

**SPRINGERBAAI  
HOME-OWNERS'  
ASSOCIATION**

**CONSTITUTION**

**CONSTITUTION OF THE SPRINGERBAAI  
HOME-OWNERS' ASSOCIATION**

**INTERPRETATION**

1.1. In this Constitution the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

"Association"	means "SPRINGERBAAI HOME-OWNERS' ASSOCIATION";
"Auditors"	means the Auditors of the Association;
"Business day"	means weekdays other than Saturdays, Sundays and Public Holidays;
"Chairperson"	means the Chairperson of the TRUSTEES;
"Vice-Chairperson"	means the Vice-Chairperson of the TRUSTEES;
"Developer"	means SPRINGERBAAI EIENDOMME (EDMS) BEPERK or its successors in title;
"Development"	means the Development on and resulting from the subdivision of Portion 8 of the farm KLIPFONTEIN 249, Division of MOSSEL BAY including any further subdivisions of portions resulting from Portion 8 of the farm KLIPFONTEIN 249, Division of MOSSEL BAY and shall include Remainder of Portion 7 of the farm Klipfontein 249, Mossel Bay;
"Erf"	means one of the Erven;
"Erven"	means the erven and or Portions resulting from the subdivision of Portion 8 of the farm KLIPFONTEIN 249, Division of MOSSEL BAY;
"Local Authority"	means the Eden District Council or its successor in title for the time being;
"Member"	means a MEMBER of the HOME-OWNERS' ASSOCIATION;
"month"	means calendar month;
"office"	means the administrative office of the ASSOCIATION;
"Ordinance"	means the Land Use Planning Ordinance 15/1985;

- "Public Area" means those portions of the Development not registered in the name of individual owners and comprising, without detracting from the generality of the foregoing, roads, road verges and other areas, including public open spaces and any buildings thereon and services for the maintenance of which the Local Authority is not responsible in terms of the Land Use Planning Ordinance, 15/1985, and shall include Remainder of Portion 7 of the farm Klipfontein 249, Mossel Bay;
- "Resolution" means a Resolution other than a Special Resolution passed at an Annual General Meeting or any other General Meeting by an ordinary majority of the total votes represented at such meeting by Members present in person or by proxy;
- "Special Resolution" means a Resolution:
- passed at an Annual General Meeting or any other General Meeting whereat Members present in person or by proxy represent not less than 25% (TWENTY FIVE PER CENTUM) of the total votes; and
  - passed by majority of at least 75% (SEVENTY FIVE PER CENTUM) of the total votes represented by Members present in person or by proxy;
- "Registered Owner" means the party or parties acquiring ownership and taking transfer of one or more erven in the Development resulting from the subdivision of Portion 8 of the farm KLIPFONTEIN 249, Division of MOSSEL BAY;
- "TRUSTEES" means the TRUSTEES of the ASSOCIATION from time to time and includes alternate and co-opted TRUSTEES;
- "Unit" means one of the Residential Units constructed on Portion 8 of the farm KLIPFONTEIN 249, Division of MOSSEL BAY or any other portion resulting from further subdivisions of Portion 8;
- "in writing" means written, printed or lithographed or partly one and partly another and other modes of representing or producing words in a visible form;
- "year" means a financial period of TWELVE (12) months ending on the 30th September of each year;

- 1.2. Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other gender.

- 1.3. Should the CONSTITUTION be translated, and any contradictions arise between the two versions this English text will have preference.

### **MEMBERS OF THE ASSOCIATION**

2. 2.1. The ASSOCIATION which is hereby constituted prior to the sale of the first erf comprised of a single Member, namely, the DEVELOPER.
- 2.2. Every Registered Owner, upon registration of transfer of an Erf into his name, shall *ipso facto* become a Member subject to the terms contained herein and in particular in Para. 6 to 10 hereof.
- 2.3. The ASSOCIATION is a legal entity.

### **MAIN OBJECT**

3. 3.1 The ASSOCIATION shall have as its main object the promotion and advancement of the Development, and the protection of the communal interests of the MEMBERS. This main object of the ASSOCIATION shall from date of transfer of the last erf in the Development in favour of a Registered Owner, be the sole responsibility of the ASSOCIATION.
- 3.2 It is recorded that the ASSOCIATION has received exemption from Income Tax from the South African Revenue Services in terms of which the ASSOCIATION qualifies for exemption from Income Tax in terms of Section 10(1)(e)(iii) of the Income Tax Act and that levy income will not be taxable, but that the ASSOCIATION will be taxable on all other income, including investment income. Only expenditure applicable to such other income will be allowed as a deduction in terms of Section 11(a) of the Income Tax Act.
- 3.3 The ASSOCIATION shall not be permitted to distribute its funds to any person other than to a similar Association of persons.
- 3.4 On dissolution of the ASSOCIATION the remaining assets must be distributed 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.

### **MAIN BUSINESS**

4. 4.1. The main business of the ASSOCIATION shall be the general management and administration of the Development. This main business of the ASSOCIATION shall, from date of transfer of the last erf in the Development in favour of a Registered Owner, be the sole responsibility of the ASSOCIATION.
- 4.2. Such business shall include the maintenance of buildings, roads, verges, public area together with any buildings thereon, services and amenities situate in the Development, the maintenance of which the Local Authority is not responsible for in terms of the Ordinance, and for the collection of contributions in respect of expenditure incurred by members in the Development relating to all electricity

charges, charges for sewerage, water and refuse removal whether in respect of individual Erven or the Public Area, depending on the circumstances.

### **THE PUBLIC AREA**

5. 5.1. Neither the whole nor any portion of the Public Area shall be:
  - 5.1.1. sold, let, alienated, otherwise disposed of, subdivided or transferred; or
  - 5.1.2. mortgaged; or
  - 5.1.3. subject to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude (save those enjoyed by the Members in terms hereof);  
without the sanction of a Special Resolution of the ASSOCIATION.
- 5.2. The transfer of the Erf or Erven comprising the Public Area has been affected by MILLERS INC, 123 Meade Street, Beacon House, George (tel 044 874 1140).

### **MEMBERSHIP**

6. Membership of the ASSOCIATION shall be limited to Registered Owners resulting from the Development, provided that where any such owner comprises more than one person, all the Registered Owners of that Erf shall be deemed jointly and severally to be one MEMBER of the ASSOCIATION.
7. When a MEMBER ceases to be the Registered Owner of an Erf, he shall *ipso facto* cease to be a Member of the ASSOCIATION, provided that a former member will not thereby be relieved of his obligations towards the ASSOCIATION.
8. The following condition shall be embodied in the Deed of Transfer relating to each Erf resulting from the Development as a condition of title:

"The Transferee and his successors in title shall be Members of the SPRINGERBAAI HOME-OWNERS' ASSOCIATION established in terms of Section 29 of Ordinance 15/85 and shall at all times be subject to the CONSTITUTION thereof and the property shall not be transferred without the written consent of the said SPRINGERBAAI HOME-OWNERS' ASSOCIATION."

Such consent shall not be withheld, provided that:

- 8.1. the Registered Owner of the Erf in question has fulfilled all his financial obligations to the ASSOCIATION in terms of this CONSTITUTION; and
- 8.2. The Agreement of Sale concluded between the Registered Owner and Purchaser of the said Erf contains the following term:

"The Purchaser shall, if he elects to take transfer of the Erf be required to remain a member of the ASSOCIATION consisting of all Registered Owners of either single residential Erven and Units on the property and shall be subject to

the Rules and Regulations of the CONSTITUTION governing the said ASSOCIATION. The Purchaser further acknowledges that his successors in title shall be similarly obliged to become and remain members of the said ASSOCIATION."

9. A Registered Owner may not resign as a MEMBER.
10. The rights and obligations of a MEMBER shall not be transferable, and every MEMBER shall:
  - 10.1. to the best of his ability further the objects and interests of the ASSOCIATION;
  - 10.2. observe all bye-laws and regulations made by the ASSOCIATION or the TRUSTEES;

provided that nothing contained in this CONSTITUTION shall prevent a MEMBER from ceding his rights in terms of this CONSTITUTION as security to the Mortgagee of that MEMBER'S Erf.

### **CONTRIBUTIONS**

11. The TRUSTEES shall establish and maintain a fund, to which end they shall from time to time levy and collect contributions from the Registered Owners in such amounts as are, in their opinion, sufficient for the control, management and administration of the Development and for the repair, upkeep and maintenance of the Public Area, for the payment of rates and taxes and any other Local Authority charges, and charges for the supply of any services required by the ASSOCIATION, for recovering any losses suffered by the ASSOCIATION, and for the discharge of any other obligation of the ASSOCIATION.
12. The TRUSTEES shall estimate the amount which shall be required by the ASSOCIATION to meet the expenses referred to in paragraph 11 above during each operational year or any portion thereof, together with the estimated deficiency, if any, which have resulted from the preceding operational year or portion thereof and shall collect from the Registered Owner such amount as is as near as reasonably practical to such estimated amount. The TRUSTEES may include in such contributions an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such expenses to be incurred for the Development and which will be to the benefit of the members of the ASSOCIATION. The TRUSTEES must decide on the frequency of payments and must endeavour to maintain the contributions at a fair and reasonable level and prevent same from becoming exorbitantly high in due course. In terms of paragraph 59 the amount of the levy proposed by the TRUSTEES must be approved at an Annual General Meeting of the members.
13. The TRUSTEES may from time to time levy and collect contributions from the MEMBERS in respect of all such expenses as are not mentioned in Para. 11 (which are not included in any estimate made in terms of Para. 12), and such contributions may be imposed and be payable in one sum or in instalments and at such time or times as the TRUSTEES shall deem fit.
14. Any contribution due by a MEMBER shall be a debt due by him to the ASSOCIATION. The obligation of a MEMBER to make such contributions shall cease upon his ceasing

to be a Registered Owner, save that he shall remain liable for all contributions calculated up to the date upon which he ceases to be a Registered Owner. No contributions paid by a MEMBER shall under any circumstances be repayable by the ASSOCIATION upon his ceasing to be a MEMBER. A MEMBER'S successor-in-title to an Erf shall be liable from the date upon which he becomes a MEMBER pursuant to the transfer of that Erf, to make the contribution attributable to that Erf.

15. 15.1. In calculating levies the TRUSTEES shall take into account income, if any, earned by the ASSOCIATION.
  - 15.2. The contribution to be made by a MEMBER can be based on the area of the Erf and any other factors which the TRUSTEES may deem relevant.
  - 15.3. It is specifically recorded that any arrear contributions shall bear interest at prime overdraft rate of the bank where the ASSOCIATION has its account plus 3% (THREE PER CENTUM) per annum compounded monthly in advance and immediately become due and payable.
16. No MEMBER shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable by him to the ASSOCIATION.

### **MEMBERS' OBLIGATION AND PARTICIPATION**

17. The TRUSTEES may from time to time:
  - 17.1. make regulations governing *inter alia*:
    - 17.1.1. the MEMBER'S rights to use, occupation and enjoyment of his Erf and of the Public Area;
    - 17.1.2. the external appearance of and the maintenance of the Public Area and the buildings or other improvements erected thereon;

provided that the provisions of Para 17.1.1 and 17.1.2 will only apply to the Public Area on transfer of the Public Area to the ASSOCIATION in terms of Para 5.2.
  - 17.2. enter into agreement(s) with third parties on behalf of the ASSOCIATION, *inter alia*, with the Local Authority, governing the matters set out in Para. 17.1 and any other matters incidental thereto.
18. 18.1. Each MEMBER undertakes to the ASSOCIATION that he shall comply with:
  - 18.1.1. the provisions of this CONSTITUTION;
  - 18.1.2. any regulations made in terms of Para. 17.1.;
  - 18.1.3. that every building and/or structure to be erected in the DEVELOPMENT shall be of approved design in accordance with the architectural regulations, which are available for inspection at the offices of the ASSOCIATION and each building and/or structure shall be of

sound construction in accordance with Plans approved by the ASSOCIATION and the Local Authority;

- 18.1.4. any agreements referred to in Para. 17. insofar as those agreements may directly or indirectly impose obligations on him; and
  - 18.1.5. the environmental management plan drawn up by Ecosense dated November 1999, as amended and approved by the Local Authority, which management plan is available for inspection at the offices of the ASSOCIATION.
- 18.2. Each MEMBER further undertakes to the ASSOCIATION that he shall comply with, *inter alia*, the following specific regulations:
- 18.2.1. that buildings or alterations shall be in accordance with a standard approved by the TRUSTEES;
  - 18.2.2. that the Development and more particularly the Public Area shall be maintained in good and tidy condition in compliance with standards set from time to time by the TRUSTEES;
  - 18.2.3. that no building operations, additions or alterations to approved buildings shall be affected until the TRUSTEES have approved in writing the design and construction plans including material and colour specifications for the erection of any building or structure specifically including any dwelling house, outside buildings, fences or walls;
  - 18.2.4. that the TRUSTEES shall be the judges as to the suitability of the design and/or construction method, material or colours as referred to in Para. 18.2.3, and their decision shall be final;
  - 18.2.5. that each Registered Owner shall care for any trees, indigenous plants or shrubbery on the Erf registered in his name and shall not be entitled to remove or cut down, or cause to be removed or cut down any trees situated on his Erf or in the Public Area without the prior written consent of the TRUSTEES;
  - 18.2.6. that each Registered Owner shall establish and maintain the natural indigenous vegetation on the Erf registered in his name according to a standard approved by the TRUSTEES;
  - 18.2.7. that each Registered Owner shall maintain all buildings and/or structures erected on the Erf registered in his name in a neat and tidy condition;
  - 18.2.8. that each Registered Owner shall adequately insure all buildings and/or structures erected on the Erf registered in his name (and if requested, to furnish proof of such insurance to the TRUSTEES and in the event of total or partial destruction shall, within a reasonable period of time, make good such damage or reconstruct in accordance with the original approved plans or in the event of a total reconstruction, in accordance



with the TRUSTEES' approval, *mutatis mutandis*, the provisions of Par. 18.2.1. to 18.2.3. inclusive;

18.2.9. that no Registered Owner shall, without the prior written consent of the TRUSTEES:

18.2.9.1. alter the previously approved external colour scheme of buildings/structures erected on the Erf registered in his name;

18.2.9.2. erect/construct on the Erf registered in his name any solar energy system, wind turbine, outdoor radio/television aerial or any other aerial(s) and/or similar structures;

18.2.9.3. permit any commercial type vehicle, boat, caravan, trailer, or any derelict or abandoned vehicle to be parked on or in front of the Erf registered in his name or in the Public Area which, in the opinion of the TRUSTEES is unsightly;

18.2.9.4. do or suffer to be done on the Erf registered in his name or in the Public Area anything which in the opinion of the TRUSTEES is noisome, unsightly, injurious, objectionable or detrimental, or a public or private nuisance or a source of damage or disturbance to any owner, tenant or occupier of any other property in the DEVELOPMENT in which the Erf is situated;

18.2.10. each Registered Owner shall be obliged to obtain the approval of the Local Authority in respect of any buildings and/or structures to be erected on the Erf registered in his name and he shall further be obliged to comply with all conditions and standards imposed by such Local Authority;

18.2.11. in granting any approval in terms hereof the TRUSTEES shall have the right to determine the siting of all buildings and/or structures (including garden/boundary/link walls) to be erected on the Erf and to impose such conditions as the TRUSTEES deem necessary;

18.2.12. in the light of the nature of the Development, no household pets may be brought into the Development or kept at an Erf or in a Unit.

18.3. If any Registered Owner, tenant or occupier of an Erf by act or omission commits a breach of any of these conditions and fails to remedy such breach after the TRUSTEES have given the Registered Owner written notice to make good such breach within a time specified in such notice, then:

- 18.3.1. the TRUSTEES and/or the owner of any erf shall be entitled without further notice to the Registered Owner to institute proceedings against a Registered Owner in any Court of competent jurisdiction to obtain redress against such Registered Owner and without detracting from the generality of the foregoing this will include the obtaining of an interdict against the Registered Owner; and
- 18.3.2. the TRUSTEES (or those employed by the TRUSTEES, whichever the case may be, on behalf of the ASSOCIATION) may enter upon the Erven, and Public Area to take such action as may be required (as determined in the discretion of the TRUSTEES to remedy the breach and the Registered Owner concerned shall be liable to the ASSOCIATION for all costs so incurred which costs shall be due and payable upon demand. The foregoing action shall, without detracting from the generality of the foregoing, include the obtaining of the services of a garden service company.
- 18.4 Members shall be entitled to submit properly motivated proposals in writing to the Trustees at any stage between Annual General Meetings. Once properly motivated proposals have been received, the Trustees will consider them and give feedback as to the feasibility, and timing of any actions. The trustees will not be obligated to execute any proposals and may refer the proposal to a vote in a General meeting.

## **BREACH**

19. 19.1. NOTWITHSTANDING Para. 15.3. hereof any MEMBER who fails to make payment to the ASSOCIATION on due date of any contribution or other amounts payable by such MEMBER, or who otherwise breaches or fails in the observance of any of the provisions of these presents, may, if so determined by a Resolution passed by not less than 3 (THREE) of the TRUSTEES:
- 19.1.1. be fined by the ASSOCIATION in an amount not exceeding an amount equal to twice the sum outstanding; and/or
- 19.1.2. be liable for and pay such amount as the TRUSTEES may deem fit after having made the necessary enquiries to the ASSOCIATION or any MEMBER or any other person wronged by the relevant breach or non-compliance, and be liable for any pay all legal costs including costs as between attorney and client, including Value Added Tax thereon at the statutory rate, collection commission, expenses and charges incurred by the ASSOCIATION in obtaining the recovery of arrear contributions, or any other arrear amounts due and owing by such MEMBER to the ASSOCIATION.
- 19.2. The MEMBER concerned shall be invited to attend such meeting of TRUSTEES by notice in writing delivered to such MEMBER not less than 21 (TWENTY ONE) days prior to the holding thereof, and such MEMBER shall be

given the right to speak thereat, and to be represented legally, but not to be present at the voting or to take part in the proceedings, other than as allowed by the Chairperson of such meeting.

- 19.3. Notwithstanding the contents of Para. 15.3, the TRUSTEES shall be entitled to charge interest on arrear amounts (including amounts due in terms of Para. 19.1.1.) at such rate as they may from time to time determine.
- 19.4. Nothing in the foregoing shall derogate from or in any way diminish the right of the ASSOCIATION represented by an authorised TRUSTEE to institute proceedings in any Court of competent jurisdiction for recovery of any money due by a MEMBER.

### **CESSATION OF MEMBERSHIP**

20. No MEMBER, nor such MEMBER'S executor, curator, trustee or liquidator, who ceases to be a Member of the ASSOCIATION, shall, for any reason, 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 his estate any arrears of contributions or other sums due from him to the ASSOCIATION at the time of his so ceasing to be a MEMBER.

### **TRUSTEES**

21. There shall be a Board of TRUSTEES of the ASSOCIATION which shall consist of not less than 3 (THREE) and not more than 6 (SIX) persons, the exact number to be determined from time to time at the Annual General Meeting of the ASSOCIATION.
22. A TRUSTEE shall be an individual who is also a MEMBER of the ASSOCIATION. A TRUSTEE, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of these presents.

### **APPOINTMENT AND ELECTION OF TRUSTEES**

23.
  - 23.1. Upon termination of the term of office of the TRUSTEES aforesaid, as set forth in Para. 24, TRUSTEES as set forth in Para. 21 shall be:
    - 23.2.1. nominated;
    - 23.2.2. elected to office, upon acceptance of such nomination;

by MEMBERS of the ASSOCIATION present in person or by proxy at the first Annual General Meeting of the ASSOCIATION and at each Annual General Meeting held thereafter.

## **TERM OF SERVICE ON BOARD OF TRUSTEES**

24. Save as set forth in Para. 25, each TRUSTEE shall continue to hold office until the next Annual General Meeting following his said appointment, at which meeting each TRUSTEE shall be deemed to have retired from office as such but will be eligible for re-election as a TRUSTEE at such meeting. Subject to the provisions which follow:
- 24.1. That members be informed in advance of the next Annual General Meeting of the proposed core portfolios of the Trustees for the next year.
  - 24.2. That a member be nominated for a specific core portfolio, motivated by a brief outline of his/her expertise, background and experience. The member must accept his/her nomination in writing.
  - 24.3. That Trustees be elected one by one and that the voting takes place one core portfolio at a time, subject to the following guidelines:
    - 24.3.1. If there is a **vacancy** (because the Trustee resigned or retires), a vote is taken between those members nominated for that portfolio;
    - 24.3.2. If an existing Trustee is willing to continue, but **one or more other members have also been nominated for that portfolio**, a vote is taken between all those persons. If there are three or more nominees, the person receiving the least votes will fall out and a next round of voting will take place between the remaining nominees until a winner emerges;
    - 24.3.3. If an existing Trustee is willing to continue in that portfolio, and **no one else has been nominated** for that portfolio, the existing Trustee can be re-elected and voting will take place; every voter has to indicate whether he/she supports the incumbent's re-election or not; if he/she does not obtain a majority of the votes cast, a vacancy will arise, to be filled by the newly elected Trustees co-opting a suitable member as Trustee for that portfolio.
25. A TRUSTEE shall be deemed to have vacated his office as such upon:
- 25.1. their estate being sequestrated, whether provisionally or finally, or by the surrendering of their estate; or
  - 25.2. their making any arrangement or compromise with their creditors; or
  - 25.3. their conviction for any offence involving dishonesty; or
  - 25.4. their becoming of unsound mind or being found lunatic; or
  - 25.5. their resignation from such office in writing delivered to the registered office of the ASSOCIATION; or
  - 25.6. their death; or
  - 25.7. their being removed from office by a Resolution of the MEMBERS of the ASSOCIATION, requiring a simple majority, before the termination of their period of office; provided that anything done in good faith in the capacity of a TRUSTEE by a person who ceases to be a TRUSTEE, shall be valid in spite of the fact that he

is no longer a TRUSTEE of the ASSOCIATION, provided that the resolution has been recorded in the Minute Book of the TRUSTEES.

26. Should the office of a TRUSTEE fall vacant prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining TRUSTEES for the time being, and he shall hold office until the next General Meeting when he may be eligible for re-election.

### **OFFICE OF TRUSTEES**

27. At the first Annual General Meeting the TRUSTEES shall appoint a Chairperson and Vice-Chairperson from amongst themselves.
28. Within 7 (SEVEN) days of the holding of such Annual General Meeting, the TRUSTEES shall meet and shall elect from their own number a Chairperson and Vice-Chairperson, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairperson or Vice-Chairperson 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 TRUSTEES shall meet as soon as possible to appoint one of their number as a replacement in such office.
29. Save as otherwise provided in these presents, the Chairperson shall preside at all meetings of the TRUSTEES, and all General Meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the TRUSTEES or by Members, and shall allow or refuse to permit guests to speak at any such meetings, provided, however, that any such guests shall not be entitled to vote at any such meetings.
30. The Vice-Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the TRUSTEES.
31. TRUSTEES shall be entitled to be re-imbursed for all reasonable and bona fide expenses incurred by them in the performance of their duties as TRUSTEES and/or Chairperson, or Vice-Chairperson, 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.

### **FUNCTIONS AND POWERS OF TRUSTEES**

32. Subject to the express provisions of these presents the TRUSTEES shall manage and control the business and affairs of the ASSOCIATION, shall have full powers in the governance and direction of such business and affairs and, save as may be expressly provided for in these presents to the contrary, 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 these presents required to be exercised or done by the ASSOCIATION in a General Meeting subject

nevertheless to such regulations as may be prescribed by the ASSOCIATION in General Meeting from time to time, provided that no regulation made by the ASSOCIATION in General Meeting shall invalidate any prior act of the TRUSTEES which would have been valid if such regulation had not been made. Without detracting from the above, the TRUSTEES shall have the right to appoint manager and labour/personnel (staff), levy and collect charges to enforce and apply the environmental management plan and to have same audited as prescribed.

33. The TRUSTEES shall have the right to vary, cancel or modify any of their decisions and Resolutions from time to time.
34. Subject to Para 21 to 22, the TRUSTEES shall have the right to co-opt any person or persons chosen by it. A co-opted TRUSTEE shall enjoy all the rights and be subject to all the obligations of the TRUSTEES, provided that such co-opted TRUSTEE shall only serve until the next Annual General Meeting.
35. The TRUSTEES may, should they so decide, investigate any suspected or alleged breach by any Member or TRUSTEE of these presents, in such reasonable manner as they shall decide from time to time.
36. The TRUSTEES may make regulations and by-laws, not inconsistent with these presents, or any regulations or by-laws prescribed by the ASSOCIATION in General Meeting:
  - 36.1. as to disputes generally;
  - 36.2. for the furtherance and promotion of any of the objects of the ASSOCIATION;
  - 36.3. for the better management of the affairs of the ASSOCIATION;
  - 36.4. for the advancement of the interests of MEMBERS;
  - 36.5. for the conduct of TRUSTEES at meetings of TRUSTEES and Meetings of the ASSOCIATION;
  - 36.6. to levy and collect contributions from the MEMBERS in accordance with Par. 11 to 16; and
  - 36.7. to assist in administering and governing its activities generally,  
and shall be entitled to cancel, vary or modify any of the said regulations or by laws from time to time.
  - 36.8 Without detracting from the generality of the foregoing, the TRUSTEES may not vary or modify the following stipulations without a special resolution of the MEMBERS which will, where applicable, result in an amendment of this CONSTITUTION:
    - 36.8.1. no pets will be allowed, and the wild animals may not be interfered with;
    - 36.8.2 no gardening will be allowed at the UNITS and the natural vegetation

has to be resettled after construction of the UNIT;

36.8.3 all UNITS will be supplied with fire-extinguishers in a working condition;

36.8.4 archaeological material may not be picked up or removed;

36.8.5 fires may only be made in approved fireplaces;

36.8.6 the natural vegetation may not be disturbed for any reason, save for matters concerning management (as set out in the management plan). Alien plants must be cut out and can be used as firewood.

36.9 Without in any way derogating from the functions and powers set out above, the Trustees shall be entitled between Annual General Meetings to conduct an opinion poll amongst members, provided that the circular accompanying the opinion poll sets out the matter in respect of which their opinion is requested, the issues involved, all relevant information to be taken into account and the rules of the opinion poll (eg minimum participation).

### **PROCEEDINGS AT MEETINGS OF TRUSTEES**

37. 37.1. The TRUSTEES may meet for the despatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of these presents.

37.2. Meetings of the TRUSTEES shall be held at least once every SIX Months.

38. 38.1. Three (3) TRUSTEES may at any time convene a meeting of TRUSTEES by giving to the other TRUSTEES not less than 21 (TWENTY ONE) 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.

38.2. Any mortgagee holding a first mortgage bond or bonds over the Erven shall, if he so requires of the TRUSTEES, be entitled to receive reasonable written notice of all meetings of TRUSTEES.

39. The quorum necessary for the holding of any meeting of TRUSTEES shall be 4 (FOUR) TRUSTEES.

40. 40.1. The Chairperson shall preside as such at all meetings of TRUSTEES provided that should at any meeting of TRUSTEES the Chairperson not be present within 5 (FIVE) minutes after the time appointed for the holding thereof, then the Vice-Chairperson shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson also not be present within 5 (FIVE) minutes of the time appointed for the holding of such meeting, those present of the TRUSTEES shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

41. 41.1. The TRUSTEES shall:
    - 41.1.1. ensure that minutes are taken of every meeting of TRUSTEES, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and after being approved by the TRUSTEES at their next meeting, be certified correct by the Chairperson of the meeting;
    - 41.1.2. cause such minutes of all meetings of the TRUSTEES to be kept in a Minute Book kept for the purpose;
  - 41.2. The TRUSTEES shall keep all Minute Books of Meetings of TRUSTEES.
  - 41.3. On the written application of any MEMBER, the TRUSTEES shall make all Minutes of their proceedings available for inspection by such MEMBER.
42. All duly passed Resolutions recorded in the minutes of any meeting of TRUSTEES 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 TRUSTEES shall be of any force or effect or shall be binding upon the MEMBERS or any of the TRUSTEES unless such Resolution is competent within the powers of the TRUSTEES.
  43. Save as otherwise provided in these presents, the proceedings at any meeting of TRUSTEES shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
  44. A Resolution signed by all the TRUSTEES shall be valid in all respects as if it had been duly passed at a meeting of TRUSTEES duly convened.

#### **OTHER PROFESSIONAL OFFICERS**

45. Save as specifically provided otherwise in this Constitution, the TRUSTEES shall at all times have the rights to engage on behalf of the ASSOCIATION, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, or any other person, professional or otherwise, firm and/or any other employee/s whatsoever, for any reasons thought necessary by the TRUSTEES and on such terms as the TRUSTEES shall decide, subject to any of the provisions of these presents.

#### **GENERAL MEETINGS OF THE ASSOCIATION**

46. 46.1. The ASSOCIATION shall before end of December in each calendar year, hold a General Meeting as its Annual General Meeting in respect of the financial year ended 30th September of that year, in addition to any other General Meetings during that year, and shall specify the meeting as such in the notice convening it, in terms of Par. 48 infra.
- 46.2. Such Annual General Meeting shall be held at such time and place, subject to such provisions as the TRUSTEES shall decide from time to time.



47. The TRUSTEES may, whenever they deem fit, convene a General Meeting, and a General Meeting shall also be convened on a requisition made by not less than 15% (FIFTEEN PER CENTUM) of Members eligible to vote, or in default, may be convened by the requisitionists themselves, provided that proper notice thereof be given in terms of Par. 48 infra.

### **NOTICE OF MEETINGS**

48. An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by at least 21 (TWENTY-ONE) days' notice in writing. Any other General Meeting shall be called by 14 (FOURTEEN) days' notice at the least. 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 these presents, 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. A General Meeting of the ASSOCIATION shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:
- 48.1. in the case of a meeting called as the Annual General Meeting, by an ordinary majority of votes represented by MEMBERS entitled to attend and vote thereat, present in person or by proxy, being a majority together holding not less than 20% (TWENTY PER CENTUM) of the total voting rights of all MEMBERS;
- 48.2. in the case of any other General Meeting, by an ordinary majority of votes represented by MEMBERS entitled to attend and vote thereat, present in person or by proxy, being a majority together holding not less than 10% (TEN PER CENTUM) of a total voting rights of all MEMBERS.
49. 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 these presents, or in terms of the law, 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.

### **SERVICE OF NOTICES OF MEETINGS**

50. A notice of a meeting shall be in writing and shall be given to or served by the ASSOCIATION upon any MEMBER, either personally or by post in a prepaid registered letter or per fax or per electronic mail, properly addressed to the MEMBER at the address as is provided, in writing, to the Board of TRUSTEES.
51. No MEMBER shall be entitled to have a notice of a meeting served on him 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.
52. Any notice of a meeting sent 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, shall be sufficient to prove that the letter containing the notice was properly

addressed and posted.

53. 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.

### **VENUE OF MEETINGS**

54. General Meetings of the ASSOCIATION shall take place at such place(s) as shall be determined by the TRUSTEES from time to time.

### **QUORUM**

55. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any General Meeting shall be such of the MEMBERS entitled to attend and vote thereat, as together for the time being represent 20% (TWENTY PER CENTUM) of the total votes of all MEMBERS of the ASSOCIATION entitled to vote for the time being.
56. If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting shall be dissolved and be adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairperson of the meeting shall appoint, and if at such adjourned meeting a quorum is not present, the MEMBERS present shall be a quorum.

### **AGENDA AT MEETINGS**

57. In addition to any other matters required by legislation or these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
  - 57.1. the consideration of the report by the Chairperson of the TRUSTEES;
  - 57.2. the election of TRUSTEES;
  - 57.3. the consideration of the financial statements of the ASSOCIATION for the last financial year of the ASSOCIATION preceding the date of such meeting;
  - 57.4. the consideration of the budget for the next financial year as presented by the TRUSTEES and approval of the contributions to be levied by the TRUSTEES in terms thereof;
  - 57.5. any other business pertinent to such meeting including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions.

## **PROCEDURE AT GENERAL MEETINGS**

58. The Chairperson shall preside as such at all General Meetings, provided that should he not be present within FIVE MINUTES after the time appointed for the holding thereof, then the Vice-Chairperson shall act as Chairperson at such meeting, provided further that should the Vice-Chairperson also not be present within FIVE 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 Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
59. The Chairperson 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 unless notice of the adjourned meeting shall be given in the same manner as of an original meeting.
60. Except as otherwise set forth in these presents, all General Meetings shall be conducted in accordance with procedures to be stipulated by the TRUSTEES from time to time, which procedures shall be recorded in the Notices referred to in Par. 50 to 53 inclusive.

## **MINUTES OF MEETINGS OF THE ASSOCIATION**

61. 61.1. The TRUSTEES shall:
- 61.1.1. ensure that minutes are taken of every meeting of the ASSOCIATION, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and be certified correct by the Chairperson of the meeting after being approved by the MEMBERS at the next meeting.
- 61.1.2. cause such minutes of all meetings of the ASSOCIATION to be kept in a Minute Book kept for the purpose;
- 61.2. The TRUSTEES shall keep all Minute Books of Meetings of the ASSOCIATION.
- 61.3. On the written application of any Member, the TRUSTEES shall make all Minutes of the proceedings and/or meetings of the ASSOCIATION available for inspection by such MEMBER.
- 61.4. All duly passed Resolutions recorded in the minutes of any meeting of the ASSOCIATION shall be valid and of full force and effect as therein recorded, with effect from the passing of such Resolutions, and until varied or rescinded, but no Resolution or purported Resolution of the ASSOCIATION shall be of any force or effect or shall be binding upon the MEMBERS or any of the TRUSTEES unless such Resolution is competent within the powers of the ASSOCIATION.

- 61.5. Save as otherwise provided in these presents, the proceedings at any meeting of the ASSOCIATION shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

## **PROXIES**

62. 62.1. A MEMBER may be represented at a General Meeting by a proxy, who shall be a MEMBER of the ASSOCIATION.
- 62.2. The instrument appointing a proxy shall be in writing signed by the MEMBER concerned and his duly authorised agent in writing, but need not be in any particular form, provided that where a MEMBER is more than one person, any one of these 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 the Chairperson of the board of Directors of the Company or by its Secretary, and where an association of persons, by the Secretary thereof.
- 62.3. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed or a notarially certified copy thereof shall be 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 12 (TWELVE) Months from the date of its execution.
63. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the MEMBER or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the TRUSTEES at least one hour before the time fixed for the holding of the meeting.

## **VOTING**

64. At every General Meeting every MEMBER present in person or by proxy and entitled to vote, shall be entitled to 1 (ONE) vote per single ERF; provided that if a single Erf (or Unit) is registered in more than one person's name, then they shall jointly have 1 (ONE) vote.
65. At any meeting of MEMBERS a Resolution put to the vote of the meeting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by any MEMBER.
- If a poll is duly demanded it shall be taken in such manner as the Chairperson directs, and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded.
66. Save as expressly provided for in these presents, no person other than a MEMBER duly registered, and who shall have paid every contribution (as contemplated in Par.

- 11) and other sum (if any) which shall be due and payable to the ASSOCIATION in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting.
67. At any General Meeting a Resolution put to the vote of the meeting shall be decided on by an ordinary majority of votes represented by MEMBERS entitled to attend and vote thereat, present in person or by proxy.
68. Voting on the election of a Chairperson of a General Meeting as referred to in Par. 59 (if necessary) or on any question of adjournment, shall be decided on an ordinary majority of votes represented by MEMBERS entitled to attend and vote thereat, present in person or by proxy.
69. 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.
70. 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 and an abstention shall not be counted as a vote for or against the Resolution in question. In the case of an equality of votes, the Chairperson of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
71. 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 Chairperson of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson 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. An entry in the Minutes of the ASSOCIATION to the effect that any motion has been carried or rejected, 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 Chairperson of the meeting as to the result of any voting at the meeting.
- 71.1 Every resolution put to the vote at a general meeting shall be worded as set out in the notice of the meeting. Should such a resolution be amended at the meeting and seconded as required by Paragraph 69 above, the amendment and wording of the proposed resolution as amended, shall either be projected on a screen at the meeting, or read out loud to the meeting, before the resolution is brought to the vote.

### **FINANCIAL YEAR END**

72. The Financial Year-end of the ASSOCIATION shall be the end of SEPTEMBER of each year.

### **ACCOUNTS**

73. 73.1. The TRUSTEES shall cause proper books of account and records to be kept

so as fairly to explain the transactions and financial position of the ASSOCIATION, including:

- 731.1. a record of the assets and liabilities of the ASSOCIATION;
  - 731.2. a record of all sums of money received and expended by the ASSOCIATION and the matters in respect of which such receipt and expenditure occurred;
  - 731.3. a register of MEMBERS showing in each case their addresses;
  - 731.4. individual ledger accounts in respect of each owner.
- 73.2. On the application of any MEMBER the TRUSTEES shall make all or any of the books of account and records available for inspection by such MEMBER.
- 73.3. The TRUSTEES shall cause all books of account and records to be retained for a period of SIX years after completion of the transactions, acts or operations to which they relate.
74. 74.1. The ASSOCIATION in General Meeting or the TRUSTEES, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by 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.
- 74.2. At each Annual General Meeting the TRUSTEES shall lay before the Association audited financial statements for the immediately preceding financial year of the ASSOCIATION, or in the case of the first period since the date of incorporation of the ASSOCIATION made up for that period. Such financial statements shall have been drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the TRUSTEES and/or as recommended by Auditors, and shall be attached to the notice sent to MEMBERS convening each Annual General Meeting, as set forth in Par. 50 supra, together with copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

#### **DEPOSIT AND INVESTMENT OF FUNDS**

75. 75.1. The TRUSTEES shall cause all moneys received by the ASSOCIATION to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the ASSOCIATION and, such moneys shall only be withdrawn for the purpose of payment of the expenses of the ASSOCIATION or investment in terms of Par. 75.2.
- 75.2. Any funds not immediately required for disbursements may be invested in a savings or similar account with any bank or any other registered deposit taking institution approved by the TRUSTEES from time to time.

- 75.3. Interest on moneys invested shall be used by the ASSOCIATION for any lawful purpose.

### **AUDIT**

76. At least once in every year, the accounts of the ASSOCIATION shall be examined, and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors, if so required by such General Meeting.
77. The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards in terms of the Public Accountants' and Auditors' Act.

### **INDEMNITY**

78. 78.1. All TRUSTEES and the Auditors 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 in his capacity as Chairperson, Vice-Chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 78.2. Every TRUSTEE, every servant, agent and employee of the ASSOCIATION, and the Auditors shall be indemnified by the ASSOCIATION against (and it shall be the duty of the TRUSTEES 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 his/their respective duties, including in the case of a TRUSTEE, his duties as Chairperson or Vice-Chairperson. 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 him jointly or severally in connection with the discharge of his duties provided that any such act, deed or letter has been done or written in good faith.
79. A TRUSTEE shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other TRUSTEES, whether in their capacities as TRUSTEE or as Chairperson or Vice-Chairperson, 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 TRUSTEES for or on behalf of the ASSOCIATION, or for the insufficiency or deficiency of any security in or upon which any of the moneys 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 moneys, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

## **PRIVILEGE IN RESPECT OF DEFAMATION**

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

## **ARBITRATION**

81. Any dispute, question or difference arising at any time between MEMBERS or between MEMBERS and TRUSTEES or amongst the TRUSTEES out of or in regard to:

- 81.1. any matters arising out of these presents; or
- 81.2. the rights and duties of any of the parties mentioned in these presents; or
- 81.3. the interpretation of these presents;

shall be submitted to and decided by arbitration on notice given by any party to the other parties who has a direct interest in the matter in question.

82. Arbitration shall be held at a location determined by the TRUSTEES.

- 82.1 The TRUSTEES shall further determine, having regard to the nature of the dispute:

82.1.1 whether the arbitration proceedings are to be informal with the arbitrator acting as an expert and where the intention is to conclude the arbitration within 21 (twenty one) business days from the arbitrator entering upon the dispute; or

82.1.2 whether the proceedings are to be formal with the arbitrator acting as an arbitrator in terms of the Arbitration Act 42 of 1965 and in which event the proceedings will be regulated by the Rules of the Conduct of Arbitrations published by the Association of Arbitrators of Southern Africa current at the time when the arbitration has been demanded.

83. The Arbitrator shall be if the question in dispute is:

- 83.1. primarily an accounting matter - an independent chartered accountant;



83.2. primarily a legal matter - a practising counsel or attorney of not less than 10 (TEN) years standing;

83.3. any other matter - an independent and suitably qualified person nominated by the Association of Arbitrators;

as may be agreed upon between the parties to the dispute.

84. If agreement cannot be reached upon a particular arbitrator within 10 (TEN) Business Days after the arbitration has been demanded, then:

84.1. the Chairperson of the Association of Arbitrators of Southern Africa for the time being shall nominate the arbitrator in terms of Par. 83, within 10 (ten) Business Days after the parties have failed to agree.

85. The arbitrator shall have regard to the principles laid down in terms of this CONSTITUTION and shall have the powers provided for in the Arbitration Act. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the ASSOCIATION as he in his sole discretion may deem fit.

86. The decision of the arbitrator shall be final and binding and may be made an Order of Court upon the application of any party to the arbitration.

87. Notwithstanding anything to the contrary contained in Par. 79 to 85 inclusive, the TRUSTEES shall be entitled to institute legal proceedings on behalf of the ASSOCIATION by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting or remedying breaches of any of these provisions.

### **DOMICILIUM CITANDI ET EXECUTANDI**

88. 88.1. The TRUSTEES shall from time to time determine the address constituting the *domicilium citandi et executandi* of the ASSOCIATION, subject to the following:  
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88.1.1. Such address shall be the address of the Chairperson or the administrative office of the ASSOCIATION;

88.1.2. The TRUSTEES shall give notice to all MEMBERS of any change of such address.

88.2. The *domicilium citandi et executandi* of each MEMBER shall be the address as provided, in writing, to the Board of TRUSTEES; provided that he shall be entitled from time to time to change the said *domicilium* but that any new *domicilium* selected shall be within the borders of the Republic of South Africa, and that the change shall only be effective on receipt of written notice thereof by the ASSOCIATION at its *domicilium*.

If no address which is to serve as a member's *domicilium citandi et executandi*

is provided by a member to the Board of Trustees, the erf or the erven which that member is the owner of and in respect of which the notice or process is to be delivered/served shall be the member's *domicilium citandi et executandi*.

## **AMENDMENT OF CONSTITUTION AND CONSENT OF LOCAL AUTHORITY AND SOUTH AFRICAN REVENUE SERVICE**

89. 89.1. This CONSTITUTION may be amended, added to or repealed by an ordinary resolution of the MEMBERS provided that a Special Resolution will be required to amend Paragraphs 18, 36, 90, 91 and this paragraph. No amendment of Paragraphs 8, 89.1, 89.2 and 92.

89.2 Proper notice of each amendment must be given in terms of Paragraph 48. With an ordinary and special resolution, the terms and effect of the resolution as well as the reasons must be furnished.

90. The provisions hereof shall not be added to, amended or repealed without the consent in writing of the Local Authority or its assigns, any amendments to the constitution must be submitted to the Commissioner for the South African Revenue Service.

91. The following conditions shall apply to MEMBERS and their successors in title, namely:-

### 91.1 MAINTENANCE OF VEGETATION

The MEMBER shall throughout his period of ownership of the Erf maintain the natural vegetation fronting on the road verge abutting his Erf according to a standard approved from time to time by the TRUSTEES.

### 91.2 TREES NOT TO BE REMOVED

No existing trees on the Erf or on the road verge may be damaged and none shall be removed without the prior written consent of the TRUSTEES.

### 91.3 NO CHANGE TO COLOUR SCHEME OR STREET FACADE

No change may be made to the external colour scheme and materials used on the Erf, including when effecting any repairs or maintenance without the prior written consent of the TRUSTEES. Burglar bars shall be fixed internally and shall be of a design approved by the TRUSTEES.

### 91.4 APPROVAL OF ALTERATIONS

The MEMBER undertakes not to alter, add to, demolish, redecorate or reconstruct the property and/or building without the prior written consent of the TRUSTEES, which consent shall not be unreasonably withheld.

91.5 SPECIAL STRUCTURES

The erection of any awnings, blinds, patios, roofs or any other coverings or additions as well as the colours and quality thereof shall be approved by the TRUSTEES prior to erection thereof and such approval shall be furnished by the TRUSTEES in writing, failing which the TRUSTEES shall be entitled to demand that such structure or attachment be forthwith removed.

91.6 MAINTENANCE OF ERF

All Buildings on the Erf, including all walls, fences, gates and other structures, as well as gardens and court areas exposed to public view must be maintained in a neat and tidy condition and in a state of good repair.

91.7 SCREENING OF VEHICLES

The MEMBER shall not permit any commercial vehicle, boat, caravan, trailer or any derelict vehicle to be parked on or in front of the Erf which in the opinion of the TRUSTEES is unsightly.

91.8 WASHING LINES

Washing lines are not to be visible from the street or from neighbouring properties and the MEMBER is to ensure that no line protrudes above the level of the yard or garden walls. "Retractable lines" are recommended.

91.9 NON-COMPLIANCE

If any purchaser, tenant or occupier of the Building or Erf by act or omission breaches any condition of this Para. 91., the TRUSTEES may give the MEMBER written notice to make good such breach within a time specified in such notice and upon his failure to do so, the TRUSTEES or any authorised person(s) may enter upon the Erf to take the necessary action in the absolute discretion of the TRUSTEES and may recover the cost from any person served with such notice. The aforesaid action shall include, but not be limited to obtaining the services of gardening consultants/services.

**GENERAL STIPULATIONS**

92. The ASSOCIATION may not at any stage after the coming into operation of the CONSTITUTION apply to develop the Public Area for commercial gain. This Par 92 may not be amended at all.
93. The DEVELOPER obtained the right to develop a recreational area for the Development. The responsibility to develop the recreational area and all the costs in relation thereto rests on the ASSOCIATION.