

CONSTITUTION

THE ATLANTIC WAVES HOME OWNERS ASSOCIATION

A body corporate established
in terms of Section 29 of the Land Use
Planning Ordinance, No 15 of 1985

Amended: July 2021

1. ESTABLISHMENT IN TERMS OF STATUTE

The Atlantic Waves Home Owners association is constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985, in accordance with the conditions imposed in the Record of Decision by the Department of Environmental and Development Planning of the Western Cape Government on 13 July 2007 when approving in terms of Section 22 of the Environmental Conservation Act, 1989 (Act No 73 of 1989) the subdivision of Erf 578 Laaiplek, Veldrif, Western Cape as amended in accordance with the conditions imposed in the Record of Decision by the Department of Environmental and Development Planning of the Western Cape Government on 10 June 2014 in terms of Regulation 42 of the National Environmental Management Act, 1998 (Act No 107 of 1998) together with the Environmental Impact Assessment Regulations, 2010 (NEMA EIA Regulations) as well as the approval by the Berg River Municipality on 30 September 2014 of the amendment of the site development plan and related applications for rezoning and subdivision .

2. INTERPRETATION

In these presents:

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

“architectural design manual”	means the architectural design manual annexed hereto;
“association”	means the Atlantic Waves Home Owners Association;
“auditors”	means the auditors of the association;
“business day”	means weekdays other than Saturdays, Sundays and public holidays;
“chairman”	means the chairman of the trustee committee;
“company”	means Tarsius Agtien (Edms) Bpk and includes its successor/s in title or assigns;
“erven”	means the residential erven arising from the subdivision of Erf 578 Laaiplek;
“in writing”	means written, emailed, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
“member”	means a member of the association;
“month”	means calendar month;
“office”	means the registered office of the association;

“private area”	means the area/s of Erf 578 Laaiplek which is not a unit and comprises the private road/s and other communal areas;
“special resolution”	means a resolution passed at a special general meeting in accordance with the provisions of clause 24 below;
“these presents”	means this constitution and regulations and by-laws of the association from time to time in force;
“trustee”	means one of the trustee committee;
“trustee committee”	means the board of trustees of the association;
“unit”	means any residential or commercial erf or sectional title unit arising from the subdivision of erf 578 Laaiplek;
“vice-chairman”	means the vice-chairman of the trustee committee;
“year”	means calendar year;

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

3. OBJECT OF THE ASSOCIATION

- 3.1. The sole object of the association is to manage the collective interests common to all its members, which includes expenditure applicable to the common property of such members and collection of levies for which such members are liable.
- 3.2. The object of the association includes:
- 3.2.1. the control over:
- 3.2.1.1 all buildings, and/or structures erected or to be erected on the erven; and
- 3.2.1.2. the maintenance thereof, and
- 3.2.1.3. the maintenance of buildings, roads, and street lights in the private area; and
- 3.3. the promotion, advancement and protection of the communal and group interests of the members generally;
- 3.4. to take title to the private area upon transfer thereof to the association from the Berg River Municipality;
- 3.5. to enter into services agreements with the local authority or any other authority or supplier of services.

4. FINANCIAL YEAR END

The financial year-end of the association is the end of June each year.

5. MEMBERSHIP

5.1. Membership of the association shall be compulsory for every registered owner of a unit.

5.2. Such membership shall commence simultaneously with the transfer of the units into the name of the transferee.

5.3. Membership of the association shall be limited to the registered owners of the units provided that:

5.3.1. a person who is entitled to obtain a certificate of registered title to any such unit shall be deemed to be the registered owner thereof;

5.3.2. where any such owner is more than one person, all the registered owners of that unit shall be deemed jointly and severally to be one member of the association and nominate one owner to represent them and vote at meetings of the association.

5.4. When a member ceases to be the registered owner of a unit, he shall *ipso facto* cease to be a member of the association.

5.5. A member shall not be entitled to:

5.5.1. sell or transfer a unit unless it is a condition of the sale and transfer that:

5.5.1.1 the transferee becomes a member of the association;

5.5.1.2 the registration of transfer of that unit into the name of that transferee shall *ipso facto* constitute the transferee as a member of the association;

5.5.1.3 he first obtains the written consent of the association which consent shall be given provided the purchaser of such unit agrees in writing to abide by the rules of the constitution of the association and provided further that there are no amounts owing by him to the association as at the date of transfer of the unit;

5.5.2. without the prior written approval of the trustees:

5.5.2.1 erect any new buildings and/or structures of any nature whatsoever on his unit;

5.5.2.2 make any changes or alterations to existing buildings and/or structures on his unit, including changes to the external colour scheme;

5.5.2.3 erect or construct any pergolas, patio awnings, shade ports, car ports, washing lines, wendy houses, walls or any other structures which may affect the external appearance of the improvements on his unit;

5.5.2.4 install or fix burglar bars to any external windows or doors of the buildings on his unit.

- 5.6. The approval of the trustees as contemplated in clause 5.5.2. shall only be given:
- 5.6.1. after detailed plans of the proposed work has been submitted to the trustees, or any person nominated by the trustees (who may be an architect, registered with the South African Council of Architects or the Institute of South African Architects); and
 - 5.6.2. the trustees or their nominee are satisfied that the proposed work has been designed by a person registered with the S A Council for the Architectural Profession and that it is in accordance with the architectural design and development manual, for the purposes of which, the trustees or their nominee shall be the sole arbiter and their decision shall be final and binding on the member; and
 - 5.6.3. the member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature.
- 5.7. The registered owner of a unit may not resign as a member of the association.
- 5.8. The trustee committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the trustee committee.
- 5.9. The rights and obligations of a member shall not be transferable and every member shall:
- 5.9.1. to the best of his ability further the objects and interests of the association;
 - 5.9.2. observe all by-laws and regulations made by the association or the trustee committee and the council;

provided that nothing contained in this constitution shall prevent a member from ceding his rights in terms of this constitution as security to the mortgagee of that member's unit.

6. LEVIES

- 6.1. The trustee committee shall from time to time, make levies upon the members for the purpose of meeting all the expenses which the association has incurred, or to which the trustee committee reasonably anticipates the association will be put by way of maintenance, repair, improvement and keeping in order and condition of the private area including, specifically, the guardhouse and associated equipment, the boundary walls and fencing, the roads, the street lights, the security systems to be installed on the 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 trustee committee shall take into account, income, if any, earned by the association.

- 6.2. The trustee committee shall estimate the amount which shall be required by the association to meet the expenses during which year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the members', equal as nearly as is reasonably practical to such estimated amount. The trustee committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an 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.
- 6.3. The trustee committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in clause 6 (which are not included in any estimate made in terms of clause 6.2, and such levies may be made in the sum or by such instalments and at such time or times as the trustee committee shall think fit.
- 6.4. Any amount due by a member by way of a levy shall be a debt due by him to the association. The obligation of a member to pay a levy shall cease upon his ceasing to be a 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 a member. A member's successor in title to a unit shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf, to pay the levy attributable to that erf.
- 6.5. The total estimated levy as contemplated in clause 6.2 shall be apportioned equally between the units.
- 6.6. Any special levies imposed by the trustees in terms of clause 6.3 shall be apportioned between the members by the trustees in an apportionment which the trustees may regard as reasonable, regard being had of the direct benefits which the member(s) may derive from the proposed expenditure for which the special levies are imposed.
- 6.7. No member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the association in respect of his membership thereof.
- 6.8. The raising of levies will commence after the completion of all the remedial measures determined to be necessary by the trustees in order to bring the infrastructure to an acceptable standard and to convert the estate into a private security estate with associated access control infrastructure.

7. DEALING WITH THE PRIVATE AREA

Neither the whole nor any portion of the private area shall be:

- 7.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 7.2 mortgaged; or
- 7.3 subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude, (save those enjoyed by the members in terms hereof);

without the specific prior written consent of the council and the sanction of a special resolution of the association (and no member shall be entitled to unreasonable vote against any such special resolution which may be proposed); or

- 7.4. built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a special resolution of the association and written consent of the council with the exception of the entrance guardhouse and access control equipment.

8. CONTRACTS AND REGULATIONS

- 8.1. The trustee committee may from time to time:
- 8.1.1. make regulations governing inter alia:
 - 8.1.1.1. the members' right of use, occupation and enjoyment of the private area;
 - 8.1.1.2. the external appearance of and the maintenance of the private area and the buildings or other improvements erected thereon;
 - 8.1.1.3. the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on units,
 - 8.1.2. enter into agreement(s) with the local authorities governing the matters set out in clause 8.1.1 and any other incidental matters.
- 8.2. Each member undertakes to the association that he shall comply with:
- 8.2.1. the provisions of this constitution;
 - 8.2.2. any regulations made in terms of clause 8.1.1;
 - 8.2.2. any agreements referred to in clause 8.1.2. insofar as those agreements may directly or indirectly impose obligations on him.

9. BREACH

- 9.1. Should any member:
- 9.1.1. fail to pay on due date any amount due by that member in terms of his constitution or any regulation made thereunder and remain in default for more than 7 days after being notified in writing to do so by the trustees; or
 - 9.1.2. commit any other breach of any of the provisions of this constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 days after the receipt of written notice to that effect by the trustees and complete the remedying of such breach within a reasonable time;

then and in either such event, the trustees shall be entitled on behalf of the association, without prejudice to any other rights or remedies which the trustees or the association or any other member may have in law, including the right to claim damages:

- 9.1.3. to institute legal proceedings on behalf of the association against such member for payment of such overdue amount or for performance of his obligations in terms of this constitution or any regulation made thereunder, as the case may be; or
 - 9.1.4. to suspend all or any services by the Association to the unit owned by that member; and/or
 - 9.1.5. in the case of clause 9.1.2., to remedy such breach and immediately recover the total cost incurred by the trustees or the association in so doing from such member.
- 9.2. Should the trustees institute any legal proceedings against any member pursuant to a breach by that member of this constitution or any regulation made thereunder, then without prejudice to any other rights which the trustees or the association or any other member may have in law, the trustees shall be entitled to recover from such member all legal costs incurred by the trustees or the association, including attorney/client charges, tracing fees and collection commission.
- 9.3. Without prejudice to all or any of the rights the trustees or the association granted under this constitution, should any member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at a rate of interest determined by the trustees from time to time in accordance with the National Credit Act calculated from the due date for payment until the actual date of payment of such amount.

10 CESSATION OF MEMBERSHIP

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

11. TRUSTEE COMMITTEE

- 11.1. There shall be a board of trustees of the association which shall consist of no less than 4 and no more than 6 members.
- 11.2. Every trustee must be a member of the association or an authorized representative of the member where the member is not a natural person.
- 11.3. Spouses of members and residents with bona fide usufruct over erven within Atlantic Waves are eligible for election to the Board of Trustees"

12. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 12.1. Save as set forth in clause 13.1 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, and shall be eligible for re-election to the trustee committee at such meeting.

- 12.2. A trustee shall be deemed to have vacated his office as such upon:
- 12.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 12.2.2 his making any arrangement or compromise with his creditors;
 - 12.2.3 his conviction for any offence involving dishonesty;
 - 12.2.4 his becoming of unsound mind or being found lunatic;
 - 12.2.5 his resigning from such office in writing delivered to the secretary;
 - 12.2.6 his death;
 - 12.2.7 his being removed from office by a special resolution of the members;
- 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 trustee committee.
- 12.3. Upon any vacancy occurring on the trustee 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 trustee committee.

13. OFFICE OF TRUSTEES

- 13.1. The trustees shall appoint from amongst themselves, a chairman and vice-chairman.
- 13.2. The chairman, and vice-chairman, and such bearers shall hold their respective offices until the first annual general meeting following the date of their appointment, provided that any such office shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason.
- 13.3. Within 7 days of the holding of such annual general meeting, the trustee committee shall meet and shall elect from its own number the chairman and vice-chairman, who shall hold their respective offices until the annual general meeting held next after their said appointment, provided that the office of the chairman or vice-chairman shall *ipso facto* be vacated by the trustee holding such office upon his ceasing to be a trustee for any reason. No one trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the trustee committee shall immediately meet to appoint one of their number as a replacement in such office.
- 13.4. Save as otherwise provided in these presents, the chairman shall preside at all meetings of the trustee 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 trustee 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.
- 13.5. 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 trustee committee.
- 13.6. Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as trustees and/or chairman, vice-chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

14. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 14.1 Subject to the expenses provisions of these presents, the trustee 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 these presents, may exercise all such powers of the association, and do all such acts on behalf of the association as may be exercised and done by the association, and as are not by these presents required to be exercised or done by the association in general meeting, subject nevertheless to such regulations as may be prescribed by the association in general meeting from time to time, provided that no regulation made by the association in general meeting shall invalidate any prior act of the trustee committee which would have been valid if such regulation had not been made.
- 14.2 The trustee committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time,
- 14.3 The trustee committee shall have the right to co-opt onto the trustee committee any member or members chosen by it. A co-opted trustee shall enjoy all the rights and be subject to all the obligations of the trustees.
- 14.4 The trustee committee may, should it so decide, investigate any suspected or alleged breach by any member or trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 14.5 The trustee committee may make regulations and by-laws, not inconsistent with this constitution, or any regulations or by-laws prescribed in the association in general meeting:
- 14.5.1 as to disputed generally;
 - 14.5.2 for the furtherance and promotion of any of the objects of the association;
 - 14.5.3 for the better management of the affairs of the association;
 - 14.5.4 for the advancement of the interests of members;
 - 14.5.5 for the conduct of trustee committee meetings and general meetings;
and
 - 14.5.6 to assist it in administering and governing its activities generally,
- and shall be entitled to cancel, vary or modify any of the same from time to time and to administer penalty levies at their discretion upon any member who continues to be in breach of the Constitution or any regulation imposed by the Trustees provided that due notice has been served to this effect as determined in Clause 9.1.2. These penalty levies shall be paid in addition to the levy payable by the member in terms of Clause 6 hereof.
- 14.6 The trustee committee shall have the capacity to institute legal proceedings, on behalf of the association, against third parties, without obtaining special consent or ratification to apply thereto from the members.

15. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 15.1 The trustee committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 15.2 Meetings of the trustee 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 trustee committee need to be held for that quarter.
- 15.3 The quorum necessary for the holding of any meeting of the trustee committee shall be 3 trustees.
- 15.4 The chairman shall preside as such at all meetings of the trustee committee, provided that should at any meeting of the trustee committee the chairman not be present within 5 minutes after the time appointed for the holding thereof, then the vice-chairman at such meeting, provided further that should the vice-chairman also not be present within 5 minutes of the time appointed for the holding of such meeting, those present of the trustees shall note to appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.
- 15.5 The trustees shall take minutes of every trustee 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. All minutes of trustee committee meetings shall after certification as aforesaid be placed in a trustee committee minute book to be kept in accordance *mutates mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The trustee committee minute book shall be open for inspection at all reasonable times by a trustee, the auditors, and the members.
- 15.6 All competent resolutions recorded in the minutes of any trustee 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, but no resolution or purported resolution of the trustee committee shall be of any force or effect, or shall be binding upon the members or any of the trustees unless such resolution is competent within the powers of the trustee committee.
- 15.7 Save as otherwise provided in these presents, the proceedings at any trustee meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.
- 15.8 A resolution signed by all the trustees shall be valid in all aspects as if it had been duly passed at a meeting of the trustee committee duly convened.

16. GENERAL MEETINGS OF THE ASSOCIATION

- 16.1 The association shall before 31st December in each calendar year, hold a general meeting as its annual general meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices, in terms of clause 17.1 below.
- 16.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the trustee committee shall decide from time to time.

16.3 All general meetings other than annual general meetings shall be called special general meetings.

16.4 The trustee committee, may, whenever they think fit, convene a special general meeting.

17. NOTICE OF MEETINGS

17.1 An annual general meeting and a meeting called for a passing of a special resolution, shall be called by 21 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 14 days' notice in writing at the 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 presents, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reason for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the trustee committee to such persons as are under these presents entitled to receive such notices from the association; provided that a general meeting of the association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:

17.1.1 in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

17.1.2 in the case of a special general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 75% of the total voting rights of all members.

17.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

18. VENUE OF MEETINGS

General meetings of the association shall take place at such place/s as shall be determined by the trustee committee from time to time.

19. QUORUM

19.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the members entitled to vote, as together for the time being, represent one-tenth of the total votes of all members of the association entitled to vote, for the time being save that not less than 3 members must be personally present.

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

20. AGENDA AT MEETINGS

In addition to any other matters required by these presents to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 20.1 the consideration of the chairman's report to the trustee committee;
- 20.2 the election of the trustee committee;
- 20.3 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;
- 20.4 the consideration of the balance sheet of the association for the last financial year of the association preceding the date of such meeting;
- 20.5 the consideration of the report of the auditors;
- 20.6 the consideration of the total levy (as referred to in clause 6) for the calendar year during which such annual general meeting takes place; and
- 20.7 the consideration and fixing of the remuneration of the auditors for the financial year of the association preceding the annual general meeting.

21. PROCEDURE AT GENERAL MEETINGS

- 21.1 The chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the vice-chairman, shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 5 minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall vote to appoint a chairman for the meeting, who shall thereupon exercise all of the powers and duties of the chairman in relation to such meeting.
- 21.2 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.
- 21.3 Whenever a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjournment meeting.
- 21.4 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

22. PROXIES

- 22.1 A member may be represented at a general meeting by a proxy, who need not be a member of the association. The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorized agent in writing, but need not be in any particular form, provided that where a member is more than one person, any one of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairman of the board of directors of the company or by its secretary, and where an association of persons, by the secretary thereof.

- 22.2 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution.
- 22.3 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 intimation in writing of the death or revocation shall have been received by the trustee committee at least one hour before the time fixed for the holding of the meeting.
- 22.4 Should a member be absent from the recorded domicilium address which the trustees may have for such member for a continuous period in excess of 3 weeks, a proxy must be appointed by such member prior to his absence in accordance with clauses 22.1 and 22.2, failing which a member shall not be entitled to vote, at any special general meeting, called during such member's absence.

23. VOTING

- 23.1 At every general meeting, every member in person or by proxy and entitled to vote shall have one vote for each unit registered in his name provided that if a unit is registered in more than one person's name, then they shall jointly have one vote.
- 23.2 Save as expressly provided for in these presents, no person other than a member duly registered, and who shall have paid every levy and other amount (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.
- 23.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 23.4 Notwithstanding the provisions of clause 23.3 aforesaid, voting on the election of a chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or any of the members in terms of clause 23.5 below.
- 23.5 When a poll is demanded regard shall be had, in computing the majority on the poll, to the number of votes cast for and against the resolution.
- 23.6 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.

- 23.7 An ordinary resolution (that is a resolution other than special resolution) or the amendment of any ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. 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.
- 23.8 Unless any member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity of the procedure at such meeting, such declaration by the chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairman of the meeting as to the result of any voting at the meeting.

24. SPECIAL RESOLUTION

- 24.1 A resolution by the association shall be a special resolution if at a general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which members holding in aggregate not less than one-fourth of the total votes of all the members entitled to vote thereat, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than three-fourths of the number of members of the association entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than three-fourths of the total votes to which the members present in person or by proxy are entitled.
- 24.2 If less than one-fourth of the total votes of all the members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date not earlier than 14 days and not later than 30 days after the date of the meeting and the provisions of clause 21.3 shall apply in respect of such adjournment.
- 24.3 At the adjourned meeting, the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such members shall be deemed to be special resolution even if less than one-fourth of the total votes are represented at such adjourned meeting.

25. MANAGING AGENT

The trustees shall appoint, at their sole discretion, a managing agent to assist them with their responsibilities and specifically for the purpose of collection of levies, corporate governance responsibilities and the management of the architectural design manual with the assistance of an independent architect. The managing agent shall be a registered member of the National Association of Managing Agents (NAMA) and shall hold at all times a valid fidelity fund certificate issued by the Estate Agents Affairs Board (EAAB)

26. OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this constitution, the trustee committee shall at all times have the rights to engage on behalf of the association, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the trustee committee and on such terms as the trustee committee shall decide, subject to any of the provisions of these presents.

27. ACCOUNTS

27.1 The association in general meeting or the trustee 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.

27.2 At each annual general meeting the trustee 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 made up as at the last financial year end of the association. Every such balance sheet shall be accompanied by proper and extensive reports of the trustee committee and the auditors if appointed, and there shall be attached to the notice sent to members convening each annual general meeting, as set forth in clause 17.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

28. AUDIT

Should the trustees or the majority of the members so require, the accounts of the association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the auditors at least once a year.

29. SERVICE OF NOTICES

29.1 A notice shall be in writing and shall be given or served by the association upon any member, either personally or by post in a prepaid registered letter, properly addressed to the member at the address of the unit owned by him.

29.2 No member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any member may require the association, by notice, to record an address within the Republic of South Africa, which shall be deemed to be his address for the purpose of the service of notices.

- 29.3 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, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 29.4 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.

30. INDEMNITY

- 30.1 All trustee members shall be indemnified out of the funds of the association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a trustee member, in his capacity as chairman or vice-chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.
- 30.2 Every trustee member, every servant, agent and employee of the association, shall be indemnified by the association against (and it shall be the duty of the trustee committee out of the funds of the association to pay) all costs, losses and expenses (including traveling expenses) which such persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a trustee member, his duties as chairman or vice-chairman. Without prejudice to the generality of the above, the association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.
- 30.3 A trustee member shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other trustee members, whether in their capacities as trustee members or as chairman or vice-chairman, or for any loss or expense sustained or incurred by the association through the insufficiency or deficiency of title to any property acquired by the trustee 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 or 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.

31. ARBITRATION

- 31.1 Any dispute, question or difference arising at any time between member or between members and trustees out of or in regard to:
- 31.1.1 any matters arising out of this constitution; or
 - 31.1.2 the rights and duties of any of the parties mentioned in this constitution; or
 - 31.1.3 the interpretation of this constitution, 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.

- 31.2 Arbitration shall be held in Cape Town 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 business days after it has been demanded.
- 31.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 31.3.1 primarily an accounting matter – an independent accountant;
 - 31.3.2 primarily a legal matter – a practicing counsel or attorney of not less than 10 years standing;
 - 31.3.3 any other matter – an independent and suitably qualified person appointed by the auditors; as may be agreed upon between the parties to the dispute.
- 31.4 If agreement cannot be reached on whether the question in dispute falls under clauses 30.3.1, 30.3.2 or 30.3.3 or upon a particular arbitrator in terms of clause 30.3.3, within 3 business days after the arbitration has been demanded, then:
- 31.4.1 the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 30.3.1, 30.3.2 or 30.3.3; or
 - 31.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 30.3.1 within 7 business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 business days referred to in clause 30.2 above.
- 31.5 The arbitrator shall make his award within 7 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.
- 31.6 The decision of the arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa or its successor/s upon the application of any party to the arbitration.
- 31.7 Notwithstanding anything to the contrary contained in clauses 30.1 to 30.7 inclusive, the trustees shall be entitled to institute legal proceedings on behalf of the association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

32. EFFECTIVE DATE

The provisions hereof shall come into force immediately upon approval by the members by special resolution.

33. AMENDMENTS TO CONSTITUTION

- 33.1 This constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a special resolution adopted at an annual general meeting or a general meeting of the members, subject to the provisions of clause 41.
- 33.2 Any amendments to this constitution must be submitted to the Commissioner for the South African Revenue Service.

34. STATUS OF TARSIVUS AGTIEN (EDMS) BPK (The Company)

It is noted that the company has been purchased by a group of private investors who have spent a substantial amount of their private funds in acquiring the necessary permissions to convert the Atlantic Waves Development into a private estate for the benefit of all its members. Until such time as all the units in Atlantic Waves still owned by the company have been sold to new members, the following provisions shall apply in addition to the conditions in these presents:

- 34.1 the company shall be entitled:
 - 34.1.1 to nominate and appoint a pro rata proportion of the trustees of the board of trustees, such proportion being the same proportion as exists between the total number of units within Atlantic Waves and the total number of units of which the company is the registered owner at the relevant time (rounded up to the next number in the event of a fraction) which trustees need not be members of the association;
 - 34.1.2 to a number of votes equal to the number of remaining unsold units at any time at any meeting of members;
 - 34.1.3 to require that the trustee committee enforces the rights granted to it in terms of these presents against any member who, in the sole opinion of the company, is not complying with his obligations as a member, and in particular, without restricting the generality of the foregoing, has failed to maintain the exterior and aesthetic appearance of the dwelling constructed on his unit by giving such member written notice in which his failure to comply with the particular provisions of these presents is detailed and calling upon him to remedy such failure within a prescribed period of not more than 30 days, failing which, the company shall be entitled at the sole cost of that member to carry out all such work as may be required to maintain the exterior and aesthetic appearance of the dwelling;
 - 34.1.4 to pay a monthly levy for each erf registered in its name equivalent to 40% of the levy paid for each erf by the other members.
- 34.2 neither the trustee committee nor any member of the association shall prevent or hinder in any way the company from:
 - 34.2.1 gaining access to and egress from Atlantic Waves;
 - 34.2.2 continuing its building operations at Atlantic Waves;
 - 34.2.3 marketing and selling any of its unsold units;
 - 34.2.4 generally from carrying on its business operations, provided that the provisions of this clause 33 shall not be interpreted as allowing the company access onto any of the units already transferred to a member unless 48 hours prior written notice has been given to the member concerned. The company shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the member. No member shall be entitled to refuse the company access if the required notice has been given;
- 34.3 no consent shall be given by the board of trustees as contemplated in clause 5.5.2 unless the representative trustee of the company has voted in favour of such consent granted;
- 34.4 upon the transfer of the last unit, from the company to a member, the rights of the company in terms of the provisions of this clause 33 shall immediately terminate *ipso facto* and no longer be of any force and effect.

35. ACCESS TO ATLANTIC WAVES DEVELOPMENT

It is recorded that officials, employees and contractors employed by the association, local authority and/or any public service company shall, at all times, have reasonable access to the units and private area for purposes of executing all necessary services.

36. ARCHITECTURAL DESIGN MANUAL

It is recorded that the erven are located in the Berg River municipal area and fall within the jurisdiction of the Berg River Municipality. The Municipality has approved the subdivision of erf 578 into residential erven and private areas on the condition that all dwellings to be constructed on units must comply with the architectural design manual.

37. DEVELOPMENT COMMITTEE

37.1 The trustee committee shall appoint a development committee to evaluate and approve all building plans submitted by owners of erven in accordance with the requirements of the architectural manual and recommend them for approval by the Municipality.

37.2 Until such time that a development committee is appointed by the trustee committee to evaluate and recommend for approval by the Municipality all building plans submitted, Tarsius Agtien Edms Bpk shall take full responsibility.

38. DISTRIBUTION OF FUNDS AND ASSETS

38.1 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.

38.2 The funds available for investment may only be invested with registered financial institutions as defined in Section Figure 1 of the Financial Institutions (Investment of Funds) Act of 1984 and in securities listed on the stock exchange as defined in Section 1 of the Stock Exchange Control Act 1985 Act No 1 of 1985.

38.3 On dissolution 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) (iii) of the Act.

39. LEGAL STATUS

39.1 The association is and shall continue to be a distinct and separate entity or body corporate with the power to acquire, to hold and alienate property of every description whatsoever, and with the capacity to acquire rights and obligations and having perpetual succession.

39.2 All actions, suits, proceedings at law or any arbitration shall be brought by or against the association in the name of the Association and the Trustees may authorize any person or persons to act on behalf of the Association to sign all such documents and take all such steps as may be necessary in connection with any such proceedings.

39.3 The liability of the members of the association shall be limited to the amount of the unpaid levies or other amounts owing by them to the Association subject, however, to the liability of the members in terms of Section 29 (4) of

the Land Use Planning Ordinance No15 of 1985 and any amendment or modification thereof or substitution thereof from time to time.

40. MUNICIPAL REQUIREMENTS

- 40.1 No member shall be entitled to let his unit unless the tenant enters into a written agreement with such member in terms of which the tenant acknowledges that he has read a copy of this constitution and that he understands the contents thereof and regards himself bound thereto.
- 40.2 All traffic rules and regulations on roads shall apply and be enforceable by the Municipality
- 40.3 Prior to occupation, all dwellings must, with effect from 1 January 2015, be completed according to the approved plans as well as all external works. External works are determined to be any other physical improvements to the property other than the dwellings themselves eg driveways and perimeter walls or fences etc. Completion certificates will be issued by the Berg River Municipality only for those dwellings which have complied with these requirements.

41. MUNICIPAL APPROVAL

This constitution is subject to the approval of the Municipality and any amendment hereof may only be effected with the approval of the Municipality and the rights of the Municipality with regard to the provision of services and the levying of rates will not be prejudiced.