



ATHINA

ESTATE

CONSTITUTION

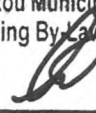
OF

ATHINA ESTATE PROPERTY OWNERS' ASSOCIATION

Established in terms of Section 29 of the Bitou Municipality Land Use Planning By-Law, 2015

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*Athina Estate Property Owners' Association
Constitution*

MUNISIPALITEIT BITOU MUNICIPALITY	
Subdivision and/or consolidation approved in terms of Sections 60 of the Bitou Municipality : Land Use Planning By-Law	
<i>09/10/2014</i>	
DATE DATUM	MUNICIPAL MANAGER MUNISIPALE BESTUURDER

1. ESTABLISHMENT OF THE ASSOCIATION

The establishment of the Athina Estate Property Owners' Association is a requirement in terms of Section 29 of the Bitou Municipality Land Use Planning By-Law, 2015 when approving of the rezoning, subdivision, and development of the land comprising Athina Estate being the consolidation of the properties described as:

- 1.1 Portion 66 (portion of Portion 57) of the Fam Brakkloof No. 443, in the Bitou Municipality, Knysna Division, Province of the Western Cape; in extent: 1,7130 hectares
- and
- 1.2 Portion 67 (portion of Portion 57) of the Fam Brakkloof No. 443, in the Bitou Municipality, Knysna Division, Province of the Western Cape; in extent: 8 565 square metres.

which properties have been consolidated in accordance with Diagram S.G. No. 415/2024 to form :

Erf 16830 Plettenberg Bay, in the Bitou Municipality, Knysna Division, Western Cape Province;

in extent: 2,4587 hectares

in respect of which consolidated property, General Plan of Subdivision S.G. No. 416/2024, has been approved by the Surveyor-General.

("the Land")

The Athina Estate Property Owners' Association shall come into existence upon signature of this Constitution by the Developer.

2. INTERPRETATION

2.1 In this constitution, unless the context otherwise indicates:

- 2.1.1 "**Architectural Design Manual**" means the Architectural Design Manual to control all aspects of the design of all buildings, improvements and landscaping within the Estate as amended from time to time in terms of this Constitution or as required by the Council from time to time;
- 2.1.2 "**Association**" and "**AEPOA**" means the Athina Estate Property Owners' Association;
- 2.1.3 "**auditors**" means the auditors of the Association;
- 2.1.4 "**business day**" means any day other than Saturdays, Sundays and public holidays;
- 2.1.5 "**By-Law**" means the Bitou Municipality Land Use Planning By-Law, 2015 and includes any statutory amendment or re-enactment thereof;
- 2.1.6 "**Chairman**" means the chairman of the Trustee Committee;
- 2.1.7 "**common areas**" mean the private roads, visitors parking areas, private open

space, security gate/s, security electric fencing perimeter, boardwalks and refuse room, and any other common facilities or amenities within the Estate,

- 2.1.8 **"Constitution"** means the constitution of the Association, as amended from time to time; including the Architectural Design Manual, the Estate Rules and the Construction Phase Management Rules;
- 2.1.9 **"Construction Phase Management Rules"** means the document, as amended from time to time, specifying the terms and conditions under which building and other contractors shall be permitted to carry out work on the Estate;
- 2.1.10 **"Council"** means the Bitou Municipality, Plettenberg Bay or its successor/s;
- 2.1.11 **"Developer"** means Athina Development (Pty) Ltd;
- 2.1.12 **"Development"** and **"Estate"** means all Erven in the Estate, including the common areas, contained in, or created through, the rezoning, subdivision and development of the Land, substantially as per the Site Development Plan, and as finally approved by the Bitou Municipality and the Surveyor-General;
- 2.1.13 **"development period"** means the period from the establishment of the Association in terms of clause 1 above until such time that the Developer is no longer the registered owner of any residential Erven in the Estate, alternatively until the Developer notifies the Association in writing that it waives the rights herein conferred upon it during the development period;
- 2.1.14 **"Erven"** mean the residential Erven situated in the Estate, duly registered in the Deeds Registry with separate title, excluding the common areas and reference to an **"Erf"** shall have the corresponding meaning;
- 2.1.15 **"Estate Rules"** means the rules referred to in clause 14.1 as amended from time to time;
- 2.1.16 **"member(s)"** means a member(s) of the Association;
- 2.1.17 **"month"** means calendar month;
- 2.1.18 **"owner"** means any registered owner of an Erf within the Estate;
- 2.1.19 **"prime rate"** means the prime bank overdraft rate of interest charged by the Association's bankers or its successor/s from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the members);
- 2.1.20 **"special resolution"** means a resolution passed at a special general meeting in accordance with the provisions of clause 28 below;
- 2.1.21 **"Trustee Committee"** means the board of trustees of the Association;
- 2.1.22 **"trustee"** means a member of the Trustee Committee;



- 2.1.23 "Vice-Chairman" means the vice-chairman of the Trustee Committee;
- 2.1.24 "year" means a period of 12 calendar months calculated to start and run over the same period set for the financial year in terms of clause 7.1 of this Constitution.
- 2.2 Words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine and neuter genders, and *vice versa*, and words importing persons shall include partnerships, trusts, and bodies corporate, and *vice versa*.
- 2.3 The head notes to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.4 In any reference herein to the giving of any written notice, the giving of such notice per electronic mail shall be regarded as being competent notice.

3. MAIN PURPOSE AND THE MAIN BUSINESS

The main purpose and main business of the Association is to acquire ownership of the common areas and to manage, maintain, and control such common areas, to manage the Estate, to promote, advance, and protect the interests of the members of the Association in relation to their ownership and occupation of Erven in the Estate, and in so doing to act in accordance with the collective mutual interests of its members.

4. STATUS OF THE ASSOCIATION

- 4.1 The Association shall be an Association:
- 4.1.1 with legal personality, capable of suing and being sued in its own name;
- 4.1.2 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 the Association and be controlled by the Trustee Committee in terms hereof;
- 4.1.3 not for profit, but for benefit of the members;
- 4.1.4 with the right to acquire, hold, lease and alienate property, both movable and immovable
- 4.2 The Association is not permitted to distribute or utilize its funds other than for achieving the main purpose of the Association and including the exercise of its main business.
- 4.3 On dissolution of the Association, the remaining assets must be distributed to the successor in title of the Association with the same main purpose and main business, and failing such successor in title, then to a similar Association of persons, which is also exempt from income tax in terms of Section 10(1)(e)(iii) of the Income Tax Act.



- 4.4 Funds of the Association available for investment may only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990) and in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
- 4.5 Any amendments to clause 4 of the Constitution must be submitted to the Commissioner for the South African Revenue Service.

5. OBJECTS OF THE ASSOCIATION

In accordance with the main purpose and main business of the Association, the objects of the Association shall, for the benefit of all members, be the following:

- 5.1 to ensure compliance with the Architectural Design Manual (as amended from time to time) in the development of Erven in the Estate and the construction of buildings in the Estate, and the maintenance of all buildings, improvements, and landscaping within the Estate;
- 5.2 to ensure compliance with the Estate Rules;
- 5.3 the maintenance, control and management of the common areas within the Estate;
- 5.4 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the Estate;
- 5.5 to enter into service agreements and other necessary agreements with the local authority or any other authority or supplier of services in connection with the Estate;
- 5.6 to generally do all such things as may be necessary or requisite to give effect to and implement the main purpose, main business and objects of the Association and to do all such things ancillary or incidental thereto;
- 5.7 without detracting from the generality of the foregoing, to ensure that all Erven shall have been developed as soon as is reasonably possible;
- 5.8 to enforce compliance, where applicable, with conditions of approval imposed by the Bitou Municipality when approving of the rezoning, subdivision, and development of the Land;

provided however, that nothing in this Constitution shall in any way detract from or relieve the Council or any other authority from any of its duties and obligations or any services which it is required to provide by law to property owners or occupiers of any land or buildings within the Estate.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 The Association shall have as its members:
- 6.1.1 the Developer, for the duration of the development period and thereafter, until the Developer is no longer the owner of unregistered Erven in the Development;



6.1.2 every owner upon registration of transfer of an Erf into his name, subject to the provisions of clause 6.4.2 hereof,

and the members shall be jointly liable for expenditure incurred in connection with the Association, which expenditure shall be recovered by way of levies raised subject to the provisions of clause 8 hereunder.

6.2 Membership of the Association shall be compulsory for every registered owner of an Erf. The registered owner of an Erf shall not be entitled to resign as a member of the Association and shall remain a member for as long as such owner is the registered owner of any Erf in the Estate.

6.3 Such membership shall commence simultaneously with the registration of transfer of the Erf into the name of the transferee.

6.4 Membership of the Association shall be limited to the registered owners of Erven provided that:

6.4.1 a person who is entitled to obtain a certificate of registered title to any such Erf shall be deemed to be the registered owner thereof;

6.4.2 where any such owner is more than one person, all the registered owners of that Erf shall be deemed jointly and severally to be one member of the Association and shall nominate one owner to represent them and vote at meetings of the Association.

6.5 When a member ceases to be the registered owner of an Erf, such person shall *ipso facto* cease to be a member of the Association.

6.6 A member shall not be entitled:

6.6.1 to sell or alienate an Erf unless it is a condition of the sale or deed of alienation that:

6.6.1.1 the transferee shall become a member of the Association and shall be bound by the provisions of this Constitution with effect from the date of transfer of the Erf into the name of the transferee;

6.6.1.2 the registration of transfer of that Erf into the name of the transferee shall *ipso facto* constitute the transferee as a member of the Association;

6.6.2 subject to the provisions of clause 35 of this Constitution, to transfer an Erf unless the member first obtains the written consent of the Association to such transfer, which consent shall be given provided;

6.6.2.1 the transferee of such Erf agrees in writing to become a member of the Association and to be bound by the Constitution of the Association;

6.6.2.2 the member has paid all levies and any other amounts owing by such member to the Association, including the levy stabilisation fund payment in terms of clause 9 below, or has secured to the



- satisfaction of the Association, the payment of such amounts to the Association on transfer of the Erf to the transferee;
- 6.6.2.3 the member is not in any manner in breach of the Constitution of the Association, and/or the Architectural Design Manual, and/or the Estate Rules, and/or the Construction Phase Management Rules;
 - 6.6.3 without the prior written approval of the trustees:
 - 6.6.3.1 to erect any new buildings and/or structures of any nature whatsoever, nor to make any alterations, modifications or renovations to such buildings and/or structures ("the proposed work") on his Erf without the written approval of the trustees, which shall only be given in terms of clause 6.7 hereof;
 - 6.6.3.2 to subdivide an Erf in any manner for any reason whatsoever
 - 6.7 The approval of the trustees as contemplated in clause 6.6.3.1 shall be a written formal approval and only be given
 - 6.7.1 if the member has, during the development period, used an architect approved of by the Developer, or after the development period, used an architect approved of by the Trustee Committee, in writing; provided that approval of a member's selected architect shall only be denied upon good cause shown ;
 - 6.7.2 after detailed plans of the proposed work has been submitted to the Trustee Committee, or to any person nominated by the Trustee Committee (who may be an architect, registered with the South African Council of Architects or the Institute of South African Architects); and
 - 6.7.3 after the Trustee Committee or its nominee is satisfied that the proposed work is in accordance with the Architectural Design Manual for the purposes of which the Trustee Committee or its nominee shall be the sole arbiter and its decision shall be final and binding on the member and recorded in writing; and
 - 6.7.4 after the member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustee Committee or its nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature;
 - 6.7.5 after the member has paid to the Association a deposit in such amount as the Trustee Committee may from time to time determine as the building and damage deposit which amount shall be held by the Association subject to the provisions of clause 11 below;
 - 6.7.6 after the member and his/her/its building contractor has signed the Construction Phase Management Rules of the Association as amended from time to time;
 - 6.7.7 after written acknowledgement of the Architectural Design Manual has been received from the member and his/her building contractor,

provided that the provisions of clause 6.7 shall not be interpreted as detracting from the obligation of members to obtain approval of building plans from the Bitou Municipality which approval must be obtained before construction commences.

- 6.8 The provisions of clause 6.7 shall not apply to the Developer provided that the Developer shall comply with the Architectural Design Manual and the conditions imposed by the Bitou Municipality when approving the rezoning, subdivision, and development of the Land
- 6.9 The Trustee Committee may by regulation provide for the issue of a membership certificate which certificate shall be in such form as may be prescribed by the Trustee Committee.
- 6.10 The rights and obligations of a member shall not be transferable, and every member shall
- 6.10.1 to the best of the ability of such member further the objects and interests of the Association;
 - 6.10.2 observe all rules by-laws and regulations made by the Association or the Trustee Committee, from time to time;
 - 6.10.3 ensure that the repair of any damage or any alterations to existing buildings and/or structures on his Erf be completed within such period as may be stipulated in terms of clause 10.1.1;
 - 6.10.4 comply with any agreements referred to in clause 14
- 6.11 For the purposes of clause 6.10.3 "completion" shall mean when the Association's architect certifies the changes and/or alterations as being complete in terms of the relevant approved plans.
- 6.12 No member ceasing to be a member of the Association for any reason shall, nor shall any such member's executor, curators, trustees or liquidators, have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such member or the estate of such member any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a member.
- 6.13 The provisions of this Constitution, the Architectural Design Manual, the Construction Phase Management Rules, and the Estate Rules, shall be binding on all owners, lessees and occupants of Erven, and it shall be the duty of the owner to ensure compliance with the provisions of the Constitution, the Architectural Design Manual, the Construction Phase Management Rules, and the Estate Rules by the lessee or other occupant of his Erf, including the family members, guests, visitors, workers or contractors of the owner, the lessee or occupant. In the event of any breach of this Constitution, Architectural Design Manual, the Construction Phase Management Rules, or the Estate Rules by a lessee or other occupant of an Erf or the family members, guests, visitors, workers or contractors of the owner, the lessee or occupant such breach shall be deemed to have been committed by the owner of the Erf himself. Without prejudice to the foregoing, the Trustee Committee 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 owner.



7. FINANCIAL AFFAIRS

- 7.1 The financial year end of the Association shall be the end of February of each year, or on a date determined by members in general meeting;
- 7.2 The fiscal year of the Association shall normally be a twelve-month period always ending on the financial year-end date, the period to be reduced or increased only when necessary to accommodate changes to the year-end date and approved by members in general meeting.

8. LEVIES PAYABLE BY THE MEMBERS

- 8.1 The Association shall recover from the members all expenditure incurred in connection with the Association and shall do so by way of levies raised against the members. The Trustee Committee shall from time to time determine the levies payable by the members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put, by way of the following:
 - 8.1.1 the anticipated or budgeted costs of maintenance, management, repair, improvement and keeping in order of the common areas (including landscaping), all services, and sewage pipes and sewage systems within the Estate save for sewage pipes and systems on Erven within the Estate which shall be maintained and repaired;
 - 8.1.2 the promotion, advancement and protection of the communal and group interests of the members generally in regard to the Estate, including security and security systems, personnel and staff;
 - 8.1.3 payment of all rates and other charges payable by the Association in respect of the common areas;
 - 8.1.4 all services rendered to the Association and/or for payment of expenses necessarily or reasonably incurred in connection with the management and objects of the Association and its affairs;
 - 8.1.5 salaries and remuneration of employees and staff employed by the Association.

and in calculating the levies payable by each member, the Trustee Committee shall take into account the income (if any) earned by the Association.

- 8.2 The Trustee Committee shall prepare a budget of the estimated amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency (if any) as shall result from the preceding year, and shall impose a levy upon the members equal, as nearly as is reasonably practical, to such estimated amount.
- 8.3 Levies imposed in terms of clause 8.2 above shall be deemed payable in advance in equal monthly instalments on the first day of each and every month.



- 8.4 The Trustee Committee shall include in such budgeted levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature and shall comply with the Community Schemes Ombud Service Act No. 9/2011 and the regulations promulgated thereunder. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 8.5 The members, at the annual general meeting, shall approve the budget and the levies payable by members.
- 8.6 The Trustee Committee may from time to time make special levies upon the members in respect of all such expenses as are mentioned in this clause 8 (which are not included in any estimate made in terms of clause 8.2) and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit, provided that:
- 8.6.1 the Trustee Committee shall, in writing, announce to all members the imposition of the special levy and the reasons therefor as soon as the Trustee Committee has resolved to impose such special levy;
- 8.6.2 where feasible, the Trustee Committee shall not commit itself to expenditure for which they intend to raise a special levy until fourteen (14) days after the announcement of the special levy, calculated from the date of posting/sending/mailling the notice. If before this period has expired, a special general meeting is called by the Members in terms of clause 21.3 to discuss the levy, then the Trustee Committee shall not commit itself to the expenditure until it has been approved at the special general meeting, unless the situation is of such an urgent nature that no delay can be countenanced, and immediate action is required.
- 8.7 Any amount due by a member by way of a levy and/or penalty and/or fine shall be a debt due by such member to the Association and shall attract interest (compounded monthly) at prime overdraft rate of the Association's bankers, plus a percentage as determined by the Trustee Committee from time to time. Any newly determined percentage will be applied to all such outstanding amounts/debtors and be valid for as long as such interest is attracted or until a new interest percentage is determined, as the case may be.
- 8.8 The obligation of a member to pay levies to the Association shall cease upon such member ceasing to be a member of the Association, without prejudice to the right of the Association to recover arrear levies or any other amounts whatsoever owing to the Association.
- 8.9 No levies paid by a member to the Association shall under any circumstances be repayable to the Association upon such member ceasing to be a member.
- 8.10 A member's successor in title to the Erfen shall be liable as from the date upon which such successor becomes a member pursuant to the transfer of such Erf, to pay the levy attributable to the Erf.
- 8.11 Members of the Association shall be entitled to elect to pay levies by means of any of the following methods:



- 8.11.1 in 12 equal monthly instalments by means of any of the following methods
- 8.11.1.1 the issue of a debit order against his account,
 - 8.11.1.2 electronic funds transfer, or
 - 8 11 1.3 or such other method as the Trustee Committee may determine from time to time
- 8.11.2 by means of an advance payment of all levies due for the full year,
- 8.11.3 Members electing to pay levies in terms of 8 11.2 above shall receive a discount as determined by the Trustee Committee from time to time.
- 8.11.4 Members who require a monthly invoice in any form other than by e-mail shall pay a service fee as determined by the Trustee Committee from time to time
- 8.12 Any special levies imposed by the Trustee Committee in terms of clause 8.6 may be apportioned between the members by the Trustee Committee in an apportionment which the Trustee Committee may regard as reasonable, regard being had of the direct benefits which the member(s) may derive from the proposed expenditure for which the special levies are imposed.
- 8.13 No member shall be entitled to any of the privileges of membership unless and until such member shall have paid every levy or other amount (if any) which shall be due and payable to the Association in respect of the membership of such member
- 8.14 The members acknowledge, understand, and agree that the provisions of clauses 8.1 to 8 16 hereof are not applicable to the Developer during the development period for as long as the Developer remains the owner of any portion of the Development and that reference to the word member within the context of clauses 8.1 to 8.16 hereof shall only refer to members other than the Developer.
- 8.15 The Developer, for the duration of the development period, for as long as he remains the owner of any portion of the Development, shall, however pay the difference between the actual expenses incurred by the Association (as referred to in clause 8.1 above) but excluding any provisions for a reserve fund, and the aggregate of the levies payable jointly by the members who are registered owners of Erven, for each month from time to time.
- 8.16 For the avoidance of any doubt it is recorded that in determining the aggregate of individual levies payable by members who are registered owners from time to time for the purposes of clause 8.15, the aggregate shall include all levies payable by such members, irrespective of whether such levies have actually been paid by those members. If there is a dispute as to the actual costs incurred by the Association at any time, then the matter shall be referred to the Developer's auditor who, acting as an expert and not as an arbitrator, shall be entitled for this purpose to have access to all the records and books of account of the Association as and when required The costs of the said auditor shall be borne by the Association
- 8 17 The liability of members for debts or obligations of the Association shall be limited to the members' monthly levy contribution and to any special levy properly raised in terms of clause 8 6



9. LEVY STABILISATION FUND

- 9.1 The Levy Stabilisation fund shall be established by the Association and funded via a once-off obligatory payment contribution of an amount equivalent to zero point two five percent (0.25 %) of the sale price of the Erf by each and every selling member or of the market value of an Erf where there is no sale, and shall be payable upon transfer of the Erf, the payment of which shall be secured to the satisfaction of the Association prior to the issue of the written consent of the Association to the transfer of the Erf. The Levy Stabilisation fund may only be altered and/or abolished by way of a special resolution passed by the members in general meeting in terms of clause 28.
- 9.2 A Levy Stabilisation Fund contribution is not payable upon the first transfer of an Erf from the Developer and shall only be payable on successive transfers of such Erf.
- 9.3 A Levy Stabilisation Fund contribution shall be paid every time there is a change in ownership of an Erf (whether the Erf is improved or unimproved) or of a sectional title unit on an Erf, subject to the provisions of clauses 9.2 above and 9.5 below.
- 9.4 The Association shall use all money collected pursuant to the provisions of clause 9.1 above for the purpose of capital improvements to be brought about on the Estate, including infrastructure repairs and renewal and shall not use such monies to subsidise operating expenses, unless approved by a special resolution of the members of the Association.
- 9.5 The members acknowledge, understand, and agree that the provisions of clause 9.1 to 9.3 hereof are not applicable to the Developer during the development period for as long as he remains the owner of any portion of the Development and that reference to the word member within the context of clause 8 hereof shall only refer to members other than the Developer.
- 9.6 In the case of a Trust owning the Erf, a change in a Trustee shall not constitute a transfer unless there is also a change in the beneficiaries of the Trust, in which case the Levy Stabilisation Fund contribution shall apply. In the case of a company or close corporation owning an Erf, the Levy Stabilisation Fund contribution shall apply where there is a change in the shareholders of the company or in the membership of the close corporation. A transfer of an Erf as between lawfully married spouses, whether such is done *inter vivos* or in terms of testamentary disposition, shall not be subject to the Levy Stabilisation Fund contribution, and nor shall a transfer between such spouses arising out of and as part of a divorce settlement where the spouse receiving the property was prior to the divorce, a resident on the Erf. The burden of proof shall rest with the owner seeking to avoid the imposition of the Levy Stabilisation Fund contribution to establish to the satisfaction of the Trustee Committee that such Levy Stabilisation Fund contribution is not applicable.

10. BUILDINGS, ALTERATIONS AND ARCHITECTURAL DESIGN MANUAL

- 10.1 The Association shall be entitled to:
- 10.1.1 having regard to the Architectural Design Manual, frame, implement and enforce conditions on members to harmonise the architectural styles and design criteria of and the materials and colours to be used in all buildings



erected within the Estate including any refurbishment, alterations or additions thereto and to stipulate a time frame for the completion of such works.

- 10.1.2 do such acts as are necessary to accomplish the purposes expressed or implied herein which acts shall include, inter alia, the examination and endorsement of the relevant building plans as necessary for any construction, renovation and/or alterations within the Estate;
 - 10.1.3 appoint such advisors as are necessary to scrutinize the relevant plans referred to herein;
 - 10.1.4 impose a scrutiny fee on members for the services as mentioned herein,
 - 10.1.5 The provisions of this clause shall not be applicable in relation to any of the works to be undertaken by the Developer prior to the completion of the works for which the Developer is responsible.
 - 10.1.6 In the event that the Association is of the opinion, in its sole discretion, that a member has acted outside the criteria of the written approval as envisaged in clause 6.7 above, the Association will have the power to issue a "Cease Works Order" which will become binding on the member, who will be required to cease works with immediate effect, until the provisions of the written approval have been fully complied with, to the satisfaction of the Association.
- 10.2 The Trustee Committee may, in liaison and with the consent of the Bitou Municipality, where such may be required, amend, amplify, clarify, or add to the provisions of the Architectural Design Manual and/or the Construction Phase Management Rules.
- 10.3 In the event of the provisions of the Architectural Design Manual and/or the Construction Phase Management Rules being amended or added to and such amendment or addition is a material departure from the existing Architectural Design Manual and/or the Construction Phase Management Rules and/or will materially affect any further development of any Erf in the Estate, the Trustee Committee shall give no less than thirty (30) days prior written notice informing all members of the amendment or addition to the Architectural Design Manual and/or the Construction Phase Management Rules.
- 10.4 All buildings and other structures erected on any Erven within the Estate shall comply with the provisions of the Architectural Design Manual, and no building plans or drawings shall be submitted to the Council for approval unless such plans or drawings have first been approved in writing by the Association.

11. BUILDING AND DAMAGE DEPOSIT

- 11.1 Each member shall, when submitting to the Trustee Committee for approval the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements on his Erf in terms of clause 6.7.2, pay to the Association a building and damage deposit in an amount to be determined from time to time by the Trustee Committee which amount shall be retained by the Association until completion by the member and/or its contractors of such work, with interest accruing for the benefit of the Association, and which deposit shall be dealt with in terms of the provisions of clause 11.2 below.



11.2 Upon completion of all such building and other activities, the Trustee Committee shall, if it is satisfied that:

11.2.1 no damage has been effected by the member or any of his contractors to the common areas and/or landscaped areas within the Estate or where there has been any such damage, such has been repaired to the satisfaction of the Trustee Committee; and

11.2.2 the work has been constructed in accordance with duly approved plans; and

11.2.3 all rules and regulations of the Association have been adhered to;

refund the building and damage deposit to the member after deduction of all monies due to the Association by the member in respect of damage caused or fines imposed, excluding any interest thereon which will accrue to the Association.

11.3 In the event of any landscaped area and/or the common areas having been damaged due to such work, the member shall within fifteen (15) days of having been requested to do so in writing by the Trustee Committee, rectify the damage to the satisfaction of the Trustee Committee, failing which, the Trustee Committee shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the Association as a building and damage deposit shall be utilised to defray the expenses of the independent contractor. If, however, the said deposit is insufficient to cover the cost of such repairs, the Trustee Committee shall be entitled to recover the shortfall from the member.

12. DEALING WITH COMMON AREAS

Neither the whole nor any portion of the common areas shall:

12.1 be sold, alienated, or otherwise disposed of, transferred, or mortgaged;

12.2 be encumbered in any manner whatsoever save in respect of access and services servitudes where such are indicated on the General Plan in respect of the Estate, as approved by the Surveyor-General; or

12.3 save as is otherwise provided in the Site Development Plan for the Land, be built upon, improved, or enhanced in value by the construction of buildings, erections, facilities or amenities which are of a permanent nature, requiring the approval of the Bitou Municipality;

without the specific prior written consent of the Bitou Municipality where applicable, and the sanction of a special resolution of the Association.

13. RESPONSIBILITY FOR THE COMMON AREAS

13.1 The Association shall take title to the common areas which are registerable as soon as legally possible.

13.2 The Association acknowledges that the Bitou Municipality shall not be responsible for, and the Association shall be solely responsible for, the care, repair, maintenance, cleaning, upkeep, improvement, and control of the common areas, all services therein

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

- 13.3 The Developer shall simultaneously, or as soon as possible after the coming into operation of this Association, transfer the common areas to the Association free of consideration and at the cost and expense of the Developer.

14. CONTRACTS AND REGULATIONS

- 14.1 The Trustee Committee may from time to time subject to the provisions of this Constitution:

- 14.1.1 make, such amendments, alterations, and adjustments to the rules and regulations, governing *inter alia*:

14.1.1.1 the members' rights of use and enjoyment of the common areas and the Estate;

14.1.1.2 the external appearance of and the maintenance of the common areas and the buildings or other improvements erected thereon;

14.1.1.3 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on the Erven;

14.1.1.4 the conduct of members generally.

- 14.1.2 enter into agreement(s) with the local authorities governing the matters set out in clause 14.1.1 and any other incidental matters;

- 14.1.3 enter into any other agreement(s) for the purpose of achieving the objects of the Association, including (but not limited to) agreements with security organisations to provide security to the whole or any part of the Estate.

- 14.2 Each member undertakes to the Association to comply with:

14.2.1 the provisions of this Constitution, the Architectural Design Manual, the Estate Rules, and the Construction Phase Management Rules;

14.2.2 any rules and regulations made in terms of clause 14.1.1 above,

14.2.3 any agreements referred to in clause 14.1.2 and 14.1.3 above insofar as those agreements may directly or indirectly impose obligations on such member.

- 14.3 All officials, employees and contractors employed by the Association, local authority and/or any public service company shall, at all times, have reasonable access to the Erven and common areas for purposes of inspecting and/or maintaining all services supplying and/or traversing any part thereof.

15. BREACH OF THIS CONSTITUTION

- 15.1 Should any member:



- 15.1.1 fail to pay on due date any amount due by that member in terms of this Constitution or any rule or regulation made thereunder and remain in default for more than seven (7) days after being notified in writing to do so by the Trustee Committee; or
- 15.1.2 commit any other breach of any of the provisions of this Constitution or any regulation made thereunder and fail to commence remedying that breach within a period of seven (7) days after the issue of written notice to that effect by the Trustee Committee and complete the remedying of such breach within a reasonable time;

then and in either such event the Trustee Committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustee Committee or the Association or any other member may have in law, including the right to claim damages:

- 15.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his or her obligations in terms of this Constitution or any rule or regulation made in terms of this Constitution, as the case may be; and/or
 - 15.1.4 to suspend all or any services to the Erf owned by that member; and/or
 - 15.1.5 in the case of clause 15.1.2 above, to remedy such breach and immediately recover the total cost incurred by the Trustee Committee or by the Association in so doing, from such member.
 - 15.1.6 Notwithstanding the provisions of clause 15.1 above, the Trustee Committee shall be entitled to impose fines on owners, in respect of any breach of this Constitution, the Architectural Design Manual, or the Construction Phase Management Rules or the Estate Rules, by the owner, resident or his or her family member, guest, visitor, worker or contractor.
 - 15.1.7 Subject however to the applicable provisions of the Community Schemes Ombud Service Act No. 9/2011, nothing in this clause 15.1 shall be construed as prohibiting or preventing the Trustee Committee, if considered necessary by them, from applying to the High Court for an interdict or other urgent relief against any member in breach of this Constitution, or in the event of a threatened or impending or ongoing breach by such member of this Constitution, the Architectural Design Manual, the Estate Rules, and the Construction Phase Management Rules.
- 15.2 Should the Trustee Committee of the Association institute any legal proceedings against any member pursuant to a breach by that member of this Constitution or any rule or regulation made thereunder, then without prejudice to any other rights which the Trustee Committee or the Association or any other member may have in law, the Trustee Committee shall be entitled to recover from such member all legal costs incurred by the Trustee Committee or the Association, including attorney/client charges reckoned on the non-litigious tariff recommended by the Law Society of South Africa and/or the Legal Practice Council, tracing fees and collection commission.
- 15.3 Without prejudice to all or any of the rights the Trustee Committee or the Association granted under this Constitution, should any member fail to pay any amount due by that



member on due date, then such member shall pay interest (compounded monthly) thereon at the prime rate of interest of the Association's bankers, plus a percentage as specified by the Trustee Committee from time to time calculated from the due date for payment until the actual date of payment of such amount, both dates inclusive.

16. TRUSTEE COMMITTEE

- 16.1 There shall be a board of trustees of the Association which shall consist of not less than three (3) and not more than five (5) members, and during the development period the board of trustees shall be comprised of three (3) trustees appointed by the Developer and two (2) trustees appointed by the members during the development period.
- 16.2 Subject to the provisions of clause 16.1 above, the election of the first Trustee Committee shall be carried out at the first General Meeting of the members of the Association. Until such election has been held the Trustee Committee shall comprise persons appointed by the Developer.
- 16.3 Save for trustees nominated by the Developer, every trustee must be a natural person and shall not necessarily be a member of the Association, however at least one (1) of the trustees appointed by the members during the development period shall be a member of the Association;
- 16.4 At any meeting of the Trustee Committee, the trustees present at the meeting shall each have one (1) vote, save as provided in clause 16.5.
- 16.5 In the case of an equality of votes, the chairman of that Trustee Committee meeting shall have a casting vote in addition to his deliberative vote as Trustee Committee member.

17. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 17.1 Save as set forth in clauses 18 and 17.3 below, each trustee shall continue to hold office until the annual general meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such and shall be eligible for re-election to the Trustee Committee at such meeting.
- 17.2 The provisions of clause 17.1 are not applicable to trustees appointed by the Developer.
- 17.3 A trustee shall be deemed to have vacated his or her office as such upon:
 - 17.3.1 his or her estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 17.3.2 his or her making any arrangement or compromise with his creditors;
 - 17.3.3 his or her conviction for any offence involving dishonesty;
 - 17.3.4 his or her becoming of unsound mind or being found lunatic;
 - 17.3.5 his or her resigning from such office in writing delivered to the Association;



- 17.3.6 his or her death;
- 17.3.7 his or her being removed from office by a resolution of the majority of the trustees;
- 17.3.8 his or her failing to attend three consecutive meetings of the Trustee Committee;
- 17.3.9 him or her being in default and indebted to the Association for the payment of any levy, penalty or other amount, despite having been duly notified of such default;

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

- 17.4 Upon any vacancy occurring on the Trustee Committee prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by the Developer during the development period, and after the development period, by a person co-opted by the remaining members of the Trustee Committee.

18. OFFICE OF TRUSTEES

- 18.1 The Chairman, and Vice-Chairman, shall, for the duration of the development period, be appointed by the Developer. The Chairman and Vice-Chairman shall hold their respective offices until the first annual general meeting following the date of their appointment, provided that any office shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason.
- 18.2 Within ten (10) days of the holding of the annual general meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice Chairman, who shall hold their respective offices until the end of the following year, provided that the office of the Chairman or Vice-Chairman shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason. No one trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement for the vacancy in such office.
- 18.3 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or by members, and to allow or to refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 18.4 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.
- 18.5 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as trustees and/or



Chairman, Vice-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.

19. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 19.1 Subject to the express provisions of this Constitution, the Trustee Committee shall manage and control the affairs of the Association, and shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this Constitution required to be exercised or done by the Association in general meeting, subject nevertheless to such restrictions which may be imposed or to such directions which may be given or to such regulations as may be prescribed by the members of the Association in general meeting from time to time, provided that no such restriction, direction or regulation made by the members of the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such restriction, direction or regulation had not been made.
- 19.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 19.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any person or persons chosen by it, provided that during the development period, the majority of trustees at all times shall be appointed by the Developer. Any co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees, but no co-opted trustee shall have any vote at any meeting of the Trustee Committee, unless such trustee has been co-opted to fill a vacancy in the Trustee Committee.
- 19.4 The Trustee Committee may should it so decide, investigate any suspected or alleged breach by any member or trustee of this Constitution in such reasonable manner as it shall decide from time to time.
- 19.5 The Trustee Committee may make rules, regulations and by-laws not inconsistent with this Constitution or any regulations prescribed by the members of the Association in a general meeting and shall be entitled to cancel, vary or amend any of the same from time to time:
- 19.5.1 as to disputes generally;
 - 19.5.2 for the furtherance and promotion of any of the objects of the Association;
 - 19.5.3 for the better management of the affairs of the Association;
 - 19.5.4 for the advancement of the interests of members;
 - 19.5.5 for the conduct of Trustee Committee meetings and general meetings; and
 - 19.5.6 to assist it in administering and governing its activities generally.



- 19.6 Subject to the express provisions of this Constitution, the Trustee Committee shall have the power to appoint managing agent/s to assist the Trustee Committee with the management of the affairs of the Association, and to delegate to such managing agent/s, powers of the Trustee Committee as specified by the latter, which may include, *inter alia*, the power to collect levies on behalf of the Association and to issue and sign on behalf of the Association, Consents to Transfer of Erven in the Estate in terms of clause 6.6.2 of this Constitution.

20. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 20.1 The Trustee Committee may meet for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 20.2 Meetings of the Trustee Committee shall be held at least once every quarter provided that if all the trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter.
- 20.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be three (3) trustees, provided that, during the development period, at least two (2) of such trustees shall be trustees appointed by the Developer.
- 20.4 The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five (5) minutes of the time appointed for the holding of such meeting, those present of the trustees shall vote to appoint a Chairman for the meeting provided that, during the development period, such Chairman shall be appointed from the trustees appointed by the Developer, and that Chairman so appointed shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting
- 20.5 Minutes shall be taken at every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee minute book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee minute book shall be open for inspection at all reasonable times by any trustee, the auditors, the members, and where required in terms of the By-Law, by the Bitou Municipality.
- 20.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting 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 Trustee Committee shall be of any force or effect or shall be binding upon the members or on any of the trustees unless such resolution is competent within the powers of the Trustee Committee.



- 20.7 Save as otherwise provided in this Constitution, the proceedings at any meeting of the Trustee Committee shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 20.8 A resolution of the trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened if the voting on such resolution is conducted by the trustees via e-mail in such form as the Trustee Committee may determine from time to time or if the resolution is signed by all the trustees.
- 20.9 At any meeting of the Trustee Committee a resolution or decision put to the vote of the meeting shall be decided on a show of hands, unless otherwise determined by the Chairman, and the Minutes of such meeting shall record the number of votes for and against, as well as the number of abstentions.

21. GENERAL MEETINGS OF THE ASSOCIATION

- 21.1 The Association shall within ninety (90) days after the end of the financial year of the Association hold a general meeting as its annual general meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices in terms of clause 22.1 below calling it.
- 21.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 21.3 All general meetings other than annual general meetings shall be called special general meetings.
- 21.4 The Trustee Committee may whenever they think fit convene a special general meeting for any purpose.
- 21.5 The Developer shall call the first General Meeting of the members of the Association within sixty (60) days of the transfer from the Developer of sixty percent (60 %) percent of the Erven in the Estate, or within 2 (two) years of the transfer of the first Erf in the Estate, whichever is earlier. The Developer shall, as soon as the first General Meeting of the members has been held, if required in terms of the By-Law, notify the Bitou Municipality in writing that such General Meeting has been held, and provide the Bitou Municipality with a copy of the minutes of the meeting.

22. NOTICE OF MEETINGS OF THE ASSOCIATION

- 22.1 An annual general meeting and a meeting called for the passing of a special resolution, shall be called on not less than twenty-one (21) days' notice in writing and a special general meeting other than one called for the passing of a special resolution shall be called on not less than fourteen (14) days' notice in writing.
- 22.2 In each case, the notice shall be exclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under this Constitution entitled to receive such



notices from the Association provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed:

- 22.2.1 in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and
- 22.2.2 in the case of a special general meeting, by the Developer during the development period, and after the development period, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than seventy five percent (75 %) of the total voting rights of all members.
- 22.3 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

23. QUORUM FOR GENERAL MEETINGS

- 23.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 23.2 The quorum necessary for the holding of any general meeting shall be such of the members entitled to vote, as together for the time being, represent twenty five percent (25 %) of the total votes of all members of the Association entitled to vote, save that not less than three (3) members must be personally present, and provided further that, during the development period, the Developer is present in person or by proxy.
- 23.3 If within thirty (30) minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute a quorum, provided that, during the development period, the Developer is present in person or by proxy.

24. AGENDA AT GENERAL MEETINGS

In addition to any other matters required by this Constitution to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 24.1 the consideration of the Chairman's report to the Trustee Committee;
- 24.2 the consideration of the nominations received and the election of trustees;
- 24.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;



- 24.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 24.5 the consideration of the report of the auditors;
- 24.6 the consideration and approval of the budget and the total levy (as referred to in clause 8) for the calendar year during which such Annual General Meeting takes place; and
- 24.7 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting.
- 24.8 the approval of the appointment of the auditors proposed for the year following the annual general meeting.
- 24.9 where applicable, the consideration and approval of the appointment of a managing agent for the Association including the terms and conditions of such appointment.

25. PROCEDURE AT GENERAL MEETINGS

- 25.1 The Chairman shall preside as such at all general meetings provided that should he not be present within fifteen (15) minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting provided further that should the Vice-Chairman not be present within fifteen (15) minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting, provided that, during the development period, the Chairman shall be a trustee who is appointed by the Developer.
- 25.2 The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.
- 25.3 Whenever a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 25.4 Except as otherwise set forth in this Constitution, all general meetings shall be conducted in accordance with generally accepted practice.

26. PROXIES FOR GENERAL MEETINGS

- 26.1 A member may be represented at a general meeting by a proxy who need not be a member of the Association.
- 26.2 Subject to the provisions of clause 27.7, the instrument appointing a proxy shall be in writing, and be signed by the member concerned or by his duly authorised agent acting on his written authority, but need not be in any particular form provided that where a member is more than one (1) person, any one of those persons may sign the instrument



appointing a proxy on such member's behalf, where a member is a company, the same may be signed by a director of the company or by its secretary, and where an association of persons, or a body corporate, by the chairman thereof.

- 26.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office of the Association at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of two (2) months from the date of its execution.
- 26.4 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one (1) hour before the time fixed for the holding of the meeting.
- 26.5 Should a member be absent from the recorded *domicilium* address which the Trustee Committee may have for such member for a continuous period of more than thirty (30) days, a proxy must be appointed by such member prior to his absence in accordance with clauses 26.1 and 26.3 above, failing which a member shall not be entitled to vote, at any special general meeting, called during such member's absence.

27. VOTING AT GENERAL MEETINGS

- 27.1 Subject to the provisions of clause 27.5 below, at every general meeting, each member in person or by proxy and entitled to vote shall have one (1) vote for each Erf registered in his name, provided that if an Erf is registered in more than one person's name then they shall jointly have one (1) vote.
- 27.2 Save as expressly provided for in this Constitution, no person other than a member duly registered, and who shall have paid every levy and other amount (if any) which shall be due and payable to the Association in respect of or arising out of the membership of such member, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 27.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any member entitled to vote at such meeting.
- 27.4 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.
- 27.5 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, provided however, that during the development period, no vote shall be carried unless the Developer or its proxy votes in favour of the resolution. An abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman



of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

27.6 Unless any member present in person or by proxy at a general 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, whether by show of hands or by poll, or to the propriety of 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 to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

27.7 Notwithstanding the provisions of clauses 26 and 27 hereof, at the election of Trustee Committee members, members who are entitled to vote, shall vote:

27.7.1 if present, in person; or

27.7.2 by way of a properly completed ballot paper, in such form as the Trustee Committee may determine from time to time, handed to the Managing Agent or alternatively the Estate Manager alternatively the Chairman of the Association, at least twenty-four (24) hours prior to the relevant general meeting.

28. SPECIAL RESOLUTION

28.1 The requirements for the passing of a special resolution shall be as follows:

28.1.1 that twenty-one (21) days' notice be sent out to all members specifying the proposed special resolution, the terms and effect thereof, and the reasons therefor, and

28.1.2 that the special resolution be carried at a general meeting at which members holding in aggregate not less than fifty percent (50 %) of the total votes of all members entitled to vote, are present in person or by proxy; and

28.1.3 that the special resolution be passed by a show of hands by not less than seventy five percent (75 %) of the number of members entitled to vote, who are present at the general meeting in person or by proxy; or where a poll has been demanded for the special resolution, then such shall be passed by not less than seventy five percent (75 %) of the total number of votes to which the members present in person or by proxy, are entitled.

28.2 If less than fifty percent (50 %) of the total votes of all the members entitled to attend the meeting and to vote thereat, are present or represented by proxy at a general meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than fourteen (14) days and not later than thirty (30) days after the date of the meeting and the provisions of clauses 23.3 and 25.3 shall apply in respect of such adjournment.



- 28.3 Notwithstanding anything to the contrary in this clause 28 or in clause 23.3, during the development period, no special resolution shall be regarded as having been properly passed, unless the Developer or its proxy, votes in favour of such special resolution.

29. OTHER PROFESSIONAL OFFICERS, CONTRACTORS, AND EMPLOYEES

Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, and any other professional person or firm and/or any other contractors and/or employee/s whatsoever, for any reasons considered necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to the relevant provisions of this Constitution, provided that any expenditure incurred in respect of the above, shall not exceed five percent (5 %) of the total annual levy for the year in question unless authorised by a special resolution.

30. ACCOUNTS OF THE ASSOCIATION

- 30.1 The Association in general meeting, or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of members at all reasonable times during normal business hours.
- 30.2 At each annual general meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the auditors if appointed, and there shall be attached to the notice sent to members convening each annual general meeting, as set forth in clause 22.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.
- 30.3 Should the Trustee Committee or the majority of the members so require, the accounts of the Association shall be examined, and the correctness of the income and expenditure account and balance sheets ascertained by the auditors at least once a year.

31. SERVICE OF NOTICES

- 31.1 A notice shall be in writing and shall be given or served by the Association upon any member, either personally or by post in a prepaid registered letter or by electronic mail, properly addressed to the member at the address of the Erf owned by such member, or in the case of electronic mail, properly addressed to the last electronic mail address appointed in writing including by e-mail for such purposes by the member.
- 31.2 No member shall be entitled other than by email, to have a notice served on such member at any address not within the Republic of South Africa, but any member may



require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.

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

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

32. INDEMNITY

32.1 All trustee members shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a trustee member, in his or her capacity as Chairman or Vice-Chairman, whether defending any proceedings, civil, criminal, or otherwise, in which relief is granted to any such person/s by the court.

32.2 Every trustee member, every servant, agent and employee of the Association, shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of their respective duties, including in the case of a trustee member, his or her duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by such person jointly or severally in connection with the discharge of his or her duties, provided that any such act, deed or letter has been done or written in good faith.

32.3 A trustee member shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustee members, whether in their capacities as trustee members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or delictual act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his or her office/s or in relation thereto, unless the same shall happen through lack of *bona fides* or gross dereliction of duty or breach of trust.



33. AMENDMENTS TO THE CONSTITUTION

- 33.1 This Constitution, or any part thereof, shall not be repealed or amended, save by a special resolution adopted at an annual general meeting or a general meeting of the members, subject to clause 33.3 below, provided however that the Architectural Design Manual, the Construction Phase Management Rules and the Estate Rules may be amended by an ordinary resolution of the members of the Association in a general meeting or by the Trustee Committee subject, where applicable, to the provisions of clause 10.3 of this Constitution.
- 33.2 Notwithstanding the provisions of clause 33.1 above, no clause or provision contained within this Constitution, relating to, or affecting, the Developer may be repealed or amended, during the development period, without the specific written consent of the Developer.
- 33.3 Notwithstanding the provisions of clause 33.1 above, this Constitution shall, if required in terms of the By-Law, not be amended without the written consent of the Bitou Municipality and where such amendment concerns any matter provided for in the Bitou Municipality Land Use Planning By-Law, 2015 and any such amendment shall only become effective when certified by the Bitou Municipality.

34. EFFECTIVE DATE

This Constitution shall come into force upon the date of signature of this Constitution by the Developer.

35. TITLE DEED CONDITION – PROHIBITION AGAINST TRANSFER

Every Erf in the Estate shall upon the first transfer thereof from the Developer, be made subject to a restriction in favour of the Association against transfer of the Erf without the prior written consent of the Association. The wording of such title deed condition shall be as required by the Developer and by the Bitou Municipality when approving of the rezoning, subdivision, and development of the Land in terms of the Bitou Municipality Land Use Planning By-Law, 2015. The said title deed condition shall operate as a mechanism for the enforcement by the Association of the provisions of this Constitution, Architectural Design Manual, Construction Phase Management Rules and Estate Rules, and which title deed condition shall be binding upon the transferee and all successors in title.

The Association shall not issue a consent to transfer of an Erf in the Estate:

- unless all monies (including levies and any other amounts) owing or payable to the Association in respect of the Erf have been paid or provision has been made for the payment thereof, to the satisfaction of the Association;
- while an owner is in breach of any of the provisions of this Constitution, including the Architectural Design Manual, the Construction Phase Management Rules or the Estate Rules.

The prohibition against transfer of an Erf referred to in clause 6.6.2 of this Constitution, shall not apply to the first transfer of any Erf from the Developer.

36. NATURE AREAS

The nature areas, if any, of the Estate shall at all times be managed and maintained in accordance with the Environmental Management Plan for the Estate, and in accordance with all agreements, where applicable, entered into between the Developer and/or the Association and any competent authority in regard to such nature areas. Following the establishment of the Association, the Association shall likewise comply with any directive issued by any competent authority regarding the nature areas of the Estate.

37. AMENDMENT OF THE CONSTITUTION TO COMPLY WITH THE REQUIREMENTS OF THE BITOU MUNICIPALITY

This Constitution shall be amended by the Developer to incorporate any provisions required by the Bitou Municipality when approving of the rezoning, subdivision, and development of the Land in terms of the Bitou Municipality Land Use Planning By-Law, 2015, and as may be required by the Bitou Municipality to be included in the provisions of this Constitution

38. REGISTRATION OF ACCESS AND SERVICES SERVITUDES AND RELATED MATTERS

38.1 Should access and service servitudes be required in terms of the approval by the Bitou Municipality of the rezoning, subdivision, and development of the Land granted in terms of the Bitou Municipality Land Use Planning By-Law, 2015, and/or be reflected on the General Plan, then such access and services servitudes shall be registered notwithstanding that they may traverse Erven in the Estate.

38.2 General Plan S.G. No. 416/2024 has been approved by the Surveyor-General in respect Erf 16830 Plettenberg Bay which is the mother Erf for Athina Estate. Erf 16842 comprising part of Athina Estate is a proclaimed minor road and a public road which is to be transferred to the Western Cape Government, free of consideration, as soon as possible.

39. MEMBERS'/OWNERS' OBLIGATION TO BUILD AND PENALTY LEVIES

39.1 Each member of the Association as the owner of an Erf in the Estate shall be obliged to develop his/her/its Erf in the Estate by the erection thereon of a dwelling in accordance with building plans approved by the Bitou Municipality, and by the Association in terms of the Constitution and Architectural Design Manual of the Association, and in accordance with the Construction Phase Management Rules.

39.2 In regard to the construction of the dwelling referred to in clause 39.1 above, each member/owner shall be obliged:

39.2.1 to commence construction by no later than twenty-four (24) months after registration of the first transfer of the Erf from the Developer; and

39.2.2 to complete construction of all buildings comprising the dwelling aforesaid in accordance with approved building plans by no later forty-eight (48) months after registration of the first transfer of the Erf from the Developer.

39.3 No owner/member shall commence construction until:

39.3.1 The building plans for the Erf in question have been approved by the Association and have its stamp of approval

- 39.3.2 The building plans for the Erf in question have been approved by the Bitou Municipality.
- 39.3.3 The Construction Management Rules document for the construction of the dwelling and all buildings on the Erf, has been signed by the owner and by the contractor and submitted to the Association.
- 39.3.4 The building and damage deposit in respect of the proposed construction, has been paid to the Association.
- 39.4 For the purposes of sub-clause 39.2.1 above, commencement of construction shall mean and shall be deemed to have taken place upon fulfilment of all the requirements of subclauses 39.3.1 to 39.3.4 above, irrespective of whether or when construction actually commenced.
- 39.5 For the purposes of sub-clause 39.2.2 above, completion of construction shall mean and shall be deemed to have taken place upon the issue of a certificate of practical completion by the owner's architect (acting in a professional capacity), in respect of the buildings on the Erf in question, provided that the said building/s have been constructed in accordance with the approved building plans aforesaid, or upon issue of a certificate of practical completion by the Estate's architect. In the event of a difference arising between the owner's architect and the Estate's architect, the decision of the latter shall be final and binding.
- 39.6 Where the date of the commencement of construction as defined in clause 39.4 above, does not occur within the aforesaid twenty-four (24) month period referred to in clause 39.2.1 above, then with effect from the first day of the calendar month following the month in which the period for the commencement of the dwelling house as set out in clause 39.2.1 above expired, the Purchaser shall pay to the Association, monthly in advance, in addition to the ordinary monthly levy, a penalty levy in an amount equal to four (4) times the ordinary monthly levy until the end of the calendar month during which the date of commencement of construction as defined, takes place.
- 39.7 Where completion of construction as defined in clause 39.5 above does not occur within the aforesaid forty-eight (48) month period referred to in clause 39.2.2 above, then with effect from the first day of the calendar month following the month in which the period for the completion of construction as set out in clause 39.2.2 expired, the Purchaser shall pay to the Association, monthly in advance, in addition to the ordinary monthly levy, a penalty levy in an amount equal to four (4) times the ordinary monthly levy until the end of the calendar month during which the date of completion of construction as defined, takes place.
- 39.8 For the avoidance of doubt, the total maximum monthly penalty levy payable in terms of this clause 39 in addition to the ordinary monthly levy, is four (4) times the ordinary monthly levy.

