

# **C O N S T I T U T I O N**

## **THE ERINVALE COUNTRY ESTATE HOMEOWNERS' ASSOCIATION**

**I, Brian Malcolm Stuart, Trustee Committee Secretary,  
certify that the above Association was established as a body corporate on 4 July 1994  
and that the founding Constitution was replaced by this  
Constitution which was properly approved by Members  
in general meeting on 16 February 1998 and that subsequent amendments  
were made by Members in general meetings in accordance with its provisions  
on 5 July 1999, 16 August 1999, 10 July 2000, 19 September 2000, 23 October 2000,  
8 October 2001, 10<sup>th</sup> January 2011 and 23<sup>rd</sup> April 2015.**

\_\_\_\_\_  
**Brian Malcolm Stuart**

\_\_\_\_\_  
**Date**

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## 1 NAME AND ESTABLISHMENT

- 1.1 The name of the Association is **THE ERINVALE COUNTRY ESTATE HOMEOWNERS' ASSOCIATION**;
- 1.2 The Association is constituted and has been established by the Members as a body corporate pursuant to, *inter alia*, the provisions of Section 29 of the **Land Use Planning Ordinance [Cape Ordinance No. 15 of 1985]**.

## 2 INTERPRETATION

In these Presents:

- 2.1 The following words and phrases shall, unless the context otherwise requires, have meanings hereinafter assigned to them:
- 2.1.1 "**Architectural Guidelines**" means regulations formulated to govern the structure and appearance of buildings and gardens at Erinvale;
- 2.1.2 "**the Association**" means the Erinvale Country Estate Homeowners' Association;
- 2.1.3 "**Auditors**" means the Auditors of the Association, appointed in terms of these Presents;
- 2.1.4 "**Chairperson**" means the Chairperson of the Trustee Committee;
- 2.1.5 "**the Common Area**" means the land owned by the Association and will include all services (whether Municipal or otherwise) constructed within the Common Ground;
- 2.1.6 "**the Developer**" means Lourensford Estates (Pty) Ltd.
- 2.1.7 "**Erinvale**" means the Township Area, the Golf Course and the Common Area.
- 2.1.8 "**General Meeting**" means a General Meeting of the Members of the Association and shall include reference to an Annual General Meeting or a Special General Meeting;
- 2.1.9 "**the Golf Course**" means erven 10746, 10762, 10964 and 11023, Somerset West;
- 2.1.10 "**House Rules**" means regulations governing the conduct upon and affairs at Erinvale;
- 2.1.11 "**the Land**" means:
- 2.1.11.1 erf 10018 and the erven numbered 10697 to 11035 Somerset West appearing on General Plan No. 316/94 as at 23 September 1994, and
- 2.1.11.2 any erven created subsequently as a result of subdivision and/or consolidation of any such erf or erven or portions thereof or any other cause.

- 2.1.12 "**Member**" means a Member of the Association;
- 2.1.13 "**the Municipality**" means the Helderberg Municipality or such authority as may succeed it from time to time;
- 2.1.14 "**Ordinary Resolution**" means a resolution passed in compliance with clause 6 at a duly constituted general meeting by a simple majority of Members entitled to vote at that meeting who are present in person or by proxy;
- 2.1.15 "**Person**" means, as the context requires, a natural or a juristic person;
- 2.1.16 "**these Presents**" means this Constitution and any Regulation, as amended from time to time;
- 2.1.17 "**Regulation**" means any House Rule and/or Architectural Guideline, and/or any other regulation and/or by-laws of the Association;
- 2.1.18 "**Special Resolution**" means a resolution passed in compliance with clause 6 at a duly constituted general meeting by not less than three fourths of Members entitled to vote at that meeting who are present in person or by proxy;
- 2.1.19 "**the Township Area**" means the erven contained in the Land, excluding erven 10746, 10762, 10964 and 11023, Somerset West;
- 2.1.20 "**the Trustee Committee**" means the current committee of Trustees or any committee of Trustees of the Association subsequently appointed in terms of these Presents;
- 2.1.21 "**a Trustee Member**" means a person appointed to the Trustee Committee;
- 2.1.22 "**the Unit Erven**" means:
- 2.1.22.1 any erven resulting from the subdivision of the Township Area;
- 2.1.22.2 any sectional title unit as defined in Section 1 of the **Sectional Titles Act No. 95 of 1986**, situate in the Township Area;
- 2.1.22.3 any erf or unit of immovable property, in respect of which separate ownership can be registered in the Deeds Office and which is registerable, formerly being part of a Unit Erf;
- 2.1.22.4 any right, pursuant to any Certificate of Real Right reserved in terms of Sections 12 and 25 of the **Sectional Titles Act** referred to in 2.1.22.2, to erect and complete any building or portion of a building which is proposed to constitute a section as defined in the said Act, from the date of issue by the Registrar of Deeds of the Certificate until such time as a Sectional Title Deed, as defined in the said Act, is registered in respect of that section.
- 2.1.23 "**Vice Chairperson**" means the Vice Chairperson of the Trustee Committee.

2.1.24 The Erinvale Golf Club means the club of that name as constituted by its Constitution as approved by its members on the 26<sup>th</sup> of May 1998 and subsequent amendments thereto.

2.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number and *vice versa*, and words importing any one gender only shall include the other gender as well as juristic persons.

### **3 THE ASSOCIATION**

#### **3.1 MAIN BUSINESS**

The Main Business of the Association is the promotion, advancement and protection of the interests of the Members, in their capacity as such, at Erinvale.

#### **3.2 STATUS OF THE ASSOCIATION**

3.2.1 The Association shall be an Association:

3.2.1.1 with legal personality, capable of suing and being sued in its own name;

3.2.1.2 none of whose Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the Trustee Committee in terms hereof;

3.2.1.3 not for profit, but for the benefit of the Members;

3.2.1.4 with the right to acquire, hold, lease and alienate property, both movable and immovable.

#### **3.3 MAIN OBJECTS**

3.3.1 The main objects of the Association shall be to promote the communal interests of the Members and shall include but not be limited to:

3.3.1.1 The care, maintenance, upkeep and control of the Common Area, including all services constructed within the Common Area and to ensure that applicable Municipal Services are supplied to Erinvale;

3.3.1.2 The formulation and enforcement of rules and regulations at Erinvale;

3.3.1.3 The formulation and enforcement of aesthetic and environmental standards and Architectural Guidelines at Erinvale;

3.3.1.4 The provision and maintenance of access and egress control and security measures at Erinvale;

3.3.1.5 To own Common Property and any improvements erected thereon;

- 3.3.1.6 To ensure that all Unit Erven shall have been developed by not later than the date set out in these Presents;
- 3.3.1.7 The preservation of the low density residential nature of Erinvale;
- 3.3.2 Without limiting the generality of the powers specifically referred to below, the Association shall, subject to this Constitution, have the power to do such acts as may be necessary to accomplish the objects referred to herein.

#### 3.4 SUBDIVISION AND THE COMMON AREA

- 3.4.1 Immovable property at Erinvale or any portion thereof shall not be subdivided nor consolidated nor form the subject matter of any notarial tie agreement without the sanction of a Special Resolution of the Association unless such property is a Unit Erf or Unit Erven situated in the Township Area and
  - 3.4.1.1 in the case of a sub-division, the subdivided portion or portions are simultaneously consolidated with an adjacent Unit Erf or Erven or sub-divisions thereof in the Township Area;
  - 3.4.1.2 an agreement is reached between the Association and the Member binding both himself and his successors-in-title to the effect that the total levies receivable by the Association as a consequence of such sub-division and/or consolidation and/or tie agreement shall not be less than that receivable immediately prior thereto; and
  - 3.4.1.3 it has the prior written approval of the Trustee Committee.
- 3.4.2 The Common Area or any portion thereof shall not without the sanction of a Special Resolution of the Association be:
  - 3.4.2.1 sold, let on a long term basis, alienated, otherwise disposed of or transferred from the Association; or
  - 3.4.2.2 mortgaged; or
  - 3.4.2.3 subjected to any rights for a period exceeding 12 (twelve) months, whether registered in a Deeds Registry or not, of use, occupation or servitude, other than the general servitude in favour of the Helderberg Municipality, save those enjoyed by the Members of the Association in terms hereof
- 3.4.3.1 Immovable property at Erinvale or any portion thereof shall not form the subject matter of an application by a Member for the opening of a Sectional Title Scheme in terms of the **Sectional Titles Act No 95 of 1986** on such property without the prior approval of the Trustee Committee which shall have the right to stipulate, whether or not the proposed building or buildings are to form the subject matter of a right to extend the scheme in terms of Section 25 of the said Act, the maximum density permitted for the Scheme and such reasonable time periods for
  - 3.4.3.1.1 the commencement of construction and completion, as defined in 3.5.11 of a building or buildings on the property, in conformity with the Architectural

Guidelines; and

3.4.3.1.2 the issue of a Sectional Title Deed or Deeds, as defined in the said Act, in respect of such building or buildings.

3.4.3.2 In the event of a Member failing to comply with his obligations under 3.4.3.1.1 above the provisions of 3.5.10 shall apply as if such Member was a Member who had failed to comply with his obligations as set out therein.

### 3.5 MEMBERSHIP

3.5.1.1 Membership of the Association shall be compulsory for the owner of the land comprising the Golf Course and for every registered owner of a Unit Erf and for every holder of a right in terms of Sections 12 and 25 of the **Sectional Titles Act** referred to in 2.1.22.4 to erect and complete or extend a further building or buildings in the Township Area, and the transferee of a Unit Erf or the successor-in-title of such holder shall be deemed to have become a Member of the Association, subject to all the obligations of Membership, forthwith upon registration of transfer of a Unit Erf into his name or upon his acquisition of such right from such holder;

3.5.1.2 Every registered owner of a unit erf, acquiring such ownership on or after 23rd April 2015, shall be deemed to be and, for so long as that owner is a member of the Association, also remain a Full Member or a Special Social Member of the Erinvale Golf Club. Such compulsory Full Golf Club, or Special Social Membership shall only be enforceable for as long as the Erinvale Golf Club has available to the owner, this class of membership. The Purchaser agrees and acknowledges that upon becoming a Full, or Special Social member of the Club, he will be bound by the Constitution, Rules and Regulations of the Club. Owners who became regular Social Members of the Club between 4th January 2012 and 22nd April 2015 shall remain Social members at an annual cost not exceeding 8% of the Membership Fee payable by Full Members of the Erinvale Golf Club. This regular Social membership shall entitle the owner and residents of the unit erf to use the Clubhouse and associated facilities and he agrees and acknowledges that by being a Social member of the Club he will be bound by the Constitution, Rules and Regulations of the Club. Failure by the aforementioned registered owner to remain a Full or Special Social Member of the Erinvale Golf Club shall incur an administrative penalty, levied by the HOA, being a monthly charge equivalent to 1/12 of the annual Membership Fee payable by Full Members of the Erinvale Golf Club, for the duration of the period of Non-Membership.”

3.5.2 Membership of the Association shall be limited to the owner of the land comprising the Golf Course and to the registered owners of the Unit Erven provided that:

3.5.2.1 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;



- 3.5.2.2 where any such owner is more than one Person, all registered owners of that erf shall be deemed jointly and severally to be one Member of the Association.
- 3.5.3 When a Member ceases to be the registered owner of the last Unit Erf registered in his name, he shall *ipso facto* cease to be a Member of the Association.
- 3.5.4 The owner of the Golf Course shall not be entitled to sell or transfer the Golf Course and a Member shall not be entitled to sell or transfer a Unit Erf unless it is a condition of the sale and/or transfer that:
- 3.5.4.1 the transferee shall become a Member of the Association;
- 3.5.4.2 the registration of the transfer of that Unit Erf into the name of that transferee shall *ipso facto* constitute the transferee as a Member of the Association;
- 3.5.4.3 he first obtains the written consent of the Association, which consent shall be given without undue delay provided the purchaser of such Unit Erf agrees in writing to abide by these Presents, and provided the Member shall have paid all amounts due by him to the Association for the period up to the date of transfer of the Unit Erf;
- 3.5.5 A Member shall be obliged to give the Association notice in writing forthwith, upon the sale of any Unit Erf owned by him and upon the transfer of the Unit Erf into the name of the intended Purchaser.
- 3.5.6 The registered owner of a Unit Erf and the owner of the Golf Course may not resign as a Member of the Association or cease to be a Member of the Association.
- 3.5.7 The rights and obligations of a Member shall not be transferable and every Member shall:
- 3.5.7.1 to the best of his ability further the objects and interests of the Association;
- 3.5.7.2 observe all Regulations;
- 3.5.7.3 be jointly liable with all the Members for all expenditure properly incurred in connection with the Association, insofar as third parties are concerned;
- 3.5.7.4 not be entitled, without the prior written approval of the Trustee Committee, to make any alterations to any building or Unit Erven or do anything that will affect the architectural style or aesthetic appearance of the buildings within Erinvale;
- 3.5.7.5 be obliged to submit any building plan, whether such plan is for new construction, renovation, alteration and/or addition, to the Trustee Committee for examination and approval prior to the submission of such plan to the Municipality or other local authority for approval;
- 3.5.8 Nothing contained in the Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of the Member's

Unit Erf.

- 3.5.9 A Member shall be obliged to ensure that a Unit Erf owned by him shall, subject to 3.5.11 below, have been developed by the commencement of construction of a dwelling, and the completion of such dwelling, in conformity with the Architectural Guidelines, within the time limits stipulated in the Deed of Sale which resulted in the original transfer of such Unit Erf from the Developer to the first owner of that Unit Erf.
- 3.5.10 In the event of the Member failing to comply with his obligations under 3.5.9 above, the Trustee Committee, for and on behalf of the Association, shall have the right, without derogating from any other right/s which the Association may have, to impose on such Member a levy equal to 10 (ten) times the then current levy determined under clause 5.2.5 below which shall be payable monthly in advance on the terms referred to in 5.2.6 until such time, and in accordance with 3.5.11, as construction of the said dwelling is commenced, or until completion of the said dwelling, as the case may be, and whether or not the failure to commence construction or complete the dwelling was attributable to such Member, or any predecessor in title.
- 3.5.11 For the purposes of 3.5.9 and 3.5.10 above, "commencement of construction" shall mean the clearing and fencing of the erf, the establishment of a site office and builders' toilet facilities, and the excavation and throwing of foundations; "completion" shall mean when either the Member's or the Association's architect certifies the dwelling suitable for occupation.

### 3.6 **HOUSE RULES, ARCHITECTURAL GUIDELINES AND OTHER REGULATIONS**

- 3.6.1 Members, their guests and their tenants and any person entering the estate, shall be subject to all relevant Regulations. Such Regulations shall remain in force and effect until such time as they may be varied in the manner detailed in 3.6.2 and 3.6.3 below.
- 3.6.2 Regulations in force at the date of the adoption of this Constitution shall be binding on the Members until cancelled or modified as provided hereunder;
- 3.6.3 Any Regulations may be made, modified or cancelled by the Trustee Committee provided, where appropriate, it announces such changes to Members in writing, giving the reasons and effective date.
- 3.6.4 Regulations govern, *inter alia*:
- 3.6.4.1 the Members' rights of use, access to, occupation and enjoyment of the Common Area;
- 3.6.4.2 the control of pets and other animals at Erinvale;
- 3.6.4.3 the external appearance of and the maintenance and use of the Common Area and the buildings or other improvements erected thereon;

- 3.6.4.4 the external appearance and maintenance of buildings or other improvements or structures erected at Erinvale and on Unit Erven, architectural and aesthetic style and design criteria, and the type of plants and maintenance of gardens;
- 3.6.4.5 the execution of building work within Erinvale;
- 3.6.4.6 the code of conduct at Erinvale required of builders, other contractors and owners wishing to execute work within Erinvale;
- 3.6.4.7 the conditions of access to and egress from Erinvale;
- 3.6.4.8 security within Erinvale;
- 3.6.4.9 disputes and disciplinary measures relating to Members and others having access to Erinvale in relation to matters affecting Erinvale;
- 3.6.4.10 the furtherance and promotion of the affairs of the Association;
- 3.6.4.11 the management of the affairs of the Association;
- 3.6.4.12 the conduct of the Trustee Committee;
- 3.6.4.13 the conduct at Erinvale of Members and any person resident on or entering the estate;
- 3.6.4.14 any matter that may assist the Association and its representative organs in administering and governing the activities of the Association generally;
- 3.6.4.15 the utilisation of Erven and dwellings at Erinvale;
- 3.6.4.16 the determination and imposition of fines, which shall become a debt owing to the Association.
- 3.6.5 Notwithstanding 3.6.3 above, the Members, by Ordinary Resolution in general meeting, may
  - 3.6.5.1 make any regulation; or
  - 3.6.5.2 cancel or modify any regulation.
- 3.6.6 Members shall be obliged to inform the Members of their households, their guests, employees, invitees and/or tenants of the Regulations then in force and the Association shall be entitled, but not obliged, in its discretion, to act against such guests, employees, invitees and/or tenants, in addition to the Member, for any breach. The Member shall be responsible and liable for the acts and omissions of their guests, employees, invitees and/or tenants and indemnifies the Association accordingly;
- 3.6.7 The Trustee Committee shall each year appoint an Architectural Review Committee consisting of at least one Trustee Member, one of whom shall be Chairperson, and such other suitably qualified persons, who need not be

Members, as it may from time to time decide.

- 3.6.8 The Architectural Review Committee
- 3.6.8.1 shall, in any deliberations be bound by the Architectural Guidelines and other relevant Regulations in force at the time, and
- 3.6.8.2 may recommend changes to the Architectural Guidelines for consideration by the Trustee Committee and/or Association in general meeting.
- 3.6.9 Submissions of plans referred to in 3.5.7.4 and 3.5.7.5 shall be dealt with timeously and any rejection or deferral shall be accompanied by the reasons therefore.
- 3.6.10 Dwellings on Erinvale shall be for single family occupation, whether by Members, their guests or tenants. Exceptions to this clause shall be subject to the prior written approval of the Association.
- 3.6.11 Persons enter the Golf Course at their own risk.

### **3.7 MEMBERS' OBLIGATIONS**

- 3.7.1 Each Member undertakes to the Association that he shall comply with:
- 3.7.1.1 the provisions of this Constitution;
- 3.7.1.2 any Regulation;
- 3.7.1.3 any agreements entered into by the Association which impose obligations on the Member.
- 3.7.2 Every Member shall observe all laws, ordinances, by-laws, regulations or rules imposed by any statutory or other relevant authority.

## **4 TRUSTEE COMMITTEE**

### **4.1. COMPOSITION OF THE TRUSTEE COMMITTEE**

- 4.1.1. The affairs of the Association shall be managed and controlled by a Committee of Trustees (the Trustee Committee) which shall consist of not less than 5 (five) and not more than 7 (seven) Members, these numbers including both Members elected by a general meeting and Members co-opted in terms of sub-clause 4.3.1.4 of this Constitution.
- 4.1.2. Every Trustee Member must be a Member of the Association or a person permanently residing at Erinvale, provided that the spouse of a Member may be a Trustee Member and provided further that in the event that the Member is a company, close corporation or trust, a duly nominated shareholder, director, Member or trustee, as the case may be, may be a Trustee Member. Notwithstanding the provisions of this clause, not more that 1 (one) person may

be appointed as a Trustee Member in respect of a Unit Erf.

- 4.1.3. In the event that a Trustee Member or, as the case may be, the spouse, company, close corporation or trust represented by him, ceases to be a Member of the Association during his period of office or, if he was appointed based upon the fact that he permanently resides at Erinvale and ceases to do so during his period of office, he shall be entitled to remain a Trustee Member until the next Annual General Meeting of the Association, provided that the Trustee Committee shall be entitled, by ordinary majority of the Trustee Members, to require a Trustee Member as envisaged in this clause to resign.

#### **4.2. NOMINATIONS FOR MEMBERS OF THE TRUSTEE COMMITTEE**

- 4.2.1. The Trustee Committee shall call for nominations of Members to fill vacancies on the Trustee Committee not later than 3 (three) calendar months before the Annual General Meeting;
- 4.2.2. Written nominations for Trustee Members shall be lodged not later than 6 (six) weeks before each Annual General Meeting and shall be proposed and seconded by Members and accepted by the nominee;
- 4.2.3. A list of nominees for vacant positions on the Trustee Committee shall be distributed to all Members not less than 28 (twenty eight) days before each Annual General Meeting. Each nominee may submit a brief curriculum vitae which shall be distributed with the list of nominees.

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

- 4.3.1. Subject to the express provisions of these Presents to the contrary the Trustee Committee shall have full powers in the management and business affairs of the Association which powers shall, without limiting the generality of the aforementioned include the powers and right:
- 4.3.1.1. to do all that is necessary and appropriate to ensure that the objects of the Association are performed and fulfilled;
- 4.3.1.2. to exercise all powers of the Association and do such acts on behalf of the Association as may be exercised and done by the Association, save those that are required to be done by the Association in General or Special Meeting, and subject to any Regulation and/or restrictions as may be prescribed by the Association in General Meeting from time to time;
- 4.3.1.3. subject to the provisions of 3.6.3 and 3.6.5.2, to make, cancel, or modify any Regulation, including Regulations relating to the preservation of the low density residential nature of Erinvale;
- 4.3.1.4. to vary, cancel or modify any decisions and resolutions of the Trustee Committee from time to time;
- 4.3.1.5. to fill a vacancy on the Trustee Committee by co-opting any person who qualifies to be a Trustee Member as defined in sub-clause 4.1.2 above. The co-option shall be effected by a majority vote of the Trustee Committee. A co-

opted Trustee Member shall enjoy all the rights and be subject to all the obligations of a Trustee Member duly elected by Members. The Trustee Committee shall cause to have recorded the reasons for any co-option in the minutes of the relevant meeting.

- 4.3.1.6. to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Trustee Members and/or Chairperson, Vice Chairperson, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties. Any such expenses shall be disclosed as a separate item in the income statement of the Association.
- 4.3.1.7. in the absence of any occupant of a Unit Erf where there is an imminent and serious threat to property and/or persons arising from that Unit Erf, to obtain entry, whether forcibly or not, to such Unit Erf including any buildings thereon and to take whatever action is deemed necessary to rectify or remove such threat. Any reasonable expenditure incurred in this endeavour shall be for the account of the Member concerned and be a debt owing to the Association. The Member shall have no claim against the Association in this regard unless the Trustee Committee has acted with lack of *bona fides*, in breach of duty, in breach of trust or with gross negligence.
- 4.3.1.8. to restrict, approve and control any commercial activity at Erinvale;
- 4.3.2. The Trustee Committee shall appoint the Architectural Review Committee referred to in 3.6.7.
- 4.3.3. A Trustee Member and/or Members of any sub-committees appointed by the Trustee Committee shall before:
  - 4.3.3.1. the meeting of the committee concerned or;
  - 4.3.3.2. entering into a contract on behalf of the Association in which the Member is directly or indirectly materially interested; declare his full interest, if any, in respect of the subject matter of the proposed resolution or the proposed contract, in writing, to the committee concerned and shall not enter into such contract until such time as a resolution has been passed by the Trustee Committee or the sub-committee, as the case may be, approving thereof.
- 4.3.4.1 The Trustee Committee may establish a sub-committee or sub-committees and delegate such tasks and/or responsibilities to such sub-committee or sub-committees as it deems fit.
- 4.3.4.2 Each such sub-committee shall;
  - 4.3.4.2.1 be chaired by a Trustee Committee Member;
  - 4.3.4.2.2 not necessarily be composed of Association Members;
  - 4.3.4.2.3 keep minutes of its meetings and decisions and present these to the next Trustee Committee meeting for approval;

- 4.3.4.2.4 obtain approval of the Association's treasurer prior to authorising any expenditure or placing the Association under any financial obligation;
  - 4.3.4.2.5 be dissolved at the next Annual General Meeting of the Association or upon a decision of the Trustee Committee;
  - 4.3.4.2.6 conduct its proceedings in such reasonable manner and form as the chairperson thereof decides; and
  - 4.3.4.2.7 otherwise be subject to the provisions of these Presents and the mandate under which it was established.
- 4.3.4.3 The Architectural Review Committee is not a sub-committee as set out in this clause.

#### 4.4 OTHER PROFESSIONAL OFFICERS

- 4.4.1 Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the right to engage on behalf of the Association, and for its benefit, the services of accountants, auditors, attorneys, advocates, architects, engineers and any other professional person/s or firm 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 the provisions of these Presents.

#### 4.5 OFFICE BEARERS

- 4.5.1 After the holding of any Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number a Chairperson, Vice Chairperson, Treasurer and Secretary.
- 4.5.2 The office of the Chairperson, Vice Chairperson, Treasurer and Secretary shall *ipso facto* be vacated by the Trustee Member holding such office upon his ceasing to be a Trustee Member for any reason. No one Trustee Member shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall meet to appoint one of their number as a replacement for such office.
- 4.5.3 Save as otherwise provided in these Presents, the Chairperson shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Trustee Committee or the Members, and permit 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.
- 4.5.4 The Vice Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the Trustee Committee.

#### 4.6 **DISQUALIFICATION AND ROTATION OF TRUSTEE COMMITTEE MEMBERS**

- 4.6.1 Any of the following persons shall be disqualified from being appointed or acting as a Trustee Member of the Association;
- 4.6.1.1 a juristic person;
- 4.6.1.2 a minor or any other person under legal disability;
- 4.6.1.3 any person disqualified from being a director of a company as envisaged in the Companies Act No. 61 of 1973;
- 4.6.1.4 an unrehabilitated insolvent;
- 4.6.1.5 being more than 3 (three) months in arrears with any debt due and payable to the Association.
- 4.6.2 A Trustee Member shall be deemed to have vacated his office upon his:
- 4.6.2.1 resignation from such office, in writing, being delivered to the offices of the Association;
- 4.6.2.2 death;
- 4.6.2.3 his insolvency or the insolvency of the company, close corporation or trust represented by the said person;
- 4.6.2.4 being removed from office by resolution of the Members;
- 4.6.2.5 absence from three consecutive meetings of the Trustee Committee without leave of absence;
- 4.6.2.6 being disqualified on any basis envisaged in 4.6.1 above.
- 4.6.3 To encourage continuity, a limited number of Trustee Members shall be required to retire each year.
- 4.6.3.1 The Trustee Members, whether appointed at an Annual General Meeting or co-opted by the Trustee Committee, shall retire by rotation. At every Annual General Meeting at least 3 (three) of such Trustee Members shall retire from office if there are 5 (five) Trustee Members in office and at least 4 (four) Trustee Members shall retire if there are 6 (six) or 7 (seven) Trustee Members in office.
- 4.6.3.2 The Trustee Members to retire as aforesaid in each year shall be those who have been longest in office since their election or co-option, but as between persons who became Trustee Members on the same day as those to retire, unless they otherwise agree amongst themselves, shall be determined by lot.



- 4.6.3.3 A retiring Trustee Member shall be eligible for re-election.
- 4.6.4 Anything done by a person in the capacity of a Trustee Member and in good faith, prior to the recording of the fact that he is no longer a Trustee Member in the minute book of the Trustee Committee, shall be valid, notwithstanding the fact that he ceased to be a Trustee Member prior to the recording referred to.
- 4.6.5 A Trustee Member may be removed from office by an Ordinary Resolution of the Members.

#### 4.7 INDEMNITY

- 4.7.1 All Trustee Members 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 Chairperson or Vice Chairperson, whether defending any proceedings, civil, criminal or otherwise, notwithstanding the fact that such liability may have been incurred or action instituted pursuant to a failure to follow the procedures provided for in these Presents alternatively based upon a misinterpretation of these Presents.
- 4.7.2 Every Trustee Member, every servant, agent and employee of the Association, 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 any reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee Member, his duties as Chairperson or Vice Chairperson. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 4.7.3 A Trustee Member in his capacity as such 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 Chairperson or Vice Chairperson, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the 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 for any loss or damage occasioned by any error of judgement or oversight on the part of the Trustee Member concerned, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of the office/s of the Trustee Member concerned or in relation thereto, unless the same should happen through lack of *bona fides*, breach of duty or breach of trust or gross negligence of the Trustee Member concerned.

## **5 FINANCIAL AFFAIRS**

### **5.1 FINANCIAL AND FISCAL YEAR**

- 5.1.1 The financial year end of the Association shall be on a date determined by Members in General Meeting.
- 5.1.2 The fiscal year of the Association shall normally be a twelve month period always ending on the financial year end date, the period to be reduced or increased only when necessary to accommodate changes to the year end date and approved by Members in General Meeting.
- 5.1.3 New budgets and/or levies or alterations thereto arising from changes to the date and/or period referred to in 5.1.1 and 5.1.2 must be approved by Members in General Meeting.

### **5.2 LEVIES**

- 5.2.1 Levies shall be made on Members for the purpose of meeting all the expenditure which the Association has properly incurred, or to which it may be reasonably anticipated that the Association will necessarily or reasonably be put by way of:
- 5.2.1.1 maintenance, repair, improvement and keeping in order and condition of the Common Area;
- 5.2.1.2 mortgage payments;
- 5.2.1.3 purchases of fixed or movable property;
- 5.2.1.4 erection of or alterations to buildings;
- 5.2.1.5 payment of all rates and other charges payable by the Association in respect of the Common Area;
- 5.2.1.6 payment for all services rendered to the Association;
- 5.2.1.7 payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, the Common Area and the Association's affairs and the execution of its objects, including its contribution to the annual golf maintenance budget, if any.
- 5.2.2 In calculating levies, account shall be taken of income, if any, earned by the Association.
- 5.2.3 The Trustee Committee shall prepare a budget for the ensuing year and estimate the total levy required to cover the budget. The Trustee Committee may include in such levy an amount to be held in reserve to meet necessary and/or reasonably anticipated future expenditure not of an annual nature and any deficiency from the preceding year.

- 5.2.4 The total levy payable by the Members shall be divided by the number of Unit Erven and deemed Unit Erven and borne by the owner/s of the respective Unit Erven, save in those instances where agreement has been concluded with the owners of a Unit Erf to pay a higher levy.
- 5.2.5 The Members shall approve the budget and the levies payable by Members at the Annual General Meeting.
- 5.2.6 The levies referred to in 5.2.5 shall be payable annually in advance, provided that they may be paid in instalments on terms and conditions determined by the Trustees.
- 5.2.7 The Trustee Committee may make special levies upon the Members for unbudgetted expenses, provided that:
- 5.2.7.1 The Trustee Committee shall announce the imposition of the levy and the reasons therefore as soon as the Trustee Committee has resolved to impose the same;
- 5.2.7.2 Where feasible, the Trustee Committee shall not commit itself to expenditure for which they intend to raise a special levy until 14 (fourteen) days after the announcement of the levy, calculated from the date of posting the notice. If, before this period has expired, a Special General Meeting is called by the Members in terms of clause 6.4.2 to discuss the levy, then the Trustee Committee shall not commit itself to the expenditure until it has been approved at the Special General Meeting, unless the situation is of such an urgent nature that no delay can be countenanced and immediate action is required;
- 5.2.7.3 Such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit;
- 5.2.8 Any amount due by a Member by way of a levy shall be a debt due and payable by him to the Association.
- 5.2.9 The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies and any other amount due by a Member to the Association.
- 5.2.10 Levies paid by a Member shall not be repayable by the Association upon his ceasing to be a Member. Notwithstanding the provisions of this clause, the outgoing Member shall be entitled to cede to his successor in title the benefit in and to prepaid levies.
- 5.2.11 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 Unit Erf, to pay the levy attributable to that Unit Erf. No Member shall transfer his Unit Erf unless the Member has at the date of transfer fulfilled all his financial obligations to the Association.
- 5.2.12 The levies due by a Member of the Association shall be paid without deduction or set-off, free of exchange at the offices of the Association or such other place

as it may specify in writing from time to time.

- 5.2.13 A Member shall not be entitled to any of the privileges of Membership unless and until he shall have paid every levy and other sum, if any, which shall be due and payable to the Association in respect of his Membership thereof and the Association shall be entitled to discontinue rendering services supplied by the Association to any applicable Unit Erven 28 (twenty eight) days after posting by registered mail of written notice requiring payment.
- 5.2.14 The announcement of any levy and the dispatch of statements of account may be sent either to the Member's elected address referred to in 6.6.1, should this not be a postal address or to the Member's postal address at the discretion of the Trustee Committee.

### **5.3 ACCOUNTS**

- 5.3.1 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/or books of the Association, and subject to such conditions and regulations, the accounts and/or books of the Association shall be open to inspection of Members during normal business hours.
- 5.3.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income statement and, where appropriate, a statement of source and application of funds for the immediately preceding financial year of the Association together with a proper balance sheet made up as at the last financial year end of the Association. The financial statements referred to shall be accompanied by full and proper reports of the Trustee Committee and the Auditors, together with a budget for income and expenditure for the next financial year, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in clause 6.2 below, copies of such accounts, balance sheet, reports and budget and/or any other documents required by law to accompany same.

### **5.4 AUDIT**

- 5.4.1 Once at least every year, the financial statements of the Association shall be audited by the Auditors.

### **5.5 CESSATION OF MEMBERSHIP**

- 5.5.1 A Member ceasing to be a Member of the Association for any reason shall not, nor shall any such Member's executor, curator, trustee or liquidator, have any claim upon or interest in the funds or other assets of the Association. The provisions of this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his ceasing to be a Member.

## 6 MEETINGS

### 6.1 PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 6.1.1 Subject to any provisions of these Presents, the Trustee Committee shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 6.1.2 Notwithstanding clause 6.1.1, meetings of the Trustee Committee shall be held at least once every quarter.
- 6.1.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustee Members if the Trustee Committee consists of 5 (five) persons and 4 (four) persons if the Trustee Committee consists of 6 (six) or 7 (seven) persons.
- 6.1.4 The Chairperson shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairperson not be present within 10 (ten) minutes after the time appointed for the holding thereof, then the Vice Chairperson shall act as Chairperson at such meeting, provided further that should the Vice Chairperson also not be present within 10 (ten) minutes of the time appointed for the holding of such meeting, those present of the Trustee Committee shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 6.1.5 The Trustee Members shall cause minutes of all decisions to be taken at every Trustee Committee meeting to be prepared, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Trustees at the next monthly or quarterly meeting, as the case may be, of the Trustee Committee and thereafter signed by the Chairperson. 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 Member, the Auditors, the Association Members and the Municipality.
- 6.1.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect or shall be binding upon the Members or any of the Trustee Committee unless such resolution is within the powers of the Trustee Committee.
- 6.1.7 Save as otherwise provided in these Presents, the proceedings at any Trustee Committee Meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

6.1.8 A resolution signed by all the Members of the Trustee Committee shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

6.1.9 In the case of an equality of votes, the Chairperson of that meeting shall have a casting vote in addition to his deliberative vote as Trustee Member.

## **6.2 ANNUAL GENERAL MEETING**

6.2.1 The Association shall, within 4 (four) calendar months of the end of its 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 notices to be given in terms of clause 6.6 below.

## **6.3 AGENDA AT ANNUAL GENERAL MEETINGS**

6.3.1 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:

6.3.1.1 The consideration of the Chairperson's report;

6.3.1.2 The consideration of the financial statements of the Association for the financial year of the Association preceding the date of such meeting;

6.3.1.3 The consideration of the report of the Auditors;

6.3.1.4 The consideration of a budget and the total levy payable pursuant thereto (as referred to in 5.2) for the calendar year during which such Annual General Meeting takes place, alternatively for the period up to the next Annual General Meeting;

6.3.1.5 The consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting and the appointment of Auditors for the ensuing financial year;

6.3.1.6 The election of the Trustee Committee;

6.3.1.7 The consideration of any resolutions of which due notice has been given and the voting upon any such resolutions;

6.3.1.8 The consideration of any resolution regarding procedural matters proposed for adoption by such meeting and the voting upon such resolution.

## **6.4 SPECIAL GENERAL MEETINGS**

6.4.1 All General Meetings other than the Annual General Meeting shall be called Special General Meetings.

6.4.2 The Trustee Committee may, whenever it thinks fit, convene a Special General Meeting or Homeowners' Information Meeting as envisaged in 6.12 and shall be obliged to convene a Special General Meeting if called upon to do so by

written request from Members owning not less than 30 (thirty) Unit Erven.

## **6.5 VENUE OF MEETINGS**

- 6.5.1 General Meetings of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time, provided that the venue shall be not more than 25km from Erinvale.

## **6.6 NOTICE OF MEETINGS**

- 6.6.1 An Annual General Meeting and a Special General Meeting called for the passing of a Special or Ordinary Resolution, shall be called on not less than 28 (twenty eight) days' notice in writing after the date of sending thereof. Members must provide the Association with a postal address, but may elect to receive notice by telefacsimile or electronic transmission except that in the case of telefacsimile only the notice and not necessarily the supporting documentation will be sent in that manner and may be sent by postal delivery. Notices may be sent to the Member's postal address even if the telefacsimile or electronic transmission has been elected at the discretion of the Trustee Committee. In each case, the notice shall be exclusive of the day on which it was sent and shall specify the resolution/s and any other business to be attended to, the place, the date and the time of the meeting. 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.
- 6.6.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification or present any document required to be given or sent in terms of these Presents, or the non-receipt of any such notice, notification or document shall not invalidate the proceedings at or any resolution passed at any meeting, provided that not more than 10% (ten per centum) of the persons entitled to receive the same are affected.

## **6.7 PROCEDURE AT GENERAL MEETINGS**

- 6.7.1 The Chairperson shall preside as such at all General Meetings, provided that should he not be present within 10 (ten) minutes after the time appointed for the holding thereof, then the Vice Chairperson shall act as Chairperson at such meeting, provided further that should the Vice Chairperson also not be present within 10 (ten) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 6.7.2 The Chairperson may, with the consent of any General Meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. 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. If the adjournment is for less

than 10 (ten) days, the Members shall not be entitled to any notice of adjournment or any notice of the business to be transacted.

- 6.7.3 Except as otherwise set forth in these Presents, all General Meetings shall be conducted in accordance with generally accepted practice.

## **6.8 QUORUM**

- 6.8.1 No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any General Meeting shall be the presence, in person or by proxy such of the Members entitled to vote, as represent 25% (twenty five per centum) of the total votes of all Members of the Association entitled to vote, except where the purpose of the meeting is the passing of a Special Resolution, in which case the quorum shall be the presence, in person or by proxy such of the Members entitled to vote, as represent not less than 50% (fifty per centum) of the total votes of all Members of the Association entitled to vote.

- 6.8.2 If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the following week, at the same place and time, or at such other place as the Chairperson of the meeting shall appoint, provided that, if a Special Resolution is to be voted on at the meeting, the meeting shall stand adjourned for at least 28 (twenty eight) days, and at least 28 (twenty eight) day's notice shall be given of the date on which the meeting has been reconvened. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, Members present shall be a quorum, except that, if the meeting has been convened on the requisition of Members and a quorum is not present, the meeting shall be dissolved.

## **6.9 PROXIES**

- 6.9.1 A Member may be represented at a General Meeting by a proxy, who need not be a Member of the Association. A Member may appoint the Secretary of the Association as a proxy, in which case the Member shall give instructions to the Secretary on how to vote. The instrument appointing a proxy shall be substantially in the form given in Appendix 1. Where a Member is a company, the instrument shall be signed by a director, who shall warrant that he is duly authorised. Where the Member is a close corporation the instrument shall be signed by a Member thereof who shall warrant that he is duly authorised and where the Member is a trust the instrument shall be signed by a trustee who shall warrant that he is duly authorised.

- 6.9.2 The instrument appointing a proxy and the Power of Attorney or other authority, if any, under which it is signed, or a notarially certified copy thereof shall be deposited at the office of the Association at any time but not less than 24 (twenty four) week day hours before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution, and it may be cancelled at any time by the Member who has appointed the proxy by giving written notice to this effect to the Secretary of



the Association .

- 6.9.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death of the principal or revocation of the proxy, provided that no intimation 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.

## **6.10 VOTING**

- 6.10.1 Unless otherwise provided, at every General Meeting every Member in person or by proxy and entitled to vote shall have one vote for each Unit Erf registered in his name provided that if a Unit Erf is registered in more than one name, they shall jointly have one vote.
- 6.10.2 Save as expressly provided for in these Presents, no person other than a Member duly registered, who shall have paid every levy and other sum, if any, which shall be due and payable to the Association in respect of or arising out of his Membership, and who is not under suspension, shall be entitled to vote on any question, either personally or by proxy, at any General or Special Meeting.
- 6.10.3 At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or immediately on the declaration by the Chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting. The Chairperson shall call for persons holding more than one proxy to declare the number of proxies held and their votes shall be counted separately. The documentation of proxies shall be open to the meeting for inspection. When declaring the result of the vote, the Chairperson shall specify, if requested to do so by any person entitled to vote at such meeting, the number of votes cast by Members present at the meeting and the number of proxy votes.
- 6.10.4 Notwithstanding the provisions of sub-clause 6.10.3 aforesaid, voting on the election of a Chairperson of a General Meeting, if necessary, or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.
- 6.10.5 Every resolution and every amendment of a resolution proposed for adoption by a General Meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 6.10.6 Every resolution other than a Special Resolution or the amendment of a Special Resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the General Meeting shall be entitled to a casting vote in addition to his deliberative vote. A Special Resolution shall be carried by not less than three fourths of the Members at the meeting who are present in person or by proxy.
- 6.10.7 Unless any Member present in person or by proxy at a General Meeting shall before closure of the meeting have objected to any declaration made by the

Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

- 6.10.8 The election of Trustees shall be decided on a poll unless otherwise resolved at that meeting and the Trustee Committee shall prepare suitable ballot papers prior to the meeting to facilitate the voting. In the case of an equality of votes, the outcome shall be decided by lot.

## **6.11 RESOLUTIONS: ORDINARY AND SPECIAL**

- 6.11.1 A Special Resolution shall be required in relation to the matters referred to in 3.4 above and 8.1.2 below. All other matters can be decided by Ordinary Resolution.
- 6.11.2 For the specific quorum requirements for Ordinary and Special Resolutions, refer to clause 6.8.1 above, and for the specific voting requirements for Ordinary and Special Resolutions, refer to clause 6.10.6 above.

## **6.12 HOMEOWNERS' INFORMATION MEETING**

- 6.12.1 The Trustee Committee shall convene a Homeowners' Information Meeting at least once per year approximately six months after the Annual General Meeting, unless otherwise instructed by a General Meeting of the Members provided that, in the event that a Homeowners' Information Meeting has been requisitioned or held at the instance of Members prior to the expiry of 6 (six) months after the Annual General Meeting, the obligation of the Trustee Committee in terms of this clause to hold another Homeowners' Information Meeting shall fall away.
- 6.12.2 The Trustee Committee shall be obliged to convene a Homeowners' Information Meeting if requisitioned by Members as envisaged in 6.4.2.
- 6.12.3 The Homeowners' Information Meeting shall be for the purpose of an exchange of information amongst Members and the Trustee Committee and of affording Members the opportunity of discussing with the Trustee Members and other Members any matters pertaining to these Presents or to the management of Erinvale.
- 6.12.4 The Trustee Committee shall give 28 (twenty eight) days notice of the date and venue of the meeting and an agenda, if appropriate, in which the Trustee Committee shall list any agenda item which any Member wishes to have included. There shall be no other formalities and the meeting shall not require a quorum.

- 6.12.5 The Chairperson of the Trustee Committee shall preside over the meeting, or in the absence of the Chairperson the Vice Chairperson, or in the absence of the Vice Chairperson any other Trustee Member appointed by the Trustee Committee to do so.
- 6.12.6 If, within 10 (ten) minutes of the scheduled starting time of the meeting, no Member is present at the meeting who is not a Trustee Member, the Chairperson may call the meeting closed.

## **7 DISPUTES**

### **7.1 BREACH**

- 7.1.1 The Trustee Committee may, in its discretion, investigate any suspected or alleged breach by any Member or Trustee Member of these Presents, in such reasonable manner as it shall decide from time to time.
- 7.1.2 Should any Member:
- 7.1.2.1 fail to pay on the due date any amount due by that Member in terms of these Presents or any regulation made thereunder and remain in default for more than 28 (twenty eight) days after posting by registered mail of written notice requiring payment; or
- 7.1.2.2 commit any other breach of any of the provisions of these Presents and fail to commence remedying that breach within a period of 28 (twenty eight) days after the posting by registered mail of written notice to that effect and 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 Trustee Committee or Association or any other Member may have in law, including the right to claim any damages;
- 7.1.2.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of these Presents; and
- 7.1.2.4 in the case of 7.1.2.2, to remedy the breach complained of and immediately recover all costs and expenses incurred by the Trustee Committee or the Association in so doing from such Member; and
- 7.1.2.5 deny the Member concerned the benefits of Membership of the Association (including the right to vote), which Member shall nonetheless remain bound to perform his obligations in terms of these Presents.
- 7.1.3 Should the Trustee Committee and/or the Association institute any legal proceedings against any Member pursuant to a breach by that Member of these Presents or defend any proceedings brought by a Member against the Trustee Committee and/or the Association, then without prejudice to any other rights which the Trustee Committee and/or the Association or any other Member may

have in law, the Trustee Committee and/or the Association shall be entitled to claim from such Member all legal costs incurred by the Trustee Committee or the Association, including all attorney/client charges, tracing fees and collection commission. The Member shall be entitled to claim costs from the Association on the same basis when suing the Association or defending himself against a breach alleged by the Association.

- 7.1.4 Without prejudice to all or any of the rights of the Trustee Committee or the Association in terms hereof or otherwise, should any Member fail to pay any amount due by that Member by due date, then such Member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's primary bankers from time to time plus 3% (three per centum) calculated from the due date for payment until the actual date of payment of such amount.

## **7.2 ARBITRATION**

- 7.2.1 Subject to the provisions of 7.3 below, any dispute, question or difference arising at any time between Members or between Members and the Trustee Committee relating to:

7.2.1.1 any matters arising out of these Presents;

7.2.1.2 the rights and duties of any of the parties mentioned in these Presents;

7.2.1.3 the interpretation of these Presents;

shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question;

- 7.2.2 Arbitration shall be held at a venue situate within a radius of 15 (fifteen) kilometres from the Magistrate's Court, Somerset West informally and in the English language unless otherwise agreed between the parties and the arbitrator, and otherwise upon the provisions 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) days after it has been demanded.

- 7.2.3 The parties to the dispute shall seek to appoint an arbitrator, who shall be any suitably qualified independent person mutually agreed between them or, if they are unable to reach agreement in 3 (three) days, an arbitrator appointed by the President for the Law Society for the Cape of Good Hope or any body that may replace it from time to time.

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

- 7.2.5 The decision of the arbitrator shall be final and binding and may be made an order of the Cape of Good Hope Provincial Division of the High Court of South Africa upon the application of any party to the arbitration.

Notwithstanding anything to the contrary contained in 7.2.1 to 7.2.5, the Trustee Committee shall be entitled to institute legal proceedings by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of these Presents or to recover levies and/or other amounts due to the Association, or in relation to any other matter it may deem fit.

### **7.3 INFORMAL DISPUTE RESOLUTION**

- 7.3.1 Any dispute referred to in 7.2 above may, by written agreement between the parties thereto, be submitted to and decided by a peer tribunal in which event the provisions of this sub-clause shall apply.
- 7.3.2 A peer tribunal shall consist of 3 (three) Members of the arbitration committee as described in 7.3.3 below, determined by lot. Should any Member so determined be unable or unwilling to act or having accepted such appointment ceasing to act for any reason whatsoever then his replacement shall be similarly determined by lot.
- 7.3.3 The arbitration committee shall consist of 10 (ten) persons nominated by the Trustee Committee provided that a Member of the arbitration committee shall:
- 7.3.3.1 not be a serving Trustee Member;
  - 7.3.3.2 not be a person who shall have been disqualified from being appointed or acting as a Trustee Member of the Association;
  - 7.3.3.3 be deemed to have vacated his office upon his:
    - 7.3.3.3.1 resignation from such office, in writing, being delivered to the offices of the Association;
    - 7.3.3.3.2 death;
    - 7.3.3.3.3 insolvency or the insolvency of the company, close corporation or trust represented by the said person;
    - 7.3.3.3.4 being removed from office by resolution of Members;
    - 7.3.3.3.5 being disqualified on any of the bases reflected in 4.6.1 above;
- 7.3.4 The arbitration committee Members shall retire by rotation. At every Annual General Meeting 5 (five) of the Members of the arbitration committee shall retire from office.
- 7.3.5 The Members of the arbitration committee to retire as aforesaid in each year shall be those who have been longest in office since their appointment, but as between persons who became Members of the arbitration committee on the same day as those to retire, unless they otherwise agree amongst themselves, shall be determined by lot.

- 7.3.6 Upon any vacancy occurring in the arbitration committee prior to the next Annual General Meeting, the vacancy in question may be filled by a person nominated by those remaining from time to time being Members of the arbitration committee. Save for the aforesaid the appointment of Members to the arbitration committee on an annual basis shall be made by resolution of the Members of the Trustee Committee. The Trustee Committee shall be entitled to nominate and appoint retired Members of the arbitration committee.
- 7.3.7 Any arbitration of the peer tribunal shall be held:
- 7.3.7.1 at Erinvale, in the English language unless otherwise mutually agreed upon by the parties to the dispute;
- 7.3.7.2 in a summary manner which shall not require the Peer Tribunal to observe:
- 7.3.7.2.1 the usual formalities and procedures pertaining to legal proceedings;
- 7.3.7.2.2 rules of evidence.
- 7.3.8 Any decision of a peer tribunal shall be final and binding upon the parties thereto.

#### **7.4 SERVICE OF NOTICES**

- 7.4.1 Unless a Member shall have nominated an alternative domicilium, being a physical address in the Republic of South Africa, by written notice delivered to the Association, a Member's *domicilium citandi et executandi* for all purposes in terms hereof shall be at any Unit Erf owned by the Member.
- 7.4.2 Any notice, acceptance, demand or other communication properly addressed by the Association to the Member's domicilium in terms hereof for the time being and sent by pre-paid registered post shall be deemed to be received by the latter on the fourteenth day after the day following the date of posting thereof. This provision shall not be construed as precluding the utilisation of other means and methods (including telefacsimile) for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption shall arise if such other means or method is used.
- 7.4.3 A Member shall not be entitled to have notice served upon him at any address outside the Republic of South Africa.

## **8 GENERAL**

### **8.1 ADOPTION AND AMENDMENT OF THE CONSTITUTION**

- 8.1.1 Subject to the prior or subsequent approval of the Municipality the provisions hereof shall not come into force save with the consent of 70% (seventy per centum) of the numbers of Members of the Association in General Meeting or by postal ballot.
- 8.1.2 Subject to the provisions of 8.1.3 below, 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.
- 8.1.3 The provisions of this Constitution shall not be added to, amended or repealed in conflict with section 29 of the Land Use Planning Ordinance no. 15/1985 without the consent in writing of the Municipality.

### **8.2 INCOME TAX AND INVESTMENTS**

- 8.2.1 Any amendments to the Association's Constitution must be submitted to the Commissioner for the South African Revenue Service.
- 8.2.2 Funds available for investment may be invested only with registered financial institutions as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984, 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).

### **8.3 DISTRIBUTION OF FUNDS AND DISSOLUTION**

The Association is not permitted to distribute its funds to any person other than to a similar association of persons, and upon 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) (iii) of the Income Tax Act, No. 58 of 1962 as amended.

Appendix 1

**ERINVALE COUNTRY ESTATE HOMEOWNERS' ASSOCIATION  
PROXY**

I, \_\_\_\_\_ of

\_\_\_\_\_

being a Member of the Association, hereby appoint:

\_\_\_\_\_ of

\_\_\_\_\_

or failing him/her \_\_\_\_\_ of

\_\_\_\_\_

as my proxy to vote for me/us and on my/our behalf at a general meeting of the Association to be held on

the \_\_\_\_\_ day of \_\_\_\_\_ which will be held for the purpose of considering, and if deemed fit, passing, with or without modification, the resolutions to be proposed thereat and at any adjournment thereof; and to vote for and/or against the resolution and/or abstain from voting in accordance with the following instructions:

	In favour	Against	Abstain
Resolution No.....	.....	.....	.....
Resolution No.....	.....	.....	.....
Resolution No.....	.....	.....	.....
Resolution No.....	.....	.....	.....

(Indicate instructions to proxy by way of a cross in the space provided above)

Take notice that unless otherwise instructed in this instrument my proxy shall be entitled to vote as he wishes and to vote in respect of any modification to any resolution and/or any other resolution, not referred to hereinbefore, proposed at the aforesaid meeting and/or at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_

Note: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead. Such proxy need not be a Member of the Association.

\_\_\_\_\_  
SIGNATURE