

CONSTITUTION OF KARIEGA HEIGHTS HOME OWNERS' ASSOCIATION

1. NAME

The name of the Association is:

Kariega Heights Home Owners' Association

which is a body corporate.

2. DEFINITION

In this Constitution unless the context indicates the contrary:

- 2.1 "the Association" shall mean "Kariega Heights Home Owners' Association";
- 2.2 "Development Area" shall mean the entire area covered by "THE KARIEGA HEIGHTS" Development situate upon Erf Kenton on Sea as shown on the layout Plan, a copy of which is attached hereto marked Annexure "X";
- 2.3 "the Township Area" shall mean Erf Kenton on Sea as shown on the layout plan, a copy of which is attached hereto marked Annexure "X";
- 2.4 "the Developer" shall mean Ndlambe Municipality and who have entered into a joint Venture Development Agreement.
- 2.5 "person" shall include a company, close corporation, partnership, trust or other association of persons entitled by law to hold title to immovable property;
- 2.6 "member" shall mean a member as defined in Clause 5 hereof;
- 2.7 "lessee" shall mean any person having a lease on any property in the Township area;
- 2.8 "resident member" shall mean a resident member as defined in Clause 7.2.2.3 hereof;
- 2.9 words importing the singular number shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter gender shall include the masculine and feminine genders.
- 2.10 "Excom" shall mean the Executive Committee constituted in terms of clause 7 hereof.
- 2.11 "Rules" shall mean the house rules initially proposed by the Developer (if any) and/or such rules as may be formed or amended in time by the members of the Association.

3. HEADNOTES

The headnotes to the clauses in this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

4. AIMS AND OBJECTS OF THE ASSOCIATION

The main aims and objects of the Association are to do all things necessary or incidental to the proper maintenance and management of the Township Area, but without derogating from the generality of the foregoing shall include:

- 4.1 the promotion and enforcement of standards for community living in the Township Area in such a way that members may derive the maximum collective benefit therefrom;

- 4.2 the promotion of acceptable aesthetic, environmental and architectural styles and design criteria for the Township Area in order to achieve the harmonious development thereof and to control the design and development of all properties therein;
- 4.3 the management and maintenance in good and clean order and condition:
 - 4.3.1 within the Township Area of all road, water, stormwater, sewerage and electrical installation, and the compliance with all environmental requirements;
 - 4.3.2 within the Township Area, of any communal facilities and amenities whatsoever, as well as for the ongoing security of the Township Area;
 - 4.3.3 of Erf as depicted on General Plan S.G. No.a copy of which is attached hereto lettered "X" transfer of which is to take place from the developer to the Kariega Heights Home Owners' Association without payment of any consideration;
- 4.4 the control over and maintenance of any communal buildings, services and amenities within the Township Area;
- 4.5 to do all things necessary for the enforcement of the rules of the association;

and to this end if necessary to employ at its cost a part-time or full-time manager and/or other employees, and the Association shall have the powers to do such acts as are necessary to accomplish these aims and objects including the raising of subscriptions or levies from members to achieve its aims and objects;

5. **MEMBERS**

- 5.1 The Association shall initially be organised without capital and membership thereof shall be evidenced by registered ownership in the Deeds Registry enjoying jurisdiction of one or more properties in the township Area. Upon registration of ownership, membership of the Association shall be automatic and members shall be obliged to comply with the provisions of this Constitution and with the Rules of the Association. No person shall be entitled to cease to be a member of the Association while remaining the registered owner of a property in the Township Area;
- 5.2 Each member shall be entitled to one vote for each property owned in the Township Area. Ownership of a property in divided shares shall constitute only one membership, which membership shall be represented by one individual in terms of the provisions of Clause 8.10 hereof;
- 5.3 Membership shall be transferred by the registration of a deed of transfer in the Deeds Registry having jurisdiction, passing transfer of one or more properties in the Township Area from the previous member to the new member;
- 5.4 Every member shall pay an annual subscription or levy to the Association the amount of which shall be determined by a majority decision of the members taken at the Annual General Meeting of the Association in each year and as provided for in Clause 10 below. The subscription or levy so determined shall apply equally to all registered properties and shall be payable in respect of each property owned by a member subject, however, to the provisions of Clause 10.
- 5.5 Should any owner let any property owned by him to a lessee, then such owner accepts responsibility to ensure that such lessee complies with the provisions of this Constitution;
- 5.6 Where a property or properties originally purchased is/are consolidated, then the original Purchaser and his Successors in Title shall be obliged to pay subscriptions or levies on each original property making up the consolidated property and the owner

of the consolidated property shall be entitled to one vote for each original property of which the consolidated property is comprised;

- 5.7 Ndlambe Municipality will hold a Title Deed in respect of all erven in the Development as depicted on General Plan S.G. No.in respect of the sub division of Erf Kenton on Sea and the developer as the owner of all erven in the development will initially be the sole member of the Association.

6. **COMMITTEE**

The powers of the Association, other than those to be exercised by the members in general meeting, shall be exercised by The Executive Committee (Excom);

7. **EXECUTIVE COMMITTEE (EXCOM)**

7.1 Composition:

7.1.1 The number of members to serve on Excom shall be fixed at each Annual General Meeting but shall consist of not more than 5 (Five) persons who shall be registered property owners, of whom at least 1 (One) shall be a resident member or the spouse of a resident member or a registered owner who is employed or in business in the general vicinity of the Township area;

7.1.2 any Excom member shall be eligible for re-election;

7.1.3 until the first Annual General Meeting is held, the developer shall be the sole member and chairman of Excom.

7.2 Election at Annual General Meetings:

7.2.1 The Excom members shall be elected annually at the Annual General Meeting and shall, subject to the provisions herein contained, remain in office until the following Annual General Meeting. If more than 5 (Five) candidates are nominated, a ballot shall be held amongst those members present to determine which members shall form the Excom. No proxy vote shall be permitted for purposes of electing these members.

7.2.2.1 only a member who is not delinquent in terms of Clause 10.5 or the spouse of a non-delinquent member shall be eligible for election to Excom;

7.2.2.2 a "member" shall be the registered owner of property within the Development Area or the spouse of such registered owner;

7.2.2.3 A "resident member" shall be a member or spouse of such member who resides permanently in the Development Area, provided that any member or spouse who resides for not less than 6 (Six) months in a current year in the Township Area shall be deemed to be a resident member or spouse of such resident member, subject, however, to the condition that for the initial period of 5 (Five) years the first Annual General Meeting "resident member" shall merely mean a person who is a registered owner of property within the Development Area or the spouse of such registered owner;

7.2.3 Nominations of candidates for election to Excom at any meeting shall be in writing, signed by two members and accompanied by the written consent of the candidate nominated (who shall be required to be present in person at the Annual General Meeting failing which his nomination shall be invalid) so as to be received at the domicilium of the Association not later than 5 (Five) days before the meeting;

7.2.4 Excom members may fill any vacancy in their number or co-opt any additional member, provided that the number of Excom members shall not exceed 5 (Five). Any Excom member so appointed or co-opted shall hold office until the next Annual General Meeting when he shall retire and be eligible for re-election as though he had been elected at the previous Annual General Meeting.

7.3 Vacation of Office:

An Excom member shall cease to hold office as such if:

7.3.1 by notice in writing to Excom he resigns his office;

7.3.2 he is or becomes of unsound mind;

7.3.3 he surrenders his estate as insolvent or his estate is sequestrated;

7.3.4 he is convicted of an offence which involves dishonesty;

7.3.5 he absents himself from three consecutive meetings of Excom without special leave of absence from Excom;

7.3.6 by resolution of a general meeting of the Association he is removed from his office;

7.3.7 he ceases to be a member or his subscription becomes delinquent in terms of Clause 10.5.

7.4 Excom Meetings and Procedures thereat:

7.4.1 Excom shall meet at such time and place as shall be decided by Excom from time to time, provided that it shall meet within 14 (Fourteen) days of an Annual General Meeting. It shall not be necessary to give notice of a meeting to any Excom member for the time being absent from the Republic. Special meetings may be called by the Chairman or in his absence the Vice Chairman;

7.4.2 Any Excom member may at any time convene a meeting of Excom by giving to the other Excom members no less than 10 (Ten) days' written notice or telefax notice of the proposed meeting which notice shall specify the reason for calling such a meeting: provided that in cases of emergency such shorter notice as is reasonable in the circumstances may be given;

7.4.3 50% of the Excom members shall form a quorum at any meeting of Excom. If at any meeting a quorum is not present within 10 (Ten) minutes of the appointed time of the meeting, such meeting shall stand adjourned to the same day of the following week at the same time;

7.4.4 If the number of Excom members falls below the number necessary to form a quorum, the remaining members may continue to act but only for the purpose of convening a general meeting of members;

7.4.5 Excom shall keep a minute of each meeting held and decisions taken, the said minute shall be tabled at the next Excom meeting and Excom shall make a full annual report at the Annual General Meeting;

7.4.6 At the commencement of the first meeting of Excom members after each AGM, Excom shall elect from its members a Chairman and Vice Chairman who shall be **ipso facto** Chairman and Vice chairman of the Association. The Chairman and Vice Chairman so elected shall hold office as such until the end of the next ensuing AGM. If the Chairman vacates his office or is

removed therefrom by members at a General Meeting, then the Vice Chairman shall automatically become the Chairman and he shall hold office for the remaining period in respect of which the first mentioned Chairman was elected. Excom shall elect a new Vice Chairman at the meeting following immediately upon the vacation of office by the former Chairman;

- 7.4.7 All matters at any meeting of Excom shall be determined by a majority of those present and voting. In the event of an equality of votes, the Chairman of any meeting shall have a casting as well as a deliberative vote;
- 7.4.8 Excom may from time to time appoint a Secretary and a Treasurer, or a Secretary/Treasurer, who shall hold office until the end of the next AGM. Should the Secretary or Treasurer not be an elected member of Excom, he shall have no vote at meetings;
- 7.4.9 Excom shall keep minutes of meetings;
- 7.4.10 All meetings of Excom shall be held at "The Palms" Port Alfred, or at such other venue as may be decided upon from time to time.

7.5 Powers:

The management and administration of the Association shall vest in Excom which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself and as are not by its Constitution required to be exercised or done by the Association in general meeting. Without in any way limiting the generality of the foregoing, such powers shall include but not be limited to the following:

- 7.5.1 the determination of what constitutes appropriate standards for community living and the maintenance of properties in the Development Area;
- 7.5.2 the performance of such acts as are necessary to accomplish the aims and objects expressed or implied in this Constitution;
- 7.5.3 the investment and reinvestment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 7.5.4 the operation of a banking account with all powers required by such operations;
- 7.5.5 the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- 7.5.6 the employment and payment of agents, servants and any other parties;
- 7.5.7 the making, amendment and repeal of rules which shall be binding upon members as if they form part of this Constitution;
- 7.5.8 the formation of subcommittees and the delegation of such powers to such subcommittees as Excom may deem necessary;
- 7.5.9 the right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 7.5.10 the co-option of additional members at its discretion from time to time provided that the total number of elected and co-opted members shall together not exceed 5 (Five);
- 7.5.11 the collection of the prescribed levies due by members.

7.5.12 the enforcement of the following conditions which were imposed by the Developer as Title conditions:

7.5.12.1 A Member may not build or erect any buildings or structures (including but not limited to a dwelling, garages, outbuildings, fences, gates and walls) on the said property which:

(a) is not approved by Cornerstone Architects (Graham Grant) or the nominated partner of his firm, or failing him an Architect appointed by the Home Owners Association, which Architect will be the sole project Architect

(b) does not comply with the conditions of the design manuals and building envelope constraints prepared by the said Architect which documents will always be available for inspection at the offices of the said Architect.

7.5.12.2 The Member acknowledges that the design manuals may be amended from time to time in the sole and absolute discretion of the Architect.

7.5.12.3 Until the property has been fully developed in accordance with the provisions of 7.5.12.1, 7.5.12.2 by the erection thereof of an approved dwelling house with outbuildings a Member may not alienate or transfer the property without the consent of the Developer, which consent will not be furnished unless the proposed alienee agrees in writing that he is bound by the provisions of this clause. The Members acknowledge that such consent will be required in the event of the purported alienation of the property by any successor in title.

7.5.12.4 Each member when developing his property shall provide for a permanent storage facility for rain water with a minimum storage capacity of 9 000 (NINE THOUSAND) litres

7.6 Validity of Acts of Excom Members:

Any act performed by Excom members shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any Excom member, be as valid as if such Excom member had been duly appointed to office;

7.7 Remuneration:

Excom members shall not be entitled to be paid any remuneration for their services but should a member incur expenses which are directly linked to the affairs of the Association and which are sanctioned by Excom, then Excom shall repay any such expenses to the member concerned;

7.8 Indemnity:

No Excom members shall be liable to the Association or to any member thereof, or to any other person whomsoever for any act or omission by himself, by the Association

or by its servants or agents. An Excom member shall be indemnified by the Association against any loss or damage suffered by him in consequence of any purported liability, provided that such member has, upon the basis of information known to him, acted in good faith and without gross negligence.

8. **MEETINGS OF THE ASSOCIATION:**

8.1 Annual General Meetings of members shall be held once in every year at the headquarters of the Association at Kenton on Sea, and at such time and place as may be determined by Excom, but so that no more than 15 (Fifteen) months shall be allowed to elapse between any two such successive meetings. The first Annual General Meeting shall be held within 3 (Three) months of any person/s other than the developer becoming the registered owner/s of property in the Development. The business to be done at the Annual General Meeting shall include:

8.1.1 the receipt of a report on the affairs of the Association;

8.1.2 the election of members to Excom;

8.1.3 the adoption of the minutes of the previous Annual General Meeting;

8.1.4 the adoption of the audited balance sheet and accounts;

8.1.5 the consideration of any resolutions concerning the affairs of the Association of which due notice has been given;

8.1.6 the determination of the monthly subscription or levy to be charged out against all members of the Association to give proper effect to the carrying out of the objects of the Association for the ensuing year as is more fully referred to in paragraph 12 hereunder;

8.1.7 Any other business.

8.2 **Ordinary General Meetings:**

Excom may call an ordinary general meeting of members whenever it thinks fit. Ordinary general meetings shall also be called upon the written request of not less than 25% of its members, directed to the Chairman of Excom;

8.3 **Notice of Meeting:**

An Annual General Meeting shall be convened on not less than 21 (Twenty One) days' notice in writing. An ordinary general meeting shall be called by not less than 14 (Fourteen) days' notice in writing. The notice shall be inclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting and the agenda for such meeting; provided that any meeting shall, notwithstanding that it is called by shorter notice than that specified, be deemed to have been correctly called if it is so agreed by 90% (Ninety percent) of the members present;

8.4 **Validity of the Meeting:**

The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that meeting;

8.5 **Quorum:**

No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. For all purposes, the quorum shall be members present in person or by proxy and being not less than 15 (Fifteen) or half the total number of

members, whichever shall be the lesser.

8.6 Adjournment:

If within a half an hour from the time appointed for the holding of a meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute a quorum. All members of the Association shall be given notice of such adjourned meeting.

8.7 Chairman:

The Chairman and failing him, the Vice Chairman, of Excom shall preside at every General Meeting, but if there be no such Chairman or Vice Chairman, the members present shall choose a Chairman from the members of Excom, or if no such members are present, they shall choose some member present to be chairman of the meeting.

8.8 Votes:

At all general meetings resolutions put to the vote, save for resolutions for the election of a member to any committee or his removal therefrom which shall be decided by ballot, shall take place by show of hands unless by majority vote the meeting decides that voting shall be by ballot, in which event the ballot shall take place immediately. Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:

8.8.1 each member present in person shall have one vote for every property registered in his name;

8.8.2 each person present as proxy for a member shall have one vote for each property registered in the name of the member for whom he is proxy;

8.8.3 each member and person present as proxy for a member shall indicate clearly how he casts each vote to which he is entitled as aforesaid;

8.8.4 all resolutions shall, except as otherwise provided herein, be by simple majority of those members present in person or proxy at the meeting and voting;

8.8.5 the chairman of the meeting shall count the votes cast for and against the resolution and shall declare it carried or lost as the case may be;

8.8.6 a declaration by the Chairman of the result of the voting by show of hands or ballot and the entry thereof in the minute book of the Association shall be conclusive evidence of that fact;

8.9 Incapacity:

Should any member be declared incapable of managing his own affairs, or a prodigal, or insolvent, or in the case of a company placed under judicial management, or into liquidation, such member may be represented by his Curator Bonis, trustee, judicial manager or liquidator as the case may be, who shall be entitled to vote on his behalf either personally or by proxy.

8.10 Companies, Close Corporations, Trusts and Co-ownership

Any Company, Close Corporation, Trust or Co-owners of property who are owners of the Association may, by resolution of its Directors, Members, Trustees or Co-owners, authorise such person as it/they think fit to act as its/their

representative at any meeting of the Association and the person so authorised shall be entitled to exercise the same powers on behalf of the Company, Close Corporation, Trust or Co-owners which he represents as that Company, Close corporation, trust or Co-owners could exercise if it/they were an individual member of the Association. Such authorization shall be in writing, shall be accompanied by copies of the necessary supporting resolution and shall be lodged with the Chairman of the meeting prior to the meeting's commencement.

8.11 Proxy:

8.11.1 Votes may be given either personally or by proxy provided that only a registered owner of a property may be appointed as a proxy;

8.11.2 The instrument appointing a proxy shall be in writing in the common form, (or any form approved by Excom), shall be under the hand of the appointer, (or of his attorney or agent duly authorised in writing), or if such appointer is a company, close corporation or trust under the hand of an officer/member/trustee duly authorised in that regard;

8.11.3 The instrument appointing a proxy, together with the power of attorney (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the **domicilium citandi** of the Association at least 3 (Three) days before the time appointed for holding of the meeting, or adjourned meeting, at which the person named in such instrument proposes to vote; otherwise the person so named shall not be entitled to vote in respect thereof.

9. **THE STATUS OF THE ASSOCIATION**

The Association shall be a body corporate:

9.1 with legal personality, capable of suing and being sued in its own name; and

9.2 none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by Excom in terms hereof; and

9.3 not for profit, but for the benefit of the owners and occupants of immovable property situation in the Township Area; and

9.4 with the right to acquire, hold and alienate property, both movable and immovable.

10. **ANNUAL SUBSCRIPTIONS OR LEVIES:**

10.1 The Association, through Excom, shall be entitled to impose and collect an annual subscription or levy to defray the costs of managing and administering the Association, and managing and maintaining the area and items referred to in paragraph 4.4 above;

10.2 The annual subscription or levy shall be determined at the Annual General Meeting in terms of paragraph 10.1.6 above;

10.3 The subscriptions or levies, although fixed annually, shall be collected and be paid as provided for in Clauses 12.4 and 12.5 below;

10.4 All registered owners of property shall become liable for the subscription or levy with effect from the date upon which a property is registered in the name of its purchaser in the Deeds Registry serving the area in which the Township Area is situated;

10.5 Subscriptions or levies shall be payable in such manner and at such times as are

agreed upon by members of the Association at an Annual General Meeting but until otherwise agreed shall be payable quarterly in advance on 1st January, 1st April, 1st July and 1st October in each and every year, save that:

- 10.5.1 a new member must pay for the period from date of registration of transfer of the property into his name until the end of the initial quarter, within 30 (Thirty) days of registration of transfer of a property into his name;
 - 10.5.2 subscriptions or levies shall be payable on the dates aforementioned notwithstanding that an account for payment has not been received by a member from the Association.
- 10.6 Should a member not pay his subscription or levy on due date, then he shall, in addition, be liable for and shall pay:
- 10.6.1 interest on the amount due reckoned from due date of payment as provided for in Clause 12.5 above until date of payment, both dates inclusive, at the maximum rate permitted by the Limitation and Disclosure of Finance Charges Act, as amended;
 - 10.6.2 all legal costs of whatsoever nature and collection commission chargeable including any attorney and client costs;
 - 10.6.3 an administration fee determined by the members of the Association at its Annual General Meeting from time to time which administration fee shall initially be the sum of R50.00 (Fifty Rand);
- 10.7 Any proceedings at Law which the Association may desire to institute in respect of subscriptions or levies may, at the sole option of the Association, be instituted in the Magistrate's Court of the District of Bathurst at Port Alfred, to the jurisdiction of which Court, if necessary, each and every member of the Association hereby consents in terms of section 45 of the Magistrate's Court Act, Act No. 32 of 1944, as amended;
- 10.8 Where a person becomes a member of the Association during the course of a financial year, then the amount of the subscription or levy payable by such a member shall be determined on a pro rata basis reckoned from the date upon which he becomes a registered property owner;
- 10.9 The initial subscription or levy payable with effect from the date of registration of a property transferred by the Developer in the Development to the purchaser thereof in terms of Clause 12.4 until the first Annual General Meeting is held shall be such amount as may be determined at the above Annual General Meeting and initial subscriptions payable shall be payable within 30 (Thirty) days of the holding of the first Annual General Meeting;
- 10.10 If a member does not pay the subscription or levy due by him on due date as provided for in Clause 12.5 above, then such subscription or levy shall become delinquent, and the Association may institute immediate legal proceedings against the member for the recovery thereof;
- 10.11 A member whose payment in respect of the annual subscription and levy is delinquent shall not be entitled to:
- 10.11.1 vote at any General Meeting;
 - 10.11.2 nominate candidates for election to Excom;
 - 10.11.3 serve on excom or Archcom;

whilst any payment is delinquent;

10.12 If the Developer erects a building or buildings on one of its properties as contemplated in 12.12.2 above, then the normal annual subscription or levy shall become payable as from the date upon which building on such erf is commenced. The Developer shall not be required to pay a levy on undeveloped Erven.

10.13 A member who sells or otherwise disposes of his property shall, prior to passing registration of transfer of the property into the name of the Purchaser, be required to obtain a Levies Clearance Certificate from the Association. The Association shall be entitled to charge a fee for the issue of a Levies Clearance Certificate.

11. ACCOUNTS

11.1 Excom shall cause proper books of accounts of the administration and finance of the Association to be kept at the **domicilium** of the Association or such other place or places as it may think fit;

11.2 Excom shall cause to be laid before the Association at the Annual General Meeting, the books of account, audited balance sheets and reports of the Association.

12. DOMICILIUM

12.1 For all purposes arising out of this Agreement including the giving of notices and the serving of legal process, the Association and each member choose **domicilium citandi et executandi** as follows:

12.1.1 Kenton on Sea

12.1.2 each member at the address as recorded by the Local Authority for the purpose of rendering accounts for rates in respect of the member's property;

12.2 Any notice which may be required to be given in terms of this Constitution may be given by the despatch of such notice in writing by prepaid registered post in which event such notice shall be deemed to have been received 10 (Ten) days after the posting thereof from any Post Office within the Republic of South Africa.

13. WINDING UP

The Association may be wound up only in the following circumstances:

13.1 by a Resolution of 90% (Ninety percent) of the persons present or represented at a general meeting; together with

13.2 the consent of the Ndlambe Municipality (or its successor) in writing; and a supporting

13.3 order of winding up on good cause shown, granted by the Eastern Cape Division of the High Court in Grahamstown.

In the event of such winding up, it shall be the duty of Excom, or a Receiver to be appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to all the members in accordance with the number of erven registered in the name of each member. If, within a period of 4 (Four) months from such distribution, Excom or the Receiver is unable to find, locate or trace any member, such

member's share shall then be paid into the Guardian's Fund at the Office of the Master of the High Court at Grahamstown, failing which to the attorneys of the Association, to be held in trust by them.

14. **AMENDMENTS TO THE CONSTITUTION**

Section 29(2)(b) read with Section 29(2)(c) of the Land Use Planning Ordinance No. 15 of 1985, as amended, provides that a Home Owners' Association shall have a Constitution which has as its object the control over and maintenance of buildings, services and amenities arising from the subdivision concerned and that it shall have as its members the owners of land units arising from the subdivision concerned, who shall be jointly liable for expenditure incurred in connection with the Association and in order to ensure that these provisions are being complied with, the Constitution shall not, insofar as the abovementioned provisions are concerned, be amended save with the consent of the Ndlambe Municipality (or its successor), which consent shall not be unreasonably withheld, and insofar as Clause 10.12 is concerned, also with the consent of the Developer.

15. **NON-LIABILITY OF MEMBERS**

No member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by or on behalf of, the Association.

16. **INTERPRETATION**

16.1 Should any dispute or doubt arise as to the interpretation or meaning of this Constitution or any Rules and Regulations of the Association, Excom shall be the final arbiter and its decisions shall be binding upon the member;

16.2.1 Apart from questions of interpretation, which are provided for in 16.1 above, any other dispute whatsoever which may arise between the Association and a Member, or between members, arising out of the constitution or the rules of the Association, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of the provisions of this clause.

16.2.2 If such dispute arises, the aggrieved party shall notify the other interested party in writing and copies of such notification shall be served on the members and on Excom.

16.2.3 The parties shall appoint an arbitrator who shall be independent and be a suitably experienced and qualified person as may be agreed upon between the parties to this dispute.

16.2.4 If the parties cannot agree as to the arbitrator to be appointed, the Law Society of the Cape of Good Hope shall upon written application and subject to payment of the prescribed fee, in writing, appoint an arbitrator within 7 days after it has been required to make the appointment so that the arbitration can be held and concluded without delay.

16.2.5 The arbitrator shall make use of his/her award within 7 days from the date of the completion of the arbitration and the decision of the arbitrator shall be final and binding and may be made an order of the High Court upon application of any party to be affected by the arbitration.
