

CONSTITUTION

of the

KERSBOS STRAND

HOME OWNERS

ASSOCIATION



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1. **INTERPRETATION**

In this document the following words shall have the meanings hereinafter assigned to them unless a different interpretation is required from the context:

"The Association"	means the KERSBOS STRAND HOME OWNERS ASSOCIATION
"Chairperson"	means the Chairperson of the Management Committee
"consulting architect"	a qualified architect or draftsmen or alike, appointed by the independent Architectural Committee in accordance with paragraph 8.7 hereof.
"Commercial property"	means that part of the property on the Development plan, which will not be sold for residential purposes excluding roads, public open spaces and Erven required for authority use
"Constitution"	means the Constitution of the KERSBOS STRAND HOME OWNERS ASSOCIATION
"The Council"	means the Bergrivier Municipal Council
"Development"	means the Kersbos Strand Development
"Development plan"	means the approved Development plan as may be amended from time to time of the Kersbos Strand Town Development
"Erf"	means an Erf or Erven situated within the KERSBOS STRAND DEVELOPMENT
"Management Committee"	means a Committee of the Association created in terms of paragraph 5 hereof
"Management Committee Member"	means a Member of the Management Committee



"Member"	means a member of the Association
"Vice-chairperson"	the Vice-chairperson of the Management Committee
"Registered owner"	means DOLPHIN WHISPER TRADING 10 (PTY) Limited the registered owner of the property depicted in the Development plan

2. OBJECTIVES OF THE ASSOCIATION

The objectives of the Association are:

- 2.1 To formulate, promote and enforce standards in such a way that the Members may derive the maximum collective benefit there from;
- 2.2 To formulate, promote and enforce acceptable aesthetic, environmental criteria for the Development;
- 2.3 To control the common area and certain aspects of individual Stands;
- 2.4 To establish a levy fund to meet expenses incurred and discharge obligations of the Association;
- 2.5 To establish an architectural committee to formulate and enforce architectural and design criteria in accordance with the Architectural Guidelines attached hereto as Annexure "A";
- 2.6 In general to provide a high quality lifestyle to residents and eliminate undesirable situations;
- 2.7 To promote and guard the interests of Members and the Association;
- 2.8 To control and maintain buildings, services and amenities within the Development.



3. POWERS OF THE ASSOCIATION

The Association shall have the powers to execute and accomplish the objectives as set out in paragraph 2, to create the necessary infrastructure, draw regulations (which shall not be in conflict with Municipal and other statutory regulations or by-laws) and attend to the management of the Association with regard to all its executive, financial, administrative and decision-making requirements.

4. MEMBERSHIP

- 4.1 Membership of the Association shall be compulsory for every registered owner of an Erf within the Development.
- 4.2 Membership of the Association shall be limited to the registered owners of the Erven provided that:
 - 4.2.1 a person who is entitled to obtain a certificate of registered title to any such Erf shall be deemed to be registered owner thereof;
 - 4.2.2 where any such owner is more than one person, all the registered owners of that Erf shall be deemed jointly and severally deemed to be one Member of the Association.
 - 4.2.3 the Developer will be a Member of the Association for as long as the Developer remains an owner of any portion of the Development and, without detracting from the generality of the afore going, specifically including any Erf forming part of the Development.
- 4.3 When a Member ceases to be the registered owner of an Erf, he shall ipso facto cease to be a Member of the Association.
- 4.4 A Member shall not be entitled to sell or transfer an Erf unless it is a condition of the sale and transfer that:
 - 4.4.1 the transferee becomes a Member of the Association;
 - 4.4.2 the registration of transfer of that Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association;



- 4.4.3 he/she first obtains the written consent of the Association which consent shall be given provided the purchaser of such Erf agrees in writing to abide by the rules of the Constitution of the Association.
- 4.5 The registered owner of an Erf may not resign as a Member of the Association.
- 4.6 The rights and obligations of a Member shall not be transferable and every Member shall:
- 4.6.1 to the best of his ability further the objects and interests of the Association;
- 4.6.2 observe all by-laws and regulations made by the Association or the Management Committee provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of that Member's Erf.
- 4.7 Any owner submitting an application for sub-division of his/her property, will simultaneously with the application to the local authority, also submit an application to the Home Owners Association in order to enable them to give their input and requirements in respect of the proposed sub-division.

5. MANAGEMENT COMMITTEE

- 5.1 There shall be a Management Committee, which will always consist of not less than five (5) and not more than eight (8) Management Committee Members;
- 5.2 A Management Committee Member need not be a Member of the Association, but by accepting his appointment to office as such, shall be deemed bound by all the provisions of this Constitution;
- 5.3 Should the Management Committee at any given time be less than five (5) Management Committee Members due to the resignation of a Member or Members, the Management Committee will appoint additional Members in accordance with the provisions of clause 6.5, to ensure compliance with paragraph 5.1 above.



- 5.4 The Management Committee will be elected at the Annual General Meeting and be in office from that date, until the next Annual General Meeting.

6. REMOVAL & ROTATION OF MANAGEMENT COMMITTEE MEMBERS

- 6.1 A Management Committee Member shall continue to hold office for a period of one (1) year. A Management Committee Member must be a Management Committee Member for at least one (1) year before he or she will become eligible to be elected as Chairperson of the Management Committee.
- 6.2 A Management Committee Member shall be deemed to have vacated his office and cease to be a Management Committee Member upon:
- 6.2.1 his/her estate being sequestrated, whether provisionally or finally, or the surrendering of his/her estate;
 - 6.2.2 he or her making any arrangement or composition with his/her creditors;
 - 6.2.3 his/her conviction for any offence involving dishonesty;
 - 6.2.4 him/her becoming of unsound mind;
 - 6.2.5 his/her resignation from such office in writing delivered to the Secretary for the time being of the Management Committee;
 - 6.2.6 his/her death;
- 6.3 A Management Committee Member can be removed from the Management Committee by a consensus decision of the remaining Management Committee Members should they be of the opinion that the Management Committee Member in question does not make a meaningful contribution to the Management Committee.
- 6.4 Anything done by a Management Committee Member in its capacity as such and done in good faith, by a Member who ceases to be a Management Committee Member, shall be valid until the fact that he/her is no longer a Management Committee Member, has been recorded by the Management Committee;
- 6.5 Upon any vacancy occurring on the Management Committee prior to the next Annual General Meeting, the vacancy in question shall be filled



by a person nominated by those remaining for the time being on the Management Committee. The office of Chairperson or Vice-chairperson shall ipso facto be vacated by the Management Committee Member holding such office upon his ceasing to be a Management Committee Member for any reason.

7. OFFICE OF MANAGEMENT COMMITTEE MEMBERS

- 7.1 The Management Committee Members shall appoint from amongst themselves a Chairperson and Vice-chairperson;
- 7.2 The Chairperson, and Vice-chairperson, shall hold their respective offices for a period of one (1) year, provided that any such office shall ipso facto be vacated by the Management Committee Members holding such office upon his ceasing to be a Management Committee Member for any reason;
- 7.3 Save as otherwise provided in these presents, the Chairperson shall preside at all the meetings of the Management 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 Management Committee or of Members, and to allow or refuse to permit invites to speak at any such meetings, provided however, that any such invites shall not be entitled to vote at any such meetings;
- 7.4 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 Management Committee;
- 7.5 Management Committee Members shall be entitled to be repaid all reasonable and bona fide expenses incurred by any of them personally in connection with the performance of their duties as Management Committee Member and/or Chairperson or Vice-chairperson, as the case may be, subject to the submission of proof of expense to the Chairperson, who have the authority to approve or decline the said expense. Should there be a dispute as to the reasonability of the expense, a final decision to approve or decline it will be taken at the next Annual General Meeting, where it can be decided to reclaim the expense from the relevant Management Committee Member should it be found to be unreasonable, after which the said Member will be obliged to repay the expense. Save as aforesaid, no Management



Committee Member shall be entitled to any other remuneration fees or salary in respect of the performance of such duties.

8. POWERS, FUNCTIONS & RESPONSIBILITIES OF THE MANAGEMENT COMMITTEE

- 8.1 Subject to the express provisions of these presents, the Management Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Management Committee which would have been valid if such regulation had not been made;
- 8.2 The Management Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time;
- 8.3 Only registered owners of Erven in the Development can be voted a Member of the Management Committee. However, the Management Committee shall have the right to nominate a person as envisaged in paragraph 6.5 and to co-opt onto the Management Committee any person or persons chosen by it, even if such a person is a non-registered owner of an Erf in Kersbos Strand. A co-opted Management Member shall enjoy all the rights and be subjected to all obligations of the Management Committee Member;
- 8.4 The Management Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Management Committee Member of this Constitution, in such reasonable manner as it shall decide from time to time;
- 8.5 The Management Committee shall have the right to take out liability insurance in respect of matters that they seem fit to insure against. The risks that should be covered by the said insurance shall be decided by the Management Committee as the need arises from time to time.
- 8.6 The Management Committee may make regulations and by-laws, not inconsistent with this Constitution or any regulations or by-laws prescribed in the Association in a general meeting;



- 8.6.1 as to disputes generally;
- 8.6.2 for the furtherance and promotion of any of the objects of the Association;
- 8.6.3 for the better management of the affairs of the Association;
- 8.6.4 for the advancement of the interest of Members;
- 8.6.5 for the conduct of Management Committee meetings and general meetings;
- 8.6.6 to assist in administering and governing its activities generally;

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

- 8.7 Subject to the provisions of clause 26, the Management Committee shall have the power to appoint an independent Architectural Committee, consisting of a qualified architect (the "consulting architect") or draftsmen or alike and at least three (3) other Members, of which at least two (2) are Management Committee Members, and empower them to enact the Architectural Guidelines, attached hereto as Annexure "A". The consulting architect will report to the Management Committee in order to avoid him/her taking sole control over architectural matters.
- 8.8 Subject to the provisions of clause 17, the Management Committee will have the power to appoint a Managing Agent to manage the affairs of the Association at its first Management Committee meeting held after the Annual General Meeting was held and the Management Committee was elected in terms of clause 5.4 above.

9. PROCEEDINGS OF THE MANAGEMENT COMMITTEE

- 9.1 The Management Committee may meet, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of these presents;
- 9.2 Meetings of the Membership Committee shall be held at least twice per annum, or more frequently if circumstances so require, provided that if all the Management Committee Members shall in writing have



waived the above requirement in respect of a prescribed meeting to be held, then no meeting of the Management Committee need be held within the prescribed period;

- 9.3 The quorum necessary for the holding of any meeting of the Management Committee shall be three (3) Management Committee Members. Subject to the provisions of clause 25, a Management Committee Member will be allowed to appoint a proxy from among the other Management Committee Members to vote on behalf of him/herself, but he/she must indicate his/her choice of how should be voted if the said Management Committee Member should be required to vote on any matter at a Management Committee Meeting;
- 9.4 The Chairperson shall preside at such at all meetings of the Management Committee, provided that should at any meeting of the Management Committee the Chairperson not be present within five (5) 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 five (5) minutes of the time appointed for the holding of such a meeting, those present of the Management Committee Members shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and the duties of the Chairperson in relation to such meeting;
- 9.5 At the beginning of each Management Committee meeting, a secretary will be appointed amongst the Management Committee Members present at the meeting, whose responsibility it will be to take minutes of the said meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting closed and shall then be forwarded to the Chairperson who chaired the meeting to be certified as correct. All minutes of Management Committee meetings shall after certification as aforesaid, be placed in a Management Committee Minute Book. The Management Committee Minute Book shall be open for inspection at all reasonable times by a Management Committee Member, the Auditors, the Association Members and the Local Authority.
- 9.6 All competent resolutions recorded in the minutes of any Management 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 Management Committee, shall be of any force or



effect, or shall be binding upon the Members or any of the Management Committee Members unless such resolution is competent within the powers of the Management Committee;

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

10. GENERAL MEETINGS OF THE ASSOCIATION

10.1 The Association shall hold a general meeting as its Annual General Meeting no later than four (4) months after the end of its financial year, in addition to any other general meetings, during that year.

10.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Management Committee shall decide from time to time;

10.3 The Management Committee may, in its discretion, convene a special general meeting, and a special general meeting shall also be convened on a requisition made in writing by at least ten (10) percent of registered owners of Erven in Kersbos Strand.

11. NOTICE OF MEETINGS OF MEMBERS

An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called on twenty one (21) days' notice at least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting as well as the terms and effect of any proposed special resolution and the reasons for it. Members will be notified of meetings via e-mail to their respective e-mail addresses. Members of whom the e-mail addresses are not known, will receive notification of the meeting via registered mail. General meetings of the Association shall take place at such venue as shall be determined by the Management Committee from time to time.

12. QUORUM

12.1 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



ten percent (10%) of all registered owners of Erven in Kersbos Strand to be present at the meeting with ten percent (10%) of such Members entitled to vote, either present in person or by proxy.

- 12.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the Members present shall be a quorum.

13. AGENDA AT MEETINGS

The Management Committee Members will determine the Agenda at any meeting.

14. PROCEDURE AT GENERAL MEETINGS

- 14.1 The Chairperson of the Management Committee shall preside as such at all general meetings, provided that should he not be present within (5) minutes after the time appointed for the holding thereof, then the Vice-chairperson shall act as Chairperson at such meetings, provided further that should the Vice-chairperson also not be present within five (5) 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;
- 14.2 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 business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten (10) 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 any business to be transacted at an adjournment meeting;
- 14.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.



15.VOTING

15.1 At every general meeting, every Member in person or by proxy entitled to vote, shall have one vote for each Erf registered in his name, provided that if an Erf is registered in more than one person's name, they shall jointly have one vote;

15.2 Save as expressly provided for in these presents, no person other than a Member who are fully up to date with any amounts due and owing by him to the Association in respect of or arising out of his membership, and who is not in breach of any of the provisions of this Constitution as referred to in clause 24, shall be entitled to be present and to vote on any question, either personally or by proxy, at any general meeting.

15.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, or by ballot paper depending on the decision of the Chairperson of the meeting;

15.4 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;

15.4.1 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the Chairperson of the general meeting shall be entitled to a casting vote in addition to his deliberative vote;

15.4.2 A special resolution is a resolution amending the Constitution and shall be carried only with a 75% vote by registered owners present in person or by proxy at the meeting and entitled to vote, in favour of such resolution given in accordance with paragraph 15.3;

15.5 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, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson 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 to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded if such entry confirms with the declaration made by the Chairperson of the meeting as to the result of any voting at the meeting.

16.LEVIES

- 16.1 The Management Committee shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Management Committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order of communal services and buildings (if applicable) and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association and the Association's affairs. In calculating levies the Management Committee shall take into account, income, if any, earned by the Association.
- 16.2 The Management Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Members, equal as nearly as is reasonably practical to such estimated amount. Notwithstanding the above, the Management Committee will not be allowed to increase the levies with more than ten (10) percent per annum, unless a decision to increase the levies with more than ten (10) percent has been ratified at an Annual General Meeting. The Management Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable annually due in advance within three (3) months from date of yearly invoices being sent by the Association to its respective Members. The invoices will be issued once a year, in the month following the Annual General Meeting where the levies were approved.
- 16.3 The Management Committee, may from time to time, make special levies upon the Members in respect of all such expenses as are mentioned in clause 16.1 above (which are not included in any estimate made in terms of clause 16.2), and such levies may be



made in the sum or by such instalments and at such time or times as the Management Committee shall think fit.

- 16.4 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. 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. Levies paid by a Member shall under no circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to an Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Erf, to pay the levy attributable to that Erf. No Member shall transfer his Erf until the Association has certified that the Member has at the date of transfer fulfilled all his/her financial obligations to the Association.
- 16.5 The total levy payable by Members shall be borne in equal shares by each Member.
- 16.6 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 16.7 Any levies not paid within a three (3) month period after the date of invoice for the payment of levies being provided to the Member, shall accrue interest at the rate of two percent (2 percent) per annum above Standard Bank Limited's prime lending rate, calculated from the date of expiry of the three (3) month period to date of payment.

17. OTHER PROFESSIONAL OFFICERS

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

18. ACCOUNTS



18.1 The Management Committee may from time to time make regulations and stipulate conditions as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours;

18.2 At each Annual General Meeting the Management Committee shall lay before the Association audited financial statements for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the founding of the Association.

19. AUDIT

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

20. SERVICE OF NOTICES

20.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either via e-mail to those Members whose e-mail addresses are known, or by registered post, properly addressed to the Member at the address supplied by or of the Erf owned by such Member, to those Members whose e-mail addresses are not known;

20.2 No Member shall be entitled to have a notice served on him at an address not within the Republic of South Africa, but any Member may require the Association, by written notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices;

20.3 Any notice via e-mail, shall be deemed to have been received within twenty four (24) hours after it being e-mailed, and any notice by registered post shall be deemed to have been received ten (10) days after the letter containing the same was posted, and in proving the giving of the notice by registered post, it shall be sufficient to prove that the e-mail or letter containing the notice was properly addressed and posted;



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

21. INDEMNITY

- 21.1 All Management Committee Members and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Management Committee Member, in his capacity as Chairperson, Vice-chairperson, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 21.2 Every Management Committee Member, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Management Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their duties, including in the case of a Management Committee 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.

- 21.3 A Management Committee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Management Committee Members, whether in their capacities as Management Committee 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 Management 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 tortious 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.

22. PRIVILEGE IN RESPECT OF DEFAMATION

Every Member of the Association and every Management Committee Member shall be deemed by virtue of his/her membership or, as the case may be, his holding office as a Management Committee Member, to have waived all claims and right of action which such Member might have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Management Committee Member, or any reference to such Member or Management Committee Member, made at any Management Committee meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory to such Member or Management Committee Member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Management Committee Member, whether such statement be true or false, against every other Member, the Management Committee, the Chairperson or Vice-chairperson, every other Management Committee Member, the Auditors, and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Management Committee, or any sub-committee.

23. ARBITRATION

23.1 Any dispute, question or difference arising at any time between Members or between Members and Management Committee Members out of or in regard to:

- 23.1.1 any matters arising out of this Constitution; or
- 23.1.2 the rights and duties of any of the parties mentioned in this Constitution; or
- 23.1.3 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.

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

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

23.3.1 primarily an accounting matter - an independent accountant;

23.3.2 primarily a legal matter - a practising counsel or attorney of not less than 10 (ten) years standing;

23.3.3 any other matter - an independent and suitably qualified person appointed by the Auditors;

as may be agreed upon between the parties to the dispute.

23.4 If agreement cannot be reached on whether the question in dispute falls under clauses 23.3.1, 23.3.2 or 23.3.3 or upon a particular arbitrator in terms of 23.3.3, within 3 (three) Business Days after the arbitration has been demanded, then:

23.5 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 clauses 23.3.1, 23.3.2, 23.3.3; or

23.6 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of 23.3 within 7 (seven) Business Days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) Business Days referred to in 23.2.

23.7 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 other of the disputing parties or by the Association as he in his sole discretion may deem fit.



- 23.8 The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.
- 23.9 Notwithstanding anything to the contrary contained in clauses 23.1 to 23.9 inclusive, the Management Committee Members shall be entitled to institute legal proceedings on behalf of the Association 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.

24. BREACH

- 24.1 Any Member who fails to make payment to the Association on due date therefore of any monthly subscription and/or levies or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of these presents, and neglects to rectify the breach after receipt of written notice to that effect in accordance with clause 21 hereof, may, if so determined by a resolution passed by not less than 4 (four) of the Management Committee Members present at a meeting of the Management Committee:
- 24.1.1 be fined by the Association in such amount; and/or
- 24.1.2 be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question, such sum as compensation, as in each case shall have been determined at such Management Committee meeting.
- 24.2 These fines shall be payable by the Member in addition to the levy payable by each Member in accordance with clause 16 hereof.
- 24.3 The Member concerned shall be invited to attend such Management Committee meeting by notice in writing, either via e-mail or by registered post delivered to such Member not less than seven (7) days prior to the holding thereof, and such Member shall be given the right to speak at the Management Committee meeting, and to be represented legally, but not to be present at the voting or to take part in the proceedings, other than as allowed by the Chairperson of such meeting.



25. PROXIES

- 25.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly 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 those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairperson of the Board of Directors of the Company or by its secretary, and where an association of persons, by the secretary thereof.
- 25.2 A Member will not be allowed to appoint a proxy who are in breach of the provisions of this Constitution as referred to in clause 24, and no proxy appointed by a Member who are in breach of the Constitution in terms of clause 24, will be entitled to vote at any meeting.
- 25.3 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after expiration of 12 (twelve) months from the date of its execution.
- 25.4 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the prior death of the principal or revocation of the proxy, provided that no information in writing of the death or revocation shall have been received by the Management Committee at least one hour before the time fixed for the holding of the meeting.
- 25.5 Should a Member be absent from the recorded domicilium address which the Management Committee may have for such Member for a continuous period in excess of three (3) weeks, a proxy must be appointed by such Member prior to his absence in accordance with clauses 25.1 and 25.2, failing which a Member shall not be entitled to vote, at any special general meeting, called during such Member's absence.
- 25.6 Subject to the provisions of clause 15.2, each registered owner will be limited to provide five (5) additional proxies, apart from his/her



own. Lastmentioned will also be applicable on the Chairperson. No Member, inclusive of the Chairperson, shall be allowed to utilize more than five (5) proxies in any meeting. In the event of any one Member having more than five (5) proxies in his/her possession for utilization at any meeting, the amount of proxies should be divided evenly amongst the Members of the Management Committee to ensure compliance with this clause. The Member appointing the proxy are obliged to indicate his/her election of how should be voted at the meeting. The choice must be indicated on the form of proxy before it is given to the person representing him/her at the meeting.

26. ESTHETIC AND ENVIRONMENTAL REQUIREMENTS

26.1 The Management Committee shall in addition to any other powers, have the power to:

26.1.1 do such acts and to frame and enforce conditions on Members as are necessary to accomplish the purposes expressed or implied herein, which acts shall include inter alia, the approval or refusal of building plans relating to the external renovations, alterations or additions envisaged on any stand prior to submission for Local Authority approval as stipulated below, via the Members of the Management Committee forming part of the independent Architectural Committee stipulated in clause 8.7, and subject to the Architectural Guidelines applicable to the Development, and attached hereto as Annexure "A";

26.1.2 compel Members to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such Member;

26.1.3 ensure that all Members maintain their properties in a clean and tidy condition (including the pavement bordering his property).

26.2 Members shall be obliged to ensure that its architect attending to the drafting of the Member's building plans, consults with the consulting architect of the Association, as appointed from time to time by the Association, on any matters relating to the interpretation of the Architectural Guidelines of the Association, and submit sketch plans for external renovations, alterations or additions to the consulting architect for comment;



- 26.3 A Member needs to ensure that the final plans are submitted to the consulting architect, who needs to approve and stamp the plans, whereafter it will be submitted to the Architectural Committee for final approval prior to the submission of such plan to the Local Authority for approval. Any decision by the Architectural Committee shall be final and binding on the Member.
- 26.4 The consulting architect appointed by the Association will ensure that building plans comply with the existing Architectural Guidelines in respect of the Development, attached hereto as Annexure "A";
- 26.5 On submission of a plan to the Architectural Committee for approval, the Member submitting the plan shall pay a fee to the consulting architect as described in the Architectural Guidelines attached hereto as Annexure "A";
- 26.6 No Member shall be entitled to dump material or goods on the common area or any Erf and shall be liable for payment of the costs of rectifying or removal of the material or goods, on the terms and conditions as specified in the Architectural Guidelines attached hereto;
- 26.7 Every Member shall observe all and not breach any laws, ordinances, by-laws and regulations or rules imposed by the statutory or other authority and, without detracting from the generality of the foregoing, shall observe and comply with the provisions of the Cape Provincial Road Traffic Ordinance as amended (or Ordinance or Act substituted therefore) with regard to any road in the township.

27. AMENDMENTS TO THE CONSTITUTION

This Constitution can only be altered or amended in any way by a resolution taken by seventy five percent (75%) of registered owners of Erven in Kersbos Strand either present in person or by proxy at an Annual General Meeting and entitled to vote at the said Annual General Meeting of the Association, and subject to the approval of Council as the Local Authority. Any procedures and processes followed to amend the Constitution will be in compliance with clauses 10 to 15 of this document.



28. STATUS OF THE ASSOCIATION

The Association shall be an Association:

- 28.1 with legal personality, capable of suing and be sued in its own name; and
- 28.2 none of whose Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the Management Committee in terms hereof; and
- 28.3 not for profit, but for the benefit of the owners and occupants of immovable property situated in the Development; and
- 28.4 with the right to acquire, build, lease and alienate property, both moveable and immoveable.

29. PERSONAL LIABILITY OF MEMBERS

- 29.1 No Member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of, the Association if not properly authorized thereto;
- 29.2 Notwithstanding any stipulation to the contrary, all Members of the Association shall be jointly liable for the expenditure incurred in connection with the Association in accordance with Section 29(2)(c) of Ordinance 15 of 1985.

30. FINANCIAL YEAR END

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

31. EFFECTIVE DATE

The provisions of this amended document shall come into force and effect on the same date of approval hereof by the Berg River Municipality.

