

CONSTITUTION

OF THE

SWIFTLANDS HOME OWNERS' ASSOCIATION

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**1. INTERPRETATION**

1.1 In this Constitution the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

“this Constitution” means this Constitution and regulations and by-laws of the Association from time to time in force;

“local authority” means the Buffalo City Municipality;

“The Developer” means Paradigm Investments 444 PTY LTD Reg No. 2001/012281/07;

“registered owner” means the party or parties acquiring ownership and taking transfer of one or more Erf/Erven;

“the original property” means Erf 5543, Beacon Bay;

IN EXTENT: 20948 (Twenty thousand nine hundred and forty-eight square metres);

“Private Township” means Erf 5543, Beacon Bay, being approximately 20948 (Twenty thousand nine hundred and forty-eight square metres), in extent.

“common area” means the private roadway, utility area and any other open space within the private township;

“common services” means pipes, cables, drains and installations in connection with electricity, water, sewerage and drainage on the common property for which either Members individually or the Local Authority are responsible.

“Erven” means the Erven resulting from the sub-division of the original property.

“Erf” all Erven shall be deemed to be of equal size and buildings thereon of equal value for the purposes of levies.

“Association” means the SWIFTLANDS HOME OWNERS’ ASSOCIATION;

“Office” means the administrative office of the Association;

“Member” means a Member of the Association;

“Trustees” means the Trustees of the Association from time to time and includes alternate and co-opted Trustees;

“Chairperson” means the Chairperson of the Trustees;

“Vice-Chairperson” means the Vice-Chairperson of the Trustees;

“Secretary” means the Secretary of the Trustees;

“Auditors” means the Auditors of the Association;

“Resolution” means a Resolution other than a Special Resolution passed at an Annual General Meeting or a Special General Meeting by an ordinary majority of the total votes represented at such meeting by Members present in person or by proxy;

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“Special Resolution” means a Resolution.

passed at an Annual General Meeting or a Special General Meeting where Members present in person or by proxy represent at least 75% (seventy-five per centum) of the total votes; and

passed by 75% (seventy-five per centum) of the total votes represented by Members present in person or by proxy;

“business day” means weekdays other than Saturdays, Sundays and Public Holidays;

“month” means calendar month;

“year” means calendar year;

“in writing” means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

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

## **2. MEMBERS OF THE ASSOCIATION**

- 2.1. The Association which is hereby constituted is composed of a single Member, namely, the Developer.
- 2.2. The following condition shall be registered at the discretion of the Developer or the Association against the title deed of each property, forming a part of the Development:  
“The Purchaser specifically agrees by affixing his signature hereto, to become a member of the SWIFTLANDS HOME OWNERS’ ASSOCIATION upon the registration of the abovementioned property in his name, and further specifically agrees to abide by the provisions of the constitution of the SWIFTLANDS HOME OWNERS’ ASSOCIATION and any regulation made in terms thereof, and any agreements referred to therein, insofar as those agreements may directly or indirectly impose obligations on him”.
- The Association or Developer shall be entitled to include the foregoing condition, or any reasonable variation thereof.
- 2.3. 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 clause 3 hereof.
- 2.4. Where any such registered owner is more than one person, all the registered owners of the Erf shall be deemed jointly and severally to be one Member and shall nominate one of them to represent them and to vote at meetings of the Association.
- 2.5. When a Member ceases to be a registered owner of an erf, he shall ipso facto cease to be a Member of the Association save for the Developer who shall remain a Member of the Association during the Development Phase.

- 2.6. No Member ceasing to be a Member of the Association for any reason shall (nor shall any such Member’s executors, 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

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Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a Member.

### **3. CONDITIONS OF MEMBERSHIP**

- 3.1 Membership of the Association shall be compulsory but limited to the registered owners resulting from the sub-division of the original property, 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.
- 3.2 When a Member ceases to be the registered owner of an Erf, he shall ipso facto cease to be a Member of the Association.
- 3.3 A registered owner of any erf may not resign as a Member of the Association.
- 3.4 The rights and obligations of a Member shall not be transferable and every Member shall:
- 3.4.1 to the best of his ability further the objects and interests of the Association;
- 3.4.2 observe all by-laws and regulations made by the Association or the Trustees.
- 3.5 Provided that nothing contained in this Constitution shall prevent a Member may cede his rights in terms of this Constitution as security to the Mortgagee of that Member's Erf.

### **4. MEMBER'S OBLIGATIONS**

- 4.1 Each Member undertakes to the Association that he shall comply with:
- 4.1.1 the provisions of this Constitution;
- 4.1.2 any regulations made in terms hereof;
- 4.1.3 any agreements referred to herein insofar as those agreements may directly or indirectly impose obligations on him;
- 4.1.4 the directive of the Association made hereby, that save for the private roadway no single residential Erf resulting from the sub-division of the original Erf shall be permitted to be further sub-divided by any registered owner thereof at any time.
- 4.2 Members shall have equal voting rights
- 4.3 Members may not, in any circumstances, interfere with the appointed service provider or employee of the Association in the execution of his duties as laid down by the Trustees from time to time.

### **5. ENTRENCHED PROVISIONS**

- 5.1 The appointed maintenance and security contractors and/or employees of the Association shall have access to all common property as directed by the Association.

### **6. MAIN OBJECTS**

- 6.1 The main objects of the Association shall be:
- 6.1.1 the maintenance and control of the private roadway, the perimeter fence and the protection of the communal interest of the Members;

- 6.1.2 to control, regulate, maintain, repair, develop and keep in good order all areas, roadway and all services, common to and/or which serve and relate to the Erven following upon the subdivision and development of the original property, to promote the common interest of the Members as registered owners of the Erven.

## **7 MAIN BUSINESS**

- 7.1 The main business of the Association shall be the general management and administration of the private Township: "SWIFTLANDS".
- 7.2 Such business shall include the maintenance of the common areas and,
- 7.3 Interpretation and Enforcement of Building standards as set forth in Annexure "B" hereto and the other provisions of this Constitution.

## **8 THE COMMON AREA**

- 8.1 Neither the whole nor any portion of the common area, shall be:
- 8.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 8.1.2 mortgaged; or
- 8.1.3 subject to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude (save those enjoyed by the Members in terms hereof);

Without the sanction of a Special Resolution of the Association. The provisions of 8.1.1 to 8.1.3 shall not, however apply to testamentary disposition, foreclosure by a Bank or other financier, or expropriation by a Local Authority or Central Government in accordance with an Act of Parliament.

## **9. LEVIES**

- 9.1 The Association 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 its opinion sufficient for:
- 9.1.1 control, management and administration of the Association;
- 9.1.2 repair, upkeep and maintenance of the common area;
- 9.1.3 payment of rates and taxes and any other local authority charges, if any;
- 9.1.4 charges for the supply of electric current, water and sanitary and other services;
- 9.1.5 services required by the Association for recovering any losses suffered by the Association;
- 9.1.6 payment of any premiums of insurance and for the discharge of any other obligation of the Association.
- 9.2 The procedure for raising and collecting levies shall be as follows:
- 9.2.1 The Trustees shall estimate the amount which shall be required by the Association to meet the aforesaid 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.
- 9.2.2 The Trustees may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such expenses to be incurred for such purpose as may be deemed necessary by the Trustees from time to time in carrying out their duties or as decided upon by a special meeting of Members.
- 9.3 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 9.2), and

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such levies may be imposed and be payable in one sum or by such instalments and at such time or times as the Trustees shall think fit.

- 9.4 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a registered owner, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a registered owner.
- 9.5 No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a member.
- 9.6 A Member's successor-in-title to an Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Erf, to pay the levy attributable to that Erf.
- 9.7 In calculating levies the Trustees shall take into account income, if any, earned by the Association.
- 9.8 All Members shall have equal voting rights save as provided for in section 9.9 below.
- 9.9 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.
- 9.10 Notwithstanding the foregoing, rates and taxes and other costs will as far as possible be charged directly to and be payable by an individual Member in respect of his Erf.
- 9.11. No Member on ceasing to be a Member, shall be entitled to repayment of any reserve funds of the Association.
- 9.12 All Erven irrespective of size shall be levied equally. This provision may not be amended by the Association without the Developer's consent or unanimous decision of a meeting of Members.
- 9.13 Insofar as the following condition is embodied in the title deed relating to each Erf resulting from the sub-division of the original Erf as a condition of title: "the Erf shall not be transferred without the written consent of the SWIFTLANDS HOME OWNERS' ASSOCIATION, of which the transferee or its successors in title shall be a member". Such consent shall not be withheld, provided that the registered owner of the Erf in question has fulfilled all its financial obligations in association with this Constitution, or has made reasonable arrangements to the satisfaction of the Trustees of the Home Owner's Association that payment will be effected against registration of transfer.

## 10 **USE OF PREMISES**

- 10.1 All Members shall ensure that their respective activities on and uses of the property or any part thereof with all its services, facilities and amenities shall at all times be conducted and carried out with reasonable and diligent care and with due and proper consideration for other Members of the Association in accordance with the provisions of this constitution.
- 10.2 All Members are required to ensure that occupants of their erven, whether such occupation arises from an agreement of lease or otherwise, comply with all applicable provisions of this constitution.
- 10.3 The provisions of this constitution shall likewise apply to guests, servants, employees, children, family members, invitees and/or any other contractor/subcontractor of Members while they are on the property governed by this constitution.

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- 10.4 No Members shall cause or permit any disorderly conduct of whatsoever nature on his Erf or do or permit any act, matter or thing in or about the same which shall constitute or cause a nuisance or any inconvenience to any other Member, occupant or staff of the Association.
- 10.5 A motor vehicle shall not be parked in a place that has not been set aside or demarcated for this purpose and shall at no time be permitted to obstruct any roads.
- 10.6 Members are allowed to keep pets, but strictly under supervision and in terms of the conditions as stipulated in the Association's Conduct Rules and Regulations which rules and regulations shall be in line with this constitution.
- 10.7 The member shall maintain in a hygienic and dry conditions, a receptacle for refuse within his Erf.
- 10.8 A member may not hang any washing or laundry or any other items on any part of the building or the common land so as to be visible from outside the building or from any other Erf.
- 10.9 A member of a unit shall not deposit, throw or permit or allow to be deposited or thrown, on common area, any rubbish, including dirt, cigarette butts, food scraps or any other litter whatsoever.
- 10.10 All tenants of erven or other persons granted rights of occupancy, by any owner of the relevant erf are obliged to comply with this constitution notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy.

## 11 **MAINTENANCE**

- 11.1 The Member shall at all times at his own expense maintain the building on his Erf, including without limitation all electrical wiring and fittings, plumbing installations and apparatus and all fittings whatsoever, in good and sound order and repair and in a thoroughly clean, tidy and tenantable condition.
- 11.2 The Member shall be responsible for all maintenance, repairs and replacements of whatever nature, including without limitation, all painting, repairs and if necessary, the clearing of any blockages of drains, sewers, plumbing and sanitary equipment and connections and the maintenance and replacement thereof and all such repairs and renovations to his registered Erf.
- 11.3 Where any dispute arises as to whose liability it is to maintain any portion of the property, such dispute shall be determined by the Committee of the Association and the decision of the Committee shall be final and binding on the parties to the dispute.
- 11.4 Should the Member refuse to effect any repairs and/or renovations after fourteen (14) days of being instructed to do so by the Association, the Association may effect such repairs and/or renovations and claim the cost thereof from the Member.
- 11.5 The Member may make improvements to the interior of the building on the Erf, but no structural alterations or additions to the water, gas, sewerage, electric conduits or plumbing may be effected without the written consent of the Association having been previously obtained and subject to the architectural and landscape conditions of the Association.

## 12 **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

- 12.1 It shall be the duty of the Association at its own expense to:
- 12.1.1 maintain in good order and repair and in clean and tenantable condition common property roads, buildings, recreation facilities, lawns, pathways and all such other portions of the common property which are not reserved for the exclusive use of the Member;

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- 12.1.2 effect such insurances over and in respect of the property not reserved for the exclusive use of Members against damage in accordance with any relevant resolutions passed by the Members of the Association from time to time at general meetings of the Association and to renew such policies.
- 12.2 The Association shall not be responsible for the repair and renovation of any portion of the property reserved for the exclusive use of the Member.
- 12.3 The Association shall at all times, through its servants, be entitled to inspect the said Erf occupied by the member and if dissatisfied with the condition thereof, may call upon the Member to carry out the obligations imposed upon him by the terms of this constitution.
- 12.4 Should the Member fail to maintain the said Erf in good order and condition, the Association shall, after 14 (fourteen) days written notice to the Member, be entitled without prejudice to any other rights it may have to put into good order and condition at the expense of the Association and to recover from the Member any expenditure thereby incurred.
- 12.5 The Association shall not be responsible for:
- 12.5.1 any loss, damage or injury which the Member's visitors, or any person occupying the property through or at the instance of the Member, may sustain on the property or in or about the Association's property by reason of any act whatsoever, or neglect on the part of the Association;
- 12.5.2 any loss, damage or injury of any description which the Member or such other person may sustain by reason of the property or the building on the Erf at any time falling into a defective state, or by reason of any repairs, renovations and/or maintenance or work to the rest of the property which are effected by the Association or by the occupant thereof, or by reason of such repairs, renovations and maintenance work to the rest of the property which are effected by the Association or by the occupant;
- 12.5.3 nor loss, damage or injury by reason of such repairs, renovations and maintenance work not being effected timeously or at all.
- 12.6 The Member shall not be entitled for any of the reasons aforesaid or for any other reason whatsoever to withhold any payment due to the Association.
- 12.7 No liability shall result upon the Association for any interruption or failure of the electrical and/or other services to the property, irrespective of the cause thereof, nor for any consequential damage the Member may occur by reason of such failure or interruption.
13. **BREACH**
- 13.1 Any Member who fails to make payment to the Association on due date of any levies or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of this Constitution, may, if so determined by a resolution passed by not less than 3 (Three) of the Trustees present at a meeting of Trustees:
- 13.1.1 be fined by the Association in an amount not exceeding an amount equal to double the sum outstanding; and/or
- 13.1.2 be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question, such sum as compensation and/or fine as determined at a meeting of Trustees; and or

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13.1.3 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 of arrear levies, or any other arrear amounts due and owing by such Member to the Association, as determined at a meeting of Trustees.

13.2 The Member concerned shall be invited to attend such meeting of Trustees 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 or to take part in the proceedings, other than as allowed by the Chairman of such meeting.

13.3 The Trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine.

14. **TRUSTEES**

14.1 There shall be a Board of Trustees of the Association which shall consist of not less than 3 (Three) and not more than 7 (Seven) Members.

14.2 A Trustee shall be an individual, but need not himself be a Member of the Association.

14.3 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 this Constitution.

14.4 For as long as the Developer is a Member it shall be entitled to nominate and appoint one of the Trustees.

15. **APPOINTMENT AND ELECTION OF TRUSTEES**

15.1 All the initial Trustees shall be appointed by the Developer and until so appointed the Developer shall be, notwithstanding 14.1 and 14.2, the sole Trustee. The Trustees shall continue to be appointed by the developer until such date as determined by the developer.

15.2 Upon termination of the term of office of the Trustees aforesaid, Trustees shall be appointed at the Annual General Meeting by the Members of the Association after being nominated and upon acceptance of such nominations.

15.3 Nominations by Members for the election of trustees at any annual general meeting shall be given in Writing, accompanied by the written consent of the person nominated, so as to be received at the domicilium of the Association not later than 48 hours before the meeting: Provided that trustees are also capable of being elected by way of nominations with the consent of the nominee given at the meeting itself should insufficient written nominations be received to comply with this provision.

15.4 The election and appointment of Trustees to office shall be by Special Resolution of 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.

16. **REMOVAL AND ROTATION OF TRUSTEES**

16.1 Save as set forth herein, 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 to the Trustees at such meeting

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

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- 16.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 16.2.2 his making any arrangement or compromising with his creditors;
- 16.2.3 his conviction for any offence involving dishonesty;
- 16.2.4 his becoming of unsound mind or being found lunatic;
- 16.2.5 his resigning from such office in writing delivered to the Secretary;
- 16.2.6 his death;
- 16.2.7 him being removed by resolution of a general meeting of the Association provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting.
- 16.3 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.
- 16.10 Upon any vacancy occurring on the Trustees prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by the remaining Trustees.
17. **OFFICE OF TRUSTEES**
- 17.1 The first Chairman, and Vice-Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices until at least half of the Erven in number and area have been sold, 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.
- 17.2 The Trustees shall elect from amongst themselves a Chairman and in need Vice-Chairman.
- 17.3 Within 7 (Seven) days of the holding of such annual General Meeting, the Trustees shall meet and shall elect from their own number the Chairman and in need 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 to such office.
- 17.4 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees, and all General Meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by Members, and 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.
- 17.5 The Vice-Chairman if elected, 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 by the Trustees.
- 17.6 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them 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.



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18. **FUNCTIONS AND POWERS OF TRUSTEES**

- 18.1 Subject to the express provisions of this Constitution, 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 may be expressly provided in this constitution, may exercise all such powers of the Association as may be exercised and done by the Association, and as are not by this Constitution 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 Trustees which would have been valid if such regulation had not been made.
- 18.2 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 18.3 The Trustees shall have the right to co-opt as a Trustee any person or persons chosen by them. A co-opted Trustee shall enjoy the rights and be subject to all the obligations of the Trustees, provided that such co-opted Trustee shall enjoy no voting rights, casting or otherwise.
- 18.4 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee, in such reasonable manner as they shall decide from time to time.
- 18.5 The Trustees may make regulations and/or by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association in General Meeting:
- 18.5.1 as to settlement of disputes generally;
- 18.5.2 for the furtherance and promotion of any of the objects of the Association;
- 18.5.3 for the better management of the affairs of the Association;
- 18.5.4 for the advancement of the interests of Members;
- 18.5.5 for the conduct of Trustees meeting of Trustees and meetings of the Association;
- 18.5.6 to levy and collect contributions from the Members in terms of this Constitution;
- 18.5.7 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.
- 18.6 For the purpose of transacting their business as provided herein, the Trustees shall be entitled open and operate a banking account in the name of the Association at a registered banking institution.
- 18.7 Subject to any restriction imposed or direction given at a general meeting of the Association, the Trustees shall be entitled:
- 18.7.1 to appoint for and on behalf of the Association such agents and employees as they deem Fit;
- 18.7.2 to delegate to one or more of the trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation.
- 18.8 Trustees may not make loans on behalf of the Association to owners of units or to themselves.

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19. **PROCEEDINGS OF MEETINGS OF TRUSTEES**

- 19.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 19.2 Meetings of the Trustees shall be held at least once every three months, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular three months then no meeting of the Trustees needs be held for that three months.
- 19.3 Two (2) Trustees may at any time jointly convene a meeting of Trustees by giving to the other Trustees not less than seven (7) days written notice of a meeting proposed by them, which notice shall specify the reason for calling such a meeting: provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.
- 19.4 A Trustee may be represented at a Meeting of Trustees by a proxy, who need not be a Trustee of the Association.
- 19.5 Any mortgagee holding a first mortgage bond or bonds over the Erven shall, if he so requires, be entitled to receive reasonable written notice of all meetings of Trustees.
- 19.6 A quorum at a meeting of the trustees shall be 50(fifty) percent of the number of trustees but not less than two, present in person or by proxy.
- 19.7 The Chairman shall preside as such at all meetings of Trustees provided that should at any meeting of Trustees, The Chairman not be present within 5 (five) minutes after the time appointed for such meeting, 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.
- 19.8 The instrument appointing a proxy shall be in writing signed by the Trustee concerned or his duly authorised agent in writing, but need not be in any particular form.
- 19.9 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 designated 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.
- 19.10 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 remaining Trustees at least one hour before the time fixed for the holding of the meeting.
- 19.11 All matters at any meeting of the trustees shall be determined by a majority of the votes of the trustees present in person or by proxy and voting.
- 19.12 A Trustee or the appointed Secretary of the Trustees shall take the minutes of every meeting of Trustees, 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 Trustees shall after certification as aforesaid be placed in a Trustees Minute Book, that shall be kept for that purpose.

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- 19.13 The Trustees shall keep all Minute Books of Meetings of Trustees in perpetuity.
- 19.14 On the written application of any Member, the auditor and the Local authority the Trustees shall make all Minutes of their proceedings available for inspection at all reasonable times.
- 19.15 The competent resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustees shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such Resolution is competent within the powers of the Trustees.
- 19.16 Save as otherwise provided in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 19.17 A "Round Robin" resolution in writing signed by all the Trustees for the time being present in the Republic and being not less than are sufficient to form a quorum, shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held.

20. **OTHER PROFESSIONAL OFFICERS**

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

21. **GENERAL MEETINGS OF THE ASSOCIATION**

- 21.1 An annual general meeting of the Association shall be held within four months of the end of each financial year in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices calling it.
- 21.2 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.
- 21.3 All General Meetings other than Annual General Meetings shall be called Special General Meetings.
- 21.4 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 25% (twenty-five per centum) of the Members, or should the Trustees fail to do so, such a meeting may be convened by the requisitionists themselves, provided that notice thereof has been given in terms of this Constitution.

22. **NOTICE OF MEETINGS**

- 22.1 The Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called with not less than 21 (twenty-one) days' notice in writing, and a Special General Meeting, other than one called for the passing of a Special Resolution, shall be called with not less than 14 (fourteen) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and in the case of a Special Resolution, the terms and effect of the Resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Trustees to such persons as are under this Constitution entitled to receive such notices from the Association; provided that a General Meeting of the Association shall,

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notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed by not less than 75% (seventy-five per centum) of Members having the right to attend and vote at the meeting.

22.2 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 this Constitution, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

23. **SERVICE OF NOTICES OF MEETINGS**

23.1 A notice of a meeting 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 street address of the Erf owned by him.

23.2 No Member shall be entitled to have a notice of a meeting 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.

23.3 Any notice of a meeting sent 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.

23.4 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.

23.5 Notwithstanding anything to the contrary herein, a written notice actually received by a Member, including a notice sent by telefax or e-mail, shall be an adequate notice to him notwithstanding that it was not sent or delivered to his chosen address.

24. **VENUE OF MEETINGS**

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

25. **QUORUM**

25.1 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 attend and vote thereat, as together for the time being representing 30% (thirty per centum) of the total votes of all Members of the Association entitled to vote for the time being.

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

26. **AGENDA AT MEETINGS**

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

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

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- 26.1.2 the election of the Trustees;
  - 26.1.3 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;
  - 26.1.4 the consideration of the financial position of the Association for the last financial year of the Association preceding the date of such meeting.
  - 26.1.5 the consideration of the report of the Auditors;
  - 26.1.6 the consideration of the budgeted income and expenditure including total levy for the calendar year during which such Annual General Meeting takes place, and;
  - 26.1.7 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

27. **PROCEDURE AT GENERAL MEETINGS**

- 27.1 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 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.
- 27.2 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.
- 27.3 Except as otherwise set forth in this Constitution, all General Meetings shall be conducted in accordance with procedures to be stipulated by the Trustees from time to time, which procedures shall be recorded in the Notice to Members.

28. **MINUTES OF MEETING OF THE ASSOCIATION**

- 28.1 The Chairman or the designated Secretary of the Association shall take the 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 the Association Minute Book, that shall be kept for that purpose.
- 28.2 The Chairman shall direct that all Minute Books of Meetings of the Association are kept in perpetuity.
- 28.3 On the written application of any Member, the Auditor and the Local authority the Association shall make all Minutes of their proceedings available for inspection at all reasonable times.
- 28.4 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

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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.

28.5 Save as otherwise provided in this Constitution, 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.

29. **PROXIES**

29.1 A Member may be represented at a General Meeting by a proxy, who need not to be a Member of the Association.

29.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of these persons may sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where an association of persons, by the Secretary thereof, where a close corporation, by any Member and where a trust, by any Trustee.

29.3 The instrument appointing a proxy and the power of Attorney or certified copy thereof shall be deposited at the Association's designated office no less than 24 hours before the time appointed for the commencement of the meeting, or adjournment 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.

29.4 A vote given in accordance with the term 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 Chairman or designated Secretary at least one hour before the time for the holding of the meeting.

30. **VOTING**

30.1 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 the name of more than one person then all such co-owners shall jointly have only one vote.

30.2 Save as expressly provided for in this Constitution, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) due and payable to the Association, 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.

30.3 At any General Meeting a resolution put to the vote of the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy.

30.4 Voting on the election of a Chairman of a General Meeting (if necessary) or on any question of adjournment, shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereat, present in person or by proxy.

30.5 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.

30.6 A resolution (other than a Special Resolution) or the amendment of a resolution, shall be carried out by a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

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30.7 Any resolution or the amendment of a resolution which would have the effect of amending or replacing any part of this constitution shall be known as a special resolution and shall be dealt with in terms of section 1.1 of this constitution.

30.8 Unless any Member present in person or by proxy at a General Meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes 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.

31. **FINANCIAL YEAR END**

31.1 The financial year end of the Association is the end of August of each year.

32. **ACCOUNTS**

32.1 The Trustees shall cause proper books of accounts and records to be kept so as to fairly explain the transactions and financial position of the Association, including:

32.1.1 a record of the assets and liabilities of the Association;

32.1.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipts and expenditures occurred;

32.1.3 a register of Members showing in each case their addresses;

32.1.4 individual ledger accounts in respect of each owner.

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

32.3 The Association in a 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.

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

33. **DEPOSIT AND INVESTMENT OF FUNDS**

33.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association, and subject to any direction given or restriction imposed at a General Meeting of the Association, such moneys

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shall only be withdrawn for the purpose of payment of the expenses of the Association or investment in terms of 33.2.

33.2 Any funds not immediately required for disbursements may be invested in an interest bearing account with a registered deposit taking institution approved by the Trustees from time to time.

33.3 Interest on moneys invested shall be used by the Association for any lawful purpose.

34. **AUDIT**

34.1 At least once 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.

34.2 The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards in terms of the applicable law(s).

35. **INDEMNITY**

35.1 All Trustees 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, 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.

35.2 Every Trustee, 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 Trustees 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, 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 shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustees, whether in their capacities as Trustee 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 moneys of the Association shall be invested, or for any loss or damage arising from the insolvency or delictual or criminal act of any person with whom any moneys, 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 for 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**

36.1 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 Member, to have waived as against every other Member, the Trustees, the Chairman or Vice-Chairman, Auditors and everybody else engaged to perform any function or duty on behalf of 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 meeting of Trustees or general meeting or otherwise in the performance or exercise of any right, function, duty, power or

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trust, within the ambit of this Constitution, being a statement report, complaint, notice or reference defamatory to such Member or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false.

37. **ARBITRATION**

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

37.1.1 any matters arising out of;

37.1.2 the rights and duties of any of the parties mentioned in;

37.1.3 the interpretation of this Constitution, shall be submitted to and decided by arbitration on notice given by the aggrieved party to the other parties who are affected in the matter in question.

37.2 Arbitration shall be held informally and otherwise in terms of the provisions of the applicable Arbitration Act of the Republic of South Africa (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.

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

37.3.1 primarily an accounting matter – and independent accountant;

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

37.3.3 any other matter – an independent and suitably qualified person appointed by the Auditors;

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

37.4 If agreement cannot be reached on whether the question in dispute falls under 34.3.1, 34.3.2 or 34.3.3 or upon a particular arbitrator in terms of 34.3.3, within 3 (three) business days after the arbitration has been demanded, then:

37.4.1 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 34.3.1; 34.3.2 or 34.3.3 and/or

37.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of this section 34 within 7 (seven) business days after the parties have failed to agree so that arbitration can be held and concluded as soon as possible within the 21 (twenty-one) business days referred to in herein.

37.5 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 fit.

37.6 The decision of the arbitrator shall be final and binding and may be made an Order of the Eastern Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.

37.7 Notwithstanding anything to the contrary contained herein, the Trustees shall be entitled to institute legal proceedings on behalf for 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 the provisions of this constitution.

38. **DOMICILIUM CITANDI ET EXECUTANDI**

38.1 The Trustees shall from time to time determine the address constituting the Domicilium citandi et executandi of the Association, subject to the following:

38.1.1 Such address shall be situated in the Magisterial District of East London and shall be the address of the Chairman or other resident Trustee duly appointed at a General Meeting, or the administrative office of the Association;

38.1.2 The Trustees shall give notice to all Members of any change of such address.

38.2 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 to a physical address in the Republic of South Africa, and that the change shall only be effective on receipt of written notice thereof by the Association at its domicilium.

39. **BUILDING PLANS**

39.1 All building plans shall be submitted to the Association Committee for scrutiny and approval before being submitted to the Local Authority for approval. Plans are subject to the building regulations of the relevant Local Authority.

39.2 Plans are to be scrutinised by the Home Owner's Association Committee and any amendments to be stipulated within a reasonable period which should not exceed 30 days.

39.3 One (1) dwelling unit will be permitted on each Erf and which shall not exceed one storey (other than basement area where split-level buildings is permissible if the basement area is to be utilised for the purpose of a garage between the main dwelling). After completion of the initial dwelling in accordance with the building contract which constitutes a part of the initial sale agreement in respect of the property from the Developer, the Owner shall be entitled to construct additional buildings / alterations only with the written authority of the Trustees and the local authority. Under no circumstances shall such additions exceed one storey.

39.4 No caravans, prefabricated or other temporary structures will be permitted.

40. **SITE WORKS**

40.1 **SITE CLEARING**

The clearing of building sites should be phased so that only areas for immediate construction are cleared at a time to avoid dust etc.

40.2 **TOPSOIL PROTECTION**

Topsoil and organic material should be removed from the construction area and carefully stored for re-use in landscape work. In this regard, the Developer shall be entitled at its discretion to remove sand, topsoil, surface material or earth and to deposit same elsewhere where they may be required to complete the development of the sites or infrastructure of the township.

40.3 **FILL MATERIAL**

40.3.1 Material should be brought from outside the area. No damage to the commonage or exclusive use areas is permitted.

40.3.2 Builders Rubble is to be removed from the township at the owner's expense and shall not be deposited elsewhere without the Developer and Committee's consent.

40.4 **SITE WORKS RELATED PENALTIES**

Members must ensure that their contractor observes the above conditions. The Member may be penalised if the conditions are not observed.

SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

AS WITNESSES

1. \_\_\_\_\_

2. \_\_\_\_\_

SIGNED at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

AS WITNESSES

1. \_\_\_\_\_

2. \_\_\_\_\_