

APPENDIX 1 -MONTE CHRISTO ECO-ESTATE  
CONSTITUTION

MUNICIPALITY MOSSEL BAY  
MUNISIPALITEIT MOSSELBAAI

05 SEP 2002

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Mosselbaai/Bay 6500

# MONTE CHRISTO ECO-ESTATE CONSTITUTION

MUNICIPALITY MOSSEL BAY  
MUNISIPALITEIT MOSSELBAAI  
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Approved in terms of delegated power

Nr/No: .....918.....

05/09/2002  
DATUM  
DATE

  
TOWN ENGINEER

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*Monte Christo Eco-Estate*

**MONTE CHRISTO ECO - ESTATE CONSTITUTION**

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## MONTE CHRISTO ECO - ESTATE CONSTITUTION

### 1. NAME

The name of the Association is THE MONTE CHRISTO ECO - ESTATE ASSOCIATION, which is an Association established in terms of Section 29 of the Land Use Planning Ordinance 1985. The Constitution is applicable to the area as indicated on the attached diagram, No. HB217.07/02

### 2. DEFINITIONS

In this Constitution, unless the context indicates the contrary:

- 2.1 The "Association" will mean THE MONTE CHRISTO ECO - ESTATE ASSOCIATION.
- 2.2 "MONTE CHRISTO Development" will mean the whole development of the farm Hartenbosch 217 inclusive of the Conservation Area and the Eco-Estate.
- 2.3 "Conservation Area" will mean the conservation area as shown on Diagram No. HB217.07/02, or any part thereof, together with any improvements thereon.
- 2.4 "The Eco-Estate" will mean the area depicted on Diagram No. HB217.07/02 in respect of the development as depicted on the said diagram.
- 2.5 "Person" will include a Company, Closed Corporation, Trust, Partnership or other Association of persons entitled by law to hold title to immovable property.
- 2.6 "Member" will mean a Member as defined in Clause 5 hereof.
- 2.7 "Architectural Guidelines" will mean the guidelines within which development on the Eco-Estate portion may take place.
- 2.8 "Development Guidelines" will mean the guidelines within which development of the Area is managed.
- 2.9 Words importing the singular will include the plural and the converse will also apply; to masculine gender will include the feminine and neuter genders, and the neuter gender will include the masculine and feminine genders.
- 2.10 "The Constitution" will mean the Owners' Constitution established in terms of Section 29 of Ordinance 15 of 1985 for the Eco-Estate.



**3. INCORPORATION**

The Association will come into existence simultaneously with the registration of transfer of the first deducted subdivided portion of the MONTE CHRISTO Eco-Estate.

**4. OBJECTS**

The objects of the Association are to:

- 4.1 Promote and enforce standards, not the least of which will be the congenial atmosphere in the Eco-Estate in such a way that Members may derive the maximum collective benefit therefrom;
- 4.2 Promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Eco-Estate in order to achieve harmonious development thereof;
- 4.3 Maintain and repair all services in the Eco-Estate; and the Association will have the powers to do such acts as are necessary to accomplish these objects.
- 4.4 Control of access to the Conservation Area and Open Space portions;
- 4.5 Management of the Environmental Management Program conditions.

**5. MEMBERS**

- 5.1 Membership of the Association will be evidenced by registered ownership in the Deeds Registry of one or more portions in the Eco-Estate.
- 5.2 Upon registration of ownership of the portion in the name of a purchaser, membership of the Association by such purchasers will be automatic and obligatory and Members will be obliged to comply with the provisions of this Constitution.
- 5.3 No person will be entitled to cease to be a Member of the Association while remaining the registered owner of a portion in the Eco-Estate.
- 5.4 Each Member will be entitled to one (1) vote for each developed and occupied portion owned in the Eco-Estate.
- 5.5 Membership will be transferred by the registration of a Deed of Transfer in the Deeds Registry, passing transfer of one or more portions in the Eco-Estate from the previous Member to the new Member.
- 5.6 A Member will not be entitled to sell his property unless it is a condition of the sale that:



- 5.6.1 The Purchaser becomes a Member of the Association;
- 5.6.2 The registration of transfer of the portion into the name of that purchaser will ipso facto constitute the transferee as a Member of the Association;
- 5.6.3 A copy of the Constitution and Rules must be given to the Member's selling agent who must ensure that they are handed to any prospective purchaser before or at the time of drawing up the Offer to Purchase or Deed of Sale;
- 5.6.4 The purchaser, by his signature to the Deed of Sale, undertakes to abide by the rules of the Constitution of the Association;
- 5.7 Membership levy:
  - 5.7.1 Every Member will be obliged to pay such levies as may be determined from time to time by the Committee for the maintenance and upkeep of the private/common road, gardens, cleaning, water, street lighting, general maintenance of the Conservation Area as well as payment of expenses necessary or reasonably incurred in managing the Association's affairs.
  - 5.7.2 Special levies may be levied from time to time so as to adhere to the requirements of the Environmental Management Plan (EMP) for the Conservation Area,
  - 5.7.3 Responsibility for the payment of levies will commence on the Member taking possession of his or her portion and will be payable monthly in advance.
- 5.9 No Member will be entitled to lease his portion unless it is a specific condition of such lease that the Lessee be handed a copy of the Constitution of the Association, and that such Lessee undertakes to be bound by and abide by the terms and conditions thereof as far as they may affect such Lessee.

## 6. MANAGEMENT

- 6.1 The Affairs of the Association will be managed and controlled by a Committee consisting of at least five (5) registered Owners of portions in the Eco-Estate of which two (2) members will be registered owners from the Group Housing zoned properties, elected by majority vote and to remain in office for one (1) year. The Developer of the Eco-Estate, together with the registered Owners of the first five (5) transferred registered portions, will serve as the initial Committee pending the election of the Committee referred to above.
- 6.2 As soon as a minimum of ten (10) portions per phased development have been sold and registered, a general meeting of Members will be called for electing a Committee as herein envisaged.



- 6.3 The Members of the Committee as envisaged under Clause 6.2, and subsequent Committees, will after proposal and seconding, be elected by ballot or show of hands (if the meetings so determines) of those persons who attend the general meeting of the Association, and successive Committees will be elected likewise at each successive annual general meeting of the Association, provided that no Member will be eligible for election unless he has been duly proposed and seconded in writing by Members and such written proposal endorsed by the candidate, has been handed to the Secretary not later than the day preceding the meeting, and provided his levy for the current year has been paid.
- 6.4 The Committee will consist of a Chairman, a Secretary, a Treasurer, and two others. Three Members will form a quorum. All matters at any meeting will be determined by a majority of those present and voting. In the event of an equality of votes, the Chairman of any Committee meeting will have a casting vote.
- 6.4.1 In the event of no quorum being present at a Committee meeting, the meeting will stand adjourned for one week at the same time and place, when the quorum will be those Members present, but not less than two members.
- 6.5 Committee Members will cease to hold office -
- 6.5.1 at every annual general meeting, but will be eligible for re-election;
- 6.5.2 by notice to the Committee if he resigns his office;
- 6.5.3 if he absences himself from three (3) consecutive meetings of the Committee without leave of absence;
- 6.5.4 if he ceases to be a Member of the Association;
- 6.5.5 in the event of death.
- 6.6 Casual vacancies on the Committee may be filled either by co-option or by the remaining Members of the Committee subject to confirmation at the next annual general meeting.
- 6.7 Committee Members will receive no remuneration.
- 6.8 No Committee Member will be liable to the Association or to any Member thereof or to any other person whomsoever for any act or omission by himself, the Association or its servants or agents. All Members of the Committee are indemnified against any loss or damage suffered by him in consequence of any purported liability provided such Member has upon the basis of information known to him, acted in good faith and without gross negligence and/or without dishonesty.
- 6.9 Committee meetings will be held once a month or as otherwise decided by the Committee, and minutes will be kept of all meetings and decisions.
- 6.10 Proper books of account of the administration and finance of the Association will be kept and financial accounts will be drawn and audited annually.



## 7. MEETINGS

- 7.1 The annual general meeting will be held on a date fixed by the Committee in the month of May, and twenty-one (21) days' written notice thereof and the agenda will be sent to all Members by the Secretary. A full annual report of the Committee will be tabled at every annual general meeting, together with the proper income and expenditure account and balance sheets for the immediately preceding financial year. Each said meeting will also deal with the election of Committee Members for the forthcoming year, adoption of financial reports and budget for the forthcoming year.
- 7.2 Special general meetings may be called by the Committee whenever they consider it desirable, and will be called upon the requisition hereto in writing of all the Members, in either event on seven (7) days' written notice by the Secretary, specifying the business to be discussed (registered and signed delivery notices).
- 7.3 At all meetings, the chair will be taken by the Chairman or, in his absence, by the Treasurer or Secretary. In the absence of both, the Committee Members present will elect a Chairman.
- 7.4 The Chairman will have a casting vote and a quorum at all general or special general meetings will consist of at least three (3) Members.
- 7.5 At all meetings' votes on any matter will be by show-of-hands of those present, the majority vote to count, unless the meeting decides otherwise (majority of members).
- 7.6 In the event of a Member being unable to attend a meeting, a written proxy vote may be given to another Member of his choice to act on his behalf for the purpose of voting on specified issues, but not to be used for voting in Committee elections. The proxy must reflect the specific decision of the Member using the proxy and be signed by him.

## 8. POWERS

- 8.1 The management and administration of the Association will vest in the Committee, which may exercise all powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself.
- 8.2 Without in any way limiting the generality of the afore going, such powers will include, but not be limited to, the following:
  - 8.2.1 the determination of what constitutes appropriate standards, as set out in Clause 4, and the maintenance of properties in the Eco-Estate area;
  - 8.2.2 the performance of such acts as are necessary to accomplish the objects expressed or implied herein.

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- 8.2.3 the investment and re-investment of monies of the Association not immediately required, in such a manner as may from time to time be determined.
- 8.2.4 the operation of banking and savings accounts with all powers required by such operations;
- 8.2.5 the making of and entering into and carrying out of contracts or agreements for any of the Association;
- 8.2.6 the employment and payment of agents, servants and any other parties;
- 8.2.7 the performance of such acts as are required to ensure the security of persons and property in the Eco-Estate;
- 8.2.8 the making, amendment and repeal of rules which will be binding upon Members as if they form part of this Constitution (provided these have been passed at a special meeting of Members called for this purpose) and the formation of Sub-Committees and the delegation of such powers to such Sub-Committees as may be deemed necessary;
- 8.2.9 to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 8.2.10 the levying of a charge payable by Members as provided in Clause 5.7 hereof and subject to the said Clause, the determination from time to time and as frequently as they may, in their sole and absolute discretion, consider necessary or expedient, of the amount of the levy (if any) to be paid to the Association by its Members.

## **9. AESTHETIC AND ENVIRONMENTAL REQUIREMENTS**

- 9.1 The Committee will have the power to:
  - 9.1.1 do such acts and to frame and enforce conditions on Members as are necessary to accomplish the purposes expressed or implied herein, which acts will include inter alia, the approval or refusal of building plans relating to external renovations, alterations and additions.
  - 9.1.2 compel Member to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such Member;
  - 9.1.3 to ensure that all Members maintain their properties in a clean and tidy condition (which will include each Member being responsible for the maintenance and upkeep of the pavement bordering his property) and to implement and control the security, vegetation, parking, signage and advertising within the Eco-Estate.



- 9.2 Members will be obliged to submit all building plans for external renovations, alterations or additions to the Committee for approval prior to the submission of such plans to the Local Authority for approval.
- 9.3 No Member will be entitled to dump material or goods on the Conservation Area or on any portion not registered in the name of the Member and will be liable for payment of the cost of rectifying the damage or removal of the material or goods.
- 9.4 Every Member will observe, and not breach, all laws, ordinances, bylaws and regulations or rules imposed by any statutory or other authority and, without detracting from the generality of the foregoing, will observe and comply with the provisions of the Cape Provincial Road Traffic Ordinance No. 21/1966 as amended (or any Ordinance or Act substituted therefor) as fully and effectually as through the private road was a public road as defined in terms of Section 1 of the Ordinance.
- 9.5 In the event of emergency maintenance being required in a Member's absence (e.g.: fire, burst pipes, etc.) the Committee may act on behalf of the Member and the expense incurred will be for the Member's account. A key holder, if the Committee has been advised of one, will be contacted before any action is taken.
- 9.10 The Architectural Guideline document will form an integral part of this constitution and will be binding on all members.
- 9.11 The EMP and other environmental documents as per conditions of approval will form an integral part of this constitution and will be binding on all members.

## 10. STATUS OF THE ASSOCIATION

The Association will be an association:

- 10.1 with legal personality, capable of suing and being sued in its own name, and
- 10.2 none of whose members in their personal capacities will have any right, title or interest to or in the property, funds or assets of the Association, which will vest in and be controlled by the Committee in terms hereof, and
- 10.3 not for profit, but for the benefit of the Owners and Occupants of immovable property situate in the Eco-Estate Area, and
- 10.4 with the right to acquire, hold, lease and alienate property, both movable and immovable.

## 11. AMENDMENTS TO THE CONSTITUTION

The constitution will consist of the following documents all of which will be binding on all members of the constitution:



- 11.1 MONTE CHRISTO Eco-Estate Owner's Constitution document  
MONTE CHRISTO Eco-Estate Architectural Manual document
- 11.2 This Constitution will not be altered or amended in any way save with the consent of two-thirds of all the Members of the Association in general meeting.
- 11.3 The approval of the Municipality of Mossel Bay as the Local Authority in terms of Section 29 of Ordinance 15 of 1985 need to be obtained as final approval of any amended constitution.

**12. PERSONAL LIABILITY OF MEMBERS**

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

**13. USAGE OF CONSERVATION AREA**

The Conservation Area may only be utilized by the Owners' Association members as stipulated in the document above or any special regulations duly approved of.

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**The MONTE CHRISTO Eco-Estate Association**

**The Rules**

**(forming part of the Constitution)**

**DEFINITION**

In terms of Clause 8.2.8 of the Constitution, these Rules form part of the Constitution.

**1. LETTING OF HOUSES**

All Tenants of houses and other persons granted rights of occupancy by any owner of the relevant house are obliged to comply with these regulations, notwithstanding any provision to the contrary in any lease or grant of rights of occupancy.

This rule is to be incorporated into all lease agreements entered into between Members and Tenants.

**2. REDECORATION**

Members will maintain the exterior of their premises in a neat and tidy manner consistent with a high standard of appearance. Light colors e.g. pastel and white as well as bright colors are not allowed. Earthy colors that fit into the landscape are to be used.

**3. PARKING OF VEHICLES / ACCESS**

Members and their visitors will not cause any obstructions to the free movement of vehicles or persons in the common area. No Member will park any vehicle, including caravans, boats, trailers or horse-boxes upon the Conservation area or Open Space areas without the prior consent of the Association.

No Member will be permitted to dismantle or effect major repairs to any vehicle on any portion of the Common area.

Vehicles parked in contravention of the above may be towed away at the risk and at the expense of the owner of the vehicle.

**4. SIGNS AND NOTICES**

No Member or Occupier will place any sign, notice, billboard or advertisement of any kind whatsoever on any part of the Eco-Estate or the external area of a house or the private/common roads, so as to be visible from the outside, without the written consent of the Association.

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**5. LAUNDRY**

No Member or Occupier will erect washing-lines or hang any washing or laundry or any other items on any part of a house or the Conservation area or the private/common roads so as to be visible from the outside.

**6. LITTERING**

No Member or Occupier will deposit, throw, or permit to be deposited on the Conservation area or the private/public areas and private/public roads or common area any rubbish including dirt, cigarette butts, food scraps or any other litter whatsoever.

**7. ALTERATIONS / ADDITIONS**

External alterations and/or additions to a Member's premises will not be undertaken without the prior consent of the Association. This includes awnings, TV aerials/antennas/dishes and fences or partitions.

**8. PETS**

Members and Occupiers of houses must ensure that all pets are controlled at all times, that they do not foul any common areas nor cause a nuisance to any other Members or Occupiers. Only neutered animals are permitted.

No animal may be allowed in the Conservation area unless on a leash and under direct supervision of the owner thereof.

**9. LIGHTING**

The cost of maintenance and replacement, where necessary, of lighting within the private/common road reserves will be the responsibility of the Association.

Security lighting of individual properties may not provide a nuisance value to adjacent properties or shine directly into adjacent properties.

**10. MAINTENANCE AND CLEANING OF THE PRIVATE/COMMON ROADS**

The Association is responsible for the general maintenance including rates and taxes, electricity and water accounts, and the cleansing of the private/common roads. The Committee will secure whatever labor is necessary to complete this work.

**11. QUIET TIMES**

It is requested that unreasonable noise from loud music, noisy and rowdy parties and large gatherings be avoided at all times. Particular care and consideration should be exercised on Sundays, religious public holidays and between 12:00 and 14:00 as well as after 23:00 hours each evening.

