



THORNHILL ESTATE

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MAS:001:K

**CONSTITUTION
OF
THORNHILL HOME OWNERS' ASSOCIATION**

Original Issue 'A'	Name	Signature	Date
Prepared:	Heartlands	<i>ORIGINAL</i>	2000-03-01
Recommended: Governance Com.			
Authorised for Issue: THOA Chairman:	Heartlands MD Len Larsen	<i>Signed</i> <i>L. Larsen</i>	2000-03 01

REV	DESCRIPTION	DATE	CONTENT APPROVED	AUTHORISED
B	Revision One	2001-07-26	Previous Revisions	
C	Revision Two	2002-05-29		
D	Revision Three	2003-08-05		
E	Revision Four	2008-08-20		
F	Revision Five	2011-09-01	By members at the 2011 AGM	Ian Boxall 08/09/2011
G	Revision Six	2014-08-24	By members at the 2014 AGM	Ian Boxall 09/09/2014
H	Added Clause 27.9.4	2016-08-28	By members at the 2016 AGM	Steve Burrow 08/11/2016
J	General Review and Revision	2017-06-25	By members at the 2017 AGM	Steve Burrow 06/07/2017
K	Amended clauses 6.5, 14.2, 15.2, 15.4 and 16.1	2019-08-26	By members at the 2019 AGM	Stephen Burrow 10/10/2019

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**CONSTITUTION
OF
THE THORNHILL HOME OWNERS ASSOCIATION**

1. Definitions

The headings of the clauses in this constitution are for the purposes of convenience and reference only and shall not be used in the interpretation of, nor modify, nor amplify the terms of this constitution nor any clause hereof. Unless a contrary intention clearly appears:

1.1 Words importing:

1.1.1 any one gender includes the other gender;

1.1.2 the singular shall include the plural and vice versa;

1.1.3 natural persons include created entities (corporate or unincorporated) and vice versa;

1.1.4 “**universitas**” means a common law association of persons with a common goal and means of achieving the goal.

1.2 The following terms shall have the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.2.1 “**AGM**” means the Annual General Meeting of Members held in terms of the provisions contained in this constitution;

1.2.2 “**at the discretion of the trustees**” (or equivalent terminology) means that the Board of Trustees, in terms of the powers conferred on it, and where specified, may deem it fit to change or amend such regulation/s due to specific circumstances and/or exempt a member from the provisions thereof on grounds of extenuating circumstances, in accordance with due process.

1.2.3 “**the ALA**” means the Alienation of Land Act, No. 68 of 1981 and any Regulations promulgated in terms thereof;

- 1.2.4 “**the association**” means the Thornhill Homeowners Association as defined in the constitution;
- 1.2.5 “**auditors**” means the external independent auditors of the association as appointed from time to time by the association;
- 1.2.6 “**Board of Trustees**” means the body comprising trustees elected by the members of the association in terms of the constitution;
- 1.2.7 “**CA**” means the Companies Act, No. 71 of 2008 and any Regulations promulgated in terms thereof from time to time;
- 1.2.8 “**chairman**” means the chairman of the board of trustees;
- 1.2.9 “**constitution**” means this constitution regulating the rights and obligations and objects of the association and its members;
- 1.2.10 “**CSOS**” means the Community Schemes Ombud Services Act 9 of 2011 and any regulations promulgated in terms thereof from time to time
- 1.2.11 “**due process**” means the procedures and rules prescribed by the Constitution and Code of Conduct, Rules & Regulations, which may be applicable to a particular situation;
- 1.2.12 “**the CPA**” means the Consumer Protection Act, No. 68 of 2008 and its Regulations as promulgated from time to time;
- 1.2.13 “**the DRA**” means the Deeds Registries Act, No. 47 of 1937, as amended, and any Regulations promulgated in terms thereof from time to time;
- 1.2.14 “**dwelling**” means a residential dwelling unit situated on land within the township area;
- 1.2.15 “**EGM**” means the Extraordinary General Meeting of Members held in terms of the provisions contained in this constitution;
- 1.2.16 “**general meeting**” means any meeting of Members other than an AGM or EGM that does not necessarily require a vote in terms of the provisions contained in this constitution;
- 1.2.17 “**Governance Committee**” means the committee established by the trustees in terms of the provisions of clause 15;
- 1.2.18 “**the HA**” means the Heritage Act, No. 25 of 1999, as amended, and any Regulations promulgated in terms thereof from time to time;
- 1.2.19 “**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;

- 1.2.20** “**land**” means any land as known in its ordinary meaning, whether improved or unimproved and includes a unit or dwelling situated in the township area and may be used interchangeably with the terms “dwelling” and “unit” in this constitution;
- 1.2.21** “**managing agent**” means any person who provides management services to a community scheme for reward;
- 1.2.22** “**member**” means a member of the association, whether natural or juristic, and such member’s successors in title, being an owner of land in the township area;
- 1.2.23** “**the NCA**” means the National Credit Act, No. 34 of 2005 and any regulations promulgated in terms thereof from time to time;
- 1.2.24** “**owner**” means an owner as defined in Section 102 of the DRA and for purposes of clarity includes an owner’s successors in title;
- 1.2.25** “**privileged documents**” shall mean any documents, records or information as defined in the Promotion of Access to Information Act, No. 2 of 2000 (PAIA) and as defined in any other legislation as the context may require and regulations promulgated in terms thereof from time to time;
- 1.2.26** “**the STA**” means the Sectional Titles Act, No. 95 of 1986 and any Regulations promulgated in terms thereof;
- 1.2.27** “**THOA**” means the Thornhill Homeowners Association and may be used interchangeably with the term “association” throughout the constitution;
- 1.2.28** “**township area**” means Thornhill Estate in Modderfontein Extension 2, which is located in the Johannesburg Metropolitan Municipality. This area comprises erf 30 (formally Founders Hill) and the erven 186 to 469 and the subdivisions thereof, as detailed in the diagram in Annexure 1;
- 1.2.29** “**trustees**” means the Board of Trustees;
- 1.2.30** “**unit**” means a unit as defined in Section 1 of the STA;
- 1.2.31** “**vice-chairman**” means the vice-chairman of the board of trustees.
- 1.3** Any reference to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at the signature date and as amended or replaced from time to time.

- 1.4 If a provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the constitution.
- 1.5 When any number of days is prescribed in this constitution, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday in which case the last day shall be the last succeeding day which is not a Saturday, Sunday or a public holiday.
- 1.6 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.7 Expressions defined in this agreement shall bear the same meanings in schedules or annexures to this constitution which do not themselves contain their own definitions.
- 1.8 Reference to day(s), month(s) or year(s) shall be construed as Gregorian calendar date(s), month(s) or year(s).
- 1.9 Any schedule or annexure to this constitution shall form part of this constitution.
- 1.10 The use of the word “including” followed by a specific example or examples, shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example or examples.
- 1.11 The expiry or termination of this constitution shall not affect those provisions of this constitution which expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.
- 1.12 In its interpretation the *contra proferentem* rule of construction shall not apply (this constitution being the product of negotiations between the parties), nor shall this

constitution be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this constitution.

1.13 Records shall be binding on the parties and are not merely for information purposes.

2. Legal Status and Limited Liability

2.1 The association is a common law corporate body (*universitas*) and as such:

2.1.1 its assets, liabilities, rights and obligations vest in it independently of its members;

2.1.2 the primary object of the association is not for gain or profit and in the event of such gain or profit being realised or generated, it may not distribute any of its profits or gains to any person or member, and will use such funds solely to further the objects of the association and such funds will be held in the association's bank accounts;

2.1.3 it will have perpetual succession;

2.1.4 it may sue or be sued in its own name; and

2.1.5 the members will not by reason of their membership be liable for the liabilities and obligations of the association.

3. Objectives

3.1 The objectives of the association are to, within the township area, amongst other things control the aesthetic appearance of land, dwellings, units and any other buildings, the improvement of safety of persons or members and property, the promotion of communal and recreational interests of members, and matters incidental thereto, including, without limiting the scope thereof, in particular:

3.1.1 to ensure that the land, dwellings and units situated within the township area, are developed and maintained in accordance with the aesthetic standards determined by the association from time to time;

- 3.1.2 to take transfer of, maintain and control any internal roads, erven, parks, servitudes, recreational areas or facilities, or other common areas within the township area;
 - 3.1.3 to maintain the entrance to the township area and the perimeter fence around the township area;
 - 3.1.4 to institute, control and pay for measures to ensure the safety and security of members, families and visitors to the township area;
 - 3.1.5 to protect the use and enjoyment by members, families and visitors of the land, dwellings or units and any common areas within the township area.
- 3.2 It is recorded that the local authority owns and is responsible for the maintenance of all public roads situated within the township area as well as equipment relating to water reticulation, sewerage disposal, electricity reticulation, stormwater, street lighting, refuse removal and any other municipal service rendered by the Local Authority within the boundaries of the township area.

4. Powers

- 4.1 The association has the following powers, including but not limited to:
 - 4.1.1 The powers normally associated with a common law corporate body such as a *universitas*;
 - 4.1.2 The powers necessary to enable the association to achieve the objects as defined in clause 3;
 - 4.1.3 The powers necessary to enforce the provisions contained in the constitution;
 - 4.1.4 Such powers specifically granted to the association in terms of the constitution; and
 - 4.1.5 Such other powers that are either expressly or impliedly included in the association's powers to, in general, achieve the objectives as referred to in clause 3 of the constitution.

5. Membership

- 5.1** Membership of the association shall be limited to persons being an owner of land, a dwelling or unit and registered as such in terms of the DRA and reflected as such in the records of a Deeds Office concerned.
- 5.2** Where any land, dwelling or unit is owned by more than one person, all the registered owners of that land, dwelling or unit shall together be deemed to be one member of the association and have the rights and obligations of one member of the association, provided that all co-owners of any land, dwelling or unit shall be jointly and severally liable for the due performance of any obligation they may have to the association in terms of this constitution and law in general.
- 5.3** A person shall automatically become a member of the association on becoming an owner of land, a dwelling or unit as referred to in clause 5.1 and as defined in this constitution and such person shall cease to be a member of the association when such person ceases to be an owner of land, a dwelling or unit within the township area.
- 5.4** An owner of land, a dwelling or unit may not resign as a member of the association and shall remain a member for as long as he is an owner.
- 5.5** The rights and obligations of a member shall not be transferable and every member shall:
- 5.5.1** do all things necessary to further the interest and objects of the association;
 - 5.5.2** adhere to and abide and respect all rules made by the association, the trustees or managing body of the association; and
 - 5.5.3** sign all documents and do all things necessary, *inter alia* for the provision of servitudes and access for security purposes, to enable the association to achieve its objectives in terms of this constitution.

6. Levies

- 6.1** The association may from time to time impose levies upon the members of the association for the purpose of meeting all the association's expenses or which the association reasonably requires or anticipates will be necessary for the association to attain the association's objectives.
- 6.2** In the event of levies being increased by the association at a rate which is more than the Consumer Price Index at that stage plus 50% (fifty per centum) of that rate, then such proposed increase shall be approved by at least 75% (seventy five per centum) of members at an AGM or an EGM of the association.
- 6.3** The trustees elected by the members of the association shall be entrusted with the determination and imposition of levies and shall, not less than 30 (thirty) days prior to the end of each financial year, prepare and serve upon every member at the address chosen by such member, an estimate in reasonable detail of the amount/s, which shall be required by the association to meet the association's total expenses during the next financial year, and shall in such estimate specify separately estimated deficiencies, if any, emanating from the previous year and may include in such estimate an amount/s to be held in reserve to meet anticipated or unforeseen expenditure.
- 6.4** Each notice as referred to in clause 6.3 to each member shall specify the contribution payable by that member to the association.
- 6.5** The annual levy determined by the trustees shall be payable to the association in equal monthly instalments on or before the 1st (first) day of each and every month of each financial year, provided that payments received after the 7th (seventh) day of each month shall be subject to an interest bearing penalty payment linked to the prime interest rate of the association's bankers at that time, plus 9% to be compounded monthly, and may be altered at the discretion of the Board of Trustees at any time.

- 6.6** In the event of the trustees, for any reason whatsoever, failing to prepare and serve the estimate, referred to in clause 6.3, timeously or such estimate not being accepted by the members of the association, every member shall, until service of such estimate as aforesaid or the approval thereof by the members of the association, continue to pay the levy previously imposed and shall after such service, pay such levy as may be specified in the notice as from the month following such notice
- 6.7** The trustees may from time to time impose special levies upon the members for additional funding to cover expenditure of a non-repetitive nature and may in imposing such levies determine the terms of payment thereof. Such special levies shall be subject to approval at an AGM or EGM of the association by at least 75% (seventy five per centum) of members present, inclusive of proxies.
- 6.8** Any amount due by a member by way of levy and interest or any special levy shall be a debt due by him to the association and remains recoverable regardless of termination of membership, provided that any levies, interest or special levies shall only be due and payable by the member to the association until such date as the member ceases to be an owner of land, a dwelling or unit within the township area. No member shall after termination of membership have any claim of whatsoever nature, whether for the payment of money or otherwise, against the association and shall not have a claim for the repayment of any levy, interest or special levy, unless such member made advance payments to the association prior to the termination of membership.
- 6.9** In amplification of the above a member's successor in title being the new owner of the land, dwelling or unit shall become a member of the association and shall be liable for levies attributable to that land, dwelling or unit as from the date upon which such person becomes an owner.
- 6.10** In addition to the levies, special levies and interest referred to above, members shall become liable for penalties at the discretion of the Board of Trustees in respect of the provisions, as contained in sub-clauses 6.10.1 to 6.10.4. These provisions are as follows:

- 6.10.1** a failure by a member to commence with building work on land within 18 (eighteen) months from the date on which the member became the owner of the land, in which event a double monthly levy will be due and payable by the member to the association until the date on which the owner actually commences with building work on the land;
- 6.10.2** a failure by a member to complete any building work on land within a period of 18 (eighteen) months from the date of commencement of such building works subject to clause 6.10.1, failing which a double monthly levy will become due and payable to the association until the completion of the building operations coupled with the issuing of a certificate of occupancy by the relevant authority;
- 6.10.3** failure by a member to complete any approved renovations, alteration or additions to existing dwellings or units within 6 (six) months from commencement of building operations, shall, at the discretion of the Board of Trustees, be subject to a penalty of an additional monthly levy until completion; and
- 6.10.4** an additional monthly levy and/or special levy shall be applicable on each dwelling or unit where such dwellings or units have been added to or extended, or where additional dwellings or units have been built on the land for the purpose of letting out the added to, extended or additional dwellings or units with the object of earning rental income therefrom. The provisions contained in this clause to be effective and applied to persons or entities becoming members of the association after the approval and adoption of the 2011 constitution, Revision F.

- 6.11** In calculating the levy payable by members, the trustees shall, as far as reasonably practical and/or possible, take the following into account in the calculation of such levy:

 - 6.11.1** assign the costs relating to the maintenance, upkeep, development, etc. of the common areas and/or areas generally not owned by members, equally between the owners and members of land, dwellings and/or units;
 - 6.11.2** any costs directly attributable to a member, such member's land, dwelling or unit shall be the responsibility of that member;

- 6.12** The Trustees shall determine an equitable and fair method for the calculation of levies and the distribution of levies payable by the members to the association and shall have

the right in the trustees' discretion to assign to particular members any greater or lesser share of the costs of the association as may be reasonable in the circumstances.

7. Rules

7.1 Any member and any member of his household or his guests, tenants, employees, contractors or contractor's sub-contractors or invitees are subject to compliance with the provisions of this constitution and the THOA Code of Conduct, Rules and Regulations.

7.2 Subject to any restriction imposed or direction given at a general meeting of the association referred to in clause 7.9, the trustees may from time to time make rules in regard to:

7.2.1 the standard and guidelines for the architectural design of all buildings and outbuildings, structures of any nature and all additions and alterations to any such buildings, outbuildings or structures erected or to be erected in the township area, and in particular to control the design of the exterior of such buildings, outbuildings or structures and the materials and colours used on such exterior to ensure an attractive, aesthetically pleasing character to all the buildings in the township area;

7.2.2 the siting of all buildings, outbuildings, structures of any nature and of any additions and alterations thereto;

7.2.3 the standards and guidelines for the design of all site works, buildings, structures, installations, projects and parking areas on the properties in the township area, including aerials, pergolas, sidewalks, swimming pools, tennis courts, awnings, jacuzzis, carports and paved pathways;

7.2.4 the preservation of the environment including the right to control and to require the cultivation of trees and other vegetation within the parameters set by National legislation pertaining to the environment and the design, placement of materials to be used and construction of fences and/or walls, on the boundaries of any unit, including the right to restrict the design of fences and/or walls around any unit;

- 7.2.5** the placing or fixing of ornamentation or embellishments upon the outside of buildings including the power to remove any such objects;
 - 7.2.6** the conduct of persons within the township area for the prevention of nuisance of any nature;
 - 7.2.7** the design, dimensions, location and number of advertising and other signs on any unit in the township area;
 - 7.2.8** the right to determine and control all security measures in the township area;
 - 7.2.9** the right to make rules, enforce and maintain the Authorised Road Closure and monitor access to and egress from the township area and to and from the units or any other public area within the township area; and
 - 7.2.10** the furtherance and promotion of any of the objects of the association and/or the better management of the affairs of the association and/or the advancement of the interests of members and/or residents in the township area.
- 7.3** For the enforcement of any of the rules made by the trustees in terms hereof, the trustees shall:
- 7.3.1** give notice to the member concerned requiring him to remedy such breach within such reasonable period as the trustees may determine; and / or
 - 7.3.2** take or cause to be taken, such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the association; and/or
 - 7.3.3** impose a system of fines or other penalties; and/or
 - 7.3.4** take such other action including a reference to arbitration in terms of clause 28, by proceedings in court or by application to the Ombud in terms of the relevant provisions of the CSOS, as they may deem fit and defend any action by any member or any other person in terms of arbitration or proceedings in court or the CSOS.
- 7.4** In the event of the trustees instituting any proceedings whether by arbitration, or in court or by application to the Ombud in terms of the relevant provisions of the CSOS against any member or other person within the township area for the enforcement of any of the rights of the association in terms hereof, if successful in its action, the

association shall be entitled to recover all legal costs so incurred from the member or other person concerned, calculated as between attorney and own client.

- 7.5** In the event of any breach of the rules of this constitution or the THOA Code of Conduct, Rules and Regulations by any member or member of his household or his guests, tenants, employees, contractors or contractor's sub-contractors or invitees, the trustees shall take or cause to be taken such steps against the member by issuing a notice of non-compliance or take steps against the person actually committing the breach as they in their discretion may deem fit.
- 7.6** In the event of any member disputing the fact that he has committed a breach of any of the rules, and after an unsuccessful attempt to resolve the dispute by negotiation, such dispute may be determined by arbitration in terms of clause 28 or by civil application or action in a court of competent jurisdiction and for this purpose, the member may appoint such attorneys and counsel as they deem fit. Alternatively, the member may seek resolution by application to the CSOS in terms of section 38 of the CSOS Act.
- 7.7** Any fine imposed upon any member shall be deemed to be a debt due by the member to the association and shall be recoverable by ordinary civil process.
- 7.8** Notwithstanding anything to the contrary herein contained, the trustees may, at their discretion and in the name of the association, enforce the provisions of the Constitution, Code of Conduct, Rules and Regulations and the associated Addenda by way of arbitration in terms of clause 28 or by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit. Alternatively, the trustees may seek to enforce these provisions by application to the Ombud in terms of the relevant provisions of the CSOS for dispute resolution in terms of section 38 of the CSOS Act.
- 7.9** The association may within the limits of the power vested in it at a general meeting, make rules it considers necessary or amend or repeal rules made by it or the trustees.

8. Trustees - including Rotation and Removal

- 8.1** A system for the orderly rotation of trustees shall be used to ensure continuity of the Board from one year to the next. In order to achieve this, the trustees shall be elected for a 2 (two) year term of office, with half of the Board automatically retiring every alternative year while the other half remain in office to ensure continuity into the following year.
- 8.2** There shall be a Board of Trustees of the association which shall consist of not less than 4 (four) and not more than 6 (six) elected members.
- 8.3** At the first meeting of elected trustees, when the trustees elect a chairman and vice chairman of the board, they shall also determine which trustees will resign at the end of the first year while the chairman and two other trustees remain in office for 2 (two) years. The retiring trustees may seek re-election at the AGM for the following 2 (two) years.
- 8.4** At the end of the second year, the chairman and the other original trustees will automatically resign, but they too may seek re-election for the following two years.
- 8.5** In addition to the retiring trustees, who may or may not wish to seek re-election, other members may also seek election as trustees.
- 8.6** Save as set out in clause 8.1, each trustee shall continue to hold office for 2 (two) years from the date of the trustee's appointment until the second AGM following the trustee's appointment, at which meeting the trustee shall be deemed to have retired from office but shall be eligible for re-election to the Board of Trustees at such meeting subject to the provisions contained in clause 8.7.
- 8.7** A trustee shall be deemed to have vacated his office in the event of:
- 8.7.1** being disqualified to act as a director in terms of the CA, or declared unfit to act as such, or in any other capacity in a legal entity by a competent court;

- 8.7.2 being removed from office as a director by the shareholders of such a company in terms of the provisions of the CA;
- 8.7.3 being in arrears with the payment of any levy, special levy or fine, which is due and payable to the association;
- 8.7.4 being in breach of or contravening the terms of this constitution and/or any rule or regulation made in terms of this constitution and remaining in breach thereof after being given due notice to comply with the constitution or rule or regulation;
- 8.7.5 being declared insolvent by a competent court;
- 8.7.6 applying for debt relief in terms of the NCA;
- 8.7.7 being generally unable or unwilling to perform the functions of a trustee effectively and to serve generally the best interests of the association;
- 8.7.8 illness, which materially affects the trustee's ability to serve the interests of the association.

8.8 Upon any vacancy occurring in the Board of Trustees prior to the next AGM, the vacancy in question may be filled by a person nominated by those remaining for the time being on the Board of Trustees.

9. Code of Conduct by Members of the Board of Trustees and Associated Committees

9.1 Members nominated and elected to the Board of Trustees at an AGM shall be required to sign an Oath of Office / Code of Conduct and shall be obliged to adhere to the Code of Conduct once elected to office. Failure by the nominated and elected trustee to sign such Oath of Office / Code of Conduct immediately disqualifies the trustee from taking up a position on the Board of Trustees.

9.2 The basic provisions of the Oath of Office / Code of Conduct are inherent in the following tenets:

9.2.1 Members of the Board of Trustees and any associated committees established by the association from time to time to serve its objectives have basic rights and basic duties which are inextricably linked to attaining the association's common objectives.

9.2.2 The common objectives include, but are not limited to, the right to take part in the processes of the association and Board of Trustees in the formulation and resolution of sound decisions to further the objectives of the association and the basic duty to comply with the decisions of the members of the association until such time as they are amended or changed by the Board of Trustees or the AGM, as the case may be, as well as the basic duty to comply with the principles of good governance such as accountability, responsibility, integrity, honesty, transparency, independence, fairness, discipline and selflessness.

10. Nomination and Election of Trustees

10.1 At least 21 (twenty one) days prior to an AGM, a proposer and seconder, both of whom must be members in good financial standing, shall complete and sign a nomination form nominating a member in good financial standing, or an individual who need not be a member of the association, providing such individual is not remunerated to act as a trustee on the THOA Board of Trustees. Should a nominee be found to have received, and/or is receiving and/or will receive remuneration, the nominee will be disqualified from the nomination process, and/or if elected, removed from the position as trustee.

10.2 The nomination form shall be properly completed, dated and signed by a proposer and seconder and be accompanied by a recent photograph of the nominated member with a brief résumé and motivation.

10.3 The nomination forms shall be handed to the secretary of the Board of Trustees within the time period referred to in clause 10.1.

10.4 On receipt of all the nomination forms, the secretary of the Board of Trustees shall produce a single official document providing details of all members nominated for

election as trustees and such document shall be distributed to all members at least 15 (fifteen) days prior to the scheduled AGM.

10.5 The official document prepared by the Estate Office shall contain sufficient details of all the nominated members in order to ensure that members of the association are able to make an informed decision on their choice of trustees.

10.6 Nominated members may use the official document to canvas proxies from members.

11. Chairman and Vice-Chairman

11.1 The trustees shall at the first trustees' meeting after an AGM, appoint from their number a chairman, vice-chairman and secretary, who shall hold their respective offices until the next AGM, provided that these offices shall forthwith be vacated by the persons holding such office should they cease to be a trustee for any reason whatsoever.

11.2 A trustee may not hold more than 1 (one) office at any given time during the trustee's term of office and in the event of any vacancy occurring in either of the aforesaid offices at any time, the Board of Trustees shall immediately fill the position from their ranks.

11.3 Except as otherwise provided, the chairman of the Board of Trustees shall preside at all meetings of the trustees and at AGMs and other meetings and, should he not be present within 5 (five) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the vice-chairman shall act in his stead, or failing the vice-chairman, a chairman appointed by the meeting.

12. Trustees' Expenses

12.1 Trustees shall be entitled to recover all authorised reasonable and bona fide expenses incurred by them in the performance of their duties as trustees. Such expenses must be approved by the chairman and one other trustee. Save as aforesaid, trustees shall not be entitled to any remuneration for the performance of their duties in terms hereof.

13. Powers, Duties and Functions of Trustees

13.1 Subject to the express provisions of this constitution, the trustees shall manage and control the business and affairs of the association and shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of the managing agent or any other persons employed by the association, the trustees may exercise all powers of the association and do all such acts on behalf of the association as may be exercised and done by the association and which are, by the applicable Acts or by this constitution, required to be exercised or done by the association as authorized by an AGM, EGM or a general meeting.

13.2 Save as specifically provided for in this constitution, the trustees shall at all times have the right to engage, on behalf of the association, the services of accountants, auditors, attorneys, advocates, architects, engineers, a managing agent and any other professional firms or persons or other employees whatsoever for any reasons deemed necessary by the trustees and on such terms as the trustees shall decide, in accordance with the relevant procedures and subject to the financial restraints contained in the budget referred to in clause 6.3.

13.3 The trustees shall further have power:

13.3.1 to require the submission for approval of such plans, drawing, specifications and other information as they may deem necessary to ensure compliance by members with this constitution and the rules made in terms hereof;

- 13.3.2** to require that any works being constructed within the township area shall be supervised to ensure that the provisions of this constitution and the rules are complied with and that all work is performed in a proper and workmanlike manner;
- 13.3.3** to take measures to ensure that members who do not comply with the aesthetic standards are held accountable;
- 13.3.4** to determine the parking areas to be used by members and their employees, agents and invitees;
- 13.3.5** to determine the access to the township area and to the units in the township area; and
- 13.3.6** to determine the security facilities to be installed and the operation thereof for the protection of the township area;
- 13.3.7** to make rules as provided for in clause 7.

- 13.4** The board of trustees shall have the right to co-opt onto the board any person or persons chosen by it. A co-opted trustee need not necessarily be a member of the association. A co-opted trustee shall hold office until the next AGM following his co-option.

- 13.5** The trustees are entitled to appoint committees consisting of such number of their members and other persons, as they may deem fit and to delegate to such committees such of their functions, powers and duties considered necessary. Such appointments and delegations may be revoked at any time.

- 13.6** The trustees may appoint an architect on such terms and conditions as they may deem appropriate. Such architect need not be a member of the association.

- 13.7** Plans for buildings, outbuildings, structures, walls, fences, additions, alterations and signage shall be submitted in terms of clause 27.9, and shall first be referred to the association for evaluation. In addition, such plans shall also be submitted to the subordinate home owners' associations for comment (e.g. The Cottages, Oaktree Village, The Villas).

13.8 The Trustees may not approve any plan unless such a plan has been seen and noted by the neighbours and, if applicable, approved by the architect appointed in terms of clause 13.6 and the relevant subordinate home owners' association in the case of The Cottages, The Villas and Oaktree Village. Such approval shall not be unreasonably withheld.

13.9 The trustees shall reply to applications, requests, etc. within the specified time period contained in the rules and regulations.

14. Proceedings of Trustees

14.1 The trustees shall meet at least once per month for the despatch of business and otherwise regulate their meetings as they think fit, subject to the provisions of this constitution.

14.2 For the holding of any meetings, at least three trustees shall be present personally, which will constitute a quorum. Any resolution of the Board of Trustees shall be carried on a simple majority of all votes cast and in the event of a split decision, the chairman or acting chairman as the case may be, will have a casting vote. Any resolution passed by the Board of Trustees shall be valid and binding on any succeeding Boards of Trustees unless changed and/or amended following due process.

14.3 The trustees shall cause minutes to be kept of every trustee's meeting and sub-committee meetings, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman. All minutes of trustee meetings shall, after certification, be placed in a trustee's minute book to be kept in accordance 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 any trustee, the auditors, the members and the Managing Agent.

14.4 Save as provided for in this constitution, the proceedings of any trustees' meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.

14.5 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 board of trustees.

15. Governance Committee

15.1 The purpose of the governance committee is to monitor compliance with the principles and practice of good governance in the management of the estate.

15.2 The governance committee shall comprise of up to three members who are not members of the Board of Trustees but who shall be appointed by chairman of the Board of Trustees and the appointment will be ratified at the AGM.

15.3 The committee shall operate as an independent body reporting directly to the chairman.

15.4 All governance committee recommendations, including changes and additions to governance documents, shall be submitted to the Board of Trustees for approval before implementation and, when necessary, a combined meeting of trustees and the governance committee shall be called to debate the proposed change/addition. In the absence of a Governance Committee, the responsibility for these document management and control tasks will be assigned to one of the trustees by the Chairman.

15.5 A member of the governance committee shall attend the board of trustee's meeting at least once every three months.

16. General Meetings of the Association

- 16.1** The association shall within 3½ (three and a half) months, or such extended period as allowed by CSOS after the end of each financial year, hold an AGM in addition to any other general meetings during that year, and shall specify the meeting as such in the notices in terms of clause 17.
- 16.2** Such AGM shall be held at such time and place as the trustees shall decide from time to time.
- 16.3** All general meetings other than an AGM or EGM shall be referred to as a general meeting.
- 16.4** The trustees shall, whenever they think fit, convene an extraordinary general meeting, and an extraordinary general meeting may also be convened at the request of not less than 20% (twenty per centum) of the members.
- 16.5** A general meeting may also be called at any time by members of the association for the discussion of general matters of interest. Decisions taken at a general meeting shall have no legal standing, but may be referred to an AGM, EGM or the Board of Trustees for consideration and approval.

17. Notice of AGM and EGM Meetings

- 17.1** No AGM or EGM of the association shall be held unless a notice has been posted to all members at least 30 (thirty) days prior to the date of the meeting. The notice shall specify the date, time and venue of the meeting, as well as an agenda, and, if applicable, the text of any proposed special resolution. Under special circumstances, an EGM of the association shall be deemed to have been duly called, notwithstanding that it is called by shorter notice than that specified in this constitution, .

17.2 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 such meeting.

18. Quorum for AGM and EGM

18.1 No business shall be transacted at any AGM or EGM unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of an AGM and EGM shall be 10% (ten per centum) of votes on behalf of members, who are eligible to vote, in number from all members of the association entitled to vote at that time. Proxies will not be considered in the determination of a quorum.

18.2 If within half an hour from the time appointed for the holding of an AGM or EGM a quorum is not present, the meeting 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 indicate. If at the 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.

19. Agenda at Meetings

19.1 In addition to any other matters required by this constitution to be dealt with at an AGM, the following matters shall be dealt with at every AGM:

19.1.1 the consideration of the chairman's report;

19.1.2 the election of trustees;

19.1.3 the consideration of any other matters as set out on the agenda including any resolutions proposed for adoption by such meeting, and the voting required for such resolutions;

- 19.1.4 the consideration of the latest management accounts of the association for the financial year, which shall be attached to the agenda; and
 - 19.1.5 the consideration of the report and audited accounts of the previous financial year, shall be attached to the agenda.
 - 19.1.6 the consideration of amendments to the constitution
- 19.2 No business shall be dealt with at any AGM unless written notice has been given to the trustees not less than 48 (forty eight) hours before such meeting by the person proposing to raise such business of his intention to that effect, provided however, that the chairman may on ordinary resolution of the meeting relax this condition.

20. Adjournment of an AGM or EGM

- 20.1 The chairman may, with the consent of any AGM or EGM at which a quorum is present and shall, if so directed by the meeting, adjourn a meeting from time to time and place to place.
- 20.2 No business shall be transacted at any adjourned AGM or EGM other than business which could have been transacted at the meeting from which the adjournment took place. The quorum for an adjourned meeting is as stated in clause 18.1.

21. Proxies

- 21.1 A member may be represented at an AGM or EGM by a proxy, who need not be a member of the association. The instrument appointing a proxy shall be in writing signed and authorised by the member concerned or his agent, on the approved association standard proxy form provided by the Board of Trustees from the Estate Office, provided that, where land, a dwelling or unit is owned by more than one person, a majority of those persons shall sign the instrument appointing a proxy on their behalf.

21.2 The instrument appointing a proxy and the power of attorney or any other authority under which it is signed shall be tabled at the meeting at which the person named in the instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.

21.3 A vote given in accordance with the terms of a 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 had been received by the trustees at any time before a vote is taken in respect of which the proxy exercises such vote.

22. Voting

The following rules shall apply in respect of voting at an AGM or EGM:

22.1 Every member, in person or by proxy and entitled to vote, shall have 1 (one) vote for land, a dwelling or unit registered in his name; but if land, a dwelling or unit is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.

22.2 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, which shall be due and payable to the association in respect of, or arising out of his membership, shall be entitled to speak at or to vote on any question, either personally or by proxy, at any AGM or EGM.

22.3 At any AGM or EGM a resolution put to the vote shall be decided on the basis of a show of hands unless, a formal count or a ballot is demanded by the chairman or members. A declaration shall be made by the chairman that a resolution has been carried or carried unanimously or by a particular majority or rejected. An entry to that effect shall be recorded in the book containing the minutes of the proceedings of the association and shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 22.4** If a formal count or ballot is duly demanded, scrutineers shall be elected to determine the result. In the case of the votes being equal, the chairman of the meeting at which the show of hands takes place, or at which the formal count or ballot is demanded, shall be entitled to a casting vote but not be compelled to exercise such vote.
- 22.5** A formal count or ballot demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A formal count or ballot demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a formal count or ballot shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the formal count or ballot has been demanded.
- 22.6** Every resolution and every amended resolution proposed for adoption by an AGM or EGM shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 22.7** An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.

23. Accounts

- 23.1** The accounts and books of the association shall be open to inspection by members at all reasonable times during business hours at the association's office, or alternatively on the association's website subject to authorisation.
- 23.2** Once in each financial year the accounts of the association shall be examined and the correctness thereof ascertained by independent external auditors. The duties of the auditors shall be as set out in the standard accounting practices that apply at that point in time.

24. Service of Notices

24.1 Owners may choose the address of the property owned by him as the address where he chooses to receive all notices and court process and any notices (by registered post, deemed to be 3 days after posting), or court process, properly served, will be deemed to be proper delivery of either notice or court process. Any member may change his domicile address on 14 days notice by registered post (and confirmed by fax) to the association. Any notice sent by post shall be deemed to have been received on the 7th day after posting and on the day received in the event of delivery by fax or hand.

25. Indemnity

25.1 Every trustee, servant, agent and employee of the association and any managing agent, his employees, nominees or invitees, shall be indemnified by the association against 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 their respective duties, including in the case of a trustee, his duties as chairman or vice chairman. Without detracting from the generality of the foregoing, the association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed done or written by him in connection with the discharge of his duties.

25.2 Any person wishing to enter the estate and/or make use of any of the facilities may only do so at their own risk. The association and the registered owners, their agents, employees and appointees shall not be liable for injury, loss or damage to any person or property arising from any cause whatsoever, including without limitation thereto, the negligence of any of the above persons or the intentional acts of any agent, employees, contractors, sub-contractors, agents or representatives. Without in any manner derogating from the above, all entrants to the estate use the roads thereon,

whether public or private, at their own risk. Whilst every effort is made to secure and monitor the estate, the association and the registered owners, members, agents, employees, contractors, sub-contractors or representatives shall not be deemed to have warranted the safety of any person or property (whether moveable or immovable) on the estate.

- 25.3** Any person entering the estate shall be bound by the terms and conditions of the association's constitution, Code of Conduct and Rules and Regulations, and each member shall ensure that any employee, friend, family member, invitees, contractor or sub-contractor is made aware of the constitution, Code of Conduct, Rules and Regulations and shall ensure compliance therewith.

26. Business Activities

- 26.1** The township area is first and foremost a residential estate and in the interests of protecting its residents from the nuisance or aggravation which may accompany any business activity, the following shall apply:

26.1.1 Should any member or family member wish to operate a business or allow someone else to operate a business from their residential or other premises situated within the township area, then such member shall immediately apply to the Board of Trustees for permission to do so.

26.1.2 The Board of Trustees shall have discretion regarding the accreditation or approval of such business and their decision shall be final in this regard irrespective of whether prior consent is granted by any lawful authority. In this connection the rental of dwellings for residential purposes shall not be construed as a business requiring accreditation.

26.1.3 Such permission shall not be unreasonably withheld, provided that the member shall comply with all the requirements that may be applicable in terms of this constitution, the association's Code of Conduct, Rules and Regulations and any other legislation that may be applicable relating to the operation of such business.

26.2 No person may conduct any business, professional or commercial activity from, or on any property within the Estate, which is contrary to any rules, regulations and by-laws of the applicable Town Planning Scheme. Should any written complaints be received by the Trustees that such business, profession or commercial activity, hobby or other activity, then any instructions, directions or ruling determined by the Board of Trustees in this regard shall be complied with.

26.3 The accreditation and/or approval of any business shall be subject to the requirements of Addendum 8: Business Rules and Accreditation, and shall not be automatically transferable to any other party in the event of the sale of such business and shall be subject to the written approval of the Board of Trustees being obtained.

27. General

27.1 Whenever the trustees consider that the appearance of any land, dwelling or unit is unsightly or impacts negatively on the amenities of or the use and enjoyment of other members' properties, or in relation to the surrounding area or the township area generally, or is in violation of this constitution, rules, regulations or any other legislation regulating land use, hygiene, etc., promulgated by the Local Authority or National or Provincial Government from time to time, the trustees may serve notice on such member or members to take such steps as may be specified in the notice to eliminate such nuisance or transgression in order to comply with the abovementioned, rules, regulations and legislation. In the event of the member or members failing to comply within a reasonable time, as specified in such notice, the trustees may enter upon the property concerned and take such steps as may be necessary, and recover the cost thereof from the member or members concerned, which costs shall be deemed to be a debt owing to the association.

27.3 In the event of any member or any guests, visitors or family of the member or any servant, agent or independent contractor of any member causing any damage to any landscape or other work done in the road reserve or to the township area fence or

security equipment facilities, such damage shall be repaired by the association and the member concerned shall be liable for the costs thereof.

27.4 The member shall at all times observe all applicable laws and by-laws, regulations, the provisions of the town planning scheme and any other provisions in force relating to the land, dwelling or unit, or the use thereof. In the event of any member failing to do so, such failure shall be deemed to be a breach of this constitution and the trustees shall be entitled to take such action as they may be empowered to remedy such breach or to prevent the continuation thereof. In the event of any town planning scheme laying down any conditions in relation to the matters dealt with herein that are more onerous than the conditions herein laid down, the provisions of such town planning scheme shall prevail.

27.5 A member shall not let or otherwise part with occupation of his land, a dwelling or unit, whether temporarily or otherwise, unless he has agreed with the proposed occupier of such land, a dwelling or unit that such occupier shall be bound by all the terms and conditions of this constitution and the association's Code of Conduct, Rules and Regulations.

27.6 Land rights usage is subject to the following conditions:

27.6.1 No member may apply to the relevant authority to alter and/or amend and/or change the land use rights of any land, dwelling or unit within the township area, save with the prior written consent of the Board of Trustees, who in their discretion may either approve or not approve such application regardless of the decision of any relevant authority or body.

27.6.2 A member may not subdivide or consolidate any land situated within the township area, nor erect a second dwelling unit on land within the township area without the prior written consent of the Board of Trustees, who shall in their discretion either approve or not approve such application regardless of whether any lawful authority or body grants permission for such subdivision or consolidation or second dwelling.

- 27.7** Each member shall comply fully with all security measures introduced by the trustees and shall ensure that all family members, friends, invitees, employees, contractors, sub-contractors, agents and/or representatives are made aware of these rules and that they abide by these rules at all times.
- 27.8** The association requires all members to maintain the sidewalk adjacent to their land, dwelling or unit. In the event of such member failing to do so to the satisfaction of the association, the association shall be entitled to issue a non-compliance notice to the member to take the necessary action to remove, clear up or clean any area that has been overgrown, damaged, fouled, or used as a dumping site within a period of 14 (fourteen) working days from date of such notice. Failure to comply with such a notice shall result in the association remedying the situation and the costs thereof shall be charged against the member's levy account.
- 27.9** Subject to clause 13.7, no member shall commence or allow any other person to commence with the construction of any building or structure within the township area, or any additions or alterations thereto unless he has submitted to the trustees for examination and approval of such plans for such building, structure, alteration or addition as are required in terms of the by-laws of the local authority having jurisdiction over the township area, and any such additional plan or information relating to the proposed building, structure, alterations or additions as the trustees may require. The trustees shall have the power:
- 27.9.1** to charge a fee for the examination and approval or refusal of building plans;
 - 27.9.2** in approving any plan, to lay down such reasonable condition as they may deem fit; and
 - 27.9.3** to refuse approval of the plans in the event of the trustees in their sole discretion determining that such plans or the development proposals therein contained are not in accordance with this constitution.
 - 27.9.4** charge a penalty as set out in Section 3 of Addendum 13 Schedule of Fees, Fines and Penalties for non-compliance with clause 27.9.

- 27.10** Notwithstanding the fact that the board of trustees may have approved such plans for such building, structure, alteration or addition, the trustees shall insist that all such plans are also submitted to the relevant local authority for approval, prior to the commencement of building operations, as is required in terms of the by-laws of the local authority. The trustees shall have the power to:
- 27.10.1** demand proof that the local authority has approved such plans;
 - 27.10.2** issue a laminated Notice of Approval, which shall be permanently displayed on view at the building site until the completion of building operations;
 - 27.10.3** report the non-compliance of clause 27.10 to the local authority and impose a penalty as set out in Section 3 of Addendum 13 Schedule of Fees, Fines and Penalties until such approval has been received from the local authority.
 - 27.10.4** demand that the member and/or contractors or sub-contractors comply with the association's Code of Conduct, Rules and Regulations.
- 27.11** No member shall be entitled to demand the transfer of its land, a dwelling or unit until the Board of Trustees, under the hand of one of its members, has certified that the member in question has at date of transfer fulfilled all his financial obligations to the association. No unit or any interest therein shall be alienated without the consent of the association. Such consent shall not be withheld unless:
- 27.11.1** such member is indebted to the association in any way in respect of levies or other amounts which the association may in terms of this constitution be entitled to claim from him;
 - 27.11.2** the proposed transferee has not agreed to become a member of the association; and
 - 27.11.3** such member remains in breach of any of the provisions of the constitution or any rules after written notice from the trustees requiring him to remedy such breach.
- 27.12** The trustees, in issuing the certificate referred to in clause 27.11, shall be entitled to charge a fee to be determined by the trustees from time to time.

- 27.13** The association may enter into agreements with members for the provision of amenities and services to the members and to levy a charge in respect of the provision thereof.
- 27.14** In the event of the association electing to provide a security service and/or other services for members in the township area, all members shall be obliged to:
- 27.14.1** permit the installation and/or servicing of any equipment on the land, dwelling or unit or in any building as may be determined by the association from time to time;
 - 27.14.2** pay the charges determined by the association for such services; and
 - 27.14.3** abide by such terms and conditions as may be laid down by the association from time to time in respect of such equipment and services.
- 27.15** Many buildings, dwellings or units situated within the township area are 60 (sixty) years or older and may therefore in terms of the provisions of the HA not be demolished, renovated or altered in any way without first obtaining the necessary approvals of the committee appointed in terms of the HA.
- 27.16** Common land owned by the THOA shall not be sold for any reason unless such sale is motivated prior to and approved at an AGM or EGM. Such approval shall be deemed passed by a vote of 75% of the members present, or a Quorum, as defined.

28. Arbitration

- 28.1** Any breach by a member of any provision of this constitution or of the association's Code of Conduct, Rules and Regulations and any dispute in that connection may, at the discretion of the trustees, after obtaining legal advice, be referred to arbitration in accordance with clause 7.5.
- 28.2** Arbitration, in terms hereof, shall be governed by the Arbitration Act, No. 42 of 1965, except to the extent set out herein.

- 28.3** If either the trustees or a member requires any matter in terms hereof to be referred to arbitration, that party shall notify the other party in writing identifying the claim or issue, and if the other party wishes to counterclaim that party shall in turn, within 7 days, notify the first party in writing identifying the counterclaim, failing which the counterclaim may not be made in the same proceedings except with the consent of the other party. The notices shall furnish sufficient details to enable the recipient to comply with the obligations set out in clause 28.6.3 to produce, at the preliminary conference, all documents relating to the issue or claim or counterclaim, as the case may be.
- 28.4** The arbitration proceedings shall be deemed to have commenced as soon as the notice requiring the claim to be referred to arbitration has been given.
- 28.5** If either party intends to be legally represented in the arbitration that party shall immediately notify the other party in writing of that intention.
- 28.6** The arbitration process requires that 14 days notice be given in writing to the parties after which, the arbitrator shall, as soon as possible, convene and preside over a preliminary conference with such parties at which:
- 28.6.1** the parties shall endeavour to limit the issues in dispute by defining as narrowly as practicable precisely what is in dispute;
 - 28.6.2** a statement of the issues shall be drawn up by the parties, provided that if they are unable to agree on the wording of the statement the arbitrator's decision shall be final and binding;
 - 28.6.3** each party shall produce and confirm orally on oath all documents in that party's possession or under that party's control relating to the dispute, other than privileged documents. Details of the documents in respect of which privilege is claimed and the grounds for claiming privilege shall be given and similarly confirmed on oath;
 - 28.6.4** the date and venue of and arrangements for recording the arbitration shall be agreed or, failing agreement, shall be determined by the arbitrator provided that the venue shall be within the area of the local authority concerned; and
 - 28.6.5** consideration shall be given to whether any further procedural steps are desirable in the arbitration proceedings, provided that if it will prolong the arbitration, further steps

shall not be resorted to unless reasonably essential. The arbitrator's decision in this respect shall be final and binding;

- 28.7** A party may at any time on 10 (ten) days written notice require the other party to furnish photocopies of any documents, other than privileged documents, in the possession or under control of that party relating to the dispute or to state on oath that that party does not possess or control the documents, in which event that party shall state on oath its whereabouts or that that party does not know its whereabouts.
- 28.8** The arbitrator shall be a practising advocate of not less than 10 (ten) years standing, or a retired judge, or an attorney of not less than 10 (ten) years standing to be appointed by agreement between the parties, failing which, by the Chairman for the time being of the Johannesburg Bar Council.
- 28.9** The arbitrator shall have the following powers and duties:
- 28.9.1** he shall have full and unrestricted powers in relation to the arbitration proceedings and the making of any award in the proceedings, including, without limitation, the powers set out in the Arbitration Act and the power to alter any time period (either before or after expiry of the period), add to or make any deletion from the procedure to be followed in the arbitration and to make any award in the absence of a party who fails to take any step required of that party (including the failure to pay any costs payable by that party), provided that;
- 28.9.2** he shall at all times have regard to the intention of the parties that disputes should be resolved in a summary manner with a minimum of delay; and
- 28.9.3** he shall not make a final award in the absence of a party without endeavouring to first satisfy himself that that party's omission is not due to excusable inadvertence or other justified cause, but he need not hear evidence before making his award;
- 28.9.4** he need not strictly observe the rules of evidence and may admit, and rely on, such evidence as he may decide;
- 28.9.5** he may take expert opinion on any matter;
- 28.9.6** he may have regard to his personal knowledge of the facts, and any expert knowledge he may have, relating to the issues in dispute;

- 28.9.7** he may investigate any matter, or cause it to be investigated, and for that purpose shall be entitled to access to the parties' premises and any other relevant premises to inspect any article or to examine, and take copies of or extracts from, the accounting and other records of the parties; alternatively, he may require that the articles or records be delivered to any place reasonably required by him for this purpose; provided that he shall afford the parties an opportunity of challenging the opinion taken by him or the knowledge he claims to have or the results of the investigation; and
- 28.9.8** he may make such award or awards, whether interim, provisional or final, as he may consider appropriate, including without limitation ex-parte awards, declaratory orders, interdicts and awards for specific performance, restitution, damages, penalties, interest and security for costs or restitution.
- 28.10** The arbitrator shall give reasons for his award, if so requested by any of the parties.
- 28.11** The award of costs of the arbitration shall be at the discretion of the arbitrator, provided that:
- 28.11.1** the arbitrator may require advance deposit or security to his satisfaction to secure payment of his fees;
- 28.11.2** pending the award of costs, the parties shall in equal shares pay the arbitrators fees and the costs of providing a venue for and the recording of the arbitration;
- 28.11.3** if a party fails to pay that party's half share of the costs, the other party may make payment and immediately recover the amount paid from the first party or the arbitrator may make his award in the absence of that party as set out in clause 27.9;
- 28.11.4** the parties intend that the substantially successful party should be awarded a full indemnity for all the costs reasonably incurred by that party and not merely the costs on the high court or any other scale;
- 28.11.5** if a party unnecessarily puts the other party to the proof of any fact, or fails to disclose or produce any document required to be disclosed or produced, that portion of the costs which relates to the proof of that fact, or which arises from the failure to disclose or produce, should be awarded to the other party whether or not the other party is substantially successful in the arbitration;

- 28.11.6** if the substantially successful party unnecessarily delays or prolongs the arbitration, that party should be penalised by not being awarded part or all of the costs; and
- 28.11.7** in the event of a dispute regarding the amount of any costs the arbitrator shall determine the amount and his decision shall be final and binding.

29. Amendment of this constitution

This constitution may only be amended by way of resolution passed at an AGM or EGM with a majority vote of not less than 75% (seventy five per centum) of the votes cast.

30. Merger

30.1 By resolution of members at an AGM or EGM, the association may merge with any other body with similar objects, by resolution of a members' meeting, provided that the constitution of the merged entity contains provisions similar to clauses in this Constitution.

30.2 In the event of a merger, the association's net assets after discharge of its liabilities, together with its rights and obligations under this constitution and under the conditions of title of land, dwellings or units in the township area, will vest in the merged entity.

31. Dissolution

31.1 The association may dissolve itself by resolution passed by a majority of not less than 75% (seventy five per centum) of the votes cast at an AGM or EGM.

31.2 In the event of dissolution:

31.2.1 the trustees will act as liquidators; and

31.2.2 the association's net assets after discharge of its liabilities will be applied to repay the most recent levies paid by members and any balance after all levies have been repaid will be distributed in the liquidator's discretion to one or more public charities.

Signed by the by the Trustees on this theday of

Chairman

Vice Chairman

Trustee

Trustee

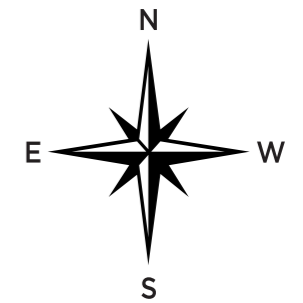
Trustee

Trustee



admin@thoa.co.za
011 987 6543
thoa.co.za

- playgrounds
- dams
- heritage spots
- ERF's
- bridge
- green area / park
- road reserve
- speed bumps
- contractors gate



300

282

249

282/1

186/1

186

187

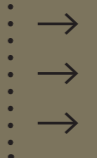
189

188

302

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301



LEASH-FREE PET AREA