



Whale Bay
CASCADES

WALKER BAY | HERMANUS

MASTER HOME OWNERS ASSOCIATION

CONSTITUTION

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Whale Bay Cascades
Master Home Owners Association – Constitution

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Whale Bay Cascades Master Home Owners Association – Constitution

1. DEFINITIONS

In this constitution and unless inconsistent with the context the following words and expressions shall have the meanings hereby assigned to them:

1.1 ALIENATE

means alienate any ERF, RESIDENTIAL or GARAGE UNIT and includes by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolute condition and "ALIENATION" shall have a corresponding meaning.

1.2 ALTERATIONS

means adjustments to IMPROVEMENTS primarily considered as affecting the interior of a RESIDENCE or GARAGE UNIT with the exception of external alterations catered for in the DEVELOPMENT DIRECTIVE e.g. external fencing of a stipulated type in a stipulated position.

1.3 ASSOCIATION

means the Whale Bay Cascades Master Home Owners Association which is bound by the provisions of this CONSTITUTION.

1.4 AUDITORS

means the auditors of the ASSOCIATION.

1.5 CHAIRMAN

means the Chairman of the TRUSTEES.

1.6 CONSTITUTION

means this document with any annexures hereto.

1.7 CONSTRUCTION AGREEMENT

means the agreement that defines the details and timing pertaining to the construction of IMPROVEMENTS intended for a specific ERF as a result of an agreement of sale.

1.8 CONTRACTOR

means the DEVELOPER appointed building MASTER CONTRACTOR (or one of his accredited contractors or sub-contractors as directed by the MASTER CONTRACTOR) employed by an OWNER of an ERF for the construction of IMPROVEMENTS on his ERF.

1.9 CONTRACTOR'S CONDUCT AGREEMENT

means the agreement to be obtained from the DEVELOPER or the ASSOCIATION and to be entered into in the event of proposed construction of IMPROVEMENTS or alterations to the Erf or Residential or Garage unit.

1.10 DEPRECIATING ASSET RESERVE FUND

means the fund that is to be maintained by the TRUSTEES to facilitate the timeous replacement of depreciating or redundant or deteriorating assets.

1.11 DEVELOPER

means Whale Bay Cascades CC (Registration No.2003/000043/23), a duly registered South African Close Corporation.

1.12 DEVELOPER MEMBER

means a member of the DEVELOPER or an IMMEDIATE FAMILY member of such a member.

1.13 DEVELOPER'S PROPERTY LIST

means the list of DEVELOPER or a DEVELOPER MEMBER owned properties within the DEVELOPMENT that may be amended by the DEVELOPER from time to time but may not be increased in number.

1.14 DEVELOPER TRUSTEE

means a trustee appointed by the DEVELOPER.

1.15 DEVELOPMENT

means certain immovable property being ERF 9846 (a portion of erf 243) Hermanus which has been subdivided into a development to be known as "WHALE BAY CASCADES" in accordance with approval obtained from the LOCAL AUTHORITY.

1.16 DEVELOPMENT DIRECTIVE

means the document defining the architectural and construction directive applicable to IMPROVEMENTS to be constructed within the DEVELOPMENT (inclusive of reviews for residential renovations and alterations), a copy of which is annexed to the CONSTRUCTION AGREEMENT and includes all/any amendments made thereto from time to time.

1.17 DWELLING

means any IMPROVEMENT that has been designed for residential use.

1.18 ERF

means the uniquely identified portion of ground (with its own Erf number) as defined in the General Plan for this DEVELOPMENT as approved by the Surveyor General's office.

1.19 ERVEN

means every ERF in the DEVELOPMENT collectively and includes immovable property transferred or to be transferred in accordance with the provisions hereto to the ASSOCIATION.

1.20 GARAGE ERF

means an ERF that is specifically intended for the development of a garage with or without a constructed garage thereupon.

1.21 GARAGE UNIT

means a section intended for use as a garage (as defined in the Sectional Titles Act No.95/1986) in any sectional title scheme in the DEVELOPMENT together with such section's undivided share in the common property of such sectional title scheme or the garage unit built on an ERF specifically earmarked for the construction of a garage unit.

1.22 IMPROVEMENTS

means any structure of whatever nature constructed or erected or to be constructed or to be erected on an ERF.

1.23 IMMEDIATE FAMILY

means the referenced party's spouse, parents, brother or sister, his spouse's brother or sister or parents or any siblings or children of the aforementioned or their IMMEDIATE FAMILY in time.

1.24 LEVY

means the levy referred to in clause 13 hereof.

1.25 LEVY SECURITY FUND

means the special Levy Fund as defined in clause 16.7.

1.26 LOCAL AUTHORITY

means the local authority having jurisdiction over the DEVELOPMENT which, at date of approval of the DEVELOPMENT, was Overstrand Municipality, Western Cape.

1.27 LUPO

means the Land Use Planning Ordinance No.15/1985 (as amended) and includes any substituted legislation.

1.28 MASTER CONTRACTOR (elsewhere defined as Construction Rights Holder (CRH))

means a CONTRACTOR that has gained overall DEVELOPMENT RIGHTS to develop all IMPROVEMENTS within the development either through the appointment of own construction teams or through the outsourcing of construction to SUB-CONTRACTORS as listed on a CONTRACTORS list as approved by the MASTER CONTRACTOR and the DEVELOPER.

1.29 MASTER HOME OWNERS ASSOCIATION

means a Master Home Owner Association constituted in accordance with conditions imposed by the LOCAL AUTHORITY when granting approval of the DEVELOPMENT. All other constitutions applicable to the DEVELOPMENT be it a HOA or Body Corporate constitution will become subservient to this a Master Home Owners Association Constitution if ever the need for further constitutions arises and may not be in conflict with terms defined in this MHOA.

1.30 MANAGING AGENT

means any person or body appointed by the ASSOCIATION or initially by the DEVELOPER as an independent contractor to undertake any of the functions of the ASSOCIATION.

1.31 MEMBER

means every registered OWNER of an ERF (other than a garage explicit Erf) as well as every registered OWNER of a RESIDENTIAL UNIT in any sectional title scheme. If a MEMBER consists of more than one person such persons shall be jointly and severally liable in solidum for all obligations in terms of this CONSTITUTION.

1.32 MEMBER TRUSTEE

means a trustee appointed by the MEMBERS.

1.33 OWNER

means the registered owner of a RESIDENTIAL ERF or RESIDENTIAL UNIT.

1.34 PROPERTY

means an ERF with or without constructed IMPROVEMENTS thereupon.

1.35 RESIDENTIAL ERF

means an ERF that is specifically intended for the development of a residence with or without a constructed residence thereupon.

1.36 RESIDENTIAL UNIT

means a section intended for residential use (as defined in the Sectional Titles Act No.95/1986) in any sectional title scheme in the DEVELOPMENT together with such section's undivided share in the common property of such sectional title scheme.

1.37 RESOLUTION

means a resolution passed at an annual general meeting or any other general meeting of the ASSOCIATION by an ordinary majority of the total votes represented at such meeting by MEMBERS present in person or by proxy.

1.38 RULES AND REGULATIONS

means a set of operational rules and regulations to be applied to the DEVELOPMENT and

applicable to all OWNERS their invitees, servants, contractors or any other individual on the DEVELOPMENT the terms of which may from time to time be amended by the TRUSTEES or nominated for change or inclusion at a General Meeting and all Members will be bound by such rules and regulations and comply with any penalty clauses without arbitration unless done so at a Special General Meeting called for such a discussion in keeping with the rules for the calling of such a Special General Meeting. No rules or regulations will be of any force if it is deemed to be in conflict with the directives of this CONSTITUTION.

1.39 TRANSFEREE

means the person (entity) into who's name the property is being transferred in the event of a MEMBER ALIENATING a PROPERTY.

1.40 TRUSTEES

means the DEVELOPER TRUSTEES and the MEMBER TRUSTEES of the ASSOCIATION, collectively from time to time and includes alternate and co-opted TRUSTEES.

2. INTERPRETATION

- 2.1 The clause headings are for convenience and shall be disregarded in construing this CONSTITUTION.
- 2.2 Unless the context clearly indicates a contrary intention
 - 2.2.1 The singular shall include the plural and vice versa and
 - 2.2.2 A reference to anyone 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 sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
- 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, 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 Any annexure to this CONSTITUTION is deemed to be incorporated in and form part of this CONSTITUTION.

3. MEMBERSHIP OF HOME OWNERS ASSOCIATION

- 3.1 The LOCAL AUTHORITY when approving the application for subdivision to allow for the DEVELOPMENT imposed a condition in terms of section 29(1) of the Land Use Planning Ordinance whereby the OWNER of each subdivided portion of the immovable property comprising the DEVELOPMENT and all successors in title shall be members of a home owners association in respect of the DEVELOPMENT.

4. COMMENCEMENT DATE

- 4.1 The ASSOCIATION, as contemplated in terms of section 29 of the Land Use Planning Ordinance, will come into existence simultaneously with the first registration of transfer of an ERF from the DEVELOPER to an OWNER.

5. STATUS

- 5.1 The ASSOCIATION shall
- 5.1.1 have legal personality and be capable of suing and being sued in its own name; and
 - 5.1.2 not operate for profit but for the benefit of the MEMBERS.
- 5.2 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.

6. OBJECTS

The ASSOCIATION shall have as its objects:

- 6.1 the matters referred to in section 29(2)(b) and (c) of LUPO and without detracting from the generality thereof to ensure compliance with the conditions for subdivision imposed by the LOCAL AUTHORITY when approving the DEVELOPMENT and, more specifically
- 6.1.1 to oversee, maintain and control the DEVELOPMENT;
 - 6.1.2 ensure the general high standard of the DEVELOPMENT;
 - 6.1.3 generally to promote, advance and protect the DEVELOPMENT and the interests of the ASSOCIATION.
- 6.2 the regulation and control of harmonious development of the DEVELOPMENT.
- 6.3 to promote and retain a high standard of IMPROVEMENTS on the DEVELOPMENT.
- 6.4 to administer and enforce the DEVELOPMENT DIRECTIVE as well as Rules and Regulations of the DEVELOPMENT.

- 6.5 to control the secondary transfer of PROPERTIES in the DEVELOPMENT (not the initial transfer) and the conditions imposed by the LOCAL AUTHORITY including those conditions imposed by the DEVELOPER in the Agreement of Sale between the DEVELOPER and the first OWNER of a PROPERTY as well as any items recorded on the title deed.
- 6.6 to maintain a high standard of gardens, painted surfaces of PROPERTIES, common property, assets and facilities.
- 6.7 to plan for and timeously replace depreciating assets at a point when replacement is needed through the consistent provisioning of replacement finance for the assets so as to nullify as best possible the need for special levies and to distribute the replacement cost over all MEMBERS over the period of depreciation.
- 6.8 to maintain a LEVY SECURITY FUND as to secure the continued operational ability of the DEVELOPMENT in the event of unforeseen circumstances.
- 6.9 to manage the timeous replacement of depreciating or redundant or deteriorating assets through the management of a "Depreciation Asset Fund" specifically maintained for such events.

and the ASSOCIATION shall have the power to do all such acts as are necessary to accomplish the fulfillment of the foregoing objects including, but not restricted, to powers specifically contained in this CONSTITUTION.

7. MEMBERSHIP

7.1 The ASSOCIATION shall have as its MEMBERS

- 7.1.1 the DEVELOPER for as long as the DEVELOPER remains an owner of any portion of the DEVELOPMENT and, without detracting from the generality of the foregoing, specifically including any "as yet to be developed" portion of the DEVELOPMENT, ERF, GARAGE or RESIDENTIAL UNIT.
- 7.1.2 every OWNER upon registration of transfer of an ERF and/or a RESIDENTIAL UNIT into his name provided that where an OWNER comprises more than one person, such persons shall be deemed jointly to be one MEMBER of the ASSOCIATION and shall be responsible jointly and severally for the obligations of such membership.
- 7.1.3 every OWNER upon registration of transfer of an ERF and/or a RESIDENTIAL UNIT into his name provided that where an OWNER is also the owner of a GARAGE ERF or UNIT, such OWNERS shall be deemed jointly to be one MEMBER of the ASSOCIATION and shall be responsible jointly and severally for the obligations of such membership.

7.2 An OWNER of a RESIDENTIAL ERF and/or a RESIDENTIAL UNIT shall be a member of the ASSOCIATION until he ceases to be the registered owner of such RESIDENTIAL ERF and/or RESIDENTIAL UNIT and only such an OWNER may acquire and retain a GARAGE ERF or GARAGE UNIT.

7.3 An OWNER must own a residential component in the DEVELOPMENT to be registered as a MEMBER and may not only be the owner of a GARAGE ERF or UNIT. The latter will not constitute a MEMBERSHIP and will be considered in breach of the CONSTITUTION.

7.4 When a MEMBER ceases to be the registered owner of at least one RESIDENTIAL ERF and/or a RESIDENTIAL UNIT he shall ipso facto cease to be a MEMBER of the ASSOCIATION.

7.5 Should a MEMBER effect a sale of his last residential property and be left with only a GARAGE UNIT or GARAGE ERF and in so doing lose MEMBERSHIP status, such a remaining property will on conclusion of the transfer of the final residential property immediately be submitted for resale to existing or prospective OWNERS compliant with terms of clause 9.7. In the event of the unsold entity being a GARAGE UNIT, the TRUSTEES shall have the right but not the obligation to let the GARAGE UNIT to any OWNER at a price agreed to between the current owner and TRUSTEES and shall be entitled to retain 30% of such rental income, the remainder being due to the current owner. The current owner of such an unsold GARAGE ERF or GARAGE UNIT will remain liable for the all municipal service fees etc. as well as any LEVIES payable on the PROPERTY but may not use the property for personal storage or use of any nature after a lapse period of 3(three) months has expired, this period being provided to enable the clearance of the PROPERTY.

7.6 GARAGE UNITS may not be rented out to Non-Members unless such a rental accompanies the rental of a residential component.

8. PHASES

8.1 The DEVELOPER intends to develop and market the DEVELOPMENT in phases and in its own time as the DEVELOPER deems fit and, for as long as the DEVELOPER is a MEMBER of the ASSOCIATION, the DEVELOPER shall enjoy unrestricted rights with regard to the marketing of the DEVELOPMENT and, in particular, the right to erect signage within the DEVELOPMENT.

8.2 The DEVELOPER is entitled in terms of agreements reached with the LOCAL AUTHORITY to install road surfaces, paving and related only after the completion of a phase so as to protect the quality of surface if the DEVELOPER so desires.

8.3 As a result of the approved phased approach some services or provisional services (other than services required to enable transfer in terms of the Service Level Agreement with the Municipality) will only be installed when practical. The MEMBER shall not be entitled by reason of any of the foregoing to claim damages from the DEVELOPER or ASSOCIATION or any person or institute interdict proceedings.

8.4 The DEVELOPER shall, in its absolute discretion, be entitled to apply for and subject to approval by the LOCAL AUTHORITY (where necessary):

8.4.1 provide for a retirement component within the DEVELOPMENT at any stage;

8.4.2 vary the site development plan, layout, communal facilities, development phases, zoning, erf sizes, intended facilities, boundaries of ERVEN, land use and/or the extent and position of streets comprising the “as yet to be sold or transferred” portions of the DEVELOPMENT

and MEMBERS shall be bound thereby and shall have no claim of whatever nature against the DEVELOPER arising therefrom. Insofar as the consent of a MEMBER is required for any of the foregoing, the DEVELOPER (represented by any one of its Directors) is irrevocably granted a power of attorney to grant any/all such consents on behalf of MEMBERS, as may be required.

8.5 The MEMBER may suffer inconvenience from the phased building operations, noise, dust and other nuisance factors from time to time subsequent to becoming a MEMBER arising from the development of the DEVELOPMENT. The MEMBER shall not be entitled by reason of any of the foregoing to claim damages from the DEVELOPER or ASSOCIATION or any person or institute interdict proceedings.

9. MEMBER OBLIGATIONS

- 9.1 Every MEMBER is obliged to comply with:
- 9.1.1 the provisions of this CONSTITUTION and all rules or regulations passed by the ASSOCIATION or the TRUSTEES;
 - 9.1.2 the provisions of the DEVELOPMENT DIRECTIVE;
 - 9.1.3 any agreement concluded by the ASSOCIATION insofar as such agreement may directly or indirectly impose obligations on a MEMBER;
 - 9.1.4 any directive given by the ASSOCIATION and/or the TRUSTEES in enforcing the provisions of this CONSTITUTION.
 - 9.1.5 the provisions of the SALES and CONSTRUCTION AGREEMENT where and when applicable;
- 9.2 The rights and obligations of a MEMBER are not transferable and every MEMBER shall:
- 9.2.1 to the best of his ability, further the objects and interests of the ASSOCIATION;
 - 9.2.2 observe all directives made or given by the ASSOCIATION and/or the TRUSTEES.
- 9.3 The MEMBERS shall be jointly liable for expenditure incurred in connection with the ASSOCIATION as more fully later referred to herein.
- 9.4 A MEMBER shall not be entitled to ALIENATE or transfer a PROPERTY without the written consent of the DEVELOPER for as long as the DEVELOPER is a MEMBER or until the DEVELOPER relinquishes this responsibility in favour of the TRUSTEES and, thereafter, by the TRUSTEES pending confirmation of compliance with the provisions of this CONSTITUTION.
- 9.5 A MEMBER shall not consolidate an ERF (and/or DWELLING) with one or more erven (or DWELLINGS) without the written consent of the DEVELOPER for as long as the DEVELOPER is a MEMBER or until the DEVELOPER relinquishes this responsibility in favour of the TRUSTEES and, thereafter, of the TRUSTEES.
- 9.6 A MEMBER shall not demolish a DWELLING without the written consent of the DEVELOPER for as long as the DEVELOPER is a MEMBER or until the DEVELOPER relinquishes this responsibility in favour of the TRUSTEES and, thereafter, of the TRUSTEES.
- 9.7 A MEMBER shall not ALIENATE a PROPERTY unless
- 9.7.1 the proposed TRANSFEREE has irrevocably bound himself to become a member of the ASSOCIATION and to observe the CONSTITUTION for the duration of his ownership of the PROPERTY and to accept any conditions of sale imposed on the first purchaser in their Deed of Sale that was recorded/intended as being applicable to all subsequent re-sales of the PROPERTY;
 - 9.7.2 the ASSOCIATION has issued a clearance that all amounts owing to the ASSOCIATION by such a MEMBER have been paid and that the MEMBER is not in breach of any of the provisions of this CONSTITUTION;
 - 9.7.3 the proposed TRANSFEREE acknowledges that upon the registration of transfer of the PROPERTY into his name, he shall ipso facto become a MEMBER of the ASSOCIATION.
 - 9.7.4 he grants the DEVELOPER or its nominee or the DEVELOPER appointed on-site agent which has been appointed under contract with the DEVELOPER, the exclusive right to market the PROPERTY at an agreed market related price for a period of not less than six months, at a DEVELOPER nominated commission of not more than 7,5% (plus applicable VAT thereupon) of the gross selling price. Failing to conclude a sale within this period will

entitle the OWNER to either extend the awarded exclusive sales rights or to nominate an alternate sales entity to represent him.

Should the sale be concluded through the DEVELOPER or its nominee or the DEVELOPER appointed on-site agent, the DEVELOPER or its nominee or agent will pay the 1,5% referred to in clause 9.8 below, on behalf of the MEMBER. Failure of the MEMBER to comply with this “exclusive marketing rights clause” will make the MEMBER accountable for commission payment to the DEVELOPER or his nominee to the same amount as paid to any alternate agent and make the MEMBER accountable for the payment of the 1,5% referred to in clause 9.8 below.

Should the sale not be concluded through the DEVELOPER or its nominee or the DEVELOPER appointed on-site agent within the time provided for exclusive marketing and the MEMBER elected to market through other avenues, the MEMBER will remain liable for the payment of the 1,5% referred to in clause 9.8 below.

9.7.5 the MEMBER gains the written consent of the DEVELOPER for as long as the DEVELOPER is a MEMBER or until the DEVELOPER relinquishes this responsibility in favour of the TRUSTEES and, thereafter, of the TRUSTEES, to sell his PROPERTY in his private capacity (in preference of clause 9.7.4.) within the governing terms defining this process, as detailed within the RULES and REGULATIONS of the ASSOCIATION (as would be provided for in the event of the MEMBER wishing to sell to a personal friend), in which case the MEMBER will remain accountable for the 1,5% referred to in clause 9.8 below.

9.7.6 assuming availability thereof, the MEMBER or his appointed agent shall use the DEED of SALE document as provided by the DEVELOPER or TRUSTEES to facilitate the resale of his PROPERTY.

9.8 The ASSOCIATION will not issue the clearance referred to in clause 9.7 above unless the MEMBER (or the appointed marketing agent) pays 1,5% (plus VAT if applicable) of the gross proceeds of the sale of the PROPERTY to the ASSOCIATION by no later than transfer of the PROPERTY into the name of the TRANSFEREE.

9.8.1 This condition will be waived by the ASSOCIATION and the DEVELOPER if the PROPERTY is awarded to the TRANSFEREE out of a deceased estate or transferred to an IMMEDIATE FAMILY member or as result of matrimonial court order or the undoing of a Trust or Company or Close Corporation, but will however apply when the PROPERTY is registered in the name of a Company or Close Corporation and the shares in the company or the members interest, transferred to persons other than the members (in their personal capacity or IMMEDIATE FAMILY) of the Company or Close Corporation or in the case of a Trust where the PROPERTY is transferred into any person’s name other than the founder of the Trust or a Trust nominated beneficiary or the IMMEDIATE FAMILY of such persons.

9.8.2 This condition will be waived and will not apply to any property belonging to the DEVELOPER or DEVELOPER MEMBER or if listed on the DEVELOPER’S PROPERTY LIST till such time as the PROPERTY has been sold and the Sales Agreement states that the exclusion of this clause is no longer applicable at which stage the property will be removed from the DEVELOPER’S PROPERTY LIST by the DEVELOPER.

9.9 No MEMBER shall let or otherwise part with the occupation of his PROPERTY whether temporarily or otherwise unless the proposed occupier has agreed to be bound by this CONSTITUTION. The MEMBER shall nonetheless remain bound by this CONSTITUTION and is required to ensure compliance therewith by such occupier. Failure by the occupiers to adhere to the terms of the CONSTITUTION shall be deemed as failure by the OWNER/MEMBER to comply with the CONSTITUTION and shall be acted against in terms of

the CONSTITUTION and/or RULES and REGULATIONS by the TRUSTEES. The aforesaid does however not prevent or remove the right of the ASSOCIATION of taking separate or further action against the offender.

9.10 A MEMBER may not resign from the ASSOCIATION.

9.11 MEMBERS shall pay all LOCAL AUTHORITY, electrical, telephone, gas, internet, water and such like fees and expenses and will not hold the TRUSTEES or DEVELOPER responsible for non-availability of such services for any reason.

9.12 Members shall start with construction of IMPROVEMENTS to the PROPERTY in keeping with the terms and conditions as detailed in the CONSTRUCTION AGREEMENT and be concluded within 3 (three) years of date of first transfer unless otherwise detailed in the CONSTRUCTION AGREEMENT as may be applicable to the specific property sale conditions. Failure to comply with the above will be acted upon in terms of clause 11.9. This clause will not apply to any PROPERTY owned by the DEVELOPER or DEVELOPER MEMBERS or properties listed on the DEVELOPER'S PROPERTY LIST.

9.13 No MEMBER shall display any "TO LET" or "FOR SALE" signs anywhere within the DEVELOPMENT unless it is a specifically demarcated marketing facility for such purposes and the MEMBER has gained the right from the DEVELOPER appointed agent for the DEVELOPMENT t

10. FURTHER OBLIGATIONS OF MEMBERS

Each MEMBER shall

10.1 maintain his ERF, GARAGE and/or RESIDENTIAL UNIT in accordance with the CONSTITUTION, DEVELOPMENT DIRECTIVE and the body corporate RULES and REGULATIONS respectively;

10.2 maintain in a neat and tidy condition and in a state of good repair all IMPROVEMENTS on his ERF;

10.3 leave it up to the DEVELOPER to establish, and thereafter the TRUSTEES, to maintain a garden as well as the road verge bordering his ERF according to a standard acceptable to the TRUSTEES;

10.4 not be responsible for the general maintenance of external residential and boundary walling inclusive of regular painting thereof as this function will be managed by the TRUSTEES and may not be interfered with;

10.5 not park any commercial type vehicle, boat, caravan, trailer or any vehicle not in good working order on any roadway in the DEVELOPMENT or on the MEMBER'S ERF. Such vehicle/boat/caravan/trailer may only be parked in the GARAGE UNITS that may have been designed to specifically accommodate such entities. GARAGE UNITS may be purchased from the DEVELOPER or rented through the RENTAL SERVICE if available. If the intended GARAGE UNITS are not available for any reason and no other provisions have been made for the above by the DEVELOPER then the boat/caravan etc may not be stored on the DEVELOPMENT;

- 10.6 not do or suffer to be done on or in any PROPERTY anything which, in the opinion of the TRUSTEES, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any MEMBER, tenant or occupier of any PROPERTY in the DEVELOPMENT;
- 10.7 not, during construction/erection of IMPROVEMENTS or ALTERATIONS or resale of the PROPERTY permit the erection of any advertising board on an ERF other than specifically prescribed by the DEVELOPER;
- 10.8 not erect or permit the erection of any advertising boards on any ERF or near any RESIDENTIAL UNIT without the written approval of the DEVELOPER for as long as the DEVELOPER is a MEMBER or until the DEVELOPER relinquishes this responsibility in favour of the TRUSTEES and, thereafter, of the TRUSTEES;
- 10.9 adequately insure the IMPROVEMENTS on his ERF and/or his RESIDENTIAL UNIT and, if requested by the TRUSTEES, furnish proof of such insurance to them and, in the event of total/partial destruction, he shall, within a reasonable time period as is to be agreed with the DEVELOPER/TRUSTEES, make good such damage or reconstruction in accordance with the original approved plans or, in the event of total destruction in accordance with the DEVELOPMENT DIRECTIVE and the initially submitted architectural plans. Should the MEMBER fail to comply with his obligations in terms hereof, the rights of the DEVELOPER will for as long as he is a MEMBER, and, thereafter the TRUSTEES, be identical to those of the DEVELOPER as described in 11.9 below.
- 10.10 not do or permit to be done on his ERF or common property anything which will or may increase the rate of premium payable by the TRUSTEES on any insurance policy or which may tend to impair such insurance policy nor bring onto the DEVELOPMENT or ERF any hazardous substances or machinery.
- 10.11 maintain in a hygienic condition a receptacle for refuse within his property; ensure that refuse placed in such receptacle is securely wrapped or bagged, or in the case of containers, drained; for the purpose of collection place such receptacle within an area and at times designated by the TRUSTEES; not leave any refuse including garden refuse outside his property except for collection on the date of collection, and not leave any refuse overnight, adhere to the different set of directives if otherwise defined in the RULES and REGULATIONS.
- 10.12 when keeping a pet, ensure that such pet wears a nametag with contact details of the owner and that the keeping of such pet shall not constitute a disturbance or nuisance to MEMBERS or their tenants or occupiers and the TRUSTEES shall, in their absolute discretion, be entitled to require the permanent removal from the DEVELOPMENT of any such pet which, in the opinion of the TRUSTEES, constitute a meaningful threat or disturbance or nuisance or is found without a nametag or insufficient detail on such a nametag.
- 10.13 not keep reptiles, insects, noisy birds, homing pigeons, live stock, poisonous pets or plants of any nature or any known or perceived (by the TRUSTEES) dangerous animals as pets.
- 10.14 gain permission from the TRUSTEES if more than three pets of any nature are to be kept. The decision of the TRUSTEES in this regard will be final.

- 10.15 ensure that his pet is kept on a leash in all open areas within the DEVELOPMENT and is controlled to ensure that other pets are not interfered with and, in particular, that no nuisance is caused by such pet to the MEMBERS and that the pet does not cause un-cleared fouling of walkways within the DEVELOPMENT or on open spaces within the DEVELOPMENT or on the beachfront in front of the DEVELOPMENT;
- 10.16 ensure that his pet is kept within the residence or within a permitted enclosable area (as may be defined in the DEVELOPMENT DIRECTIVE) on the ERF when not on a leash and that the enclosed area is kept clear of all fouling;
- 10.17 comply with all standard security and access control procedures as well as procedures that may be implemented from time to time or otherwise defined in the RULES and REGULATIONS;
- 10.18 ensure that at no time washing is displayed on the balconies, patios or any other place visible to any other MEMBER and that no enclosed balconies (if provided for in the DEVELOPMENT DIRECTIVE) are converted to bedrooms or reflect anything else but that of a balcony area and that enclosed balconies are not painted in any other colour than that prescribed in the Development Directive (pre-enclosed colour);
- 10.19 obtain permission from the TRUSTEES before any private gardening is attempted, which includes the trimming of trees or the planting of any plant so as to ensure that gardening and landscaping of his ERF is undertaken in such a way as to be compatible with the gardening and landscaping of the development and in keeping with the design and desires of the DEVELOPER appointed landscape architect's directives and plant selection which in any event only be indigenous;
- 10.20 adhere strictly to the terms of servitudes and pathways granting access to the beachfront and/or any recreational or water feature areas and/or DEVELOPMENT or RESIDENTIAL UNIT services;
- 10.21 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on common or private areas of the DEVELOPMENT;
- 10.22 ensure that any elevator that may be in operation within the residence is maintained in excellent running order in keeping with the elevator manual and in strict adherence to the service requirements through the exclusive use of the TRUSTEES' nominated elevator contractor;
- 10.23 not enter an area under development on the DEVELOPMENT unless it has been arranged with the DEVELOPER or unless accompanied by the CONTRACTOR in the event of IMPROVEMENTS being undertaken on his own behalf on an ERF belonging to such a MEMBER;
- 10.24 ensure that his residence has a functional alarm system coupled to the approved security provider for the DEVELOPMENT and ensure that the RESIDENTIAL UNIT has sufficient paid-up electrical capacity (if applicable), as well as battery backup, to ensure that the RESIDENTIAL alarm system remains operational to ensure a higher safety level of the complete DEVELOPMENT;
- 10.25 subscribe to the same armed response service with which the TRUSTEES have entered into negotiation with, with the objective of ensuring the best overall security rates for all residents if such a contracted agreement is maintained by the TRUSTEES;

- 10.26 refrain from issuing instructions of any nature to construction team members or the employees (including security related staff) of the DEVELOPMENT by directing such requests to the DEVELOPER or TRUSTEES (as may be relevant) or the development manager who will attend to such requests on authorisation of the TRUSTEES;
- 10.27 comply with Rental Rules and Regulations, including to not rent the RESIDENTIAL UNIT for a period less than the minimum prescribed in the abovementioned rules (six months unless otherwise prescribed in the rules) and at all times ensure that the tenants have a copy of the rules and that there is strict compliance with the regulations pertaining to maximum number of occupants of a PROPERTY;
- 10.28 timeously pay any penalties raised for failure to comply with the RULES and REGULATIONS or terms of the CONSTITUTION;
- 10.29 refrain from parking any vehicle on any pavement or upon the common property for any period of time without the written consent of the Trustees. The Trustees may cause the vehicle to be removed, wheels clamped or towed away from the DEVELOPMENT at the expense of the MEMBER. Ensure that his and his guests' and visitors' vehicles do not drip oil or brake fluid on the common property or otherwise deface the common property. Removal of dripping will be at the expense of the MEMBER. Not dismantle or effect major repairs to any vehicle or cause or allow such dismantling or repairs to be effected upon any part of the common property. Accept that any vehicle entering the DEVELOPMENT do so that the risk of the owner of the vehicle.

11. IMPROVEMENTS and ALTERATIONS

- 11.1 A panel comprising of members of the DEVELOPER and/or TRUSTEES along with their nominated architect has been established and is known as the ARCHITECTURAL COMMITTEE. The committee shall be entitled to approve or withhold approval of "improvement and alteration" plans submitted and/or direct such other conditions as the panel may reasonably deem necessary. The reasonable cost of the committee connected with the foregoing shall be borne by the MEMBER. All such decisions will be taken and given within the terms of the DEVELOPMENT DIRECTIVE and should any request not be covered by the DEVELOPMENT DIRECTIVE at the time, then a directive decision is first to be compiled compliant with the current theme and intention of the DEVELOPMENT DIRECTIVE without giving preference or cognizance to the request before a decision or response to the request is considered.
- 11.2 All initial designs for IMPROVEMENTS will be concluded, submitted and administered by the DEVELOPER appointed architect as nominated in the Schedule of the CONSTRUCTION AGREEMENT and no subsequent structural alterations (internal or external) will be considered for implementation at all unless specifically catered for in the DEVELOPMENT DIRECTIVE and approved by the Architectural Committee.
- 11.3 Only the DEVELOPER for as long as the DEVELOPER is a MEMBER and thereafter the TRUSTEES may change the content of the DEVELOPMENT DIRECTIVE in consultation with the ARCHITECTURAL COMMITTEE and such changes may not require a retrospective fit to existing structures.
- 11.4 MEMBERS shall not
- 11.4.1 be entitled to deviate from any plan approved by the ARCHITECTURAL COMMITTEE unless the committee's written approval for such proposed deviation has been obtained;

- 11.4.2 submit plans in respect of IMPROVEMENTS or alterations to the LOCAL AUTHORITY unless such plans have been prepared by the architect specifically appointed for such functions by the DEVELOPER and approved by the ARCHITECTURAL COMMITTEE. Should plans for IMPROVEMENTS or alterations be submitted to and approved by the LOCAL AUTHORITY and should such plans not have been approved by the DEVELOPER or the ARCHITECTURAL COMMITTEE, such plans will be voided on instruction of the DEVELOPER or TRUSTEES and the MEMBER shall not be entitled to challenge or contest such an act;
- 11.4.3 be entitled to challenge or contest any of the provisions of the DEVELOPMENT DIRECTIVE;
- 11.4.4 have any claim of whatsoever nature against the DEVELOPER and/or the ASSOCIATION and/or any member of the ARCHITECTURAL COMMITTEE arising from any refusal of approval of plans and/or conditional approval and/or a “stop work” instruction that may have been issued by any of the aforementioned and, in that regard, the discretion of the ARCHITECTURAL COMMITTEE is absolute;
- 11.4.5 breach any restrictions directly stipulated or implied in the DEVELOPMENT DIRECTIVE.
- 11.5 The DEVELOPER, for as long as the DEVELOPER is a MEMBER, and thereafter the TRUSTEES, shall be entitled to add to or reduce the number of the members of the ARCHITECTURAL COMMITTEE including the right to remove any one or more of the architectural firm(s) on such a panel.
- 11.6 A MEMBER shall not commence the implementation of IMPROVEMENTS or ALTERATIONS unless the CONTRACTOR'S CONDUCT AGREEMENT has been signed and lodged with the TRUSTEES and effected payment as may be provided for therein.
- 11.7 Only the DEVELOPER for as long as the DEVELOPER is a MEMBER and thereafter the TRUSTEES may change the content of the CONTRACTOR'S CONDUCT AGREEMENT.
- 11.8 The construction/erection of IMPROVEMENTS shall be undertaken only by:
- the MASTER CONTRACTOR that has gained total development rights for all construction work of IMPROVEMENTS on the DEVELOPMENT or one of his accredited CONTRACTORS as directed by such a MASTER CONTRACTOR and approved by the DEVELOPER or
 - if such a MASTER CONTRACTOR has not been appointed or has withdrawn, a CONTRACTOR reflected on a list of accredited building contractors available from the DEVELOPER'

The MASTER CONTRACTOR or in absence thereof the DEVELOPER may under exceptional conditions and at his exclusive discretion approve the use of an OWNER selected contractor not appearing on the list.

Terms and conditions pertaining to the construction and control of the construction of IMPROVEMENTS, other than those detailed above, are documented in the CONSTRUCTION AGREEMENT.

11.9 If a MEMBER has purchased an ERF and such a MEMBER, through no fault of the CONTRACTOR, fails to timeously complete the erection of a residence (or GARAGE UNIT) in accordance with the construction period as detailed under clause 9.12 and is not clearly and actively (in the absolute discretion of the DEVELOPER) in the process of completing the construction process:

11.9.1 the DEVELOPER shall be entitled, but not obliged, to repurchase the ERF from the MEMBER who shall be obliged to sell the ERF to the DEVELOPER at a price equal to 75% of the PURCHASE PRICE (as defined in the AGREEMENT OF SALE) paid by the initial purchaser of the ERF from the DEVELOPER less Value-Added Tax and initial agent commission (the "net Market Price") upon notification to that effect received from the DEVELOPER.

11.9.2 Transfer from the MEMBER to the DEVELOPER of such ERF shall be effected by attorneys nominated by the DEVELOPER and the MEMBER shall be liable for payment of the costs of registration of such transfer inclusive of Transfer Duty and attorney transfer fees upon date of transfer. The MEMBER shall not be entitled to any compensation for completed or incomplete structures erected on the ERF as at the date of receipt by the MEMBER of the said notice from the DEVELOPER, which shall be the date of sale by the MEMBER to the DEVELOPER of the said ERF.

11.9.3 The MEMBER and/or any occupier shall vacate the ERF and possession thereof shall pass to the DEVELOPER on the 5th (fifth) day after the said date of sale. The "net Market Price" shall be payable by the DEVELOPER to the MEMBER on registration of transfer of the ERF in the name of the DEVELOPER, which transfer shall be effected as soon as reasonably possible after delivery of the said notice to the MEMBER.

11.9.4 The DEVELOPER shall, in its absolute discretion, be entitled to :

- extend the contracted construction period by up to 12 (twelve) months to enable the OWNER to complete the construction of the IMPROVEMENTS provided that such extension shall only be valid if it can clearly be seen that the IMPROVEMENTS are under active daily construction with the objective of being completed in the shortest possible timeframe and provided such extension of time is in writing and signed by the DEVELOPER. The DEVELOPER shall be entitled to withdraw the extension for failure to comply and action proceedings in terms of his rights.
- Delay the decision to repurchase the PROPERTY for periods of up to 3 (three) months to enable the OWNER to start with construction subject to absolute proof of the MEMBER'S ability to complete such construction.
- Delay the decision to repurchase the PROPERTY (whilst not forfeiting the right to do so at any stage prior to start or restart of construction) and claim a monthly "construction delay damage fee" from the MEMBER equivalent to the amount as stipulated in the CONSTRUCTION AGREEMENT or such an amount as may be nominated by the DEVELOPER at the time if not recorded in an agreement. The MEMBER may not dispute the rights to such a claim. Claim settlement processing will be performed via the ATTORNEY and managed in a manner as detailed elsewhere in this agreement pertaining to cost settlements and breach.

11.9.5 If the MEMBER fails to sign the transfer documents upon request made by the DEVELOPER'S conveyancer he shall be deemed to have granted to the CHAIRMAN for the time being of the ASSOCIATION a power of attorney to act on his behalf in that regard and signature of documents by the said CHAIRMAN on his behalf shall be valid and effective as though signed by the MEMBER.

11.9.6 In the event of a repurchase option being exercised by the DEVELOPER, clause 9.8 will not be applicable.

- 11.10 The provisions of clause 9.4 are imposed to inter alia ensure compliance with the provisions of this clause 11.
- 11.11 Should the DEVELOPER take steps against a MEMBER pursuant to a breach of this clause 11, the DEVELOPER shall further be entitled to recover from such MEMBER who shall be liable to the DEVELOPER for payment of all the DEVELOPER'S legal costs incurred on the scale as between attorney and own client.
- 11.12 The DEVELOPMENT DIRECTIVE constitutes an integral part of this CONSTITUTION and for as long as the DEVELOPER is a MEMBER the DEVELOPMENT DIRECTIVE may be amended, substituted, added to or repealed only at the instance of the DEVELOPER and, thereafter, by the TRUSTEES.
- 11.13 All IMPROVEMENTS shall be of approved design and of sound construction and shall comply with the provisions of the DEVELOPMENT DIRECTIVE and will comply with terms as may be detailed in the CONSTRUCTION AGREEMENT.
- 11.14 No construction or erection of internal or external IMPROVEMENTS or ALTERATIONS on an ERF may commence prior to the approval of plans for such IMPROVEMENTS or ALTERATIONS and, in this regard
- 11.14.1 a full set of proposed building plans which indicate both construction/alterations and design details shall be submitted to the ARCHITECTURAL COMMITTEE for their approval;
- 11.14.2 thereafter, the ARCHITECTURAL COMMITTEE approved plans shall be submitted to the LOCAL AUTHORITY for approval (where so required);
- 11.14.3 having obtained the approval of the LOCAL AUTHORITY, the MEMBER shall comply with all conditions and standards imposed by the LOCAL AUTHORITY insofar as these may be additional to the requirements of the DEVELOPER or TRUSTEES.
- 11.15 The requirements of 11.14 may under exceptional conditions not apply if the DEVELOPER/TRUSTEES sign a waiver in this regard. This exception will not be applicable to construction of new IMPROVEMENTS and is mainly directed at internal alterations.
- 11.16 Approval of building plans will not be granted by the LOCAL AUTHORITY without the prior written approval of the TRUSTEES & ARCHITECTURAL COMMITTEE thereto which approval shall be evidenced by the stamp of the TRUSTEES & ARCHITECTURAL COMMITTEE. Should the LOCAL AUTHORITY approve invalidly submitted plans not bearing the required authorization, such plans will be considered as voided and not approved on instruction of the DEVELOPER or TRUSTEES to the LOCAL AUTHORITY. Any attempted construction may be stopped by the DEVELOPER or TRUSTEES and all expenses incurred in the process will be for the account of the defaulting MEMBER.

12. RESTRICTIONS

- 12.1 No MEMBER shall apply for the rezoning of his ERF, GARAGE or RESIDENTIAL UNIT with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his ERF, GARAGE or RESIDENTIAL UNIT for any purpose other than the permitted use applicable upon establishment of the DEVELOPMENT.

12.2 No MEMBER shall conduct any business on or in a PROPERTY for purposes other than residential, garaging or storage purposes (as may be relevant for the property) unless the DEVELOPER for as long as he is a MEMBER or until the DEVELOPER relinquishes this responsibility in favour of the TRUSTEES and thereafter the TRUSTEES, have in writing, approved the use to which the PROPERTY is to be put, and the LOCAL AUTHORITY has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations and there has been compliance with the following:

12.2.1 any MEMBER (other than the DEVELOPER) wishing to conduct a business on his ERF or who wishes to use his ERF for purposes other than residential, shall apply in writing to the DEVELOPER for as long as he is a MEMBER or until the DEVELOPER relinquishes this responsibility in favour of the TRUSTEES and thereafter the TRUSTEES for permission to do so. The DEVELOPER/TRUSTEES shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the DEVELOPER/TRUSTEES deem necessary.

12.2.2 An application in terms of the foregoing shall contain a full description of the proposed business or usage, including but not limited to:

12.2.2.1 the type of business;

12.2.2.2 the number of full time and/or part time staff;

12.2.2.3 the times and duration of the business operation, including the number of days per week;

12.2.2.4 the projected growth of the business operation;

12.2.2.5 whether any alteration to the existing **IMPROVEMENTS** is proposed;

12.2.2.6 defining in which portion of the **IMPROVEMENTS** the business activity is to be located;

12.2.2.7 the number and type of vehicles which will be regularly involved in the business operation;

12.2.2.8 the estimated number of visitors per week resulting from the business operation;

12.2.2.9 the estimated number of deliveries necessitated by the business operation;

12.2.2.10 defining what provision is to be made for parking;

12.2.2.11 the likely impact of the business operation on neighbouring properties and the DEVELOPMENT in general;

12.2.3 The DEVELOPER/TRUSTEES shall not approve any such application unless they are satisfied that the application complies with the following:

12.2.3.1 the business operation will not detrimentally alter the character of the DEVELOPMENT or affect the privacy and rights of neighbours;

12.2.3.2 the number of employees involved in the running of the business operation will not exceed 3 (three);

12.2.3.3 the MEMBER will reside permanently on the ERF in respect whereof the application is made unless alternative arrangements have been concluded in writing with the TRUSTEES;

12.2.3.4 MEMBERS who, in the opinion of the DEVELOPER/TRUSTEES are affected by the application, are in agreement therewith;

12.2.3.5 adequate provision has been made for parking within the ERF and the landscaping of the ERF will be suitable for the type of business contemplated

- and that no parking of vehicles off the ERF within the DEVELOPMENT will result from the business operation unless agreed to by the TRUSTEES;
- 12.2.3.6 the granting of the application will not have any significant effect on the density of traffic in the DEVELOPMENT;
- 12.2.3.7 non-residents will not be afforded uncontrolled access into the DEVELOPMENT;
- 12.2.3.8 no approved signage larger than 300mm x 250mm will be erected and none without the written approval of the TRUSTEES;
- 12.2.3.9 hours of the business operation will be confined between 8h00 and 18h00 on weekdays and no business will be conducted on Saturdays, Sundays and proclaimed public holidays unless specific approval therefore has been granted.
- 12.2.4 Should any MEMBER to whom permission has been granted for the conduct of a business change any aspect of such business then such MEMBER shall submit a fresh application in accordance with the provisions hereof to continue such business.
- 12.2.5 No MEMBER to whom approval has been granted, shall be entitled to erect any sign or advertisement on his ERF or on any of the common areas in the DEVELOPMENT in connection with such business save with the approval of the TRUSTEES.
- 12.3 No member shall permit the number of “overnight” occupants on his ERF to exceed 3 (three) persons per bedroom. The word "occupants" shall include but shall not be limited to any person who resides or stays on such ERF on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the OWNER or whether such person pays rental or gives any other form of consideration in respect of such ERF or any portion thereof.
- 12.3.1 Penalties for infringement will become applicable as per the RULES and REGULATIONS
- 12.3.2 The TRUSTEES or their nominated person (including the DEVELOPMENT security staff) will be entitled to require the excess number of “overnight” occupants to vacate the DEVELOPMENT immediately
- 12.3.3 The term “overnight” will be considered as taking effect at 2am. Any MEMBER having a function that may result in the breach of this clause is to gain prior written approval from the TRUSTEES to prevent eviction of the deemed infringers.

13. LEVIES

- 13.1 The TRUSTEES shall
- 13.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the ASSOCIATION for the control, management and administration of the DEVELOPMENT and for charges for the supply of any services required by the ASSOCIATION and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the ASSOCIATION;
- 13.1.2 estimate the amount which will be required by the ASSOCIATION to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Provisioning for the progressive painting of every structure (e.g. GARAGE UNITS, DWELLINGS, walls, etc) in the total DEVELOPMENT to ensure that no structure ever appear neglected relative to the remaining structures has to be included in this calculation;

- 13.1.3 accrue funds in a DEPRECIATING ASSET RESERVE FUND for the replacement of individually identified depreciating assets so as to spread the provisioning for the replacement of the depreciating item over all the users thereof over the full depreciating period or projected life period of the asset so as to prevent the raising of special levies to cover such replacement costs. Replacement values are to be taken into consideration throughout the provisioning process (typically yearly). Each asset so provided for is to be accounted for separately and any accumulated shortfall may not be used from other assets unless an excess from such other asset has occurred in which case such excess was to have been recorded in the “asset replacement excess account”.
- 13.1.4 require MEMBERS whenever necessary to make contributions to such funds for the purposes of satisfying the expenses referred to in clauses 13.1.1 and 13.1.2 and 13.1.3.
- 13.2 The TRUSTEES may, from time to time, make special levies upon MEMBERS effective from the date of passing of the applicable RESOLUTION in respect of such expenses referred to in clause 13.1 (which are not included in any estimate made in terms of clause 13.1.2 and not provided for in terms of clauses 13.1.3) and such levies may be imposed and shall be payable in one sum or by such installments and at such time or times as the TRUSTEES shall deem fit.
- 13.3 Any amount due by a MEMBER by way of a levy shall be a debt due by him to the ASSOCIATION payable within such time as determined by the TRUSTEES. The obligation of a MEMBER to pay a levy shall cease upon his ceasing to be a MEMBER save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a MEMBER. No levies paid by a MEMBER shall be repayable by the ASSOCIATION upon his ceasing to be a MEMBER. A MEMBER'S successor in title to a PROPERTY shall be liable as from the date upon which he becomes a MEMBER pursuant to the transfer of such ERF, GARAGE or RESIDENTIAL UNIT to pay the levies attributable to that PROPERTY. No MEMBER shall be entitled to transfer his PROPERTY until the TRUSTEES have certified that the MEMBER has, at the date of transfer, paid all amounts owing by him to the ASSOCIATION. Any levy shortfall may be acquired from funds to be paid to the MEMBER on date of transfer as part of the transferring and settlement process.
- 13.4 In calculating levies, the TRUSTEES shall take into account income, if any, earned by the ASSOCIATION as well as the impact on the ASSOCIATION'S depreciating assets and the replacement requirement of such assets and apply this in conjunction with the levy model as provided by the DEVELOPER. They shall also take into consideration the exclusion of income to be gained from the possible sale of PROPERTIES as detailed under clause 9.8 (Alienation) in the year of budgeting. Actual income gained and brought forward from the previous year from PROPERTIES sold and as detailed under clause 9.8, is to be included in the levy calculation.
- 13.5 The decision of the TRUSTEES in calculating the levies shall be final and binding on all MEMBERS once accepted at the AGM.
- 13.6 The levy payable by a MEMBER shall be calculated based on the ratio model provided to the TRUSTEES by the DEVELOPER. If in the event approval was granted for the consolidation of RESIDENTIAL UNITS or ERVEN into one then LEVIES will be calculated as if the RESIDENTIAL UNITS or ERVEN were still separate entities.
- 13.7 No MEMBER shall be entitled to any of the privileges of membership (including the use of internal roads and common facilities) unless and until he shall have paid every levy, penalty and/or other sum (if any) which shall be due and payable to the ASSOCIATION in respect of his membership thereof.

- 13.8 All levies are due and payable by MEMBERS monthly in advance by the first day of the month, and MEMBERS shall be obliged to sign a debit order to ensure timeous payment of such levies.
- 13.9 MEMBERS shall be liable for payment of interest on outstanding amounts at a rate determined by the TRUSTEES from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable (or any other such later date nominated by the TRUSTEES) to the date of payment provided that any portion of a month exceeding 15 days will be regarded as a full calendar month for the purposes of this calculation.
- 13.10 MEMBERS shall pay VAT on all such LEVIES raised if applicable.
- 13.11 The DEVELOPERS or DEVELOPER MEMBERS shall for as long as the DEVELOPER (or its members) is a MEMBER shall not be liable for the payment of levies on :
- 13.11.1 any part of the DEVELOPMENT that is yet to be developed;
 - 13.11.2 any developed ERVEN not yet sold;
 - 13.11.3 common areas or services transferred into the ASSOCIATION'S name;
 - 13.11.4 Any PROPERTIES listed on the DEVELOPER'S PROPERTY LIST.

14. BREACH

- 14.1 The TRUSTEES may on behalf of and in the name of the ASSOCIATION institute legal proceedings in accordance with the provisions of this clause 14.
- 14.2 If any MEMBER fails in the observance of any of the provisions of this CONSTITUTION, including with regard to IMPROVEMENTS or ALTERATIONS or terms as per the CONSTRUCTION AGREEMENT and/or the provisions of the DEVELOPMENT DIRECTIVE or obligations in terms of clauses 9, 10 and 12 above and/or fails to comply with any rules or regulations made in terms thereof or in terms of any other document included as part of the SALES AGREEMENT or in terms of directives on the Deed documents, the TRUSTEES may on behalf of and in the name of the ASSOCIATION serve notice on such a MEMBER calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:
- 14.2.1 enter upon the PROPERTY to take such action as may be reasonably required to remedy the breach and the MEMBER concerned shall be liable to the ASSOCIATION for all costs so incurred, which costs shall be due and payable upon demand; and / or
 - 14.2.2 call upon such MEMBER in writing to remove or alter within a specified period any portion of the IMPROVEMENTS or any addition erected contrary to the provisions of this CONSTITUTION read in conjunction with the DEVELOPMENT DIRECTIVE and CONSTRUCTION AGREEMENT and, failing which, the matter shall be referred to a special meeting of the ASSOCIATION convened to afford MEMBERS the opportunity to give directions to the TRUSTEES. The RESOLUTION of the ASSOCIATION at such meeting shall be binding upon such defaulting MEMBER and shall be implemented by the TRUSTEES; and / or
 - 14.2.3 institute proceedings in any court of competent jurisdiction for such relief as the TRUSTEES may consider necessary and such MEMBER shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.
 - 14.2.4 Raise a fine in terms of clauses 38 and/or 39 for breach of RULES and REGULATIONS or the CONSTITUTION and/or DEVELOPMENT DIRECTIVES and/or any other

directives or terms within documentation forming part of the terms of sale to the MEMBER.

- 14.3 If any MEMBER fails to make payment on due date of levies or other amounts payable by such MEMBER, the TRUSTEES may give notice to such MEMBER requiring him to remedy such breach within such period as the TRUSTEES may determine and should he fail to timeously remedy his breach, the TRUSTEES may, on behalf of the ASSOCIATION, 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 own client together with collection commission and any other expenses and charges incurred by the ASSOCIATION in obtaining recovery.
- 14.4 Nothing in the foregoing shall derogate from or in any way diminish the right of the ASSOCIATION to institute proceedings in any court of competent jurisdiction for recovery of any money due by any MEMBER arising from any cause of action whatsoever or for any other relief having first exhausted relevant recovery attempts detailed in this CONSTITUTION.
- 14.5 In the event of any breach of this CONSTITUTION by the members of any MEMBER'S household or his invitees or lessees or contractors, such breach shall be deemed to have been committed by the MEMBER himself but, without prejudice to the foregoing, the TRUSTEES shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the MEMBER.

15. TRUSTEES

- 15.1 The TRUSTEES of the ASSOCIATION shall comprise 4 (four) DEVELOPER TRUSTEES until the first annual general meeting of the ASSOCIATION whereupon the number of TRUSTEES shall be 7 (seven) comprising 4 (four) DEVELOPER TRUSTEES and of 3 (three) MEMBER TRUSTEES for as long as the DEVELOPER is a MEMBER or until the DEVELOPER, as an exclusive decision, relinquishes this responsibility (in part, progressively or in total) in favour of MEMBER TRUSTEES and upon the DEVELOPER ceasing to be a MEMBER (or on relinquishing his responsibility) the 7 (seven) TRUSTEES shall be MEMBER TRUSTEES save that the ASSOCIATION shall in a general meeting held after the DEVELOPER has relinquished his responsibility or has ceased to be a MEMBER/TRUSTEE be entitled to increase or decrease the number of TRUSTEES.
- 15.2 A TRUSTEE shall be an individual but need not himself be a MEMBER provided that the majority of MEMBER TRUSTEES shall be MEMBERS.
- 15.3 A TRUSTEE shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this CONSTITUTION.
- 15.4 The DEVELOPER shall appoint the first DEVELOPER TRUSTEES upon formation of the ASSOCIATION.
- 15.5 Subject to the provisions of clause 15.6, each MEMBER TRUSTEE shall continue to hold office until the annual general meeting of the ASSOCIATION following his appointment, at which meeting each MEMBER TRUSTEE shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The DEVELOPER shall, by written notice to the TRUSTEES, be entitled to remove any DEVELOPER TRUSTEE appointed by the

DEVELOPER and upon such removal or upon any DEVELOPER TRUSTEE ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.

15.6 A TRUSTEE shall be deemed to have vacated his office as such upon:

- 15.6.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
- 15.6.2 him making any arrangement or compromise with his creditors;
- 15.6.3 his conviction for any offence involving dishonesty;
- 15.6.4 him becoming of unsound mind or being found lunatic;
- 15.6.5 him resigning from such office in writing;
- 15.6.6 his death;
- 15.6.7 him being removed from office by a resolution of TRUSTEES;
- 15.6.8 his being disentitled to exercise a vote in terms of this CONSTITUTION provided he is a MEMBER TRUSTEE;
- 15.6.9 him owing monies to the ASSOCIATION whilst being in a dispute on such a matter .

15.7 Notwithstanding the fact that a TRUSTEE shall be deemed to have vacated his office as provided in clause 15.6, anything done by such TRUSTEE in the capacity of a TRUSTEE in good faith shall be valid until the fact that he is no longer a TRUSTEE has been recorded in the Minute Book of the TRUSTEES. Should the office of a TRUSTEE fall vacant prior to the next annual general meeting of the ASSOCIATION, the vacancy in question may be filled by the DEVELOPER if the vacancy is in respect of a DEVELOPER TRUSTEE and by the remaining MEMBER TRUSTEES if the vacancy is in respect of a MEMBER TRUSTEE and the person so appointed shall hold office until the next annual general meeting.

15.8 The first CHAIRMAN shall be appointed by the DEVELOPER and shall hold office until the first annual general meeting provided that such office shall ipso facto be vacated by the TRUSTEE who was appointed CHAIRMAN upon his ceasing to be a TRUSTEE for any reason.

15.9 Within 7 (seven) days of the holding of each annual general meeting of the ASSOCIATION the TRUSTEES shall meet and shall elect from their own number the CHAIRMAN who shall hold office until the annual general meeting held next after his appointment, provided that the office of CHAIRMAN shall ipso facto be vacated by the TRUSTEE holding such office upon his ceasing to be a TRUSTEE for any reason. In the event of any vacancy occurring in the aforesaid office the TRUSTEES shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.

15.10 Save as otherwise provided in this CONSTITUTION, the CHAIRMAN shall preside at all meetings of the TRUSTEES and all general meetings of the ASSOCIATION and shall perform all duties incidental to the office of CHAIRMAN and such other duties as may be prescribed by the TRUSTEES or by MEMBERS and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a MEMBER'S spouse or nominee shall be entitled to speak at any meeting.

15.11 If the CHAIRMAN vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the TRUSTEES present at such meeting shall choose another CHAIRMAN for such meeting.

15.12 If any CHAIRMAN vacates his office as CHAIRMAN or no longer continues in office for any reason, the TRUSTEES shall elect another CHAIRMAN who shall hold office as such for the remainder of the period of office of the first mentioned CHAIRMAN.

- 15.13 A TRUSTEE shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the ASSOCIATION, by virtue of any interest he may have therein.
- 15.14 No contract concluded on behalf of the TRUSTEES shall be valid and binding unless it is signed by the CHAIRMAN and one TRUSTEE, the latter specifically appointed as authorised signatory in terms of the RESOLUTION of TRUSTEES whereby the TRUSTEES bind the ASSOCIATION or unless specifically catered therefore within this CONSTITUTION.
- 15.15 TRUSTEES shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as TRUSTEES and/or CHAIRMAN, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties. The TRUSTEES and their spouses may once a year in recognition of services rendered to the ASSOCIATION partake in a dinner subject to provisions for such an expense being provisionally budgeted for against unbudgeted income potentially to be derived from the possible resale of PROPERTIES as referred to in clause 9.8 unless otherwise approved for inclusion in the normal budget by the previous year's AGM.
- 15.16 TRUSTEES may not make loans on behalf of the ASSOCIATION to MEMBERS, employees of any nature or to themselves.

16. FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

- 16.1 Subject to the express provision of this CONSTITUTION, the TRUSTEES 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 any MANAGING AGENT, may exercise all such powers of the ASSOCIATION and do all such acts on behalf of the ASSOCIATION as may be exercised and done by the ASSOCIATION and as are not by this CONSTITUTION required to be exercised or done by the ASSOCIATION in general meeting subject however to such regulations as may have been made by the ASSOCIATION in general meeting provided that no regulation made by the ASSOCIATION in general meeting shall invalidate any prior act of the TRUSTEES which would have been valid if such regulation had not been made.
- 16.2 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, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the TRUSTEES on such terms as the TRUSTEES shall decide.
- 16.3 The TRUSTEES shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 16.4 The TRUSTEES shall have the right to co-opt any person or persons chosen by them. A co-opted TRUSTEE shall enjoy all the rights and be subject to all the obligations of the TRUSTEES provided that such co-opted TRUSTEE shall only serve until the next annual general meeting.
- 16.5 The TRUSTEES may, should they so decide, investigate any suspected or alleged breach by any MEMBER or TRUSTEE of this CONSTITUTION in such reasonable manner as they shall decide from time to time.

- 16.6 The TRUSTEES may make regulations and rules not inconsistent with this CONSTITUTION or any regulations or rules prescribed by the ASSOCIATION in general meeting
- 16.6.1 as to the resolution of disputes generally;
 - 16.6.2 for the furtherance and promotion of any of the objects of the ASSOCIATION;
 - 16.6.3 for the better management of the affairs of the ASSOCIATION;
 - 16.6.4 for the advancement of the interests of MEMBERS;
 - 16.6.5 for the conduct of TRUSTEES at meetings of TRUSTEES and meetings of the ASSOCIATION;
 - 16.6.6 to levy and collect contributions from MEMBERS in accordance with clause 13;
 - 16.6.7 to levy and recover from MEMBERS moneys which are necessary to defray the necessary expenses of the LOCAL AUTHORITY in the event of the LOCAL AUTHORITY imposing any levies and imposts against the ASSOCIATION;
 - 16.6.8 to assist it in administering and governing its activities generally.
- 16.7 It is prudent that a LEVY SECURITY FUND be created and managed by the TRUSTEES to act as a reserve or bridging fund for the DEVELOPMENT. The fund is to be sufficient to sustain the DEVELOPMENT expenditure requirement for a period of approximately six months the funding terms of which are defined under clause 29.2. It is the TRUSTEES' duty to ensure the stability of the Levy Security Fund and if provisions of clause 29.2 prove to be insufficient the TRUSTEES may from time to time raise any shortfall through a special levy or propose an amount to be added to the normal monthly levy to supplement any shortfall.
- 16.8 Transfer will not be authorised by the DEVELOPER or TRUSTEES (as may be the case) unless provision for the LEVY SECURITY FUND deposit is made at time of a sale and committed at transfer.
- 16.9 Without in any way limiting the powers granted, the duties and powers of the TRUSTEES shall further specifically include:
- 16.9.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and improvements of all ERVEN and RESIDENTIAL UNITS in the DEVELOPMENT in strict accordance with the provisions of the DEVELOPMENT DIRECTIVE which shall be additional to the powers of the DEVELOPER for as long as the DEVELOPER is a MEMBER. The TRUSTEES shall be entitled to require any MEMBER, who shall be obliged, to renovate his IMPROVEMENTS if in the reasonable opinion of the TRUSTEES such IMPROVEMENTS require essential repairs or have become dilapidated (exclusive of painting of such units as this falls under the duties of the ASSOCIATION);
 - 16.9.2 entering into of agreements with third parties on behalf of the ASSOCIATION for any purposes of the ASSOCIATION;
 - 16.9.3 the employment on behalf of the ASSOCIATION of agents, servants and any other party and the payment of such persons;
 - 16.9.4 the taking of steps in all matters of common interest in respect of the ASSOCIATION and, without detracting from the generality thereof, such as common sewage, electricity and gas supply (if applicable), landscaping, below ground water storages, maintenance of private roads and all gardens and related services and facilities, security and related services and facilities, administration management of the DEVELOPMENT, painting of all structures, refuse facilities, removal of refuse and suchlike, where applicable;
 - 16.9.5 the right to instigate work on private property where common or garden services or servitudes crosses the property if such services need to be replaced or rectified or inspected or to ensure the upkeep of the garden or the painting of the premises or to inspect apparent infringements of the CONSTITUTION or RULES and REGULATIONS etc;

16.9.6 the institution or defense of actions in the name of the ASSOCIATION and to appoint legal representatives for such purpose.

17. PROCEEDINGS OF TRUSTEES

- 17.1 The TRUSTEES may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this CONSTITUTION.
- 17.2 Meetings of the TRUSTEES shall be held at least once every 4 (four) months.
- 17.3 The CHAIRMAN always has the right to convene meetings of TRUSTEES.
- 17.4 A TRUSTEE may, provided he has the support in writing of 2 (two) other TRUSTEES, at any time convene a meeting of TRUSTEES by giving to the other TRUSTEES not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 17.5 A RESOLUTION in writing signed by all the TRUSTEES shall be valid and effectual in all respects as if it had been passed at a meeting of TRUSTEES duly called and constituted.
- 17.6 The quorum necessary for the holding of any meeting of TRUSTEES shall be 4 (four) TRUSTEES present personally provided that, for as long as the DEVELOPER is a MEMBER or until the DEVELOPER relinquishes this responsibility in favour of the TRUSTEES, no less than 3 (three) TRUSTEES present are DEVELOPER TRUSTEES. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the TRUSTEES then present shall be a quorum.
- 17.7 Any RESOLUTION of the TRUSTEES shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a RESOLUTION, the CHAIRMAN shall have a second or casting vote.
- 17.8 The CHAIRMAN shall preside as such at all meetings of TRUSTEES provided that, should at any meeting of TRUSTEES the CHAIRMAN not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the TRUSTEES shall vote to appoint a CHAIRMAN for the meeting who shall thereupon exercise all the powers and duties of the CHAIRMAN in relation to such meeting.
- 17.9 A TRUSTEE may be represented at a meeting of TRUSTEES by a proxy provided such proxy is a TRUSTEE.
- 17.10 The instrument appointing a proxy shall be in writing and signed by the TRUSTEE concerned but need not be in any particular form. The proxy shall be deposited with the CHAIRMAN at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.
- 17.11 The TRUSTEES shall record all minutes of the meetings and RESOLUTIONS as prescribed under clause 26 “Minutes of the meetings of the Association”

17.12 Save as otherwise provided in this CONSTITUTION, the proceedings at any meeting of TRUSTEES shall be conducted in such reasonable manner and form as the CHAIRMAN of the meeting shall decide.

18. MANAGING AGENT

18.1 The TRUSTEES shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a MANAGING AGENT to control, manage and administer the DEVELOPMENT and to exercise such powers and duties as may be entrusted to the MANAGING AGENT, including the power to collect levies and fines, provided that a MANAGING AGENT shall be appointed for a year at a time, and unless the TRUSTEES notify the MANAGING AGENT to the contrary, such appointment will be automatically renewed from year to year subject to confirmation at an AGM.

18.2 The TRUSTEES shall ensure that there is included in the contract of appointment of a MANAGING AGENT a provision to the effect that if the MANAGING AGENT is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the TRUSTEES may, without notice, cancel such contract of employment and the MANAGING AGENT shall have no claim whatsoever against the TRUSTEES and/or the ASSOCIATION as a result of such cancellation.

18.3 With effect from the date of commencement of the ASSOCIATION the DEVELOPER (or an administrator to be appointed by him) is appointed as the first MANAGING AGENT for a period ending 12 (twelve) months after construction of the final PROPERTY in the first phase of the DEVELOPMENT or until the first annual general meeting of the ASSOCIATION after such a completion date, whichever occurs first. The DEVELOPER may elect to change administrators from time to time in the event of having appointed an administrator to perform the managing agent duties. A three-month notice term should be included in all MANAGING AGENT appointment agreements by the TRUSTEES.

19. GENERAL MEETINGS OF THE ASSOCIATION

19.1 The ASSOCIATION shall, within 12 (twelve) months of the date of commencement of the ASSOCIATION hold a general meeting as its first annual general meeting. Thereafter, within 6 (six) months of the financial year end of the ASSOCIATION it shall hold second and subsequent annual general meetings.

19.2 Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the TRUSTEES shall decide from time to time.

19.3 The TRUSTEES may, whenever they deem fit, convene a general meeting and a general meeting shall also be convened on a requisition made by not less than 25% (twenty five per centum) of MEMBERS or should the TRUSTEES fail to do so such meeting may be convened by the requisitionists themselves provided that notice thereof be given in terms of clause 20.

20. NOTICE OF MEETINGS

20.1 An annual general meeting shall be called by not less than 21 (twenty one) days notice and a general meeting by not less than 14 (fourteen) days notice. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in this CONSTITUTION, the general nature of that business and the

reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the TRUSTEES to such persons as are, under this CONSTITUTION, entitled to receive such notices from the ASSOCIATION; provided that a general meeting or an annual general meeting of the ASSOCIATION shall, notwithstanding that it is called by shorter notice than that specified in this CONSTITUTION, be deemed to have been duly called if it is agreed to by not less than 60% (sixty per centum) of MEMBERS having a right to attend and vote at the meeting.

20.2 The accidental omission to give notice of any RESOLUTION or to present any document required to be given or sent in terms of this CONSTITUTION, shall not invalidate the proceedings at or any RESOLUTION passed at any meeting.

20.3 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

21. PROXIES

21.1 A MEMBER may be represented at an annual general meeting and/or general meeting by a proxy who must be a MEMBER of the ASSOCIATION.

21.2 The instrument appointing a proxy shall be in writing signed by the MEMBER concerned or his duly authorised agent in writing but need not be in any particular form provided that where a MEMBER is more than one person anyone of those persons may sign the instrument appointing a proxy on such MEMBER'S behalf. Where a MEMBER is a company, the proxy may be signed by any person authorised by resolution of the board of directors of the company or by its secretary and, where a close corporation, by any member of such close corporation and, where an association of persons, by the secretary thereof and, where a trust, by a person duly authorised by the trustees of such trust.

21.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy thereof shall be lodged with the ASSOCIATION at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof. The instrument appointing a proxy shall be in a written format of no specific design.

21.4 Notwithstanding the foregoing, the CHAIRMAN of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

22. QUORUM

22.1 No business shall be transacted at any annual general meeting or general meeting unless a quorum is present when the meeting proceeds to business and when any RESOLUTION is to be passed. The quorum necessary for the holding of any meeting shall be 25% (twenty five per centum) of the total MEMBERS entitled to attend and vote there-at.

22.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of MEMBERS, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the MEMBERS present shall constitute a quorum.

23. AGENDA AT MEETINGS

In addition to any other matters required by legislation or by this **CONSTITUTION** to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:

23.1 the consideration of the CHAIRMAN'S report;

23.2 the consideration of the financial statements of the ASSOCIATION for the last financial year of the ASSOCIATION preceding the date of such meeting;

23.3 the consideration of the budget as presented by the TRUSTEES and confirmation of levies to be levied by the TRUSTEES in the pursuing budget year.

Note: This budget review is to include consideration for replacement of depreciating assets for settlement out of the DEPRECIATING ASSET RESERVE FUND and specifically from the portion of the fund reserved for the specific depreciating asset under review;

23.4 any other business pertinent to such meeting as may be recorded on the agenda, including any RESOLUTIONS proposed for adoption by such meeting and the voting upon any such RESOLUTIONS.

23.5 the review of the “unbudgeted expenditure limitations” figure as referred to in Clause 28.6

23.6 the confirmation of or nomination of the Auditors

23.7 the confirmation or nomination of the MANAGING AGENT for the pursuing year

23.8 the election of MEMBER TRUSTEES

24. PROCEDURE AT MEETINGS

24.1 The CHAIRMAN shall preside as such at all meetings provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the TRUSTEES present at such meetings shall vote to appoint a CHAIRMAN for the meeting who shall thereupon exercise all the powers and duties of the CHAIRMAN in relation to such meeting.

24.2 The CHAIRMAN may, with the consent of any meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. No notice need 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 30 (thirty) days or more, in which event notice is to be given in the same manner as for the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

25. VOTING

- 25.1 At every annual general meeting or general meeting every **MEMBER** in person or by proxy and entitled to vote shall be allocated:
- 1 (one) vote per RESIDENTIAL ERF (or RESIDENTIAL UNIT) (pre any approved consolidation) registered in his name, provided that if an ERF is registered in more than one person's name, then they shall jointly have 1 (one) vote;
 - and provided that if a RESIDENTIAL UNIT or ERF is registered in more than one person's name then they shall jointly have the vote allocated for such RESIDENTIAL UNIT.
- 25.2 At any meeting of MEMBERS a RESOLUTION put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any MEMBER. If a poll is duly demanded it shall be taken in such manner as the CHAIRMAN directs and the result of the poll shall be deemed to be the RESOLUTION of the meeting at which the poll was demanded.
- 25.3 Save as expressly provided for in this CONSTITUTION, no person other than a MEMBER duly registered and who shall have paid every levy and other sum (if any) which shall be due and payable to the ASSOCIATION in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present and to vote on any question either personally or by proxy.
- 25.4 At any annual general meeting or general meeting a RESOLUTION put to the vote at the meeting shall be decided on an ordinary majority of votes represented by MEMBERS entitled to attend and vote thereon present in person or by proxy.
- 25.5 Voting on any question of adjournment shall be decided on an ordinary majority of votes represented by MEMBERS entitled to attend and vote there-at present in person or by proxy.
- 25.6 Every RESOLUTION and every amendment of a RESOLUTION proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 25.7 Unless any MEMBER present in person or by proxy at a meeting shall, before closure of the meeting, have objected to any declaration made by the CHAIRMAN of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the CHAIRMAN shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes of the ASSOCIATION to the effect that any motion has been carried or lost with or without a record of the number of votes recorded in favour of or against such motion shall be conclusive evidence of the RESOLUTION so recorded if such entry conforms with the declaration made by the CHAIRMAN of the meeting as to the result of any voting at the meeting.

26. MINUTES OF MEETINGS OF THE ASSOCIATION

26.1 The TRUSTEES shall

- 26.1.1 ensure that minutes are taken of every meeting of the ASSOCIATION, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be circulated to the Trustees for accuracy review,

correction and confirmation and thereafter certified correct by the CHAIRMAN of the meeting;

26.1.2 cause such minutes to be kept of all such meetings of the ASSOCIATION in a minute book of meetings of the ASSOCIATION kept for the purposes.

26.2 The TRUSTEES shall keep all minute books of meetings of the ASSOCIATION in perpetuity.

26.3 On the written application of any MEMBER the TRUSTEES shall make all minutes of the proceedings and/or meetings of the ASSOCIATION available for inspection by such MEMBER.

26.4 All RESOLUTIONS recorded in the minutes of any meetings of the ASSOCIATION shall be valid and of full force and effect as therein recorded, with effect from the passing of such RESOLUTIONS, and until varied or rescinded, but no RESOLUTION or purported RESOLUTION of the ASSOCIATION shall be of any force or effect, or shall be binding upon the MEMBERS or any of the TRUSTEES, unless such RESOLUTION is competent within the powers of the ASSOCIATION.

26.5 Save as otherwise provided in this CONSTITUTION, the proceedings at any meeting of the ASSOCIATION shall be conducted in such reasonable manner and form as the CHAIRMAN of the meeting shall decide.

27. FINANCIAL YEAR END

The financial year end of the ASSOCIATION is the last day of October of each year.

28. ACCOUNTS

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

28.1.1 a record of the assets and liabilities of the ASSOCIATION;

28.1.2 a record of all sums of money received and expended by the ASSOCIATION and the matters in respect of which such receipt and expenditure occur;

28.1.3 a register of MEMBERS showing in each case their addresses;

28.1.4 a register of the depreciation status of all assets;

28.1.5 individual ledger accounts in respect of each MEMBER;

28.1.6 individual income account of income received as a result of income received from current year unbudgeted PROPERTY re-sales in terms of clause 9.8

28.1.7 a record of all assets applicable to and monies allocated to or expended out of the DEPRECIATING ASSET RESERVE FUND

28.1.8 a record of all monies allocated to or expended out of the LEVY SECURITY FUND

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

28.3 The TRUSTEES shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.

28.4 The ASSOCIATION in general meeting or the TRUSTEES may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by MEMBERS of the accounts and books of the ASSOCIATION, or any of them, and subsequent to such conditions and regulations, the accounts and books of the ASSOCIATION shall be open to the inspection of MEMBERS at all reasonable times during normal business hours.

- 28.5 At each annual general meeting the TRUSTEES shall lay before the ASSOCIATION financial statements for the immediately preceding financial year of the ASSOCIATION or, in the case of the first period since the date of commencement of the ASSOCIATION, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the TRUSTEES.
- 28.6 The TRUSTEES may not spend an amount larger than R50,000 (CPI adjusted on a yearly basis as of date of the creation of the ASSOCIATION or any other such amount as may be nominated and accepted via a RESOLUTION at an AGM) on unbudgeted items without the approval of a GENERAL MEETING and may not manipulate a single project into sub projects so as to bypass the above financial restriction.

29. DEPOSIT AND INVESTMENT OF FUNDS

- 29.1 The TRUSTEES shall cause all moneys received by the ASSOCIATION to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the ASSOCIATION and, subject to any direction given or restriction imposed at a general meeting of the ASSOCIATION, such moneys shall only be withdrawn for the purpose of payment of the expenses of the ASSOCIATION or investment.
- 29.2 All PURCHASERS (inclusive of re-sales) will on DATE of TRANSFER deposit a non-refundable percentage of the PURCHASE AMOUNT (as defined in 29.3) into the LEVY SECURITY FUND in terms of clauses 16.7 and 16.8 with such a percentage initially being set by the DEVELOPER and thereafter by the TRUSTEES.
- 29.3 The LEVY SECURITY FUND deposit percentage as initially set by the DEVELOPER may be revised by a 60% majority vote at a GENERAL MEETING but may never exceed the figure of 0,5% (one half of a percent) and may not be less than 0,25% (one quarter of a percent) of the PURCHASE AMOUNT (as an addition to the amount to be transferred) on sale of a vacant ERF or GARAGE or RESIDENTIAL UNIT and half of that for transfers applicable to RESIDENTIAL ERVEN with completed IMPROVEMENTS thereupon.
- 29.4 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the TRUSTEES from time to time.
- 29.5 Interest on moneys invested shall be used by the ASSOCIATION for any lawful purpose in the interest of the ASSOCIATION.
- 29.6 Should the LEVY SECURITY FUND exceed the directed 6 month levy reserve requirement then the TRUSTEES may propose for acceptance at an AGM to apply all or part of the excess to reduce the LEVIES proportionally for the pursuing year or apply such excess for the acquisition of one or more assets or apply such excess to the DEPRECIATING ASSET RESERVE FUND in an appropriate manner.

30. AUDIT

30.1 Once at least in every year, the accounts of the ASSOCIATION shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the AUDITORS.

30.2 The duties of the AUDITORS shall be regulated in accordance with general practice and applicable professional standards.

31. INDEMNITY

31.1 All the TRUSTEES are indemnified by the ASSOCIATION against any liabilities bona fide incurred by them in their capacities as such and in the case of the CHAIRMAN in his capacity as CHAIRMAN, as well as for all costs, losses and expenses (including traveling expenses) which they may incur or become liable for by reason of any authorised contract entered into or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.

31.2 A TRUSTEE shall not be liable for the acts, or omission of the AUDITORS or of any of the other TRUSTEES whether in their capacities as TRUSTEES or as CHAIRMAN or for any loss or expense sustained or incurred by the ASSOCIATION through the insufficiency or deficiency of any security in or upon which moneys of the ASSOCIATION are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgment or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of mala fides, breach of duty or breach of trust.

32. DEFAMATION PRIVILEGE

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

33. OWN RISK

Any person using any of the services, land or facilities of the ASSOCIATION or accesses parts of the DEVELOPMENT that is under development or as yet not developed, does so knowingly and does so entirely at his own risk and no claim of any nature may be levied against the DEVELOPER, its Members or MASTER CONTRACTOR or CONTRACTORS or the TRUSTEES or any other person for any injury or inconvenience or any other matter arising thereof.

34. TRANSFER OF LAND and OTHER LAND USE RIGHTS

34.1 The DEVELOPER shall, free of consideration, before or during the completion of the last 10% of units (or as may be depicted in a separate “developer phased development commitment schedule” if the DEVELOPER so elects and which the DEVELOPER may at his exclusive decision amend from time to time) and assuming the DEVELOPER has not employed any alterations to the initial Site Development Plan in terms of the DEVELOPER’S reserved rights, transfer to the ASSOCIATION;

34.1.1 the gate house entrance to the DEVELOPMENT;

34.1.2 all private roads within the DEVELOPMENT (on a progressive basis);

34.1.3 erven covering any common gardens, water features, pathways and access paths to the ocean with the exception of the intended lagoon area which the DEVELOPER may elect at his exclusive discretion:

34.1.3.1 transfer once 100% of the intended DEVELOPMENT ERVEN have been sold and transferred or

34.1.3.2 use or not use without transfer in terms of clause 34.3 below and until transferred retain all development rights in terms of clause 8.4 or

34.1.3.3 transfer to the ASSOCIATION if and when the DEVELOPER decides to refrain from exercising his rights in terms of clause 34.3 or decides to terminate the venture in operation of such exercised rights;

the risk in respect of which will pass to the **ASSOCIATION** on transfer.

34.2 The DEVELOPER and its DEVELOPER MEMBERS shall retain PROPERTIES, inclusive of those listed on the DEVELOPER’S PROPERTY LIST, which the DEVELOPER or its DEVELOPER MEMBERS or its nominee or successors in title will or may utilize for commercial purposes for which consent in respect of clause 12 will not be required.

34.3 Assuming no design alterations in the initially proposed Site Development Plan that effects the ability to exercise this clause, the DEVELOPER and DEVELOPER MEMBERS shall retain the exclusive right (for which consent in respect of clause 12 will not be required) to use the intended lagoon Erf and features to be situated on intended common ground for commercial purposes such as sport fishing (most likely), fish farming, seaweed growth or any other such like or viable ventures with the understanding that processing of any “crop” gained from such a venture is not to take place on the DEVELOPMENT and is not to materially affect the day to day living of MEMBERS. The DEVELOPER may at his exclusive discretion offer quotas (if applicable) for individual MEMBERS use which, if granted, will be administered by the TRUSTEES. If exercised, 10% of the Net Profit gained from such a venture will be paid into the ASSOCIATION’S levy fund on a yearly basis and is to be managed by the TRUSTEES as an “**out of budget**” income sum. Any expenses incurred to facilitate such a possible venture will be for the DEVELOPER’S account and at his discretion. The DEVELOPER retains the right to this clause 34.3 both before and after having transferred the affected Erven to the ASSOCIATION.

34.4 A DEVELOPER approved Marine Biologist may monitor and document the growth of the expected marine ecology for as long as necessary as the creation of a marine ecology of this nature is considered as a first of its kind in the world and is to be placed on record. Access to the premises by such an approved Marine Biologist will be unrestricted but will not interfere with any OWNER’S rights.

35. ARBITRATION

- 35.1 Should any dispute, question or difference arise between MEMBERS or between a MEMBER and TRUSTEES or in regard to:
- 35.1.1 the interpretation of;
 - 35.1.2 the effect of;
 - 35.1.3 their respective rights or obligations under;
 - 35.1.4 a breach of (save for non-payment of levies or any other amount due by a MEMBER in terms of this CONSTITUTION)
- this CONSTITUTION, such dispute shall be decided by arbitration in the manner set out in this clause 35.
- 35.2 In respect of any claim arising from non-payment of levies or any other amount due by a MEMBER to the ASSOCIATION in terms of this CONSTITUTION, the ASSOCIATION and TRUSTEES shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.
- 35.3 The arbitration referred to in clause 35.1 shall:
- 35.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and
 - 35.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and
 - 35.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 35.4 The arbitrator shall be a practicing senior counsel of not less than 5 (five) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing agreement on such appointment within the 7 (seven) day period, appointed by the President of the Cape Town Attorneys Association or the successor to that Association.
- 35.5 The arbitrator shall in giving his award have regard to the principles contained in this CONSTITUTION and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the ASSOCIATION as he in his sole discretion may deem fit.
- 35.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 35.6.1 shall be final and binding on each of them; and
 - 35.6.2 shall be carried into effect immediately; and
 - 35.6.3 may be made an order of any Court to whose jurisdiction the parties are subject.

35.7 Notwithstanding anything to the contrary contained in this clause 35, the TRUSTEES shall be entitled to institute legal proceedings on behalf of the ASSOCIATION by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this CONSTITUTION, including the DEVELOPMENT DIRECTIVE.

36. DOMICILIUM

36.1 The TRUSTEES shall from time to time determine the address constituting the domicilium citandi et executandi of the ASSOCIATION, subject to the following:

36.1.1 such address shall be the address of the CHAIRMAN or of a resident TRUSTEE nominated by the TRUSTEES or the address of any duly appointed MANAGING AGENT;

36.1.2 the TRUSTEES shall give notice to all MEMBERS of any change of such address.

36.2 The domicilium citandi et executandi of each MEMBER shall be the street address of the MEMBER'S ERF or RESIDENTIAL UNIT.

36.3 It shall be competent to give notice by telefax where the MEMBER'S telefax number is recorded with the TRUSTEES.

36.4 A MEMBER may by notice in writing to the TRUSTEES alter his domicilium provided such new address may not be a post office box or post restante and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.

36.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a MEMBER shall be adequate written notice or communication to such MEMBER notwithstanding that it was not sent to or delivered at his domicilium citandi et executandi.

36.6 Any notice to a MEMBER

36.6.1 sent to him by prepaid registered post in a correctly addressed envelope at his domicilium citandi et executandi shall be deemed to have been received on the 7th (seventh) day after posting (unless the contrary is proved); or

36.6.2 delivered by hand to a responsible person at his domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or

36.6.3 successfully transmitted by telefax to his chosen telefax number shall be deemed to have been received on the 1st (first) day after the date of transmission, unless the contrary is proved.

36.6.4 sent to him by e-mail to his recorded e-mail address shall be deemed to have been received on the 1st (first) day after the date of transmission

37. AMENDMENT

37.1 No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of

37.1.1 the LOCAL AUTHORITY, and

37.1.2 the DEVELOPER for as long as the DEVELOPER is a MEMBER or until the DEVELOPER relinquishes this responsibility in favour of the TRUSTEES and thereafter the TRUSTEES.

37.2 Subject to the provisions of clause 37.1, such addition amendment, substitution, or repeal shall require the approval of at least 51 % (fifty one per centum) of the total number of votes of MEMBERS of the ASSOCIATION given at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirement for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.

37.3 Notwithstanding provisions made under this section 37, no rights afforded the DEVELOPER or its DEVELOPER MEMBERS or nominees or successors in title within this CONSTITUTION may be altered without the approval of the DEVELOPER including this 37.3

38. PENALTIES

38.1 Penalties for the infringement of rules and regulations as outlined in this CONSTITUTION inclusive of those formulated and yet to be formulated and detailed in the RULES and REGULATIONS (by the TRUSTEES) may be based on a percentage of average levy (calculated as the total levy income divided by the number of “Levy Paying” MEMBERS (refer clause 13) exclusive of Garage Units. The average penalty or specific penalties or penalties for specific infringements may be calculated as a percentage of such a calculated rate. The TRUSTEES may at their sole discretion increase or decrease a specific penalty percentage/amount based on their impression of the severity of the infringement. Penalty rates must be depicted in the RULES and REGULATIONS document and must be available for all MEMBERS to view and comment upon or object to or to call for adjustment at a General Meeting and must have been available for viewing in the MEMBER’S public domain for a period of no less than two weeks before such a penalty can be raised against an offending MEMBER. Such a validly raised penalty may be raised and become payable with the next due levy once having notified the infringing party of the offence/infringement.

39. RULES AND REGULATIONS

39.1 RULES and REGULATIONS as imposed from time to time will initially be compiled the DEVELOPER and thereafter maintained and imposed and/or altered by the TRUSTEES or in terms of directives received from a General Meeting by the TRUSTEES and no such compiled rules may be in conflict with or attempt to circumvent this CONSTITUTION or any terms, rules or directives detailed in the documentation that along with the CONSTITUTION formed the agreement of sale.

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