

THE NEW HORIZON DEVELOPMENT TRUST



CONSTITUTION OF HOME OWNERS ASSOCIATION

July 2008

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CONSTITUTION

<u>CONTENT:</u>	<u>PAGE</u>
1. Definitions	2
2. Interpretation	2
3. Recordal	2
4. Commencement	2
5. Status of the Homeowners Association	2
6. Objectives and Powers of the Homeowners Association	2
7. Members	3
8. Membership	3
9. Members' Obligations	3
10. Committee	4
11. General Meeting of the Homeowners Association	6
12. Quorum	7
13. Proxies	7
14. Voting	7
15. Rules	7
16. Improvements	8
17. The Design Code and Concept Plans	9
18. Title Deed Conditions and Further Obligations of Members	10
19. Levies	10
20. Functions and powers of the Committee	11
21. Proceedings of the Committee	12
22. Managing Agent	13
23. Accounts	13
24. Deposit and Investment of funds	14
25. Audit	14
26. Indemnity	14
27. Determination of Disputes by Arbitration	14
28. Breach	14
29. Own risk	15
30. Domicilium	15
31. Amendment	16

1. **DEFINITIONS:**

In this Constitution, unless the context indicates the contrary:

"HOMEOWNERS ASSOCIATION" shall mean THE NEW HORIZON DEVELOPMENT TRUST HOME OWNERS ASSOCIATION.

"NMBM" shall mean the Nelson Mandela Bay Metropolitan Municipality.

"DEVELOPER" shall mean the NEW HORIZON DEVELOPMENT TRUST

"NEW HORIZON VILLAGES" means the DEVELOPMENT established by the DEVELOPER on a portion of 2661 PARSONSVLEI IN THE NELSON MANDELA BAY METROPOLITAN MUNICIPALITY

"COMMITTEE" shall mean the Committee constituted in terms of clause 10 hereof.

"MEMBER" shall mean a MEMBER as defined in terms of clause 7 hereof.

"IMPROVEMENTS" shall mean any construction of any nature on an erf

"DESIGN CODE" means the broad design concepts with which all buildings and gardens and any other improvement in the NEW HORIZON VILLAGES must comply in order to ensure that the scheme as a whole has a uniform and aesthetically pleasing appearance.

"CONCEPT PLANS" shall mean the concept plans prescribed by the DEVELOPER

"UNIT" shall mean a unit in a sectional title development forming part of NEW HORIZON VILLAGES

2. **INTERPRETATION:**

Words importing the singular shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and the neuter gender shall include the masculine and feminine genders.

The head notes are inserted for references purposes only and shall not affect the interpretation of any of the provisions to which they relate.

3. **RECORDAL:**

The DEVELOPER creates this HOMEOWNERS ASSOCIATION as the DEVELOPER wishes to ensure proper regulation, control and harmonious development and maintenance of the NEW HORIZON VILLAGES.

The creation of this HOMEOWNERS ASSOCIATION is not a condition of subdivision imposed by the NMBM.

All areas in the NEW HORIZON VILLAGES not transferred to a MEMBER or owned by the DEVELOPER will be transferred to the NMBM.

4. **COMMENCEMENT:**

The HOMEOWNERS ASSOCIATION will come into effect simultaneously with the date of the first registration of transfer by the DEVELOPER of an erf in NEW HORIZON VILLAGES.

5. **STATUS OF THE HOMEOWNERS ASSOCIATION:**

The HOMEOWNERS ASSOCIATION shall have legal personality and be capable of suing and being sued in its own name and shall operate for the benefit of its MEMBERS and not for profit

No MEMBERS of the HOMEOWNERS ASSOCIATION in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the HOMEOWNERS ASSOCIATION, which shall vest in and be controlled by the COMMITTEE in terms hereof.

6. **OBJECTIVES AND POWERS OF THE HOMEOWNERS ASSOCIATION:**

The HOMEOWNERS ASSOCIATION will have all the powers to carry out all acts as are necessary to accomplish the objectives of the HOMEOWNERS ASSOCIATION.

The objectives of the HOMEOWNERS ASSOCIATION are:

- to ensure a clean, happy, secure environment for the proper use and enjoyment of the MEMBERS of THE HOME OWNERS ASSOCIATION;
- to care for and maintain the upkeep and control over the parks, park lighting and street furniture in NEW HORIZON VILLAGES
- to care for, clean and maintain the sewer pump station;
- to maintain security in NEW HORIZON VILLAGES;
- to ensure the aesthetic appeal of the buildings in NEW HORIZON VILLAGES by ensuring that all buildings and improvements therein comply with the DESIGN CODE and CONCEPT PLANS applicable to NEW HORIZON VILLAGES.
- to promote, advance and protect the communal group interest of the MEMBERS of the HOMEOWNERS ASSOCIATION generally including but not limited to the adoption, amendment and enforcement of the rules.

7. MEMBERS:

The HOMEOWNERS ASSOCIATION will have as its members:

- the DEVELOPER for as long as the DEVELOPER is an owner of any portion of erf 2661 Parsonsvelei;
- every person or representative of an entity who becomes a registered owner of an erf in NEW HORIZON VILLAGES

8. MEMBERSHIP:

8.1 Membership of the HOMEOWNERS ASSOCIATION:

- will be compulsory;
- will occur automatically upon the registration of an erf in NEW HORIZON VILLAGES in the name of the MEMBER

8.2 No person shall be entitled to resign as a MEMBER or cease to be a MEMBER of the HOMEOWNERS ASSOCIATION while still a registered owner of an erf in NEW HORIZON VILLAGES.

8.3 When a MEMBER ceases to be a registered owner of an erf in NEW HORIZON VILLAGES he shall ipso facto cease to be a MEMBER of the HOMEOWNERS ASSOCIATION.

8.4 Membership shall be transferred by the passing of transfer of any erf in the complex from the previous MEMBER to the new MEMBER.

8.5 When an erf is registered in the name of more than one transferee, all the registered owners of the erf shall be deemed jointly and severally to be one MEMBER of the HOMEOWNERS ASSOCIATION.

8.6 The rights and obligation of a MEMBER shall not be transferable.

9. MEMBER'S OBLIGATION:

9.1 Every MEMBER shall:-

- 9.1.1 to the best of his ability further the objects and interests of the HOMEOWNERS ASSOCIATION;
- 9.1.2 comply with the provisions of this Constitution;
- 9.1.3 comply with the provisions of the DESIGN CODE and CONCEPT PLANS;
- 9.1.4 comply with the provisions of any agreements concluded by the HOMEOWNERS ASSOCIATION or the DEVELOPER on behalf of the HOMEOWNERS ASSOCIATION;
- 9.1.5 be jointly liable with all the MEMBERS for all expenditure incurred or foreseen in connection with the HOMEOWNERS ASSOCIATION;

- 9.1.6 insure his property for its replacement value and, on demand by the HOMEOWNERS ASSOCIATION, provide proof of such insurance;
- 9.1.7 comply with the rules made by the HOMEOWNERS ASSOCIATION.
- 9.2 No MEMBER shall:
 - 9.2.1 transfer his erf until the HOMEOWNERS ASSOCIATION has certified that the MEMBER has at the date of transfer fulfilled all his financial obligations to the HOMEOWNERS ASSOCIATION;
 - 9.2.2 consolidate an erf with one or more erven without the written consent of the DEVELOPER for as long as the DEVELOPER is a member and thereafter of the HOMEOWNERS ASSOCIATION;
 - 9.2.3 alienate an erf without ensuring that the proposed transferee has irrevocably bound him/herself, in writing, to be a MEMBER of the HOMEOWNERS ASSOCIATION and to comply with this constitution;
 - 9.2.4 let or otherwise part with the occupation of his erf without ensuring that the proposed occupier has irrevocably bound him/herself, in writing, to comply with this constitution;

10. COMMITTEE:

- 10.1 For the purposes of electing the COMMITTEE, NEW HORIZON VILLAGES will be divided into seven areas, which areas are more specifically shown on seven different General Plans, as depicted on Annexure 1 hereto.
- 10.2 The COMMITTEE shall consist of a representative from each area shown on a separate General Plan (hereinafter referred to as GP areas).
- 10.3 The COMMITTEE shall therefor consist of:
 - 10.3.1 one MEMBER, or the spouse of a MEMBER, resident on any property falling into the area shown on General Plan 4990/2007; and
 - 10.3.2 one MEMBER, or the spouse of a MEMBER, resident on any property falling into the area shown on General Plan 4977/2007; and
 - 10.3.3 one MEMBER, or the spouse of a MEMBER, resident on any property falling into the area shown on General Plan 4976/2007; and
 - 10.3.4 one MEMBER, or the spouse of a MEMBER, resident on any property falling into the area shown on General Plan 4979/2007; and
 - 10.3.5 one MEMBER, or the spouse of a MEMBER, resident on any property falling into the area shown on General Plan 4978/2007; and
 - 10.3.6 one MEMBER, or the spouse of a MEMBER, resident on any property falling into the area shown on General Plan 4981/2007; and
 - 10.3.7 one MEMBER, or the spouse of a MEMBER, resident on any property falling into the area shown on General Plan 4980/2007.



FOR REFERENCE	UTSHINTSHO / AMENDMENTS		LULUJHANGA		MUNICIPALITY OF MATIELAND		MUNICIPALITY OF MATIELAND		MUNICIPALITY OF MATIELAND		MUNICIPALITY OF MATIELAND		MUNICIPALITY OF MATIELAND	
	NO.	DATE	DESCRIPTION	APPROVED	NO.	DATE	DESCRIPTION	APPROVED	NO.	DATE	DESCRIPTION	APPROVED	NO.	DATE

- 10.4 Any committee member shall be eligible for re-election.
- 10.5 In the event that there are no MEMBERS resident in any one of the GP areas, then a non-resident MEMBER who owns an erf in the GP area or THE DEVELOPER or the DEVELOPER'S REPRESENTATIVE may serve on the COMMITTEE as the representative of that GP area.
- 10.6 As soon as the DEVELOPER has disposed of all its interest in the erf 2661 Parsonsvelei and thus ceases to be a MEMBER of the HOMEOWNERS ASSOCIATION, all MEMBERS of the COMMITTEE shall consist of resident MEMBERS or their spouses.
- 10.7 For the period commencing from the date of incorporation of the HOMEOWNERS ASSOCIATION to the date of the First COMMITTEE meeting of the HOMEOWNERS ASSOCIATION, the duties of the COMMITTEE shall be carried out by the DEVELOPER.
- 10.8 The first COMMITTEE meeting of the HOMEOWNERS ASSOCIATION shall be held as soon as possible after there are sufficient MEMBERS other than the DEVELOPER, to constitute such a committee. The DEVELOPER shall circulate a notice to all MEMBERS and call for nominations for the first COMMITTEE within 21 (twenty one) days of the notice.
- 10.9 Nominations of candidates to the COMMITTEE shall be in writing signed by the nominating MEMBER, accompanied by the written consent of the nominee, and shall be delivered or posted so as to be received by the DEVELOPER within the aforesaid 21 (twenty one) days. The DEVELOPER, as a MEMBER in respect of the unregistered erven in NEW HORIZON VILLAGES shall also be entitled to make nominations.
- 10.10 Subject to the provisions of clause 8.3 each COMMITTEE member shall continue to hold office from the date of his commencement of office until the Annual General Meeting following his said appointment, at which meeting each committee member shall be deemed to have retired from office as such and will be eligible for re-election to the COMMITTEE at such meeting.
- 10.11 Upon any vacancy occurring in the COMMITTEE prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the COMMITTEE.
- 10.12 The COMMITTEE shall within 14 (fourteen) days after the Annual General Meeting appoint a chairman who shall hold office until the following Annual General Meeting. In the event of any vacancy occurring, the COMMITTEE shall immediately appoint one of their number as a replacement in such office.

11. GENERAL MEETING OF THE HOMEOWNERS ASSOCIATION:

- 11.1 The HOMEOWNERS ASSOCIATION shall within 6 (six) months after the end of each financial year hold its Annual General Meeting in addition to any other general meeting that year and shall specify the meeting as such in the notices convening the same. Such Annual General Meeting shall be held at such time and place as the COMMITTEE shall decide from time to time.
- 11.2 All meetings other than Annual General Meetings shall be called General Meetings.
- 11.3 The inaugural meeting of the HOMEOWNERS ASSOCIATION and Annual General Meetings shall be called by at least 21 (twenty one) days notice in writing and a General Meeting, shall be called by at least 7 (seven) days notice in writing. Each notice shall specify the place, the day and hour of meeting and the general nature of the business to be discussed.
- 11.4 Matters to be dealt with at the Annual General Meeting are:
 - the consideration of the Chairman's Report.
 - election of the COMMITTEE members
 - the consideration of any other matters raised at the meeting, including any resolutions proposed for adoption by such meeting, and voting on any such resolutions.
 - the consideration of the account of the HOMEOWNERS ASSOCIATION for the preceding year.
- 11.5 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

12. QUORUM:

- 12.1 No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds with the business.
- 12.2 60% (sixty per cent) of the MEMBERS personally present will form a quorum. If within 15 (fifteen) minutes after the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned for one hour and if at such adjourned meeting a quorum is not present within 15 (fifteen) minutes of the adjourned time, the MEMBERS present in person or by proxy, shall form a quorum.

13. PROXIES:

A MEMBER may be represented at a general meeting by a proxy, who need not be a MEMBER of the HOMEOWNERS ASSOCIATION. The instrument appointing a proxy shall be in writing signed by the MEMBER concerned, and shall be tabled at the meeting.

14. VOTING:

- 14.1 Every MEMBER shall be entitled to one vote for each erf registered in his name. If an erf is registered in the name of more than one person, then all such co-owners will jointly have one vote.
- 14.2 Any MEMBER including the DEVELOPER holding undeveloped land in NEW HORIZON VILLAGES will have one vote for each separate piece of land reflected on an approved subdivision plan.
- 14.3 No person other than a MEMBER duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the HOMEOWNERS ASSOCIATION in respect of or arising out of his membership, shall be entitled to vote at any meeting.
- 14.4 At any general meeting a resolution put to the vote shall be decided upon by the show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the meeting.
- 14.5 If a poll is duly demanded it shall be taken in such a manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 14.6 Every resolution proposed for adoption shall be seconded at the meeting, and if not so seconded, shall be deemed not to have been proposed.
- 14.7 Any resolution shall be carried on the simple majority of all votes cast provided that any resolution to amend the constitution:
- shall be preceded by notice and shall set out the specific amendment proposed and the reason for the proposal
 - shall be carried by 75 % (seventy five percent) of all votes cast
 - shall be subject to the approval referred to in clause 31

15. RULES:

- 15.1 Every Member will:
- 15.1.1 maintain his erf and all improvements in a neat and tidy condition and in a state of good repair;
- 15.1.2 in respect of his erf establish and maintain a garden to a standard acceptable to the COMMITTEE and in compliance with the DESIGN CODE where applicable;
- 15.1.3 not park any commercial type vehicle, boat, caravan, trailer or any vehicle not in good working order on any road, pavement, parking area or parkland in NEW HORIZON VILLAGES;
- 15.1.4 not do or suffer to be done on any erf anything which, in the opinion of the COMMITTEE, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any MEMBER, tenant or occupier of any erf in NEW HORIZON VILLAGES;
- 15.1.5 not erect or permit the erection of any advertising boards on any erf without the written approval of the DEVELOPER for as long as the DEVELOPER is a MEMBER and, thereafter, of the COMMITTEE;

- 15.1.6 ensure that animals or birds housed on his erf shall not constitute a disturbance or nuisance to MEMBERS or their tenants or occupiers and the COMMITTEE shall, in their absolute discretion, be entitled to require the permanent removal from NEW HORIZON VILLAGES of any animals or birds which, in the opinion of the COMMITTEE, constitute a disturbance or nuisance;
- 15.1.7 comply with all security procedures implemented from time to time;
- 15.1.8 ensure that his dog is kept on a leash in all road reserves, parkland and open areas within NEW HORIZON VILLAGES and is properly controlled and, in particular, that no nuisance is caused by such dog and that the dog does not cause uncleared fouling of sidewalks within NEW HORIZON VILLAGES or on open spaces within NEW HORIZON VILLAGES;
- 15.1.9 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping or street furniture on open areas of NEW HORIZON VILLAGES and that planting on his erf does not interfere with pedestrian traffic or obscure the vision of motorists;
- 15.1.10 no MEMBER shall apply for the subdivision or rezoning of his erf with a view to procuring a variation or amendment or substitution of use rights.
- 15.1.11 no MEMBER shall conduct any business on an erf having single residential use rights or use such erf for purposes other than those for which it is zoned unless the COMMITTEE have, in writing, approved the use to which the erf is to be put; and the NMBM has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations. The COMMITTEE shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the COMMITTEE deem necessary. The COMMITTEE shall not be entitled to grant approval if such proposed business involves visits by non-residents of NEW HORIZON VILLAGES.
- 15.1.12 should any MEMBER to whom permission has been granted for the conduct of a business change any aspect of such business then such MEMBER shall submit a fresh application in accordance with the provisions hereof to continue such business.
- 15.1.13 no MEMBER to whom approval has been granted for the conduct of a business shall be entitled to erect any sign or advertisement on his erf or on any of the common areas in NEW HORIZON VILLAGES in connection with such business;
- 15.1.14 no MEMBER shall permit the number of occupants of his erf or unit to exceed 2 (two) persons per bedroom. The word "occupants" shall include but shall not be limited to any person who resides or stays on such erf or unit on a regular or occasional basis irrespective of whether such person is related to or is financially dependant upon the OWNER or whether such person pays rental or gives any other form of consideration in respect of such erf or any portion thereof.
- 15.1.15 no MEMBER shall be permitted to conduct a guesthouse, "bed-and-breakfast" establishment or any other form of accommodation facility from a residence situated on any erf or from a UNIT.
- 15.1.16 no MEMBER shall undertake any building work without the prior written approval of THE HOMEOWNERS ASSOCIATION.

16. IMPROVEMENTS:

- 16.1 Every MEMBER whose erf enjoys single residential use rights, other than the DEVELOPER, shall by no later than 2 (two) years calculated from the date on which the original purchaser of such erf from the DEVELOPER became a MEMBER, procure that the construction of a house on his erf, which complies in all respects with the DESIGN CODE and CONCEPT PLANS, is completed.
- 16.2 MEMBERS shall not:
 - 16.2.1 be entitled to deviate from any plan approved by the DEVELOPER (or its authorised representative) unless the DEVELOPER (or its authorised representative), has granted prior written approval for such proposed deviation;
 - 16.2.2 submit plans in respect of improvements to his erf to the NMBM unless such plans have been approved of by the DEVELOPER or its duly authorised representative;
 - 16.2.3 be entitled to challenge or contest any of the provisions of the DESIGN CODE and CONCEPT PLANS;

- 16.2.4 have any claim of whatsoever nature against the DEVELOPER, or its duly authorised representative, and/or the HOMEOWNERS ASSOCIATION, arising from any refusal of approval of plans and/or conditional approval and, in that regard, the discretion of the DEVELOPER or its duly authorised representative is absolute;
- 16.2.5 breach any restrictions applicable to the MEMBER's erf and, in particular, coverage, floor area, height and building line restrictions applicable to IMPROVEMENTS on such erf.
- 16.3 A MEMBER shall not commence the construction or implementation of IMPROVEMENTS unless the MEMBER's contractor together with the MEMBER and the MEMBER's architect have concluded a conduct agreement and have lodged a copy thereof with the DEVELOPER or nominee.
- 16.4 If a MEMBER fails to timeously complete, in the judgment of the DEVELOPER, the erection of a house in accordance with the foregoing, the DEVELOPER shall be entitled, but not obliged, to repurchase the erf from the MEMBER who shall be obliged to sell the erf to the DEVELOPER at a price equal to the purchase price paid by the initial purchaser of the erf from the DEVELOPER less Value-Added Tax and further less estate agent's commission paid by the DEVELOPER arising out of the sale to such initial purchaser (the "net price") upon notification to that effect received from the DEVELOPER. Transfer from the MEMBER to the DEVELOPER of such erf shall be effected by attorneys nominated by the DEVELOPER and the MEMBER shall be liable for payment of the costs of registration of such transfer upon request. The MEMBER shall not be entitled to any compensation for completed or incomplete structures erected on the erf as at the date of receipt by the MEMBER of the said notice from the DEVELOPER, which shall be the date of sale by the MEMBER to the DEVELOPER of the said erf. The MEMBER and any occupier shall vacate the erf and possession thereof shall pass to the DEVELOPER on the 5th (fifth) day after the said date of sale. The net price shall be payable by the DEVELOPER to the MEMBER on registration of transfer of the erf in the name of the DEVELOPER, which transfer shall be effected as soon as reasonably possible after delivery of the said notice to the MEMBER. If the MEMBER fails to sign the transfer documents upon request made by the DEVELOPER's conveyancers he shall be deemed to have granted to the chairman for the time being of the HOMEOWNERS ASSOCIATION a power of attorney to act on his behalf in that regard and signature of documents by the said chairman on his behalf shall be valid and effective as though signed by the MEMBER.
- 16.5 Should the DEVELOPER take steps against a MEMBER pursuant to a breach of this clause, the DEVELOPER shall further be entitled to recover from such MEMBER who shall be liable to the DEVELOPER for payment of all the DEVELOPER's legal costs incurred on the scale as between attorney and own client.

17. THE DESIGN CODE AND CONCEPT PLANS:

- 17.1 The broad concepts of the DESIGN CODE constitute an integral part of this CONSTITUTION and may not be changed. Minor amendments may be made from time to time by the DEVELOPER for as long as the DEVELOPER is a MEMBER and thereafter by the COMMITTEE.
- 17.2 All improvements to any erf in the DEVELOPMENT shall comply with the provisions of the DESIGN CODE.
- 17.3 No construction, erection or implementation of improvements on an erf may commence prior to the approval of plans and, in this regard, a full set of proposed plans prepared in accordance with the DESIGN CODE shall be submitted to the DEVELOPER or its duly authorised representative for approval. The DEVELOPER or its duly authorised representative shall be the sole judge as to whether the plans and specifications conform to the DESIGN CODE and its decision shall be final and binding upon the MEMBER;
- 17.4 The DEVELOPER or its duly authorised representative, shall be entitled to withhold approval subject to compliance with such modifications or amendments as the DEVELOPER or its duly authorised representative proposes to the plans submitted and/or such other conditions as may reasonably be imposed;
- 17.5 The MEMBER shall be liable for all costs in respect of the scrutiny and consideration of plans submitted by the MEMBER to the DEVELOPER or its duly authorised representative;
- 17.6 Thereafter, the approved building plans shall be submitted to the NMBM for approval;
- 17.7 Having obtained the approval of the NMBM, the MEMBER shall comply with all conditions and standards imposed by the NMBM insofar as these may be additional to the requirements of the DESIGN CODE read with the plans.

- 17.8 Any plans, notwithstanding approval by the NMBM, which have not been prepared and/or submitted and/or approved in compliance with the above, shall be invalid.
- 17.9 If a MEMBER fails to comply with any obligation contained in this clause, the DEVELOPER or its duly authorised representative may enter upon the erf in order to inspect the erf and improvements and institute legal proceedings against the MEMBER who shall be liable to the DEVELOPER on the scale as between attorney and own client.

18. TITLE DEED CONDITIONS AND FURTHER OBLIGATIONS OF MEMBERS:

- 18.1 The following condition will be embodied in the deed of transfer relating to each erf in NEW HORIZON VILLAGES as a condition of title:
- "The property may not be transferred without the written consent of the NHD Home Owners Association."
- and the DEVELOPER shall be entitled, in its discretion, to embody in the deed of transfer relating to each erf in NEW HORIZON VILLAGES such further condition/s of title as it considers necessary with particular reference to implementation of or arising from agreements of sale of erven.
- 18.2 The HOMEOWNERS ASSOCIATION may withhold any written consent required if the MEMBER has not complied with all provisions of this CONSTITUTION or his obligations (whether financial or otherwise) in terms thereof or in terms of applicable rules or regulations.
- 18.3 A member shall not be entitled to alienate his erf unless it is a condition of the sale and transfer that the transferee acknowledges that he becomes a MEMBER of the HOMEOWNERS ASSOCIATION upon registration of such transfer and that he agrees to abide by the terms of this CONSTITUTION and the DESIGN CODE.

19. LEVIES:

- 19.1 The COMMITTEE shall:
- 19.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the HOMEOWNERS ASSOCIATION necessarily or reasonably incurred to accomplish the objectives of the HOMEOWNERS ASSOCIATION and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the HOMEOWNERS ASSOCIATION
- 19.1.2 estimate the amount which will be required by the HOMEOWNERS ASSOCIATION to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and must include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;
- 19.1.3 require MEMBERS whenever necessary to make contributions to such fund for the purposes of satisfying the expenses, equal as nearly as is reasonably practical to such estimated amount.
- 19.1.4 any amount due by a MEMBER by way of a levy shall be a debt due by him to the HOMEOWNERS ASSOCIATION payable within such time as determined by the COMMITTEE. The obligation of a MEMBER to pay a levy shall cease upon his ceasing to be a MEMBER save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a MEMBER. No levies paid by a MEMBER shall be repayable by the HOMEOWNERS ASSOCIATION upon his ceasing to be a MEMBER. A MEMBER's successor in title to an erf shall be liable as from the date upon which he becomes a MEMBER pursuant to the transfer of such erf to pay the levies attributable to that erf. No MEMBER shall be entitled to transfer his erf until the COMMITTEE have certified that the MEMBER has, at the date of transfer, paid all amounts owing by him to the HOMEOWNERS ASSOCIATION.
- 19.1.5 the decision of the COMMITTEE in calculating the levies shall be final and binding on all MEMBERS.
- 19.1.6 the levy payable by a MEMBER shall bear the same proportion to the total levy imposed on MEMBERS as that MEMBER's voting right bears to the aggregate of voting rights of all MEMBERS.
- 19.1.7 no MEMBER shall be entitled to vote or to enjoy any of the other privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the HOMEOWNERS ASSOCIATION in respect of his membership thereof. All levies are due and payable by MEMBERS on the first day of the month immediately following the month in which such liability arose and, thereafter, on the first day of each and every following month.

19.1.8 MEMBERS shall be liable for payment of interest on outstanding amounts at a rate determined by the COMMITTEE from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.

20. FUNCTIONS, POWERS AND DUTIES OF THE COMMITTEE:

20.1 Subject to the express provision of this CONSTITUTION, the COMMITTEE shall:

20.1.1 manage and control the business and affairs of the HOMEOWNERS ASSOCIATION and shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any managing agent.

20.1.2 may exercise all such powers of the HOMEOWNERS ASSOCIATION and do all such acts on behalf of the HOMEOWNERS ASSOCIATION as may be exercised and done by the HOMEOWNERS ASSOCIATION with the exception of this CONSTITUTION to be exercised or done by the HOMEOWNERS ASSOCIATION in a general meeting provided that no regulation made by the HOMEOWNERS ASSOCIATION in general meeting shall invalidate any prior act of the COMMITTEE which would have been valid if such regulation had not been made.

20.2 Save as specifically provided in this CONSTITUTION, the COMMITTEE shall at all times have the right to engage on behalf of the HOMEOWNERS ASSOCIATION the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the COMMITTEE on such terms as the COMMITTEE shall decide.

20.3 The COMMITTEE shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.

20.4 The COMMITTEE shall have the right to co-opt any person or persons chosen by them. A co-opted committee member shall enjoy all the rights and be subject to all the obligations of the COMMITTEE provided that such co-opted committee member shall only serve until the next annual general meeting.

20.5 The COMMITTEE may, should they so decide, investigate any suspected or alleged breach by any MEMBER or committee member of this CONSTITUTION in such reasonable manner as they shall decide from time to time.

20.6 The COMMITTEE may make regulations and rules not inconsistent with this CONSTITUTION or any regulations or rules prescribed by the HOMEOWNERS ASSOCIATION in general meeting

- as to the resolution of disputes generally;
- for the furtherance and promotion of any of the objects of the HOMEOWNERS ASSOCIATION;
- for the better management of the affairs of the HOMEOWNERS ASSOCIATION;
- for the advancement of the interests of MEMBERS;
- for the conduct of COMMITTEE at meetings of COMMITTEE and meetings of the HOMEOWNERS ASSOCIATION;
- to levy and collect contributions from MEMBERS;
- to levy and recover from MEMBERS moneys which are necessary to defray the necessary expenses of the NMBM in the event of the NMBM imposing any levies and imposts against the HOMEOWNERS ASSOCIATION;
- to assist it in administering and governing its activities generally.

20.7 Without in any way limiting the powers granted, the duties and powers of the COMMITTEE shall further specifically include:

- the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and improvements of all erven in NEW HORIZON VILLAGES in strict accordance with the provisions of the DESIGN CODE which shall be additional to the powers of

the DEVELOPER for as long as the DEVELOPER is a MEMBER. The COMMITTEE shall be entitled to require any MEMBER, who shall be obliged, to repaint or renovate his improvements if in the reasonable opinion of the COMMITTEE such improvements require essential repairs or have become dilapidated;

- entering into of agreements with third parties on behalf of the HOMEOWNERS ASSOCIATION for any purposes of the HOMEOWNERS ASSOCIATION;
- the employment on behalf of the HOMEOWNERS ASSOCIATION of agents, servants and any other party and the payment of such persons;
- the taking of steps in all matters of common interest in respect of the HOMEOWNERS ASSOCIATION and, without detracting from the generality thereof, such as common sewage, pump stations, landscaping, street lighting, street furniture and general security;
- the institution or defence of actions and/or applications in the name of the HOMEOWNERS ASSOCIATION and to appoint legal representatives for such purpose.

21. PROCEEDINGS OF THE COMMITTEE:

- 21.1 The COMMITTEE may meet and regulate their meetings as they deem fit, subject to the provisions of this CONSTITUTION.
- 21.2 Meetings of the COMMITTEE shall be held at least once every 6 (six) months.
- 21.3 The chairman always has the right to convene meetings of COMMITTEE.
- 21.4 A committee member may, provided he has the support in writing of 2 (two) other COMMITTEE, at any time convene a meeting of COMMITTEE by giving to the other COMMITTEE not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
A resolution in writing signed by all the COMMITTEE shall be valid and effectual as if it had been passed at a meeting of COMMITTEE duly called and constituted.
- 21.5 The quorum necessary for the holding of any meeting of COMMITTEE shall be 4 (FOUR) committee members present personally provided that, for as long as the DEVELOPER is a MEMBER, the DEVELOPER must be present. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the COMMITTEE then present shall be a quorum.
- 21.6 Any resolution of the COMMITTEE shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the chairman shall have a second or casting vote.
- 21.7 The chairman shall preside as such at all meetings of COMMITTEE provided that, should at any meeting of COMMITTEE the chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the COMMITTEE 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.
- 21.8 A committee member may be represented at a meeting of COMMITTEE by a proxy provided such proxy is a committee member.
- 21.9 The instrument appointing a proxy shall be in writing and signed by the committee member concerned but need not be in any particular form. The proxy shall be deposited with the chairman at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.
- 21.10 The COMMITTEE shall:
- 21.10.1 ensure that minutes are taken of every meeting of COMMITTEE, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the chairman of the meeting;
- 21.10.2 cause such minutes to be kept of all meetings of the COMMITTEE in a minute book of meetings of COMMITTEE kept for that purpose;

21.10.3 keep all minute books of meetings of COMMITTEE in perpetuity;

21.10.4 on the written application of any MEMBER, make all minutes of their proceedings available for inspection by such MEMBER.

21.11 All resolutions recorded in the minutes of any meeting of COMMITTEE 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 COMMITTEE shall be of any force or effect or shall be binding upon the MEMBERS or any of the COMMITTEE unless such resolution is competent within the powers of the COMMITTEE.

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

22. MANAGING AGENT:

22.1 The COMMITTEE shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a managing agent to control, manage and administer NEW HORIZON VILLAGES and to exercise such powers and duties as may be entrusted to the managing agent, including the power to collect levies, provided that a managing agent shall be appointed for a year at a time, and unless the COMMITTEE notify the managing agent to the contrary, such appointment will be automatically renewed from year to year.

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

22.3 With effect from the date of commencement of the HOMEOWNERS ASSOCIATION, the DEVELOPER, in its sole discretion, is entitled to appoint the first managing agent for a period of 12 (twelve) months or until the first annual general meeting of the HOMEOWNERS ASSOCIATION, whichever first occurs.

23. ACCOUNTS:

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

23.1.1 a record of the assets and liabilities of the HOMEOWNERS ASSOCIATION;

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

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

23.1.4 individual ledger accounts in respect of each MEMBER.

23.2 On the application of any MEMBER the COMMITTEE shall make all or any of the books of account and records available for inspection by such MEMBER.
The COMMITTEE shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.

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

23.4 At each annual general meeting the COMMITTEE shall lay before the HOMEOWNERS ASSOCIATION financial statements for the immediately preceding financial year of the HOMEOWNERS ASSOCIATION or, in the case of the first period since the date of commencement of the HOMEOWNERS ASSOCIATION, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the COMMITTEE.

24. DEPOSIT AND INVESTMENT OF FUNDS:

The COMMITTEE shall cause all moneys received by the HOMEOWNERS ASSOCIATION to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the HOMEOWNERS ASSOCIATION and, subject to any direction given or restriction imposed at a general meeting of the HOMEOWNERS ASSOCIATION, such moneys shall only be withdrawn for the purpose of payment of the expenses of the HOMEOWNERS ASSOCIATION or investment.

Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the COMMITTEE from time to time.

Interest on moneys invested shall be used by the HOMEOWNERS ASSOCIATION for any lawful purpose in the interest of the HOMEOWNERS ASSOCIATION.

25. AUDIT:

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

The duties of the auditors shall be regulated in accordance with general practise and applicable professional standards.

26. INDEMNITY:

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

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

27. DETERMINATION OF DISPUTES BY ARBITRATION:

27.1 Any dispute between the COMMITTEE and a MEMBER or between MEMBERS arising out of or in connection with or related to the constitution or rules made in terms of the constitution, 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 this clause.

27.2 Any party to such dispute may demand that the dispute be determined by arbitration in terms of this clause, by written notice given to the other party and the COMMITTEE. The arbitrator shall be agreed upon between the parties. Should the parties fail to agree on an arbitrator within fourteen (14) days after giving of notice in terms of the preceding clause, the arbitrator shall be appointed on written request by either party by the chairman for the time being of the South Eastern Cape Attorneys Association.

27.3 The arbitration shall be held at Port Elizabeth, in accordance with the formalities and procedures prescribed in terms of the Arbitration Act, No 42 of 1965.

28. BREACH:

28.1 The COMMITTEE may on behalf of and in the name of the HOMEOWNERS ASSOCIATION institute legal proceedings.

28.2 If any MEMBER fails in the observance of any of the provisions of this CONSTITUTION, or any rules or regulations made in terms thereof, and/or fails to comply with the provisions of the DESIGN CODE, the COMMITTEE may on behalf of and in the name of the HOMEOWNERS ASSOCIATION serve notice on such MEMBER calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:

28.2.1 enter upon the erf to take such action as may be reasonably required to remedy the breach and the MEMBER concerned shall be liable to the HOMEOWNERS ASSOCIATION for all costs so incurred, which costs shall be due and payable upon demand;

and/or

28.2.2 call upon such MEMBER in writing to remove or alter within a specified period any portion of the improvements or any addition erected contrary to the provisions of this CONSTITUTION read with the DESIGN CODE and, failing which, the matter shall be referred to a special meeting of the HOMEOWNERS ASSOCIATION convened to afford MEMBERS the opportunity to give directions to the COMMITTEE. The resolution of the HOMEOWNERS ASSOCIATION at such meeting shall be binding upon such defaulting MEMBER and shall be implemented by the COMMITTEE;

and/or

28.2.3 institute proceedings in any court of competent jurisdiction for such relief as the COMMITTEE may consider necessary and such MEMBER shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief;

and/or

28.2.4 impose a daily financial penalty, the amount of which shall be determined from time to time by the COMMITTEE, on notice to the MEMBER.

28.3 If any MEMBER fails to make payment on due date of levies or other amounts payable by such MEMBER, the COMMITTEE may give notice to such MEMBER requiring him to remedy such breach within such period as the COMMITTEE may determine and should he fail to timeously remedy his breach, the COMMITTEE may, on behalf of the HOMEOWNERS ASSOCIATION, institute legal proceedings against such MEMBER without further notice and such MEMBER will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the HOMEOWNERS ASSOCIATION in obtaining recovery.

28.4 Nothing in the foregoing shall derogate from or in any way diminish the right of the HOMEOWNERS ASSOCIATION to institute proceedings in any court of competent jurisdiction for recovery of any money due by any MEMBER arising from any cause of action whatsoever or for any other relief.

28.5 In the event of any breach of this CONSTITUTION by the members of any MEMBER's household or his invitees or lessees, such breach shall be deemed to have been committed by the MEMBER himself but, without prejudice to the foregoing, the 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 MEMBER.

29. OWN RISK:

Any person using any of the services, land or facilities maintained by the HOMEOWNERS ASSOCIATION does so entirely at his own risk.

30. DOMICILIUM:

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

such address shall be the address of the chairman or of a resident committee member nominated by the COMMITTEE or the address of any duly appointed managing agent;

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

The domicilium citandi et executandi of each MEMBER shall be the street address of the MEMBER's erf or UNIT.

It shall be competent to give notice by telefax where the MEMBER's telefax number is recorded with the COMMITTEE.

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

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

Any notice to a MEMBER

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

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

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

31. AMENDMENT:

No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of the DEVELOPER for as long as the DEVELOPER is a MEMBER.