



# **CONSTITUTION**

Of

## **THE KLEIN BRON PARK HOME OWNERS ASSOCIATION**

A statutory Body Corporate established

In terms of Section 29 of the Land Use

Planning Ordinance, Ordinance

15 of 1985

## 1. ESTABLISHMENT IN TERMS OF STATUTE

The Klein Bron Park Home Owners Association is constituted, as a body corporate, in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985, in accordance with the conditions imposed by the Oostenberg Municipality when approving in terms of Section 25(1) and 42 of the said Ordinance of the subdivision of portion 66 of the Farm Lange Berg, No. 311, Division Cape, Western Cape province, commonly known as the Farm Kleinbron, Brackenfell.

## 2. INTERPRETATION

In these presents: -

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

**“Architectural manual”** means the Architectural manual of Development, annexed hereto and marked “A”

**“these presents”** means this Constitution and regulations and by-laws of the Association from time to time in force and the word “constitution” shall bear the same meaning

**“Association”** means The Klein Bron Park Home Owners Association;

**“office”** means the registered office of the Association

**“month”** means calendar month;

**“year”** means calendar year;

**“in writing”** means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

**“Unit Erven”** means:

1. Single Residential Erven;
2. Group Housing Erven before subdivision thereof;
3. Group Housing Erven individually after subdivision; and
4. General Residential erven for sectional title development each as an entity resulting from the subdivision of Portion 66 of the Farm Lange Berg, No 311, Division Cape, Western Cape Province, commonly known as the Farm Kleinbron, Brackenfell and situated in Phase III (consisting of Erven with Erf numbers still to be supplied) of the Development.

**“Mutual Area”** means those areas or structures within the Development which have been designated as areas which the Association are obliged to maintain inclusive of but not restricted to the security wall, entrance and buildings erected at such entrance, designated open areas or park, an office complex and basic office furniture to be used therein and all storm-water flood retention structures of whatever nature;

**“Developer”** means the Klein Bron Ontwikkelingsmaatskappy (Edms) Bpk, Registered Number 99/05916/07.

**“Development”** means Unit Erven and the Mutual Area situated in Phase I and II in the development commonly known as the Kleinbron Development

**“Member”** means a member of the Association

**“Trustee Committee”** means the Board of Trustees of the Association;

**“a Trustee”** means one member of the Trustee Committee;

**“Chariman”** means the Chairman of the Trustee Committee;

**“Vice-Chairman”** means the Vice-Chairman of the Trustee Committee;

**“Auditors”** mean the Auditors of the Association;

**“Registered Owner”** means the registered owner of any one of the Unit Erven;

**“Municipality”** means the Oostenberg Municipality or any other local authority established or to be established to succeed in whole or in part the said Municipality in exercising control of the area of which the Development forms part;

**“Business Days”** means weekdays other than Saturdays, Sundays and Public Holidays;

**“Special Resolution”** means a resolutions passed at a special general meeting of which not less than 21 (twenty one) clear days notice has been given specifying resolution, the terms and effect of the resolution and the reason for it, and passed, on a show of hands, by not less than three-fourths of the number of the members entitled to vote at that meeting who are present in person or by proxy at such meeting.

**“Gardening Firm”** The person or firm approved and specified by the Trustee Committee, who shall render gardening services to all its Members and / or the Association, the latter with regards to the Mutual Areas

2.2. Unless the context 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 two genders. A person shall include legal personae or other entities.

### **3. PURPOSE DESCRIBING THE MAIN BUSINESS**

The main business of the Association is to carry on the promotion, advancement and protection of the Members of the Association as owners of Unit Erven.

### **4. MAIN OBJECT**

The main object of the Association is:

- 4.1. the care, maintenance, upkeep and control of the Mutual Area and, without limiting same, the provision of security services;
- 4.1. the control over buildings erected on Unit Erven or within the development with specific reference to the obligation on Members to conform with the prescriptions and guidelines contained in the Architectural Manual;
- 4.1. the promotion, advancement and protection of the communal and group interests of the Members generally and;
- 4.1. the enforcement of the provisions hereof.

### **5. FINANCIAL YEAR END**

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

### **6. MEMBERSHIP**

6.1 Membership of the Association shall be compulsory for every registered owner of Unit Erven, which membership shall commence simultaneously and automatically with the transfer of any Unit Erf into the name of the registered owner.

6.2 Membership of the Association shall be limited to the registered owners of the Unit Erven provided that:

- 6.2.1 a person who is entitled to obtain a certificate of registered title to any such Unit Erf shall be deemed to be the registered owner thereof
- 6.2.2 where such owners is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one Member of the Association

- 6.2.3 where any person is the Registered Owner of more than one Unit Erf, such person shall be regarded to be a Member and shall have the rights and obligations of a Member in respect of each of the Unit Erven registered in the person's name, it being recorded that the provisions of this clause shall also be applicable to the Developer whilst it is Registered Owner of a Unit Erf or Unit Erven.
7. When a member ceases to be the registered owner of Unit Erf, he shall *ipso facto* cease to be a Member of the Association.
8. A Member shall not be entitled to sell or transfer a unit Erf unless it is a condition of the sale and transfer that:
- 8.1 the transferee becomes a Member of the Association;
  - 8.2 the Member had paid all outstanding levies owed by him to the Home Owners Association
  - 8.3 he first obtains the written consent of the Home Owners Association, which consent shall be given provided the purchaser of such Unit Erf agrees in writing to abide by the rules of the Association;
  - 8.4 the registration of transfer of that Unit Erf into the name of that transferee shall *ipso facto* constitute the transferee as a Member of the Association;
9. The Registered Owner of a Unit Erf may not resign as a member of the Association
10. The Trustee Committee, by regulation, may provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.
11. The rights and obligations of a Member shall not be transferable and every Member shall:
- 11.1 to the best of his ability further the objects and interests of the Association;
  - 11.2 observe all by-laws and regulations made by the Association or the Trustee Committee;
  - 11.3 be jointly liable with all the Members for the Members for all expenditure incurred in good faith in connection with the Association insofar as third parties are concerned;

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 Unit Erf.

## **LEVIES**

12. The Trustee Committee shall from time to time make levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by the way of maintenance, repair, improvement and keeping in order and condition of the Mutual Area, and/or for payment of all rates and other charges payable by the Association in respect of the Mutual Area, and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Mutual Area and the Association's affairs.
13. In calculating levies the Trustee Committee shall take into account income, if any, earned by the Association and shall specifically further take into account expenses incurred with regard to the employment of security firms or security personnel. It is further specifically recorded as follows with regard to gardening services rendered within the Development:
  - 13.1 Each Member has an obligation to attend to his own garden as stipulated below and to keep it in a neat, tidy and acceptable condition:
  - 13.2 Each Member may attend to this own garden privately, but shall at all times be obliged to utilize only the gardening services of the Gardening Firm when employing others to attend to his garden unless the Trustee Committee agrees otherwise in writing. This arrangement is necessary in order to control access to and security in the Development;
  - 13.3 Each Member shall promptly make payment of all amounts due to the Gardening Firm and shall solely be responsible for payment for these services. The Trustee Committee may however, notwithstanding the above, employ the services of the Gardening Firm if a Member neglects his duties to attend to his garden, which shall be for the sole account of such Member.
14. The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Members, equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly installments due in advance on the first day of each and every succeeding month of such year.

15. The Trustee Committee may from time to time make special levies upon the members in respect of all such expenses as are mentioned in paragraph 12 and 13 (excluding gardening services and expenses which are not included in any estimate made in terms of paragraph 14), and such levies may be made in the sum or by such installments and at such time or times as the Trustee Committee deem fit.

16. Any amount due by a Member by way of levy shall be debt due by him to the Association. The obligation of a Member to pay a levy cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. 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 a Unit 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. No Member shall transfer his Unit Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.

17. Notwithstanding anything herein to the contrary, the total levy imposed on Members collectively shall be borne by each Member on an equal basis provided that is a Member is the owner of more than one Erven, he shall be obliged to pay a levy for each of the said Erven.

18. No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.

19. The Association shall at all times be sufficiently funded by Members in order for it to fulfill its objects in respect of expenditure for:

19.1 rates and taxes: and /or

19.2 maintenance of Mutual Area; and/or

19.3 any other obligations assumed by it in terms of an agreement with the local authority and/or

19.4 all other necessary and reasonable expenditures incurred /to be incurred in good faith;

19.5 Gardening services rendered with regard to the Mutual Areas

and it is specifically recorded that, notwithstanding anything contained herein to the contrary, the levies referred to herein *only* refers to levies payable to the Home Owners Association in addition to the said levies. It shall be each Member's sole responsibility to make payment of the moneys due to the said Municipality.

## **DEALING WITH THE MUTUAL AREA**

20. Subject to the provisions of paragraph 88, neither the whole nor any portion of the Mutual Area shall be:

- 20.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 20.2 mortgaged; or
- 20.3 subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitudes, other than the general servitudes in favour of the local authority for services, (save those enjoyed by the Members of the Association in terms hereof);

without sanction of a Special Resolution of the Association (and no Member shall be entitled to unreasonably vote against any such Special Resolution which may be proposed).

## **CONTRACTS AND REGULATIONS**

21. The Trustee Committee may from time to time:

21.1 make regulations governing *inter alia*:

- 21.1.1 the Members' rights to use, occupation and enjoyment of the Mutual Area;
- 21.1.2 the external appearance of and the maintenance of the Mutual Area and the buildings or other improvements erected thereon;
- 21.1.3 the external appearance and maintenance of buildings or other improvements erected on Unit Erven.

It is specifically recorded herein that in terms of the provisions of the Deed of Sale in terms of which each Unit Erf was sold to its first Purchaser by the Developer:

21.1.3.1 Any permanent dwelling as well all other improvements to be executed on the Unit Erven shall strictly comply with the Architectural Guidelines as contained in the Architectural Manual;

21.1.3.2 This constitution, the Architectural Manual and the provisions, terms and conditions contained therein shall be binding on the first Purchaser of Unit Erf and ever successor in title;

and it is further recorded that each Registered Owner and other possessor or occupier of a Unit Erf at any given time shall be subject to the above restrictions and conditions. Each Member undertakes to bring all of the provisions hereof and



regulations and rules issued under the attention of all possessors and occupiers of his Erven, should he not reside on or occupy such Erven. Each Member henceforth takes sole responsibility for any breach committed by an occupier of possessor of his Unit Erven.

Without limiting the above, it is specifically therefor recorded that a Member shall not be entitled to erect any buildings and/or structures of any nature whatsoever, nor to make any structural alterations, modifications or renovations to existing buildings and/or structures ("the proposed work") on his Unit Erf without the written approval of the Trustees, which approval shall only be given:

21.1.3.3 after detailed plans of the proposed work have been submitted to the Trustees, or any person nominated by the Trustees (who shall be an Architect, registered with the South African Council of Architects or the Institute of South African Architects, currently being Hennie de Villiers Architects of Durbanville ); and

21.1.3.4 the Trustees or their nominee are satisfied that the proposed work is in accordance with the character and style of the Development;

21.1.3.5 the Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature;

21.2 enter into agreement(s) with the local authorities governing the matters set out in paragraph 21.1 and any other incidental matters.

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

22.1 the provisions of this Constitution;

22.2 any regulations made in terms of paragraph 21.1 and specifically the Architectural Manual annexed hereto;

22.3 any agreements referred to in this paragraph 21.2 insofar as those agreements may directly or indirectly imposed obligations on him.

## **23. BREACH**

23.1 Should any Member:

23.1.1 fail to pay on due date any amount due by that Member in terms of this Constitution and remain in default for more than 7 (seven) days after being notified in writing by the Trustee Committee; or

23.1.2 commit any other breach of any of the provisions of this Constitution and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice requiring same and fail to complete the remedying of such breach within a reasonable time;

then and in either such event, the Trustee Committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees or the Association or any other Member may have in law, including the right to claim damages:

23.1.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance for such obligations, as the case may be; or

23.1.4 in the case of clause 23.1.2 to remedy such breach and immediately recover the total cost incurred by the Trustees or the Association in so doing from such Member;

23.2 Should the Trustee Committee institute any legal proceedings against any Member pursuant to a breach by that Member of this constitution then, without prejudice to any other rights which the Trustee Committee or the Association or any other Member may have in law, the Trustee Committee shall be entitled to recover from such Member all legal costs incurred by the Trustee Committee, including attorney and own client charges, tracing fees and collection commission.

23.3 Without prejudice to all or any of the rights of the Trustees of the Association under this Constitution, should any Member fail to pay any amount due by that Member on due date then such Member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's bankers from time to time, calculated from the due date for payment until the actual date of payment of such amount.

#### **CESSATION OF MEMEBERSHIP**

24. No Member ceasing to be a Member of the Association for any reason shall have any claim upon or interest in the funds or other property of the Association (nor shall any such Member's executor, curators, trustees or liquidators). This clause shall be without prejudice to the rights of the Association to claim from such Member or his Park any arrears of subscriptions or other sums due from him to the Association at the time of him ceasing to be a Member.

#### **TRUSTEE COMMITTEE**

25. There shall be a Board of Trustees of the Association which shall consist of not less than 4 (four) and not more than 6 (six) Members.

26. Every Trustee must be a Member of the Association and reside within the Development, provided that the spouse of a Member may be a Trustee.

### **REMOVAL & ROTATION OF TRUSTEE MEMBERS**

27. Save as set forth in clause 28 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, but will be eligible for re-election to the Trustee Committee at such meeting.

28. A Trustee shall be deemed to have vacated his office as such upon:

- 28.1 his Park being sequestered, whether provisionally or finally, or him surrendering his Park;
- 28.2 him making any arrangement or compromise with his creditors;
- 28.3 him being convicted of any offence involving dishonesty;
- 28.4 him becoming of unsound mind or being found lunatic;
- 28.5 him resigning from such office in writing delivered to the Secretary or Chairman;
- 28.6 his death;
- 28.7 him being removed from office by a Special Resolution of the Members.

provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

29. Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee and such person accepting the nomination.

### **OFFICE OF TRUSTEES**

30. The Trustees shall appoint from amongst themselves a Chairman and Vice-Chairman.

31. The first Chairman and Vice-Chairman shall be appointed by the Developer, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall *ipso facto* be vacated by the Trustee holding such office upon him ceasing to be a trustee for any reason.

32. Within 7 (seven) days of the holding of such Annual General meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman,

who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall *ipso facto* be vacated by the Trustee holding such office upon him ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid office. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office.

33. Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee and all general meetings of Members, and shall perform all the duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or of Members, and shall allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.

34. The Vice- Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.

35. The Trustee shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

#### **FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

36. Subject to the express provisions of these presents, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and which are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made. The Trustee Committee shall specifically be empowered to enforce the provisions hereof (in litigation or otherwise) and generally to sue in a Court of Justice to enforce the provisions hereof or rules and /or regulations issued in terms hereof.

37. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time

38. The Trustee Committee shall have the right to co-opt onto Trustee Committee any Member or Members or the spouse of any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.

39. The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as it shall decide from time to time.

40. The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed in the Association in general meeting;

40.1 as to disputes generally;

40.2 For the furtherance and promotion of any of the objects of the Association;

40.3 for the better management of the affairs of the Association;

40.4 for the advancement of the interests of Members;

40.5 for the conduct of Trustee Committee meetings and general meetings; and

40.6 to assist it in administering and governing its activities generally;

and shall be entitled to cancel, vary or modify any of the same from time to time.

#### **PROCEEDINGS OF THE TRUSTEE COMMITTEE**

41. The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.

42. Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter.

43. The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (Three) Trustees.

44. The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within 5 (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 5 (five) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall there upon exercise all the powers and duties of the Chairman in relation to such meeting.

45. A Trustee shall take minutes of every Trustee Committee meeting, 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. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and Local Authority.

46. All component resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and 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 Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is component within the powers of the Trustee Committee.

47. Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

48. 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 Trustee Committee duly convened.

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

49.1 The Association shall before 30 June 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, in terms of 52 below calling it.

49.2 Such Annual General meeting shall be held at such time and place, subject to the foregoing provisions, as Trustee Committee shall decide from time to time.

50. All general meetings other than Annual General Meetings shall be called Special General Meetings.

51. The Trustee Committee, may, whenever they think fit, convene a Special General Meeting.

#### **NOTICE OF MEETINGS**

52. 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 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 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

case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under these presents 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 these presents, be deemed to have been duly called if it is so agreed:

52.1 in the case of a meeting called as the Annual General Meeting, by all Members entitled to attend and vote thereat; and

52.2 in the case of a special General Meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy five per centum) of the total voting rights of all Members.

53. The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive, the same, shall not invalidate the proceedings at any meetings or any resolution taken forthwith.

#### **VENUE OF MEETINGS**

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

#### **QUORUM**

55. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for time being, represent one-half of the total votes of all Members of the Association entitled to vote, for the time being save that not less than 5 (five) members must be personally present.

56. 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 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 within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

## **AGENDA AT MEETINGS**

57. In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 57.1 the consideration of the Chairman's report to the Trustee's Committee;
- 57.2 the election of the Trustee Committee;
- 57.3 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;
- 57.4 the consideration of the balance sheet of the Association for the last financial year of the Association proceeding the date of such meeting;
- 57.5 the consideration of the report of the Auditors;
- 57.6 the consideration of the total levy (as referred to above) for the calendar year during which such Annual General Meeting takes place; and
- 57.7 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

## **PROCEDURE AT GENERAL MEETINGS**

58. 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 the time appointed for the holding of such 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.

59. 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.



60. Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

## **PROXIES**

61. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorized agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary thereof.

62. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or notarially certified copy thereof shall be deposited at the office at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after expiration of 12 (twelve) months from date of its execution.

63. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of principal or revocation of the proxy, provided that notification in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

## **VOTING**

64. At every general meeting, every Member in person or by proxy and entitled to vote shall have the following vote/s:

64.1 Two Votes for each Unit Erf registered in his name and which has been zoned as a Single Residential area, provided that if a Unit Erf is registered in more than one name, then they shall jointly have two votes with regard to that Erf,

64.2 One Vote for each Unit Erf registered in his name and which has been zoned as a Group Housing area or General Residential area, provided that if a Unit Erf is registered in more than one name, then they shall jointly have one vote with regard to that Erf

65. Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid all levies or other sums (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 present or to vote on any question, either personally or by proxy, at any general meeting.

66. At any general meeting a resolution put to the vote of the meeting shall be decided on a poll, unless no Member present objects to voting by a show of hands, in which case the Chairman may direct voting to take place by a show of hands. The Chairman shall however ensure that all proceedings are controlled and practical, specifically taking cognizance of the number of votes awarded to the various categories of registered owners of Unit Erven as stipulated above in clause 64.

67. Notwithstanding the provisions hereof, voting on the election of a Chairman of a general meeting where a Chairman is not present or on any question of adjournment, shall be decided on a show of hands by the majority of the members present in person or by proxy, and entitled to vote.

68. 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.

69. 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 count as a vote for or against the resolution in question. In the case of an equality of votes, whether on a shown of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

70. 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 them meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and entry in the minutes to the effect that any motion has been carried or lost, with or without a recorded 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 the result of any voting at the meeting.

#### **OTHER PROFESSIONAL OFFICERS**

71. Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firms and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the trustee Committee shall decide, subject to any of the provision of these presents, provided that any expenditure incurred in respect of the above, shall not exceed 5% (five per centum) of the total annual levy for the year in question unless authorized by a Special Resolution.

## **ACCOUNTS**

72. The Association in general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

73. At each Annual General Meeting the Trustee Committee 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 Trustee Committee and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General meeting, as set forth in paragraph 52 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

## **AUDIT**

74. Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

## **SERVICE OF NOTICES**

75. A notice shall be 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 address of the Unit Erf owned by him.

76. No Member shall be entitled to have a notice 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.

77. 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.

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

## **INDEMNITY**

79.1 All Trustee Members and the Auditors shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a Trustee Member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.

79.2 Every Trustee Member, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of Trustee Member, 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 *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

79.3 A Trustee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustee Members, whether in their capacities as Trustee Members 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 Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of *bona fides* or breach of duty or breach of trust.

## **PRIVILEGE IN RESPECT OF DEFAMATION**

80. Every Member of the Association and every Trustee Member shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee Member, to have waived as against every other Member, the Trustee Committee, the Chairman or Vice-Chairman, every other Trustee Member, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Trustee Committee, or any sub-committee, all claims and rights of action which such Member or Trustee Member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee Member, or any reference to such Member or Trustee Member, or any reference to such Member or Trustee Member made at Trustee Committee meetings, or otherwise in the performance or exercise of any right, function, duty, power or trust,

within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee Member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee Member, whether such statement be true or false.

## **ARBITRATION**

81. Subject to option of the Trustee Committee to approach any Court of Law (as described below) any dispute, question or difference arising at any time between a Member or between Members and Trustees out of or in regard to:

- 81.1 any matters arising out of this Constitution; or
- 81.2 the rights and duties of any of the parties mentioned in this Constitution; or
- 81.3 the interpretation of this Constitution;

will 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.

82. Arbitration shall be held in Cape Town informally and otherwise upon the provision the provision of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty-one) Business Days after it has been demanded.

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

- 83.1 primarily an accounting matter – an independent accountant;
- 83.2 primarily a legal matter – a practicing counsel or attorney of not less than 10 (ten) years standing;
- 83.3 any other matter – an independent and suitably qualified person appointed by Auditors as may be agreed upon between the parties to the dispute.

84. If agreement cannot be reached on whether the question in dispute falls under 83.1, 83.2, 83.3 or upon a particular arbitrator in terms of 83.3, within 3 (three) Business Days after the arbitration has been demanded, then:

- 84.1 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 83.1, 83.2, or 83.3: or
- 84.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of paragraph 83 within 7 (seven) Business

Days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within 21 (twenty one) Business Days referred to in paragraph 82.

85. The arbitration shall make his award within 14 (fourteen) 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 arbitration may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

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

87. Notwithstanding anything to the contrary contained in this document, the Trustee Committee shall always be entitled to institute legal proceedings on behalf of the Association (rather than to submit a matter to Arbitration proceedings) by way of application, action or otherwise in any High Court or Magistrate's Court having jurisdiction for the purpose of claiming any relief (whether permanent or temporary) it is entitled to claim or, without limiting same, claiming urgent relief.

#### **88. EFFECTIVE DATE**

The provisions hereof shall come into force simultaneously with the first passing of the first transfer of Unit Erven from the Developer and shall operate and bind each following successor in title of the Unit Erven.

#### **89. CONSENT BY MUNICIPALITY**

The provisions of clauses 6,7,8,9 and 19 shall not be added to, amended or repealed without the consent in writing of the Oostenberg Municipality.

#### **90. HOME BUSINESSES**

90.1 No Member may operate any business or profession of whatever nature from his Unit Erf or otherwise within the boundaries of the development without the written consent and approval of the Association and the Oostenberg Municipality having being obtained prior to the commencement of such business or profession, and then subject to such conditions or restrictions as the Association may prescribe.

90.2 The consent referred to in paragraph 90.1 above:

90.2.1 Shall not be considered if in opinion of the Trustee:

90.2.1.1 the business or profession is of trading nature, where clients and/or customers and/or suppliers and/or creditors, their agents or employees (may) frequently call on a Unit Erf or Mutual Area and/or enter the development for any reason whatsoever;

90.2.1.2 if the business or profession practiced from within the development (may) cause a nuisance of whatever nature to other Members or,

90.2.1.3 if the business or profession (may) reasonably offend Members, due to the nature thereof;

90.2.2 Shall only be considered if in opinion of the Trustees it is sought for a private and respected business operation or profession which is of a calm and respected nature, after consideration of the above.

## **91. STATUS OF DEVELOPER**

As from the effective date and notwithstanding any of the provisions hereof (except for paragraph 6.2.3 to be read herewith), the Developer shall be entitled:

91.1 at any General Meeting to a number of votes equal to the number of Unit Erven not yet transferred to other parties from the Developer and;

91.2 to appoint a sufficient number of Trustees to ensure that the Developer has majority of such Trustees in the Committee until at least 50% (FIFTY PERCENT) of the Unit Erven had thus been transferred.

## **92. AMENDMENTS**

This constitution, or any part thereof, as contained herein shall not be repealed or amended, save by a Special Resolution adopted at an Annual General Meeting or Special General Meeting of the Members.