

**ANNEXURE G**  
**PHOA CONSTITUTION**

**CONSTITUTION**

**OF**

**PARKLANDS  
HOME OWNERS ASSOCIATION**

## 1. DEFINITIONS

In this Constitution, and unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them.

1. CHAIRMAN means the CHAIRMAN of the TRUSTEES.
2. DEVELOPMENT means all phases of the development known as PARKLANDS being the shaded area indicated on Annexure "X" hereto, and including sectional title schemes, in terms of the Sectional Titles Act No.95/1986.
3. DEVELOPMENT CONDITIONS means those conditions contractually imposed by the SELLER and/or the PHOA from time to time on REGISTERED OWNERS in the DEVELOPMENT, an example of which conditions current as at July 1997 is annexed this Constitution.
4. ERF means one of the ERVEN
5. ERVEN mean all the erven comprising the DEVELOPMENT
6. LOCAL AUTHORITY means the Blaauwberg Municipality, Milnerton Administration
7. MEMBER means a REGISTERED OWNER who in terms of clause 7 is automatically a MEMBER of the PHOA.
8. MONTH means a calendar month.
9. PHOA means the PARKLANDS HOME OWNERS ASSOCIATION which is deemed to have been established in terms of clause 4 for all phases of the DEVELOPMENT and which is bound by the provisions of this Constitution.
10. REGISTERED OWNER means a party or parties acquiring ownership and taking transfer of more of the ERVEN and/or one or more of the UNITS comprising the DEVELOPMENT.
11. RESOLUTION means a Resolution passed at a Annual General Meeting or any other General Meeting by an ordinary majority of the total votes represented at such meeting by MEMBERS present in person or by proxy.
12. SELLER means The Milnerton Estates Limited (Registration No. 04/00196/06) and/or its /duly authorised agent/s including but not restricted to the Aska Property Group (Proprietary) Limited (Registration No. 87/03781/07)
13. TRUSTEES mean the TRUSTEES of the PHOA from time to time and includes alternate and co-opted Trustees.
14. UNIT means one of the UNITS.
15. UNITS mean the sections as defined in the Sectional Titles Act No.95/1986, in any sectional title scheme in the DEVELOPMENT, together with such sections' undivided share in the common property of such sectional title scheme.

## 2. INTERPRETATION

- 2.1 The clause headings are for convenience and shall be disregarded in construing this Constitution.
- 2.2 Unless the context clearly indicates a contrary intention:
  - a) the singular shall include the plural and vice versa.
  - b) reference to any one gender shall include the other genders
  - c) a reference to natural persons includes legal persons and vice versa.
- 2.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part and in subsequent clauses bear the meaning assigned to such words and expressions in such sub-clause.

- 2.4 When any number of days is prescribed in the Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 If any provision of this Constitution is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions thereof.

### **3. RECORDAL**

#### **3.1 Phases of the DEVELOPMENT**

3.1.1 It is recorded that the DEVELOPMENT comprises several phases. The SELLER's right to develop such further phases as, seen as in such manners it may deem fit are fully reserved. The SELLER's rights to perform all ancillary functions relating to the development and marketing of the further phases of the DEVELOPMENT, including but not restricted to the signage, are further specifically reserved.

3.1.2 Every MEMBER of the PHOA shall be obliged, on request, to consent in writing to any re-zoning application, road closure, re-design or any other application which may be submitted by the SELLER and/or its duly authorised agent/s to the LOCAL AUTHORITY or to any other body to which such an application may be made in respect of any portion/s of the DEVELOPMENT. The TRUSTEES are hereby specifically and irrevocable authorised to give such written consent on behalf of each MEMBER. The TRUSTEES are hereby obliged to give such written consent on behalf of each MEMBER, as may be required by the LOCAL AUTHORITY or any other body to which such an application may be made.

#### **3.2 Approval of Proposed Building Plans**

3.2.1 Every building and/or structure to be erected on any ERF shall be of approved design and of sound construction.

3.2.2 Prior to the commencement of any building operations on any ERF or in respect of any UNIT and prior to the initiation of any additions or alterations to approved buildings, the REGISTERED OWNER shall be obliged to:

3.2.2.1 submit a full set of proposed building plans indicating both construction and design details to the PHOA for approval.

3.2.2.2 having obtained the written approval of the PHOA, the stamp of the PHOA being evidence of such approval, submit the said full set of building plans to the LOCAL AUTHORITY for approval:

3.2.2.3 having obtained the approval of the LOCAL AUTHORITY, to comply with all conditions and standards imposed by that LOCAL AUTHORITY.

3.2.3 It is recorded that no approval of building plans shall be granted by the LOCAL AUTHORITY without the prior written approval of the PHOA thereto having been obtained

3.2.4 It is further recorded that the PHOA shall be the sole judge as to whether the building plans conform to these DEVELOPMENT CONDITIONS and its decision shall be final and binding upon the REGISTERED OWNER.

3.2.5 It is further recorded that:

3.2.5.1 With regard to the DEVELOPMENT, the PHOA has appointed the Aska Property Group (Proprietary) Limited as its agent for the purpose of approval of proposed building plans as referred to above. All proposed building plans relating to any ERF or Unit in the DEVELOPMENT are to be submitted to: Aska Property Group (Proprietary) Limited, Shop No 4, Sandown Centre, Sandown Road, Table View (Tel: 021-554-3550).

3.2.5.2 the appointment of the Aska Property Group (Proprietary) Limited by the PHOA for the purposes of approval of proposed building plans is irrevocable until the registration of transfer of every ERF comprising the DEVELOPMENT has been affected.

3.2.5.3 thereafter, such appointment may be terminated at the instance of the Aska Property Group (Proprietary) Limited.

3.2.5.4 upon such termination, the PHOA will retain the responsibility of approving, or otherwise, proposed building plans submitted to it through the offices of an appointee of its choice of whom the members of the PHOA will be notified.

### 3.3 Application of DEVELOPMENT CONDITIONS

The DEVELOPMENT CONDITIONS contractually imposed by the SELLER and/or the PHOA from time to time upon REGISTERED OWNERS in the DEVELOPMENT, constitute an integral part of this Constitution and may be amended, substituted, added to or repealed only at the instance of the SELLER.

### 3.4 Amendment of These Provisions

No provisions contained in clauses 3.1, 3.2 and 3.3 may be amended, substituted, added to or repealed without the prior written consent of the SELLER having been obtained. Any amendment, substitution, addition to or repeal of these provisions without such prior written consent having been obtained shall be of no force, validity or effect.

### 3.5 Amendment of the Provisions of this Constitution

Subject to clause 3.4 above, no provisions of this Constitution may be amended, substituted, added to or repealed

without:

3.5.1 the prior written consent of the LOCAL AUTHORITY having been obtained; and

3.5.2 the prior written consent of all MEMBERS.

## 4 COMMENCEMENT DATE

The PHOA shall be deemed to be formally constituted simultaneously with registration of the transfer of the first of the ERVEN from the SELLER to a REGISTERED OWNER.

## 5 STATUS

5.2 The PHOA shall:

5.1.1 have legal personality and be capable of suing and being sued in its own name; and

5.1.2 not operate for profit but for the benefit of the MEMBERS.

5.2 No MEMBER in his personal capacity shall have any right, title or interest to or in the funds or assets of the PHOA which shall vest in and be controlled by the TRUSTEES.

5.3 No MEMBER shall incur any personal liability in respect of acts done or liabilities incurred by or on behalf of the PHOA.

## 6 OBJECTS

The PHOA shall have as its sole objects: -

6.1 to manage the COLLECTIVE INTERESTS common to all its members, which includes expenditure applicable to the COMMON PROPERTY OF SUCH MEMBERS and the collection of levies for which such members are liable.

6.2 to promote high standard of residential development.

6.3 to administer and enforce the DEVELOPMENT CONDITIONS.

6.4 to control the transfer of ERFVEN and UNITS in the DEVELOPMENT in terms of the DEVELOPMENT CONDITIONS and conditions imposed by the LOCAL AUTHORITY restricting transfer.

and the PHOA shall have the powers to do such acts as are necessary to accomplish these objects, including but not restricted to those powers referred to in clause 16.

## 7 MEMBERSHIP

7.1 The PHOA shall have as its MEMBERS every REGISTERED OWNER upon registration of transfer of an ERF/ERVEN and/or UNIT/UNITS into the name of such REGISTERED OWNER.

7.2 Where any ERF or UNIT is registered in the name of more than one person all the REGISTERED OWNERS of that ERF shall be deemed jointly and severally to be one MEMBER.

7.3 When a MEMBER ceases to be a REGISTERED OWNER, he shall ipso facto cease to be a MEMBER.

## 8 MEMBERS' OBLIGATIONS

8.1 Every MEMBER is obliged to comply with: -

8.1.1 the provisions of this Constitution and all regulations passed by the PHOA or the TRUSTEES.

8.1.2 the provisions of the DEVELOPMENT CONDITIONS annexed hereto.

8.1.3 any agreement concluded by the PHOA insofar as such agreement may directly or indirectly imposed obligations on a MEMBER.

8.2 The MEMBER shall be jointly liable for expenditure incurred in connection with the PHOA as more fully later referred to herein.

8.3 Insofar as the following condition will be embodied in the Deed of Transfer relating to each ERF and UNIT in the DEVELOPMENT, as a condition of title: -

"The within property shall not be transferred without the written consent of the Parklands Home Owners Association of which the within transferee and his successors in title shall automatically become a member."

8.3.1 A MEMBER shall not be entitled to sell or transfer his ERF or UNIT unless it is a condition of the sale and transfer that the transferee acknowledges that he becomes a MEMBER of the PHOA upon registration of such transfer and that he agrees to abide by the terms of this Constitution and the DEVELOPMENT CONDITIONS.

8.3.2 A MEMBER shall only be released from the terms and conditions contained in this Constitution once he has satisfactorily conveyed the provisions of the DEVELOPMENT CONDITIONS to a subsequent purchaser.

8.4 Each MEMBER shall:

8.4.1 maintain his ERF and/or UNIT in accordance with the provisions of the DEVELOPMENT CONDITIONS.

8.4.2 maintain in a neat and tidy conditions and in a state of good repair his UNIT/s and all building/structures erected on his ERF/ERVEN.

8.4.3 establish and maintain a garden according to an acceptable standard, as well as maintaining the road verge.

8.4.4 be responsible for the maintenance of external and boundary walling, inclusive of regular painting thereof, if applicable.

8.4.5 not permit any commercial type of vehicle, boat, caravan, trailer or any vehicle not in good working order to be parked on or in front of any ERF which, in the opinion of the PHOA, is unsightly;

8.4.6 not do or suffer to be done on any ERF or in any UNIT anything which, in the opinion of the

PHOA, is noisome, unsightly, injurious, objectionable, or detrimental, or a public or private nuisance or a source of damage or disturbance to any owner, tenant or occupier of any property in the DEVELOPMENT,

8.4.7 not permit any contractors and/or advertising boards in excess of 1 (one) square meter in extent to be erected on any ERF or near any UNIT other than with the written approval of the SELLER.

8.5 Each MEMBER shall adequately insure his UNIT and/or all buildings and/or structures erected on his ERF (and, if requested, furnish proof of such insurance to the TRUSTEES) and in the event of total/partial destruction, he shall within a reasonable time period make good such damage or reconstruct in accordance with the original approved plans or, in the event of total reconstruction, in accordance with the TRUSTEES' approval.

8.6 Where the TRUSTEES permit the erection of structures to house animals or birds or the erection of garden/tool shed/s, such structures/sheds shall be screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to owner/tenants/occupiers of adjoining properties.

## 9 LEVIES

9.1 The TRUSTEES shall:

9.1.1 establish and maintain a levy fund for the purpose of meeting all expenses of the PHOA, for the control, management, and administration of the DEVELOPMENT, and for charges for the supply of any services required by the PHOA and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the PHOA,

9.1.2 estimate the amount which shall be required by the PHOA to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.

9.1.3 require MEMBERS whenever necessary to make contributions to such fund for the purposes of satisfying the expenditure set out in clauses 9.1.1 and 9.1.2 equal as nearly as is reasonably practical to such estimated amount.

9.2 The TRUSTEES may, from time to time, make special levies upon MEMBERS in respect of such expenses as are referred to in clause 9.1 (which are not included in any estimate made in terms of clause 9.1.2 and such levies may be imposed and be payable in one sum or by such instalments and at such time or times as the TRUSTEES shall deem fit.

9.3 Any amount due by a MEMBER by way of a levy shall be a debt due by him to the PHOA payable within such time as determined by TRUSTEES. The obligation of a MEMBER to pay a levy shall cease upon his ceasing to be a REGISTERED OWNER, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a REGISTERED OWNER. No levies paid by a MEMBER shall be repayable by the PHOA upon his ceasing to be a MEMBER. A MEMBER's successor in title to an ERF or UNIT shall be liable as from the date upon which he becomes a MEMBER pursuant to the transfer of such ERF or UNIT, to pay the levy attributable to that ERF or UNIT.

9.4 In calculating levies, the TRUSTEES shall take into account income, of any, earned by the PHOA, and the allocation of voting rights to MEMBERS as recorded in clause 28.1.

9.5 The levy payable by a MEMBER shall bear the same proportion to the total levy imposed on MEMBERS, as that MEMBER's voting right bears to the aggregate voting rights of all MEMBERS as set out in clause 28.

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

## 10 BREACH OF THE PROVISIONS OF THIS CONSTITUTION AND/OR THE PROVISIONS OF THE DEVELOPMENT CONDITIONS

10.1 If any MEMBER fails in the observance of any of the provisions of this Constitution and/or the provisions of the DEVELOPMENT CONDITIONS or fails to comply with any rules or regulations made in terms hereof, the TRUSTEES may on behalf of and in the name of the PHOA serve notice on such MEMBER calling upon him to remedy such breach within a time specified in such notice and failing timeous compliance:

- 10.1.1 enter upon the ERF or UNIT to take such action as may be reasonably required to remedy the breach and the MEMBER concerned shall be liable to the PHOA for all cost so incurred, which costs shall be due and payable upon demand;and/or
  - 10.1.2 call upon a MEMBER in writing to remove or alter within a specified period any improvement or addition erected contrary to the provisions of this Constitutionand/or the DEVELOPMENT CONDITIONS and, failing which, a special meetingof the PHOA may be convened to allow MEMBERS to give the TRUSTEESdirections. The decision of the PHOA shall be binding against a defaultingMEMBER; and/or
  - 10.1.3 institute proceedings in any Court of competent jurisdiction for such relief as the TRUSTEES may consider necessary and such MEMBER shall be liable for andshall pay all legal costs on the scale as between attorney and own client and allother expenses and charges incurred obtaining relief.
- 10.2 If any MEMBER fails to make payment to the PHOA on due date of levies or other amounts payable by such MEMBER, and fails to remedy such breach within a period of 14 (fourteen) days after delivery of a notice calling upon such MEMBER to effect such payment, the TRUSTEES may, on behalf of the PHOA, if so determined be a RESOLUTION passed by the TRUSTEES institute legal proceedings against such MEMBER without further notice and such MEMBER will be liable for and pay all legal costs including costs as between attorney and own client, collection commission, expenses and charges incurred by the PHOA in obtaining recovery of arrear levies or any other arrear amounts due and owing by such MEMBER of the PHOA.
- 10.3 Nothing in the afore going shall derogate from or in any way diminish the right of the PHOA to institute proceedings in any Court of competent jurisdiction for recovery of any money due by any MEMBER arising from any cause of action whatsoever.

11. **TRUSTEES**

- 11.1 There shall be board of TRUSTEES of the PHOA which shall comprise no less than 7 (seven) and no more than 14 (fourteen) REGISTERED OWNERS or persons nominated by such REGISTERED OWNERS.
- 11.2 A TRUSTEE shall be an individual but need not himself be a MEMBER of the PHOA, provided that a majority of TRUSTEES shall be MEMBERS. A TRUSTEE shall by accepting his appointment as such be deemed to have agreed to be bound by the provisions of this Constitution.

12. **APPOINTMENT OF TRUSTEES**

The initial TRUSTEES shall be appointed by the SELLER.

13. **REMOVAL AND ROTATION OF TRUSTEES**

- 13.1 Save as is set forth in clause 13.2 each TRUSTEE shall continue to hold office until the Annual General Meeting following his appointment, at which meeting each TRUSTEE shall be deemed to have retired from office as such but will be eligible for re-election at such meeting.
- 13.2 A TRUSTEE shall be deemed to have vacated his office as such in the event of:-
  - 13.2.1 his estate being sequestered, whether provisionally or finally, or him surrendering his estate;
  - 13.2.2. him making any arrangement or composition with his creditors;



13.2.3 his conviction for any offence involving dishonesty;

13.2.4 him becoming of unsound mind or being found lunatic:

13.2.5 him resigning from such office in writing;

13.2.6 his death; or

13.2.7 him being removed from office by a RESOLUTION of the MEMBERS of the PHOA, requiring a simple majority, before termination of his period of office;

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

13.3 Should the office of a TRUSTEE fall vacant prior to the next Annual General Meeting, the vacancy in question may be filled by a person nominated by the remaining TRUSTEES and who may hold office until the next Annual General Meeting when he may be eligible for re- election.

#### 14. CESSATION OF MEMBERSHIP

No MEMBER ceasing to be a member of the PHOA for any reason shall (nor shall any such MEMBER's executor, curator, trustees or liquidators) have any claim upon or interest in the funds or other property of the PHOA, but this clause shall be without prejudice to the rights of the PHOA to claim from such MEMBER or his estate any arrears of levies or other sums due from him to the PHOA at the time of his so ceasing to be a MEMBER.

#### 15. OFFICE OF TRUSTEES

- a. The first CHAIRMAN shall be appointed by the SELLER and shall hold office until the First Annual General Meeting following the date of his appointment, provided that such office shall ipso facto be vacated by the TRUSTEE holding such office upon his ceasing to be a TRUSTEE for any reason.
- b. Within 7 (seven) days of the holding of such Annual General Meeting, the TRUSTEES shall meet and shall elect from their own number the CHAIRMAN, who shall hold office until the Annual General Meeting held next after his said appointment, provided that the office of the CHAIRMAN shall ipso facto be vacated by the TRUSTEE holding such office upon his ceasing to be a TRUSTEE for any reason. In the event of any vacancy occurring in the aforesaid office at any time, the TRUSTEE shall immediately meet to appoint one of their number as a replacement in such office.
- c. Save as otherwise provided in this Constitution, the CHAIRMAN shall preside at all meetings of the TRUSTEES and all General Meetings of MEMBERS, and shall perform all duties incidental to the office of CHAIRMAN and such other duties as may be prescribed by the TRUSTEES or by MEMBERS, and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings, and provided further that a MEMBER's spouse shall be entitled to speak at any meeting.
- d. TRUSTEES shall be entitled to be repaid all reasonable and bona fide expenses incurred by the in or about the performance of their duties as TRUSTEES and/or CHAIRMAN, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

#### 16. FUNCTIONS AND POWERS OF TRUSTEES

- a. Subject to the express provisions of this Constitution, the TRUSTEES shall manage and

control the business and affairs of the PHOA, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of the PHOA, and do all such acts on behalf of the PHOA as may be exercised and done by the PHOA, and as are not by this Constitution required to be exercised or done by the PHOA in General Meeting subject nevertheless to such regulations as may be prescribed by the PHOA in General Meeting from time to time, provided that no regulation made by the PHOA in General Meeting shall invalidate any prior act of the TRUSTEES which would have been valid if such regulation had not been made.

- b. The TRUSTEES shall have the right to vary, cancel or modify any of their decisions and RESOLUTIONS from time to time.
- c. The TRUSTEES shall have the right to co-opt any person or persons chosen by them. A co-opted TRUSTEE shall enjoy all the rights and be subject to all the obligations of the TRUSTEES, provided that such co-opted TRUSTEE shall only serve until next Annual General Meeting.
- d. The TRUSTEES may, should they so decide, investigate any suspected or alleged breach by any MEMBER or TRUSTEE of this Constitution, in such reasonable manner as they shall decide from time to time.
- e. The TRUSTEES may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the PHOA in General Meetings:
  - i. as to the resolution of disputes generally;
  - ii. for the furtherance and promotion of any of the objects of the PHOA;
  - iii. for the better management of the affairs of the PHOA;
  - iv. for the advancement of the interests of MEMBERS;
  - v. for the conduct of TRUSTEES at meetings of TRUSTEES and Meetings of the PHOA;
  - vi. to levy and collect contributions from MEMBERS in accordance with clause 9;
  - vii. to levy and recover from MEMBERS monies which are necessary to defray the necessary expenses of the LOCAL AUTHORITY in the event of the LOCAL AUTHORITY imposing any levies and imposts against the PHOA;
  - viii. to assist it in administering and governing its activities generally.
- f. The TRUSTEES may:
  - i. determine what constitutes appropriate standards for residential living, maintenance, repairs, additions and improvements of all ERVEN and UNITS in the DEVELOPMENT in strict accordance with and limited to the provisions of the DEVELOPMENT CONDITIONS. The TRUSTEES may require any MEMBER to repaint or renovate his property in the DEVELOPMENT if, in the reasonable opinion of the TRUSTEES, such property requires essential repairs or has become dilapidated.
  - ii. make, enter into and carry out contracts or agreements for any of the purposes of the PHOA;
  - iii. employ and pay agents, servants and any other parties;
  - iv. enforce the provisions of the DEVELOPMENT CONDITIONS;
  - v. sue and defend actions in the name of the PHOA and to appoint legal representatives for this purpose.
  - vi. exercise the power conferred upon them in terms of this Constitution only in strict accordance with the provisions of the DEVELOPMENT CONDITIONS.

17. **PROCEEDINGS OF MEETINGS OF TRUSTEES**

- a. The TRUSTEES may meet for the dispatch of business, adjourn, and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
- b. Meetings of the TRUSTEES shall be held at least once every 6 (six) MONTHS.
- c. A TRUSTEE may at any time convene a meeting of TRUSTEES by giving to the other TRUSTEES not less than 21 (twenty-one) days' written notice of a meeting purposed by him, which notice shall specify the reason for calling such meeting: provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given. A resolution in writing signed by all the TRUSTEES shall be valid and effectual as if it had been passed at a meeting of TRUSTEES duly called and constituted.
- d. Any mortgagee holding a first mortgage bond or bonds over the ERVEN and/or UNITS shall, if he so requires of the TRUSTEES, be entitled to receive reasonable written notice of all meetings of TRUSTEES.
- e. The quorum necessary for the holding of any meeting of TRUSTEES shall be 4 (four) TRUSTEES.
- f. The CHAIRMAN shall preside as such at all meetings of TRUSTEES provided that should, at any meeting of TRUSTEES the CHAIRMAN is not present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the TRUSTEES shall vote to appoint a CHAIRMAN for the meeting. Who shall thereupon exercise all the powers and duties of the CHAIRMAN in relation to such meeting.
- g. A TRUSTEE may be represented at a Meeting of TRUSTEES by a proxy, who need not be a TRUSTEE of the PHOA.
- h. The instrument appointing a proxy shall be in writing signed by the TRUSTEE concerned or his duly authorized agent in writing but need not be in any particular form.
- i. 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 with the CHAIRMAN at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) MONTHS from the date of its execution.
- j. The TRUSTEES shall:
  - i. ensure that minutes are taken of every meeting of TRUSTEES, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting closed and shall then be certified correct by the CHAIRMAN of the meeting.
  - ii. cause such minutes to be kept of all meetings of the TRUSTEES in a Minute Book of Meeting of TRUSTEES kept for that purpose.
- k. The TRUSTEES shall keep all Minute Books of Meetings of TRUSTEES in perpetuity.
- l. On the written application of any MEMBER, the TRUSTEES shall make all Minutes of their proceedings available for inspection by such MEMBER.
- m. All competent resolutions recorded in the minutes of any meeting of TRUSTEES 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 TRUSTEES shall be of any force or effect or shall be binding upon the MEMBERS or any of the TRUSTEES unless such resolution is competent within the powers of the TRUSTEES.
- n. Save as otherwise provided in this Constitution, the proceedings at any meeting of TRUSTEES shall be conducted in such reasonable manner and form as the CHAIRMAN of the meeting shall decide.
- o. A resolution signed by all the TRUSTEES shall be valid in all respects as if it had been duly passed at a meeting of TRUSTEES duly convened.

18. **OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in this Constitution, the TRUSTEES shall at all times have the rights to engage on behalf of the PHOA, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other person, professional or otherwise, firm and/or any other employee/s whatsoever, for any reasons thought necessary by the TRUSTEES and on such terms as the TRUSTEES shall decide, subject to any of the provisions of this Constitution.

19. **GENERAL MEETINGS OF THE PHOA**

- a. The PHOA shall before end of August in each calendar year, hold a General Meeting as its Annual General Meeting in respect of the financial year the last day of February for the prior year, in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices calling it, in terms of clause 21.
- b. Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the TRUSTEES shall decide from time to time.
- c. The TRUSTEES may, whenever they deem fit, convene a General Meeting, and a General Meeting shall also be convened on a requisition made by not less than 10 (ten) MEMBERS, or in default, may be convened by the requisitioners themselves, provided that notice thereof be given in terms of clause 20.

20. **NOTICE OF MEETINGS**

- a. An Annual General Meeting and/or a General Meeting shall be called by 21 (twenty one) days' notice as provided for in clause 21.1 at the least. The notice shall be exclusive of the day on which it appears, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the TRUSTEES to such persons as are under this Constitution entitled to receive such notices from the PHOA; provided that a General Meeting or an Annual General Meeting of the PHOA shall, notwithstanding that it is called by shorter than that specified in this Constitution, be deemed to have been duly called if it is agreed to by not less than 10 (ten) MEMBERS.
- b. The accidental omission to give notice of a meeting or of any RESOLUTION, or to give any other notification, or present any document required to be given or sent in terms of this Constitution, or the non-receipt of any such notice, notification or document by any MEMBER or other person entitled to receive the same, shall not invalidate the proceedings at, or any RESOLUTION passed at, any meeting.

21. **SERVICE OF NOTICES OF MEETINGS**

- a. A notice of a meeting shall be placed in one issue of the "Cape Times" and "The Milnerton Talk and Mail" by the PHOA, not more than 28 (twenty eight) days and not less than 21 (twenty one) days prior to the date of the meeting concerned.
- b. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

22. **VENUE OF MEETINGS**

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

23. **QUORUM**

- a. 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 20% (twenty per centum) of the total MEMBERS entitled to attend and vote thereat, or a total of 50 (fifty) persons., whichever is the lesser.

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

#### 24. AGENDA AT MEETINGS

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

- a. the consideration of the CHAIRMAN's report to the TRUSTEES.
- b. the election of the TRUSTEES.
- c. the consideration of the financial statement of the PHOA for the last financial year of the PHOA preceding the date of such meeting.
- d. the consideration of the budget as presented by the TRUSTEES and confirmation of levies as currently levied by the TRUSTEES.
- e. any other business pertinent to such meeting including any RESOLUTIONS proposed for adoption by such meeting and the voting upon any such RESOLUTIONS.

#### 25. PROCEDURE AT GENERAL MEETINGS

- a. The CHAIRMAN shall preside as such at all General Meetings, provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the TRUSTEES present at such meeting shall vote to appoint a CHAIRMAN for the meeting, who shall thereupon exercise all the powers and duties of the CHAIRMAN in relation to such meeting.
- b. The CHAIRMAN may, with the consent of any General Meeting at which a quorum is present (and if so, directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Wherever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the MEMBERS shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjournment meeting.
- c. Except as otherwise set forth in this Constitution, all General Meetings shall be conducted in accordance with procedures to be stipulated by the TRUSTEES from time to time, which procedures shall be recorded in the Notices referred to in clause 21.

#### 26. MINUTES OF MEETINGS OF THE PHOA

- a. The TRUSTEES shall:
  - i. ensure that minutes are taken of every meeting of the PHOA, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the CHAIRMAN of the meeting.
  - ii. cause such minutes to be kept of all meetings of the PHOA in a Minute Book of Meetings of the PHOA for the purpose.
- b. The TRUSTEES shall keep all Minute Books of Meetings of the PHOA in perpetuity.
- c. On the written application of any MEMBER, the TRUSTEES shall make all Minutes of the proceedings and/or meetings of the PHOA available for inspection by such MEMBER.
- d. All competent RESOLUTIONS recorded in the minutes of any meeting of the PHOA 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 PHOA shall be of any force or effect or shall be binding upon the MEMBERS or any of the TRUSTEES unless such RESOLUTION is competent within the power of the PHOA.

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

## 27. PROXIES

- a. A MEMBER may be represented at a General Meeting by a proxy, who need not be a MEMBER of the PHOA.
- b. The instrument appointing a proxy shall be in writing signed by the MEMBER concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a MEMBER is more than one person, any one of these persons may sign the instrument appointing a proxy on such MEMBER's behalf. Where a MEMBER is a company, the same may be signed by the chairman of the Board of Directors of the Company or by its secretary, and where an association of persons, by the secretary thereof, and where a Trust, by the person duly authorised by the Trustees of such Trust.
- c. 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 domicile of the PHOA at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) MONTHS from the date of its execution.

## 28. VOTING

- a. At every General Meeting every MEMBER in person or by proxy and entitled to vote, shall be allocated voting rights as follows: the REGISTERED OWNER of an ERF and/or a UNIT: 1 (one) vote; provided that if an ERF or UNIT is registered in more than one person's name, then they shall jointly have 1 (one) vote.
- b. At any meeting of MEMBER S a RESOLUTION put to the vote of the meeting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands, a poll shall be demanded by any MEMBER.  

If a poll is duly demanded it shall be taken in such manner as the CHAIRMAN directs, and the result of the poll shall be deemed to be the RESOLUTION of the meeting at which the poll was demanded.
- c. Save as expressly provided for in this Constitution, no person other than a MEMBER duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the PHOA in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting.
- d. At any General Meeting a RESOLUTION put to the vote of the meeting shall be decided on an ordinary majority of votes represented by MEMBERS entitled to attend and vote thereat, present in person or by proxy.
- e. Voting in the election of a CHAIRMAN of a General Meeting as referred to in clause 25.1 (if necessary) or on any question of adjournment, shall be decided on an ordinary majority of votes represented by MEMBERS entitled to attend and vote thereat, present in person or by proxy.
- f. Every RESOLUTION and every amendment of a RESOLUTION proposed for adoption by a General Meeting shall be seconded at that meeting, and if not seconded, shall be deemed not to have been proposed.
- g. An ordinary RESOLUTION or the amendment of an ordinary RESOLUTION shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the RESOLUTION in question.
- h. Unless any MEMBER present in person or by proxy at a General Meeting shall before closure of the meeting have objected to any declaration made by the CHAIRMAN of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at

such meeting, such declaration by the CHAIRMAN shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the Minutes of the PHOA 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 CHAIRMAN of the meeting as to the result of any voting at the meeting.

#### 29. FINANCIAL YEAR END

The financial year end of the PHOA is the last day of February of each year.

#### 30. ACCOUNTS

- a. The TRUSTEES shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the PHOA, including:
  - i. a record of the assets and liabilities of the PHOA.
  - ii. a record of all sums of money received and expended by the PHOA and the matters in respect of which such receipt and expenditure occur.
  - iii. a register of MEMBERS showing in each case their addresses.
  - iv. individual ledger accounts in respect of each MEMBER.
- b. On the application of any MEMBER the TRUSTEES shall make all or any of the books of account and records available for inspection by such MEMBER.
- c. The TRUSTEES shall cause all books of account and records to be retained for a period of six years after completion of the transactions, acts or operations to which they relate.
- d. The PHOA in General Meeting or the TRUSTEES, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the MEMBERS of the accounts and books of the PHOA, or any of them, and subject to such conditions and regulations, the accounts and books of the PHOA shall be open to the inspection of MEMBERS at all reasonable times during normal business hours.
- e. At each Annual General Meeting the TRUSTEES shall lay before the PHOA financial statements for the immediately preceding financial year of the PHOA, or in the case of the first period since the date of incorporation of the PHOA made up for that period. Such financial statements shall have been drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the direction of the TRUSTEES and shall be attached to the notice sent to MEMBERS convening each Annual General Meeting, as set forth in clause 20, copies of such accounts, balance sheet and report and of any other document required by law to accompany the same.

#### 31. DEPOSIT AND INVESTMENT OF FUNDS

- a. The TRUSTEES shall cause all monies received by the PHOA to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the PHOA and, subject to any direction given or restriction imposed at a General Meeting of the PHOA, such monies shall only be withdrawn for the purpose of payment of the expenses of the PHOA or investment.
- b. Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the TRUSTEES from time to time.
- c. Interest in monies invested shall be used by the PHOA for any lawful purpose.
- d. Should the Parklands Home Owners Association be dissolved or wound-up for any reason whatsoever then all the assets of the association shall be transferred to an association with similar objects as this association.
- e. That the Association invest in offices for the administrative functions of the Association.

### 32. INDEMNITY

- a. All TRUSTEES shall be indemnified out of the funds of the PHOA against any liabilities bona fide incurred by them in their capacities as such and in the case of the CHAIRMAN, in his capacity as CHAIRMAN, whether defending any proceedings, civil, criminal, or otherwise, in which relief is granted to any such person/s by the Court.
  - i. Every TRUSTEE, every servant, agent and employee of the PHOA, shall be indemnified by the PHOA against ( and it shall be the duty of the TRUSTEES out of the funds of the PHOA to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of the CHAIRMAN, his duties as CHAIRMAN.
  - ii. Without prejudice to the generality of the above, the PHOA 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.
- b. A TRUSTEE shall not be liable for the acts, receipts, neglects or defaults of any of the other TRUSTEES, whether in their capacities as TRUSTEE or as CHAIRMAN, or for any loss or expense sustained or incurred by the PHOA through the insufficiency or deficiency of title to any property acquired by the TRUSTEES for or on behalf of the PHOA, or for the insufficiency or deficiency of any security in or upon which any of the monies of the PHOA shall be invested, or for any loss or damage arising from the insolvency or delictual act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

### 33. PRIVILEGE IN RESPECT OF DEFAMATION

Every MEMBER of the PHOA and every TRUSTEE shall be deemed by virtue of his membership or, as the case may be, his holding office as a TRUSTEE, to have waived as against every other MEMBER, the CHAIRMAN, every other TRUSTEE, and everybody else engaged to perform any function or duty on behalf or for the benefit of the PHOA, or the TRUSTEES, or any sub-committee, all claims and rights of action which such MEMBER or TRUSTEE might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such MEMBER or TRUSTEE, or any reference to such MEMBER or TRUSTEE, made at any meeting of TRUSTEES, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such MEMBER or TRUSTEE, or otherwise injurious to the dignity, reputation, business or financial interest of such MEMBER or TRUSTEE, whether such statement be true or false.

### 34. ARBITRATION

- a. Any dispute, question or difference arising at any time between MEMBERS or between MEMBERS and TRUSTEES out of or in regard to:
  - i. any matters arising out of this Constitution; or
  - ii. the rights and duties of any of the parties mentioned in this Constitution; or
  - iii. the interpretation of this Constitution.shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.
- b. Arbitration shall be held in Cape Town, at the offices of the attorneys appointed by the TRUSTEES, informally and otherwise in terms of 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.
- c. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:



- i. primarily an accounting matter – an independent chartered accountant.
  - ii. primarily a legal matter – a practicing counsel or attorney of not less than 10 (ten) years standing.
  - iii. any other matter – an independent and suitable qualified person appointed by a majority of TRUSTEES.
- as may be agreed upon between the parties to the dispute.
- d. If agreement cannot be reached on whether the question in dispute falls under clause 34.3.1, 34.3.2 or 34.3.3 or upon a particular arbitrator in terms of clause 34.3.3, within 3 (three) days after the arbitration has been demanded, then:
    - i. the President for the time being of the Law Society of the Cape of Good Hope shall determine whether the question in dispute falls under clause 34.3.1, 34.3.2 or 34.3.3; or
    - ii. the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 34 within 7 (seven) days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) days referred to in clause 34.2.
  - e. 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 may be paid either by one or the other of the disputing parties or by the PHOA as he in his sole discretion may deem fit.
  - f. The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the High Court of South Africa upon the application of any party to the arbitration.
  - g. Notwithstanding anything to the contrary contained in clauses 33 to 34.4 inclusive, the TRUSTEES shall be entitled to institute legal proceedings on behalf of the PHOA by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

### 35. DOMICILIUM CITANDI ET EXECUTANDI

- a. The TRUSTEES shall from time to time determine the address constituting the domicillium citandi et executandi of the PHOA, subject to the following:
  - i. Such address shall be the address of the CHAIRMAN or other resident TRUSTEE duly appointed at a General Meeting, or the administrative office of the PHOA.
  - ii. The TRUSTEES shall give notice to all MEMBERS of any change of such address.
- b. The domicillium citandi et executandi of each MEMBER shall be the MEMBER's telefax number or the street address of the ERF of UNIT registered in his name; provided that he shall be entitled from time to time to change the said domicillium but that any new domicillium selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the PHOA at its domicillium.
- c. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its domicilium citandi et executandi.
- d. Any notice to a MEMBER
  - i. sent by pre-paid registered post in a correctly addressed envelope to the MEMBER's domicilium citandi et executandi shall be deemed to have been received on the seventh day after posting (unless the contrary is proved);
  - ii. delivered by hand during ordinary business hours to the domicilium citandi et executandi shall be deemed to have been received on the day of delivery thereof.

