

AMENDED CONSTITUTION OF THE SETTLERS PARK ASSOCIATION

ISSUE DATE: 17 OCTOBER 2007

ANY CONSTITUTION ISSUED PRIOR TO THIS DATE IS HEREBY RENDERED NULL AND VOID

1. NAME

The name of the organisation is the "Settlers Park Association" which, in addition to being an Association for the aged and for retired persons, is the developer and management association of the "Settlers Park Retirement Village" situated on erven 2086, 3853, 3609 and 4353 in Port Alfred in the Municipality of Ndlambe.

- 1.1 The Settlers Park Association and all its members shall be referred to as "the Association".

2. OBJECTS

The objects of the Association are to establish and maintain housing, institutional and community facilities and services for the aged and for retired persons (being persons who have attained the age of 60 years or persons who have retired by reason of ill health or infirmity) on a non-profit basis and with an altruistic or philanthropic intent, that is to say, to operate a housing development scheme on the Association's property as contemplated in and subject to the provisions of the Housing Development Schemes for Retired Persons Act, 1988 (Act 65 of 1988), as amended (hereinafter referred to as "the Act") and the Regulations promulgated under the Act under Government Notice R1351/1989 (hereinafter referred to as "the Regulations").

3. AREA

The area of operation of the Association shall be the Magisterial District of Bathurst, within the Republic of South Africa.

4. STATUS, LEGAL RESPONSIBILITY, CONTROL AND ADMINISTRATION

- 4.1 The Association has full legal personality and is therefore competent to have rights and responsibilities, to negotiate any legal act, and to participate in legal proceedings.
- 4.2 All assets, funds and property of the Association shall be registered in the name of the Association which shall have perpetual succession.
- 4.3 The property and income of the Association shall be used solely to further the objects of the Association.

5. MEMBERSHIP

- 5.1 Any natural person who subscribes to the objects of the Association may apply for membership of the Association.

- 5.2 Application for membership shall be on the prescribed form and shall be signed by the applicant. The Board referred to in clause 7 below (hereinafter referred to as "the Board") shall have discretion as to whether such person's application for membership shall be accepted.
- 5.3 Each member, other than such honorary members as the Association may elect, or members who are resident in the Settlers Park Retirement Village, shall be obliged to pay an annual subscription, the amount and manner of which shall be determined by the Board, subject to confirmation annually by members at the Association's Annual General Meeting.
- 5.4 A member of the Association, provided that such member has attained the age of 60 (sixty) years, or has retired by reason of ill health or infirmity, may, if housing units are available:
- (i) acquire from the Association a right to occupy a housing unit for the duration of the lifetime of the member in terms of the provision of the Association's Life Right Agreement; or
 - (ii) lease from the Association a housing unit in terms of the provisions of the Association's Lease Agreement.

6. GENERAL MEETINGS OF ASSOCIATION MEMBERS

- 6.1 The Annual General Meeting of members shall be held at such time, not being more than 15 (fifteen) months after the holding of the last preceding Annual General Meeting and within not more than 6 (six) months after the end of the financial year, and at such place and time as may be fixed by the Board.
- 6.2 All general meetings, other than the Annual General Meeting, shall be called "Special General Meetings".
- 6.3 Special General Meetings shall be convened by the Board or if a written requisition is made, by not fewer than 25 (twenty-five) members of the Association. Provided that if the meeting is not convened by the Board within 3 (three) calendar months of date of the written requisition then it may be convened by the requisitioners themselves in the manner set out herein for convening General Meetings.
- 6.4 Notice of General Meetings shall be given to all members by publication in the local press at least 21 (twenty one) calendar days before the date set for such meeting.
- 6.5 Only business mentioned at the request of the members, of which 7 (seven) days notice has been given, and business placed on the agenda by the Board may be transacted at an Annual or Special General Meeting.

- 6.6 No business transacted at a General Meeting shall be invalid merely by reason of the fact that any member entitled to receive notice of the meeting was accidentally not notified, or did not receive notice of the meeting.
- 6.7 A quorum of members at the Annual General Meeting and at Special General Meetings shall be 50 (fifty) members.
- 6.8 In the absence of a quorum at an Annual General Meeting or at a Special General Meeting, the meeting shall stand adjourned to the same time and place on the next weekday (not being a public holiday, Saturday or Sunday) If no quorum then be present, the meeting shall be considered as cancelled and shall only be re-convened if a new request is received in terms of clause 6.3
- 6.9 The chairperson of the Board, elected in terms of sub-clause 7.3 below, shall chair all meetings of the Association. Provided that, in his/her absence the vice chairperson shall take the chairperson's place. In the absence of these elected officers, those present may appoint their own chairperson.
- 6.10 In accordance with regulation 9(6), at every general meeting, all members present in person or by proxy, who have purchased a life right or are renting a dwelling unit from the Association shall be entitled to vote. There shall be one vote for each housing interest alienated to such member. The instrument appointing a proxy shall be in writing signed by the appointer and lodged with the Association prior to the meeting. Proxies can only be in favour of a member of the Association and one member may hold more than one proxy.
- 6.11 Voting on resolutions on the agenda of General meetings shall be by show of hands except when a ballot is requested by more than fifty percent of the members present. The election of the members of the Board or any other Committees to be elected at such meetings, shall be by ballot.
- 6.12 All matters at a General Meeting shall be determined by a simple majority vote and, in the case of an equality of votes at any meeting, the Chairperson of the meeting shall have a second or casting vote.
- 6.13 The business of the Annual General Meeting shall include:
- 6.13.1 receiving, considering and approving the Annual Financial Statements, including the budget for the forthcoming year and such projections as may be required by the Act, the Auditor's Report and the Annual Report of the Association's affairs;
- 6.13.2 discussion of any matter referred to or arising out of the said financial statements or the said reports;
- 6.13.3 the election of 5 (five) members to serve on the Board and 5 – 7 (five to seven) members to serve on the Residents and Services committee.

- 6.13.4 the appointment of the Auditors of the Association for the ensuing year;
- 6.13.5 confirmation of any powers ceded or assigned for the ensuing year;
- 6.13.6 the appointment of any committees deemed necessary for any specific tasks during the ensuing year;
- 6.13.7 the discussion of any matter of which notice shall have been given to the Board at least 7 (seven) days before the date of the Annual General Meeting; and
- 6.13.8 the transaction of such other business as may be transacted at an Annual General Meeting.

7. SETTLERS PARK ASSOCIATION BOARD

- 7.1 All business of the Association (including the business of the Management Association contemplated in Regulation 7 of the Regulations) shall be managed by the Board and as such the Board shall be responsible for deciding on general policy, control and administration of the affairs of the Association subject to the provisions of this Constitution, subject to the provisions of the Act and of the Regulations and subject to any lawful restrictions imposed or direction given at an Annual or Extraordinary General Meeting by majority vote of members of the Association.
- 7.2 The Board shall consist of 5 (five) members of the Association, elected annually by members of the Association plus two persons nominated by the Residents and Services Committee. Nominations of persons for election to the Board, duly signed by the proposer, the seconder and the nominee, shall be submitted to the Administration Manager no fewer than 7 (seven) days before the date of the Annual General Meeting. A brief C.V. of the nominee shall also be submitted. The persons nominated shall have specific qualifications or experience which will enable them to make meaningful contributions to the business of the Board and to provide guidance to the Managing Agent and office staff regarding matters of concern which occur from time to time. Board members shall hold office until the next appointment of Board members.
- 7.3 The Board shall elect from its members a chairperson, a vice-chairperson and a financial director. The responsibilities of these officers are set out in the Appendix to this constitution. The chairperson, upon retirement from the position, shall continue to serve on the Board for a period of one year in an advisory and non voting capacity.
- 7.4 The Board shall be empowered to fill any vacancies occurring on the Board.
- 7.5 The Board shall cause proper minutes to be kept of its proceedings.

- 7.6 A Board member who has a direct interest in, or could benefit from, any contract, other than a lease or life right contract, shall recuse himself/herself from any deliberations on that contract.
- 7.7 Employees of the Association may attend Board meetings but only in advisory capacities and will have no voting rights.
- 7.8 The Board shall appoint from its members at least three persons who shall accept fiduciary responsibility for the Association and who will not be connected in relation to each other.

8. PROCEEDINGS OF THE BOARD

- 8.1 The Board shall meet at least every 2 (two) months and shall regulate its meetings as it deems fit. Questions arising at any meeting shall be determined by a simple majority vote. In the event of an equality of votes, the chairperson shall have a second or casting vote.
- 8.2 The quorum necessary for the transaction of business of the Board shall be 4 (four) members personally present, of whom at least 1 (one) member must be either the chairperson or the vice chairperson or the financial director.
- 8.3 The Board shall appoint a Managing Agent as contemplated in Regulation 6(a) of the Regulations, and shall also appoint a Welfare Manager and a Marketing Manager. These officers and the appointed office staff, shall be responsible for the daily management and control of the Settlers Park Retirement Village in accordance with policy rules determined by the Board from time to time. Their functions and areas of responsibilities are set out in the Appendix to this constitution.
- 8.4 The Board may delegate any of its powers to committees consisting of such member or members as the Board deems fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to this Constitution and to any rules that may be imposed on it by the Board.
- 8.5 The powers and duties of the Board and committees shall terminate at the date of each Annual General Meeting following its appointment.
- 8.6 All acts done by any person acting as a Board or committee member shall, notwithstanding that it be afterwards discovered that there were some defects in the appointment of any such members, be as valid as if every person had been duly appointed and was qualified to be a committee member.

9. RESIDENTS AND SERVICES COMMITTEE

- 9.1 A Residents and Services Committee, comprising 5 – 7 (five to seven) resident or non resident members of the Association shall be elected at each Annual General Meeting. No husband and wife shall serve together on any committee.

- 9.2 Nominations of persons for election to the Residents and Services Committee, duly signed by the proposer, the seconder and the nominee, shall be submitted to the Administration Manager no fewer than 7 (seven) days before the date of the Annual General Meeting. A brief C.V. of the nominee shall also be submitted.
- 9.3 Within 1 (one) week of the meeting those elected shall meet to elect a chairperson, vice chairperson and secretary. They shall also elect 2 (two) persons to serve on the Board. These may include the elected officers.
- 9.4 The purpose, function and area of responsibility of the Residents and Services Committee shall be as set out in the Appendix. The Committee may co-opt members or appoint sub-committees as required.

10. FINANCIAL PROVISIONS AND RECORDS

- 10.1 The Board shall cause proper books of account to be kept as required by any law or regulations to which the Association is subject, with respect to:
- 10.1.1 all sums of money received and expended by the Association and the manner in respect of which the receipt and expenditure takes place;
- 10.1.2 all sales and purchases of goods by the Association;
- 10.1.3 the Association's assets and liabilities;
- 10.2 The accounting records shall be kept at the nominated office of the Association or at such other place or places as the Board thinks fit and shall always be open to the inspection of the members of the Association.
- 10.3 A member of the Association shall have the right of inspection of any account or document of the Board except for confidential staff files and Residents personal files.
- 10.4 All monies, bills and notes belonging to the Association shall be paid to or deposited with the Association's bankers and/or deposit receiving institution, to an account to be opened in the name of the Association. The banking or deposit receiving institution account shall be kept with such bank and/or deposit receiving institution as the Board shall from time to time determine.
- 10.5 All withdrawals drawn on the account shall be signed by at least 2 (two) of such persons as may be authorised thereto from time to time by the Board.
- 10.6 The account shall be audited annually by an Accountant/Auditor registered in terms of the Public Accountants Act No. 51 of 1951 and appointed for the ensuing year at each Annual General Meeting. The Audited Financial Statements and the required returns for income tax will be submitted to the South African Revenue Services by the Auditor on behalf of the Association.
- 10.7 The financial year of the Association shall be from the first of April in the year to the thirty-first of March in the next succeeding year.

- 10.8 The Board may hold and invest or otherwise deal with any monies of the Association, not required for immediate use, in such manner and subject to such conditions as the Board may determine.
- 10.9 All donations, bequests, collections, funds or other immovable or movable assets in the hands of the Association, or which in future may be acquired by, or accrue to the Association, shall be held, controlled and dealt with by the Board, but subject to the condition (if any) on which property or money shall have been received. No donation will be accepted which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation.
- 10.10 A Trust Fund for the benefit of the Settlers Park Association community has been established and shall be administered by the Trustees appointed in terms of the Deed of Trust.
- 10.11 The income and property of the Association, whencesoever derived, shall be applied and utilised solely towards the promotion of the objects of the Association and the furtherance of its objects as set forth in this Constitution, and no portion thereof shall be paid or be transferred directly or indirectly by way of bonus or otherwise howsoever by way of profit to the members of the Association or any other person, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Association or to any member thereof in return for any services actually rendered to the Association.
- 10.12 The Board may purchase or otherwise acquire, let, hire, sell, transfer, mortgage or otherwise alienate, encumber or deal with property, movable and immovable. Such property shall be registered in the name of the Association and all property, movable and immovable, shall always be held and be dealt with subject to the terms and conditions imposed by the Transferor when transferring the property to the Association, subject to the provisions of any law or regulations to which the Association is subject and subject to any restriction imposed or direction given by majority vote of members of the Association at any Annual General or Extraordinary General Meeting.
- 10.13 Members of the Board or any committee which is formed in terms of the Constitution shall, provided they have acted *bona fide*, be indemnified by the Association against all proceedings, costs and expenses incurred by reason of any act or thing done in the performance of their duties in connection with the Association.
- 10.14 Should the services of a fundraiser be used for the collection of contributions, the expenses (remuneration and/or commission included) may not exceed 40% of the total proceeds of the collection.

11. DISSOLUTION

- 11.1 The Association may be dissolved if at least two-thirds of the Members present and voting at a General Meeting of members convened for the purpose of considering such matter are in favour of dissolution. Not less than 21 days notice shall be given of such meeting and the notice convening the

meeting shall clearly state that the question of dissolution of the Association and disposal of its assets will be considered. If there is no quorum at such a General Meeting, the meeting shall stand adjourned for not less than 1 (one) week and the members attending such adjourned meeting shall then constitute a quorum.

- 11.2 If, upon dissolution of the Association, there remain any assets whatsoever after the satisfaction of all its debts and liabilities, such assets shall not be paid to or be distributed amongst the members of the Association, but shall be given or be transferred to some other Society, Association or Company with objects similar to those of this Association and which is an approved public benefit organization in terms of S(30) of the Income Tax Act No. 58 of 1962 and which is also registered with the Department of Welfare (or its successor) in terms of the Non-Profit Organisations Act No. 71 of 1997, as amended, or any Act or law passed in substitution for that Act, as may be decided either by the members at a meeting convened for the purpose of dissolving the Association or in default of such decision, as may be decided by the Directorate for Non-Profit Organisations.

12. AMENDMENTS

- 12.1 This Constitution may only be amended by “Special Resolutions” as defined in regulation 1 (vii) and approved by three fourths of the members present in person or by proxy at a general meeting of the Association. In accordance with this regulation, 14 (Fourteen) days notice shall be given. Such notice shall include the text of the proposed amendment.
- 12.2 Amendments to the Constitution must be approved by the Directorate for Non-Profit Organisations and submitted to the Commissioner for the South African Revenue Services.