

**CONSTITUTION OF THE NUM-NUM
HOME OWNERS' ASSOCIATION**

SEPTEMBER 2021

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1. INTERPRETATION

In this constitution, unless the context indicates to the contrary: -

"The Association" shall mean The Home Owners' Association established in terms of 29(1) of the Ordinance;

"The Ordinance" shall mean the Mossel Bay Municipality: By-Law on Municipal Land Use Planning, 2015 (Section 29). (Amended April 2021).

"The Constitution" shall mean this Constitution and Annexures;

"The Office" shall mean c/o Status Mark, P.O. Box 567, Mossel Bay, 6500;

"The Month" shall mean calendar month;

"Year" shall mean calendar year;

"In Writing" shall mean written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

"The Erf" shall mean one of the Erven which was subdivided from the Mother Erf according to the General Plan, including renovations on it and which is registered or is able to be registered by the Deeds Office, but does not include the Private Area;

"The Private Area" shall mean portions in between Erven which will form part of the Mother Erf and which does not form an Erf;

"The Member" shall mean an owner of an Erf whom in terms of Section 29 of the Ordinance shall automatically become a member of the Association through registration of the Erf in his/her name;

"The Mother Erf" shall mean Erf 18676;

"The Management Committee" shall mean the Management Committee of the Association;

"The Act" shall mean the Companies Act No. 71 of 2008, as amended from time to time;

"A Trustee" shall mean a Trustee being one of the Members of the Management Committee;

"Chairman" shall mean the Chairman of the Management Committee;

"Vice-Chairman" shall mean the Vice-Chairman of the Management Committee;

"Bookkeeper" shall mean a reputable Bookkeeper, appointed by the Management Committee;

"Developer" shall mean Formador Dertien (Pty) Limited;

"The Development" shall mean the Erven, streets and open areas on the Mother Erf laid out in terms of the General Plan;

"Registered Owner" shall mean the Registered Owner of an Erf which is subdivided from the Mother Erf;

"The Council" shall mean the Municipality of Mossel Bay;

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

"Ordinary Resolution" shall mean a resolution adopted at a General Meeting or special general meeting, with the support of more than 50% of the voting rights exercised on the resolution. This resolution will be used for any proposed resolution not effecting any amendments or repeals of this Constitution and Annexures;

"Special Resolution" shall mean a resolution adopted at a General Meeting or special general meeting, with the support of more than 75% of the voting rights of all Members exercised on the resolution. This resolution will only be used to propose any amendments or repeals of this Constitution and Annexures;

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 gender.

Subject as aforesaid, any words or expressions defined in the Act or any statutory modifications thereof in force at the date on which the Constitution becomes binding on the associations shall, if not inconsistent with the subject or context, bear the same meaning in the Constitution.

2. CONSENT

The provisions hereof shall not be added to, amended or repealed without giving written notice to, and obtaining approval of such amendment or repeal from the Municipality of Mossel Bay.

3. PURPOSE AND OBJECT OF THE ASSOCIATION

3.1 The Association shall have as their main objectives:

3.1.1 the Environmental Management Plan;

3.1.2 the promotion, advancement and protection of the Members and the communal interests and the control over and maintenance of services and amenities arising from the subdivision of Erf.

3.2 The Association shall at all times promote the unique and special character of the Development and maintain the Development in such a way that the members enjoy the majority, joint benefit there from and to improve future values.

3.3 The Association will promote the aesthetic, natural and architectural code as set by the Developer and maintain these principals to achieve a harmonious Development.

3.4 The Association will monitor that the Architectural Development Code as set out in Annexure B are adhered to at all times.

3.5 The Association shall at all times endeavour to promote, advance and protect the home owners and shall be responsible for:

- 3.5.1 the maintenance and repairs to the Private Area;
 - 3.5.2 the maintenance, servicing and repairs to the storm water pipes and drains, internal streets, which includes streetlights, sewage reticulation system and other services as needed from time to time;
 - 3.5.3 all responsibilities regarding aforementioned and/or as stated by any Act, ordinance or regulation;
 - 3.5.4 furthering the purpose and object of the Association.
- 3.6 The sole object of the Association must be to manage the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable.
- 3.7 The Association is not permitted to distribute its funds to any other than to a similar association of persons.
- 3.8 On dissolution of the Association the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(i)(cc) of the Act.

4. ALIENATION OF ERVEN

The Members may not alienate or transfer the Erf without the prior written consent of the Association, which consent shall not be unreasonably withheld.

The condition created above will be made a condition in the title deed of each Erf.

5. MANAGEMENT COMMITTEE

- 5.1 There shall be a Management Committee of the Association, which shall consist of not less than 4 (FOUR) members.
- 5.2 A Management Committee Member shall be an individual, but need not himself be a member of the Association. A Management Committee Member, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of the Constitution.
- 5.3 For as long as the Developer is a member of the Association, the Developer will be represented by one representative of his choice on the Management Committee.
- 5.4 Save as set forth in paragraph 5.5 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each Trustee shall be deemed to have retired from office as such, but will be eligible for re-election to the Management Committee at such meeting.
- 5.5 A Trustee shall be deemed to have vacated his office as such upon: -

- 5.5.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 5.5.2 his making any arrangement or composition with his creditors;
- 5.5.3 his conviction for any offence involving dishonesty;
- 5.5.4 his becoming of unsound mind or being found to be a lunatic;
- 5.5.5 his resigning from such office in writing delivered to the secretary;
- 5.5.6 his death;
- 5.5.7 his being removed from office as provided in Section 71 of the Act.

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

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

6. CHAIRMAN

- 6.1 The members of the Management Committee shall appoint from amongst themselves, a Chairman and Vice-Chairman.
- 6.2 Save as otherwise provided in the Constitution, the Chairman shall preside at all meetings of the Management Committee, and all general meetings of Members and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Management Committee or of Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 6.3 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Management Committee.
- 6.4 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be. The Chairman and Secretary/Treasurer will be paid an amount per month as decided by the Trustees at the first meeting following the AGM.

7. MANAGEMENT BY THE MANAGEMENT COMMITTEE

- 7.1 Subject to the express provisions of the Constitution, the Management Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and save as may be expressly provided in the Constitution, may exercise all such powers of the Association, and do all

such acts on behalf of the Association, as may be exercised and done by the Association, and as are not by the Act or by the Constitution required to be exercised or done by the Association in the general meeting, subject nevertheless to any provisions of the Act, and to such regulations as may be prescribed by the Association in general meetings from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Management Committee which would have been valid in such regulation had not been made.

- 7.2 The Management Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 7.3 The Management Committee shall have the right to co-opt onto the Management Committee any person or persons chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 7.4 The Management Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of any stipulation of the Constitution, in such reasonable manner, as it shall decide from time to time.
- 7.5 The Management Committee may make codes, rules, regulations and by-laws, not inconsistent with this Constitution and Annexures, or any codes, regulations or by-laws prescribed in the Association in general meeting: -
 - 7.5.1 as to disputes generally;
 - 7.5.2 for the furtherance and promotion of any of the objects of the Association;
 - 7.5.3 for the better management of the affairs of the Association;
 - 7.5.4 for the advancement of the interests of Members;
 - 7.5.5 for the conduct of Management Committee meetings and general meetings; and
 - 7.5.6 to assist it in administering and governing its activities generallyand shall be entitled to cancel, vary or modify any of the same from time to time.

8. PROCEEDINGS OF THE MANAGEMENT COMMITTEE

- 8.1 The Management Committee may meet to discuss the business of the Association, adjourn any meeting or otherwise regulate any meeting as they think fit, subject to any provisions of the Constitution.
- 8.2 Meetings of the Management Committee shall be held at least once every quarter provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Management Committee need to be held for that quarter.
- 8.3 The quorum necessary for the holding of any meeting of the Management Committee shall be 2 (TWO) Trustees where there are 4 (FOUR) Trustees and 3 (THREE) Trustees where there are more than 4 (FOUR) Trustees.

- 8.4 The Chairman shall preside as such at all meetings of the Management Committee, providing that, should at any meeting of the Management Committee the Chairman not be present within 5 (FIVE) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 5 (FIVE) minutes of the time appointed for the holding of such meeting, those present of the 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.
- 8.5 A Trustee shall, in the absence of a management agent representative tasked as such, take minutes of every Management Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting.
- 8.6 All competent resolutions recorded in the minutes of any Management Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded. However, no resolution or supposed resolution of the Management Committee shall be of any force or effect, or be binding upon the Members or any of the Trustees, unless such resolution is falling within the powers of the Management Committee.
- 8.7 Save as otherwise provided in the Constitution, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 8.8 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 Management Committee duly convened.

9. MANAGING AGENT

The Trustees shall be, with the consent of the Members in terms of a resolution at the Annual General Meeting, entitled to appoint a managing agent, should the need arise therefor.

10. MEMBERSHIP

Only registered owners of the Erven shall be entitled to membership of the Association provided further that:

- 10.1 Any one person who is entitled to obtain a title deed to any Erf shall be deemed to be the registered owner thereof.
- 10.2 Where two or more persons own one Erf, the registered owners of the Erf shall be deemed jointly and severally to be one Member of the Association.
- 10.3 On transfer of a Member's registered ownership of an Erf he shall immediately cease to be a Member of the Association.
- 10.4 No Member shall be entitled to transfer an Erf unless it is a condition of the transfer that:
- 10.4.1 the transferee of such Erf becomes a Member of the Association;

- 10.4.2 the registration of transfer of that Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association.
- 10.5 The registered owner of the Erf may not resign as a member of the Association.
- 10.6 The rights and obligations of a Member shall not be transferable (except as referred to in subparagraph 10.4) and every Member shall;
 - 10.6.1 to the best of his ability further the object and interest of the Association;
 - 10.6.2 observe all by-laws, codes, rules and regulations made by the Association and the Management Committee from time to time, but
 - 10.6.3 provided that nothing contained in this Constitution shall prevent a Member from ceding his rights to any property in the Development, as security to the Mortgagee of that Member's Erf.

11. CONTRACTS AND REGULATIONS

- 11.1 The Management Committee may from time to time make rules and regulations governing inter alia;
 - 11.1.1 the Member's rights of use, occupation and enjoyment of the Private Area and any areas (if any) leased from the Municipality.
 - 11.1.2 the external appearance of and the maintenance of the Private Area and the buildings or other improvements erected thereon;
 - 11.1.3 enter into agreement(s) with local authorities governing the matters set out in 11.1 and any other incidental matters.
- 11.2 Each Member undertakes to the Association that he shall comply with:
 - 11.2.1 the provisions of this Constitution;
 - 11.2.2 any regulations made in terms of subparagraph 11.1;
 - 11.2.3 any agreements referred to in paragraph 11 insofar as those agreements may directly or indirectly impose obligations on him/her.

12. PAYMENT OF LEVIES

- 12.1 The Management Committee is authorised from time to time to levy contribution from the Members for the purpose of meeting all expenses which the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the infrastructure (roads and streetlights) and Private Area, and/or for payment of all rates and other charges payable by the Association in respect of the Private Area, and/or for the services rendered to it and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Private Area and the

Association's affairs. In calculating levies, the Management Committee shall take into account income, if any earned by the Association.

- 12.2 The Management Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and shall make a levy upon the Member's equal, as nearly as is reasonably practical, to such estimated amount. The Management Committee may include in such levies an amount to be held in reserve on annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 12.3 The Management Committee may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in subparagraph 12.1 (which are not included in any estimate made in terms of subparagraph 12.2), and such levies may be made in the sum or by such instalments and at such time or times as the Management Committee shall think fit.
- 12.4 Any amount due by a Member by way of levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be Member. A Member's successor in title to an Erf shall be liable as from the date upon which he becomes Member pursuant to the transfer of that Erf, to pay the levy attributable to that Erf. No Member shall transfer his Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association. Such successor of any Member shall also be responsible for payment of the reasonable fee charged by the Association to issue a certificate as referred to above.
- 12.5 No Member shall be entitled to any of their 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.

13. CESSATION OF MEMBERSHIP

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

14. FINANCIAL YEAR END

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

15. GENERAL MEETINGS OF THE ASSOCIATION

- 15.1 The Association shall within 90 days of the ending of the financial year, in each calendar year hold a general meeting as its Annual General Meeting, in addition to any other general

meetings during that year, and shall specify their meeting as such in the notices in terms of subparagraph 17.1 below.

- 15.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Management Committee shall decide from time to time.
- 15.3 All general meetings other than Annual General Meetings shall be called special general meetings.
- 15.4 The Management Committee, may, whenever they think fit, convene a special general meeting in any event where the Management Committee, in their sole discretion, believes that such special general meeting is required to discuss matters which are of such nature that it cannot stand over until the next Annual General Meeting of the Association.

16. VENUE OF MEETINGS

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

17. NOTICE OF MEETINGS

- 17.1 Subject to the provisions of Section 185 and 186 of the Act an Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by 30 (THIRTY) days' notice in writing at the least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by 30 (THIRTY) days' notice in writing at least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these paragraphs, the general nature of that business, and in the case of 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 Management Committee to such persons as are under the Constitution entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in the Constitution, be deemed to have been duly called if it is so agreed.

17.1.1 In the case of a meeting called the Annual General Meeting, all the Members are entitled to attend and vote there at.

- 17.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification of present any document required to be given or sent in terms of the Constitution, or in terms of the Act, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same shall not invalidate the proceedings at, nor any resolution passed at any meeting.

18. QUORUM

- 18.1 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 35% (THIRTY-FIVE percent) of the total Members of the Association,

entitled to vote, either present or presented by means of a valid proxy, save that no less than 3 (THREE) Members must be personally present.

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

19. AGENDA AT MEETINGS

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

- 19.1 The consideration of the Chairman's report to the Management Committee;
- 19.2 The election of the Management Committee;
- 19.3 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;
- 19.4 The consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 19.5 The consideration of the report of the Bookkeeper;
- 19.6 The consideration of the total levy (as referred to in paragraph 12) for the calendar year during which such Annual General Meeting takes place; and
- 19.7 The consideration and fixing of the remuneration of the Bookkeeper for the financial year of the Association preceding the Annual General Meeting.

20. PROCEDURE AT GENERAL MEETINGS

- 20.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within 5 (FIVE) minutes after the time appointed for the holding thereof, then the Vice-Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 20.2 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 10 (TEN) days or more, notice of the adjourned meeting shall be given in the same manner as of any original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

20.3 Except as otherwise set forth in the Constitution, all general meetings shall be conducted in accordance with generally accepted practice.

21. PROXIES

21.1 A Member may be represented at a general meeting by a proxy who must be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, in the form provided with the notice of meeting and no other form. Where a Member is more than one person, any of those persons may sign the instrument appointing a proxy on such Member's behalf, and where a Member is company, it 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.

21.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, shall be deposited by hand or email or fax to the Secretary of the Association, at least 24 (TWENTY-FOUR) hours before the time appointed for the commencement of the meeting, or the general meeting at which the person named in the instrument is proposed to vote. No proxy sent to any member directly, shall be accepted, and all proxies shall be sent to the Secretary as mentioned in this paragraph, to be valid, failing which it shall be invalid and unacceptable and the proxy shall not be entitled to vote on behalf of the Member. No instrument appointing a proxy shall be valid after the expiry of 12 (TWELVE) months from the date of its execution.

21.3 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 proof, in writing, of the death or revocation shall have been received by the Secretary of the Management Committee, at least one hour before the time fixed for the holding of the meeting.

22. VOTING

22.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name provided that if an Erf is registered in more than one person's name, then they shall jointly have one vote. While the Developer still has Erven in his name he shall have one vote per Erf.

22.2 Save as expressly provided for in the 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, 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.

22.3 At any general meeting a resolution put to vote of the meeting shall be decided, in the Chairman's sole discretion, either on a show of hands, ballot or by means of electronic vote as provided for in subparagraph 22.6.

22.4 Every resolution and every amendment of a resolution, proposed for adoption by a general meeting, shall be seconded at the meeting or per email received at least 24 (TWENTY-FOUR) hours before the proposed meeting, and if not seconded, shall be deemed not to have been proposed.

22.5 Any ordinary resolution, as defined in paragraph 1. hereof for the amendment of an ordinary resolution shall be carried on a 51% (FIFTY ONE percent) majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

Any Special resolution, as defined in paragraph 1. hereof for the amendment of a special resolution shall be carried on a 75% (SEVENTY FIVE percent) majority of all the email votes cast thereon.

22.6 Unless any Member present in person or by proxy at a general meeting, shall, before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands, ballot or by means of electronic vote , or to the propriety of validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have 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 confirms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

22.7 Once the matter has been properly voted on, either at an Annual General Meeting, general or special meeting, any other special voting process, no further correspondence regarding any such matter shall be entertained or discussed by the Association or the Management Committee, save for as provided in this Constitution, and shall the matter be regarded as finalised. Any member who wishes to, in any way, reopen any such matter, will need to follow the process of bringing a fresh motion to the next Annual General Meeting or special meeting in terms of the procedure as prescribed in this Constitution.

22.8 In the event of any proposed amendment or repeal of any stipulation of this Constitution and Annexures, at any Annual General Meeting or special general meeting, and voted on as a special resolution proposal, the relevant accepted amendments, after email voting by all Members, will be distributed to Members within (THIRTY) days of the approval by the Municipality of Mossel Bay. These alterations shall only take effect from the date of the Municipal approval.

22.9 In the event of any amendment or repeal proposed to any stipulation of a code, by-law or rule, not inconsistent to the provisions of this Constitution and Annexures, and voted on as an ordinary resolution, will be distributed to the Members within 30 (THIRTY) days of such an Annual General Meeting or special meeting and shall take effect from date of the meeting on which it was voted on.

23. DEALING WITH THE PRIVATE AREA

Neither the whole nor any portion of the Private Area shall be: -

23.1 Sold, let, alienated, otherwise disposed of, subdivided or transferred; or

23.2 Mortgaged; or

- 23.3 Subjected to any rights whether registered in a Deeds Registry or not of use occupation or servitude (save those enjoyed by the Members of the Association in terms hereof); or
- 23.4 Built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without a sanction of the Special Resolution of the Association.
- 23.5 Any of the above actions may only take place after the Mossel Bay Municipality has given written consent.

24. BREACH

24.1 Any Member who fails to make payment to the Association on due date therefore of any monthly subscription or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of the Constitution and Annexures, may if so determined by a resolution passed by not less than 3 (THREE) of the Trustees present at a meeting of the Management Committee:

- 24.1.1 be fined by the Association in such amount; and/or
- 24.1.2 be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question such sum as compensation; and/or
- 24.1.3 be handed over to the Management Committee's attorneys for collection and further legal action. The Member will be responsible for all legal fees, including disbursements, as between attorney and own client, collection commission, tracing agent costs, interest calculated at +2% prime, other fees and disbursements incurred by the Association with the collection of any outstanding levies and other amounts due to the Association;

as in each case shall have been determined at such Management Committee meeting.

24.2 The Member concerned shall be invited to attend such Management Committee meeting by notice in writing delivered to such Member not less than 7 (SEVEN) days prior to the holding thereof, and such Member shall be given the right to speak thereat, and to be represented legally, but not to be present at the voting or to take part in the proceedings other than as allowed by the Chairman of such meeting.

25. OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in the Constitution, the Management Committee shall at all times have the rights to engage on behalf of the Association, the services of accountants, bookkeeper, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever for any reasons thought necessary by the Management Committee and on such terms as the Management Committee shall decide, subject to any of the provisions of the Constitution.

26. ACCOUNTS

- 26.1 The Association in general meeting or the Management Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association or any of them and subject to such conditions and regulations the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 26.2 At each Annual General Meeting the Management Committee 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 shall be accompanied by proper and extensive reports of the Management Committee and the Bookkeeper and there shall be attached to the notice sent to Members convening each Annual General Meeting as set forth in paragraph 17 above, copies of such accounts, balance sheets and reports (all of which shall be framed in accordance with the provisions of the Act) and of any other documents required by law to accompany the same.

27. FINANCIAL REVIEW

- 27.1 At least once 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 Bookkeeper.
- 27.2 The duties of the Bookkeeper shall be regulated in accordance with the Act.

28. SERVICE OF NOTICE

- 28.1 A notice shall be in writing and shall be given or served by the Association upon any Member, personally, by post by means of a prepaid registered letter, properly addressed to the Member at the address provided by the Member, or by email at such email address as provided to the Association by such Member on any previous correspondence.
- 28.2 No Member shall be entitled to have a notice served on him at any physical or postal 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, which address may be physical, postal or email address.
- 28.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted. Any notice sent by email, shall be deemed to have been received, unless the contrary is proved, by such Member on the business day following the date of sending thereof.
- 28.4 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.

29. INDEMNITY

- 29.1 All Management Committee Members and the Bookkeeper shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Management Committee Member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.
- 29.2 Every Management Committee Member, every servant, agent and employee of the Association, and the Bookkeeper, shall be indemnified by the Association against all cost, 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 Management Committee Member, his duties as Chairman or Vice-Chairman. It shall be the duty of the Management Committee out of the funds of the Association, to pay the aforementioned items. 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.
- 29.3 A Management Committee Member shall not be liable for the acts, receipts, neglects or defaults of the Bookkeeper or of any of the other Management Committee Members, whether in their capacities as Management Committee Members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Management Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

30. ARBITRATION

- 30.1 Any dispute, question or difference arising at any time between Member or between Members and Trustees out of or in regard to: -
- 30.1.1 any matters arising out of this Constitution and Annexures; or
 - 30.1.2 the rights and duties of any of the parties mentioned in the Constitution and Annexures; or
 - 30.1.3 the interpretation of this Constitution and Annexures,
- shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.
- 30.2 Arbitration shall be held in Mossel Bay informally and otherwise upon the provisions of the Arbitration Act. No. 42 of 1965 (as amended or replaced from time to time) it being intended

that if possible it shall be held and concluded within 21 (TWENTY-ONE) business days after it has been demanded.

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

30.3.1 primarily an accounting matter – an independent accountant;

30.3.2 primarily a legal matter – a practicing counsel or attorney of not less than 10 (TEN) years standing;

30.3.3 any other matter – an independent and suitably qualified person appointed by the Chairperson,

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

30.4 If agreement cannot be reached on whether the question in dispute falls under subparagraphs 30.3.1, 30.3.2, 30.3.3 within 3 (THREE) business days after the arbitration has been demanded, then:

30.4.1 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 subparagraphs 30.3.1, 30.3.2, 30.3.3; or

30.4.2 the President for the time being of the Law Society of Cape of Good Hope shall nominate the arbitrator in terms of subparagraph 30.3 within 7 (SEVEN) business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (TWENTY-ONE) business days referred to in subparagraph 30.2.

30.5 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.

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

30.7 Notwithstanding anything to the contrary contained herein, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction.

31. PRIVATE ROAD AND SERVICES

31.1 The Home Owners' Association and/or Municipality of Mossel Bay shall be responsible for the maintenance and repairs of all infrastructure and services in the Development, including street lights, drains, roads, water and electricity, sewage reticulation system and any other similar services and/or infrastructure.

31.2 In the event of the Association failing to meet any obligation resting on it by virtue of the provisions of subparagraph 31.1, the Association, and its Members will be jointly and separately responsible to restore such defect.

32. BUILDING CLAUSE

32.1 All building works, be that the erection of a residential unit or the extension of such unit, will take place according to the following process:

32.1.1 All building plans for the erection of a residential unit/extension shall be drafted according the Architectural Development Code attached hereto as Annexure B, as amended from time to time by the Management Committee provided for in paragraph 33. The Aesthetics Committee, and thereafter the Municipality of Mossel Bay, shall approve all building plans for the erection of new units; including any attachments and/or extensions prior the commencement of any building works.

32.1.2 All building works will take place in accordance with the Architectural Development Code Annexure B as mentioned in subparagraph 32.1.1 above, the Building Code Annexure D, which will both be signed by the owner before any plans may be approved. No construction will commence before Annexure B, Annexure D and the Builders Contract are signed. The owner accepts responsibility for any omission by the building contractor not to comply with the Architectural Development Code, Building Code, Building Contract and House Rules and authorises the Management Committee to prohibit the building contractor from entering the premises until he duly complies with the above Codes and Rules.

32.1.3 All building works will take place with consideration of: -

32.1.3.1 The minimum disturbance and discomfort for residents/owners in the Development;

32.1.3.2 Compliance of all work with the rules and regulations as laid down by Nature Reservation and Environmental Affairs of related officials;

32.1.3.3 The minimum impact on the infrastructure of the Development, including the Private Areas, roads, open spaces and Erven. The owner indemnifies the Municipality of Mossel Bay, the Home Owners' Association and/or other owners against any/all damage and losses suffered by any person as a result of the conduct or omission by the owner, his building contractor, subcontractor, agents and/or other persons involved, whether directly or indirectly, during such construction or related activities.

32.1.3.4 All building rubble will be removed by the owner.

32.1.3.5 The owner will only be able to erect a dwelling in accordance with the purchase agreement and the Storeys and Contours Annexure C. In the event that the purchase agreement refers to

a single storey dwelling the owner will only be able to erect such single storey dwelling. Only if the agreement makes provision for a double storey dwelling will the owner be able to erect such.

32.1.4 The owner will be responsible for the following payments, levies and contributions: -

32.1.4.1 A plan approval fee as determined by the Management Committee, which may include any architect fees;

32.1.4.2 A refundable, non-interest bearing building deposit as determined by the Management Committee, which amount will be refunded to the owner by the Management Committee, if the Management Committee, in their sole discretion, is satisfied that all provisions of this paragraph and attachments referred to have been complied with.

32.1.4.3 A penalty, in amount of R10 000.00 (TEN THOUSAND RAND) per month or a portion thereof, in the event that the structure is not properly completed externally according to all building specifications and further reasonable specifications of the Home Owners' Association, within a period of 12 (TWELVE) months from date of commencement of building works. The owner accepts that such penalty shall be added to his monthly statement of account for the levies payable in terms of this Constitution, and further agrees that the penalty is fair and reasonable.

32.1.4.4 In the event of any penalty imposed in terms of this Constitution, being outstanding for a period of 90 (NINETY) days from date of becoming due, the Association shall be entitled to proceed with legal steps against the owner at the cost of the owner on the scale as between attorney and own client scale, to enforce the penalties provided for in this paragraph, and further to force the owner to complete the outstanding building works within a period of 12 (TWELVE) months.

32.1.5 The Management Committee shall issue a Completion Certificate prior to any Municipal Occupation Certificate being issued.

33. **AESTHETICS COMMITTEE**

33.1 The members of the Management Committee shall appoint the members of an Aesthetics Committee; which committee shall consist of 3 (THREE) members. All proposed buildings and alterations to any existing buildings or structures on any Erven in the Development shall be approved by the Aesthetics Committee in accordance with the Architectural Development Code of the Association.

33.2 The Aesthetics Committee shall, inter alia, have the following functions and powers:

33.2.1 approval of all building plans (including extensions) on any Erf or to any unit;

33.2.2 imposing and enforcement of any penalty applicable and provided for in this Constitution, any rule or by-law – specifically as referred to in paragraph 32 above;

33.2.3 imposing the Building Code as provided for in the Architectural Development Code;

33.2.4 general supervision of any building activity;

33.2.5 any related functions or duties.

34. HOUSE RULES

The Management Committee will compile a set of house rules, not inconsistent to the provisions and stipulations of the Constitution and Annexures, which shall be binding on all Members, their employees, contractors, agents, family members, visitors and guests. These house rules may be updated by the Management Committee from time to time as required.

35. ELECTRONIC VOTING

Any aspect that may be voted on in terms of this Constitution, may be, at the sole discretion of the Management Committee, be voted on by means of email ballot.

36. PETS

To protect and promote the ethos of the Estate, predatory pets (including cats and dogs) may NOT be kept or brought onto the Estate. This applies to any visitors, holiday rentals as well as longer term private rentals. (Copied from Rule 2.3 of Annexure “B” - Num-Num Architectural Development Code – April 2021)

37. ANNEXURES

The following Annexures forms part of this Constitution

Annexure A – Num-Num Site Development and Layout Plan Dec 2014

Annexure B – Num-Num Architectural Development Code Sept 2021

Annexure C – Num-Num Storeys and Contours March 2017

Annexure D – Num-Num Building Code March 2017