

## ANNEXURE AC@

### CONSTITUTION OF THE SHELLEY POINT HOME OWNERS ASSOCIATION

#### 1. ESTABLISHMENT IN TERMS OF STATUTE

The SHELLEY POINT HOME OWNERS ASSOCIATION is constituted, as a Body Corporate, in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985, in accordance with the conditions imposed by the Municipality of ST HELENA BAY when approving in terms of Section 25(1) and 42 of the said Ordinance of the subdivisions of the Consolidated Erf comprising Erf No 3 and portions of Erven No=s 1 and 2 in the Municipality of ST HELENA BAY, Division of MALMESBURY.

#### 2. INTERPRETATION

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

- Àthe Association@ means the SHELLEY POINT Home Owners Association;
- Àthe Office@ means the registered office of the Association;
- Àmonth@ means calender month;
- Àyear@ means calender year;
- Àthe Unit Erven@ means the residential erven resulting from the subdivision of the consolidated erf comprising Erf No 3 and portions of Erven No=s 1 and 2 in the WEST COAST TRANSITIONAL COUNCIL, Division of MALMESBURY.
- Àmember@ means member of the Association;
- Àthe trustee Committee@ means the Board of Trustees of the Association;
- Àa Trustee@ means one of the Trustee Committee;
- ÀChairman@ means the Chairman of the Trustee Committee;
- ÀVice-Chairman@ means the Vice-Chairman of the Trustee Committee;
- Àthe Municipality@ means WEST COAST PENINSULA TRANSITIONAL COUNCIL;
- ÀBusiness day@ means weekdays other than Saturdays, Sundays and Public Holidays;
- ÀSpecial Resolution@ means a resolution passed at a special general meeting of which not less than 21 clear days notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than three-fourths of the number of members entitled to vote at that meeting who are present in person or by proxy.

Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and word importing any one gender only shall include the other two genders.

#### 3. PURPOSE DESCRIBING THE MAIN BUSINESS

The main business which the Association is to carry on is the promotion, advancement and protection of the Members at the Consolidated Erf Comprising Erf 3 and Portions of Erven No 1 and 2, ST HELENA BAY in the WESTCOAST PENINSULA TRANSITIONAL COUNCIL, Division of MALMESBURY.

#### 4. MAIN OBJECT

The main object of the Association is the care, control, maintenance and upkeep of roads and any buildings, services and amenities, and the promotion, advancement and protection of the communal and group interests of the Members generally, and more specifically, but without derogation from the generality of the foregoing, to comply with provisions of Section 29 of the Land Planning Ordinance No 15 of 1985.

#### 5. FINANCIAL YEAR END

The financial year end of the Association is the **end of September** of each year.

#### 6. MEMBERSHIP

- 6.1 Membership of the Association shall be compulsory for every registered owner of the Unit Erven.
- 6.2 Membership of the Association shall be limited to the registered owners of the Unit Erven provided that:
- 6.2.1 a person who is entitled to obtain a certificate of registered title to any such Unit Erf shall be deemed to be the registered owner thereof;
- 6.2.2 where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one Member of the Association.

7. When a member ceases to be a registered owner of a Unit Erf, he shall ipso facto cease to be a Member of the Association.
8. A Member shall not be entitled to sell or transfer a Unit erf unless it is a condition of the sale and transfer that:
- 8.1 The transferee becomes a Member of the Association, and will thereby be bound by the terms and conditions of this Constitution.
- 8.2 The registration of transfer of that Unit Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association.
- 8.3 He first obtains the written consent of the Home Owners Association which consent shall be given provided the purchaser of such Unit Erf agrees in writing to abide by the rules of the Constitution of the Association, and provided the seller has settled any indebtedness to the Home Owners Association.
9. The registered owner of a Unit Erf may not resign as a member of the Association.
10. The Trustee Committee may, by regulation, provide for the issue of a membership certificate in such a form as may be prescribed by the Trustee Committee.

11. The rights and obligations of a Member shall not be transferable and every Member shall:
- 11.1 To the best of his ability further the objects and interests of the Association;
  - 11.2 Observe all by-laws and regulations made by the Association or the Trustee Committee provided that nothing contained in this Constitution shall prevent a member from ceding his rights in terms of this Constitution as security to the Mortgagee of that Member=s Unit Erf.
  - 11.3 Be responsible for the matters described in paragraph 4 above.
  - 11.4 Comply with all duties of a landowner.
  - 11.5 Comply with the requirements of the Council of the Municipality.
  - 11.6 Observe any statutory or other regulations imposed by any Governmental or Local Institution, including, but not limited to the Land Use Planning Ordinance No 15 of 1985.

12. **LEVIES**

The Trustee Committee shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by way of maintenance and repair and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association and the Association=s affairs. In calculating levies the Trustee Committee shall take into account income, if any, earned by the Association.

13. The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Members equal, as nearly as reasonably practical, to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an unusual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.

14. The Trustee Committee may from time to time make special levies upon the Members in respect of all such expenses as are mentioned in 12 (which are not included in any estimate made in terms of 13) and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit.

15. 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. No levies paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member=s successor in title to a Unit Erf shall be liable as from the date upon which he becomes a member pursuant the transfer of that erf, to pay the levy attributable to that erf. No Member shall transfer his Unit Erf until the Association has certified that the Member has at the date of transfer fulfilled his financial obligations to the Association.

16. The total levy payable by Members shall be borne in equal shares by each Member.

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

18. Notwithstanding the foregoing, the levy imposed on a member in any month shall not be increased without the sanction of a Special Resolution of the Association (and no members shall be entitled to unreasonably vote against a Resolution proposing an increase) provided that the aforesaid limit shall not apply if it shall have the effect of the Association being unable to fulfill its objects in respect of expenditure for Rates and taxes and/or any other obligation assumed by it in terms of a agreement with the local authority.

19. **THE STATUS OF THE ASSOCIATION**

The Association shall be an Association with legal personality, capable of suing and being sued in its own name and of acquiring movable and immovable property; and

- 19.1 none of whose members in their personal capacities shall have any right, or interest to or in the property funds or assets of the Association, which shall vest in and be controlled by the Trustee Committee in terms hereof;
- 19.2 and not for profit, but for the benefit of the owners and occupants of immovable property situated in the area controlled by the Home Owners Association.

20. **CONTRACTS AND REGULATIONS**

The Trustee Committee may from time to time:

- 20.1 Make regulations governing inter alia:
  - the general external appearance of all buildings and other improvements erected on the Unit Erven
  - the rights, duties and obligations of the members in respect of the Unit Erven.
- 20.2 Enter into agreement(s) with the local authorities governing the matters set out in 20.1 and any other incidental matters.

21. Each Member undertakes to the Association that he shall comply with the provisions of this Constitution; any regulations made in terms of 20.1; any agreements referred to in 20 insofar as those agreements may directly or indirectly impose on him.

22. **BREACH**

Should any Member:

- 22.1 fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation made thereunder and remain in default for more than 7 (seven) days after being notified in writing to do so by the Trustees; or

- 22.2 commit any other breach of any of the provisions of this Constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time then and in either such event, the Trustees shall be entitled

on behalf of the Association, without prejudice to any other rights or remedies which the Trustees or the Association or any other Member may have in law, including the right to claim damages:

- 22.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made thereunder, as the case may be; or
- 22.4 in the case of clause 20.2 to remedy such breach and immediately recover the total cost incurred by the Trustees or the Association in so doing from such Member.
- 22.5 Should the Trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation made thereunder, then without prejudice to any other rights which the Trustees or the Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Association, including attorney/client charges, tracing fees and collection commission.
- 22.6 Without prejudice to any of the rights the Trustees or the Association granted under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon at the publicly quoted prime rate of interest charges by the Association's bankers from time to time calculated from the date for payment until the actual date of payment of such amount.

**23. CESSATION OF MEMBERSHIP**

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

**24. TRUSTEE COMMITTEE**

There shall be a Board of Trustees of Association which shall consist of not less than 4 (four) and not more than 10 (ten) Members.

25. Every Trustee must be a Member of the Association.

**26. REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

Save as set forth in 29 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting such trustees shall be deemed to have retired from office as such, but will be eligible for re-election to the Trustee Committee at such meeting.

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

- 26.1 His estate being sequestered, whether provisionally or finally, or his surrendering his estate;
- 26.2 His making any arrangement of compromise with his creditors;
- 26.3 His conviction for any offence involving dishonesty;
- 26.4 His becoming of unsound mind or being found lunatic;
- 26.5 His resigning from such office in writing delivered to the Secretary;
- 26.6 His death;
- 26.7 His being removed from office by a Special Resolution of the Members

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

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

28. **OFFICE OF TRUSTEES:** The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.

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

30. Within 7 (seven) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid office at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office.

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

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

33. Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be

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

**34. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

Subject to the express provisions of these presents, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may exercise all such powers of the Association, and as are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.

35. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
36. The Trustee Committee shall have the right to co-opt onto the Trustee Committee any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subjected to all the obligations of the Trustees.
37. The Trustee Committee may should it so decide, investigate any suspected or alleged breach by any Member of Trustee of these presents, in such reasonable manner as it shall decide from time to time.
38. The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulation or by-laws prescribed in the Association in general meeting:
- 38.1 As to disputes generally;
  - 38.2 For the furtherance and promotion of any of the objects of the Association;
  - 38.3 For the better management of the affairs of the Association;
  - 38.4 For the advancement of the interests of Members;
  - 38.5 For the conduct of Trustee Committee meetings and general meetings; and
  - 38.6 to assist it in administering and governing its activities generally and shall be entitled to cancel, vary or modify any of the same from time to time.

**39. PROCEEDINGS OF THE TRUSTEE COMMITTEE**

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

40. Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter.
41. The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustees.
42. The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee, the Chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those present of the Trustee 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.
43. A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of the Trustee Committee meeting shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and Local Authority.
44. All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members of any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
45. Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
46. A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

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**47. GENERAL MEETINGS OF THE ASSOCIATION**

47.1 The Association shall before 31st December in each calendar year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notice, in terms of 50 below calling it.

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

48. All general meetings other than Annual General Meetings shall be called special general meetings.
49. The Trustee Committee may, whenever they think fit, convene a special general meeting.

**50. NOTICE OF MEETINGS**

An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by 21 (twenty-one) days notice in writing at least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by 14 (fourteen) days notice in writing at the 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 meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed.

50.1 In the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote here at; and

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

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

**52. VENUE OF MEETINGS**

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

**53. QUORUM**

No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent one half of the total votes of all Members of the Association entitled to vote, for the time being save that not less than 20 (twenty) members must be personally present.

54. 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 that meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum

**55. AGENDA AT MEETINGS**

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

55.1 The consideration of the Chairman=s report to the Trustee=s Committee;

55.2 The election of the Trustee Committee;

55.3 The consideration of any other matter raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;

55.4 The consideration of the annual financial statements of the Association for the last financial year of the Association preceding the date of such meeting;

55.5 The consideration of the report of the Auditors;

55.6 The consideration of the total levy (as referred to in 12) for the calender year during which Annual General Meeting takes place; and

55.7 The consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

**56. PROCEDURE AT GENERAL MEETING**

The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

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57. The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjournment meeting.

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

**59. PROXIES**

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 Chairman of the Board or Directors of the Company or by its secretary, and where an association of persons, by the secretary thereto.

60. 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 the expiration of 12 (twelve) months from the date of its execution.

60.1 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

60.2 Should a member be absent from SHELLEY POINT 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 59 and 60, failing which a Member shall not be entitled to vote, at any special general meeting called during such Member=s absence.

**61. VOTING**

At any general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Unit Erf registered in his name provided that if a Unit Erf is registered in more than one person=s name, then they shall jointly have one vote.

62. Save as expressly provided for in these presents, 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 Association 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.

63. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman or the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

64. Voting on the election of a Chairman of a meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.

65. 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.

66. An ordinary resolution (that is a resolution other than special resolution) or the amendment of any 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, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

67. 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, whether by show of hands or by poll, or to the property of 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 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.

**68. OTHER PROFESSIONAL OFFICERS**

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

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**69. ACCOUNTS**

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

70. At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, together with a proper balance sheet made up at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in 47 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

**71. AUDIT**

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

**72. SERVICE OF NOTICES**

A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid

registered letter, properly addressed to the Member at the address of the Unit Erf owned by him.

73. No Member shall be entitled to have a notice served on him at any address not within the Republic of South-Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
74. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
75. 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.

**76. INDEMNITY**

- 76.1 All Trustee members and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person(s) by the court.
- 76.2 Every Trustee member, every servant, agent and employee of the Association and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including traveling 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 a Trustee member, his duties as Chairman or Vice-Chairman, without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of 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.
- 76.3 A Trustee member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustee members, whether in their capacities as Trustee members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities of effects shall be deposited, or for any loss or damage occasioned by any error of judgement 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 hereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

**77. PRIVILEGE IN RESPECT OF DEFAMATION**

Every member of the association and every Trustee member shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee member, to have waived as against every other Member, the Trustee Committee, the Chairman or Vice-Chairman, every other Trustee member, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Trustee Committee, or any sub-committee, all claims and rights of action which such Member or Trustee member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee member, or any reference to such Member or Trustee member, made at any Trustee 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 Trustee member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee member, whether such statement be true or false.

**78. ARBITRATION**

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

- 78.1 Any matters arising out of this Constitution; or  
78.2 The rights and duties of any of the parties mentioned in this Constitution; or

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78.3 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.

79. 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.

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

- 80.1 Primarily an accounting matter - an independent accountant;  
80.2 Primarily a legal matter - a practicing counsel or attorney of not less than 10 (ten) years standing;  
80.3 Any other matter - an independent and suitable qualified person appointed by the Auditors; as may be agreed upon between the parties dispute.

81. If agreement cannot be reached on whether the question in dispute falls under 80.1, 80.2, 80.3 or upon a particular arbitrator in terms of 80.3, within 3 (three) Business Days after the arbitration has been demanded, then:

- 81.1 The President for the time being of the Law Society of the Cape of Good Hope shall determine whether the question in dispute falls under 80.1, 80.2 or 80.3; or  
81.2 The President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of 81 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 Business Days referred to in 79.

82. 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.
83. 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.
84. Notwithstanding anything to the contrary contained in 78 to 83 inclusive, the Trustees 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.
85. **EFFECTIVE DATE**  
The provisions hereof shall come into force simultaneously with the registration of transfer of the first Unit Erf.
86. **STATUS OF THE DEVELOPER IN THE ASSOCIATION**  
Notwithstanding all or any of the provisions contained in this Constitution, the Developer shall be entitled at any General Meeting to a number of votes equal to the total number of votes of all other members of the Association. In addition, the Developer shall be entitled to appoint an equal number of Trustee Committee Members (which Members need not be Owners of Unit Erven) to the existing Trustee Committee. The provisions of this clause shall remain until 90% of the ERVEN have been transferred out of the name of the Developer.
87. **FURTHER DEVELOPMENT**  
The rights and duties of the Home Owners Association only apply to these portions of the Property already developed and transferred to Members thereof, and neither the Association nor the Trustee Committee will have the right to interfere or participate in the further Development and Utilization of the balance of the Property not yet developed. The development and utilization thereof shall be in the sole right of the Developer.
88. **RULES, REGULATIONS AND AMENDMENTS**  
Any proposed rule or regulation or any proposed repeal of, or amendment or addition to any rule or regulation by the Trustee Committee; and
- 88.1 Amendment or addition to the Constitution shall while Clause 86 hereof is force, be submitted to the Developer and the Trustee Committee for approval and shall be of no force and effect whatsoever unless and until same has been approved by the Developer and Trustee Committee.
- 88.2 While Clause 86 hereof is in force, the Developer shall be entitled to make amendments or additions to the Constitution and shall be obliged to send by prepaid registered post a copy of each such amendment or addition to each member.
89. **INTERPRETATION / DISPUTES**
- 89.1 While clause 86 hereof applies, the Developer's interpretation of this Constitution and any rules and regulations of the Association shall be binding on the members;
- 89.2 Any other dispute whatsoever between members, including a dispute as to interpretation of this Constitution which arises after Clause 86 hereof no longer applies, shall be dealt with as stipulated in Clauses 78 to and including 84 hereof.
90. **COMPLIANCE WITH DESIGN MANUAL**  
Members other than the Developer shall be obliged to comply with the stipulations of the Shelley Point Building Design Manual applicable to his/her specific Unit Erven for any new constructions, renovations, alterations or additions.

91. **PUBLIC ACCESS**
- 91.1 The Public is irrevocably granted access and usage rights to all the public amenities, roads and parks notwithstanding any other stipulation of the Constitution.
- 91.2 A servitude right of way in favour of the General Public will be registered over Erven 2893, 2973 and 3032 St Helena Bay, being roads and public open spaces.
- 91.3 The public will be entitled to exercise its rights and duties in exactly the same manner and to the exact extent as the rights and duties of the Members.
- 91.4 It is expressly recorded that the rights and duties of the public is limited to the usage of public amenities, roads and parks.