



CONSTITUTION

THE ERINVALE COUNTRY ESTATE HOMEOWNERS' ASSOCIATION

I, **ERZSEBET BLAIKLOCK**, in my capacity as the Secretary of the Trustee Committee, herewith certify that:

The Erinvale Country Estate Homeowners' Association is the Association established as described in Clause 1 of the Constitution attached hereto, and that its founding Constitution and the subsequent amendments thereof were properly approved by Members in general meetings in accordance with the process and procedures prescribed in the Constitution in force at the time. The amendments took place on 16 February 1998, 5 July 1999, 16 August 1999, 10 July 2000, 19 September 2000, 23 October 2000, 8 October 2001, 10th January 2011, 23rd April 2015, and 9th April 2024.

The Constitution attached hereto is the version of the Constitution as approved by the Members on 9th April 2024, lodged to and approved by the City of Cape Town on _____ in accordance with Section 62 of the City of Cape Town Municipal Planning By-law, 2015, as amended.

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7/5/2024

Date

This Constitution was adopted by Members at the Special General Meeting held on 9th April 2024. However, the submission process by the City of Cape Town has not yet been completed.

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1. **Name of the Association**

1.1 The name of the Association is **THE ERINVALLE COUNTRY ESTATE HOMEOWNERS' ASSOCIATION.**

1.2 The Association is constituted and has been established as a body corporate pursuant to the provision of Section 29(1) and 29(2)(a) of the Land Use Planning Ordinance (Cape Ordinance No. 15 of 1985) in respect of the General Residential Zones and the Common Area situated within Erinvale, as approved, regarding Portion 2 of the Farm Erinvale No 722 by the Town Council of Somerset West on 30 November 1992 and amended on 30 August 1993, and to function in accordance with a Constitution as contemplated in Section 29(2)(b) and 29(2)(c) thereof.

1.3 As the Land Use Planning Ordinance (Cape Ordinance No. 15 of 1985) was repealed in its entirety by section 77 of the Western Cape Land Use Planning Act (No 3 of 2014), the Association is currently deemed to be an Owners' Association established in terms of Section 61(10) of The City of Cape Town Municipal Planning By-Law, (Provincial Gazette Extraordinary No 7414 of 29 June 2015), as amended, hereinafter referred to as the Planning By-law, 2015, as amended, in respect of the Residential Erven in Erinvale and the Common Area within Erinvale, and obliged to function in accordance with a Constitution compliant with the provisions of section 61 to 63 of the Planning By-Law, 2015, read with Section 78(1) of the Western Cape Land Use Planning Act, 2014, and Section 2 of the Planning By-Law, 2015.

2. **Interpretation**

In this Constitution:

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

2.1.1 **"Architectural Design and Landscaping Guidelines"** means the Rules of the Association as empowered in terms of Section 62(1)(b) and Section 142 (1) of the Planning By-law, 2015, and the Constitution of the Association, which became and remain effective in accordance therewith, formulated to govern the structure and appearance of buildings and gardens in the Township and Common Area in Erinvale.

2.1.2 **"Association"**, also referred to as "EHOA" means the Erinvale Country Estate Homeowners' Association established and functioning as described in Clause 1.2 and 1.3.

2.1.3 **"Auditors"** means the Auditors of the Association appointed at the Annual General Meeting in terms of the provisions of Clause 6.3.1.5.

2.1.4 **"Chairperson"** means the Chairperson of the Trustee Committee.

2.1.5 **"Common Area"** means the private open space, the buildings thereupon, and the private streets within Erinvale under the Association's control for the benefit of all Members, comprised of, on 31 August 2023, Erven 10018, 10747, 10748, 12587, 10812, 10862,

11987, 11406, 11571 and 10697-RE being the ECHO building site, duly registered in the name of the Association, and depending on the context, also refers to the services constructed thereupon, whether the Association acquired ownership thereof, or not.

2.1.6 “**Constitution**” means this Constitution of the Association and amendments thereto, defined herein as a constituent part of the Governance Documentation of the Association, containing the provisions as prescribed in Section 62(1)(a) of the Planning By-law, 2015, and among others, provisions authorised in Section 62(1)(b) of the said By-law, approved in accordance with the prescribed processes contained in the Constitution of the Association at the time and lodged with and certified by the City of Cape Town as required in terms of Section 62(5), read with Section 62(2) and 62(4), of the Planning By-law, 2015, which *ipso facto* apply to the Members of the EHOA, and also to Members of the EGC (with the concomitant obligation of the EGC) as determined in this Constitution and the relevant Clause of the Lease Agreement, respectively.

2.1.7 “**Developer**” means Lourensford Estates (Pty) Ltd.

2.1.8 “**Erf**” means a portion of Erinvale:

- identified with reference to the number allotted thereto in terms of the approved subdivision, as well as any so identified portion created subsequently because of subdivision and/or consolidation of any such portion, or portions thereof, or any other cause;
- a Unit or a Section with its undivided share in the common property apportioned to that Unit or Section in accordance with a sectional plan of a development scheme in terms of the Sectional Titles Act, 1986, as amended, and the Sectional titles Schemes Management Act, 2010, as amended; and
- any building or portion of a building to be erected or completed which is proposed to constitute a section as defined in the Sectional Titles Act, 1986, as amended, the subject matter of a Certificate of Real Right in terms of Section 12 and 25 of the said Act which has not expired, 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; and
- Erven will collectively refer to all the herein defined portions of Erinvale.

2.1.9 “**Erinvale**” means the Erinvale Country Estate and Golf Course comprising the subdivision of Portion 2 of the Farm Erinvale No 722 as approved by the Town Council of Somerset West, Western Cape Province, on 30 November 1992 and amended on 30 August 1993 comprising the Common Area, the Township Area, and the Golf Course, as defined herein.

2.1.10 “**Erinvale Golf Club**” also referred to as the “**EGC**” means the Erinvale Golf Club constituted on the 26th of May 1998 in accordance with the Constitution as approved by its members at the time, functioning in accordance therewith, as may be amended from time- to-time, and depending on the context, means the Erinvale Golf Club acting in the capacity as the Lessee of the Erinvale Golf Course Association in terms of the Lease Agreement.

- 2.1.11 **“Erinvale Golf Course Association”** also referred to as the **“EGCA”** means the Erinvale Golf Course Association, a Non-Profit Company (NPC) (No 1994/005573/08) registered in accordance with applicable legislation, and a Member of the EHOA by virtue of its ownership of the Erven comprising the Golf Course, and depending on the context, means the Erinvale Golf Course Association acting in the capacity as the Lessor of the EGC in terms of the Lease Agreement.
- 2.1.12 **“Estate”** means with reference to the applicability of the Governance Documentation of the Association areas within Erinvale.
- 2.1.13 **“Estate Rules”**, refers to the “Rules” as defined herein.
- 2.1.14 **“Golf Course”** means Erven 10746, 10762, 10964, and 11023 within Erinvale, duly registered in the name of the EGCA, of which the selling, use, and development are restricted as per the conditions contained in the Deed of Transfer No T48478/95 (4th July 1995) and the additional conditions contained in the Notarial Deed No K174/2001 (13 March 2001).
- 2.1.15 **“Governance Documents”** means this Constitution and the Rules.
- 2.1.16 **“Lease Agreement”** means the Long-Term Lease agreement concluded on 2 June 1994 between the EGCA and the EGC, as may be amended by the parties from time-to-time.
- 2.1.17 **“Member”** means a member of the Association as contemplated in Clause 3.4.
- 2.1.18 **“The Local Authority”** means the City of Cape Town or such authority as may succeed it from time-to-time.
- 2.1.19 **“Owner”** means, in relation to an Erf in Erinvale, as defined herein, any person and/or legal entity registered in the Registry of the relevant Deeds Office as the owner or the holder of the Erf or in whom ownership is vested by statute, subject to the conditions contained in the Deeds of Transfer, any additional conditions contained in Notarial Deeds, and any other conditions as may be applicable, and may, depending on the context, also include the holder of a Real Right as defined herein.
- 2.1.20 **“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.
- 2.1.21 **“Person”** means, depending on the context, a natural or a juristic person.
- 2.1.22 **“Planning By-law 2015”** means The City of Cape Town Municipal Planning By-Law, 2015 (Provincial Gazette Extraordinary No 7414 of 29 June 2015), as amended from time-to-time.
- 2.1.23 **“Real Right”** means any right which has not expired, reserved pursuant to any Certificate of Real Right issued in terms of Sections 12 and 25 of the Sectional Titles Act, 1986, as amended, to erect and complete any building or portion of a building which is proposed to constitute a section as defined in the said Act within a time specified, or any approved

extension thereof, from the date of issuing of the Certificate by the Registrar of Deeds until such time as a Sectional Title Deed, as defined in the said Act, is registered in respect of that section.

- 2.1.24 **"Rules"** means the rules and guidelines of the Association, as empowered in terms of Section 62(1)(b) and Section 142 (1) of the Planning By-law, 2015, and the Constitution of the Association, which became and remain effective in accordance therewith, and which *ipso facto* apply to the Members of the EHOA, and also to Members of the EGC (with the concomitant obligation of the EGC) as per the relevant Clause of the Lease Agreement, and which may be amended from time-to-time in accordance with Clause 3.6, provided that such amendments may not be in conflict with the provisions of the Planning By-law, 2015, as amended, or any other law, and may not without the permission of the City of Cape Town introduce more restrictive development rules or land uses than provided in the Development Management Scheme.
- 2.1.25 **"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.
- 2.1.26 **"Spouse"** means, in relation to a person at any time, a life partner in a relationship recognized by South African law, and/or the law of another country and/or according to the tenets of any religion.
- 2.1.27 **"The Township Area"** means the Erven within Erinvale, comprising the Common Area and the Unit Erven as defined herein, but excluding the Golf Course.
- 2.1.28 **"The Trustee Committee"** means the Committee constituted in terms of Clause 4.
- 2.1.29 **"A Trustee Member"** means a Member of the Association elected and appointed to the Trustee Committee in accordance with Clause 4.
- 2.1.30 **"Unit Erven"** means:
- 2.1.30.1 Erven situated in the Township Area, excluding the Erven comprising the Common Area.
- 2.1.30.2 Any other piece of land situated in the Estate, excluding the Erven comprising the Golf Course and related facilities, in respect of which separate ownership can be registered in the Deeds Office, such as land comprising the Hotel, group housing, sectional title developments and the like: and
- 2.1.30.3 Any building or portion of a building to be erected or completed on the Erven and the land contemplated in Clause 2.1.30.1 and 2.1.30.2 and which is proposed to constitute a section as defined in the Sectional Titles Act, 1986, as amended, the subject matter of a Certificate of Real Right in terms of Sections 12 and 25 of the said Act which has not expired, 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.
- 2.1.31 **"Vice Chairperson"** means the Vice Chairperson of the Trustee Committee.

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 other genders, 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 is in terms of Section 61(10) of the City of Cape Town Municipal Planning By-law, 2015 deemed to be an owners' association established in terms of the said By-law, and:

3.2.1.1 Is a juristic person, has perpetual succession and is capable of suing and being sued;

3.2.1.2 Has as its Members the owner of the Golf Course, and all the owners of Unit Erven who may not resign from the Association, and who are jointly liable for the expenditure incurred in connection with the Association;

3.2.1.3 Must recover expenditure incurred in connection with the Association from its Members;

3.2.1.4 Must enforce the provisions of its Constitution;

3.2.1.5 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;

3.2.1.6 Not for profit, but for the benefit of the Members;

3.2.1.7 With the right to acquire, hold, lease, and alienate property, both movable and immovable; and

3.2.1.8 Is subject to the provisions of Section 63 of the City of Cape Town Municipal Planning By-law, 2015, in instances of failure to meet an obligation or ceases to function as contemplated in the said By-law.

3.3 **Main Objectives**

3.3.1 Considering its Main Business and related provisions of the City of Cape Town Municipal Planning By-law, 2015, the Association must strive to achieving the following main objectives:

- 3.3.1.1 To comply with its obligation to enforce certain conditions of the subdivision approval or the management plans listed in the conditions;
- 3.3.1.2 To act in accordance with the collective mutual interest of the Members at all times, also as constituent of the collective mutual interests of the Members of the Association, the EGC, and the EGCA manifesting at Erinvale;
- 3.3.1.3 To adopt and act in accordance with good governance principles embedded in its Governance Documentation;
- 3.3.1.4 To prepare and submit for approval, to the relevant authorities, as may be required, Estate Rules and Architectural Design and Landscaping Rules as defined herein;
- 3.3.1.5 To enforce the provisions embedded in its Governance Documentation, and to take remedial action, inclusive of imposing financial penalties, for any failure to comply with such;
- 3.3.1.6 To confirm the registration in the name of the EHOA, and any related restrictions, of all properties comprising the Common Area, and to optimally protect and unlock the benefits of the collective property rights of Members as may be permitted in the Constitution and related statutory prescripts;
- 3.3.1.7 To control, administer, maintain, and manage the Common Area, including all related services and amenities constructed thereupon, or to be delivered thereto, for the benefit of all Members;
- 3.3.1.8 The provision and maintenance of access and egress control and security measures at Erinvale; and
- 3.3.1.9 The preservation of the low-density residential nature of Erinvale.
- 3.3.2 Notwithstanding the provisions of Clause 3.3.1, and supplementary thereto, the Association may with the view to attaining its objects, whether explicitly provided for in its Governance Documentation or not, perform any act serving the collective and mutual interest of its Members as contemplated in Clause 3.3.1.2, which conforms with its Constitution, read with the relevant empowering legislation, and which is not in conflict with the City of Cape Town Municipal Planning By-law, 2015, or any other law.

3.4 **Membership and Related Obligations**

Homeowners' Association

- 3.4.1 Membership of the Association shall be compulsory for the EGCA and every registered owner of a Unit Erf.
- 3.4.2 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.
- 3.4.3 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:

- 3.4.3.1 the transferee shall become a Member of the Association;
- 3.4.3.2 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, subject to all the obligations of Membership, inclusive of agreements entered by the Association which impose obligations on the Member, and where such ownership vests in a juristic person, the entity must nominate in writing a natural person as a designated representative.
- 3.4.3.3 written consent of the Association be obtained, which consent shall be given without undue delay provided the purchaser of such Unit Erf agrees in writing to abide by the provisions of the Governance Documentation of the Association, and provided the Member shall have paid all amounts due by him to the Association, and/or the Association's subrogate, for the period up to the date of transfer of the Unit Erf, and complied with any directive issued by the Association in terms of the Architectural Design and Landscaping Guidelines.
- 3.4.4 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.
- 3.4.5 The EGCA and the registered owner of a Unit Erf may not resign as a Member of the Association or cease to be a Member of the Association.
- 3.4.6 The rights and obligations of a Member shall not be transferable, and every Member shall:
 - 3.4.6.1 to the best of his ability further the objects and interests of the Association;
 - 3.4.6.2 comply with the provisions embedded in the Governance Documentation and comply with the prescripts of all laws applicable to the Association and its Members;
 - 3.4.6.3 be jointly liable with all the Members for all expenditure incurred in connection with the Association, which the Association must recover from its Members;
 - 3.4.6.4 not be entitled, without the prior written approval of the Trustee Committee, to make any alterations to any building or do anything that will affect the architectural style or aesthetic appearance of the buildings within Erinvale; and
 - 3.4.6.5 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.
- 3.4.7 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.
- 3.4.8 A Member shall be obliged to ensure that a Unit Erf owned by him shall, subject to Clause 3.4.10 below, be developed by the commencement of construction of a dwelling, and the completion of such dwelling, in conformity with the Architectural Design and Landscaping Guidelines within the time limits stipulated in the Deed of Sale which resulted as per the original transfer of such Unit Erf from the Developer to the first owner of that Unit Erf.

- 3.4.9 In the event of the Member failing to comply with his obligations under Clause 3.4.8 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 4 (four) times the then current monthly levy amount, as determined under Clause 5.2.5 below which shall be payable monthly in advance on the terms referred to in Clause 5.2.6 until such time, and in accordance with Clause 3.4.10, 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.
- 3.4.10 For the purposes of Clause 3.4.8 and Clause 3.4.9 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.

Erinvale Golf Club

- 3.4.11 With effect from 23rd April 2015 Members of the Association also become Members of the EGC by virtue of their Membership of the Association, and obtain compulsory Membership of the EGC of the category indicated herein after:
- 3.4.11.1 Members of the Association who become Members with effect from 23rd April 2015 obtain compulsory Full Membership of the EGC, or, if not choosing to exercise their right to Full Membership of the EGC, obtain Special Social Membership of the EGC.
- 3.4.11.2 Members of the Association referred to in Clause 3.4.11.1 above shall, regarding their membership of the EGC also be bound by the Constitution and Rules of the EGC, as amended from time-to-time, and be obliged to pay the associated entrance fees and annual subscription to the EGC as determined in accordance with Clause 3.4.11.4, such obligation constituting a levy related debt payable by the Member of the Association to the EGC.
- 3.4.11.3 Any amendment pertaining to the voting rights at General Meetings of the EGC of the Members of the Association contemplated in Clause 3.4.11.1 and/or any reduction of benefits as contemplated in Clause 3.4.11.4 must be approved by the Association as well.
- 3.4.11.4 The fees and subscription payable in terms of Clause 3.4.11.2 and the related benefits, shall be determined as follows:
- 3.4.11.4.1 **Full Membership**, as determined by the EGC from time-to-time for Full Members with all the associated rights and benefits;
- 3.4.11.4.2 **Special Social Membership** at an Annual Subscription not exceeding 40% of the Annual Subscription payable by Full Members of the EGC, and the once off payment of the Entrance Fee as defined in the Constitution of the EGC, entitling the Member to use the Clubhouse facilities, amenities, and vote at General Meetings, in accordance with the Club's Membership Brochure, subject to the Terms and Conditions agreed between the Association and the EGC from time to time, provided that Special Social Members shall not be obliged to pay any other charges and levies payable by other classes of Membership.

- 3.4.11.5 The Trustee Committee of the Association in the event of the termination of the compulsory membership of a Member of the EGC, for whatever reason, may in lieu of the compulsory Membership of the EGC, and the related privileges, as may be applicable, instead impose a higher monthly Levy in terms of Clause 5.2.4 on such Member of the Association for the period of non-membership.
- 3.4.11.6 The monthly Levy imposed in terms of Clause 3.4.11.5, shall be determined at a General Meeting of the Association, after consultation with the EGC, and the additional amount may not be less than 100% of the amount payable to the EGC in accordance with the applicable Membership dispensation at the time, and the said amount will be payable as a Levy related Debt to the Association, as contemplated in Clause 5.2.6, and only after receipt thereof by the Association, be due and payable to the EGC in the normal course of business.
- 3.4.11.7 Notwithstanding the provisions of this Constitution regarding compulsory membership of the EGC, with effect from 23rd April 2015, the vested rights of Members of the Association regarding such membership and the related benefits remain unaltered and in accordance with the dispensation applicable to them at the time of acquiring membership of the Association at a date preceding the said date of 23rd April 2015.

3.5 Cessation of Membership

- 3.5.1 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.

3.6 Estate Rules, Architectural Design and Landscaping 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 Rules.
- 3.6.2 Rules in force at the date of the adoption of this Constitution shall remain in force and effect and binding on the Members until cancelled or modified in the manner described in Clause 3.6.3 and Clause 3.6.5.
- 3.6.3 Any Rules 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 Rules 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 the Estate;

- 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 the Estate, 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 the Estate;
- 3.6.4.6 the code of conduct at the Estate required of builders, other contractors and owners wishing to execute work within the Estate;
- 3.6.4.7 the terms and conditions of access to and egress from the Estate;
- 3.6.4.8 security within the Estate and the concomitant indemnification of the Association;
- 3.6.4.9 disputes and disciplinary measures relating to Members and others having access to the Estate in relation to matters affecting the Estate;
- 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 the Estate 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 the Estate;
- 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 Design and Landscaping Guidelines and other relevant Regulations in force at the time, and

3.6.8.2 may recommend changes to the Architectural Design and Landscaping Guidelines for consideration by the Trustee Committee and/or Association in a General Meeting.

3.6.9 Submissions of plans referred to in Clause 3.4.6.4 and Clause 3.4.6.5 shall be dealt with timeously and any rejection or deferral shall be accompanied by the reasons, therefore.

3.6.10 Dwellings on the Estate 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.

3.7 Subdivision of Unit Erven and Matters Related to Common Areas

3.7.1 Immovable property at Erinvale comprising Unit Erven, or any portion thereof, shall not be subdivided, nor consolidated, without the prior written approval of the Trustee Committee, provided further that:

3.7.1.1 The subdivided portion or portions are simultaneously consolidated with an adjacent Unit Erf or Erven or subdivisions thereof, and

3.7.1.2 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 because of such sub-division and/or consolidation and/or tie agreement shall not be less than that receivable immediately prior thereto.

3.7.2 The Common Area or any portion thereof shall not without the sanction of a Special Resolution of the Association be:

3.7.2.1 sold, let on a long-term basis, alienated, otherwise disposed of, or transferred from the Association; or

3.7.2.2 mortgaged; or

3.7.2.3 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.

3.7.3 Immovable property at Erinvale, comprising Unit Erven, 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, 1986, as amended without the prior approval of the Trustee Committee, which shall have the authority to implement the Guidelines for the

Development of Sectional Title Schemes at the Estate as approved by a General Meeting of Members, in particular the right to determine the conditions pertaining to Membership of the Association of the Owners of Units of the Scheme, 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:

- 3.7.3.1 the commencement of construction and completion, as defined in Clause 3.4.10 of a building or buildings on the property, in conformity with the Architectural Guidelines; and
- 3.7.4 the issue of a Sectional Title Deed or Deeds, as defined in the said Act, in respect of such building or buildings.
- 3.7.5 In the event of a Member failing to comply with his obligations under Clause 3.7.3 and Clause 3.7.4 above, the provisions of Clause 3.4.9 and Clause 3.4.10 shall apply as if such Member was a Member who had failed to comply with his obligations as set out therein.

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 this Constitution.
- 4.1.2 Members of the Trustee Committee must be Members of the Association, or a Spouse of a Member of the Association as defined herein, or a duly appointed representative of a juristic person being a Member of the Association, as the case may be, provided that in the case of a Spouse, a confirming statement and/or documentation, as may be applicable, must be submitted to the Association, and in the case of a juristic person the Association has been officially informed of the appointment in writing. Notwithstanding the provisions of this Clause, not more than 1 (one) person may be appointed as a Trustee Member in respect of a Unit Erf.
- 4.1.3 Membership of the Trustee Committee ceases *ipso facto* in the event of the cessation of Membership of the Association, or the cessation of the relationship founding the Membership of the Committee by virtue of being a Spouse of a Member, or the cessation of the Membership of the Association of a juristic person, or the cessation of the appointment as the representative of a juristic person, as may be applicable.

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 the Governance Documentation of the Association 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 Rule 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 Clause 3.6.3, to make, cancel, or modify any Rule, including Rules relating to the preservation of the low-density residential nature of the Estate;

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 Clause 4.1.2 above. The co-option shall be affected 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, Chairperson, or Vice Chairperson, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees, or salary in respect of the performance of such duties. 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; and

- 4.3.1.8 to restrict, approve and control any commercial activity at the Estate.
- 4.3.2 The Trustee Committee shall appoint the Architectural Review Committee referred to in Clause 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 Regarding the authority of the Trustee Committee to appoint sub-committees:
 - 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 the Governance Documentation of the Association, 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 the Governance Documentation of the Association.

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 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 the Governance Documentation of the Association, 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. 71 of 2008, as amended;

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 Clause 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 the Governance Documentation of the Association, alternatively based upon a misinterpretation thereof.

- 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 Clause 5.1.1 and Clause 5.1.2 must be approved by Members in General Meetings.

5.2 Levies

- 5.2.1 The Association may impose Levies on Members to recover expenditure incurred in connection with the Association, with reference to expenditure already incurred, and/or to secure the financial resources required to finance deficiencies from the previous Financial Year, its approved Annual Budget, and its Development Plan, as the case may be. Without derogating from the generality of the right of the Association to impose a Levy, the expenditure may relate to:

- 5.2.1.1 The control, administration, management, maintenance, and improvement for the benefit of all Members of the Common Area and related buildings, infrastructure, amenities, and services.
- 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;
- 5.2.2 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 Clause 5.2.5 shall be payable annually in advance, provided the Trustee Committee may rule that such may be paid in instalments on the terms and conditions determined by the Committee.
- 5.2.7 The Trustee Committee may make special levies upon the Members for unbudgeted 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 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 Clause 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.

6 Meetings

6.1 Proceedings of the Trustee Committee

6.1.1 Subject to any provisions of the Governance documentation of the Association, the Trustee Committee shall meet 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) 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 the Governance Documentation of the Association, 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 the Governance Documentation of the Association 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 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 Clause 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 electronic transmission. Notices may be sent to the Member's postal address even if the 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 the provisions of the Governance Documentation of the Association 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 the Governance Documentation of the Association, 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) days' 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 juristic person, the instrument shall be signed by its duly appointed representative, 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 notarial 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 the Governance Documentation of the association, 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 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 Clause 3.4 above and Clause 8.1 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 Clause 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 its Governance Documentation, 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 the Governance Documentation of the Association 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 the Governance Documentation of the Association 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 the Governance documentation; and

7.1.2.4 in the case of Clause 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 the Governance Documentation 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 successfully 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 Dispute Resolution

7.2.1 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 the Governance Documentation of the Association shall be submitted to and decided by a Peer Tribunal on notice given by any party to the other parties who are affected in the matter in question.

7.2.2 A Peer Tribunal shall consist of 3 (three) Members of the Arbitration Committee as described 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.

7.2.3 The Arbitration Committee shall consist of 10 (ten) persons nominated by the Trustee Committee provided that a Member of the Arbitration Committee shall:

7.2.3.1 not be a serving Trustee Member;

7.2.3.2 not be a person who shall have been disqualified from being appointed or acting as a Trustee Member of the Association;

7.2.3.3 be deemed to have vacated his office upon his:

7.2.3.3.1 resignation from such office, in writing, being delivered to the offices of the Association;

7.2.3.3.2 death;

7.2.3.3.3 insolvency or the insolvency of the company, close corporation or trust represented by the said person;

7.2.3.3.4 being removed from office by resolution of Members;

7.2.3.3.5 being disqualified on any of the bases reflected in Clause 4.6.1 above;

7.2.4 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.

7.2.5 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.

- 7.2.6 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.
- 7.2.7 Any arbitration of the Peer Tribunal shall be held;
- 7.2.7.1 at Erinvale, in the English language unless otherwise mutually agreed upon by the parties to the dispute;
- 7.2.7.2 in a summary manner which shall not require the Peer Tribunal to observe:
- 7.2.7.2.1 the usual formalities and procedures pertaining to legal proceedings;
- 7.2.7.2.2 rules of evidence.
- 7.2.8 Subject to the provisions of Clause 7.2.9 a decision of a Peer Tribunal shall be final and binding upon the parties thereto.
- 7.2.9 Notwithstanding the provisions of Clause 7.2.8, the Association and affected Members may approach the Community Schemes Ombud Service in accordance with the provisions of the Community Schemes Ombud Service Act, 2011, the Regulations, and Directives for appropriate relief.
- 7.2.10 The provisions of Clause 7.2.1, 7.2.8, and 7.2.9 do not prohibit the affected Member, or the HOA, from approaching a competent court for appropriate relief.

7.3 Service of Notices

- 7.3.1 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.
- 7.3.2 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.
- 7.3.3 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 This Constitution, or any part thereof, as contained herein, shall not be repealed, or amended, save by a Special Resolution adopted at a General Meeting of the Members of the Association, provided that any such action in conflict with the provisions of the Planning By-law, 2015, or any other law, will be null and void, and provided further that subject matters pertaining to the matters listed in section 62(1)(a) will become effective only when certified by the City of Cape Town.
- 8.1.2 The Constitution of the Association, and any amendment thereof, must be lodged with the City of Cape Town as contemplated in section 62(5) of the Planning By-law, 2015, and the latest copy duly lodged and which the City of Cape Town has certified in terms of section 62(2) and (4) of the Planning By-law, is presumed to contain the operative provisions of the Constitution.
- 8.1.3 The City of Cape Town is exempt from liability for any damage which may be caused by its certification of a constitution, or an amendment thereof, or by the loss of a constitution lodged with the City.
- 8.1.4 Without derogating from the provisions of Section 62(1)(a), 62(2), and 62(5) of the Planning By-law, 2015 (refer to clause 8.1.1 and 8.1.2 herein), certain Governance Documentation of the Association, and any amendments thereto, must be filed with the Community Schemes Ombud Service, if so determined in terms of Section 59(b)(iii) of the Community Schemes Ombud Services Act, 2011 and the Regulations, to enable the Ombud Service to perform its functions in accordance with Section 4(2)(a) and (c) of the Act pertaining to the promotion and monitoring of good governance in community schemes.

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, Dissolution, City Interventions, and Related Matters

- 8.3.1 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, subject to the provision of section 63(6) of the Planning By-law, 2015, 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.
- 8.3.2 When the Association is dissolved, the Members must pay jointly the costs, in accordance with Section 63(6) of the Planning By-law, 2015, as amended, of the transfer to the City of

the Association's property which contains the internal engineering services and private open space, and any costs of upgrading of the internal engineering services to the standards of the City.

- 8.3.3 The City of Cape Town may intervene if the Association fails to meet an obligation determined in Section 61(5)(d) or Section 62(1)(a)(ii) of the City of Cape Town Municipal Planning By-law, 2015, as amended, when the City believes that the community is adversely affected by the failure, and may take appropriate action to rectify the failure and may recover any expenditure in terms of Section 61(5)(d) of the By-law from the Association or its Members, who are jointly liable.
- 8.3.4 Notwithstanding the intervention in Clause 8.3.3, the City may when the Association ceases to function effectively, or to carry out any of its obligations, intervene as contemplated in Section 63(4)(a) or (b) of the City of Cape Town Municipal Planning By-law, 2015, as amended, after following due process prescribed in Section 63(5) of the By-law.
- 8.3.5 In the event the Association has ceased to function, and an Owner of a Unit Erf wishes to transfer such in that event, in lieu of the default permission prescribed in Section 63(7) of the City of Cape Town Municipal Planning By-law, 2015, as amended. the permission for transfer may be given by the serving Auditors at the time of dissolution, duly appointed as such at the time, after being satisfied that the Owner has paid all Debts due and payable to the erstwhile Association, and/or its successor in title, as the case may be.

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, / and to vote notwithstanding modifications approved at the meeting (delete as per preferred instructions) 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

