

CONSTITUTION

KINGSWOOD GOLF ESTATE HOME OWNERS ASSOCIATION

DEFINITIONS

The following words and phrases shall, unless the context clearly indicates otherwise, have the meaning hereinafter assigned to it

“Aesthetic and Environmental Standards and Controls” those measures, rules, regulations and guidelines enacted by the Association to control, enhance and improve the general appearance of the Estate, including, but not limited to colour schemes and maintenance of buildings and structures, the maintenance and appearance of private gardens and the Common Area as a whole, including the Golf Course and Club House to be established on the Estate, and encourage the protection, conservation and propagation of indigenous flora and fauna so as to enhance the bio-diversity in the Estate;

“Affiliation” Home Owners Associations of all Group Housing Developments developed within the Golf Estate shall affiliate with this Association on

“Architectural Guidelines” rules, regulations, guidelines, and a design manual formulated by the Association to govern and control the design and construction of all buildings and structures on the Estate with due regard to the “Aesthetic and Environmental Standards and Controls”;

“Common Area” all the roads, private open space, internal storm water and passage ways, including all security fencing and gate(s), and services constructed on the Estate as well as all property registered on the name of the Association;

“Corporate Entities” a duly registered company and/or close corporation and/or the trustees of a trust duly registered with the Master of the High Court;

“Developer” Kingswood Golf Estate (Pty) Limited (Reg.No.1988/004195/07) its successors or assigns;

“Development”	includes all references to Kingswood Golf Estate and the Estate developed on the Development Area;
“Development Area”	the area demarcated as such on the Proposed Development Plan and attached hereto marked “Annexure A” or any amendment or extension thereof as determined by the Developer from time to time until completion of the Golf Estate;
“Development Period”	the period from the incorporation of the Association until all the erven within the Development Area have been sold and transferred to third parties by the Developer; alternatively until the Developer notifies the Association that it waives the rights herein conferred upon it during the Development Period;
“Erf”	any single residential and/or any individual group erf within any Group Housing Development, including those erven on which the Golf Club, Club House and related facilities are constructed within the Development Area;
“Estate”	is synonymous to the Development Area;
“Golf Estate”	is synonymous to the Development Area
“Home Owners Associations”	Home Owners Associations of all Group Housing Developments developed within the Golf Estate and affiliated to this Association;
“Rules”	those rules and regulations enacted from time to time by the Association to control, regulate and manage the general conduct and behavior of Members, their families, guests, visitors, contractors, employees and invitees in the Golf Estate as set out in the Rules attached hereto marked “B”;
“Member”	a registered owner as defined in Clause 8;
“Person”	includes a natural or juristic person, and corporate entity as the context dictates;

Words importing the singular include the plural, and vice versa, and words importing any one gender include the other gender as well as a juristic person;

1. NAME OF ASSOCIATION

The name of the association is Kingswood Golf Estate Home Owners Association and herein referred to as the Association.

2 LEGAL STATUS

The Association is incorporated in terms of Sect.29 of the Land Use Planning Ordinance (No.15/1985). The date of incorporation shall be the date upon which the first transfer of an erf in the Development Area is registered in the Deeds Office. The Association has

2.1 legal personality, separate from its Members; and;

2.2 No Member shall have any claim to its Assets which shall vest in the Association, controlled and managed by the Committee in terms of this Constitution; and

2.3 The Association is incorporated not for profit, but for the benefit of its Members; and;

2.4 Has the right to acquire, hold, lease, alienate, pledge and mortgage movable and immovable property.

3. OBJECTS

The Main Objects of the Association are to promote and manage the communal interests of its Members and, include but are not limited to:

3.1. Own, maintain and ensure the upkeep and control of the Common Area and any improvements thereon, including all services within the Common Area;

3.2. Ensure that all municipal and related services are supplied to the Estate;

3.3. Ensure compliance by all Members of the Establishment and Township Conditions imposed by the Local Authority when approving the Golf Estate Development in so far as those conditions impose such a duty on the Association;

3.4. Adopt and enforce such Title and other Conditions imposed by the Developer in any first Deed of Sale and /or transfer for the benefit of the Association and its Members to ensure the good and orderly governance and financial health of the Association;

3.5. Determine and enforce aesthetic and environmental standards and controls as defined above, which shall include but not be limited to compliance by all Members of the Establishment and Township Conditions imposed by the Local Authority when approving the Golf Estate Development and in respect of the Environmental Management Plan for the Golf Estate Development in so far as those conditions imposed such a duty on the Association;

3.6. Determine and enforce the Architectural Guidelines and Design Manual to preserve the residential character of the Estate;

3.7. Ensure the expeditious development of all Erven in the Estate;

3.8. Provide, maintain and manage secure access and egress control for the Golf Estate Development.

4. DEVELOPER'S RIGHTS RESERVED

- 4.1 the Developer has the right at any time to extend or alter the composition of the Golf Estate and to add any further land purchased;
- 4.2 such extension or alternation of the Golf Estate shall be incorporated into the Development Area or any part of the Development Area from time to time which the Developer shall be entitled to develop as it may deem fit;
- 4.3 the Association shall transfer to the Developer any part of the Common Area in the Golf Estate which is not part of an erf on which no facilities or amenities are located to enable the Developer to give effect to the provisions of clauses 4.1 and 4.2;
- 4.4 Should any land be incorporated into the Golf Estate as contemplated in clause 4.1 the first and all subsequent owners thereof shall become members of the Association in respect of those parts from such dates as registration of transfer is registered onto their respective names;
- 4.5 Neither the Association nor any Member shall be entitled to object to the subdivision and/or development of any part of the Golf Estate provided that such subdivision and/or development is not inconsistent with the development plan approved by the relevant authorities for that part of the Development Area;
- 4.6 no erf or unit shall be sub-divided or rezoned during the Development Period without the prior written consent of the Developer or without the prior written consent of the Association after the termination of the Development Period; Subdivision or Rezoning must also be approved by the local authority.
- 4.7 the Association shall at all times be entitled to draw electricity from erven adjacent to sprinkler heads in any Private Road Reserve and/or Private Open Space for the purposes of powering the irrigation system. The cost thereof shall be borne by the Association but recovered as part of the levy upon Members;
- 4.8 ownership of an erf does not confer any right, including that of access, in respect of property owned by the Developer including any right of way or access across such property; the Association and all Members acknowledge and agree that the Developer, its successor/s in title and its employees have certain rights, including: rights of access across property owned by the Association and across the golf course land, the right to develop other areas in the Development Area in the future, and also the right to share various services with the Association and to connect any parts of the Development Area to the services in the Golf Estate.

5. POWERS AND OBLIGATIONS

- 5.1 The Association shall have all such powers do all things and perform all such acts as are required and necessary to give effect to all the provisions and stipulations of this Constitution. Without limiting the generality of the above, the Association is empowered to formulate and enforce rules and regulations to
 - 5.1.1 determine and impose levies to meet all expenses of the Association;
 - 5.1.2 determine and impose fines on Members who are in default of any provision of this Constitution, more in particular, of
 - 5.1.2.1 any and all of the Environmental Guidelines;
 - 5.1.2.2 any and all the Architectural Guidelines and Design Manual;
 - 5.1.2.3 any and all House Rules;
 - 5.1.2.4 and the due payment of any levy or special levy lawfully imposed.

- 5.2 The Association is obliged to manage the affairs and do all things and perform all acts required and necessary to give effect to all the provisions and stipulations of this Constitution.
- 5.2.1 The financial and administrative management of the Associations affairs shall vest in the Committee which shall, without limiting the generality of the above, manage, control and enforce the provisions of this Constitution and all rules and regulation enacted in terms hereof, and shall include but not be limited to;
- 5.2.2 The implementation and management of the Environmental Guidelines, and more in particular give effect to the Environmental Management Plan imposed by Competent Authority when approving the development of the Golf Estate;
- 5.2.3 The management and maintenance of all facilities, services and private open spaces owned by or that vests in the Association;
- 5.2.4 The development, management, operation and maintenance of the golf course land, including the golf course, the club house and all other related facilities thereon, shall vest in the registered owner of the golf course and club house erven. The Association shall have no responsibility in this regard save that the Association shall ensure that its Members' interests are protected and that the Club and club members comply with all Environmental Guidelines (including the Environmental Management Plan) as well as the Architectural Guidelines and Design Manual.

6. LEVIES

The Association shall from time to time, impose levies upon Members to meet all the expenses in respect of

- 6.1 the Common Area, and;
- 6.2 the management and administration of the Association and its affairs;
- 6.3 In calculating the amount of the levies, the Trustees shall take into account:
- 6.3.1 income (if any) earned by the Association;
- 6.3.2 Municipal rates, taxes, service charges and levies payable to the Council in accordance with applicable legislation;
- 6.3.3 the estimated amount which shall be required by the Association to meet the expenses during each financial year;
- 6.3.4 any estimated deficiency (if any) from the preceding financial year;

and determine, as near as practical in the circumstances, a levy upon Members, equal to such estimated amount.

- 6.4 The Trustees may, in such determination of levies for any particular financial year, include an amount to be held in reserve to meet any anticipated future expenditure of a non-recurring nature.
- 6.5 The determination of levies shall be made by the Trustees on or before 31st December of any particular year and shall take effect on the 1st day of the following financial year.

- 6.6 All levies shall be due and payable in advance in twelve (12) equal monthly instalments commencing on the first day of each of such financial year and thereafter on the first day of each succeeding month.
- 6.7 The trustees shall not less than 30 (thirty) days prior to the end of each financial year give every Member, at the address chosen by him, a written notice of the Levies payable by that Member, including any contributions to the reserve fund.
- 6.8 Should the Trustees for any reason whatsoever fail to prepare and/or give due notice of the determination referred to in clause 6.3 above, every Member shall, until served with such notice, continue to pay the levy previously imposed and shall after such notice pay such levy as may be specified in the notice, in the manner specified in the notice, together with any arrear levies.
- 6.9 The Trustees may at any time impose special levies upon the Members in respect of any expenses of a non recurring nature as are mentioned in clause 6.4 above (which are not included in any determination made in terms of clause 6.3) and such special levies may be imposed in the sum or by such instalments and at such times as the Trustees shall deem fit.
- 6.10 In calculating any levy payable by Members, the Trustees shall, as far as reasonably practical, assign such levies to Members equally provided, however, that the Trustees may in any instance where they consider it equitable to do so, assign to any Member any greater or lesser share of such expenses as may be reasonable in the circumstances.
- 6.11 Any amount due by any Member by way of a levy shall be a debt due by that Member to the Association.
- 6.12 The obligation of a Member to pay levies shall cease upon termination of membership of the Association, without prejudice to the Association's right to recover arrear levies.
- 6.13 No levies paid by a Member shall under any circumstances be repayable by the Association upon termination of his membership. A Member's successor in title to an erf shall, as from the date upon which he becomes a Member pursuant to the transfer of that erf into his name, be liable to pay the levies attributable to that erf.
- 6.14 Upon the re-sale and/or the transfer of any Erf or the resale and/or transfer of an interest in an Erf, or resale and/or transfer of any interest in the registered owner of an erf, a levy equal to one (1%) percent of the purchase consideration shall be due and payable to the Association. If no purchase consideration is payable on the transfer of an erf, or on the transfer of an interest in an erf, then the said levy shall be due and payable on the fair and reasonable market value of the Erf, determined by a recognised valuer, registered with the SA Institute of Valuers, appointed by the Trustees. The said Valuer's determination shall be final and binding on the member and the Association. For purposes of this clause the sale or transfer of a share or interest in or any claim to a right in a corporate entity and/or trust shall be deemed to be a re-sale of the Erf held by such corporate entity and/or trust. The provisions of this clause shall not apply to:
- 6.14.1 the Developer; or
- 6.14.2 the resale and / or transfer of an erf or interest in an erf in respect of which no Transfer Duty or Value Added Tax is payable due to one of the following reasons:

- 6.14.2.1 transfer is being effected to an heir or legatee in respect of:
property of the deceased acquired by intestate or testamentary
succession or as a result of a redistribution of assets of a
deceased estate in process of liquidation
- 6.14.2.2 a joint owner of property in respect of the acquisition and
registration in his name of a defined portion of the property allotted
to him upon partition of the property, but not in respect of any
consideration payable by him in order to equalize the portion or for
any other reason
- 6.14.2.3 a joint owner of property who acquires the sole ownership in the
whole or a portion of the property, in respect of so much of the
value of the property in which sole ownership is acquired as
represents his share in the joint ownership of that property
- 6.14.2.4 a surviving or divorced spouse who acquires the sole ownership in
the whole or any portion of the property registered in the name of
his or her deceased or divorced spouse where that property or
portion is transferred to that surviving or divorced spouse as a
result of the death of his or her spouse or dissolution of their
marriage or union
- 6.14.2.5 a spouse in a marriage in community of property in respect of the
acquisition of an undivided half-share in property by operation of
law by the other spouse prior to the date of contraction of the
marriage
- 6.14.2.6 transfer is being effected to a Trust that has been created for the
benefit of a beneficiary of the transferor Trust and /or spouse or
surviving spouse or children of such beneficiary
- 6.14.2.7 transfer is being effected to the spouse and /or child or children of
the transferor and the Trustees are satisfied that no consideration
is payable by the transferee. In terms of this provision, a transferor
will also include to be a company or close corporation provided
that the shareholder thereof qualifies as a spouse or parent of the
transferee

6.15 No Member shall be entitled to any of the privileges of membership of the Association unless and until he shall have paid all levies due and payable to the Association in respect of his membership.

6.16 **6.16.1** The Trustees are empowered to impose fines in respect of non-compliance with the provisions of this Constitution and to charge interest

on any arrear levies and to determine the rate of interest from time to time chargeable upon such arrear levies, which shall be in addition to such other rights as the Association may have in law against the Members, provided that such interest shall not exceed the rate laid down in terms of the Usury Act, No. 73 of 1968 or any statutory modification or re-enactment thereof.

6.16.2 In addition to the Trustees rights derived as per clause 6.15.1 of this constitution, the Trustees will also in their discretion have the right to report a defaulting member to the Credit Bureau in terms of the National Credit Act 34 of 2005, provided such member is in breach of payment of levies for a period in excess of 90 (ninety) days of the date when such levy has become due and payable.

6.17 Should any dispute arise at any time between the Members and the Trustees in regard to the determination or calculation of the Levies,

6.17.1 such dispute shall be referred to the Association's auditors (acting as experts and not as arbitrators) whose decision of the dispute shall be final and binding on the Members and the Trustees;

6.17.2 pending the determination of such dispute, Members shall pay the levies determined by the Trustees.

7. NON-PROFIT DISTRIBUTING CHARACTER

7.1 The income and property of the Association shall be used solely for the promotion of its stated objectives. No portion of the income or property of the Association shall be paid or distributed directly or indirectly to any person (otherwise than in the ordinary course of undertaking any public benefit activity) or to any member of the Association or Management Committee, except as:

7.1.1 reasonable compensation for services actually rendered to the Association;

7.1.2 reimbursement of actual costs or expenses reasonably incurred on behalf of the Association.

7.2 Upon the dissolution of the Association, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to some other non-profit organisation which the Management Committee (and failing which any division of the High Court) considers appropriate and which:

7.2.1 has objectives the same or similar to the objectives of the Association; and

7.2.2 should the Association be exempt from the payment of any taxes and duties, is also exempt from the same taxes and duties.

7.3 The Association intends to apply to the South African Revenue Services for exemption from appropriate taxes and duties.

8. MEMBERSHIP

8.1 All registered owners of Erven and Bodies Corporate of Sectional Title Developments in the Golf Estate shall, be Members of the Association.

8.2 Registration of transfer of an Erf unto the name of a Person and the opening of a Sectional Title Register automatically confers Membership of the Association on such Person or Body Corporate and no Person or Body Corporate can resign as Member, nor can the Association terminate Membership.

8.3 Membership shall only terminate on registration of a particular Erf onto the name of third party.

8.4 A registered owner of an Erf and the Body Corporate of a Sectional Title Development shall each have one (1) vote.

8.5 Should two (2) or more erven be consolidated the registered owner of such consolidated erf shall retain the voting rights attached to each component of such consolidated erf.

8.6 A Member's voting rights and other benefits and privileges shall be suspended if he breaches and/or contravenes any provision of this Constitution. Such suspension shall remain in force during the period such breach or contravention continues and/or persists.

8.7 A Member's suspension shall not derogate from or in any way limit the Associations powers and rights to rectify such breach or contravention and to recover its expenses and costs from such Member who is in breach of or contravenes the provisions of this Constitution.

9. TRUSTEES

9.1 During the development period Trustees shall be divided into two classes, namely Developer Trustees and Member Trustees.

9.2 Upon expiry of the Development Period there shall only be Member Trustees.

9.3 There shall be not more than 7 (seven) trustees of the Association.

9.4 During the Development Period Two (2) Trustees shall be appointed by the Members and the remaining Trustees shall be appointed by the Developer.

9.5 After termination or expiration of the Development Period, all the Trustees shall be appointed by the Members, provided that the registered owner of the erven on which the Golf Course, Club House and related facilities are constructed shall at all times be entitled and obliged to appoint one (1) Trustee

9.6 The Developer shall appoint the first Trustees on incorporation of the Association. Member Trustees shall be appointed by the Developer after due consultation with the Members.

9.7 The appointment and the acceptance of such appointment as a Trustee shall be in writing, duly signed by the relevant parties.

9.8 All Trustees shall be natural persons, and shall either be registered owners or duly authorised representatives of corporate entities who are registered owners of erven in the Golf Estate.

9.9 A Trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.

9.10 The Trustees shall appoint one of their number to act as Chairperson for such term as they think fit, but not for longer than such person's tenure as a Trustee.

9.11 During the Development Period, the Chairperson shall be one of the Developer Trustees, unless the Trustees otherwise agree.

10. REMOVAL AND ROTATION OF TRUSTEES

10.1 A Trustee shall hold office from the date of his appointment to office until the Annual General Meeting next following his appointment, at which meeting

each Trustee shall be deemed to have retired from office. All Trustees will be eligible for re-election to the Board of Trustees at such meeting.

10.2 A Trustee shall be disqualified to hold office and deemed to have vacated his office as such should:

10.2.1 He be disqualified to act as a director in terms of the provisions of the Companies Act;

10.2.2 he be removed from office in terms of Section 71 of the Companies Act 71 of 2008;

10.2.3 his estate be sequestrated, whether provisionally or finally;

10.2.4 he commit any act of insolvency;

10.2.5 he be convicted for any offence involving dishonesty or any other serious criminal offence;

10.2.6 he become unsound of mind or be declared a lunatic;

10.2.7 he resign from office in writing;

10.3 Anything done in good faith by a person who is disqualified to act as a Trustee, shall be valid until his disqualification as Trustee has been recorded in the minute book of the Association.

10.4 Any vacancy occurring in the Board of Trustees prior to the next Annual General Meeting, shall be filled by a person nominated by the remaining Trustees.

10.5 During the Development Period the Developer.

10.5.1 shall nominate a person to fill any vacancy in the Developer Trustees.

10.5.2 may remove and replace any Developer Trustee at any time upon written notice to the remaining trustees.

11. TRUSTEES' EXPENSES AND REMUNERATION

11.1 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performances of their duties as Trustees as may be approved by the Board of Trustees.

11.2 Trustees shall be entitled to remuneration in respect of the performance of their duties as determined by the Association in a General Meeting.

12. POWERS AND DUTIES OF TRUSTEES

12.1 Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of its business and affairs including the right.

12.1.1 to appoint and dismiss any managing agent,

12.1.2 to exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by this Constitution required to be exercised or done by the Association in General Meeting, subject however to such rules as may have been made by the Association in General Meeting or as may be made by the Trustees from time to time.

- 12.2 The Trustees shall cause such accounting records as are prescribed by section 28 of the Companies Act 71 of 2008 to be kept as those provisions would apply to a non-profit company. Proper accounting records shall fairly represent the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 12.2.1 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Trustees think fit, and shall always be open to inspection by the Trustees;
- 12.2.2 The Trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by members not being trustees, and no member (not being a trustee) shall have any right of inspecting any accounting records or documents of the Association except as conferred by the Companies Act or authorised by the Trustees;
- 12.2.3 The Trustees shall from time to time, in accordance with sections 29 and 30 of the Companies Act 71 of 2008 as those provisions would apply to a non-profit company, cause to be prepared and laid before the Association in general meeting such financial statements as are referred to in those sections;
- 12.2.4 A copy of the annual financial statements which are to be laid before the Association in Annual General Meeting shall, not less than 21 (twenty-one) days before the date of the meeting, be sent to every member of the Association: provided that this article shall not require a copy of those documents to be sent to any person of whose address the Association is not aware;
- 12.2.5 An auditor shall be appointed in accordance with Part C (section 90-93) of the Companies Act 71 of 2008 as if those provisions were applicable to the Association.
- 12.3 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, managing agents or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 12.4 The Trustees shall further have the power :
- 12.4.1 to require that any construction of any nature within the Development shall be supervised to ensure that the provisions of this Constitution, more in particular that the Aesthetic and Environmental Standards and Controls and the Architectural Guidelines and Controls and all the Rules enacted in terms of the Constitution are complied with and that all such construction is performed in a proper and workmanlike manner;
- 12.4.2 to issue an Architectural Guidelines and Design Manual, an Guidelines and/or instructions in respect of the Development and construction activities within the Development.
- 12.5 The Trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.

- 12.6 The Trustees shall be entitled to appoint committees consisting of such number of their members and such outsiders, including a managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Trustees may from time to time deem necessary.
- 12.7 The Trustees shall appoint an Architectural Review Committee to exercise the powers set out above provisions which may, but shall not necessarily, consist of the following persons:
- 12.7.1 a practising professional architect duly qualified to practice as such for his own account in the Republic of South Africa;
- 12.7.2 one or more trustees;
- 12.7.3 such other members as the trustees may determine;
- 12.7.4 Members of the Architectural Review Committee shall not be required to be members of the Association.
- 12.8 Except for any buildings, outbuildings, structures, additions or alterations to be erected or effected by the Developer, all plans for buildings, outbuildings, structures, additions and alterations shall be submitted for approval by the Trustees, or any person(s) designated by them for the purpose, who shall not approve such plan unless it shall first have been reviewed by the Architectural Review Committee.

13. PROCEEDINGS OF TRUSTEES

- 13.1 The trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these articles.
- 13.2 The quorum necessary for the holding of all meetings of the trustees shall be 3 (three) trustees present personally, provided that during the development period the chairperson shall be a representative of the Developer and at least 1 (one) developer trustee shall be present at all meetings of trustees to form a quorum. If no quorum is present, within 15 (fifteen) minutes after the time for commencement of the meeting, then it shall stand adjourned for 7 (seven) days, or if that is not a business day, then to the next business day thereafter, and those trustees present at the adjourned meeting shall constitute a quorum. At any meeting of the trustees, each member trustee shall have 1 (one) vote and each developer trustee shall have 3 (three) votes.
- 13.3 Any resolution of the trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the chairman of the trustees shall have a second or casting vote.
- 13.4 The trustees shall cause minutes to be kept of every trustees' meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman. All minutes of trustees' meetings shall, after certification, be placed in a trustees' minute book to be kept in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies. The trustees' minute book shall be open for inspection at all reasonable times by any trustee, the auditors, the members and the managing agent.
- 13.5 A resolution signed by all the trustees shall be valid in all respects as if it had been duly passed at a meeting of the trustees.

14. GENERAL MEETINGS OF THE ASSOCIATION

- 14.1 The Association shall within 6 (six) months after the end of the financial 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 notice of such meeting.
- 14.2 Such annual general meeting shall be held at such time and place as the trustees shall decide from time to time.
- 14.3 All meetings of the members other than annual general meetings shall be called general meetings.
- 14.4 The trustees may, whenever they think fit, convene a general meeting. A general meeting must be convened by the Trustees on a requisition made mutatis mutandis as if section 61(3) of the Companies Act 71 of 2008 was applicable to the Association, or should the trustees not do so, may be convened by the requisitionists as provided for by and subject mutatis mutandis to the provisions of section 61 (12) of the Companies Act 71 of 2008 as if that section was applicable to the Association.

15. NOTICES OF MEETINGS

- 15.1 An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than 21 (twenty-one) clear days' notice in writing and any other general meeting shall be called by not less than 14 (fourteen) clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day, and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under these articles, entitled to receive such notices from the Association; provided that a meeting of the Association shall notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by not less than 51% (fifty-one per centum) of the members having a right to attend and vote at the meeting.
- 15.2 The annual general meeting shall deal with and dispose of all matters prescribed by the Companies Act, the consideration of the annual financial statements, the election of trustees, the noting of the levy for the financial year during which such annual general meeting takes place, the appointment of an auditor, and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

16. PROXIES

- 16.1 A member may be represented at a general meeting by proxy, who must be a member of the Association or a director, member, partner or trustee of that member, save for the developer whose proxy need not necessarily be a member.
- 16.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed, must be lodged with the Association at least 24 (twenty-four) hours before the commencement of the meeting or adjourned meeting concerned, but the trustees may from time to time determine that such documents:
- 16.3 are to be lodged at a particular place; or

- 16.4 are to be lodged a certain number of hours, not exceeding 48 (forty-eight) in all, before the meeting; or
- 16.5 may be lodged at any time before or during the meeting;
- 16.6 Notwithstanding the foregoing, the chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting;
- 16.7 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period;
- 16.8 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

PROXY

I,

of Erf

being a member Home Owners' Association, hereby
appoint:

..... of

or failing him

..... of

or failing him

..... of

as my proxy to vote for me and on my behalf at the annual general meeting
(or otherwise as the case may be) of the Association to be held on the

.....day of

and at any adjournment thereof as follows :

	in favour of	against	abstained
Resolution to			
Resolution to			
Resolution to			

(Indicate instruction to proxy by way of a cross in space provided above.)

Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed this day of

.....
Signature

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy shall be a member of the Association or a director, member, trustee or partner of a member, except for the developer.) “

A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

17. QUORUM

No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, 10% (ten per centum) of the members present in person or by proxy shall constitute a quorum, provided that at least 3 (three) members are present in person at such meeting and provided that during the development period, at least 1 (one) representative of the developer is present at such meeting.

If within 15 (fifteen) minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairman of the board, or in his absence, the deputy chairman, may allow, a quorum is not present, the meeting shall be dissolved as if it was convened on requisition. In all other cases, the meeting shall stand adjourned to the same place at the same time on the same day of the next week (or if that day is not a business day, the first business day following that non-business day) or to such other place, time and day as the board may determine. If a quorum is not present at such adjourned meeting, the members present shall constitute a quorum.

18. ADJOURNMENT BY CHAIRMAN WITH CONSENT OF MEETING

- 18.1 The chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by majority vote. In the event of such an adjournment;
- 18.2 no notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting (unless the meeting is to be adjourned for 30 (thirty) days or more in which event notice is to be given in the same manner as for the original meeting);
- 18.3 only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

19. VOTING RIGHTS OF MEMBERS

- 19.1 Members shall be entitled to vote only on the matters raised at every general meeting;
- 19.2 At every general meeting;
- 19.3 each member, present in person or by proxy and entitled to one (1) vote;
- 19.4 during the development period, the developer shall be entitled to 3 (three) times the total number of votes of all the other members of the Association;
- 19.5 Save as expressly provided for in this articles, no person other than a member 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 suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting;
- 19.6 Voting at general meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded according to law;

- 19.7 Resolutions shall be passed by simple majority vote, save with respect to amendments of this Constitution, as provided for in clause 25 hereof;
- 19.8 If a poll is duly demanded, it shall be taken in such manner as the chairman of the meeting may direct either at once or after an interval or adjournment;
- 19.9 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter, such difficulty or dispute is to be determined by the chairman whether or not scrutinizers have been appointed to count the votes and his decision shall be final and conclusive;
- 19.10 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless;
- 19.11 written notice of the revocation is received by the Association prior to the meeting concerned;
- 19.12 the chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting;
- 19.13 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to in cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive;
- 19.14 A declaration made in good faith by the chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed, as the case may be. Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a trustee or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.

20 **SERVICE OF NOTICES**

Notices may be given by the Association to any member either personally, or by sending it by post in a pre-paid letter addressed to such member at his registered address or at the address (if any) within the Republic of South Africa, or by sending it per e-mail to an e-mail address, or per telefax, to a telefax number, supplied by a member to the Association for the giving of notices to him.”

- 20.1 Notice of every general meeting shall be given;
- 20.2 to every member of the Association;
- 20.3 to the auditors for the time being of the Association;
- 20.4 no other person shall be entitled to receive a notice of general meetings;
- 20.5 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted;
- 20.6 The signature to any notice given by the Association may be written or printed, or partly written and partly printed;

20.7 When a given number of days' notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.

21. INDEMNITY

21.1 All trustees and the auditors shall be indemnified against any liabilities bona fide incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a court.

21.2 Every trustee, 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.

22. GENERAL

22.1 Whenever they consider that the appearance of any land or building vested in a member or any signage on the land or building is such as to be unsightly or injurious to the amenities of the surrounding area or the property generally, the trustees may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the member fail within a reasonable time, to be specified in such notice, to comply therewith, the trustees may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing to the Association.

22.2 The trustees shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the trustees acted unreasonably.

22.3 The registered owner of an erf zoned for residential purposes shall construct and complete the construction of a dwelling house thereon within four (4) years after registration of the first transfer of the erf into the first owner' name.

22.4 Should the registered owner of an erf fail to comply with the provisions of clause 22.3, then the Developer and/or the Association shall be entitled to give written notice to the owner to commence construction of a dwelling house or to complete the construction of a partly completed dwelling house within 12 months of giving such notice and if the owner fails to comply with such notice, the Developer and or the Association shall be entitled (but not obliged) to repurchase such erf at a price equal to the following:

22.4.1 the purchase price at which the registered owner purchased such erf; plus;

22.4.2 in the case of an uncompleted dwelling house, the fair and reasonable market value of the erf and the uncompleted dwelling shall be determined by an independent recognised valuator registered with SA Institute of Valuators appointed by the Developer and/or the Association whose valuation shall be final and binding on the developer and owner.

22.5 No member shall be entitled to subdivide or rezone any erf during the development period without prior written consent of the developer and thereafter without the prior written consent of the trustees.

22.6 No member or other person shall be entitled to sink or use any boreholes within the Estate .

- 22.7 The Association may enter into agreements with any third party for the provision of facilities and services to or for the members and may levy charges in respect of the provision thereof, or may pass on such costs direct to the members.
- 22.8 The provisions of this Constitution shall be binding upon all members and, insofar as they may be applicable to all persons occupying any erf or unit by, through or under any member, whatever the nature of such occupation.
- 22.9 No member ceasing to be a member of the Association for any reason shall (nor shall such member's, executors, curators, trustees or liquidators) have any claim upon or interest in or right to the funds or any property or assets of the Association.
- 22.10 The Association may claim from any member or his estate any arrear levies and interest or other sums due from him to the Association at the time of his ceasing to be a member.
- 22.11 Any person using any of the services, land or facilities of the Association does so entirely at his own risk.
- 22.12 No member shall let or otherwise part with occupation of his erf without the consent of the Association which consent shall only be withheld if the Association is not satisfied that the provisions of this Constitution have been complied with.
- 22.13 The provisions of this Constitution shall be binding upon all members and on all persons that enter the Estate.
- 22.14 Access to be provided at all times to the municipal teams or their appointed contractors for the purpose of maintenance of municipal services.
- 22.15 Access is to be provided to municipal teams or their appointed contractors for the reading of meters.
- 22.16 Cognisance must be taken that all stipulations as set out in the Service Agreement entered into between the Developer and the municipality must be adhered to.
- 22.17 It is recorded that the maintenance of the street lighting is the responsibility of the Home Owners Association.
- 22.18 In respect of members who are the registered owners of erven zoned as group housing the following provisions will apply over and above the other provisions contained in this constitution:
- 22.18.1 Should it be necessary to rebuild any structure in its entirety, such rebuilding shall be in accordance with the building plan of the unit originally approved;
- 22.18.2 Any communal portion of a supporting wall, roof, pipe, gutter, fencing, or other structure or object on such unit shall be maintained by the owner of the unit;
- 22.18.3 Each portion of such supporting wall, roof, pipe, gutter, fencing or other structure or other object on such unit shall likewise be maintained by the owner of the unit;
- 22.18.4 Access to such unit shall be allowed for the purpose of maintenance, cleaning, renovation, repair, renewal and alteration of and addition to such wall, roof, pipe, gutter, fencing or other structure or object and nothing shall be done which may prevent access to or hinder such access;
- 22.18.5 Should the Homeowner's Association resolve to approve any alterations and/or additions, they shall be of such a nature as to be applicable to all unit owners and all unit owners shall be permitted without exception to effect similar alterations and additions;
- 22.18.6 A plan shall be provided showing the proposed location of the alterations/additions in relation to all units within the direct vicinity of the unit. (This does not imply that all unit owners should

necessarily also effect such additions and alterations. The said plan is required only to enable an evaluation to be made of the total effect of a proposal on the aesthetic appearance of the scheme);

- 22.18.7 Should it be proposed to alter the colour scheme of the complex, an indication must be given of the period in which the scheme in its totality of colour scheme will be altered and such period shall not be later than one year from the date of the commencement of the alteration of the colour scheme.

24. DISPUTES

- 24.1 Any dispute arising out of or in connection with this Constitution, shall be resolved by arbitration in terms of this clause, except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 24.2 The arbitration proceedings shall be held on an informal basis, as expeditiously as possible, subject only to the due observance of the principles of natural justice.
- 24.3 Each party to the dispute shall be entitled to be represented at such arbitration proceedings by legal representatives and/or any other expert or specialist.
- 24.4 The arbitrator shall determine the form of the proceedings and shall be held at George Western Cape Province (unless otherwise agreed to by the parties).
- 24.5 The arbitrator shall be a suitably qualified person agreed between the parties or if they are unable to agree within a period of 3 (three) days of either party having given notice to the other proposing an appointee or alternative appointees, then a person nominated by the President for the time being of the Law Society of the Cape of Good Hope.
- 24.6 The decision of the arbitrator shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 24.7 The costs of and incidental to any such arbitration proceedings shall be in the discretion of the arbitrator who shall be entitled to direct that they shall be taxed as between "Party and Party" or as between "Attorney and Client".
- 24.8 The arbitration shall be held:
- 24.8.1 as soon as possible after the dispute shall have arisen, with a view to its being completed within 21 (twenty one) days after the date upon which the dispute shall have been referred to the arbitrator;
- 24.8.2 except where the provisions of this clause otherwise provide, in terms of the arbitration laws in force.

25. AMENDMENT OF CONSTITUTION

The provisions of this Constitution may only be amended by special resolution, which will require the approval of at least seventy five percent (75%) of the total number of votes of members of the Association, given at a general meeting called specifically for such purpose.

The notice of such meeting shall set out in specific terms the proposed amendment of this Constitution.

26 EXEMPTION FROM INCOME TAX IN TERMS OF SECTION 10(1)(e)(i)(cc) OF THE INCOME TAX ACT

In order to comply with the conditions of the South African Revenue Services in respect of income tax exemption the following provisions form part of this Constitution:

- 26.1 The sole object of the Association is to manage the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable.
- 26.2 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 26.3 On dissolution 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)(i)(cc) of the Act.
- 26.4 Any amendments to the memorandum and articles of association must be submitted to the Commissioner for the South African Revenue Service.
- 26.5 Funds available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No 97 of 1990), and in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No 1 of 1985)."