

"ANNEXURE A"

CONSTITUTION

MOUNT OAKHURST ESTATE

HOME OWNERS' ASSOCIATION

A Body Corporate established in terms of
Section 29 of the Land Use
Planning Ordinance, 15 of 1985

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1. ESTABLISHMENT IN TERMS OF STATUTE

- 1.1 The Mount Oakhurst 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 South Peninsula Municipality when approving, in terms of Sections 16, 25 and 42 of the said Ordinance, the subdivision of Remainder Erf 2224 Hout Bay and Remainder Erf 8298 Hout Bay, situate in the South Peninsula Municipality.
- 1.2 Clauses 1, 2, 3, 4, 5, 6, 8, 9.1, 10, 11, 12, 13 and 40 hereof shall not be added to, amended or repealed without the prior consent in writing of the Local Authority or its assigns, which consent shall not be unreasonably withheld.

2. INTERPRETATION

In these presents:-

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

"the Act" means the Companies Act 1973, as amended from time to time;

"the Association" means MOUNT OAKHURST HOME OWNERS' ASSOCIATION;

"Auditors" means the Auditors of the Association;

"Business Day" means weekdays other than Saturdays, Sundays and Public Holidays;

"Chairman" means the Chairman of the Trustees;

"Developer" means BRENMAUR PROPERTIES (PTY) LTD and/or OAKHURST DEVELOPMENTS CC and or their successors in title or assigns;

"Development"	means any residential development on Erf 8723 Hout Bay (being a consolidation of Erf 8721 Hout Bay and Erf 8720 Hout Bay) and Erf 8722 Hout Bay (being a consolidation of Erf 8718 Hout Bay and Erf 8719 Hout Bay) and Erf 8619 Hout Bay (comprising Erven 8633, 8634, 8635, 8636, 8637 & 8638) and Remainder Erf 8298 Hout Bay and any other erven or designated piece of land required by the Local Authority (at any time) to form part of this Homeowners' Association;
"Erven"	means Erven 8633, 8634, 8635, 8636, 8637, 8638, 8690, 8691, 8692, 8693, 8694, 8695, 8696, 8697, 8698, 8699, 8700, 8701, 8702, 8703, 8704, 8705, 8706, 8707, 8708, 8709, 8710, 8711, 8712 & 8713 Hout Bay as indicated on the diagram annexed hereto marked Annexure 'A' or any other erven that the Trustees may include in the development from time to time, and erf means one of the erven;
"Local Authority"	means the South Peninsula Municipality or its successors-in-law;
"Maintenance"	means the upkeep and/or repair of the services that shall be the responsibility of the Association entirely and for which the local authority shall not be accountable.
"Member"	means a member of the Association;
"month"	means calendar month;
"the Office"	means the registered office of the Association;
"the Ordinance"	means the Land Use Planning Ordinance, No 15 of 1985;
"these presents"	means this Constitution and regulations and by-laws of the Association from time to time in force;
"the Private Area"	means Erven 8714, 8715, 8716 and 8717 Hout Bay, as indicated in the

diagram annexed hereto marked "Annexure A", and/or that portion of the development not registered in the name of individual owners and comprising, without detracting from the generality of the foregoing, roads, road verges, and other area or services for the maintenance of which the Local Authority is not responsible in terms of the Land Use Planning Ordinance, No 15 of 1985;

"Registered Owner"	means the party or parties acquiring ownership and taking transfer of one or more erven in the development;
"Resolution"	means a resolution other than a Special Resolution passed at an 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;
"Services"	means roads, verges, parking bays, water supply, sewerage pipes, electricity cables and all other municipal services within the Private Area or erven.
"Special Resolution"	means a Resolution: passed at an Annual General Meeting or any other General Meeting where the Members present in person or by proxy represent not less than 25% (twenty five per centum) of the total votes; and passed by majority of at least 75% (seventy five per centum) of the total votes represented by the Members present in person or by proxy;
"a Trustee"	means a Trustee of the Association;
"Vice-Chairman"	means the Vice-Chairman of the Trustees;
"in writing"	means written, printed or lithographed or partly one and partly another, and other modes or representing or producing words in a visible form.;
"year"	means financial year of the Association as determined by the Trustees;

- 2.2 Unless the context otherwise indicates, any words importing the singular number only shall include the plural number, and vice versa words importing any one gender only shall include the others and any reference to a person shall include any company incorporated or registered as such under any law, any body of persons corporate or unincorporated and any trust whether testamentary or inter vivos.
- 2.3 The headings to the respective clauses are for reference purposes only and shall not be considered in the interpretation of the clauses.
- 2.4 Subject as aforesaid, any words or expressions defined in the Act or any statutory modification thereof in force at the date on which these presents become binding on the Association shall, if not inconsistent with the subject or context, bear the same meaning in these presents.
- 2.5 Where consent or approval is required for any act by a Member, such consent or approval shall be in writing and duly signed, shall not be unreasonably withheld, and shall be given prior to the Member taking action.
- 2.6 If a member consists of more than one person, they shall be jointly and severally liable *in solidum* for all their obligations in respect of these presents.

3. MEMBERSHIP OF THE ASSOCIATION

- 3.1 The Association, which is hereby constituted, is comprised initially of a single Member namely, the Developer.
- 3.2 Every Registered Owner shall upon registration of transfer into his name of an erf *ipso facto* become a Member subject to the terms contained herein, and in particular in 8 hereof.

4. MAIN OBJECT

The main objects of the Association shall be:

- 4.1 the control over and the maintenance of buildings, services and amenities arising from the sub division concerned;
- 4.2 the promotion, regulation, advancement and protection of the interests of the Registered Owners of erven in the development;
- 4.3 to take transfer of the Private Area.

5. MAIN BUSINESS

5.1 The main business of the Association shall be:

- 1. the general management and administration of the Development;
- 2. to oversee the implementation of the Environmental Management Plan;
- 3. to control the development in terms of the architectural design manual.

5.2 Such business shall include the maintenance of buildings, services and amenities situate in the Development, for the maintenance of which the Local Authority is not responsible in terms of the Land Use Planning Ordinance, and for the collection of levies in respect of expenditure incurred by members in the Development relating to electricity charges, charges for sewerage, water and refuse removal or any other services for which a charge is levied by the Local Authority, whether in respect of individual erven or the Private Area.

6. PRIVATE AREA

- 6.1 The whole of *the* private open space shall remain vacant land and shall not be developed without the sanction of a Special Resolution of the Association and the consent of the Developer.
- 6.2 The Association shall take transfer of the Private Area, being Erven 8714, 8715, 8716 and 8717 Hout Bay, simultaneously with the separate registration of the first erf.
- 6.3 The Board of Trustees shall specifically authorize two (2) Trustees to sign all documents and perform all acts necessary to acquire ownership of the Private Area on behalf of the Association.
- 6.4 The transfer of the Private Area shall be effected by the Developer's attorneys and all costs relative to such transfer shall be borne by the Developer.
- 6.5 The Association acknowledges that the Local Authority shall not be responsible for the care, repair, maintenance, cleaning, upkeep, improvement and proper control of the Private Area, and all services therein, including but not limited to the common refuse storage area, private road and parking.

7. ALIENATION & CONDITIONS OF TITLE

- 7.1 The following are Conditions of Title for each erf in the Development:
 - A "The property hereby sold or any subdivision or consolidation thereof ("the erf") shall not be transferred without the written consent of the Mount Oakhurst Estate Home Owners' Association established in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985 ("the Association") of which the within Transferee and each of his successors in title shall be obliged to be a member, bound by its rules and regulations, for so long as he is the registered owner of the erf.
 - B No improvements of any nature may be effected to the erf, nor may the access to the

erf be altered without the prior written approval of the Association and any building plans in respect of the improvements to be erected on the erf shall be subject to the prior written permission of the Association and Developer. Such approval will be required without limitation to all external finishes, including materials and colours of all walls, roofs and windows.

- C In the event that the Transferee fails to build a house and outbuildings on the property within a period of four years from the initial transfer, then the Association and/or the Developer reserves the right to either repurchase the property at the price originally paid by the Transferee or to levy a penalty to be agreed upon by the Trustees.
- D Only one dwelling may be erected on each erf, together with the usual outbuildings
- E This erf may be used for residential purposes only and no light industry, home industry, hotel or any other business or occupation may be conducted from the erf.
- F Should the Transferee wish to sell, alienate or dispose of the property prior to all the residential erven being transferred from the Association and/or the Developer, the Transferee shall obtain the written consent of the Developer prior to such sale, alienation or disposition."

Insofar as the above conditions are embodied in the Deed of Transfer relating to each erf resulting from the Development as a condition of title, any consent required in terms of such conditions shall not be withheld, provided that the Registered Owner of the erf in question has fulfilled all his financial obligations to the Association in terms of these presents and has complied with all other obligations.

- 7.2 In the event of a change of beneficial ownership of either a Company, a Close Corporation or Trust by the transfer of the shares, members' interest or beneficial interest, then the written consent of the Association shall be required before the effective transfer of the aforesaid rights on the same terms and conditions as in 7,1 above.

8. MEMBERSHIP

8.1 Membership of the Association shall be limited to:

8.1.1 the Developer (for as long as it is a Registered Owner of at *least* one erf); and

8.1.2 Registered Owners resulting from the Development, provided that 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. Where a Registered Owner is a Company, Close Corporation or Trust, such juristic person shall nominate a member to represent it.

8.2 When a member ceases to be the Registered Owner of an erf, he shall *ipso facto* cease to be a member of the Association.

8.3 A Registered Owner may not resign as a Member of the Association.

8.4 Should a Member let his erf, the Member shall ensure that these rules form an addendum to the Agreement of Lease and that his tenant adheres hereto. In the event of the tenant breaking any of these rules or in any way being a nuisance to any other Member and/or tenant, the Lessor shall personally be responsible for such breach and shall be liable for any action which may be instituted in terms hereof.

8.5 In order to give effect to 8.4, a Registered Owner shall give notice to the Association seven (7) days prior to occupation by his tenant and shall furnish the Association with his address to which notices in terms of these presents are to be forwarded.

8.6 Any Registered Owner which is a Company, Close Corporation or Trust must furnish the Association with the following documents prior to becoming a member of the association:

8.6.1 Names of shareholders or members or beneficiaries, as the case may be;

8.6.2 Names of directors or members or Trustees, as the case may be;

8.6.3 Names of Auditors or Accounting Officers as the case may be;

8.6.4 Address of the Registered Office.

Furthermore, any such Owner must, upon request by the Association, file the following documents:

8.6.5 Certificate of Incorporation or Founding Statement or Letters of Authority, as the case may be.

No changes to the shareholders, members or beneficiaries may be made without the consent of the Association.

8.7 No Member shall conduct or operate a time share scheme as contemplated in the Time Share Control Act No. 71 of 1983 in respect of any erf owned by him, nor shall any Member operate a hotel, guest house, bed-and-breakfast or self-catering establishment, save for such areas designated by the Association and the Developer for that purpose.

8.8 The rights and obligations of a Member shall not be transferable and every Member shall:

8.8.1 to the best of his ability further the objects and interests of the Association;

8.8.2 observe all by-laws and regulations made by the Association or the Trustees;

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.

9. LEVIES

9.1 The Trustees shall establish and maintain a levy fund, to which end they shall, from time to time, make levies upon the Registered Owners in such amounts as are, in their opinion, sufficient for the control, management and administration of the Development, including costs

incurred in implementing the environmental management plan, and for the repair, upkeep and maintenance of the Private Area, for the payment of rates and taxes and any Local Authority charges, and charges for the supply of any services required by the Association for recovering any losses suffered by the Association, and for the discharge of any other obligation of the Association.

- 9.2 The Trustees shall be empowered, in addition to such other rights as the Association may have in law as against its members, to determine the rate of interest from time to time chargeable upon arrear levies.
- 9.3 The Trustees shall estimate the amount which shall be required by the Association to meet the expenses during each operational year or any portion thereof, together with the estimated deficiency, if any, as may have resulted from the preceding operational year or portion thereof, and shall make a levy upon the Registered Owners, equal as nearly as is reasonably practical to such estimated amount. The Trustees may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature, such expenses to be incurred for the Development. 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,
- 9.4 The Trustees, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in 9.1 (which are not included in any estimate made in terms of 9.3,) and such levies may be imposed and made payable in one sum or by such instalments and at such time or times as the Trustees shall think fit.
- 9.5 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, 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 under any 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 the 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 financial obligations to the Association.

- 9.6 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.
- 9.7 The levy payable by a Member shall be based on the area of the erf and any other factors, which the Trustees may deem relevant. The foregoing notwithstanding, the Association may by Special Resolution amend the basis on which levies are paid.
- 9.8 In calculating levies the Trustees shall take into account any income earned by the Association.

10. MEMBERS* OBLIGATIONS

- 10.1 The Trustees may from *time* to time make regulations, and vary or modify such regulations, governing inter alia;
 - 10.1.1 the Member's rights of use, occupation and enjoyment of the Private Area;
 - 10.1.2 the external appearance of and the maintenance of the Private Area;
 - 10.1.3 enter into agreement(s) with third parties on behalf of the Association, inter alia, the Local Authority, governing the matters set out in 10.1.1 and 10.1.2 and any other, incidental matters,'
 - 10.1.4 the number of occupants permitted on each property;
 - 10.1.5 The penalty to be paid in terms of Clause 7.1C of these presents by the Registered Owner of a residential erf who has not commenced construction of improvements thereto or has failed to complete the same within the time limits prescribed by the Association for these purposes.
- 10.2 Each Member undertakes to the Association that he shall comply with:

- 10.2.1 the provisions of these presents;
 - 10.2.2 any regulations made in terms of 10.1;
 - 10.2.3 any agreements referred to in 10.1.1 and 10.1.3 insofar as those agreements may directly or indirectly impose obligations on him including the right of access to the Development or any erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any services by the Local Authority, the Trustees or any person/s appointed by the said Authority or Trustees.
- 10.3 Each Member further undertakes to the Association that he shall comply with, inter alia, the following specific regulations to be issued by the Trustees:
- 10.3.1 That every building and/or structure to be erected in the Development shall be of approved design and of sound construction in accordance with the design manual annexed hereto.
 - 10.3.2 That the development shall be developed in accordance with a standard approval by the Developer, and after the Developer has ceased to be a Member, by the Trustees;
 - 3. That the development and, more particularly, the Private Area shall be maintained in good and tidy condition in compliance with standards set from time to time by the Trustees;
 - 4. That no building operations shall be commenced in the development and no additions or alterations to approved buildings shall be effected unless the plans have been approved in writing, first by the resident Architect and then The Board of Trustees and finally the Developer.
 - 10.3.5 The Registered Owner shall pay any scrutiny fees charged by any of the above parties;
 - 10.3.6 That the Trustees shall be the judges as to the -suitability of the design *and/or*

construction method, material or colours and their decision shall be final;

7. Each registered Owner shall be obliged to obtain the approval of the Local Authority in respect of any buildings and/or structures to be erected on the erf registered in his name and he shall further be obliged to comply with all conditions and standards imposed by such Local Authority.
8. In granting any approval in terms hereof the Trustees shall have the right to determine the siting of all buildings and/or structures (including garden/boundary/link walls) to be erected on the erf and to impose such conditions as the Trustees deem necessary.
- 10.3.9 That each Registered Owner shall establish and maintain a garden on the erf registered in his name in accordance with the provisions of the Environmental Management Plan and the landscaping proposals for the development;
10. That each Registered Owner shall maintain in a neat and tidy condition all buildings and/or structures erected on the erf registered in his name;
11. That each Registered Owner shall adequately insure all buildings and/or structures erected on the erf registered in his name (and if requested, to furnish proof of such insurance to the Trustees) and in the event of total/partial destruction 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 *mutatis mutandis* the provisions of 10.3.4 to 10.3.8 inclusive;
- 10.4 That no Registered Owner shall :
 - 10.4.1 alter the previously approved external colour scheme of buildings/structures erected on the erf registered in his name or in the Private Area;
 - 10.4.2 erect/construct on the erf registered in his name or in the Private Area any solar heating system, outdoor radio aerial, outdoor television aerial, or other aerial(s), signage and/or similar structures without the prior written consent of the Trustees;

- 10.4.3 permit any commercial type vehicle, boat, trailer, caravan or any derelict or abandoned vehicle to be parked on or in front of the erf registered in his name or on the Private Area which in the opinion of the Trustees is unsightly;
- 10.4.4 do or suffer to be done on the erf registered in his name or on the Private Area anything which in the opinion of the Trustees 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 other property in the township in which the erf is situated. No rubble is to be dumped onto other properties or on the Private Areas.
- 10.4.5 Keep dogs and other household pets that may create a nuisance for other Members or visitors.
- 10.4.6 Where the Trustees in special circumstances 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/birds so housed shall not constitute a disturbance or nuisance to owners, tenants or occupiers of adjoining properties.
- 10.4.7 The decision of the Trustees in regard to the provisions of 10.4.2, 10.4.5 and 10.4.6 shall be final and binding on all parties.
- 10.5 If any Registered Owner, tenant or occupier of an erf, by act or omission, commits a breach of any of these conditions and fails to remedy such breach after the Trustees have given the Registered Owner written notice to make good such breach within a time specified in such notice, then:
 - 10.5.1 The Trustees and/or the Developer shall be entitled without further notice to the Registered Owner to institute proceedings against the Registered Owner in any Court of competent jurisdiction to obtain redress against the Registered Owner and, without detracting from the generality of the foregoing, this shall include the obtaining of an interdict against the Registered Owner; and/or

2. The Trustees (or those employed by the Trustees on behalf of the Association) may enter upon the erven or Private Area to take such action as may be required (as determined in the discretion of the Trustees) to remedy the breach and the Registered Owner concerned shall be liable to the Association for all costs as incurred, which costs shall be due and payable upon demand.

3. Where a Member fails or refuses to comply with the rules of the Association, then the Trustees may, after fair written notice to the Member, attend to any maintenance, repairs or alterations which are necessary and account directly to the Member. If payment of such account is not made within 30 days the interest thereon shall accrue at such rate as may be decided by the Trustees from time to time.

11. ENVIRONMENTAL MANAGEMENT PLAN

11.1 The developer shall allocate a sum of money for landscaping of the private open spaces, including the private roads, which shall be paid into a Trust Fund and spent in accordance with the Environmental Management Plan.

11.2 Members shall landscape their erven in accordance with the guidelines laid down in the Environmental Management Plan, and more especially in accordance with Appendix 3 of the Plan, which is attached to the Agreement of Sale. It is recorded that this appendix deals with the types of plants that may be planted in gardens in this development.

11.3 The emphasis of the guidelines will be on environmental awareness and indigenous plants and water wise gardening methods will be required.

11.4 All Members shall care for any trees on the erf/erven registered in their names and shall not remove or cut down, or cause to be removed or cut down any trees situated as aforesaid, without the prior written consent of the Trustees.

1.5 The Association shall be responsible for the care of the tree's situated on the Private Area.

12. **BUILDING, ARCHITECTURAL & DESIGN REQUIREMENTS**

1. The Members undertake to abide by the terms and conditions of the Architectural Manual provided by the Developer.
2. The Developer, for as long as it is a member of the Homeowners Association, shall have the power to amend the Design Manual, subject to the approval of the Local Authority which approval shall not be unreasonably withheld, and the Trustees shall enforce such conditions on Members in order to harmonize the architectural style and design criteria of and the materials to be used in all buildings erected or to be erected in the development. The Developer shall have the right to amend such conditions from time to time in its entire discretion, but once the Developer ceases to be a member of the Homeowners Association, the Design Manual shall not be capable of any further amendments; provided that the Trustees shall have the right to change the type of materials to be used if the substituted materials are of a similar standard and aesthetic value. Such a change could only be authorized by a Special Resolution.
3. A resident architect shall be appointed by the Trustees and the Developer to scrutinize building plans to ensure that they are in accordance with the Architectural Manual.

13. **EXTENSION OF DEVELOPMENT**

1. The Developer shall have the right at any time to extend or alter the area or composition of the Mount Oakhurst Estate at no cost to the Members or to the Association by requiring the Association to incorporate into the Estate certain other erven, which the Developer shall be entitled to develop as it may deem fit.
2. Where the Estate is extended by the incorporation of such erven, the Developer, together with the Association, shall be entitled to require that the first and all subsequent owners thereof become members of the Association in respect of those erven, or part thereof from such date as the Developer may determine, and on the same terms and conditions as are applicable to the other Members of the Association. The members shall be bound by such a requirement of the Developer.

- 13.3 Any further extension as provided for in the above clauses shall be subject to the approval of the local authority.

14. BREACH

1. Any Member who fails to make payment to the Association on due date therefor of any monthly subscription or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of these presents, may, if so determined by a resolution passed by not less than 3 (three) of the Trustees present at a meeting of the Trustees:

1. be fined by the Association in such amount; and/or
2. be ordered to pay the Association or any Member or other person aggrieved by the breach or failure in question, such sum as the Trustees, after suitable enquiries, shall deem suitable;
3. be liable for and pay all legal costs including costs as between attorney and client, collection commission, expenses and charges incurred by the Association in obtaining the recovery or arrear levies, or any other arrear amounts due and owing by such Member to the Association;

as in each case shall have been determined at such Trustees' meeting.

2. The Member concerned shall be invited to attend such Trustees' meeting by notice in writing delivered to such Member not less than 7 (seven) days prior to the holding thereof, and such Member shall be given the right to speak thereat, and to be represented legally, but not to be present at the voting of or to take part in the proceedings, other than as allowed by the Chairman of such meeting.
3. Nothing in the foregoing shall derogate from or in any way diminish the right of the Association represented by an authorized Trustee to institute action proceedings in any Court of competent jurisdiction for recovery of any money due by a Member.

15. 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 subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Member.

16. TRUSTEES

1. There shall be a Board of Trustees of the Association which shall consist of not less than three (3) and not more than five (5) Members.
2. A Trustee shall be an individual, but need not himself be a Member of the Association. A Trustee, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of these presents.
3. For as long as the Developer shall be a Member of the Association, it shall be entitled to nominate and appoint three (3) of the Trustees.

17. APPOINTMENT OF TRUSTEES

1. The Developer shall appoint all the initial Trustees, and until so appointed the Developer , notwithstanding 16.1, shall be sole Trustee.
2. Upon termination of the term of office of the Trustees aforesaid, as set forth in 18, Trustees as set forth in 16.1 shall, subject to the provisions of 16.3:

17.1.1 be nominated; and

17.1.2 be elected to office, upon acceptance of such nomination, by Resolution;

by Members of the Association present in person or by proxy at the first Annual General Meeting of the Association and at each Annual General Meeting held thereafter.

18. REMOVAL & ROTATION OF TRUSTEES

1. Save as set forth in 16.3 above and 18.2 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each Trustee shall be deemed to have retired from office as such, but will be eligible for re-election as a Trustee at such meeting.
2. A Trustee shall be deemed to have vacated his office as such upon:
 1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 2. his making any arrangements or composition with his creditors;
 3. his conviction for any offence involving dishonesty;
 4. his becoming of unsound mind or being found lunatic;
 5. his resigning from such office in writing delivered to the office of the Association;
 6. his death;
 7. his being removed from office by a Resolution of the Members of the Association, requiring a simple majority, before the 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.

- 18.3 Should the office of a Trustee fall vacant prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining Trustees for the time being, and he shall hold office until the next General Meeting when he may be eligible for re-election.

19. OFFICE OF TRUSTEES

1. The first Chairman and Vice-Chairman shall be appointed by the Developer, and 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.
2. Within 7 (seven) days of holding of such Annual General Meeting, the Trustees shall meet and shall elect from their own number a 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 offices at any time, the Trustees shall immediately meet to appoint one of their number as a replacement in such office.
3. Save as otherwise provided in these presents, 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 to allow or refuse to permit guests to speak at any such meetings, provided however, that any such guests shall not be entitled to vote at any such meetings.
4. 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 Trustees.

19.5 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.

20. FUNCTIONS & POWERS OF THE TRUSTEES

1. Subject to the express provisions of these presents, the Trustees 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 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 are not by these presents required to be exercises done 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 Trustees which would have been valid if such regulation had not been made.
2. The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
3. 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 the next Annual General Meeting.
4. The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as they shall decide from time to time.
5. The Trustees may make regulation and by-laws, not inconsistent with these presents, or any regulations or by-laws prescribed by the Association in General Meeting:

20.5.1 as to disputes generally;

2. for the furtherance and promotion of any of the objects of the Association;

3. for the better management of the affairs of the Association;

20.5.4 for the advancement of the interest of the Members;

5. for the conduct of Trustees at meetings of the Trustees and Meetings of the Association;

6. to levy and collect contributions from the Members in accordance with 9;

7. the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;

8. the operation of a banking account with all powers required by such operations;

20.5.9 the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;

20.5.10 the employment and payment of agents, servants and any other parties.

21. PROCEEDINGS OF MEETINGS OF THE TRUSTEES

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

2. Meetings of the Trustees shall be held at least once every six (6) months, provided that if all the Trustees shall in writing have waived the above requirements in respect of a particular period, then no meeting of the Trustees need be held for that semester.

3. Three (3) Trustees 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, which notice must specify the reason for calling such meeting; provided that in cases of urgency such shorter notice as is reasonable in the circumstances shall be given.
4. The quorum necessary for the holding of any meeting of the Trustees shall be 3 (three) Trustees.
- 21,5 The Chairman shall preside as such at all meetings of the Trustees, provided that should at any meeting of the Trustees 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 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.
6. A Trustee shall take minutes of every Trustees' 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 Trustees' meetings shall after certification as aforesaid be placed in a Trustees' 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 Trustees' Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and Local Authority.
7. All competent resolutions recorded in the minutes of any Trustees' meetings 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.
8. 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.

9. 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 Trustees duly convened.
10. Any mortgagee holding a first mortgage bond or bonds over any erf in the Development shall, if he so requires, be entitled to receive reasonable written notice of all meetings of the Trustees.
11. A Trustee may be represented at a meeting of Trustees by a proxy, who need not be a Trustee of the Association.
12. 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.
13. 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 appointment of a proxy shall be valid more that 12 (twelve) months from the date of its execution.
- 21,14 A vote given in accordance with the terms of the 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 remaining Trustees at least one hour before the time fixed for the meeting.

22. GENERAL MEETINGS OF THE ASSOCIATION

- 22.1 The Association shall, before the last day of July 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 notices, in terms of 23 below, calling it.

2. 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.
 3. Should the financial year end of the Association at any time be such that the provision/s of 22.1 above would result in a contravention of the provisions of Section 179 of the Act, then the date for the holding of the Annual General Meeting shall be varied by resolution of the Trustees to such date as shall comply with the requirements of the said Section, provided that Members shall be given immediate written notice of any such variation.
- ~~22.4~~ All general meetings other than Annual General Meetings shall be called special general meetings.

22.5 The Trustees, may, whenever they think fit, convene a special general meeting, and a special general meeting shall also be convened on a requisition made by not less than 15% (fifteen per centum) of the Members eligible to vote, or in default may be convened by the requisitionists themselves, provided that notice thereof be given in terms of 23.

23. NOTICE OF MEETINGS

1. Subject to the provisions of Sections 185 and 186 of the Act, 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 the least. In each case the notice shall be exclusive of the date on which it is given, 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 these presents, the general nature of the business, and in the case of a special resolution, in 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 Trustees 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:
 1. in the case of a meeting called as the Annual General Meeting, by an ordinary

majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy, being a majority together holding not less than 20% (twenty per centum) of the total voting rights of all Members.

23.1.2 in the case of a special general meeting, by an ordinary majority of votes represented by Members entitled to attend and vote at the meeting, present in person or by proxy, being a majority together holding not less than 10% (ten per centum) of the total voting rights of all Members.

23.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or in terms of the Act, 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.

24. SERVICE OF NOTICE

1. 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 his chosen domicilium as referred to in 39 below or to the Member via his/her email address, which shall serve as a valid written notice.
2. 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.
3. 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, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
4. 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.

25. VENUE OF MEETINGS

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

26. QUORUM

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 such of the Members entitled to vote, as together for the time being, represent 20% (twenty per centum) of the total votes of all Members of the Association entitled to vote, for the time being, save that not less than 3 (three) members must be personally present.
2. If within 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 within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

27. AGENDA AT MEETINGS

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

27.1.1 the consideration of the Chairman's report to the Trustees;

27.1.2 the election of the Trustees;

3. the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
4. the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
5. the consideration of the report of the Auditors;
6. the consideration of the budget as presented by the Trustees and confirmation of levies as presently levied by the Trustees;
7. the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

28. PROCEDURE AT GENERAL MEETINGS

28.1 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.

282 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

adjourned meeting.

28.3 Except as otherwise set forth in these presents, 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 23.

29. PROXIES

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 agent duly authorized 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 of Directors of the Company or by its secretary, and where an association of persons, by the secretary thereof.
2. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office 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.
3. A vote 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 Trustees at least one hour before the time fixed for the holding of the meeting.

30. MINUTES OF MEETINGS OF THE ASSOCIATION

1. A Trustee shall take minutes of every Meeting of the Association, 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 meetings of the Association shall after certification as aforesaid be placed in a Minute Book of meetings of the Association kept for the purpose. The Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and Local Authority.
2. All competent resolutions recorded in the minutes of any meeting of the Association 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 Association 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 Association.
3. Save as otherwise provided in these presents, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

31. VOTING

- 31.1 At every general meeting, every Member in person or by proxy and 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 persons' name, then they shall jointly have one vote.
- 31.2 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.
- 31.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show

of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting. 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.

4. Notwithstanding the provisions of 31.2 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote.
5. Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
6. An ordinary resolution (that is a resolution other than a 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.
7. 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.
8. Voting on the election of a Chairman of a General Meeting as referred to in 28.1 (if necessary) or on any question of adjournment, shall be decided on an ordinary majority of votes presented by Members entitled to attend and vote thereat, present in person or by proxy.
- 31.9 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 propriety 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 result of any voting at the meeting.

32. OTHER PROFESSIONAL OFFICERS

Save as specially provided otherwise in this Constitution, the Trustees shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, Managing Agents, any other professional person or 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 these presents.

33. ACCOUNTS

1. 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 Association, including:

1. a record of the assets and liabilities of the Association;
2. a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
3. a register of members showing in each case their addresses;
4. individual ledger accounts in respect of each owner.

2. The Trustees shall cause all books of account and records to be retained for a period of six (6) years after completion of the transactions, acts or operations to which they relate.

33.3 On application by any member, the Trustees shall make all or any of the books of account and records available for inspection by such member.

33.4 The Association 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 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.

33.5 At each Annual General Meeting the Trustees 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 incorporation of the Association. 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 discretion of the Trustees and/or as recommended by Auditors, and there shall be attached to the notice sent to Members convening each Annual Meeting, as set forth in 21, copies of such accounts, balance sheet and reports (all of which shall be framed in accordance with the provisions of the Act) and of any other documents required by law to accompany the same.

34. AUDIT

1. 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.
2. The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards in terms of the Public Accountants' and Auditors' Act.

35. INDEMNITY

1. All Trustees 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.
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 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 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.

- 35.3 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 Trustees 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 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 thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

36. PRIVILEGE IN RESPECT OF DEFAMATION

Every Member of the Association 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 Board of Trustees, the Chairman or Vice-Chairman, every other Trustee, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, 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

Trustees' 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, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false.

37. ARBITRATION

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

1. any matters arising out of these presents; or
2. the rights and duties of any of the parties mentioned in these presents; or
3. the interpretation of these presents;

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

- 37.2 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) Business Days after it has been demanded.

3. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
 1. primarily an accounting matter - an independent chartered accountant;
 2. primarily a legal matter - a practicing counsel or attorney of not less than 10(ten) years standing;

37.3.3 any other matter - an independent and suitable qualified person appointed by the Auditors;

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

4. If agreement cannot be reached on whether the question in dispute falls under 37.3.1, 37.3.2 or upon a particular arbitrator in terms of 37.3 within 3(three) Business Days after the arbitration has been demanded, then:
 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 37.3.1, 37.3.2 or 37.3.3; and/or
 2. the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of 37.3.3 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 Business Days referred to in 37.2.
5. 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 it.
- 37.6 The decision of the arbitrator shall be final and binding and may be made an Order of the High Court of South Africa (Cape Provincial Division) upon the application of any party to the arbitration.
- 37.7 Notwithstanding anything to the contrary contained in 37.1 to 37.6 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.

38. **DEPOSIT AND INVESTMENT OF FUNDS**

1. The Trustees shall cause all monies received by the Association to be deposited to the credit of an account (s) with a registered commercial bank or building society in the name of the Association and, subject to any direction given or restriction imposed at a General Meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of the Association or investment in terms of 38.2
2. Any funds not immediately required for disbursements may be invested in a savings or similar account with any building society or any other registered deposit receiving institution approved by the Trustees from time to time.
3. Interest on monies invested shall be used by the Association for any lawful purpose.

39. DOMICILIUM CITANDI ET EXECUTANDI

1. The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
 1. 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 Association;
 2. The Trustees shall give notice to all Members of any change in such address.
2. The *domicilium citandi et executandi* of each Member shall be the street address of the erf registered in his name; provided that he shall be entitled from time to time to change the said *domicilium*, but that any new *domicilium* selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its *domicilium*.

40. EFFECTIVE DATE

The provisions hereof shall come into force simultaneously with the first passing of transfer of the first erf from the Developer to a Member.

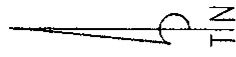
Oakwood Cape Country Estate

Layout plan

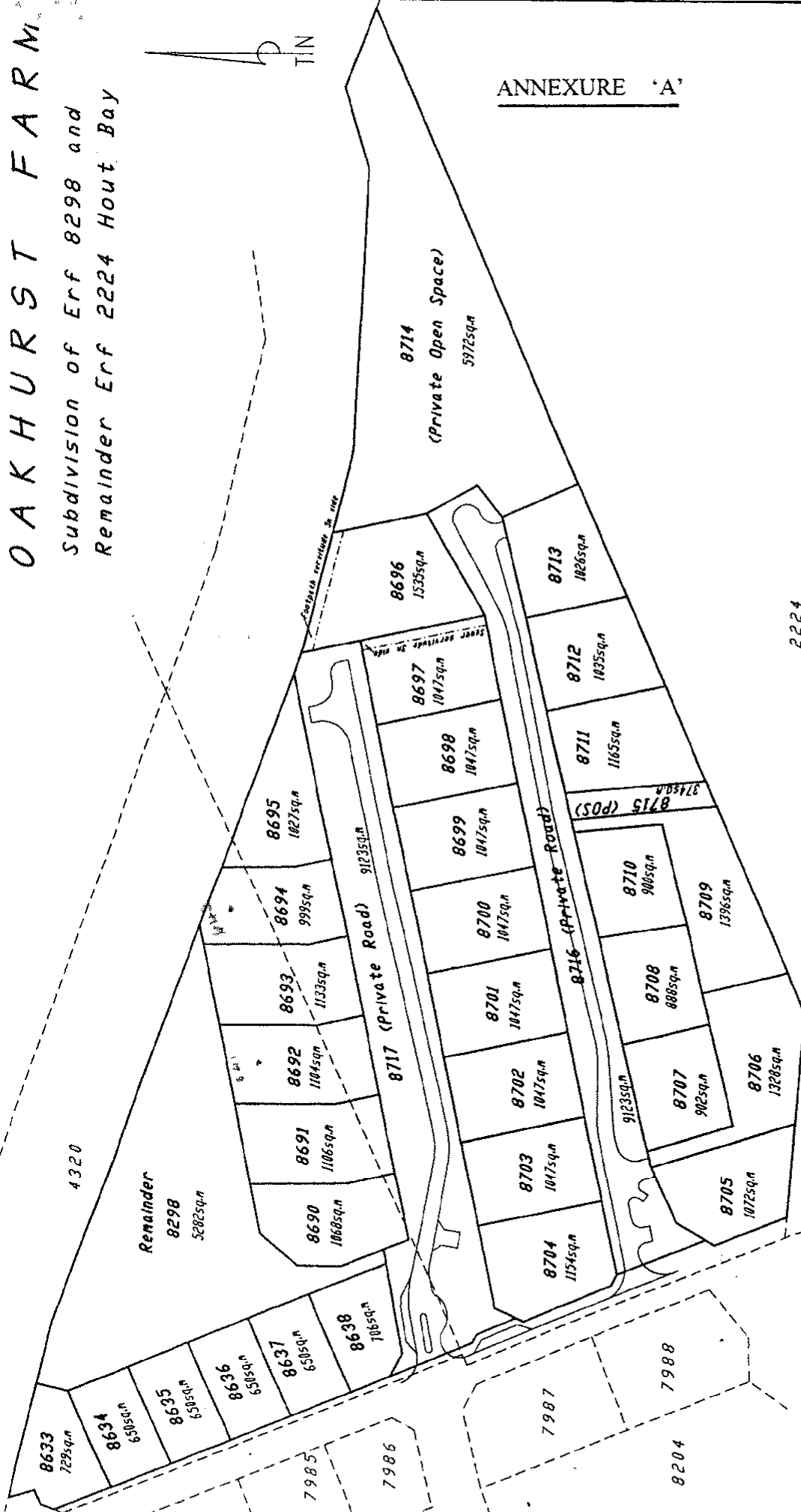
.....please scroll down.....

OAKHURST FARM

Subdivision of Erf 8298 and
Remainder Erf 2224 Hout Bay



ANNEXURE 'A'



d h a v i e

David Hellig v Abrahamse v le Brun
Professional Land Surveyors

tel : 426-2613

fax : 426-2627

e-mail: dhavie@kingsley.co.za

P.O. Box 910

CAPE TOWN

8000

ref : L4010-SS

date : 21 DECEMBER 1999

scale : 1 / 1250