

REPUBLIC OF SOUTH AFRICA

THE COMPANIES ACT OF 1973

**ARTICLES OF ASSOCIATION OF A COMPANY NOT
HAVING A SHARE CAPITAL**
(SECTION 60(1) REGULATION 18)

Registration No. of Company

2007/030516/08

OF

EYE OF AFRICA HOMEOWNERS ASSOCIATION

A

The Articles of Table A contained in Schedule 1 to the Companies Act of 1973, shall not apply to the company.

B

The Articles of the company are as follows:

1. PRELIMINARY

The Articles of Table "A" contained in Schedule 1 to the Companies Act shall not apply to the Association. The Articles of the Company are as set out below. If the provisions of these Articles are in any way inconsistent with the provisions of the Act the provisions of the Act shall prevail, and these Articles shall be read in all respects subject to the Act. Notwithstanding the omission from these Articles of any provision to that effect, the Company may do anything which the Act empowers a company to do if so authorized by its Articles of Association.

2. DEFINITIONS

2.1 In these Articles the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

2.1.1 "the Act" means the Companies Act, 1973 as amended or any Act which replaces it.

2.1.2 "Architectural Guidelines" means the design guidelines promulgated by the Association from time to time.

2.1.3 "Architectural Review Committee" means the committee appointed by the Board of Directors from time to time to ensure that the plans submitted to the Association comply with the Architectural Guidelines.

- 2.1.4 “these Articles” means these Articles of Association as now framed or as from time to time amended by special resolution.
- 2.1.5 “the Association” means the Eye of Africa Homeowners Association (Association incorporated under Section 21).
- 2.1.6 “Auditors” means the Auditors of the Association.
- 2.1.7 “the Club” means the Eye of Africa Golf Club which is a separate legal entity initially owned by the Developer consisting of the golf course and the golf facilities.
- 2.1.8 “Common Property” means all property situated in Eye of Africa which is registered in the name of the Association;
- 2.1.9 “the Developer” means Eye of Africa Developments (Pty) Ltd.
- 2.1.10 “the Development Period” means the period from the date of the incorporation of the Association until the date that the Developer notifies the Association that it has ceased the Development of the property.
- 2.1.11 “Erf / Erven / Unit” means any Erf, Erven and/or Sectional Title Unit which forms part of or which is situated in the Development known as the Eye of Africa Development.
- 2.1.12 “Estate Rules” means regulations governing the conduct upon and affairs at Eye of Africa.
- 2.1.13 “Eye of Africa” means the Development known as Eye of Africa and the extensions to such development.
- 2.1.14 “General Meeting” means a General Meeting of the Members of the Association and shall include reference to an Annual General Meeting or a Special General Meeting.
- 2.1.15 “the Golf Course” means the Eye of Africa Golf Course which is owned by the Club.
- 2.1.16 “the Landscape and Garden Guidelines” means the Landscape and Garden Guidelines promulgated by the Association from time to time.
- 2.1.17 “Landscaping and Gardening Review Committee” means the committee appointed from time to time by the Board of Directors of the Association to ensure that the landscaping and gardening within the Eye of Africa complies with the landscape and gardening guidelines as promulgated by the Association from time to time.
- 2.1.18 “Member” means the persons referred to in Article 5.1 and the persons who become members in terms of Article 5.3.
- 2.1.19 “the Municipality” means the relevant Municipality which governs the area in which the Eye of Africa Development falls.
- 2.1.20 “Regulations” means the Estate Rules and/or Architectural Guideline and/or Landscaping Guidelines and/or any other regulation and/or bylaws of the Association.

- 2.2 Unless the context otherwise requires, any word importing the singular number shall also include the plural number, and vice versa and words importing any one gender shall include the other gender and vice versa.
- 2.3 Subject as aforesaid, any words or expressions defined in the Act or any statutory modification thereof in force at the date on which these presents become binding on the Association shall, if not inconsistent with the subject or context, bear the same meaning in these presents.
- 2.4 The headnotes to the clauses in these Articles are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

3. NATURE OF THE COMPANY

The Company is a company limited by guarantee and shall be deemed to be a public company for the purposes of the Act and the provisions of the Act applying to public companies will apply to this Company unless it appears differently from the context.

4. MAIN OBJECTS

- 4.1 The main objects of the Association shall be to, control the appearance of the Eye of Africa and the buildings in it, promote the communal interest of the Members, control the safety of persons and property, and all matters incidental thereto including but not limited to:-
- 4.1.1 Ensuring that the Erven are developed according to uniform standards;
- 4.1.2 The care, upkeep and control of the Common Property including all services constructed within the Common Property and to ensure that applicable Municipal Services are supplied to the Eye of Africa;
- 4.1.3 The formulation and enforcement of rules and regulations at the Eye of Africa;
- 4.1.4 The formulation and enforcement of aesthetic and environmental standards and Landscaping and Garden Guidelines and Architectural Guidelines at the Eye of Africa;
- 4.1.5 To institute control and security measures;
- 4.1.6 To own the Common Property and any improvements erected thereon;
- 4.1.7 Ensuring that Members satisfactorily maintain their Erven in the Eye of Africa;
- 4.1.8 In general do everything necessary to promote the well being of all residents of the Eye of Africa.
- 4.2 Without limiting the generality of the powers specifically referred to above, the Association shall, subject to these Articles of Association, have the power to do such acts as may be necessary to accomplish whatever is set out in these Articles of Association.

5. MEMBERSHIP

- 5.1 The first Members of the Company shall be Rui Carlos Ermitao Graca; Bradley Evans Tindale; Justus Vermaak; Johan van Heerden; Peter Arthur Dykes; Elaine de Witt and Darryl Waks Kletz.
- 5.2 Membership of the Association shall be limited to the Developer in his capacity as such and his nominees for as long as the Developer owns any portion of the Development including the Club and to every owner who owns an erf.
- 5.3 Membership of the Association shall be compulsory for every registered owner of an Erf and every registered owner of a Sectional Title Unit, and the transferee of an Erf and the transferee of a Sectional Title Unit shall be deemed to have become a Member of the Association, subject to all the obligations of membership, forthwith upon registration of transfer of an Erf or a Sectional Title Unit into his name.
- 5.4 Where any such owner is more than one person, all registered owners of that Erf shall be deemed jointly and severally to be one Member of the Association and shall be jointly and severally liable in solidum for all the obligations of the Member in terms of these Articles.
- 5.5 The owner shall not be entitled to sell or transfer an Erf unless it is a condition of the sale and/or transfer that:-
 - 5.5.1 the transferee shall become a Member of the Association;
 - 5.5.2 the registration of the transfer of that Erf into the name of the transferee shall *ipso facto* constitute the transferee as a Member of the Association;
 - 5.5.3 he first obtains the written consent of the Association, which consent shall be given without undue delay provided the purchaser of such Erf agrees in writing to abide by these Articles of Association, and provided the Member shall have paid all amounts due by him to the Association for the period up to the date of transfer of the Erf.
- 5.6 The registered owner of an Erf may not resign as a Member of the Association or cease to be a Member of the Association.
- 5.7 The rights and obligations of a Member shall not be transferable and every Member shall:-
 - 5.7.1 observe all the Estate Rules, Landscaping and Gardening Guidelines, Architectural Guidelines and all other rules and regulations of the Association;
 - 5.7.2 be obliged to ensure that each Erf owned by him shall have been developed by no later than the date stipulated in the Deed of Sale entered into between the Developer and the first person purchasing such Erf from the Developer;
 - 5.7.3 be obliged to submit any building plan, whether such plan is for new construction, renovation, alteration and/or addition, to the Board of Directors for examination and approval prior to the submission of such plan to the Municipality or other local authority for approval.

5.8 Nothing contained in these Articles shall prevent a Member from ceding his rights in terms of these Articles of Association as security to the Mortgagee of the Member's Erf.

6. SUBDIVISION OF THE COMMON AREA

The Common Area or any portion thereof shall not without the sanction of a Special Resolution of the Association be:-

- 6.1 sold, let on a long term basis, alienated or otherwise disposed of or transferred from the Association; or
- 6.2 mortgaged; or
- 6.3 subjected to any rights in favour of any person for a period exceeding 12 (TWELVE) months, whether such rights are registered in a Deeds Registry or not, of use, occupation or servitude, other than the servitudes in favour of the Municipality, Eskom or any government organization and those enjoyed by the Members of the Association in terms hereof or in terms of the title deed of any erf.

7. PHASED DEVELOPMENT

It is recorded that the Developer is developing and marketing the Eye of Africa in phases. During the Development Period the Developer:-

- 7.1 Shall enjoy unrestricted rights with regards to the marketing of the Development and in particular to erect signage within the Eye of Africa;
- 7.2 Shall be entitled in its absolute discretion to sub-divide the Erven which form part of the Eye of Africa and insofar as the consent of the Members are required for such subdivision, each Member hereby irrevocably grants a Power of Attorney to apply for such subdivision on behalf of the Members of the Association to the Developer.

8. ESTATE RULES, ARCHITECTURAL GUIDELINES AND OTHER REGULATIONS

- 8.1 Members, their guests and their tenants and any person entering the estate, shall be subject to these Articles, the Estate Rules, Architectural Guidelines, Landscaping and Gardening Guidelines and other regulations made from time to time.
- 8.2 Regulations shall govern, inter alia:-
 - 8.2.1 the Member's rights of use, access to, occupation and enjoyment of the Common Area;
 - 8.2.2 the control of pets and other animals at the Eye of Africa;
 - 8.2.3 the external appearance of and the maintenance and use of the Common Area and the buildings and other improvements erected thereon;

- 8.2.4 the external appearance and maintenance of buildings and other improvements and structures erected at the Eye of Africa, architectural and aesthetic style and design criteria, the type of plants and the maintenance of gardens;
 - 8.2.5 the execution of building work within the Eye of Africa;
 - 8.2.6 the rules governing builders, contractors and owners wishing to execute building work within the Eye of Africa;
 - 8.2.7 the conditions of access to and egress from the Eye of Africa;
 - 8.2.8 security within the Eye of Africa;
 - 8.2.9 disputes and disciplinary measures relating to Members and others having access to the Eye of Africa in relation to matters affecting the Eye of Africa including the determination and imposition of fines, which shall become a debt owing to the Association;
 - 8.2.10 the furtherance and promotion of the affairs of the Association;
 - 8.2.11 the management of the affairs of the Association;
 - 8.2.12 the conduct of the Board of Directors;
 - 8.2.13 the conduct at the Eye of Africa of Members and any person resident on or entering the estate;
 - 8.2.14 any matter that may assist the Association and its representative organs in administering and governing the activities of the Association generally.
- 8.3 The Association may by Ordinary Resolution in General Meeting:
- 8.3.1 make any regulation, or
 - 8.3.2 cancel or modify any regulation.
- 8.4 Members shall be obliged to inform the Members of their households, their guests, employees, invitees and tenants of the Regulations then in force and the Association shall be entitled, but not obliged, in its discretion, to act against such guests, employees, invitees and tenants, in addition to the Member, for any breach. The Members shall be responsible and liable for the acts and omissions of their guests, employees, invitees and tenants and each Member indemnifies the Association accordingly.
- 8.5 The Architectural Review Committee shall during the Development Period be appointed by the Developer and thereafter shall be appointed by the Directors and shall consist of at least one Director, a qualified architect and such other suitably qualified persons as the Directors from time to time decide. Until such stage as the Architectural Review Committee has been appointed, the Developer shall act as the Architectural Review Committee.

- 8.6 The Landscaping and Gardening Review Committee shall during the Development Period be appointed by the Developer and thereafter shall be appointed by the Directors and shall consist of at least one Director and such other suitably qualified persons as the Directors from time to time decide. Until such stage as the Landscaping and Gardening Review Committee has been appointed, the developer shall act as the Landscaping and Gardening Review Committee.
- 8.7 During the Development Period, the Architectural Guidelines and Landscaping and Gardening Guidelines may not be altered, substituted, added to or repealed unless the Developer agrees to the same.

9. STATUS OF THE DEVELOPER

- 9.1 During the Development Period, no Member nor any Member of the Association shall prevent or hinder in any way the Developer from:-
- 9.1.1 gaining access to and egress from the Development.
 - 9.1.2 continuing its building and/or construction operations at the Development.
 - 9.1.3 marketing and selling any Erven or Sectional Title Units.
- 9.2 Generally carrying on its business operations,
- provided that the provisions of clause 9.1 shall not be interpreted as allowing the Developer access onto any of the Erven or Units already transferred to a Member unless 48 hours prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon. No Member shall be entitled to refuse the Developer immediate access if the required notice has been given.
- 9.3 The Developer shall have the sole right of appointment and dismissal of any managing agent during the Development Period.
- 9.4 The Developer has the right and shall be entitled to build and establish on the Eye of Africa any amenities and facilities as it in its sole discretion deems fit. The Developer has the right to subdivide from the Eye of Africa the sites for such aforesaid amenities and facilities as separate Erven and shall be entitled to dispose of and/or operate the aforementioned amenities and facilities for its own benefit, separate and independent from the remainder of the Eye of Africa.
- 9.5 The Developer has the right in its sole discretion, to establish and locate the amenities and facilities referred to in 9.4 on any portion of the Eye of Africa, save on such Erven that have already been sold to Owners other than the Developer, with the approval of the Local Authority.
- 9.6 The Association will not be entitled to change, amend or impact on the rights of the Developer or its successors in title in respect of the amenities and facilities referred to in 9.4 above, without obtaining the written consent of the Developer or its successors in title beforehand.

9.7 The Developer is entitled, in the Developer's sole discretion, as and when the Developer chooses to do so, to rezone to residential and/or commercial and/or hotel and/or business and/or special or any other zoning that the Developer chooses, those Erven which have not been sold by the Developer as at the relevant time and that portion of land marked on the site development plan as future development property and/or sub-divide in whichever manner the Developer chooses any of the same, to change the land use on the layout plans relating to such Erven and land and to register on such land and Erven whatever servitudes are certified as being necessary or desirable by the townplanner appointed by the Developer in such positions as such townplanner certifies as being appropriate. The Members irrevocably consent to the aforesaid and irrevocably grant a Power of Attorney to the Developer to enable the Developer to attend to the same whenever the Developer deems it necessary to do so. In addition the Developer shall be entitled to amend the boundaries of the common area provided that such amendment does not increase or decrease the common areas by more than 10%. In addition the Developer shall be entitled in its sole discretion to permit the owner/s of Erven situated near a cul de sac to fence off the road portion around such cul de sac and to utilize such road portion for the private use of the owner/s of such Erven. The Developer shall also be entitled to add new Erven and sections to the Development and to add new phases onto the Development by the addition of land which does not at present form part of the Development and/or to constitute such land as extensions of the township on which this Development is formed. The Member acknowledges that such extensions may be connected to the Eye of Africa through internal road connections and that certain services and security arrangements may be shared with these extensions including but not limited to the right of usage of and access to the Eye of Africa amenities and golf course. In the event that such extensions have their own homeowners associations, the Developer shall be entitled to conclude agreements between such homeowners associations and the Eye of Africa Homeowners Association regarding the relationship between such homeowners associations and the Eye of Africa Homeowners Association and the contributions to be paid to the Eye of Africa Homeowners Association by such homeowners association on terms to be decided by the Developer. The Members hereby irrevocably consent to all of the foregoing and hereby irrevocably grant the Developer Power of Attorney to enable the Developer to attend to the same and to sign any documentation on behalf of the Members to give effect to the provisions of this clause.

10. MEMBERS' OBLIGATIONS

10.1 Each Member undertakes to the Association that he shall comply with:-

10.1.1 the provisions of these Articles of Association;

10.1.2 all Regulations;

10.1.3 any agreements entered into by the Association which imposes obligations on the Member.

10.2 Every Member shall observe all laws, ordinances, by-laws, regulations and rules imposed by any statutory or other relevant authority and, without detracting from the generality of this clause, shall observe and comply with the provisions of any relevant road traffic legislation as fully and effectually as though the Eye of Africa private roads were public roads as defined in the legislation.

11. GOLF CLUB

- 11.1 It is recorded that the Golf Course and golf facilities (“the Club”) are registered in the name of the Developer and that the owner of the Club is a Member of the Association but that the owner of the Club is not liable for levies. The owner of the Club shall have no votes in the matters of the Association except insofar as the same affect the provisions relating to the conduct and access to the Golf Course and Club facilities.
- 11.2 The Club shall remain autonomous and the Association shall have no direct representation on the Management Committee or controlling body of the Club.

12. MAINTENANCE OF THE GOLF COURSE

The owner of the Club shall be responsible for the cost of the maintenance of the Golf Course and the facilities. The Golf Course shall be maintained in strict compliance with the guidelines to be supplied by the golf course designer and shall be in accordance with the general accepted standards for a golf course of the nature of the golf course constructed.

13. HIKING, GAME CONTROL AND NATURE RESERVE

- 13.1 All common areas will be transferred to the Association.
- 13.2 The Association shall be responsible for the cost of the maintenance of the common area, hiking trails and the costs of caring for the game should such game be introduced into the Development by the Developer or the Association.

14. LEVIES

- 14.1 The Directors shall establish and maintain a levy fund for the purposes of meeting all the expenditure which the Association has properly incurred or which they reasonably anticipate the Association will necessary or reasonably incur for the control, management, maintenance and administration of the Eye of Africa which includes but are not limited to:-
- 14.1.1 security;
 - 14.1.2 rates and taxes, as well as other municipal charges and levies on assets of the Home Owner’s Association;
 - 14.1.3 maintenance and upkeep of assets, including security systems, guard houses and the perimeter wall;
 - 14.1.4 transportation;
 - 14.1.5 payments to be made to the maintenance company which will be formed for the purposes of maintaining the development;
 - 14.1.6 payment of a monthly social membership levy to the Club which levy shall be an amount equal to 10% of the monthly levy payable per levy paying Member of the Association.

- 14.1.7 fees and levies payable to the body controlling the hiking, game control and nature reserve and which form part of the greater Eye of Africa Development;
- 14.1.8 administration fees;
- 14.1.9 electricity and water consumed in the Common Area;
- 14.1.10 security fences, walls and entrances;
- 14.1.11 employment of security personnel;
- 14.1.12 such other purposes as these Articles of Association may prescribe;
- 14.1.13 other amenities utilized by Members of the Association which may or may not include items such as tennis courts and a swimming pool.

The levies charged for each Erf and each Sectional Title Unit shall be the same notwithstanding the size and/or value such Erf or Sectional Title Unit.

- 14.2 The Directors shall not less than 30 (thirty) days prior to the end of each financial year deliver to each Member at the address chosen by such Member an estimate of the amount required by the Association to meet the expenses during the following financial year and shall include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 14.3 The estimate in 14.2 above shall specify the contribution payable by that Member to such expenses and reserve funds.
- 14.4 The Directors may from time to time impose special levies upon the Members (excluding the Club and the Developer in his capacity as such) which are not included in the estimate made in terms of clause 14.2 above and may in imposing such levies determine the terms of payment thereof.
- 14.5 Any amount due by a Member in regard to arrear levies and interest shall be a debt by such Member to the Association. Notwithstanding that a Member ceases to be a Member the Association shall still have the right to recover arrear levies and interest from such Member. Any Member whose levies are outstanding for more than 60 days will automatically be levied a monthly penalty levy equal to the monthly levy until his/her account is settled. In addition interest will apply to all outstanding amounts.

15. **BOARD OF DIRECTORS**

15.1 **COMPOSITION OF THE BOARD OF DIRECTORS**

- 15.1.1 The affairs of the Association shall be managed and controlled by a Committee of Directors (the Board of Directors) which shall comprise of 5 (FIVE) Directors, to be appointed by the Developer from time to time during the Development Period. Such directors shall remain in office until the first Annual General Meeting of the Association which is held after the Development Period whereupon the number of

Directors shall be 7 (SEVEN) which directors shall be elected by the Members save that the Association shall in a General Meeting held after the Development Period be entitled to increase or decrease the number of Directors.

15.1.2 Every Director other than any Director appointed by the Developer must be a Member of the Association or a person permanently residing at Eye of Africa, provided that the spouse of a Member may be a Director Member and provided further that in the event that the Member is a company, close corporation or trust, a duly nominated shareholder, director, Member or trustee, as the case may be, may be a Director. Notwithstanding the provisions of this clause, not more than 1 (ONE) person may be appointed as a Director in respect of any one Erf.

15.1.3 In the event that a Director or, as the case may be, the spouse, company, close corporation or trust represented by him, ceases to be a Member of the Association during his period of office or, if he was appointed based upon the fact that he permanently resides at Eye of Africa and ceases to do so during his period of office, he shall be entitled to remain a Director until the next Annual General Meeting of the Association, provided that the Board of Directors shall be entitled by ordinary majority of the Directors, to require a Director as envisaged in this clause to resign.

15.2 APPOINTMENT OF DIRECTOR

15.2.1 The Directors will be appointed as Directors from the date of their appointment until the next Annual General Meeting following such date of appointment and will be eligible for re-election to the Board of Directors at such meeting.

15.2.2 The Board of Directors shall call for nominations of Members to fill vacancies on the Board of Directors not later than 21 days before the Annual General Meeting.

15.2.3 Written nominations for Directors shall be lodged at the domicilium address of the Association not later than 7 (SEVEN) days before each Annual General Meeting and shall be proposed and seconded by Members and accepted by the nominee.

15.2.4 A Director should be deemed to have vacated his office upon:-

15.2.4.1 him being disqualified from being a director of a company as envisaged in the Companies Act;

15.2.4.2 him being removed from office by resolution of the Members;

15.2.4.3 his entitlement to vote as a Member being suspended under these Articles;

15.2.4.4 his estate being sequestrated or liquidated whether provisionally or finally or upon the surrendering of his estate;

15.2.4.5 him resigning as a Director;

15.2.4.6 him being removed from office by resolution of the Directors;

- 15.2.4.7 him being absent from 3 (three) consecutive meetings of the Board of Directors without having a valid reason for such absence.

15.3 FUNCTIONS AND POWERS OF THE BOARD OF DIRECTORS

15.3.1 The Directors shall manage and control the business and affairs of the Association and such shall have all powers which are necessary to attend to the same including but not limited to the right of appointment and dismissal of the Managing Agents and shall exercise all powers of the Association and do such acts on behalf of the Association as may be exercised and done by the Association others than those which are required to be done by the Association in General or Special Meeting. Without limiting the generality of the aforesaid the Board of Directors have the power and right:-

15.3.1.1 to do all that is necessary and appropriate to ensure that the objects of the Association are performed and fulfilled;

15.3.1.2 to fill a vacancy on the Board of Directors by co-opting any person who qualifies to be a Director;

15.3.1.3 to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Directors and/or Chairperson but shall not be entitled to any other remuneration in respect of the performance of such duties. Any such expenses shall be disclosed as a separate item in the income statement of the Association;

15.3.1.4 to appoint the Architectural Review Committee and the Landscaping and Gardening Review Committee;

15.3.1.5 to impose fines.

15.3.2 A Director and a Member of any sub-committee appointed by the Board of Directors shall before entering into a contract on behalf of the Association in which such person is directly or indirectly materially interested declare his full interest, if any, in respect of the subject matter of the proposed resolution or the proposed contract, in writing, to the committee concerned and shall not enter into such contract until such time as a resolution has been passed by the Board of Directors or the sub-committee, as the case may be, approving thereof.

15.4 ANNUAL GENERAL MEETING

15.4.1 Until the first Annual General Meeting to be held after the Development Period the Chairperson will be appointed by the Developer.

15.4.2 At the first meeting of the Board of Directors to be held after the Development Period, the Directors shall appoint from their Members a Chairperson who will hold such office until the next General Meeting.

15.4.3 The office of the Chairperson shall *ipso facto* be vacated by the Director holding such office upon his ceasing to be a Director for any reason. No one Director shall be

appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Board of Directors shall meet to appoint one of their number as a replacement for such office.

15.4.4 The Directors shall elect amongst themselves a new Chairman who shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his inability or refusal to act as Chairperson and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the Board of Directors.

15.4.5 Save as otherwise provided for in these Articles, the Chairperson shall preside at all meetings of the Board of Directors, and all General Meetings of Members, and shall perform all duties incidental to the office of the Chairperson and such other duties as may be prescribed by the Board of Directors or the Members, and permit 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

15.5 **OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in these Articles, the Board of Directors shall at all times have the right to engage on behalf of the Association, and for its benefit, the services of accountants, auditors, attorneys, advocates, architects, engineers and any other professional persons and any other employees whatsoever, for any reasons thought necessary by the Board of Directors and on such terms as the Directors may decide subject to the provisions of these Articles.

15.6 **INDEMNITY**

The Association indemnifies every Director, servant, agent and employee of the Association against all losses of whatsoever nature incurred out of any bona fide act or deed performed by him or jointly and severally with the other Directors, servants, agents and employees of the Association and in the discharge of his duties.

16. **MEETINGS**

16.1 **PROCEEDINGS OF THE BOARD OF DIRECTORS**

16.1.1 The Board of Directors shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit provided that the Board of Directors shall meet at least once every three months.

16.1.2 In a meeting of the Board of Directors a quorum shall be 3 (THREE) Directors provided further that for so long as the Developer is the owner of any Erf within the Development one such Director shall be a nominee of the Developer.

16.1.3 The Chairperson shall preside as such at all meetings of the Board of Directors, provided that should at any meeting of the Board of Directors the Chairperson not be present within 10 (TEN) minutes after the time appointed for the holding thereof, those Directors present shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

16.1.4 In the case of an equality of votes, the Chairperson of that meeting shall have a casting vote in addition to his deliberative vote as Director.

16.1.5 A resolution signed by all the Directors shall be valid in all respects as been duly passed at a meeting of the Board of Directors.

16.2 ANNUAL GENERAL MEETING

The Association shall, within 6 (six) calendar months of the end of its financial year, hold a general meeting to be known as its Annual General Meeting.

16.3 AGENDA AT ANNUAL GENERAL MEETINGS

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

16.3.1.1 the consideration of the Chairperson's report;

16.3.1.2 the consideration of the financial statements of the Association for the financial year of the Association preceding the date of such meeting;

16.3.1.3 the consideration of the report of the Auditors;

16.3.1.4 the consideration of a budget and the total levy payable pursuant thereto for the relevant calendar year;

16.3.1.5 The consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting and the appointment of Auditors for the ensuing financial year;

16.3.1.6 The election of the Board of Directors;

16.3.1.7 The consideration of any resolutions of which due notice has been given and the voting upon any such resolutions;

16.3.1.8 The consideration of any resolution regarding procedural matters proposed for adoption by such meeting and the voting upon such resolution.

16.4 SPECIAL GENERAL MEETINGS

16.4.1 All General Meetings other than the Annual General Meeting shall be called Special General Meetings.

16.4.2 The Directors may whenever they deem fit convene a Special General Meeting of the Home Owners' Association and shall be obliged to do so when a request is made by

not less than 30% (THIRTY PER CENTUM) of the members of the Home Owners' Association.

16.5 VENUE OF MEETINGS

General Meetings shall take place at such place(s) as shall be determined by the Board of Directors from time to time.

16.6 NOTICE OF MEETINGS

16.6.1 An Annual General Meeting and a Special General Meeting called for the passing of a Special or Ordinary Resolution, shall be called on not less than 21 (TWENTY ONE) days notice in writing after the date of posting of such notice to each Member's domicile address and failing a domicile address to the address of the Erf owned by such Member. Members residing outside the borders of the Republic of South Africa for any portion of the year may elect to receive the notices of meetings, excluding draft resolutions and any other supporting documentation, by telefax. In each case, the notice shall be exclusive of the day on which it was posted or transmitted by telefax, and shall specify the resolution(s), the place, the date and the time of the meeting. However a General Meeting and a Special General Meeting shall be deemed to be validly called if shorter notice is given provided that not less than 60% (SIXTY PER CENTUM) of the Members of the entire Association agree that such shorter notice period shall apply.

16.6.2 In the event that any notice of any resolution of any meeting or document which is required to be sent in terms of these Articles is omitted, this shall not invalidate the proceedings at any such meeting or any resolution so passed.

16.6.3 The non-receipt of a notice of a meeting by any person entitled to receive a notice shall not invalidate the proceedings of the meeting.

16.7 PROCEDURE AT GENERAL MEETINGS

16.7.1 The Chairperson shall preside as such at all General Meetings, provided that should he not be present within 10 (TEN) minutes after the time appointed from the holding thereof, then the Vice Chairperson shall act as Chairperson at such meeting, provided further that should the Vice Chairperson also not be present within 10 (TEN) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

16.7.2 The Chairperson 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 an original meeting. If the adjournment is for less than 10 (TEN) days, the Members shall

not be entitled to any notice of adjournment or any notice of the business to be transacted.

16.7.3 Unless otherwise provided in these Articles, all General Meetings shall be conducted in accordance with generally accepted practice.

16.8 **QUORUM**

16.8.1 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 a General Meeting shall be the presence, in person or by proxy of such of the Members entitled to vote, of Members representing 50 votes except where the purpose of the meeting is the passing of a Special Resolution, in which case the quorum shall be the presence, in person or by proxy of such Members who are entitled to 100 votes, and provided further that whilst the Developer has any Erf within the Eye of Africa Development no special or general resolution shall be valid unless the same has been confirmed in writing by the Developer.

16.8.2 If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the following week, at the same place and time, or at such other place as the Chairperson of the meeting shall appoint, provided that, if a Special Resolution is to be voted on at the meeting, the meeting shall stand adjourned for at least 21 (TWENTY ONE) days, and at least 21 (TWENTY ONE) day's notice shall be given of the date on which the meeting has been reconvened. If at such adjourned meeting a quorum is not present within an hour from the time appointed for holding the meeting, Members present shall be a quorum, except that, if the meeting has been convened on the requisition of Members and a quorum is not present, the meeting shall be dissolved.

16.9 **PROXIES**

16.9.1 A Member may be represented at a General Meeting by another Member by a proxy. The instrument appointing a proxy shall be in writing signed by the Member concerned or his agent who is authorized in writing and need not be in any particular form provided that where the Member consist of more than one person the majority of such persons shall assign their instrument appointing the proxy on such members' behalf. Where a Member is a company, the instrument shall be signed by a Director, who shall warrant that he is duly authorized. Where the Member is a close corporation the instrument shall be signed by a Member thereof who shall warrant that he is duly authorized and where the Member is a trust the instrument shall be signed by a Director who shall warrant that he is duly authorized.

16.9.2 The instrument appointing a proxy and the Power of Attorney or other authority, if any, under which it is signed, or a notarially certified copy thereof shall be deposited at the domicilium address of the Association at any time but not less than 24 (TWENTY FOUR) hours before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (TWELVE) months from the date of its execution, and it may be cancelled at any time by the

Member who has appointed the proxy by giving written notice to this effect to the Secretary of the Association.

16.10 VOTING

- 16.10.1 Unless otherwise provided, at every General Meeting every Member in person or by proxy and entitled to vote shall have one vote for each Erf or Sectional Title Unit registered in his name provided that if an Erf or a Sectional Title Unit is registered in more than one name, they shall jointly have one vote and provided further that the Developer shall during the Development Period, in addition have one vote for each Erf and Sectional Title Unit which has been transferred into the name of third parties and one vote for each Erf and Sectional Title Unit which has not been transferred into the name of third parties.
- 16.10.2 A Member whose levies are in arrears or who is under suspension for any reason whatsoever shall not be entitled to vote at any General or Special General Meeting.
- 16.10.3 At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or immediately on the declaration by the Chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting. The Chairman shall call for persons holding more than one proxy to declare the number of proxies held and their votes shall be counted separately. The documentation of proxies shall be open to the meeting for inspection. When declaring the result of the vote, the Chairman shall specify, if requested to do so by any person entitled to vote at such meeting, the number of votes cast by Members present at the meeting and the number of proxy votes.
- 16.10.4 Every resolution and every amendment of a resolution proposed for adoption by a General Meeting shall be seconded at the meeting and, if not seconded shall be deemed not to have been proposed.
- 16.10.5 Every resolution other than a Special Resolution or the amendment of a Special Resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the General Meeting shall be entitled to a casting vote in addition to his deliberative vote. A Special Resolution shall be carried by not less than three fourths of the Members at the meeting who are present in person or by proxy.
- 16.10.6 The election of Directors shall be decided on a poll unless otherwise resolved at that meeting and the Board of Directors shall prepare suitable ballot papers prior to the meeting to facilitate the voting. In the case of an equality of votes, the outcome shall be decided by lot.
- 16.10.7 Unless any Member in person or by proxy at a General Meeting shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, a declaration by the Chairperson that the vote was 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.

17. FINANCIAL AFFAIRS

17.1 FINANCIAL YEAR END

The financial year end of the Association shall be the last day of March of each year, and may be changed only by Ordinary Resolution of the Members.

17.2 LEVIES

17.2.1 The Directors shall prepare and approve the budget and the levies payable by members at the Annual General Meeting.

17.2.2 The levies shall be payable annually in advance, provided that they may be paid in instalments on term and conditions determined by the Directors.

17.2.3 A Member's successor in title to an Erf, Erven or Sectional Title Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Erf, Erven or Sectional Title Unit, to pay the levy attributable to that Erf, Erven or Sectional Title Unit. No Member shall transfer his Erf or Sectional Title Unit unless the Member has at the date of transfer fulfilled all his financial obligations to the Association.

17.2.4 The levies due by a Member of the Association shall be paid without deduction or set-off, free of exchange at the offices of the Association or such other place as it may specify in writing from time to time.

17.2.5 A Member shall not be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum which shall be due and payable to the Association in respect of his membership thereof and the Association shall be entitled to discontinue rendering services supplied by the Association to any applicable Erven 7 (SEVEN) days after posting by registered mail of written notice requiring payment.

17.2.6 It is specifically recorded that the Developer shall not be liable for the payment of any levies in respect of any Erven or Sectional Title Units owned by the Developer during the Development Period but that should there be a shortfall in respect of the operational expenses after the deduction of all the levies collected from the Members, the Developer shall pay the shortfall in respect of such operational expenses.

17.2.7 Each Member except the Developer shall pay to the Home Owner's Association an administrative levy of 0.25% of the selling price of the Member's Erf or Sectional Title Unit when such Erf or Sectional Title Unit is sold which amount shall be paid on date of transfer of the Unit or Erf and shall be secured by an attorney's letter of undertaking or guarantee prior to the Home Owner's Certificate being issued.

17.3 ACCOUNTS

At each Annual General meeting the Board of Directors shall lay before the Association a proper income statement and, where appropriate, a statement of source and application of

funds for the immediately preceding financial year of the Association together with a proper balance sheet made up as at the last financial year end of the Association. The financial statements referred to shall be accompanied by full and proper reports of the Board of Directors and the Auditors, together with a budget for income and expenditure for the next financial year, and there shall be attached to the notice sent to the Members convening each Annual General Meeting, copies of such accounts, balance sheet, reports and budget and/or any other documents required by law to accompany the same

17.4 **AUDIT**

Once at least every year, the financial statements of the Association shall be audited by the Auditors.

17.5 **CESSATION OF MEMBERSHIP**

A Member ceasing to be a Member of the Association for any reason shall not, nor shall any such Member's executor, curator, trustee or liquidator, have any claim upon the interest in the funds or other assets of the Association. The provisions of this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his ceasing to be a Member.

18 **MINUTES**

18.1 The Directors shall cause minutes of all decisions to be taken at every Board of Directors meeting to be prepared, which minutes shall be reduced to writing without undue delay after the meeting has closed.

18.2 All minutes of Directors meetings shall after certification be placed in the Directors Minute Book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings by directors of companies. The minute books shall be open for inspection at all reasonable times by any Director, the auditors, Members and the managing agents.

18.3 The Directors shall ensure that minutes are taken at every meeting of the Association and that after the meeting such minutes are certified as correct by the Chairperson of the meeting.

18.4 The minutes shall be kept in minute book of meetings of the Association.

19. **DISPUTES**

BREACH

19.1 The Board of Directors may, in its discretion, investigate any suspected or alleged breach by any Member or Director of these Articles or Regulations, in such reasonable manner as it shall decide from time to time.

19.2 Should any Member fail to pay on the due date any amount payable to the Association or breach any other provision of these Articles or the Regulations and fail to remedy the same within a period of 10 (TEN) days after the posting by pre-paid registered mail of a written notice calling upon him to remedy such breach, the Directors on behalf of the Association shall

be entitled (in addition to any other rights which they have in terms of these Articles or the Regulations or in law or otherwise):-

- 19.1.1 to institute action in a Court of Law to recover such monies or to force the Member the remedy such breach; and
- 19.1.2 to take such steps that they may consider necessary to remedy the breach of these Articles or Regulations and to debit the costs of remedying such breach to such Member which amount shall be deemed to be a debt payable by the Member to the Association; and
- 19.1.3 deny the Member concerned the benefits of membership of the Association and suspend his right to vote. In such event the Member shall nonetheless remain bound to perform his obligations in terms of these Articles and the Regulations.
- 19.1.4 All amounts due by any Member shall attract interest at the prime overdraft rate as charged by First National Bank Roodepoort Branch plus 4% (FOUR PER CENTUM) calculated from the due date to date of payment.
- 19.1.5 Notwithstanding anything to the contrary herein contained, the Association shall at the sole discretion of the Board of Directors, be entitled to institute legal proceedings in any court having jurisdiction for any relief to which it is entitled under the provisions of the these Articles including but not limited to the recovery of arrear levies.
- 19.1.6 In addition to the other rights of the Association referred to in these Articles the Directors may impose a system of fines or other penalties to be paid by any person breaching the provisions of these Articles or the Regulations.

20. DOMICILIUM

- 20.1 Unless a Member shall have nominated an alternative domicilium, being a physical address in the Republic of South Africa, by written notice delivered to the Association, a Member's domicilium citandi et executandi for all purposes in terms hereof and the serving of any legal process shall be at any Erf owned by the Member.
- 20.2 The Directors shall from time to time determine the domicilium citandi et executandi of the Association.
- 20.3 Any notice, acceptance, demand or other communication properly addressed by the Association to the Member's domicilium in terms hereof for the time being and sent by pre-paid registered post shall be deemed to be received by the latter on the 4th (FOURTH) day after the day following the date of posting thereof. The provision shall not be construed as precluding the utilization of other means and methods for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption shall arise if such other means or method is used.
- 20.4 A Member shall not be entitled to have notices served upon him at any address outside the Republic of South Africa.

20.5 It shall be competent to give notice by telefax where the Member's telefax number is recorded with the Directors.

21. **BANK ACCOUNT**

All funds received by the Association shall be deposited into a bank account opened by the Directors on behalf of the Association. The funds not regularly required for disbursements may be invested in a savings or similar account approved by the Directors from time to time. No cheques shall be drawn on any account unless the same is signed by at least two Directors.

22. **GENERAL**

22.1 **AMENDMENT OF THESE ARTICLES**

22.1.1 These Articles, or any part thereof, as contained herein, shall not be repealed or amended, save by a Special Resolution adopted at an Annual General Meeting or Special General Meeting of the Members;

22.1.2 No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of the Developer during the Development Period.

22.2 **THE MUNICIPALITY**

If and when necessary the employees of the Municipality and their agents, contractors and nominees shall, subject to clearance with the security of Eye of Africa be entitled to access to the Eye of Africa.

22.3 **BUILDING ACTIVITIES**

22.3.1 Each Member shall pay a deposit before the commencement of building operations in an amount as determined by the Directors from time to time as cover for any damage that may be caused to the property of the Association by such Member, his family, employees, contractors, visitors, agents or any other person whatsoever. The deposit shall be refunded to the Member upon completion of building operations to the satisfaction of the Association, on condition that all his obligations towards the Association have been discharged in full.

22.3.2 Each Member shall within a period of 24 (twenty four) months after the date of the first transfer of the property from the Developer, commence building the dwelling on the property and shall complete such dwelling within a period of 36 (thirty six) months after the date of the first transfer of the property from the Developer. This will be the date from which such periods will be calculated irrespective of whether the property has been transferred subsequently. If the Member fails to comply with these provisions the Developer shall be entitled, without prejudice to any other rights which it may have and/or at law and at its election to:-

22.3.2.1 repurchase the property from the Member for an amount equal to the original purchase price paid by the Member in terms of the Deed of Sale (inclusive of VAT); or

22.3.2.2 sell the property to any third party for an amount of not less than the original purchase price paid by the Member in terms of the Deed of Sale.

The Member hereby irrevocably and *in rem suam* appoints the Developer as his duly authorised agent for purposes of such sale, provided that all costs of transfer shall be for the account of the Member in either case.

22.3.3 Notwithstanding the provisions of clause 22.3.2 the Member shall pay to the Association an amount equal to double the normal levy per month for each month which elapses between the date 3 years from the date of the first transfer of the Erf to the date of compliance with clause 22.3.2 by the Member. This will increase to three times the normal levy after one year of non-compliance and thereafter the multiplying factor will increase with one for every completed year of non-compliance. (i.e. after two years of non-compliance, the Member or his successors in title shall pay 4 (four) times the levy, after three years 5 (five) times etc.)

22.3.4 Each Member shall conform to the prescription of the Architectural Guidelines in connection with the erection of a builder's board.

22.3.5 Each Member shall pay the fees as set out in the Architectural Guidelines, before the commencement of any building operations on his erf. These fees can be amended by the Association from time to time.

22.4 **INTERPRETATION**

For as long as the Developer is a Member the Developer's interpretation of these Articles and/or the Estate Rules shall be final and binding on the Association and all Members."