

With effect from 1st January 2014

CARMEL GARDENS
HOME OWNERS'
ASSOCIATION
CONSTITUTION

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CARMEL GARDENS HOME OWNERS' ASSOCIATION

OF THE

CONSTITUTION

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1. INTERPRETATION

1.1 In this Constitution:

1.2 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

"this Constitution" means this Constitution and regulations and by-laws of the Association from time to time in force;

"local authority" means the **Buffalo City Local Municipality** or any other local authority having jurisdiction over the Home Owners' Association;

"Building Plans Committee" shall consist of no less than one person appointed by the Trustees for the time being of the **CARMEL GARDENS HOME OWNERS' ASSOCIATION**

"registered owner" means the party or parties acquiring ownership and taking transfer of one or more ErfErvven.

"common area" means the private roadway, passages and also open space;

"common services" means pipes, cables, drains, and installations in connection with electricity, water, sewerage and drainage on the common property for which neither Members individually or the Local Authority are responsible;

"Office" means the administrative office of the Association;

"Member" means a Member of the Association;

"Trustees" means natural persons elected by the Members of the Association from time to time subject to the provisions of paragraphs 11 and 12 hereunder;

"Chairman" means the Chairman of the Trustees;

"Vice-Chairman" means the Vice-Chairman of the Trustees;

"Secretary" means the Secretary of the Trustees;

The main objects of the Association shall be: -

3. MAIN OBJECTS

ASSOCIATION

2.1 The Association which is hereby constituted is comprised of all registered owners of dwellings on the Erven known as CARMEL GARDENS HOME OWNERS'

2. MEMBERS OF THE ASSOCIATION

1.3 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 genders.

"in writing" means written or printed;

"year" means calendar year;

"month" means calendar month;

Holidays;

"business day" means weekdays other than Saturdays, Sundays and Public

present in person or by proxy;

"Special Resolution" means a Resolution passed at an Annual General Meeting or a Special General Meeting whereat Members present in person or by proxy represent at least 75% (seventy five per centum) of the total votes; and passed by 75% (seventy five per centum) of the total votes represented by Members

proxy;

"Resolution" means a Resolution other than a Special Resolution passed at an Annual General Meeting or a Special General Meeting by an ordinary majority of the total votes represented at such meeting by Members present in person or by

Bookkeeper, or equally qualified person, of the Association;

"Auditor / Bookkeeper, or equally qualified persons" means the Auditor /

3.1 The maintenance and control of the private property, the perimeter fence, sewers, drains, walkways, service infrastructure and the protection of the communal interests of the Members.

3.2 To control, regulate, maintain, repair, develop and keep in good order all areas, roadways and all services, common to and/or which serve and relate to the Erven and Erf, to promote the common interest of the Members as registered owners of the Erven.

3.3 To monitor, regulate, control, administer, adjudicate and otherwise maintain the building standards in the private township.

4. MAIN BUSINESS

4.1 The main business of the Association shall be the general management and administration of **CARMEL GARDENS HOME OWNERS' ASSOCIATION**

4.2 Such business shall include the maintenance of the common areas and;

4.3 Interpretation and Enforcement of Building standards and the other provisions of this Constitution.

4.4 Where requested to do so, to adjudicate disputes between members or any other interested party relating to the building specifications and standards or any other aspects of interpretation or enforcement of this Constitution.

5. THE COMMON AREA

5.1 Neither the whole nor any portion of the common 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);

6. CONDITIONS OF MEMBERSHIP

without the sanction of a Special Resolution of the Association. The provisions of 5.1.1 to 5.1.3 shall not, however apply to testamentary disposition, foreclosure by a Bank or Building Society, or expropriation by a Local Authority or Central Government in accordance with an Act of Parliament.

6.1 Membership of the Association shall be limited to the registered owners.

6.2 When a Member ceases to be the registered owner of an Erf, he shall ipso facto cease to be a Member of the Association. No Erf shall be transferred without the written consent of the Association which consent shall not be unreasonably withheld, provided that:

6.3 the registered owner of the Erf in question has fulfilled all his financial obligations to the Association in terms of this Constitution; and

6.4 the Agreement of Sale concluded between the registered owner and Purchaser of the said Erf contains the following term:

"The Purchaser specifically agrees, by affixing his signature hereto, to become a Member of the **CARMEL GARDENS HOME OWNERS' ASSOCIATION** upon registration of the aforementioned property in his name and further specifically agrees to abide by the provisions of the Constitution of the Association, any regulation made in terms thereof and any agreements referred to therein, insofar as those agreements may directly or indirectly impose obligations on him."

6.5 There are no legal proceedings contemplated or pending by the Home Owners' Association against the Member; provided however that if such proceedings are pending or anticipated, the Association shall be obliged to give its consent if suitable guarantees are provided by such Member guaranteeing the capital amount of the claim together with the anticipated costs of suit. The Association shall be placed in a position where it is not prejudiced by the consent.

7. LEVIES

- 6.6 A registered owner may not resign as a Member.
- 6.7 The rights and obligations of a Member shall not be transferable and every Member shall:
- 6.8 to the best of his ability further the objects and interests of the Association;
- 6.9 observe all by-laws and regulations made by the Association or the Trustees;
- 6.10 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.
- 7.1 The Trustees shall establish and maintain a levy fund, to which end they shall from time to time make levies upon the registered owners in such amounts as are in their opinion sufficient for the control, management and administration for the repair, upkeep and maintenance of the common area, for the payment of rates and taxes and any other local authority charges, if any, and charges for the supply of electric current, water and sanitary and other services, and for services required by the Association for recovering any losses suffered by the Association, for the payment of any premiums of insurance and for the discharge of any other obligation of the Association.
- 7.2 The Trustees shall estimate the amount which shall be required by the Association to meet the aforesaid expenses during each operational year or any portion thereof, together with the estimated deficiency, if any, as may have resulted from the preceding operational year or portion thereof, and shall make a levy upon the registered owners, equal as nearly as is reasonably practical to such estimated amount. The Trustees may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such expenses to be incurred for such purpose as may be deemed necessary by the Trustees from time to time in carrying out their duties or as decided upon by members at an Annual General Meeting or Special General Meeting.
- 7.3 The Trustees may from time to time, make special levies upon the Members in

- 8.1.2 the external appearance of and the maintenance of the common area
- 8.1.1 the Member's rights of use, occupation and enjoyment of the common area;
- 8.1 make regulations governing *inter alia*:

The Trustees may from time to time:

8. MEMBERS' OBLIGATIONS

- 7.9 All Erven irrespective of size shall be levied equally.
 - 7.8 No Member on ceasing to be a Member shall be entitled to repayment of any reserve funds of the Association.
 - 7.7 Notwithstanding the foregoing if rates and taxes and other costs can be charged directly to and payable by an individual Member in respect of his Erf the Members can make a suitable arrangement in this respect.
 - 7.6 No Member shall be entitled to any of the privileges of Membership unless, and until, he has paid every subscription and/or levy and any other sum (if any) which is due and payable to the Association.
 - 7.5 All Members shall have equal voting rights.
 - 7.4 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a registered owner, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a registered Owner. No levies 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 as from the date upon which he becomes a Member pursuant to the transfer of that Erf, to pay the levy attributable to that Erf.
- respect of all such expenses as are mentioned in 7.1 (which are not included in any estimate made in terms of 7.2), and such levies may be imposed and be payable in one sum or by such installments and at such time or times as the Trustees shall think fit.

8.4.3 All Members shall strictly adhere to walkway access on the property in order

Association.

8.4.2 No Members shall cause or permit any disorderly conduct of whatsoever nature, inclusive of ritual killings, on his Erf or do or permit any act, matter or thing in or about the same which shall constitute or cause a nuisance or any inconvenience to any other Member, occupant or staff of the Home Owners' Association.

8.4.1 All Members shall ensure that their respective activities on and uses of the property or any part thereof with all its services, facilities and amenities shall at all times be conducted and carried out with reasonable and diligent care and with due and proper consideration for other Members of the Home Owners' Association in accordance with these regulations. These regulations shall likewise apply to guests and employees of Members while they are on the property.

8.4 USE OF PREMISES

8.3.4 the directive of the Association made hereby, that save for the common area, no single residential Erf resulting from the sub-division of the original Erf shall be permitted to be further sub-divided by any registered owner thereof at any time.

8.3.3 any agreements referred to herein insofar as those agreements may directly or indirectly impose obligations on him;

8.3.2 any regulations made in terms hereof or by Special Resolution of members;

8.3.1 the provisions of this Constitution;

8.3 Each Member undertakes to the Association that he shall comply with:

8.2 enter into agreement(s) with third parties on behalf of the Association; *inter alia*, the Local Authority, governing the matters set out herein and any other matters incidental thereto.

and the buildings or other improvements erected thereon;

- 8.5.3 Keep on the Erf any materials of a dangerous or explosive nature, the keeping of which contravenes any statutory or local regulation or by-law or constitutes a nuisance to other Members or voids or renders void any insurance premiums effected by the Home Owners' Association or any other Members, or increases such premiums.
 - 8.5.2 Allow any part that the member owns to become unsanitary or accumulated with rubbish, a danger to health or otherwise dirty or untidy.
 - 8.5.1 Neglect to make good any damage caused to any part of the common property by the Member, his family, tenant, invitee or guest or any other person over which the Member has control.
- No Member shall, save with the written prior consent of the committee:

8.5 PRIOR CONSENT OF COMMITTEE (RESTRICTIONS):

- 8.4.8 A motor vehicle shall not be parked in a place that has not been set aside or demarcated for this purpose and shall at no time be permitted to obstruct any roads, entrances or the like.
 - 8.4.7 No motor vehicle may be repaired within the boundaries of the property, except for minor repairs.
 - 8.4.6 No animals or pets shall be kept and harboured on the site (erf) or on common property, unless the same has been expressly permitted in writing by the Committee.
 - 8.4.5 No quad bikes to be driven on the common property. Motorcycles shall be allowed onto the property provided that there is no revving or excessive noise.
 - 8.4.4 No caravans, trailers or tents shall be allowed to be permanently parked or erected on the common property.
- that privacy of other Members may not be infringed upon, or natural vegetation be disturbed in any way.

No Member shall hold or allow any other person to hold on any portion of the property any auction sale without prior written consent of the Committee, which consent shall not be unreasonably withheld.

8.10 AUCTION SALES

Access roads to dwellings erected on the property will be for the sole use of Members entitled to the use of such dwelling or people authorised by such Member or a Member of his family.

8.9 VEHICULAR ACCESS

To assist in the control of vagrants, trespassers and security, owners and tenants are requested to issue their employees with a note of identification authorising their presence in the complex. Domestic employees are to keep the employees' toilets clean and employers to please provide toilet paper.

8.8 DOMESTIC EMPLOYEES

The Members shall not allow any of his possessions whatsoever or rubbish, debris, dirt or refuse to be left anywhere on the property other than in places specifically designated for that purpose. The Member shall ensure that all refuse is put out on the designated day for the collection of same. Refuse to be securely tied up in a plastic refuse bag, no refuse to be placed outside the refuse area. Please ensure that the refuse room is locked on leaving.

8.7 REFUSE

Members may not commit or permit any act which would increase the hazard of fire or have the effect of increasing the rates of insurance premiums. Members will not be allowed to make fires other than in their own private braai areas.

8.6 HAZARDS (FIRE)

8.5.4 Permit any of his possessions or the possessions of any of his household or any of his visitors or invitees to remain in any entrance, walkway or other part of the property to which Members have common access.

8.11 GARDEN AREAS

No Member shall without prior written consent of the Committee introduce any alien vegetation on to the property; only gardens consisting of the natural existing vegetation spectrum may be kept. All owners and/or tenants are to keep their gardens respectable.

8.12 MANAGER

8.12.1 The Committee may appoint a manager on such terms, conditions and remuneration as they in their absolute discretion may deem fit. Such manager will accept responsibilities as determined by and will report directly to the Committee.

8.12.2 Members may not, in any circumstances, interfere with the Manager in the execution of his duties as laid down by the Committee from time to time.

8.13 LETTING

The Member may let or part with occupation of his Erf provided:

8.13.1 That no such letting and/or parting with occupation shall in any way release the Member from any of his obligations to the Home Owners' Association.

8.13.2 That as a condition precedent to any such letting and/or parting with occupation, the Member shall secure from the Lessee, or the person to whom occupation was given, as the case may be, an undertaking in favour of the Home Owners' Association that such lessee or person shall duly observe all such regulations and conditions as are contained herein and which may be reasonably considered as being applicable to a lessee. Such undertaking shall be in such terms as the Committee of the Home Owners' Association shall from time to time require.

8.13.3 The main standard will be set by the Home Owners' Association for sub-letting for reward.

8.15.2 The common area buildings shall be insured by the Home Owners' Association and the cost thereof shall form part of the monthly levy applicable.

8.15.1 It shall be the Member's responsibility to effect his own insurance in respect of the contents of the buildings and boundary walls on his Erf and to pay all insurance premiums in respect thereof.

8.15 INSURANCE

8.14.4 The Member may make improvements to the interior of the building on the Erf, but no structural alterations or additions to the water, gas, sewerage, electric conduits or plumbing may be effected without the written consent of the Home Owners' Association having been previously obtained and which Consent shall be subject to the architectural and landscape conditions of this Constitution.

8.14.3 Should the Member refuse to effect any repairs and/or renovations after 30 days of being instructed to do so by the Home Owners' Association, the Home Owners' Association may effect such repairs and/or renovations and claim the cost thereof from the Member.

8.14.2 Where any dispute arises as to whose liability it is to maintain any portion of the property, such dispute shall be determined by the Committee of the Home Owners' Association and the decision of the Committee shall be final and binding on the parties to the dispute.

8.14.1 The Member shall at all times at his own expense maintain the building on his Erf, including without limitation all electrical wiring and fittings, plumbing installations and apparatus and all fittings whatsoever in good and sound order and repair and in a thoroughly clean, tidy and tenable condition and shall be responsible for all maintenance, repairs and replacements of whatever nature, including without limitation, all painting, repairs and if necessary, the clearing of any blockages of drains, sewers, plumbing and sanitary equipment and connections and the maintenance and replacement thereof and all such repairs and renovations to the Erf of whatever nature, the Home Owners' Association having no liability therefore,

8.14 MAINTENANCE

8.16 RIGHTS AND OBLIGATIONS OF THE HOME OWNERS' ASSOCIATION

8.16.1 It shall be the duty of the Home Owners' Association at its own expense:

8.16.1.1 to maintain in good order and repair and in clean and tenantable condition the roads, buildings, recreating facilities, lawns, pathways and all such other portions of the property which are not reserved for the exclusive use of the Member.

8.16.1.2 to effect such insurances over and in respect of the property not reserved for the exclusive use of Members against damage in accordance with any relevant resolutions passed by the Members of the Home Owners' Association from time to time at general meetings of the Home Owners' Association and to renew such policies.

8.16.2 The Home Owners' Association shall not be responsible for the repair and renovation of any portion of the property reserved for the exclusive use of the Member, unless the Committee determines otherwise.

8.16.3 The Home Owners' Association shall at all times, through its committee, be entitled to inspect the said Erf occupied by the Member, on receipt of a complaint by another member, and if dissatisfied with the condition thereof, it may call upon the Member to carry out the obligations imposed upon him by the terms of this agreement. Should the Member fail to maintain the said Erf in good order and condition, the Home Owners' Association shall, after 30 (thirty) days written notice to the Member, be entitled without prejudice to any other rights it may have, to put into good order and condition at the expense of the Member and to recover from the Member any expenditure thereby incurred.

8.16.4 Any agent or workmen shall be permitted on any Erf on the said property at any reasonable hour of the day if authorised by the Committee or Manager to examine or effect repairs to the said property.

8.16.5 The Home Owners' Association shall not be responsible for any loss, damage or injury which the Member's visitors or any person occupying the Erf through or at the instance of the Member may sustain on the Erf or in or about the Home Owners' Association

9.1.1 be fined by the Association in an amount not exceeding an amount equal to double the sum outstanding; and/or

9.1.2 be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question, such sum as compensation;

9.1.3 be liable for and pay all legal costs including costs as between attorney and client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such Member to the Association.

9.1 Any Member who fails to make payment to the Association on due date of any monthly levy or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of this Constitution, may, if so determined by a Resolution passed by not less than 51 (FIFTY-ONE) PERCENT of the Trustees present at a meeting of Trustees:

9. BREACH

8.16.6 No liability shall result upon the Home Owners' Association for any interruption or failure of the electrical and/or other services to the property, irrespective of the cause thereof, nor for any consequential damage the Member may occur by reason of such failure or interruption.

Association property by reason of any act whatsoever, or neglect on the part of the Home Owners' Association be responsible for any loss, damage or injury of any description which the Member or such other person may sustain by reason of the property which are effected by the Home Owners' Association or by the occupant thereof, or by reason of such repairs, renovations and maintenance work to the rest of the property which are effected by the Home Owners' Association or by the occupant thereof, or by reason of such repairs, renovations and maintenance work to the rest of the property which are effected by the Home Owners' Association or by the occupant thereof, or by reason of such repairs, renovations and maintenance work not being effected timeously or at all, and the Member shall not be entitled for any of the reasons aforesaid or for any other reason whatsoever to withhold any payment due to the Home Owners' Association.

11.3 save for the provisions of clause 11 (2), a trustee or alternate trustee shall not be required to be an owner or the nominee of an owner who is a juristic person, in order to qualify for office as a trustee: Provided that—

Qualifications

11.2 With effect from the date of the establishment of the Home Owners' Association, five Trustees shall be elected who shall hold office until the first general meeting of the members of the Home Owners' Association whereupon they shall retire but shall be eligible for re-election.

11.1 The number of trustees shall be determined from time to time by the members of the Home Owners' Association in general meeting, provided that there shall be not less than two and not more than five Trustees.

Qualifications; appointment and election; tenure of office; remuneration; indemnity.

11. TRUSTEES OF THE HOME OWNERS' ASSOCIATION

No Member ceasing to be a Member of the Association for any reason shall (nor shall any such Member's executor, curator, Trustee or liquidator) 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 subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Member.

10. CESSATION OF MEMBERSHIP

9.3 The Trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine.

9.2 The Member concerned shall be invited to attend such meeting of Trustees by notice in writing delivered to such Member not less than 7 (Seven) 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 Chairman of such meeting.

as in each case shall have been determined at such meeting of Trustees.

11.9 An alternate trustee shall cease to hold office if the trustee whom he replaces, ceases to be a trustee, or if the alternate's appointment is revoked by the trustees.

11.8 An alternate trustee shall have the powers and be subject to the duties of a trustee.

11.7 The trustees may appoint another person, whether or not he be the owner of a unit, to act as an alternate trustee during the absence or inability to act of a trustee.

Alternate trustees

11.6 The trustees may fill any vacancy in their number. Any trustee so appointed shall hold office until the next annual general meeting when he shall retire and be eligible for re-election as though he had been elected at the previous annual general meeting.

Vacancy in number of trustees

11.5 Nominations by owners for the election of trustees at any annual general meeting shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the domicile of the Home Owners' Association not later than 48 hours before the meeting: Provided that trustees are also capable of being elected by way of nominations with the consent of the nominee given at the meeting itself should insufficient written nominations be received to comply with clause 11 (1).

Nominations

11.4 Save for the provisions of clause 11 (2), the trustees shall be elected at the first Annual General Meeting and thereafter at each subsequent annual General Meeting, and shall hold office until the next succeeding Annual General Meeting, but they shall be eligible for re-election, if so nominated.

Election of trustees

- (a) the majority of the trustees are owners, or spouses of owners; and
- (b) the managing agent or any of his or her employees or an employee of the Home Owners' Association may not be a trustee unless he or she is an owner.

b) It shall be the duty of the trustees to pay such indemnity out of the funds of the Home Owners' Association.

Subject to the provisions of sub-clause (2), every trustee, agent or other officer of the Home Owners' Association shall be indemnified by the Home Owners' Association against all costs, losses, expenses and claims which he may incur or become liable to by reason of any act done by him in the discharge of his duties, unless such costs, losses, expenses or claims are caused by the mala fide or grossly negligent act or omission of such person.

11.13 a) Indemnity

11.12 Any act performed by the trustees shall, notwithstanding that it is after the performance of the act, discovered that there was some defect in the appointment or continuance in office of any trustee, be as valid as if such trustee had been duly appointed or had duly continued in office.

Validity of acts of trustees

11.11 The Home Owners' Association may remunerate trustees who are not owners at such rate as may be agreed upon between the Home Owners' Association and such trustees, and such trustees shall further be entitled to have refunded to them any disbursements and expenses incurred by them in the circumstances envisaged in the proviso to sub-clause (11.10) of this clause, provided always that an alternative trustee appointed by the Trustees, who is not an owner, shall claim his remuneration, if any, from the trustee whom he replaced and not from the Home Owners' Association, unless the Home Owners' Association has been instructed in writing by such trustee to pay any portion of his remuneration to such alternate trustee.

11.10 Unless otherwise determined by a special resolution of the owners, trustees who are owners shall not be entitled to any remuneration in respect of their services as such: provided that the Home Owners' Association shall reimburse to the trustees all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.

Remuneration

13.1 (1) Subject to the provisions of sub-clause (2) and (3) hereof, the trustees may give notice convening meetings, meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give notice of a meeting of trustees to any trustee for the time being absent from the Republic, but notice of any such meeting

When to be held and notice

13. MEETING OF TRUSTEES - QUORUM; CHAIRMAN; VOTING

12.2 The Home Owners' Association may at a general meeting appoint another trustee in the place of any trustee who has ceased to hold office in terms of clause 20, for the unexpired part of the term of office of the trustee so replaced.

Replacement

company.

- (a) if by notice in writing to the Home Owners' Association, he resigns his office;
- (b) if he is or becomes of unsound mind;
- (c) if he surrenders his estate as insolvent, or if his estate is sequestrated;
- (d) if he is convicted of an offence which involves dishonesty;
- (e) if by resolution of a general meeting of the Home Owners' Association, he is removed from his office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
- (f) if he is or becomes disqualified in terms of section 218 or 219 of the Companies Act, 1973, from being appointed or acting as a director of a

12.1 A trustee shall cease to hold office as such—

Removal from Office

12. DISQUALIFICATION OF TRUSTEES

11.15 The Home Owners' Association shall obtain insurance sufficient to cover any and/or indemnity referred to in clause 11.13 a) + b) above. The amount of insurance required shall be updated on an annual basis, taking into account the previous year's claims and/or any prospective claims, losses or expenses.

appointed in terms of clause 15.20.

11.14 The indemnity referred to shall not apply in favour of any managing agent

shall be given to his alternate, if he has appointed one, where such an alternate is in the Republic.

(2) A trustee may at any time convene a meeting of the trustees by giving to the other trustees and all first mortgagees in the circumstances referred to in sub-clause (3) hereof, not less than seven 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.

(3) Any mortgagee holding first mortgage bonds over units shall, if he so requires of the trustees in writing, be entitled to receive reasonable notice of all meetings of the trustees.

(4) The nominee of any such first mortgagee shall be entitled to attend and speak at all meetings of the trustees but shall not, in his capacity as such, be entitled to vote thereat.

(5) An owner shall be entitled to attend and speak at any meeting of the trustees, but shall not in his or her capacity as such, be entitled to vote thereat.

Quorum

13.2 (1) At a meeting of the trustees, 50 percent of the number of trustees but not less than three, shall form a quorum.

(2) If the number of trustees falls below the number necessary to form a quorum, the remaining trustee or trustees may continue to act, but only for the purpose of appointing or co-opting additional trustees to make up a quorum or for the purpose of convening a general meeting of owners.

13.3 If at any meeting of trustees a quorum is not present within thirty minutes of the appointed time of the meeting, such meeting shall stand adjourned to the next business day at the same time, and the trustees then present, who shall not be less than three, shall form a quorum.

13.10 A resolution in writing signed by all the trustees for the time being present in the Republic and being not less than are sufficient to form a quorum, shall be as valid and effective as if it had been passed at a meeting of the trustees duly convened and held.

13.9 A trustee shall be disqualified from voting in respect of any contract, or any litigation or proposed litigation, with the Home Owners' Association, by virtue of any interest he may have therein.

13.8 All matters at any meeting of the trustees shall be determined by a majority of the votes of the trustees present and voting.

Voting

13.7 If any chairman vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the trustees present at such meeting shall choose another chairman for such meeting who shall have the same rights of voting as the chairman.

13.6 If any chairman elected in terms of clause 13.4 vacates his office as chairman or no longer continues in office by virtue of the provisions of clause 12, the trustees shall elect another chairman who shall hold office as such for the remainder of the period of office of the first-mentioned chairman, and who shall have the same rights to voting.

13.5 The trustees at a trustees' meeting or the Home Owners' Association at a special meeting, in respect of either of which notice of the intended removal from office of the chairperson has been given, may remove the chairperson from his or her office.

13.4 At the commencement of the first meeting of trustees after an annual general meeting, at which trustees have been elected, the trustees shall elect a chairman from among their number, who shall hold office as such until the end of the next annual general meeting of the members of the Home Owners' Association and who shall have a casting as well as a deliberative vote, save where there are only two trustees.

Chairman

15.1 (1) Without detracting from the scope of the additional duties specified in
Statutory and general duties

15. DUTIES OF TRUSTEES

14.3 No document signed on behalf of the Home Owners' Association, shall be valid and binding unless it is signed by at least 2 trustees and the chairman.

Signing of instruments

(2) The trustees may not make loans on behalf of the Home Owners' Association to owners of units or to themselves.

b) to delegate to one or more of the trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation.

(i) the control, management and administration of the common property; and
(ii) The exercise and performance of any or all of the powers and duties of the Home Owners' Association;

(a) To appoint for and on behalf of the Home Owners' Association such agents and employees as they deem fit in connection with—

the following:
of the Home Owners' Association, the powers of the trustees shall include

14.2 (1) Subject to any restriction imposed or direction given at a general meeting

Powers

provisions of the Act and these clauses and to any restriction imposed or direction given at a general meeting of the owners of sections, be performed or exercised by the trustees of the Home Owners' Association holding office in terms of these clauses.

14.1 The duties and powers of the Home Owners' Association shall, subject to the

General

14. THE FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

(b) Before every annual general meeting, the trustees shall cause to be

- (i) fire, lightning and explosion;
- (ii) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
- (iii) storm, tempest and flood;
- (iv) earthquakes;
- (v) aircraft and other aerial devices or articles dropped therefrom;
- (vi) bursting or overflowing of water tanks, apparatus or pipes;
- (vii) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
- (viii) housebreaking or any attempt thereat;
- (ix) loss of occupation or loss of rent in respect of any of the above risks;
- (x) such other perils or dangers as the trustees or any holder of first mortgage bonds over not less than 25% in number of the units in the scheme, may deem appropriate.

are most beneficial to the owners, against—

At the first meeting of the trustees or soon thereafter as is possible, and annually thereafter, the trustees shall take steps to insure the common buildings, and all improvements to the common property, to the full replacement value thereof, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the trustees

Insurance
15.2 (1)

- (3) The trustees shall do all things reasonably necessary for the enforcement of the clauses in force.
- (2) The trustees shall do all things reasonably necessary for the control, management and administration of the common property in terms of the powers conferred upon the Home Owners' Association.
- clauses 11 - 14 inclusive, and subject to the provisions of such clauses, the trustees shall perform the functions entrusted to them.

15.4 (1) The liability of owners to make contributions, and the proportions in which the owners shall be held liable for the payment of a judgment debt of the Home Owners' Association, shall with effect from the date upon which the

15.3 It shall be the duty of the trustees to levy and collect contributions from the owners in accordance with the provisions and in the proportions set forth in clause 7.

Contributions and liability

(3) The owners may by special resolution direct the trustees to insure against such other risks as the owners may determine.

(b) to procure to the extent, if any, as determined by the members of the Home Owners' Association in a general meeting, a fidelity guarantee in terms of which shall be refunded any loss of moneys belonging to the Home Owners' Association or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the service of the Home Owners' Association and all trustees and persons acting in the capacity of managing agents of the Home Owners' Association; and

(i) death, bodily injury or illness; and
(ii) loss of, or damage to, property, occurring in connection with the common property, for a sum of liability of not less than one million rand, which sum may be increased from time to time as directed by the owners in general meeting; and

(a) to insure the owners and the trustees and to keep them insured against liability in respect of—

(2) At the first meeting of the trustees or as soon thereafter as is possible, the trustees shall take all reasonable steps—

prepared schedules reflecting their estimate of the replacement value of the buildings and all improvements to the common property; and such schedules shall be laid before the annual general meeting for consideration and approval in terms of clause 7.

(2) The trustees shall on the application of—

to time ;

15.5 (1) The trustees shall keep a complete record of all clauses in force from time

Record of clauses and rules and their availability

rate as they may from time to time determine.

(6) The trustees shall be entitled to charge interest on arrear amounts at such

clauses, the conduct clauses or the Act.

An owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the Home Owners' Association in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such owner to the Home Owners' Association, or in enforcing compliance with these clauses, the conduct clauses or the Act.

(5)

installments and at such time or times as the trustees shall think fit.

The trustees may from time to time, when necessary, make special levies upon the owners or call upon them to make special contributions in respect of all such expenses as are mentioned in clause 7.3 above [which are not included in any estimates made in terms of clause 15.4.2 above], and such levies and contributions may be made payable in one sum or by such

(4)

after the Annual General Meeting.

Within fourteen days after each annual general meeting the trustees shall advise each owner in writing of the amount payable by him or her in respect of the estimate referred to in sub-clause (2) whereupon such amount shall become payable in installments, as determined by the trustees, from January

(3)

financial year.

At every annual general meeting the Home Owners' Association shall approve, with or without amendment, the estimate of income and expenditure referred to in clause 7 and shall determine the amount estimated to be levied upon the owners during the ensuing

(2)

equal shares.

Home Owners' Association comes into being, be borne by the owners in

The trustees shall at the written request of any owner convene a special general meeting in order to discuss and to deliberate upon the proposals contained in the notice referred to in paragraph (a), at which meeting the owners may approve, with or without amendments, such proposals by way of special resolution.

(b)

(cc) the need, desirability and effect thereof.

upon levies paid by owners; and

(bb) the manner in which it is to be financed and the effect

(aa) the costs thereof; and

(ii) provide details of the improvement as to—

(i) indicate the intention of the trustees to proceed with the improvement upon the expiry of a period of not less than thirty days reckoned from the date of posting such notice; and

Should the trustees wish to effect any improvements to the common property, other than luxurious improvements referred to in sub-clause (1), they shall first give written notice of such intention to all owners. Such notice shall—

(2) (a)

Non-luxurious improvements

facilities

15.6 (1) The trustees may, if the owners by unanimous resolution so decide, effect improvements of a luxurious nature on the common property. eg. braai

Luxurious improvements

Improvements

them to pay a reasonable charge therefore. to any such person a copy of all clauses in force, and may require

(f)

the Auditor / Bookkeeper, or equally qualified person, shall supply

(e)

the managing agent; and

(d)

the holder of any registered sectional mortgage bond;

(c)

the prospective purchaser of a unit;

(b)

an occupant of a unit;

(a)

an owner of a unit;

Books of account and records 15.8 (1) The trustees shall cause proper books of account and records to be kept

- (3) On the written application of any owner or registered mortgagee of a unit, the trustees shall make all minutes of their proceedings and the minutes of the Home Owners' Association available for inspection by such owner or mortgagee.
- (2) The trustees shall keep all minute books in perpetuity.

- (c) include in the minute book of the Home Owners' Association a record of every unanimous resolution, special resolution and any other resolution of the Home Owners' Association.
- (a) keep minutes of their proceedings;
- (b) cause minutes to be kept of all meetings of the Home Owners' Association in a minute book of the Home Owners' Association kept for the purpose;

Minutes 15.7 (1) The trustees shall—

- (4) If and for so long as no separate meters have been installed, the contribution payable by each owner in respect of electricity, water and gas shall be calculated in accordance with the provisions of clause 7.1.
- (3) Notwithstanding the provisions of sub-clauses (1) and (2), the trustees shall, if so required in writing by a majority of owners, procure the installation and maintenance in good working order, at the Home Owners' Association's cost, of separate meters to record the consumption of electricity, water and gas in respect of each individual section and the common property.
- (c) In the event of such a special general meeting being called, the trustees shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any special resolution ensuing therefrom.

so as fairly to explain the transactions and financial position of the Home Owners' Association, including—

- (a) a record of the assets and liabilities of the Home Owners' Association;
- (b) a record of all sums of money received and expended by the Home Owners' Association and the matters in respect of which such receipt and expenditure occur;

- (c) a register of owners and of registered mortgagees of units and of all other persons having real rights in such units (insofar as written notice shall have been given to the trustee by such owners, mortgagees or other persons) showing in each case their addresses; and

- (d) individual ledger accounts in respect of each owner.

- (2) On the application of any owner, registered mortgagee or of the managing agent the trustees shall make all or any of the books of account and records available for inspection by such owner, mortgagee or managing agent.

- (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: Provided that minute books shall be retained for so long as the scheme remains registered.

Annual financial estimate, financial statement and report

- 15.9 (1) Before every annual general meeting, the trustees shall cause to be

prepared an itemised estimate of the anticipated income and expenses of the Home Owners' Association during the ensuing financial year, which estimate shall be laid before the annual general meeting for consideration in terms of clause 28.6 hereof.

- (2) The estimate of expenses referred to in sub-clause 7.2 shall include a reasonable provision for contingencies and the maintenance of the common property.

- 15.10 (1) The trustees shall cause to be prepared, and shall lay before every annual

general meeting, for consideration in terms of clause 22.1.4, a financial statement in conformity with generally accepted accounting practice, which statement shall fairly present the state of affairs of the Home Owners' Association and its finances and transactions as at the end of the financial year concerned.

(2) The financial statement shall include information and notes pertaining to the proper financial management by the Home Owners' Association, including:

- (a) an analysis of the periods of debts and the amounts due in respect of levies, special levies and other contributions;
- (b) an analysis of the periods and the amounts due, owing by the Home Owners' Association to the creditors and in particular to any public or local authority in respect of rates, taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal;
- (c) the expiry dates of all insurance policies.

15.11 The trustees shall further cause to be prepared and shall lay before every annual general meeting a report signed by the chairman reviewing the affairs of the Home Owners' Association during the past year, for consideration in terms of clause 22.1.1

15.12 (1) The trustees shall cause copies of the schedules, estimate, audited statement and report referred to in clauses 22.1.1, 22.1.3, 22.1.4 and 22.1.6 to be delivered to each owner, and to any mortgagee who has advised the Home Owners' Association of his interest, at least fourteen days before the date of the annual general meeting at which they are to be considered.

(2) Delivery under the last preceding sub-clause shall be deemed to have been effected if the documents referred to are sent by registered post / postal delivery / email and/or per hand delivery addressed to the owner at his domicile referred to in clause 33, and to any mortgagee as aforesaid at the address of such mortgagee as reflected in the records of the Home Owners' Association.

- 15.19 (1) The owners shall not be entitled to a refund of contributions lawfully levied upon them and duly paid by them.
- (2) No portion of the profits or gains of the Home Owners' Association shall be

No refunds or distribution of profits or assets

- 15.18 Interest on moneys invested shall be used by the Home Owners' Association for any lawful purpose.
- 15.17 Any funds not immediately required for disbursement, may be invested in a savings or similar account with any registered building society or bank approved by the trustees from time to time.

- 15.16 The trustees may authorise the managing agent to administer and operate the accounts referred to in clause 15.8, provided that where the managing agent is an estate agent as defined in the Estate Agents' Act (Act 112 of 1976), the trustees may authorise such managing agent to deposit moneys in a trust account as contemplated in section 32 (3) of the Estate Agents' Act, 1976, which moneys shall only be withdrawn for the purposes contemplated in clause 15.14.

Deposit and investment of funds

- 15.14 The trustees shall cause all moneys received by the Home Owners' Association to be deposited to the credit of an account or accounts with a registered commercial bank or building society in the name of the Home Owners' Association and, subject to any direction given or restriction imposed at a general meeting of the Home Owners' Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Home Owners' Association or investment.

- 15.13 At the first general meeting and thereafter at every ensuing annual general meeting, the Home Owners' Association shall appoint an Auditor / Bookkeeper, or equally qualified person, to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting: Provided that where a scheme comprises less than 10 units, an accounting officer may be appointed for that purpose and the Auditor / Bookkeeper, or equally qualified person, or accounting officer, as the case may be, must sign the financial statements.

Audit

agents' contract. in no way detract from the trustees' rights to cancel the managing contract in terms of paragraph (a). The foregoing provisions shall servant, require the trustees to cancel the managing agents' would justify the termination of a contract between master and of his contract or if he is guilty of any conduct which at common law buildings may, if the managing agent is in breach of the provisions Any one or more of the owners or mortgagees of sections in the

(b)

cancellation. Owners' Association or any of the owners as a result of such managing agent shall have no claim whatsoever against the Home without notice, cancel such contract of appointment, and that the of a contract between master and servant, the trustees may, guilty of conduct which at common law would justify the termination he is in breach of any of the provisions of his contract, or if he is appointment of all managing agents a provision to the effect that if The trustees shall ensure that there is included in the contract of

(a) (2)

either party. thereafter upon one month's written notice of termination of appointment by managing agent shall be appointed for an initial period of one year and collect levies and to appoint a supervisor or caretaker. Provided that a duties as may be entrusted to the managing agent, including the power to Association on behalf of the unit owners, and to exercise such powers and and the obligations to any public or local authority by the Home Owners' managing agent to control, manage and administer the common property Association in a general meeting, appoint in terms of a written contract a 25 per cent of the units or by the members of the Home Owners' may from time to time, and shall if required by a registered mortgagee of 15.20 (1) Notwithstanding anything to the contrary contained herein, the trustees

The appointment, powers and duties of a managing agent / attorney / accountant

distributed to any owner or any other person except upon destruction or deemed destruction of the building, or where such profit or gain is of a capital nature.

(b) the managing agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the managing agent is a company or a close corporation, any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty, or;

(a) where the managing agent is a juristic person, an order is made for its provisional or final liquidation or, where the managing agent is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the managing agent is a company, it is placed under judicial management; or

15.21 The contract with the managing agent shall further provide for the appointment to be revoked, and such managing agent shall cease to hold office, if—

(d) The trustees shall not be required to cancel the contract of appointment of the managing agent unless and until the owner or mortgagee requiring cancellation in terms of paragraph (b) has furnished them with the security and indemnity as specified in clause 15.20.2 paragraph c (i) + (ii)

(i) all litigation costs reasonably incurred by the trustees in enforcing such cancellation against the managing agent; and
(ii) all other costs and damages arising out of such cancellation, purported cancellation or litigation for which the trustees or the Home Owners' Association might be liable up to the time such owner or mortgagee formally notifies the trustees that he no longer requires them to pursue the action.

(c) Any owner or mortgagee who required the trustees to cancel the managing agent's contract in terms of paragraph (b) shall furnish the trustees with such security as they in their discretion may determine for the payment of and shall indemnify the trustees and the Home Owners' Association against—

17.2 Such Annual General Meeting shall be held at such time and place, subject to the

calling it.

17.1 The Association shall before 31 December in each calendar year, hold a general Meeting as its Annual General Meeting, in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices

17. GENERAL MEETINGS OF THE ASSOCIATION

Constitution.

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 / Bookkeepers, or equally qualified person, Attorneys, Advocates, Architects, Engineers, any other person, or firm, professional or otherwise, and/or any other employees 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 this

16. OTHER PROFESSIONAL OFFICERS

(2) The trustees shall from time to time furnish to the managing agent copies of all minutes of the trustees and of the Home Owners' Association.

present thereat.

15.23 (1) The trustees shall give reasonable prior notice to the managing agent of all meetings of the trustees and he may with the consent of the trustees be

15.22 The managing agent shall keep full records of his or her administration and shall report to the Home Owners' Association and all holders of registered sectional mortgage bonds who have notified the Home Owners' Association of their interest to all matters which, in his or her opinion, detrimentally affect the value or amenity of the common property and any of these sections.

(c) a special resolution of the members of the Home Owners' Association is passed to that effect: Provided that in such event the managing agent so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.

18.1.2 In the case of a Special 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 75%

Members.

18.1.1 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, a majority together holding not less than 75% (seventy five per centum) of the total voting rights of all

been duly called if it is so agreed.

18.1 An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by 21 (twenty-one) days' notice in writing at the least, and a Special General Meeting, other than one called for the passing of a Special Resolution, shall be called by 14 (fourteen) days' notice in writing 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 this Constitution, the general nature of that business, and in the case of a Special Resolution, the terms and effect of that business, and in the case of a Special Resolution, the terms and effect of the Resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Trustees to such persons as are under this Constitution entitled to receive such notices from the Association; provided that a General Meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have

18. NOTICE OF MEETINGS and AMENDMENT OF CONSTITUTION

themselves, provided that notice thereof be given in terms of this Constitution.

17.4 The Trustees may, whenever they think fit, convene a Special General Meeting, and a Special General Meeting shall also be convened on a requisition made by Members, or in default, may be convened by the requisitionist

General Meetings.

17.3 All General Meetings other than Annual General Meetings shall be called Special

aftergoing provisions, as the Trustees shall decide from time to time.



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

19.3 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, posted and received.

19.2 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.

19.1.1 If transmitted by telex, facsimile or email, it shall be deemed to have been received by the addressee at the actual time of receipt.

19.1 A notice of a meeting shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter properly addressed to the Member at the street address of the Erf owned by him.

19. SERVICE OF NOTICES OF MEETINGS

18.3 The members in General Meetings or Annual General Meetings or Special Meetings may alter or add to the Constitution by Special Resolution, provided that for the purposes thereof a quorum shall be deemed to be 50 % of all members.

18.2 The accidental omission to give notice of a meeting or of any Resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution, or in terms of the Act, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive same, or the failure to obtain a receipt acknowledging the proceedings of the meeting, shall not invalidate the proceedings at, or any Resolution passed at, any meeting.

(seventy five per centum) of the total voting rights of all Members.

20. VENUE OF MEETINGS

General Meetings of the Association shall take place at such place/s as shall be determined by the Trustees from time to time.

21. QUORUM

21.1 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 representing 75% (seventy five per centum) of the total votes of all Members of the Association entitled to vote for the time being.

21.2 If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present, the Members present shall be a quorum.

22. AGENDA AT MEETINGS

22.1 In addition, to any other matters required by the Act of this Constitution to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting :

- 22.1.1 the consideration of the Chairman's report to the Trustees;
- 22.1.2 the election of the Trustees;
- 22.1.3 the consideration of any other matters raised at the meeting including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions;
- 22.1.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting.
- 22.1.5 the consideration of the report of the Auditor / Bookkeeper, or equally qualified person,
- 22.1.6 the consideration of the total levy for the calendar year during which such Annual General Meeting takes place; and
- 22.1.7 the consideration and fixing of the remuneration of the Auditor / Bookkeeper, or equally qualified person, for the financial year of the

24.1.2 cause such minutes to be kept of all meetings of the Association in a Minute Book of Meetings of the Association kept for the purpose;

24.1.1 ensure that minutes 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 shall then be certified correct by the Chairman of the meeting;

24.1 The Trustees shall:

24. MINUTES OF MEETINGS OF THE ASSOCIATION

23.3 Except as otherwise set forth in this Constitution, 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 Notice to Members.

23.2 The Chairman may, with the consent of any General Meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjournment meeting.

23.1 The Chairman 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-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of time appointed for the holding of the meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

23. PROCEDURE AT GENERAL MEETINGS

Association preceding the Annual General Meeting.

25.4 A vote given in accordance with the term of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the

execution.

25.3 The instrument appointing a proxy and the power of Attorney or certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjournment 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

Member's behalf.

25.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or 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

be a Member of the Association.

25.1 A Member may be represented at a General Meeting by a proxy, who need not

25. PROXIES

Save as otherwise provided in this Constitution, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

24.4 All competent 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.

24.3 On the written application by a Member, the Trustees shall make all Minutes of the proceedings and/or meetings of the Association available for inspection by such Member.

24.2 The Trustees shall keep all Minute Books of Meetings of the Association in perpetuity.

26. VOTING

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.

26.1 At every General Meeting every Member in person or by proxy and entitled to vote, shall be allocated voting rights as follows, on show of hands :

26.1.1 the registered owner of a single residential Erf: 1 (one) vote;

Provided that if a single residential Erf is registered in more than one person's name, then they shall jointly have 1 (one) vote.

26.2 Save as expressly provided for in this Constitution, no person other than a Member duly registered, and who shall have paid every levy and other 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.

26.3 At any General Meeting a Resolution put to the vote of the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy.

26.4 Voting on the election of a Chairman of a General Meeting (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.

26.5 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.

26.6 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

28.5 The Association in General Meeting or the Trustees, may from time to time

which they relate.

28.4 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

books of account and records available for inspection by such Member.

28.3 On the application of any Member the Trustees shall make all or any of the

28.2 individual ledger accounts in respect of each owner.

28.1.3 a register of Members showing in each case their addresses;

and the matters in respect of which such receipt and expenditure occur;

28.1.2 a record of all sums of money received and expended by the Association

28.1.1 a record of the assets and liabilities of the Association;

including :

fairly to explain the transactions and financial position of the Association,

28.1 The Trustees shall cause proper books of account and records to be kept so as

28. ACCOUNTS

The financial year end of the Association is the end of October of each year.

27. FINANCIAL YEAR END

result of any voting at the meeting.

26.7 Unless any Member present in person or by proxy at a General Meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been proper and lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

to his deliberative vote.

Chairman of the general meeting shall be entitled to a casting vote in addition

30.2 Every Trustee, every servant, agent and employee of the Association, and the Auditor / Bookkeeper, or equally qualified person, 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 any act or deed done, by such person or persons in the discharge of any of his/their respective

30.1 All Trustees and the Auditor / Bookkeeper, or equally qualified person, 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 Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such persons by the Court.

30. INDEMNITY

29. Once at least in every year, the accounts of the Association shall be examined and the correctness thereof shall be confirmed, i.e. income and expenditure account and balance sheets ascertained by the Bookkeeper / accountant or equally qualified person. The aforesaid party shall report on the accounts at the AGM.

29. AUDIT

28.6 At each Annual General Meeting the Trustees shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustees and the Auditor / Bookkeeper, or equally qualified person, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in 19 supra, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

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.

Every Member of the Association and every Trustee shall be deemed Auditor / Bookkeeper, or equally qualified persons, and everybody else engaged to perform any function or duty on behalf of 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 this Constitution, 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.

31. PRIVILEGE IN RESPECT OF DEFAMATION

30.3 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the Auditor / Bookkeeper, or equally qualified persons or of any of the other Trustees, whether in their capacities as Trustee or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the 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 default 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 for 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.

duties, including in the case of a Trustee, his duties as Chairman or Vice-Chairman). Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by 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.

32. ARBITRATION

32.1 Any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to :

32.1.1 any matters arising out of this Constitution;

or

32.1.2 the rights and duties of any of the parties mentioned in this Constitution;

or

32.1.3 the interpretation of this Constitution; shall be submitted to and decided

by arbitration on notice given by any party to the other parties who are interested in the matter in question.

32.2 Arbitration shall be held informally and otherwise in terms of the provisions of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time) if being intended that if possible it shall be held and concluded within 21 (twenty-one) business days after it has been demanded.

32.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

32.3.1 primarily an accounting matter- and independent accountant;

32.3.2 primarily a legal matter - a practicing counsel or attorney of not less than 10 (ten) years standing;

32.3.3 an architectural matter - the architect appointed for the time being by the developer;

32.3.4 any other matter - an independent and suitably qualified person appointed by the Auditor / Bookkeeper, or equally qualified persons as

32.4 If agreement cannot be reached on whether the question in dispute falls under 32.3.1, 32.3.1, 32.3.2, 32.3.3 or 32.3.4 or upon a particular arbitrator in terms of 32.2.1; 32.3.2 or 32.3.4, within 3 (three) business days after the arbitration has been demanded, then :

32.4.1 the President for the time being of the Law Society of the Cape of Good Hope shall determine whether the question in dispute falls under 32.3.1; 32.3.2, 32.3.3 or 32.3.4; and

33. DOMICILIUM CITANDI ET EXECUTANDI

33.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Erf registered in his name; provided that he shall be entitled

33.1.2 The Trustees shall give notice to all Members of any change of such address.

33.1.1 Such address shall be situated in the Magisterial District of East London and shall be the address of the Chairman or other resident Trustee duly appointed at a General Meeting, or the administrative office of the Association;

33.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:

32.7 Notwithstanding anything to the contrary contained herein, the Trustees shall be entitled to institute legal proceedings on behalf for the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

32.6 The decision of the arbitrator shall be final and binding and may be made an Order of the Eastern Cape Provincial Division of the High Court of South Africa upon the application of any party to the arbitration.

32.5 The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may at his sole discretion determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association.

32.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator to adjudicate any dispute under 32.3.1; 32.3.2; 32.3.3 or 32.3.4. The architect of the developer shall be appointed) within 7 (seven) business days after the parties have failed to agree so that arbitration can be held and concluded as soon as possible.

from time to time to change the said domicile but that any new domicile selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its domicile.

34. APPROPRIATE PLANTING

Invasive-type alien species or other exotic plants are prohibited in private gardens. Only local indigenous coastal vegetation is permitted within the private Township. Owners are to avoid growing trees or plants which may or could obscure the view of other owners who may, if necessary, but with the written approval of the Committee require the trees or growth to be trimmed or removed.

35. CLEANING OF SITES

Cleaning of sites and cutting of grass will be done by the Home Owners' Association until such time as the member is a permanent resident. The Home Owners' Association reserves the right to cut and clean even which do not meet with the standards of the Home Owners' Association at the expense of the member.

36. VEHICLES

Articulated vehicles and maximum weight of vehicles limitations will be indicated at the entrance in the form of a "caution" sign.

37. BOREHOLES

The Developer, or the Home Owners' Association shall be entitled, at their discretion, to sink boreholes to supplement the water supply of the private township. The positioning of such boreholes shall be determined by Agreement, or falling Agreement, by arbitration as contemplated under Clause 32

DATED AT on this day of 2013

AS WITNESSES:

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DATED AT on this day of 2013

AS WITNESSES:

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