

## **GREEN PASTURES HOMEOWNERS ASSOCIATION.**

### **CONSTITUTION.**

#### **1.0 NAME:**

1.1 The name of the Association is GREEN PASTURES HOMEOWNERS ASSOCIATION.

#### **2.0 DEFINITIONS”**

2.1 In this Constitution and Rules, unless the context indicates the contrary, the following words shall have the following meaning;

2.1.1 "The Association" shall mean Green Pastures Homeowners Association;

2.1.2 "The Chairman" shall mean the Chairman of the Association;

2.1.3 "the Development" shall mean Green Pastures, which is a development that exists within the Knysna Municipal area and which has been approved as such by the Knysna Municipality;

2.1.4 "The Developer" shall mean TRESSO Trading 79 (Pty) Ltd;

2.1.5 "The Lessee" shall mean any person having a lease or any temporary right of occupation from a Member of an Erf in the Development, which person shall at all times be subject to the control of the Member from whom he has obtained his rights and who shall, at all times, also be fully bound to the terms and conditions of this Constitution and / or any Rules made in terms thereof;

- 2.1.6 "The Member" shall mean an owner of an Erf as defined in the further paragraphs hereof;
- 2.1.7 "The Person" or "a person" shall include a Company, Close Corporation, a Trust, a Partnership or any other Association of persons entitled by law to enjoy freehold title to immovable property;
- 2.1.8 "Registered Owner" shall mean the registered owner from time to time of any Erf forming a part of the development;
- 2.1.9 "The Rules" shall mean the Initial Rules of the Association, a copy of which is attached hereto, as well as any subsequent Rules as drawn by / on behalf of the Association in accordance with the terms and conditions of this Constitution;
- 2.10 "The Committee" shall mean the Committee of the Association as elected by the Members of the Association at each Annual General Meeting and / or an Ordinary General Meeting [Where applicable], or as further provided for herein below, and shall include any Sub – Committee elected in the same manner or created by the Committee in accordance with the terms and conditions of this Constitution;
- 2.11 "Erf" shall mean each individual freehold piece of property within the Development;
- 2.2 Words importing the singular number shall include the plural, and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter genders shall include the feminine and masculine genders, and the converse shall also apply.
- 2.3 All notices referred to in this Constitution shall be in writing and may be sent by pre-paid registered mail to the address supplied by the Member; telefax to a telefax number supplied by the Member or by e- mail to the e – mail address supplied by the Member.

The certificate of Posting of a pre – paid registered letter; the activity report for a telefax and the transmission report of an e – mail shall be prima facie proof of the forwarding of such notice and the onus shall rest upon each and every Member, and not the Association or any Committee of the Association, to ensure that the Association has his correct address, telefax number and e – mail address.

**3. HEAD NOTES:**

- 3.1 The head notes to the paragraphs in this Constitution and any Rules drafted in accordance there with, are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

**4. OBJECTS AND POWERS OF THE ASSOCIATION:**

- 4.1 The objects of the Association are:

4.1.1 to equally, fairly, reasonably and objectively promote and enforce standards for high quality low density, country living in the Development in such a way that Members may derive the maximum collective benefits there from;

4.1.2 to provide for equal, fair, reasonable and objective control over the standards of maintenance of buildings, services and amenities forming part of the Development, more particularly to enforce the prescribed and applicable building regulations and design parameters in order to maintain a characteristic feeling in the Development. To give effect hereto, the Association shall have the powers to do such acts as are necessary to accomplish these objects and any object implied herein, as well as delegating their rights / some of their rights in this regard to the Committee.

Without in any way limiting the generality of the afore going, such powers shall include, but not be limited to the following:

- 4.1.2.1 the determination of what constitutes appropriate standards for community living and the maintenance of properties and the common property in the Development;
- 4.1.2.2 the investment and reinvestment of monies belonging to the Association not immediately required, with the manner of such investment being decided from time to time by the incumbent Committee;
- 4.1.2.3 the operation of a banking account for the Association's funds, provided that the Committee shall at all times ensure that all cheques / expenditure shall be signed / approved by at least two [2] Committee Members;
- 4.1.2.4 the making, amendment and repeal of fair, reasonable and objective Rules which shall be binding upon all Members, lessees and visitors to the Development as if they were Members of the Association and bound by this Constitution and all Rules drawn in accordance with the provisions thereof;
- 4.1.2.5 the formation / election of the Committee and / or any necessary Sub - Committees and the delegation of such powers to such Committee and / or Sub - Committees as the Members in general meeting may deem necessary;
- 4.1.2.6 the right to sue and defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 4.1.2.7 the levying of a subscription payable by Members as provided in Paragraphs 5 and 11 herein below;
- 4.1.2.8 the acquisition by purchase or otherwise and the ongoing maintenance of all common property including, but not restricted to the gate house, roads, entrance wall, electric fence, dam areas and other common property and the adoption of any of the contractual arrangements and / or undertakings

between the Developer and the Association, including all the rights and the assumption of all the obligations;

- 4.1.2.9 the incorporation of new, and the enforcement of old, design standards for the Development;
- 4.1.2.10 the incorporation, redrawing [Where deemed necessary], entrenchment and protection of the design constraints as set out in the Constitution and / or the Design Manual of the Association and, if possible, the entrenchment of the Design Manual [As amended from time to time] as Conditions of Title in the Title Deeds of each individual Erf to be sold in the future;
- 4.1.2.11 the establishment and maintenance of a garden service for the common property for the benefit of the Development and the individual Members of the Association.

## **5. MEMBERS:**

- 5.1 The Association shall be organized without capital and the Membership thereof shall be compulsory for every Registered Owner of an Erf in the Development which Membership shall be evidenced by, and limited to, registered ownership as reflected in the Deeds Registry in Cape Town of any one or more erven in the Development.
- 5.2 Upon registration of ownership of any Erf to a person, Membership of the Association shall be automatic and Members shall be obliged to comply with the provisions of this Constitution and the Rules of the Association as laid down from time to time.
- 5.3 No person shall cease to be a Member of the Association while remaining the registered owner of an Erf in the Development.
- 5.4 A person who is entitled to obtain a Certificate of Registered Title to any Erf in the Development shall be deemed to be the registered owner thereof.

- 5.5 Each Member shall be entitled to one vote for each Erf owned in the Development. Ownership of an Erf in undivided shares shall constitute only one Membership, which Membership shall be represented by one individual in terms of the provisions of Paragraph 9 hereof.
- 5.6 When a Member ceases to be the registered owner of an Erf in the Development he shall ipso facto cease to be a Member and his Membership shall be transferred, by the registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of the Erf in the Development from the previous Member to the new Member.
- 5.7 A Member shall not transfer an Erf in the Development unless it is a condition of that transfer that the registration of the transfer of the property into the name of the transferee shall ipso facto constitute the transferee as a Member of the Association and the Committee has certified in writing to the attorney passing transfer that the transferring Member owes the Association no monies at all.
- 5.8 Every Member shall pay his subscription to the Association, the amount of which shall be determined in terms of Paragraph 11 hereof. The subscription so determined shall apply equally to all erven and shall be payable in respect of each Erf owned by a Member.
- 5.9 Should any Member let any Erf owned by him to a Lessee, he shall be obliged, and by being a Member undertakes to ensure, that such Lessee complies with the provisions of this Constitution and the Rules of the Association.
- A Lessee may become an Associate Member of the Association by payment of the annual subscription. An Associate Member shall be entitled to attend meetings of the Association, but shall not be entitled to vote at any of the meetings.
- 5.10 The Association came into being on the first transfer and the Developer duly convened the Inaugural Meeting.

**6. POWERS:**

- 6.1 The management and administration of the Association shall be exercised by the Committee elected by the Members in General Meeting, provided that the Members in General Meeting shall also be entitled to elect a Member of the Association to whom the management and administration of the Association, including any of its specific powers, may be delegated and / or to appoint a Managing Agent for this purpose.
- 6.2 Any act performed without any proper authority by any Committee or individual Member thereof, may be ratified and confirmed by the Members at the following General Meeting [Annual or Ordinary], provided that the Members are fully advised by the Committee of all relevant facts surrounding the decision which is sought to be ratified and so that they are placed in the position of having all the relevant information at their disposal to make an informed decision.
- 6.3 A Member, who is duly authorized to act on behalf of the Association, shall be entitled to be repaid by the Association any reasonable and bona fide expenses incurred by him in connection with and incidental to the performance of his duties to the Association.

**7. CHAIRMAN AND COMMITTEE MEMBERS OF THE ASSOCIATION:**

- 7.1 The Chairman, together with a minimum of four [4] and a maximum of ten [10] Committee Members shall be elected at any Annual General Meeting and each Member of the Committee shall remain in office until the following Annual General Meeting, unless they vacate their office in terms of the provisions of this Constitution.

If a vacancy arises in the elected Committee and / or Sub – Committee for whatever reason and during the period between Annual General meetings, then the Committee / Sub – Committee can co-opt another Member on to such Committee / Sub – Committee and that person shall be in the same position and

have all the same rights and obligations as if he had been elected by the members at a General Meeting [Annual or Ordinary].

7.2 Any committee Member shall cease to hold office as such if:

7.2.1 by notice in writing to the Association he resigns his office;

7.2.2 he is, or becomes, of unsound mind;

7.2.3 he surrenders his estate as insolvent or his estate is sequestrated;

7.2.4 he is convicted of an offence which involves dishonesty;

7.2.5 he has absented himself from two consecutive Committee Meetings, without being excused in advance by the Chairman;

7.2.6 by a resolution of twenty five per centum [25%] of Members of a General Meeting he is removed from office;

7.2.7 his annual subscription becomes delinquent;

## **8. INDEMNITY:**

8.1 No duly authorized Member, to whom the whole or any aspects or management and administration of the Association has been delegated, shall be liable to the Association, or to any Member thereof or to any other person whomsoever for any act or admission by himself, or by the servants, agents, contractors or employees of the Association.

8.2 Such Members shall be indemnified by the Association against any loss or damage suffered by him in consequence of any purported liability, provided that such Member has, upon the basis of information known to him, or which should reasonably have been known to him, at all times acted in good faith and without gross negligence.



**9. MEETINGS OF THE ASSOCIATION:**

9.1 ANNUAL GENERAL MEETINGS:

9.1.1 Annual General Meetings of Members shall be held once in every year at such time as is most likely to be the most convenient to most of the Members, and at such place as the outgoing Committee Members may agree, but so that no more than fifteen [15] months shall be allowed to lapse between any two [2] such successive meetings.

The business to be done at the Annual General Meeting shall include, but not necessarily be limited to:

- 9.1.1.1 the receipt of a Chairman's report as well as a detailed report on the financial affairs of the Association, which shall include the Committee's budget for the forthcoming year together with its recommendations and reasoning for the new levies payable in the forthcoming year, as well as all other relevant financial issues;
- 9.1.1.2 the possible election of a Member to carry out the Management and administration of the Association;
- 9.1.1.3 the acceptance and the adoption of the Minutes of the previous Annual General Meeting;
- 9.1.1.4 the acceptance and adoption of the Balance Sheet and Financial Accounts of the Association for the past financial year;
- 9.1.1.5 the consideration of any Resolutions concerning the affairs of the Association, of which due notice has been given to all Members in accordance with the terms and conditions of this Constitution;
- 9.1.1.6 the appointment of Managing Agent or the termination of Managing Agent's contracts;

- 9.1.1.7 the election of a Committee and / or any Sub – Committees deemed necessary;
- 9.1.1.8 the election of a Chairman of the Committee and any Sub – Committee elected by the Members;
- 9.1.1.9 any other business.

## 9.2 ORDINARY GENERAL MEETINGS:

- 9.2.1 Any Member of good standing in the Association and whose levies are paid in full, duly seconded by at least two [2] further Members of the Association in good standing in the Association and whose levies are paid in full, may on due written notice to the Chairman call an Ordinary General Meeting of Members and the Chairman shall be obliged to give effect to this request for the calling of an Ordinary General Meeting.
- 9.2.2 The Member giving due written notice to the Chairman in respect of Paragraph 9.2.1 above shall also state in the same Notice what the Agenda for such meeting shall be; the precise written content of any proposed Resolutions to be placed before the Members and the motivation for any such proposed Resolution.
- 9.2.3 Nothing herein provided for shall prevent the Chairman from adding any relevant items to such an Agenda as proposed by the Member, provided that the Chairman deems such items as necessary and expedient to be discussed by the Members at the meeting to be called.

## 10. PRESENCE AT MEETINGS:

- 10.1 Subject to what is stated in Paragraph 21 below, each Member shall be obliged to be present in person, or represented by proxy, at the Annual General Meeting and at any Ordinary General Meeting, failing which such Members shall be deemed to have voted in favour of any resolution passed at such meeting by the remaining Members.

**11. NOTICE OF MEETINGS:**

- 11.1 An Annual General Meeting shall be convened on not less than twenty one [21] days notice in writing. An Ordinary Meeting shall be called by not less than fourteen [14] days notice in writing.
- 11.2 To establish the days and notice required, the notice shall be inclusive of the day on which it is given, but exclude the day on which the Meeting is to be held, and shall specify the place, the day and the hour of the meeting and the general nature of the matters to be discussed; provided that any meeting shall, notwithstanding that it is called by shorter notice than that specified, be deemed to have been correctly called if it is so agreed by all the Members present and totaling at least twenty five per centum [25%] of the Members of the Association.

**12. VALIDITY OF MEETING:**

- 12.1 The non receipt of a Notice of the meeting by any person or Member entitled to receive such notice, shall not invalidate the proceedings of that meeting, except to the extent that such proceedings are directed at the Member / class of Members personally and same would be prejudiced, on a balance of probability, or the financial or proprietary interests of the relevant Member / class of Members who did not receive the aforesaid notice, would be so prejudiced.
- 12.2 The onus of deciding whether such notice was / was not received and whether such Member or class of Members would be prejudiced shall rest on the Chairman and shall be taken on all the evidence available to him at the relevant meeting.

Once his decision in this regard is made, same shall be final and binding on all parties.

**13. QUORUM:**

- 13.1 No matters shall be discussed at any meetings unless a quorum is present when a meeting commences, or within thirty [30] minutes of the time that the meeting was called for, at the place as set out in the relevant notice.
- 13.2 For all purposes, the quorum shall be Members present, in person or by proxy, and shall be not less than 25% of the total number of Members of the Association.

**14. ADJOURNMENT:**

- 14.1 If within half an hour of the time appointed for the holding of a meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time place and, if at such adjourned meeting a quorum is not present within a half an hour from the time appointed for holding the meeting, the Members then present, and irrespective of their number, shall be a quorum for that meeting.
- 14.2 All Members of the Association shall be forwarded notice in writing of such adjourned meeting.

**15. CHAIRING OF MEETINGS:**

- 15.1 In the absence of the Chairman of the Association at any meeting, the Members present shall choose a Chairman of the meeting to preside there over.
- 15.2 The Chairman of the meeting shall keep or cause to be kept minutes of the meeting.

**16. VOTES:**

- 16.1 At all General Meetings, resolutions put to the vote shall take place by a show of hands. Voting shall take place in accordance with the following positions:

- 16.1.1 each Member present in person shall have one vote for every Erf registered in his name;
- 16.1.2 each person present as proxy for a Member shall have one vote for every Erf registered in the name of the Member for whom he is a proxy;
- 16.1.3 each Member and person present as proxy for a Member shall indicate clearly how he casts each vote to which he is entitled as aforesaid;
- 16.1.4 all Resolution shall, except as otherwise provided herein, or by the law, be by simple majority by those Members present in person or proxy at the meeting and voting;
- 16.1.5 the Chairman of the meeting shall count / have counted in his presence the votes cast for and against the Resolution and shall declare it carried or lost as the case may be according to the votes received;
- 16.1.6 a declaration by the Chairman of the result of the voting by show of hands, and an entry thereof in the Minute Book of the Association shall, be conclusive evidence of that vote;
- 16.1.7 the Chairman shall not have the casting vote in addition to his ordinary vote.

**17. INCAPACITY:**

- 17.1 Should any Member be declared incapable of managing his own affairs by a competent Court of Law, be placed under sequestration / liquidation [Whether provisional or final], such a Member may be represented by his curator bonus, trustee, or liquidator as the case may be, and who shall be entitled to vote on his behalf, either personally or by appointing a proxy.

**18. OWNERSHIP:**

18.1 If two or more persons [Legal or otherwise] are joint registered owners of an Erf, then in voting upon any question, the vote of the senior in age, who tenders a vote either in person or by proxy, shall be accepted to the exclusion of votes of the other registered owners of the Erf, and for this purpose, seniority shall be determined by the dates of birth of the joint owners as recorded in the Deeds Registry Cape Town.

18.2 In the event of an Erf being jointly owned by a natural person, a Company, Close Corporation or trust, then in such event the natural person, or a natural person authorized by such legal person to do so and in writing, shall cast a vote on behalf of such Membership.

**19. PROXY:**

19.1 Votes may be given either personally or by proxy;

19.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by the Chairman of the Meeting, by a Member, or if such appointer is a legal person, Trust or partnership, such written appointment shall be under the hand of an officer / Member of such legal person, duly authorized on their behalf.

19.3 In the case of any doubt as to whether any person having such a written authority may vote or not, the Chairman shall allow such person a brief period to address the Members in regard to why he should be allowed to vote and the Members shall then decide whether the person shall be entitled to vote or not, bearing in mind that it is the underlying intention of the Association that as many persons as possible should be allowed to vote.

**20. COMPANIES, CLOSE CORPORATIONS OR OTHER ASSOCIATIONS:**

20.1 Any Company, Close Corporation, Trust or other Association which is a Member of the Association may, by written Resolution of its Directors, Members or other governing body, authorize such a person to act as its representative at any meeting of the Association and the person so authorized shall be entitled to exercise the same powers on behalf of the Company, Close Corporation, or other Association which that Company, Close Corporation or Association could exercise if it were an individual Member of the Association.

**21. RESOLUTIONS:**

21.1 Because of the fact that many Members in the development have holiday homes there and live permanently elsewhere, and because of the cost of traveling merely to attend a meeting, the Committee may decide to attempt to have resolutions passed by the Association, other than in General Meeting.

21.2 In order to do so the specific Resolution in its precise form shall be forwarded to all Members by pre – paid registered mail, by e - mail or by telefax, together with the Committee's / Member's motivation for such a Resolution together with a voting form on which each Member can indicate whether he is for or against the Resolution.

The Committee shall then give each member a period of at least fourteen days [14] from the time of the forwarding of the last notice to all the Members to return his voting form clearly indicating thereon whether he is for or against the Resolution.

Thereafter, and provided the above procedure has been followed and at least forty per centum [40%] of the Members have voted for the Resolution, same will be deemed to be passed as if same had taken place in a General Meeting and following the normal procedure for voting as laid down in this Constitution.

**22. THE STATUS OF THE ASSOCIATION:**

- 22.1 The Association shall be an Association with legal personality, capable of suing and being sued in its own name;
- 22.2 None of the Members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association and shall at all times avoid a conflict of interest between themselves and the Association, which shall always be placed ahead of personal interest;
- 22.3 The Association shall not be for profit, but for the benefit of the owners and occupants of immovable property situate in the development;
- 22.4 The Association shall have the right to acquire, hold and alienate property both movable or immovable.
- 22.5 The Association shall have the right, when deemed necessary by the Committee, to appoint an attorney, with or without Counsel, to advise the Association / the Committee on any matter deemed necessary.

**23. ANNUAL SUBSCRIPTIONS:**

- 23.1 The Association shall be entitled to levy subscriptions [To be known as levies] from its Members to defray the costs of managing and administering the Association and for the purpose of meeting all the expenses the Association has incurred or will incur, as well as for the building up of a suitable reserve for any unforeseen, future expenses.

Such subscription may be fixed and collected in advance. A Member shall, however, only be obliged to pay a pro rata portion of the Annual Subscription where his Membership has been for a portion of a year.

- 23.2 The Association shall be entitled, at its discretion, to increase the subscriptions from time to time and to vary the timing for payment thereof, as well as calling



upon Members to pay a special levy under circumstances where the doing so is not able to be avoided.

- 23.3 The Annual Subscription for any year becomes due and payable by each Member on the first day of the month following registration of transfer of the Erf into his name.
- 23.4 Any amount due by a Member by way of an annual subscription shall be due by him to the Association. A Member's successor entitled to an Erf in the Development shall be liable as from the date upon which he becomes a Member pursuant to transfer of that Erf, to pay the annual subscription attributable to that Erf.
- 23.5 No Member shall transfer his Erf in a Development until the Association has certified that the Member has, at the date of transfer, fulfilled all his financial obligations to the Association.
- 23.6 If the annual subscription or special levy of a Member is not paid within ninety [90] days of due date, then such subscription shall become delinquent and the Association may institute legal proceedings against the Member for the recovery thereof and all the costs of such proceedings [On an attorney and own client scale, including collection charges and tracing fees] shall be added to the Member's subscription account and upon same happening, such amount shall immediately be due and payable.

All ordinary annual levies shall, as far as is practically possible, only be increased on the 1<sup>st</sup> day of the month following the month in which the Association's Annual General Meeting was held and the new levy approved by the Members.

- 23.7 A Member whose subscription is delinquent shall not be entitled to vote at any General Meeting, nor to serve as a Chairman of the Association or a Committee Member or a Sub – Committee Member unless such arrear subscription has been

paid within seven [7] days of being elected Chairman or Committee / sub – Committee Member.

If not so paid, such person shall be deemed to have resigned within seven [7] days of the election.

- 23.8 The Association shall be entitled to fix the date by when annual or monthly payments of the levies are due [Dependant on the method of payment allowed by the Association and / or chosen by the Member], and the Association shall be entitled to charge interest on all arrear levies [Special or ordinary] and / or any other amounts owing to the Association by its members at a rate not exceeding 2% above prime banking rates as charged by South Africa's major banks from time to time.

#### **24. ACCOUNTS:**

- 24.1 Proper books of account of the administration and finances of the Association shall be kept by the Association at the domicilium of the Association, or such other place or places as decided on by the Members in General Meeting.
- 24.2 The Chairman of the Association shall cause to be laid before the Association at the Annual General Meeting, the books of accounts, balance sheets and reports of the Association.
- 24.3 Any Member of the Association may at any time demand access to the books of account of the Association and may peruse same at a place to be decided by the Chairman of the Committee.

#### **25. RULES AND FINES:**

- 25.1 The Committee shall have the power to make rules not inconsistent with this Constitution for the regulation of good relationships between Members or in promotion of the objects of the association.

25.2 The Association shall, at any General Meeting, have the right to draw up a list of possible offences which are deemed to be punishable with a fine by the Members of the Association and once so drawn up and the quantum of the fine fixed and approved by the Association in General Meeting, the Committee shall have the right to implement the levying of such fines only once the Committee has fixed a specific procedure for this to happen and has thereafter advised all Members [At their chosen addresses according to the Association's records] and by placing same on the Association's web-site and by having same approved by the Members in General Meeting, which resolution may include the power of the Committee to amend such procedure and rules from time to time.