On-going clearing of aliens plants, predominantly rooikrans (*Acacia*

cyclops), has being undertaken on the developed extensions while large scale development and the construction of houses and establishment of gardens have taken place on adjoining development phases.

27.2.3 At the time of the original application for the subdivision and development of the greater property, a specialist botanist of Cape Nature Conservation found several rare and endangered plants on a portion of the site. These plants included:

- A new *Caesia* species;
- A possibly new species of *Prismatocarpus*
- *Simocheilus dispar*
- Possibly *Gladiolus grandiflora*

27.2.4 A substantial area of Albertinia Dune Fynbos, a vegetation type of “very high conservation value” as well as areas of highly threatened “coastal thicket” were also found. These occurred mainly in a specific area --- a substantial portion of which at their request was retained in development as an open (nature) space area. This was aimed at protecting some or all of the species listed above in the ecosystems in which they naturally occurred.

27.2.5 Other natural features of the site were described in the environment report which accompanied the application. Some of the most important aspects included the following:

- The site consisted of old, stabilised coastal dunes consisting of Quarternary to Tertiary sands overlying Enon shales and conglomerates. Slopes were however generally “gentle” and seldom exceeded 1: 6.
- Although no significant areas of limestone (fossilised dune) occurred on the site, there are alkaline areas containing fragments of limestone.
- Being a former drift sand area, the site was sensitive with respect to wind erosion which could become a problem if extensive denudation of protective vegetation occurred (as happened during sand mining).
- Soils generally had low water-retentive properties. Due to the comparatively low mean annual rainfall (under normal conditions) it was basically a “hostile” environment for non-adapted plants.
- Indigenous dune shrubs and trees (including protected white milkwood trees --- *Sideroxylon inerme*, and White Cape Beech --- *Pittosporum viridiflorum*) occurred sporadically throughout the property. These were a major environmental asset and were to be maintained or re-established where-ever possible.
- Although it should be seen in the agricultural and residential context of the general area, undeveloped areas were recognized as important refuges for local fauna, including invertebrates, small mammals, reptiles, antelope and birds. Their abundance was in part directly proportional of the “naturalness” of the site in question and its status with regard to rehabilitation and protection (bearing in mind the possible “island effect” of such areas)
- In addition, beyond just providing food and shelter for fauna, the natural vegetation was also an aesthetic asset. If preserved and/or re-established the Nature Area could contribute substantially towards the “quality” of adjoining development, while this could also encourage the use of locally indigenous vegetation in private gardens.

This would create “water wise” gardens in an area where water restrictions were becoming a common fact of life.

27.3 GOALS OF THE LONG TERM ENVIRONMENTAL MANAGEMENT PROGRAMME (EMP) FOR THE “NATURE AREA”

27.3.1 The goals of the EMP are to ensure that:

- the identified Nature Area is retained, maintained and protected;
- the Nature area is rehabilitated to an acceptable environmental standard;
- the Nature area in general is managed to ensure the survival of the various threatened ecosystems that are included in it (and have largely been lost in other sites in the immediate area).

27.3.2 The reasons for the above is to protect and preserve an important natural features of the site, both for the benefit of development and also to act as a “preserve” and refuge for a representative “sample” of the conservation-worthy flora and fauna native to the area.

27.4 PRESCRIPTIONS WITH RESPECT TO THE MANAGEMENT OF THE NATURE AREA.

The following are prescriptions with respect to the long-term management of the Nature Area:

27.4.1 IDENTIFICATION OF THE NATURE AREA.

- It is important that the boundaries and area covered by the Nature Area are clearly identified and easily distinguishable.
- The intention now is to enclose the Nature Area within the security fence of the securitised “village”. In this way the outer boundary of the perimeter of the Nature Area will be clearly and permanently marked.
- The intended fencing is a “penetrable security fence” with spacings that will allow passage of smaller mammals but not big dogs or humans.
- Although it could be argued that the use of barrier fencing would fragment the area and prevent natural movement of “wild life”, this is only true for large mammals and it should be borne in mind that that the area in general is in any case becoming increasingly densely developed while the site itself is separated from neighboring natural areas to the north by a busy road (the R102) while very little of natural environment to the south has survived due to extensive residential development.
- It can thus not realistically function as a complete “wildlife corridor” although smaller animals will have free movement while floristically existing natural areas can still be linked and cross-pollinated.
- It is widely recognized that the greatest threat to surviving wildlife in areas adjoining residential development is predation by domestic or feral dogs and cats. This will at least be contained to some extent on the western boundary, while some form of fencing on the eastern perimeter, e.g. a picket fence, should be considered.

27.4.2 LITTERING AND TRESSPASS

- The Nature Area must be protected from use as an area for illegal dumping of building or gardening waste, and a notice/ notices prohibiting this must be erected.
- Penalties in this regard should be established and form part of the “rules” and constitution of the Home Owners’ Association.
- Illegal, informal settlement squatting and trespass was a threat in the past. This will be countered by the establishment of the securitised development.
- Although uncontrolled access is undesirable, if there is a demand for it, controlled access and passive enjoyment of the Nature Area would add to its status as a potential social asset and a system of nature trails, benches and rest sites could be established. This should be done, in consultation with an environmental consultant.
- It would be highly desirable to establish a system of “custodians” of the Nature Area consisting of interested residents and N.G.O.’s such as the mid-Brak Conservancy).

27.4.3 REHABILITATION

- 27.4.3.1 The main source of degradation of the Nature Area is invasion by alien vegetation. Problem species include specifically rooikrans (*Acacia cyclops*) and black wattle (*Acacia mearnsii*) although a wide range of other problem species dumping of garden waste occurs.)

In this regard it is recommended that:

- Mature specimens of alien trees (predominantly rooikrans) must be killed by sawing or ring-barking;
- Removal or retention on site of sawn trees should be determined in consultation with an environmental consultant (as disturbance caused by dragging felled trees out of the underbrush could itself cause extensive disturbance and promote regeneration of alien seedlings);
- Saplings of undesirable species must be removed in an annual clean-up;
- The area must be protected against erosion caused by uncontrolled footpaths or diversion of storm-water from developed areas. This should be monitored on an annual basis

27.4.4 PROTECTION OF FAUNA.

- The hunting, snaring or removal of any natural fauna must be strictly prohibited and signboards to this effect should be placed on site.

- Special attention should be given to control of access to the site by feral cats and/or dogs and measures to trap and remove them if necessary should be taken.
- It is particularly important that reptiles, such as tortoises are protected and that in fact their removal is illegal. This should be made known and penalties laid down as required).

11.4.5 FIRE MANAGEMENT

A major “tool” in the management of the Nature Area is Fire. As described above, the vegetation of the Nature Area consists of two vegetation types: Albertinia Dune Fynbos, which is described as a vegetation type of “very high conservation value”; and “coastal thicket” that is also regarded as “highly threatened”. The biological role of fire in these two major biome categories is vastly different:

To survive on the long term, it is essential that the area of *Albertinia Dune Fynbos* is periodically burnt as this is a “fire climax” vegetation type. In the case of *Coastal Thicket* (which is not a fire-climax vegetation type) fire is harmful and damaging as species are long-lived and regeneration of climax vegetation after fires takes a very long time.

On site these two vegetation types do not have clear boundaries and “ecotones” ,i.e. transitional areas, exist. In this regard it is suggested that the area below the track through the property (on the lower north side) should be regarded as the boundary between the two vegetation types, and that:

- The (Fynbos) portion of the nature area below the road should be periodically burnt in consultation with an environmental consultant;
- The (Thicket) portion of the nature area above the road should be protected at all times against accidental or planned fires, and a management strategy to contain and control fires should be established. (In this case the aim should be to extinguish fires as efficiently as possible).
- A fire break (or minimum width) should be established around the perimeter of the Nature Area taking into account the protected status of specific tree species and plant communities.

As a great deal of “fuel” has accumulated on site (including in the “fynbos” area) and the fynbos vegetation here is mainly senile, *it is important that this area is burnt in a controlled fire, **as soon as possible** (and preferably before the immediately adjacent development phase is undertaken).*

This area should be re-burnt at intervals in the future of between ten of fifteen years or longer (according to the maturity of vegetation), in consultation with a fynbos ecologist.

27.4.6 FUTURE “DEVELOPMENT” OF THE NATURE AREA

As the primary objective of the Nature Area is to preserve plant communities controlled public access is not incompatible with this use. A system of pathways and other conservation-orientated amenities could be developed.

Some requirements/recommendations +in this regards are as follows:

- Pathways should be designed so that they do not destabilize the area;
- A perimeter pathway will give access for fire control (see previous section);
- Benches for relaxation and enjoying nature could be provided;
- Due to the predominance and variety of natural vegetation the Nature Area could provide shelter and food for a variety of birds and other life forms. A water feature and/or drinking area for birds and small mammals could be provided, either drip-fed from a water source or from a rainwater capture mechanism. A bird hide could even be established;
- The planting-in of selected locally indigenous shrubs, e.g. bitou and rhus species, could encourage wildlife and increase the “carrying capacity” for seed and fruit eaters;
- Similarly fynbos species could be augmented by planting-in of selected plant species that occur in Albertinia Fynbos in the relevant section of the Nature Area (This features many attractive and “showy” Protea and Erica species. It is however important that wild stock and not genetically modified or nursery hybridised plants should be sourced.)
- Information boards and literature could be provided.
- Access should be controlled from within the securitized area.

All the above should be done in consultation with conservation/ environmental management experts.

27.4.7 RESPONSIBILITY FOR MANAGEMENT OF THE NATURE AREA.

The establishment of a Home Owner’s Association/s is a requirement of the original authorization. The intention of the Home Owners Association, amongst others, is to share with the local authority the responsibility of developing and managing the development (and in this regard specifically the Nature Area) in an environmentally and socially responsible manner. Funding for this purpose has already been formalized by the establishment of a Trust Fund which was a condition of approval of the original subdivision.

The rezoning of the Nature Area to Private Open space as part of the securitized village development will enable the conservation objectives to be formalized and management in terms of a formal management program prescribed.

The protection and management of the Nature Area must thus however not only be clearly delegated to the Home Owner’s Association but detailed provisions in this regard should be contained in the Constitution alongside other aspects of the development/management of the general development site.

It is suggested that scope and encouragement should be given to involving interested members of the public and interested owners of property within the development in the development and management of the Nature Area.

27.4.8 MONITORING AND AUDITING

A general requirement of Environmental Management Plans / Programs, is that a regular audit should be undertaken to ensure that the requirements of Plan / programs are being met. Such an audit should be undertaken by an independent qualified environmentalist and it is suggested that this be done on an annual basis.

This audit should in particular concentrate on the management of the Nature Area, and the audit report should be submitted to the Owner's Association, the Local Authority and to the environmental authority (on request).

Aspects during the audit which should receive particular attention are:

- Erosion and stability of soil surfaces within the Nature Area (especially with respect to path ways and/or run-off from adjacent development and road reserve areas)
- The status of alien vegetation control;
- Status of stabilization and revegetation of denuded areas within the Nature Area;
- Dumping and general site "pollution" and degradation;
- The status of vegetation and requirement for controlled burning (in consultation with a fynbos ecologist).

27.5 CONCLUSION

The Nature Area could be a major asset to both the development and to general environmental conservation in the area. It is trusted that the above measures will contribute towards the optimal management and protection of the Natural Area and assist in realizing its potential as an asset both to the environment and to the "quality of life" of the residents of Rheebockrif.