

**PART C
CONSTITUTION
EDEN RESIDENTIAL ESTATE**

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www.edenresidentialestate.co.za**
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EDEN RESIDENTIAL ESTATE HOME OWNERS ASSOCIATION CONSTITUTION

1. NAME OF COMPANY

The name of the Company is: Eden Residential Estate Home Owners Association.

2. INCORPORATION

2.1 The Company is incorporated as a non-profit company as defined in the Act.

2.2 The Company is incorporated in accordance with, and governed by-

2.2.1 The unalterable provisions of the Act that are applicable to non-profit companies;

2.2.2 The alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Constitution; and

2.2.3 The provisions of this Constitution.

3. DEFINITIONS AND INTERPRETATIONS

3.1 In these clauses, the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them:

3.1.1 “**the Act**” means the Companies Act No 71 of 2008, and words or expressions defined in the Act shall, when used in these clauses, bear the meanings assigned to such words and expressions in terms of the Act;

3.1.2 “**alienate**” means the alienation of any erf or any part thereof and includes alienation by way of sale, exchange, donation, partition deed, intestate succession, will, cession, assignment, lease, court order or insolvency, irrespective of whether such alienation is subject to a suspensive or resolute condition, and 'alienation' shall have a corresponding meaning;

3.1.3 “**entrenched alienation levy**” means an amount equal to 1% (one percent) of the sale price plus VAT, if applicable, as set out in clause 30;

3.1.4 “**Association**” means Eden Residential Estate Home Owners Association a company incorporated in terms of the Act, and “the Company” shall have a corresponding meaning, approved in accordance with Section 29 of Land Use Planning By-Law for George Municipality, 2015;

3.1.5 “**auditors**” means the auditors of the Association appointed by the annual general meeting from time to time;

3.1.6 “**board of directors**” means the board of directors of the Association duly appointed in terms of the Act;

- 3.1.7 “**buildings**” means the buildings erected or to be erected on the land and other buildings and/or structures relating to communal facilities;
- 3.1.8 “**chairperson**” means the chairperson of the board of directors;
- 3.1.9 “**communal areas**” means:
- 3.1.9.1 all parts of the common property including (but not limited to) private open space areas, garden areas and recreational areas, private roads and the associated storm-water system and related structures and pathways, open parking bays, the facade of the buildings, the roof of the buildings, but specifically excluding all such parts of the common property within the buildings such as foyers, passages, stairs, lifts, balconies, under cover parking bays, storerooms and all pipes and services within the building; and
- 3.1.9.2 any land which may be designated by the board of directors for the purposes of use in common by the members; and
- 3.1.9.3 any land which may be designated in any manner or in terms of any law or condition or authority for purposes of use in common by the members and/or the public including to provide a uniform effective and comprehensive system of control and management of the private road and gate house as a whole which the HOA must make contributions towards;
- 3.1.10 “**communal facilities**” means:
- 3.1.10.1 all security facilities within the development;
- 3.1.10.2 all recreational facilities if only within the development, which are accessible to all members; and
- 3.1.10.3 all such other facilities which may be designated by the board of directors for the purposes of use in common by all members;
- 3.1.11 “**the CSOS Act**” means THE COMMUNITY SCHEMES OMBUD SERVICES ACT, 9 of 2011 including the Regulations made in terms of the Act;
- 3.1.12 “**Community Schemes Ombud Service**” means the service established in terms of the CSOS Act;
- 3.1.13 “**developer**” means Rainbow Place Properties 29 (Pty) Limited, a company duly registered and Incorporated in terms of the Company Act under registration number 2004/027560/07;
- 3.1.14 “**development period**” means the period from the establishment of the Association until completion of the whole proposed “**development area**” in accordance with the development rights or subsequent amendments thereto for a period of 10 years;
- 3.1.15 “**erf**” means any of the erven forming part of the land;

- 3.1.16 “**financial year**” means the financial year of the Association which shall run from the first day of March in any year until the last day of February in a subsequent year or such other period as the board of directors may determine;
- 3.1.17 “**Development Area**” means the land comprising Eden Residential Estate of the consolidated land known as Erf 29390 George and such adjoining land as may be acquired by the Developer for the purposes of incorporation into the Development, as well as the sectional title units to be erected on Erf 29446 George;
- 3.1.18 “**levy**” or “**levies**” means the levy or levies referred to in clause 12;
- 3.1.19 “**local authority**” means the George Municipality or its successor-in-title and it’s appointed consultants or contractors or any other relevant authority (unless the context otherwise indicates);
- 3.1.20 “**Architectural Guidelines**” means the Architectural Guidelines embodied in this document as an attachment hereto in respect of the development approved by the Council, as it may be amended from time to time;
- 3.1.21 “**Design Review Committee**” means, until the development period has lapsed, the Developer acting alone, and after such period a committee of the HOA and the Service Provider or Managing Agent appointed by the HOA;
- 3.1.22 “**Developer Director**” means a Director appointed by the Developer;
- 3.1.23 “**Special General Meeting**” means an extraordinary general meeting convent in terms of this Constitution;
- 3.1.24 “**General Meeting**” means any Annual General Meeting or Extraordinary General Meeting convent in terms of this Constitution;
- 3.1.25 “**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;
- 3.1.26 “**Managing Agent**” means any person or entity appointed by the Association to undertake any of the management functions of the Association;
- 3.1.27 “**member**” means a member of the Association as defined in clause 8;
- 3.1.28 “**Master Properties Home Owners Association**” means Eden Residential Estate Home Owners’ Association along with the members of the Master Properties Home Owners Association with the obligations of the Association, as set out in the Constitution;
- 3.1.29 “**this Constitution**” means this Constitution of Incorporation as amended from time to time;
- 3.1.30 “**roads**” means all the private roads on the land (including the associated storm-water system and related structures), whether public or private;

- 3.1.31 "rules" and "regulations" means the rules and regulations referred to in clause 14, but for the avoidance of doubt it is provided that such rules shall not be regarded as rules relating to the governance of the Company as contemplated in section 15(3) of the Act;
- 3.1.32 "unit" means a unit as defined in terms of the Sectional Titles Act 95 of 1986, to be developed on Erf 29446 George, such erf number still to be registered at the Surveyor General's office.
- 3.1.33 "the body corporate" means the body corporate to be formed for the sectional title units, such body corporate that will be a member of this constitution.
- 3.2 Unless the context otherwise indicates, any words importing the singular shall also include the plural and visa versa, words importing any one gender shall include the other genders, and words importing persons shall include corporations.
- 3.3 The headings to the respective clauses are for reference purposes only and shall not be taken into account in the interpretation of these clauses.
- 3.4 Where consent or approval is required for any act by a member, such consent or approval shall be in writing and duly signed by the Association and shall be given prior to the member taking action.
- 3.5 In the event of a member consisting of more than one person, they shall be jointly and severally liable in *solidum* for all their obligations in terms of this Constitution.
- 3.6 All references in this Constitution to an erf shall apply *mutatis mutandis* in respect of a unit: Provided that should there be any discrepancy between the provisions set out in this Constitution and the management or conduct rules of the sectional title scheme concerned, the provisions of this Constitution shall prevail.
- 3.7 Should the development contain sectional title units, the owners of such units shall be members of both the body corporate of such sectional title scheme and of the Company.
- 3.8 If any period is referred to in this Constitution by way of reference to a number of business days, the days shall be reckoned exclusively of any Saturday, Sunday or public holiday in the Republic of South Africa.
- 3.9 Any notice which is required to be in writing may be given by electronic communication or faxed to the addressee's e-mail address or fax number of which the person concerned notified the Company or which he normally uses in his communication with the Company.

4. COMMENCEMENT DATE AND STATUS

- 4.1 The Association will be established as a legal persona in accordance with Section 29 of the Land Use Planning By-Law of George, with the registration of the first transfer of an Erf or Unit in the Development Area to a third party other than the Association.
- 4.2 Pursuant to its Constitution the Association shall:
- 4.2.1 be a legal entity and exist independently of its Members.
- 4.2.2 enjoy perpetual succession.
- 4.2.3 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;
- 4.2.4 not operate for profit but for the benefit of the members;
- 4.2.5 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 Directors.

5. OBJECTS AND POWERS OF THE COMPANY

- 5.1 The sole object of the Company 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 in perpetuity.
- 5.2 The main business and object of the Association shall include the following:
- 5.2.1 to act as a Home Owners Association established in terms of Section 29 of the Land Use Planning By-Law of George Municipality, 2015, which is being developed on the Development Area.
- 5.2.2 to maintain and control the common property subject to lease agreements; and
- 5.2.3 to fulfill all and any functions and powers of the body corporates assigned to the Association; and
- 5.2.4 to provide security services for the development and to control access to and egress from the development, as set out in the Master Properties Home Owners Association constitution;
- 5.2.5 the promotion, advancement and protection of the communal and group interest of the members generally in regard to the land and that of tenants, occupiers and visitors to the land;
- 5.2.6 to enter into service agreements and/or lease agreements with the local authority or any other authority or supplier of services including with the developer.

- 5.2.7 to administer and enforce the Architectural and Development Guidelines, and the estate rules;
- 5.2.8 to take transfer of those portions of the Common Property that are to be owned by the Association for the benefit of its Members;
- 5.2.9 to enter into agreements of servitude for the benefit of its Members or any adjacent property development;
- 5.2.10 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 Development Area, water, electricity and sewerage services to the Association and where required to supply such Services to the various Members of the Association;
- 5.2.11 to control the registration of transfer of Erven and Units in the Development Area and ensure compliance within the Development Area with all conditions imposed by the Council when approving the rezoning and / or subdivision of the property(s) comprising the Development Area;
- 5.2.12 in general, to do all such things, and perform all such acts, as may be necessary or expedient to ensure that the Development Area is developed and maintained in the interests of all Members thereby ensuring that the Development Area will be and remain one of premier status.
- 5.2.13 Without limiting the generality of 5.2.1 to 5.2.12, the Association shall have the following powers and functions:-
 - 5.2.13.1 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.
 - 5.2.13.2 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 Board of Directors reasonably anticipate the Association will incur in the attainment of the objects of the Association or the pursuit of its business.
 - 5.2.13.3 To ensure that all provisions of this Constitution are complied with by all Members/parties bound thereby.

- 5.2.13.4 To promote, advance and protect the Development Area and the interests of the Association and all Members.
- 5.3 Except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.
- 5.4 The Company is subject to the restrictive conditions and requirements for the amendment of such conditions as set out in clause 10.4, 29 and 35.
- 5.5 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with the provisions set out in clause 36.
- 5.6 The Company shall apply all of its assets and income, however derived, to advance its stated objects, as set out in this Constitution.
- 5.7 The Company shall not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or who was an incorporator of the Company, or who is a member or director, or person appointing a director, of the Company, except as reasonable remuneration for goods delivered or services rendered or expenses incurred, as a payment of any amount due and payable in terms of a bona fide agreement, as a payment in order to advance a stated object of the Company or in respect of any legal obligation binding on the Company as more fully set out in item 1(3) of schedule 1 of the Act.

6. CONSTITUTION OF INCORPORATION AND COMPANY RULES

- 6.1 This Constitution may be altered or amended in the manner set out in section 16, 17 or 152(6)(b) of the Act, subject to the provisions contemplated in section 16(1)(c) read with clause 35.
- 6.2 The authority of the Company's board of directors to make rules for the Company, as contemplated in section 15(3) is limited and restricted to the extent set out in clause 14.
- 6.3 The board must notify all members in writing of any rules made in terms of clause 14.
- 6.4 The Company must publish a notice of any alteration of this Constitution or the rules by notifying all members thereof in writing.

7. OPTIONAL PROVISIONS OF COMPANIES ACT, 2008 DO NOT APPLY

The Company does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Act.

8. MEMBERS OF THE COMPANY

- 8.1 As contemplated in item 4(1) of Schedule 1 of the Act, the Company has members, who, except for the developer, are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the Company: Provided that the developer's Voting rights during the development period shall be as set out in clause 26.2.2.
- 8.2 Membership of the Association shall be limited to:
- 8.2.1 the original subscribers to these clauses until such time as the member sequal or exceed seven in number, where after they shall be replaced by such members, subject, however, to clause 8.2.2; and
- 8.2.2 any person who is a registered owner of a unit or an erf; and
- 8.2.3 the developer in its capacity as such during the development period.
- 8.3 Where a unit or erf is owned by more than one person, all such registered owners shall together be deemed to be one member of the Association and shall have the rights and obligations of one member of the Association, subject to the provisions of clause 25.
- 8.4 Save for the provisions of clauses 8.7 and 8.8, the rights and obligations shall not be transferable and every member shall:
- 8.4.1 to the best of the ability of such member further the object and interest of the Association; and
- 8.4.2 observe all by-laws and regulations made by the Association or the directors.
- 8.5 The directors, by regulation, shall provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the directors. The Company shall maintain a membership register.
- 8.6 When a member, save for the developer, ceases to be a registered owner of an unit or an erf, such person shall *ipso facto* cease to be a member of the Association. Every registered owner of an erf or an unit shall automatically be a member of the Association.
- 8.7 The developer shall be entitled to cede all of its rights in terms of these clauses and the transferee shall be entitled to exercise all such rights, without the consent of the other members.
- 8.8 The developer may at any time abandon, in writing, in whole or in part, any rights conferred upon it in terms of these clauses.
- 8.9 No member ceasing to be a member of the Association for any reason shall, nor shall any such member's executor, curators, Board of Directors or liquidators, have any claim upon or interest in the funds or property of the Association, but this clause

shall be without prejudice to the rights of the Association to claim from such member or the estate of such member any arrears to subscriptions or other sums due from such member to the Association at the time of such person so ceasing to be a member.

9. RIGHTS OF MEMBERS

9.1 Members' authority to act

It is recorded that not every member of the Company shall be a director of the Company.

9.2 Members' right to information

In addition to the rights to access information set out in section 26(1), a member of the Company has the further rights to information as set out in clause 28.3 of this Constitution.

9.3 Representation by concurrent proxies

The right of a member of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a) is not limited, restricted or varied by this Constitution.

9.4 Authority of proxy to delegate

The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58(3)(b) is not limited or restricted by this Constitution.

9.5 Requirement to deliver proxy instrument to the Company

The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting, as set out in section 58(3)(c) is varied to the extent set out in clause 23.2.

9.6 Deliberative authority of proxy

The authority of a member's proxy to decide without direction from the member whether to exercise, or abstain from exercising any voting right of the member, as set out in section 58(7) is not limited or restricted by this Constitution.

9.7 Record date for exercise of member rights

If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59(3)

10. ALIENATION

- 10.1 No owner shall be entitled to alienate in any manner such owner's erf (or any part thereof) which includes all the improvements thereon (herein referred to as the erf), in the development known Eden Residential Estate unless it is a condition of such alienation that the transferee becomes a member of the Association.
- 10.2 The registered owner of an erf shall not be entitled to resign as member of the Association.
- 10.3 The following servitude will be registered against the title deed of every erf in the development namely :
- 10.3.1 The owner of an erf or any interest herein shall at the date of registration of the erf in the Deeds Office become a member of the EDEN RESIDENTIAL ESTATE HOME OWNERS' ASSOCIATION subject, however, to its Constitution.
- 10.3.2 The owner of an erf shall only be entitled to sell or alienate in any manner (which includes the sale of shares in the case of a company, members interest in the case of a close corporation or the change of beneficiaries in the case of a trust, donation or testamentary or intestate dispositions) the erf to a third party after such purchaser, his executor, Board of Directors or assign has:
- 10.3.2.1 first obtained the written consent of the Association which consent will not unreasonably be withheld.
- 10.4 The above servitude shall be applicable *ad infinitum* on every erf in the development known as Eden Residential Estate and may only be varied or cancelled with the written consent of the Company.

11. OBLIGATION TO BUILD

- 11.1 The erection of a building in compliance with the municipal approved plans and consistent with the Association, shall be completed within 12 (twelve) months from date of commencement thereof on site. The Architectural guidelines will allow for minor deviations, but plans must comply with the Municipal approvals. The Municipality will be the final authority on approval of plans and issuing of occupation certificates.
- 11.2 Clause 11.1 is subject to any periods of extension that may negotiated with and approved from time to time by the board of directors and who may impose further conditions.
- 11.3 Should a member fail for any reason whatsoever to comply with the provisions of clause 11.1 and 11.2 above, then at any time after such failure to comply, the Association shall have the right to impose sanctions or penalties on members in terms

of the rules and regulations of the Association.

11.4 Any written acceptance of this Constitution shall stand as the member's written instruction and authority to the chairperson to act in terms thereof.

12. LEVIES

12.1 The board of directors shall from time to time impose levies (both general and specific) upon the members for the purpose of meeting all the expenses which the Association has incurred, or which the board of directors reasonably anticipates the Association will be put to by way of payment of all charges payable by the Association, and/or the services rendered to it, and/or for payment of all expenses necessarily or reasonably incurred including (but not limited to) all such expenses incurred in respect of:

12.1.1 the management of the Association;

12.1.2 the maintenance, repair, improvement and keeping in good order and condition of all such facilities as it is obliged to maintain and/or provide;

12.1.3 The HOA must consider with the Body Corporate the levies payable by the Body Corporate, for the Apartments;

12.1.4 the fulfillment of any other duties of the Association.

12.2 In calculating levies, the board of directors shall take into account the income earned by the Association, Municipal property rates and service charges and proportional contributions to the Master Property Home Owners Association.

12.3 Any amount due by a member by way of a levy shall be a debt due by such member to the Association monthly in advance. The obligation of a member to pay a levy shall, without prejudice to the Association's right to recover arrear levies, cease upon such member ceasing to be a member of the Association. No levies paid by a member shall under any circumstances be repayable by the Association upon such member's ceasing to be a member. A member's successor-in-title in respect of an erf shall be liable, as from the date upon which such member becomes a member pursuant to the transfer of that erf into such member's name, to pay the levy attributable to that erf. No member shall be entitled to transfer such member's erf until the Association has certified that the member has as at the date of transfer fulfilled all such member's financial obligations to the Association.

12.4 In calculating the specific levy payable by each member, the board of directors shall, as far as reasonably practical, and in their sole discretion assign those costs arising directly out of or directly attributable to the erf itself to the member owning such erf, provided that the board of directors shall be entitled to grant

rebates or to add premiums to members levies as they may deem fit.

12.5 In calculating the general levy payable by each member, the board of directors may, in their sole discretion, take the following factors into account:

12.5.1 the proportion that the surface area of the particular erf or dwelling bears to the total surface area of all erven and dwellings within the development;

12.5.2 the traffic flow generated by the particular erf or dwelling; provided, however, that the board of directors may consider any other factors which they in their sole discretion may deem relevant.

12.6 The board of directors' decision in calculating, assigning and/or allocating the levy shall be final and binding on all members of the Association.

12.7 No member shall be entitled to any of the privileges of membership unless and until he shall have paid all outstanding levies, of whatever nature, and other sum (if any) which shall be due and payable to the Association in respect of such member's membership thereof.

12.8 A member shall, upon request, be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of any arrear levy or other amounts due and owing to the Association. This includes enforcing compliance with any rules or regulations issued by the Association from time to time.

13. COMMUNAL AREAS AND COMMUNAL FACILITIES

13.1 The Association shall be obliged to maintain the communal areas and the communal facilities and shall have the right to supplement the function of the local authority in respect of the maintenance of existing services or the provision of additional services: Provided that prior approval is obtained in writing should any maintenance or improvement be done to a municipal service, and subject to such conditions as the local authority may impose.

13.2 For the purposes of clause 13.1, the Association shall be entitled to employ the services of independent contractors. The HOA will not be responsible for the Common property on the Apartment site. This will be the responsibility of the Body Corporate.

14. RULES

14.1 Subject to any restriction imposed or direction given at a general meeting of the Association and subject to the conditions imposed by the local authority in approving the rezoning and subdivision of the land, the board of directors may from time to time make rules, guidelines and regulations (herein referred to as rules

and regulations) in regard to:

- 14.1.1 the standards and guidelines for the architectural design of all buildings and out-buildings, structures of any nature, swimming pools, and all additions and alterations to any such buildings, out-buildings or structures, including fencing erected or to be erected on the land, and in particular to control the design of the exterior of such buildings, out-buildings or structures and the materials used on such exteriors to ensure an attractive, aesthetically pleasing and co-ordinated character to all buildings on the property;
- 14.1.2 the siting of all buildings, out-buildings, structures of any nature, swimming pools, tennis courts, and all additions and alterations to any thereof;
- 14.1.3 the preservation of the built and general environment;
- 14.1.4 the right to prohibit, restrict or control the keeping of any animal,
- 14.1.5 the conduct of any persons, including the public (which shall be allowed access, on such conditions as the Association shall regulate, to all amenities on the land), on the land for the prevention of nuisance of any nature to any member;
- 14.1.6 the preservation of the natural environment on the land;
- 14.1.7 the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;
- 14.1.8 for the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents on the land;
- 14.1.9 for the maintenance of all buildings, out-buildings, structures, improvements of any nature and landscaping on the land;
- 14.1.10 the controlling of the number of occupiers permitted on any one erf;
- 14.1.11 control of traffic and parking on the land (subject to national guidelines and approval by the local authority).
- 14.2 The rules shall be subject to any condition/s imposed by the developer upon any member purchasing an erf in terms of the deed of sale in respect of such erf.
- 14.3 For the enforcement of any of the rules made by the board of directors in terms of this article, or any of the provisions of these clauses generally, the board of directors may:
 - 14.3.1 give notice to the member concerned requiring such member to remedy such breach within such period as the board of directors may determine;
 - 14.3.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to

- be a debt owing by the member concerned to the Association; and/or
- 14.3.3 take such action including proceedings in court, as the board of directors may deem fit;
- 14.3.4 impose, in its sole discretion, spot fines, other charges and/or impost on the member concerned, as the board of directors may deem fit.
- 14.4 In the event of the board of directors instituting any legal proceedings against any member or resident on the land for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 14.5 In the event of any breach of the rules or provisions by the members of any members' household or his guests or tenants, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the board of directors may take or cause to be taken such steps against the person actually committing the breach, as the board of directors may in its sole discretion deem fit.
- 14.6 In the event of any member disputing the fact that he has committed a breach of any of the rules or regulations, a committee of three directors appointed by the chairperson for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the chairperson may direct.
- 14.7 Notwithstanding anything to the contrary herein contained, the board of directors may in the name of the Association enforce the provisions of any rules or regulations by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as the board of directors may deem fit.
- 14.8 Provision shall be made for adherence to the Water Demand Management Regulations as approved by the relevant authority.
- 14.9 Twenty four hours access is to be provided to the local authority for the purpose of monitoring, inspecting or maintaining infrastructure and for meter-reading or to provide any service as may be deemed necessary. Should such access be denied, any costs as a result thereof shall be for the account of the Association.
- 14.10 The 'Conduct rules' and 'Architectural guidelines' in respect of the development in existence on the date of approval of this Constitution by the general shareholders meeting of the company are for all purposes deemed to be concurrently approved.

15. BOARD OF DIRECTORS

15.1 The board of directors of the Association shall during the development period consist of 6 (six) persons and will, subject to clause 15.2, be composed as follows:

The Developer - 3 (three) directors

The members - 2 (two) directors

The Body Corporate - 1 (one) director

who shall be solely and exclusively responsible and authorized and obliged to manage and control the entire business, affairs and undertakings of the Association in whatever form, and/or to appoint appropriate managing agents, operators and/or sub-contractors to undertake these functions. After the development period the Developer will hold a seat as long as there is an owner in the Development.

15.2 During the development period, the developer shall be entitled to change his 3 directors, but not the members directors, neither the Body Corporate directors.

15.3 The Company shall have no *ex officio* directors.

15.4 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a director of the company, a person must satisfy the additional eligibility requirements and qualifications set out in clause 15.

15.5 In the event of a tie in votes, the Chairperson shall have the deciding vote.

16. REMOVAL AND ROTATION OF BOARD OF DIRECTORS

16.1 Save as set out in clause 16.3, each director shall continue to hold office as such from the date of such directors appointment to office until the annual general meeting following such director's said appointment, at which meeting each director, other than a director appointed by the developer, shall be deemed to have retired from office as such but will be eligible for re- election to the board of directors at such meeting.

16.2 A director shall be deemed to have vacated his office as such upon:

16.2.1 his/her having become disqualified to act as a director in terms of the provisions of the Act;

16.2.2 his/her being removed from office as provided in terms of section 71 of the Act;

16.2.3 his/her estate being sequestrated, whether provisional or finally;

16.2.4 the commission by him/her of any act of insolvency;

16.2.5 his/her conviction for any offence involving dishonesty;

16.2.6 his/her becoming of unsound mind;

- 16.2.7 his/her resigning from such office in writing;
provided that anything done in the capacity of a director in good faith by a person who ceases to be a director, shall be valid until the fact that he is no longer a director has been recorded in the minute book of the Association.
- 16.3 Upon any vacancy occurring in the board of directors prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the board of directors.
- 16.4 Each director shall have the power to nominate any person who is a member of the Association possessing the necessary qualifications of a director to act as alternate director in such director's place during such director's absence or inability to act as director, provided the appointment of an alternate director shall be approved by the board and on such appointment being made, the alternate director shall, in all respects, be subject to the terms, qualifications and conditions existing with reference to the other members of the board of directors of the company.
- 16.5 A director, whilst acting in the stead of a director who appointed him, shall exercise and discharge all the powers, duties and functions of the director he represents. The appointment of an alternate director shall be revoked and an alternate director shall cease to hold office whenever the director who appointed such director ceases to be a director or gives notice to the secretary of the company from the alternate director representing such director has ceased to do so, and in the event of a disqualification or resignation of an alternate director during the absence and inability to act of the director whom such director represents, the vacancy so arising shall be filled by the chairman of the board of directors who shall nominate a person who is a member of the company, subject to approval by the board.
- 17. BOARD OF DIRECTORS EXPENSES AND REMUNERATION**
- 17.1 The directors shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as board of directors.
- 17.2 The directors shall be entitled to remuneration in respect of the performance of their duties as determined by the Association in general meeting.

18. PROCEEDINGS OF BOARD OF DIRECTORS

- 18.1 The board of directors shall, at their first meeting or thereafter, as they may determine, elect a chairperson and such deputy chairperson(s) as they shall consider necessary or appropriate and determine the period for which he or she or they are to hold office.
- 18.2 In addition to such other powers and duties as may be delegated to him or her by the board from time to time, the chairperson shall:
- 18.2.1 preside and maintain order at all meetings of the board, provided that if, on the date and place appointed for a meeting, the chairperson is not present within 30 minutes after the time appointed for the commencement of that meeting, a deputy chairperson shall so preside or if he or she is similarly absent, then the board of directors then present shall elect one of their number to act as chairperson for that meeting;
- 18.2.2 appoint the time and place of each meeting of the board and, subject to these provisions, may on not less than 5 (five) days notice convene the board for the dispatch of business, or adjourn or otherwise regulate the meetings of the board as he or she may deem fit;
- 18.2.3 ensure that each meeting of the board is duly convened and constituted and that these provisions and any rules made by the board for the conduct of meetings are adhered to and that the proper procedure is duly followed;
- 18.2.4 convene a meeting of the board of directors, on not less than 5 (five) days' notice, upon the request of any 3 (three) or more members of the board of directors;
- 18.2.5 be entitled to determine that a meeting of the board shall be conducted by electronic communication or one or more directors may participate in a meeting by electronic communication in accordance with the provisions of section 73(3) of the Act.
- 18.3 In the event of the chairperson being absent or otherwise unable to perform his or her duties in terms hereof, any deputy chairperson and, failing him or her, any other director appointed by the board for such purpose, shall exercise the powers and perform the functions of the chairperson for so long as the chairperson remains absent or unable to perform his or her duties and for this purpose such deputy chairperson or other director shall be deemed to have all such powers and functions of the chairperson as the chairperson himself or herself might have.
- 18.4 The chairperson shall have the power to delegate any of his or her powers and duties to the deputy chairperson as he or she may deem desirable or necessary

and may add to, vary or revoke any such delegation of powers or duties as he or she may deem fit.

- 18.5 The quorum necessary for the holding of any meeting of the board of directors shall be :
- 18.5.1 during the development period, 3 (three) directors of which 1 must be a member, director or Body Corporate director; and thereafter
- 18.5.2 3 (three) directors;
present in person at such meeting. If no quorum is present within 5 (five) minutes after the time for commencement of such meeting, then it shall stand adjourned for 7 (seven) days, or if that is not a business day then the next business day thereafter, and those directors present at the adjourned meeting shall constitute a quorum.
- 18.6 Any resolution of the board of directors shall be carried on a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the chairman of the meeting shall have a second or casting vote.
- 18.7 The board of directors shall cause minutes to be kept of every director's meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman of that meeting. All minutes of board of directors' meetings shall, after certification, be placed in a board of directors' minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of board of directors of companies. The board of directors' minute book shall be open for inspection at all reasonable times by any director, the auditors and the members.
- 18.8 A decision that could be voted on at a meeting of the board of directors may instead be adopted by written consent of a majority of the directors, given in person or by electronic communication provided that each director has received notice in writing of at least 5 (five) days of the matter to be decided.

19. POWERS OF DIRECTORS

- 19.1 Subject to the express provisions of these clauses, the board of directors shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of managing agents, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by the Act or by these clauses required to be exercised or done by the Association in general

meeting, subject, however, to such directives or restrictions as may have been approved by the Association in general meeting or as may be imposed by the board of directors from time to time.

19.2 Save as specifically provided in these clauses, the board of directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, managing agents or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the board of directors on such terms as the board of directors shall decide.

19.3 The board of directors shall further have the power:

19.3.1 to require that any construction of any sort on the land shall be supervised to ensure that the provisions of these clauses and the rules and regulations are complied with and that all such construction is performed in a proper and workmanlike manner;

19.3.2 to issue an architectural and environmental design and maintenance manual in respect of the land, and ensure that such manual is complied with at all times by all members and shall authorize any deviation from the architectural guidelines.

19.4 The board of directors shall have the right to vary, cancel or modify its decisions and resolutions from time to time.

19.5 The board of directors shall be entitled to appoint committees consisting of such number of their members and such outsiders, including the managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the board of directors may from time to time deem necessary.

19.6 Members of the architectural review committee shall not necessarily be required to be members of the Association.

19.7 Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the developer, all plans for buildings, out-buildings, structures, additions or alterations, with specific reference to the design of the storm-water outlets, shall be approved by the board of directors who shall first submit such plans to the architectural review committee. The board of directors shall not approve any such plan unless it has been reviewed by the architectural review committee. The board of directors may grant a deviation from the architectural guidelines.

20. INDEMNITY

- 20.1 All members of the board of directors and the auditors shall, to the extent not prohibited in terms of section 78 of the Act be indemnified against any liabilities bona fide incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a Court.
- 20.2 Every director, servant, agent and employee of the Association, and the auditors, shall to the extent not prohibited in terms of section 78 of the Act be indemnified by the Association against (and it shall be the duty of the board of directors out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties.
- 20.3 The Company may purchase insurance to cover any expenses and liability it may lawfully incur in terms of the provisions of clauses 20.1 and 20.2.

21. GENERAL MEETINGS OF THE ASSOCIATION

- 21.1 The Association shall within 6 (six) months after the end of each financial year hold a general meeting as its annual general meeting in addition to any other general meetings during the year, and shall specify the meeting as such in the notices in terms of section 62 of the Act.
- 21.2 Such annual general meeting shall be held at such time and place in the Republic of South Africa as the board of directors shall decide from time to time.
- 21.3 All general meetings other than annual general meetings shall be called special general meetings, for purposes of which the provisions of article 21.2 shall apply *mutatis mutandis*.
- 21.4 The board of directors may, whenever they think fit, convene a special general meeting. A special general meeting may also be convened by the members on a requisition made in terms of section 61 of the Act, or should the board of directors not do so, may be convened by the requisitionists as provided for by and subject to the provisions of that section.
- 21.5 The Company shall conduct a general meeting by electronic communication or allow participation in a meeting by electronic communication only as and when so determined in advance by the board of directors, and subject to subsections (2) and (3) of section 63 of the Act.

22. NOTICES OF MEETINGS

- 22.1 Any general meeting shall be called by not less than 15 (fifteen) business days notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and on the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under these clauses, entitled to receive such notices from the Association.
- 22.2 The annual general meeting shall deal with and dispose of, in addition to all matters prescribed by the Act, the following matters :
- 22.2.1 the consideration of the chairperson's report;
- 22.2.2 the consideration of the annual financial statements;
- 22.2.3 the noting of the general levy for the financial year during which such annual general meeting takes place;
- 22.2.4 the appointment of the auditors; and
- 22.2.5 any other business laid before it

23. PROXIES

- 23.1 A member may be represented at a general meeting by a proxy, who need not be a member of the Association.
- 23.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the Association at least twenty four hours before the commencement of the meeting or adjourned meeting concerned but the board of directors may from time to time determine that such documents :
- 23.2.1 are to be lodged at a particular place; or
- 23.2.2 are to be lodged a certain number of hours, not exceeding forty eight in all, before the meeting; or
- 23.2.3 may be lodged at any time before or during the meeting.
- 23.3 Notwithstanding the foregoing, the chairperson of the meeting may agree to accept a proxy tendered at any time before or during the meeting.
- 23.4 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period.
- 23.5 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit :

“I/We, _____ of _____ being a Member(s) of the Association hereby appoint _____ of _____ or failing him of _____, failing the chairman of the meeting as my/our proxy to vote for me/us and on my/our behalf at the annual general or general meeting (as the case may be) of the Association to be held on the _____ day of _____ and at any adjournment thereof as follows:

	In favour of	Against	Abstain
Resolution No _____	_____	_____	_____
Resolution No _____	_____	_____	_____
Resolution No _____	_____	_____	_____

(Indicate instruction to proxy by way of a cross in the space provided above.) Unless otherwise instructed, my/our proxy may vote as he thinks fit.

Signed this _____ day of _____

Signature _____

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

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

24. QUORUM

24.1 No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting but not less than 3 (three) members entitled to vote and present in person, shall constitute a quorum.

- 24.2 If within 15 (fifteen) minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairperson, or in his/her absence, the deputy-chairperson may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time and the same day plus one day of the next week (or if that day is not a business day, the first business day following that non-business day). If a quorum is not present at such adjourned meeting, the members present in person or by valid proxy, shall constitute a quorum.
- 24.3 A general meeting at which a special resolution is required to be adopted and at which a quorum is not present, shall be adjourned in accordance with the provisions of section 64 of the Act.
- 24.4 The authority of a meeting to continue to consider a matter after a quorum has been established, is restricted to the extent set out in article 23.1, subject to the provisions of article 23.2.

25. ADJOURNMENT BY THE CHAIRPERSON WITH CONSENT OF GENERAL MEETING

The chairperson may adjourn a general meeting from time to time and from place to place if the general meeting approves of each adjournment by majority vote. In the event of such an adjournment:

- 25.1 no notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting (unless the meeting is to be adjourned for thirty days or more in which event notice is to be given in the same manner as for the original meeting);
- 25.2 only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

26. VOTING RIGHTS OF MEMBERS

- 26.1 The members shall be entitled to vote only on the matters before the general meeting concerned.
- 26.2 At every general meeting during the development period :
- 26.2.1 each member (other than the developer) present in person or by proxy and entitled to vote, shall be entitled to 1 (one) vote for each erf registered in his name; and
- 26.2.2 the developer present in person or represented by proxy shall have 51% (fifty one

- percent) of the total number of votes of the members of the Association during the development period.
- 26.3 At every general meeting after the development period, each member shall be entitled to 1 (one) vote for each erf registered in his name.
- 26.4 For the purposes of clauses 26.2.1 and 26.3, if an erf is registered in the name of more than 1 (one) person, then all such co-owners shall be deemed to be a single owner of the erf save as expressly provided for in these clauses, no person other than a member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Association in respect of or arising from his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting.
- 26.5 Voting at general meetings shall take place by way of show of hands unless on or before the declaration of the result of the show of hands a poll is demanded according to law. Meetings as set above, may be held by electronic means.
- 26.6 Resolutions shall be passed by simple majority vote, save with respect to amendments of these clauses, which shall be capable of amendment on the same basis *mutatis mutandis* as a special resolution in accordance with the Act, or with respect to a matter in terms of which the Act provides otherwise.
- 26.7 If a poll is duly demanded it shall be taken in such manner as the chairperson of the meeting may direct either at once or after an interval or adjournment.
- 26.8 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by the chairperson whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 26.9 A vote cast under a proxy, power of attorney or other authority which has been revoked shall nevertheless be valid unless:
- 26.9.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
- 26.9.2 the chairperson of the meeting agrees to accept written or oral notice of such relocation at the meeting.
- 26.10 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairperson of the meeting whose decision shall be final and conclusive

26.11 A declaration made in good faith by the chairperson of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.

26.12 Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a director or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.

27. SERVICE OF NOTICES

27.1 Notices may be given by the Association to any member either personally, or by sending it by email supplied by him to the Association for the giving of notices to him as well as notices via a Whatsapp group.

27.2 Notice of every general meeting shall be given :

27.2.1 to every member of the Association;

27.2.2 to the auditor for the time being of the Association.

No other person shall be entitled to receive a notice of general meetings.

27.3 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.

27.4 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.

27.5 When a given number of day's notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.

28. ACCOUNTING RECORDS

28.1 The board of directors shall cause such accounting records as are prescribed by section 28 of the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such account accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.

- 28.2 The accounting records shall be kept at the registered office of the Association or such other place or places as the board of directors think fit, and shall always be open to inspection by the board of directors
- 28.3 The board of directors shall from time to time with due regard to section 30 of the Act, 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 board of directors, and no member (not being a director) shall have any right of inspecting any accounting records or documents of the Association except as conferred by the Act or authorized by the board of directors.
- 28.4 The board of directors shall from time to time, in accordance with section 30 of the Act, cause to be prepared and laid before the Association in general meeting such financial statements as are referred to in that section.
- 28.5 A copy of the annual financial statements which are to be laid before the Association in annual general meeting shall, not less than 15 (fifteen) business days before the date of the meeting, be sent to every member of the Association and the Registrar provided that this clause shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.
- 28.6 An auditor shall be appointed in accordance with Part C of Chapter 3 of the Act.

29. ENTRENCHED PROVISIONS

- 29.1 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 Development Area. Accordingly none of the following provisions of clauses 29.1.1 to 29.1.9 (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:
- 29.1.1 the Developer will only be liable to pay levies on erven where a building has been erected and not on vacant erven, unless the property has been transferred or certificate of registered title has been issued for that property.
- 29.1.2 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 Development Area,

- the Common Property any Unit, building or common property in any sectional title scheme or any other part of the Development Area;
- 29.1.3 During the developing period, 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;
- 29.1.4 No Member shall be entitled, during the developing period, 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.
- 29.1.5 The Association may not 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. This must be a separate supply and may be connected via the street lights;
- 29.1.6 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
- 29.1.7 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 Property.
- 29.1.8 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;
- 29.1.9 All estate agents marketing and / or selling property in Eden Residential 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 Eden Residential Estate.

30. ENTRENCHED ALIENATION LEVY

- 30.1 The Purchaser, upon resale of the Property, shall pay an amount equal to 1% (one percent) of the sales price, as an Alienation Levy, to the Homeowners Association, which amount shall be payable on or before registration of transfer of such sale, or as set out hereunder:

- 30.1.1 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 Entrenched Alienation Levy as set out herein as an endowment, 1% (One 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).
- 30.2 The Member, registered owner, his/her heirs, executors or administrators, or any other subsequent owner of the Unit, shall notify the Home Owners' Association of the alienation of the Erf /Unit, as soon as same occurs, and should the 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 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 Home Owners' Association shall have the right to nominate 1 (One) Sworn Appraiser and the said parties the other;
- 30.3 The provisions of this Clause shall apply *mutatis mutandis* to disposal of the Erf /Unit by the Member/registered owner thereof subject to the following provisions:
- 30.3.1 The alienation levy as set out above is not payable in the event of the Erf /Unit being acquired by the surviving spouse of the deceased Member/registered owner to whom the Erf /Unit has accrued under the Laws of Testate or Intestate Succession;
- 30.3.2 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;
- 30.3.3 This stipulation as set out herein will not be applicable to units or erven sold by the Developer.

31. ARCHITECTURAL AND DEVELOPMENT GUIDELINES

- 31.1 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 “C2” hereto and as may be amended from time to time by the Board of Directors.
- 31.2 All improvements shall be of sound construction and shall comply with the provisions of the Architectural Guidelines contained in this Constitution or any attachments hereto;
- 31.3 No construction or erection of any improvements or alterations to and no renovation of any Erf or Unit that is undertaken by any party, 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 the Design Review Committee and, where required, the council, in accordance with the following provisions:
- 31.3.1 the Member shall submit to the Design Review Committee for recommendation, a full set of the proposed building plans or alteration plans which indicate both construction and design details;
- 31.3.2 the Member shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the Design Review Committee;
- 31.3.3 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.
- 31.4 When effecting the construction, improvements or alterations or renovations, the Member shall at all times comply strictly with the Architectural and Development Guidelines as well as all conditions and standards imposed by the local authority insofar as these may be additional to the provisions of the Architectural and Development Guidelines. No Member shall be entitled to deviate from any plan recommendation by the Design Review Committee and the local authority unless the prior written approval of both the Design Review Committee and the local authority for such proposed deviation has been obtained.

- 31.5 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 local authority unless prior written consent of the Developer, in the developing phase, and thereafter the Board of Directors has been obtained thereto.
- 31.6 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 Board of Directors, in the developing period.
- 31.7 the Board of Directors may amend the Architectural and Development Guidelines from time to time.

32. ESTATE RULES

- 32.1 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 Board of Directors shall formulate and enforce rules (and protocols) (collectively known as and referred to in this Constitution as “Rules/Estate Rules”) as follows:
- 32.1.1 House Rules dealing with such matters pertaining to the Association and as more fully detailed hereunder (for convenience “the House Rules”).
- 32.1.2 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”).
- 32.1.3 Rules dealing with disciplinary matters, sanctions and fines (for convenience “the Disciplinary Code”).
- 32.1.4 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”).
- 32.2 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 Board of Directors 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.

- 32.3 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):
- 32.3.1 the conduct of Members and all persons within the Development Area, 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 foregoing. No unit or dwelling may be used for a Bed and Breakfast, AirB&B and/or any other forms of short term letting.
- 32.3.2 the conduct of Members and all persons within the Development Area 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).
- 32.3.3 All visitors to the Development Area including tenants, other occupiers of any Unit or Erf, customers, clients and patients of any business conducted on or from within the Development Area.
- 32.3.4 the operations and activities of all businesses whatsoever conducted on or from within the Development Area, including the methods of sale and advertising within the Development Area.
- 32.3.5 the nature, method and location of any signage, posters or other form of advertising.
- 32.3.6 in particular and without derogating from the generality of the other provisions herein contained, regulating the conduct of estate agents within the Development Area, show houses, the control and movement of the estate agents and prospective clients (purchasers).
- 32.3.7 the maintenance and preservation of the natural environment and the protection of fauna and flora and the eradication of undesirable (encroaching/toxic) flora.
- 32.3.8 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.
- 32.3.9 the control of vehicular traffic of whatsoever nature, including parking.

- 32.3.10 access to and egress from the Development Area including any particular facilities or amenities within the Development Area.
- 32.3.11 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.
- 32.3.12 the control and recycling of refuse, littering and other safety and anti-pollution related measures.
- 32.3.13 the keeping of any animals (including pets, birds, fish, reptiles or insects) and in addition, the control of pets in and about the Development Area, 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.
- 32.3.14 the use of any recreational facility or other amenities.
- 32.4 The Security Code shall, in addition to the House Rules, deal with the following:
 - 32.4.1 all security related matters affecting any persons in or about the Development Area, access and egress to and from the Development Area.
 - 32.4.2 security installations affecting the Development Area, its perimeter and access points, and security installations (burglar alarms, CCTV, electrical fencing and other related equipment).
 - 32.4.3 crime prevention and monitoring procedures.
 - 32.4.4 fire prevention and control measures.
 - 32.4.5 vehicle security.
 - 32.4.6 the provision by all or any persons entering the Development Area of a written indemnity.
- 32.5 The Disciplinary Code:
 - 32.5.1 the Board of Directors shall be responsible for the enforcement of all Rules including the Disciplinary Code.
 - 32.5.2 the Board of Directors 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.
 - 32.5.3 the Disciplinary Code shall contain:
 - 32.5.3.1 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.
- 32.5.3.2 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.
- 32.5.4 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:
- 32.5.4.1 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.
- 32.5.4.2 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).
- 32.5.4.3 the Disciplinary Committee proceedings shall comply with the principles of natural justice.
- 32.5.4.4 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).
- 32.5.4.5 such arbitration shall be dealt with in an informal manner in accordance with the format prescribed by the arbitrator.
- 32.5.4.6 the arbitrator shall be entitled to make an award with respect to the costs of the arbitration.
- 32.5.4.7 the arbitrator shall act as an expert and his decision shall be final and binding upon the parties.
- 32.5.4.8 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.
- 32.5.4.9 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.

32.6 The provisions of this clause 31 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 31.5.3.

32.7 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).

32.8 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 Development Area.

32.9 The Board of Directors 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.

32.10 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.

32.11 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.

33. GENERAL

33.1 Whenever the directors consider that the appearance of any land or building vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the property generally, the board of directors may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the member failing within a reasonable time, to be specified in such notice, to comply therewith, the board of directors 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.

33.2 The board of directors 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 board of directors acted unreasonably

- 33.3 The Association may enter into agreements with members for the provision of amenities and service to the members and to levy a reasonable charge in respect of the provision thereof.
- 33.4 No member ceasing to be a member of the Association for any reasons shall (nor shall such members, executors, curators, board of directors or liquidators) have any claim or interest in or right to the funds or any land of the Association.
- 33.5 The Association may claim from any member or his estate any levy arrears, and interest or other sum due from him to the Association at the time of his ceasing to be a member.
- 33.6 Any person using any of the services, land or facilities of the Association does so entirely at his own risk.

34. DISPUTES

- 34.1 Any dispute arising out of or in connection with these clauses, including the cancellation thereof, 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.
- 34.2 If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute to determination in terms of this clause.
- 34.3 If a party exercises his right in terms of clause 33.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (ten) years experience in their field:
- 34.3.1 if the dispute is primarily an accounting matter, a practicing chartered accountant;
- 34.3.2 if the dispute is primarily a legal matter, a practicing attorney or advocate;
- 34.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practicing quantity surveyor;
- 34.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practicing engineer;
- 34.3.5 if the dispute is primarily one relating to the aesthetics of a building, on an erf, a practicing architect.

- 34.4 If the parties are unable to agree either on the person referred to in clause 33.3 or on the classification of the dispute within a period of 3 (three) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope.
- 34.5 Any person agreed upon and nominated as aforesaid ("**the expert**") shall in all respects act as an expert and not as an arbitrator.
- 34.6 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.
- 34.7 The parties shall use their best endeavors to procure that the decision of the expert shall be given 21 (twenty one) days or so soon thereafter as possible, after it has been demanded.
- 34.8 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.
- 34.9 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 whatever they shall be taxed as between "party and party" or as between "attorney and client".
- 34.10 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.
- 34.11 The internal dispute resolution mechanisms of the Association shall, for purposes of section 40(c) of the CSOS Act, be regarded as unsuccessful after a party has —
- 34.11.1 exhausted the internal dispute resolution procedure in terms of any rules and regulations of the Association; and
- 34.11.2 exhausted his rights in terms of this Constitution.
- 34.12 Only after the internal dispute resolution mechanisms of the Company have been unsuccessfully applied, to resolve a dispute, may a party lodge such a dispute with the Community Schemes Ombud Service in which event the dispute resolution provisions of the CSOS Act will then apply.

35. AMENDMENT OF CLAUSES AND CONSTITUTION

35.1 All and any amendments or variations or additions to this Constitution shall be subject to the approval on a poll of not less than 66,67% (sixty six comma six seven percent) of the voting rights exercised on the resolution at a general meeting convened specifically for such purpose or at an annual general meeting of the company.

35.2 The provisions of clause 34.1 shall apply *mutatis mutandis* in respect of all special resolutions other than special resolutions.

36. INCOME TAX EXEMPTION

36.1 The Company is not permitted to distribute any of its funds to any person other than to a similar organization.

36.2 On dissolution the remaining assets of the Company shall be distributed to a similar organization, which is also exempt from Income Tax in terms of section 10(1)(e)(i)(cc) of the Income Tax Act.

36.3 Any amendments to the Constitution must be submitted to the Commissioner for the South African Revenue Services.

36.4 The Company is not or was not knowingly a party to, or does not knowingly permit or has not knowingly have permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.

36.5 Annual returns of Income Tax together with financial statements must be submitted to the Tax Exemption Unit.

36.6 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 No 97 of 1990), and in securities listed on a stock exchange as defined in section 1 of the Stock Exchange Control Act, 1985 (Act No 1 of 1985).

37. CONSTITUTION OF THE MASTER PROPERTIES HOME OWNERS' ASSOCIATION

Eden Residential Home Owners' Association will be a member of the Master Properties Home Owners' Association.

38. LOCAL AUTHORITY REQUIREMENT

This Constitution may not be amended without the approval of the local authority.

DIRECTORS	SIGNATURE	DATE	PLACE