

**THE HOME OWNERS ASSOCIATION OF THE  
NAUTILUS BAY COASTAL RESERVE**

1. **NAME**

The name of this association is "THE HOME OWNERS ASSOCIATION OF THE NAUTILUS BAY COASTAL RESERVE"

2. **DEFINITIONS**

In this constitution, unless the context indicates the contrary

- 2.1 The "association" shall mean "the Home Owners Association of the NAUTILUS BAY COASTAL RESERVE which association will be established, as required by the local authority, to facilitate the development and management of the resort;
- 2.2 the "resort" shall mean portion 1 of the farm Klipfontein No. 344 Division of Mossel Bay, Western Cape Province, Republic of South Africa, which property is zoned to Resort Zone II and Open Space Zone III (Nature Reserve) for purposes of establishing thereon a nature resort;
- 2.3 a "party" shall mean an individual, company, close corporation, partnership, trustees of a trust, club or any alternative association of individuals (who may own immovable property in terms of the Laws of the Republic of South Africa).
- 2.4 a "member" shall mean the registered owner of a unit in the resort. Where more than one person are the registered owners of a unit thereby shall jointly be deemed to be one member but shall be jointly and severally liable for the due fulfillment of all obligations arising from such membership;
- 2.5 a "unit" shall, as the case may be, have the following meaning:
- a "single unit": a residential erf of approximately 600 square metres (as indicated on the development plan as no's 1-78) inclusive of any legal alterations and/or improvements thereto; or
- a "double unit" : a consolidated residential erf of approximately 1200 square metres (which consisted prior to consolidation of 2 adjoining single units) inclusive of any legal alterations and/or improvements thereto:
- 2.6 "developer" means **VURU VURU ESTATE WEST (PTY) LTD. No. 1999\06617\07** or its successors-in-title.
- 2.7 "financial year" shall mean the period from 1 March during a given calendar year until the last day of February during the subsequent calendar year;
- 2.8 words imparting the singular shall include the plural and the converse shall also apply; tie masculine gender shall include the feminine and neuter genders shall include the masculine and feminine genders;
- 2.9 "common property" means the resort minus the portions allocated on the development plan as residential erven and private open spaces;
- 2.10 "local authority" means the South Cape District Council (or its successors-in-title);
- 2.11 "municipality" means the Municipality of Mossel Bay (or its successors-in-title);

- 2.12 the "development plan" means the terrain development plan (plan no.C2808 of land Surveyors Diesel & Munns) of the development;
- 2.13 The "development" means the development of the portion of the resort zoned as Resort Zone II;
- 2.14 The "design manual" means the Design Manual (Architectural Guidelines) hereto appended as Annexure "B".
- 2.15 "phase 2" shall mean the development of a portion (in extent approximately 186 hectares) of portion 3 of the farm 249, Division of Mossel Bay, Republic of South Africa in terms of a Resort zone II and Open Space Zone III (nature reserve) zoning;
- 2.16 "executive committee" shall mean the committee as described under clause 6 hereof;
- 2.17 "private open spaces" shall mean the respective demarcated portions of land adjoining each unit (as indicated on the development plan as no's P1-P78);
- 2.18 the "management plan" means the report titled the Vuru-Vuru Environmental System being the environmental management report of the resort;
- 2.19 "Mossgas agreement" shall mean the written agreement between Mossgas 1985 (Pty) Ltd. (or its successors-in-title) and the developer (or its successors-in-title).

### 3. **HEADNOTES**

The headnotes to the clauses in this constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

### 4. **OBJECTIVES AND POWERS**

The objectives and powers of the association will be as follows:

#### 4.1 Main objectives :

- 4.1.1 To propose and implement high standards in the resort to ensure maximum enjoyment of the resort by inhabitants thereof as well as visitors thereto.
- 4.1.2 To establish the necessary guidelines and rules to ensure that the least possible damage to the sensitive eco-system in the resort is caused in the interest of its inhabitants, environment, region as well as the country.

#### 4.2 Implementation of power:

To give effect to the abovementioned main objectives the following objectives and powers will be applicable :

- 4.2.1 The nature and extent of all structures to be erected in the resort will be controlled in order to ensure a high standard of development with harmonious and acceptable aesthetic, architectural and environmental aspects of the development for the benefit of the owners of the resort.

- 4.2.2 Ownership of the common property remains with the developer who will ensure the improvement, control, maintenance and conservation thereof and will not transfer the ownership of the common property to any other party without the approval of the association and the municipality.
- 4.2.3 All facilities on the common property (for example tracks for use by vehicles, bicycles and people, servitude areas, streams, dams, recreational facilities as well as any other facility(s) not available for the exclusive use by any member or other person) will be owned, controlled and maintained by the developer.
- 4.2.4 To ensure that members execute the provisions applicable to the rezoning of the resort, as stipulated by the relevant authorities.
- 4.2.5 To ensure that the provisions, to be stipulated from time to time by the association, will be implemented.
- 4.2.6 To object to any further subdivision of the resort (or of any units therein).
- 4.2.7 An professional person - duly qualified thereto in the discretion of the association - may be consulted by the association to advise the latter with regard to the execution of its objectives and powers.
- 4.2.8 Employment of staff:
- a) Full time:
- The following persons must be employed on a full-time basis:
- (i) a resort manager(ess) - to be a duly qualified person with suitable experience in nature conservation and management. Accommodation for such person, including his\her family, will be available in the resort, as well as
- (ii) sufficient staff to assist the resort manager(ess) in the execution of his\her tasks. No accommodation for such persons will be available in the resort.
- b) Part-time:
- The necessary additional staff will be employed on a part-time basis from time to time to assist the full-time staff in the execution of tasks which cannot reasonably be performed by the full-time staff. No accommodation for such part-time staff will be available in the resort.
- 4.2.9 Any agent may be appointed by the association to duly fulfill any of the obligations\functions of the association.
- 4.2.10 To liaise with the local authority or any party with regard to any aspect in relation to the management of the resort.
- 4.2.11 To ensure that all members at all times keep their private open spaces in a tidy and clean condition as well as to comply with any other stipulation(s) in relation to such spaces.
- 4.2.12 To take the necessary security measures from time to time with regard to the access of the resort by the public.

- 4.2.13 To establish or revoke any regulation(s) and/or guideline(s) to ensure that all members duly conform to the objectives of the association which regulation(s) and/or guideline(s) will be applicable to all members.
- 4.2.14 To levy any fines on any member who failed to duly fulfill any of his/her/its obligations in terms of this constitution.
- 4.2.15 To constitute any guideline(s) and/or standard(s) to optimise co-existence by owners of and visitors to the resort in order to achieve the main objectives of the association as well as to ensure maximum enjoyment of the resort by such people.
- 4.2.16 To subscribe to and support all aspects of nature conservation.
- 4.2.17 The contents of the design manual may from time to time be amended if necessary.
- 4.2.18 No pets may be kept in the resort.
- 4.2.19 The necessary consent must be granted free of charge by any member(s) to facilitate the provision of any essential services to be provided over the relevant private open spaces(s).

## 5. **MEMBERS**

- 5.1 Membership of the association shall be compulsory and automatic upon the registration of any unit(s) in the name of a member and members shall be obliged to comply with the provisions of this constitution and any rules or regulations made in terms hereof.
- 5.2 No person or party shall be entitled to cease to be a member of the association while remaining the registered owner of a unit or be entitled to resign therefrom.
- 5.3 When a member ceases to be a registered owner of a unit he/she/it shall ipso facto cease to be a member of a association.
- 5.4 Membership shall be transferred by the passing of transfer of any unit from the previous member to the new member.
- 5.5 A member shall not be entitled to sell or transfer a unit unless it is a condition of the Deed of Sale that the new purchaser becomes a member of the association.

## 6. **EXECUTIVE COMMITTEE**

- 6.1 The executive committee shall consist of 5 (five) persons who shall be resident members or the spouses of resident members. Any executive committee member shall be eligible for re-election.
- 6.2 For the period commencing from the date of incorporation of the association to the date of the First Annual General Meeting of the association, the duties of the executive committee shall be performed out by the developer.
- 6.3 The developer shall be entitled to nominate and appoint all 5 (five) initial members of the executive committee as the First Annual General Meeting of the association.
- 6.4 An executive committee member shall cease to hold office as such if

- 6.4.1 he\she by notice in writing to the executive committee resigns his\her office;
  - 6.4.2 he\she is or becomes of unsound mind;
  - 6.4.3 he\she surrenders his\her estate as insolvent or his\her estate is sequestrated;
  - 6.4.4 he\she is convicted of an offence which involves dishonesty;
  - 6.4.5 he\she absents himself \herself from 3 (three) consecutive meetings of the executive committee without special leave of absence from the executive committee;
  - 6.4.6 by resolution of a general meeting of the association he\she is removed from his\her office;
  - 6.4.7 he\she ceases to be a registered owners of a unit.
- 6.5 The following shall be applicable to meetings of the executive committee:
- 6.5.1 the executive committee shall meet at such time and place as shall be decided by it from time to time.
  - 6.5.2 3 (three) executive committee members may at any time convene such a meeting by giving to the other member no less than 10 (ten) days written notice of the proposed meeting, which notice shall specify the reason for calling such a meeting provided that in cases of emergency such shorter notice as is reasonable in the circumstances may be given.
  - 6.5.3 4 (four) members shall form a quorum at any meeting of the executive committee.
  - 6.5.4 Within 7 (seven) days from the First Annual General Meeting the executive committee shall meet and elect from its members a chairman. The chairman elected shall hold office as such until a new chairman is elected.
  - 6.5.5 All matters at any meeting of the executive committee shall be determined by a majority of those present and voting. In the event of any equality of votes, the chairman of any meeting shall have a casting as well as a deliberate vote.
  - 6.5.6 The executive committee may from time to time appoint a secretary and a treasurer, or a secretary\treasurer.
  - 6.5.7 The executive committee shall keep minutes of all its meetings which shall be available for inspection by any member on request.
- 6.6 The management and administration of the association shall vest in the executive committee which may exercise all such powers of the association and do, on behalf of the association, all such acts as may be exercised and done by the association itself. Without in any way limiting the generality of the foregoing such powers shall include but not be limited to the following :
- 6.6.1 the performance of such acts as are necessary to accomplish the objectives expressed or implied herein;
  - 6.6.2 the investment and re-investment of monies of the association, not immediately required, in such manner as may from time to time be determined;
  - 6.6.3 the operation of a banking account with all powers required by such operation;

- 6.6.4 the making of, entering into and carrying out of contracts or agreements for any of the purposes of the association;
  - 6.6.5 the employment and payment of agents, servants and any other parties;
  - 6.6.6 the making, amendment and repeal of rules which shall be binding upon members as if they form part of this constitution;
  - 6.6.7 the right to sue and to defend action in the name of the association and to appoint legal representatives for this purpose;
  - 6.6.8 the levying of a subscription (levy) payable by members to enable the association to fulfill its financial obligations;
  - 6.6.9 the preservation of the architectural theme of the development and the adjudication upon any proposed extension, addition and/or alterations to the resort or erections thereon in accordance with the provisions of the design manual.
- 6.7 Any act(s) performed by executive committee members shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any executive committee member, be as valid as if such executive committee member has been duly appointed in office.
- 6.8 Executive committee members shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in connection with and incidental to the performance of their duties as executive committee members but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 6.9 No executive committee members shall be liable to the association or to any member thereof, or to any other person whomsoever for any act or omission by himself/herself by the association or by its servants or agents. An executive committee member shall be indemnified by the association against any loss or damage suffered by him/her 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, acted in good faith and without gross negligence.

## **7. GENERAL MEETINGS OF THE ASSOCIATION**

- 7.1 The association shall before 15 February of 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, calling such a meeting.
- 7.2 At the First Annual General Meeting the developer shall be entitled to nominate the initial executive committee hereinbefore referred to.
- 7.3 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the executive committee shall decide from time to time.
- 7.4 All general meetings other than Annual General Meeting shall be called "special general meetings".
- 7.5 The executive committee may, whenever it thinks fit, convene a special general meeting.
- 7.6 An annual General Meeting shall be convened on not less than 21 (twenty one) days notice in writing to members. The notice shall be inclusive of the day of which it is given and shall specify the place, the day and the hour of the meeting as well as, the general

nature of the matter 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 80% (eighty per cent) of the members present during such meeting.

- 7.7 The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that meeting.
- 7.8 No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. Save for the purposes of a Resolution required in terms of clause 11 and 13 hereof a quorum for all other purposes shall be members present in person or by proxy and holding not less than 60% (sixty per cent) of the total number of votes available to be cast by members at the time that such meeting commences.
- 7.9 The chairman of the executive committee shall preside at every General Meeting.
- 7.10 At all General Meetings resolutions put to the vote shall take place by the show of hands unless by majority vote the meeting decides that voting shall be by ballot in which event the ballot shall take place immediately. Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:
- 7.10.1 each member present in person shall have one vote for each unit registered in his\her name;
- 7.10.2 the voting rights of members present will be determined as follows :
- a) 1 (one) vote for each single unit; or
- b) 2 (two) votes for each double unit;
- registered in the name of such member;
- 7.10.3 each person present as proxy for a member shall have, on behalf of the member who\which is represented, the voting rights according to the provisions of clause 7.10.2 above;
- 7.10.4 each member and person present as proxy for a member shall indicate clearly how he\she casts each vote to which he\she is entitled as aforesaid;
- 7.10.5 the developer or its duly authorised representative shall have voting rights in accordance with the provisions of clause 7.10.2 above;
- 7.10.6 all resolutions shall, except as applicable to special general meetings, be by simple majority of those members present in person or proxy at the meeting and voting;
- 7.10.7 the chairman of the meeting shall count the votes cast for and against the resolution and shall declare it carried or lost as the case may be.
- 7.11 In addition, to any other matters required to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- 7.11.1 in consideration of the chairman's report;
- 7.11.2 the election of the executive committee;



- 7.11.3 the consideration of the report of the auditors and fixing of their remuneration;
  - 7.11.4 the confirmation of any budget proposed by the executive committee;
  - 7.11.5 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;
  - 7.11.6 the confirmation of the annual subscription (levy) and any special levy determined by the executive committee.
- 7.12 the granting of proxy to persons to represent a member shall be done on the following basis:
- 7.12.1 The instrument appointing a proxy shall be in writing in the common form, or any form approved by the executive committee under the hand of the appointer, or of his duly authorised representative in writing.
  - 7.12.2 Written proof of a proxy must be delivered to the domicilium citandi of the association by not later than 5 (five) days prior to the date of the relevant meeting.

Should a member fail to duly comply with the provisions under this clause then its right to vote shall lapse.

## 8. **SUBSCRIPTIONS (LEVIES):**

- 8.1 The association, through the executive committee, shall be entitled to levy an annual subscription for the purpose of meeting all expenses which the association has incurred or to which the executive committee reasonably anticipates the association will be put and to defray the costs of managing and administering the association to achieve its objectives set out in clause 4 hereof. Such subscription may be fixed and collected from members annually OR monthly in advance.
- 8.2 The executive committee shall be entitled at its discretion to increase the annual subscription from time to time.
- 8.3 The annual subscription shall commence on a date to be determined by the executive committee. The first subscription payable in the resort will be payable on a date still to be determined. Subscriptions during subsequent year periods will be payable as follows :
  - 8.3.1 on the first day of March of a given financial year (if payable annually in advance);  
or
  - 8.3.2 on the first day of each calendar month with effect from March of a given financial year (if payable monthly in advance).
- 8.4 The executive committee may from time to time determine and collect special levies from members in addition to the annual subscriptions should the need for such additional levies arise or circumstances so dictate.
- 8.5 If the annual subscription, whether payable annually or monthly in advance, is not paid within 90 (ninety) 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 the costs of such proceedings shall be added to the subscription due by the

delinquent member. A member whose subscription is delinquent for the current year shall not be entitled to nominate candidates for election to or serve on the executive committee.

## 9. **ACCOUNTS**

- 9.1 The executive committee shall cause proper books of accounts of the administration and finance of the association to be kept at the domicilium of the association or such other place or places as it may think fit for inspection by any member;
- 9.2 The executive committee shall cause to be laid before the association in Annual General Meeting, books of account, balance sheets and reports of or to the association.
- 9.3 At least once a year the accounts of the association shall be examined and the correctness of the income and expenditure account and the balance sheets ascertained by the auditors.

## 10. **DOMICILIUM**

For all purposes arising out of this constitution including the giving of notices and the serving of legal process, the association and each member chooses *domicilium citandi et executandi* as follows :

- 10.1 The association at:  
an address to be determined when the association is established;
- 10.2 each member at:  
the registered address of the relevant unit(s).

Any notice which may be required to be given in terms of this constitution may be given by the dispatch of such notice in writing by pre-paid post, in which event such notice shall be deemed to have been received 10 (ten) days after the posting thereof from any Post Office within the Republic of South Africa.

## 11. **AMENDMENTS TO THE CONSTITUTION**

Any amendment or addition to the constitution must be

- 11.1 passed by a resolution of not less than 75% (seventy five per cent) of members present and entitled to vote at a general meeting, and
- 11.2 confirmed by the local authority and the developer (should the developer still be the registered owner of unit(s) at the time of the adoption of such resolution) in writing.

## 12. **NON-LIABILITY OF MEMBERS**

No member of the association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of the association.

### 13. **PRIVATE OPEN SPACES**

Such areas adjoin all units and are for the exclusive use by the registered owner of the relevant inclusive unit. Ownership thereof shall be restricted to the association.

No private open space (or portion thereof) may be

- 13.1 sold, let, alienated, subdivided or transferred or otherwise be disposed of; or
- 13.2 mortgaged, or
- 13.3 subjected to any rights whatsoever; or
- 13.4 structurally improved or acquire any facilities without the prior written consent of the:
  - 13.4.1 association by means of a special resolution to be passed at an Annual General Meeting by at least 75% (seventy five per cent) of members present and entitled to vote; as well as
  - 13.4.2 the developer as registered owner of a unit(s); as well as
  - 13.4.3 the local authority.

any improvements) or alteration(s) to any private open space must comply with the provisions of the design manual as well as the management plan.

### 14. **DISPUTE SETTLEMENT**

- 14.1 Should any dispute or doubt arise as to the interpretation or meaning of this constitution or any rules and regulations of the association, the executive committee shall be the final arbitrator and its decision shall be binding upon the members.
- 14.2 Should any dispute(s) arise with regard to any other aspect as referred to under 14.1 above then such dispute(s) shall be dealt with as follows:
  - 14.2.1 if such dispute be of a legal nature then it shall be referred to a practising senior advocate with at least 5 (five) years relevant experience;
  - 14.2.2 if such dispute is of a technical nature then it shall be referred to a duly qualified and competent professional person with at least 10(ten) years experience in a related field;
  - 14.2.3 should the parties to such dispute not agree to the hereinbeforementioned nominations then the President of the Western Cape Law Society (or its successor-in-title) shall be requested to act therein as arbitrator who shall be entitled to nominate any person to act as arbitrator on his behalf;
  - 14.2.4 any arbitrator shall not be bound to follow strict principles of law but may decide that the matter submitted to him\her according to what is considered in terms of which strict rules of law need not be observed or taken into account by him\her in arriving at a decision. Such procedures must be dealt with as informal and expeditiously as possible;
  - 14.2.5 the arbitrator shall, in the event that the parties to such dispute cannot agree thereto, make a decision with regard to the liability of such parties as to costs incurred in the obtainment of such settlement by arbitration;

14.2.6 all parties, as part to a dispute or otherwise, shall be bound by the decision of such an arbitrator whose decision may be made an order of any competent court of law.

14.2.7 notwithstanding the reference herein as "an arbitrator" such person shall act as an expert and shall therefore not be bound by the provisions of the laws of Arbitration of the Republic of South Africa.

## 15. **SUBMISSION OF PLANS**

No member shall submit any plans to the local authority or commence the erection of, or alteration or addition to any building or other structure on any unit or permit the same, unless the plans thereof have first been submitted to and approved in accordance with the procedures set forth in the design manual.

## 16. **SUBDIVISION AND CONSOLIDATION**

No member shall be entitled to subdivide any unit. Two adjoining units may be consolidated in which case the

16.1 development thereof will be subject to the relevant provisions as contained in the design manual;

16.2 voting rights of the relevant member shall be determined in accordance with the provisions under clause 7.10 hereof.

## 17. **PLANTS**

In the light of the sensitive ecological balance in the resort and the importance to least disturb such balance the following provisions will be applicable to the management of plants in the resort by members :

17.1 General:

All members (or potential members) are requested to avail themselves of the contents of the management plan. Such plan offers comprehensive information on, amongst other, the plant life in the resort as well as which practises are preferred or otherwise.

17.2 Units:

Only indigenous plant species, as prescribed in the management plan, may be planted in units. Alien plants must be removed. The natural plant life must be least disturbed.

17.3 Private Open Spaces :

The natural plant life in such areas must be least disturbed. Any removal, replacement or new plantings of indigenous plants within such areas are subject to the consent of the manager of the resort. Only plant species as prescribed in the management plan may be planted. Alien plants must be removed form such areas.

## 18. **MOSSGAS AGREEMENT**

Such agreement is being concluded in writing which agreement has as its objective to establish a contractual relationship between Mossgas (or its successors-in-title) and the association (as successor-in-title of the common property in the resort) and will embody all relevant aspects with regard to the rights and obligations of

18.1 Mossgas (or its successors-in-title) as the

18.1.1 servient party in terms of a water pipe-line servitude which will stretch from a supply point of the Municipality over certain properties in ownership of Mossgas to the resort;

18.1.2 dominant party in terms of a pipe-line servitude which will stretch over the common property in the resort;

18.2 the developer or association as the

18.2.1 servient party in terms of the servitude mentioned under 18.1.2 above;

18.2.2 dominant party in terms of the servitude mentioned under 18.1.1 above;

18.3 both parties with regard to all other aspects with regard to access to the resort.

## 19. **PHASE 2**

Members must take note that the developer (per separate legal person as grantee in terms of an Option to Purchase) has applied for the rezoning and subdivision of an adjacent coastal property (being a portion of portion 3) of the farm No. 249, division of Mossel Bay) situate to the west of the resort to develop phase 2 as an additional phase. Should such development be undertaken then it will have the following likely impact on and relationship with the resort :

19.1 the residential component of phase 2 (approximately 52 units) will be situated approximately 4 kms. from the development. Such residential component will have a separate road access from the Vleesbaai\Gouritsmond road and will function as a separate entity with its own Home Owners Association;

19.2 the nature reserve component (common property), approximately 160 hectares in extent of phase 2, will be "incorporated" in the adjoining nature reserve component of the resort whereafter such total area will be under a central management;

19.3 members in the resort will have reasonable access to the common property in phase 2 and (future) members in phase 2 will have reasonable access to the common property in the resort;

19.4 a written agreement will be entered into between the then owners of the two properties which agreement will contain all relevant provisions with regard to such future relationship to the mutual benefit of both developments and the future owners thereof. The content of such an agreement will, if deemed necessary, be notarially executed and registered to render it binding upon the Home Owners Associations of both developments in future.

## 20. **RIGHT OF ACCESS**

A right of access to the resort had been granted to certain Adriaan Nortje subject to the following conditions :

- 20.1 Such right shall endure for the life duration of the said Nortje.
- 20.2 Access to the resort by the said Nortje shall be restricted to the adjacent coast solely for purposes of angling during all reasonable times.