



Theesen Islands Homeowners Association

CONSTITUTION

INDEX

	Page	
1.	Definitions	p3
2.	Interpretation	p5
3.	Recordal	p6
4.	Commencement date	p6
5.	Status	p6
6.	Objects	p6
7.	Membership	p7
8.	Members obligations	p8
9.	The design guidelines	p12
10.	Title deed conditions and further obligations of members	p12
11.	The Thesen Islands Parkland Trust and further obligations of Members	p13
12.	Municipal Services: Takeover / maintenance	p14
13.	Common property and facilities	p14
14.	Waterways and jetties	p15
15.	Levies	p15
16.	Breach	p16
17.	Trustees	p17
18.	Functions, powers and duties of Trustees	p19
19.	Proceedings of Trustees	p21
20.	Managing Agent and Estate Manager	p23
21.	General meetings of the TIHOA	p23
22.	Notice of general meetings	p23
23.	Proxies	p24
24.	Quorum at general meetings	p24
25.	Agenda at general meetings	p24
26.	Procedure at general meetings	p25
27.	Voting at general meetings	p25
28.	Minutes of meetings of the TIHOA	p26
29.	Financial year end	p26
30.	Books of Accounts and Records	p26
31.	Deposit and investment of funds	p27
32.	Audit	p27
33.	Indemnity	p27
34.	Disclaimer of Responsibility	p28
35.	Arbitration	p28
36.	Domicilium	p29
37.	Amendment	p30
38.	Dissolution	p31

1. Definitions

In this **CONSTITUTION** and unless inconsistent with the context the following words and expressions shall have the meanings hereby assigned to them:

- 1.1 **AUDITORS** means the **AUDITORS** of the **TIHOA** from time to time.
- 1.2 **CCZ** means the Core Contaminated Zone and is that portion of Erf 13840, Knysna as depicted and defined in the **Thesen Island Parkland Trust Deed**.
- 1.3 **CHAIRPERSON** means the **CHAIRPERSON** of the Board of **TRUSTEES** duly elected by the **TRUSTEES**.
- 1.4 **COMMON PROPERTY** means the parklands, reed bed, wetlands, beaches and **WATERWAYS**, roads and road verges, common garden areas and any other areas owned by the **TIHOA** or over which the **TIHOA** has control.
- 1.5 **CONDUCT AGREEMENT** means an agreement in which the **MEMBER** and the **MEMBER'S CONTRACTOR**, inter alia, undertakes to **TIHOA** that all construction and/or **IMPROVEMENTS** on the **ERF** will be done in a manner acceptable to the **TIHOA**.
- 1.6 **CONSTITUTION** means this document as amended from time to time with the annexures hereto, including the **RULES and REGULATIONS and DESIGN GUIDELINES**.
- 1.7 **CONTRACTOR** means a **CONTRACTOR** in terms of this **CONSTITUTION** read with the **DESIGN GUIDELINES** employed by an **OWNER** of an **ERF** for the construction and **IMPROVEMENTS** on their **ERF**.
- 1.8 **DESIGN GUIDELINES** means the guidelines which govern the design, construction and **IMPROVEMENT** requirements prepared for and applicable to **THESEN ISLANDS** and includes all/any amendments made thereto from time to time.
- 1.9 **DEVELOPER** means Thesen Islands Development Company (Proprietary) Limited (Registration No. 1998/006645/07), a duly registered South African company responsible for the development of **THESEN ISLANDS**.
- 1.10 **DISPOSE** means **DISPOSE** any **ERF or UNIT** or part thereof and includes a disposal or transfer by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, prescription court order, insolvency or liquidation, irrespective of whether such disposal is voluntary or involuntary and whether it is subject to a suspensive or resolutive condition and "**DISPOSAL**" shall have a corresponding meaning. In the case of an artificial person such as a company, close corporation or trust a material change in the "beneficial ownership" or in the "controlling interest" thereof, shall be deemed to constitute a **DISPOSAL** for the purposes of this **CONSTITUTION** and in the event of there being any dispute as to whether there has been a material change in the "beneficial ownership" or "controlling interest" such matter shall be referred to the **AUDITORS** whose decision shall be final and binding.
- 1.11 **DWAF** means The Department of Water Affairs and Forestry, now known as the Department of Water and Sanitation, acting as the catchment management agency, or its successor.
- 1.12 **ERF/ERVEN** means every **ERF** in **THESEN ISLANDS** which in terms of the subdivision of **THESEN ISLANDS** enjoys single and / or general residential use rights and includes consolidated **ERVEN**.

1.13	HOA or TIHOA means	the THESEN ISLANDS HOMEOWNERS ASSOCIATION which is bound by the provisions of this CONSTITUTION .
1.14	IMPROVEMENTS means	any work undertaken on an ERF and/or in respect of a UNIT including the erection or alteration of any structures, landscaping and planting.
1.15	JETTIES means	the private and communal JETTIES owned by the TIHOA .
1.16	LEVY means	the LEVY referred to in clause 15 hereof.
1.17	LOCAL AUTHORITY means	the LOCAL AUTHORITY having jurisdiction over THESEN ISLANDS which, at date of approval of THESEN ISLANDS , was Knysna Municipality, Western Cape Province.
1.18	LUPO means	the Land Use Planning Ordinance No.15/1985 (as amended) and includes any substituted legislation.
1.19	MANAGING AGENT means	any person or body appointed by the TIHOA as an independent service provider to undertake any of the functions of the TIHOA .
1.20	MEMBER means	every OWNER of an ERF and/or a UNIT .
1.21	OPERATIONAL MANAGEMENT PLAN means	the operational portion of the Environmental Management Plan produced for the THESEN ISLANDS development.
1.22	OWNER means	the registered OWNER of an ERF and / or a UNIT .
1.23	PMP means	the Poleyard Monitoring Protocol (Project No. J90299F) as prepared by Arcus Gibb Consulting Engineers and submitted to DWAF and accepted by it as setting out the ongoing monitoring obligations of the RESPONSIBLE PARTY relative to Erf 13840, Knysna and which PMP may be revised from time to time with the approval of DWAF .
1.24	PPA means	the Peripheral Property Area means that portion of Erf 13840, Knysna which excludes the CCZ .
1.25	REPRESENTATIVE MEMBER means	A person nominated to represent the MEMBER in terms of this CONSTITUTION .
1.26	RESOLUTION means	a RESOLUTION passed by MEMBERS at an Annual General Meeting or any other General Meeting of the TIHOA or depending on the context in which the term is used a RESOLUTION passed by the Board of Trustees.
1.27	RESPONSIBLE PARTY means	the party to whom DWAF has issued a Section 19 Directive in respect of the TIPT Property defined below and who is in the first instance responsible for complying with the conditions of the Section 19 Directive.
1.28	RULES and REGULATIONS means	RULES and REGULATIONS made by the TIHOA from time to time in terms of clause 18 of this CONSTITUTION .
1.29	STEWARDSHIP AGREEMENT means	an agreement entered into between the Thesen Island Parkland Trust and the TIHOA whereby the TIHOA undertakes to provide for the surface upkeep of Erf 13840 Knysna, in return for limited use and traversing rights over Erf 13840 Knysna.
1.30	TENANT means	a person who is not the MEMBER or OWNER but occupies an ERF or UNIT as a TENANT and usually pays rental to the MEMBER or OWNER directly or through an agent and which TENANT is bound by this CONSTITUTION and the RULES and REGULATIONS of the TIHOA .
1.31	THESEN ISLANDS means	the residential portion of the development of THESEN ISLANDS township by the DEVELOPER of certain immovable property being original Erf 11297 and the WATERWAYS in accordance with approval obtained from the LOCAL AUTHORITY 15 October 1998 and includes all/any extension/s of the township approved by the LOCAL AUTHORITY upon application by the DEVELOPER .

- 1.32 **TIPT** means the Thesen Island Parkland Trust, Registration Number IT 3908/2008 (G), approved by the Master of the High Court on 24/5/2022, which Trust was formed to acquire ownership and control of Erf 13840, Knysna (which includes the **CCZ** and **PPA**) (“the TIPT Property”) and to act as the **RESPONSIBLE PARTY** as per the **DWAF** directive in terms of the **PMP**.
- 1.33 **TRUSTEE** means a **TRUSTEE** appointed by the **MEMBERS** or co-opted by the appointed **TRUSTEES**.
- 1.34 **UNIT** means a **UNIT** constituting an apartment in a sectional title scheme established in terms of the Sectional Titles Act No. 95 of 1986, as amended, in respect of buildings on any **ERF** or **ERVEN**.
- 1.35 **VICE CHAIRPERSON** means the **VICE CHAIRPERSON** of the Board of **TRUSTEES** duly elected by the **TRUSTEES**.
- 1.36 **WATERWAYS** means all waterway canals and canal edges traversing **THESEN ISLANDS** (erf number 16435).

2. Interpretation

2.1 The clause headings are for convenience and shall be disregarded in construing this **CONSTITUTION**.

2.2 Unless the context clearly indicates a contrary intention

2.2.1 words importing:

2.2.1.1 the singular shall include the plural and vice versa and

2.2.1.2 any one gender shall include the other genders; and

2.2.1.3 reference to natural persons includes created entities (corporate or non-corporate) and vice versa;

2.2.2 words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause;

2.2.3 when any number of days is prescribed in this **CONSTITUTION**, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

2.2.4 where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail;

2.2.5 if any provision of this **CONSTITUTION** is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this **CONSTITUTION**;

2.2.6 if any provision in a definition in this **CONSTITUTION** is a substantive provision conferring rights or imposing obligations on any of the **MEMBERS** then, notwithstanding that it is only in the definition clause of this **CONSTITUTION**, effect shall be given to it as if it were a substantive provision in the body of this **CONSTITUTION**.

3. Recordal

- 3.1 The **DEVELOPER** completed the development of **THESEN ISLANDS** in accordance with the original **CONSTITUTION, DESIGN GUIDELINES** and requirements of the **LOCAL AUTHORITY** and handed over **THESEN ISLANDS** to the **TIHOA** in January 2008 having ceded all rights and benefits to **TIHOA**.
- 3.2 The **LOCAL AUTHORITY** when approving the application for subdivision to allow for **THESEN ISLANDS** imposed a condition in terms of section 29(1) of **LUPO** whereby the **OWNER** of each subdivided portion of the immovable property comprising **THESEN ISLANDS** and all successors in title shall be **MEMBERS** of a **HOMEOWNERS ASSOCIATION** in respect of **THESEN ISLANDS**.
- 3.3 The **TIHOA** is desirous of regulating and controlling harmonious development of **THESEN ISLANDS** and maintaining the development and lifestyle with enhancements in accordance with the Building **DESIGN GUIDELINES**.

4. Commencement date

- 4.1 The **TIHOA**, as contemplated in terms of section 29 of **LUPO**, came into existence simultaneously with the first registration of transfer of an **ERF** from the **DEVELOPER** to an **OWNER**.
- 4.2 The effective date of this amended **CONSTITUTION** will be the day it is adopted by the **MEMBERS** in a General Meeting or the **LOCAL AUTHORITY**, subject to the provisions of Clause 37.

5. Status

- 5.1 The **TIHOA** is an unincorporated association not for gain and shall:
- 5.1.1 have legal personality and be capable of suing and being sued in its own name; and
 - 5.1.2 not operate for profit but for the benefit of the **MEMBERS**.
- 5.2 No **MEMBER** in their personal capacity shall have any right, title or interest to or in the funds or assets of the **TIHOA** which shall vest in and be controlled by the **TRUSTEES**.

6. Objects

The **TIHOA** shall have as its objects:

- 6.1 to manage the collective interests common to all its **MEMBERS** which includes expenditure applicable to the maintenance, upkeep and control of the **COMMON PROPERTY** and the collection of levies and other contributions for which **MEMBERS** are liable towards funds for the **TIHOA** for the attainment of its objects;
- 6.2 the matters referred to in section 29(2)(b) and (c) of **LUPO** and without detracting from the generality thereof to ensure compliance with the conditions for subdivision imposed by the **LOCAL AUTHORITY** when approving **THESEN ISLANDS** and, more specifically
- 6.2.1 to oversee, maintain, control and enhance **THESEN ISLANDS**;
 - 6.2.2 to ensure the high standard of **THESEN ISLANDS** is maintained;
 - 6.2.3 to promote, advance and protect **THESEN ISLANDS** and the interests of the **TIHOA** and the **MEMBERS**;

- 6.2.4 to ensure that the **COMMON PROPERTY** is retained as common areas and never alienated or used for residential or other property development;
- 6.3 the regulation and control of harmonious development of **THESEN ISLANDS**;
- 6.4 to promote a high standard of **IMPROVEMENTS** on **THESEN ISLANDS**;
- 6.5 to administer and enforce the **DESIGN GUIDELINES** with particular regard to **IMPROVEMENTS**;
- 6.6 to control the transfer of **ERVEN** in **THESEN ISLANDS** and the conditions imposed by the **LOCAL AUTHORITY** and conditions imposed in the Agreement of Sale between the **DEVELOPER, TIHOA** and the **OWNER** of an **ERF** and/or **UNIT**;
- 6.7 to promote environmental awareness and responsibility amongst **MEMBERS** and to administer the **OPERATIONAL MANAGEMENT PLAN**;
- 6.8 to regulate the conduct of any person within **THESEN ISLANDS** with regards to this **CONSTITUTION**, the **RULES and REGULATIONS** and the **DESIGN GUIDELINES** and to promote harmonious relations;
- 6.9 to adhere to the terms of the **STEWARDSHIP AGREEMENT**;
- 6.10 to impose financial penalties and other penalties upon **MEMBERS** failing to comply with this **CONSTITUTION** and/or the **RULES and REGULATIONS** and/or the **DESIGN GUIDELINES**;

and generally to do all such acts as are necessary to accomplish the fulfilment of the foregoing objects including, but not restricted, to powers specifically contained in this **CONSTITUTION**.

7. Membership

7.1 The **TIHOA** shall have as its **MEMBERS**:

- 7.1.1 every **OWNER** upon registration of transfer of an **ERF** and/or a **UNIT** (as may be applicable) into their name provided that the spouse of such **OWNER** may be nominated as the **REPRESENTATIVE MEMBER** and may then exercise (on behalf of the owner) all of the powers and privileges of membership, including (without limitation thereto) being appointed to office as a **TRUSTEE**; and
- 7.1.2 where an **OWNER** comprises more than one person, such persons shall be deemed jointly to be one **MEMBER** of the **TIHOA** and shall be responsible jointly and severally for the obligations of such **MEMBERSHIP** provided that any such joint owner may be nominated as the **REPRESENTATIVE MEMBER** and may then exercise (on behalf of the joint owners) all of the powers and privileges of membership, including (without limitation thereto) being appointed to office as a **TRUSTEE**; and
- 7.1.3 where an **OWNER** is a juristic person such as a company, close corporation or trust the shareholders, directors, members and/or trustees, as the case may be, of such juristic person shall be personally liable, jointly and severally with such **OWNER** for the due performance by such **OWNER** of all of its obligations in terms of this **CONSTITUTION**, provided that any such shareholder, director, members and/or trustee may be nominated as the **REPRESENTATIVE MEMBER** and may then exercise (on behalf of the juristic person) all of the powers and privileges of membership, including (without limitation thereto) being appointed to office as a **TRUSTEE**;
- 7.1.4 where any **MEMBER** has nominated a **REPRESENTATIVE MEMBER** in terms of Clauses 7.1.1, 7.1.2 or 7.1.3, the liability of the **MEMBER** and its members, directors, trustees or shareholders shall remain but the **REPRESENTATIVE MEMBER** by accepting such appointment shall:

- 7.1.4.1 become obligated to **TIHOA** jointly and severally with the **MEMBER** for all the obligations of the **MEMBER to TIHOA** in terms hereof or arising from any other cause whatsoever, and the **REPRESENTATIVE MEMBER**; and
 - 7.1.4.2 be deemed to have accepted to abide and comply with the terms of this **CONSTITUTION**.
- 7.2 An **OWNER** of an **ERF** and/or **UNIT** shall be a **MEMBER** of the **TIHOA** until they cease to be the registered **OWNER** of such **ERF** and/or a **UNIT**.
- 7.3 When a **MEMBER** ceases to be an **OWNER** they shall ipso facto cease to be a **MEMBER** of the **TIHOA**.
- 7.4 In the event of an **ERF** and/or **UNIT** being owned by more than one person or by a partnership of two or more persons or where an **ERF** and/or **UNIT** is owned by a company, close corporation or trust they shall be obliged to formally nominate one of them as the **REPRESENTATIVE MEMBER** for such purposes as the **TRUSTEES** may from time to time determine as well as the exercise of voting rights in terms of this **CONSTITUTION**. Such nomination shall be made in writing to the **TIHOA** within 7 (seven) days of becoming a **MEMBER** of the **TIHOA**. In the event of co-owners or a partnership, company, close corporation or trust failing to make the aforesaid nomination then the **TIHOA** shall be entitled to presume, until notified otherwise in writing that the owner or partner listed first on the title deed to the **ERF** and/or **UNIT** in question is the party nominated by the co-owners or partnership for all such purposes of this **CONSTITUTION** and that likewise the director, member or trustee first listed on the most recent CIPC records or Letters of Authority, as the case may, is the party nominated for all such purposes of this **CONSTITUTION**.
- 7.5 In the event of the death of a **MEMBER** or upon a **MEMBER** being declared insane or incapable of managing his affairs or upon the issue of a final order of sequestration or liquidation of a **MEMBER** then the legal representative of such **MEMBER** shall, for all purposes, be recognised and be bound as **MEMBER** under this **CONSTITUTION**.

8. Members obligations

- 8.1 Every **MEMBER** is obliged to comply with:
 - 8.1.1 the provisions of this **CONSTITUTION** and all **RULES and REGULATIONS**;
 - 8.1.2 the provisions of the **DESIGN GUIDELINES**;
 - 8.1.3 any agreement concluded by the **TIHOA** insofar as such agreement may directly or indirectly impose obligations on a **MEMBER**;
 - 8.1.4 any directive given by the **TIHOA** and/or the **TRUSTEES** in enforcing the provisions of this **CONSTITUTION, RULES and REGULATIONS** and **DESIGN GUIDELINES**.
- 8.2 The rights and obligations of a **MEMBER** are not transferable and every **MEMBER** shall
 - 8.2.1 to the best of their ability, further the objects and interests of the **TIHOA**;
 - 8.2.2 observe all directives made or given by the **TIHOA** and/or the **TRUSTEES**.
- 8.3 The **MEMBERS** shall be jointly liable for expenditure incurred in connection with the **TIHOA** referred to in this **CONSTITUTION**.
- 8.4 A **MEMBER** shall not be entitled to **DISPOSE** of an **ERF** and/or a **UNIT** without the written consent of the **TIHOA** which consent shall not be unreasonably withheld provided there has been compliance with the provisions of the **CONSTITUTION**.

- 8.5 A **MEMBER** shall not consolidate an **ERF** and/or **UNIT** with one or more **ERVEN** and/or **UNITS** without the written consent of the **TIHOA**.
- 8.6 A **MEMBER** shall not **DISPOSE of** an **ERF** and/or **UNIT** unless:
- 8.6.1 the proposed transferee has irrevocably bound himself in writing to become a **MEMBER** of the **TIHOA** and to observe the **CONSTITUTION** for the duration of their ownership of the **ERF** and/or **UNIT**;
- 8.6.2 the **TIHOA** has issued a clearance that all amounts owing to the **TIHOA** by such **MEMBER** have been paid and that the **MEMBER** is not in breach of any of the provisions of the **CONSTITUTION**;
- 8.6.3 the proposed transferee acknowledges in writing that upon the registration of the transfer of the **ERF** and/or **UNIT** into their name, they shall ipso facto become a **MEMBER** of the **TIHOA**.
- 8.7 No **MEMBER** shall let or otherwise part with the occupation of their **ERF** and/or **UNIT**, whether temporarily or otherwise, without the prior written consent of the **TIHOA** and provided that the proposed **TENANT** or guest, if the **MEMBER** is not in residence, has agreed in writing to be bound by the **CONSTITUTION** including all **RULES and REGULATIONS** applicable to the **TIHOA**.
- 8.8 Any **MEMBER** who wishes to let their **ERF** and/or **UNIT**, or allow a guest to occupy their **ERF** and/or **UNIT** while the **MEMBER** is not in residence, must notify the **TIHOA** in writing prior to the occupation of the **ERF** and/or **UNIT**.
- 8.9 Any letting for a period of between 1 (one) night to 60 (sixty) nights to a **TENANT** is defined as short-term rental. Any letting for a period longer than 60 (sixty) nights to a **TENANT** is defined as long-term rental.
- 8.10 A **TENANT** shall not be allowed to sub-let any rented **ERF** and/or **UNIT** or a section thereof to any third party.
- 8.11 No **MEMBER** shall be allowed to let his **ERF** and/or **UNIT** to more than one party at any given time.
- 8.12 A **MEMBER** may not resign from the **TIHOA** whilst remaining an **OWNER**.
- 8.13 Each **MEMBER** shall, *inter alia*:
- 8.13.1 maintain their **ERF** and/or **UNIT** and all **IMPROVEMENTS** in a neat and tidy condition and in a state of good repair;
- 8.13.2 use all due diligence to ensure the property is made “fire safe” by taking any necessary action that may reasonably be expected or required in terms of prevailing legislation and municipal by-laws to ensure that their **ERF** and/or **UNIT** is “fire safe” as well as generally safe and compliant with the terms of any policy of insurance to which the **ERF** and/or **UNIT** is subject;
- 8.13.3 in respect of their **ERF** and/or **UNIT** establish and maintain a garden to a standard acceptable to the **TIHOA** and/or **TRUSTEES**;
- 8.13.4 not park any commercial type vehicle, boat or caravan or trailer on any road, pavement, parking area or parkland in **THESEN ISLANDS** and such commercial type vehicle, boat or caravan or trailer shall be parked on the **MEMBER’S ERF** and/or **UNIT** (or such area within any applicable sectional title scheme available to the relevant **UNIT** for parking purposes);
- 8.13.5 park their motor vehicles in their garages or at least on the **MEMBER’S ERF** and/or **UNIT** (or such area within any applicable sectional title scheme available to the relevant **UNIT** for parking purposes). Occasional overflow parking for visitors will be permitted on the verges or external parking area, provided always that no vehicle may encroach into the road, onto the footpaths or into any flowerbeds or parkland. Occasional parking is defined as short term parking of duration to a maximum of one week. If a **MEMBER** is unable to comply with this rule then a written application for a concession must

be submitted to the **TIHOA** General Manager, who will investigate the circumstances and may in his sole discretion grant a relaxation on such terms and conditions as the **TIHOA** General Manager may determine;

- 8.13.6 not do or suffer to be done on any **ERF** and/or **UNIT** anything which, in the opinion of the **TRUSTEES**, is noisome, unsightly, injurious, objectionable or detrimental or a nuisance or a source of damage or disturbance to any **MEMBER, TENANT** or occupier of any **ERF** and/or **UNIT** in **THESEN ISLANDS**;
 - 8.13.7 not erect or permit the erection of any advertising boards on any **ERF** and/or **UNIT** without the written approval of the **TIHOA**;
 - 8.13.8 ensure that all animals including birds and reptiles housed on their **ERF** or in their **UNIT** (if so permitted in terms of Body Corporate rules applicable to such **UNIT**) shall not constitute a disturbance or nuisance to **MEMBERS** or their **TENANTS** or occupiers. The **TRUSTEES** shall, in their absolute discretion, be entitled to require the permanent removal from **THESEN ISLANDS** of any animals including birds and reptiles which, in the opinion of the **TRUSTEES**, constitute a disturbance or nuisance;
 - 8.13.9 ensure that all of their dogs are kept on leads on all **COMMON PROPERTY** (other than in the designated dog run area) within **THESEN ISLANDS** and are properly controlled and, in particular, that no nuisance is caused by such dogs and that dogs do not cause uncleared fouling on **COMMON PROPERTY** within **THESEN ISLANDS**;
 - 8.13.10 comply with all security procedures implemented from time to time;
 - 8.13.11 comply with all traffic control **RULES and REGULATIONS** and in particular adhere to speed limits;
 - 8.13.12 ensure that they and their guests do not damage or destroy trees, vegetation and landscaping on **COMMON PROPERTY** within **THESEN ISLANDS** including the eco strip along the edges of the **WATERWAYS** and that planting on their **ERF** does not interfere with infrastructural services including those underground, pedestrian traffic or obscure the vision of motorists;
 - 8.13.13 ensure that, if their **ERF** and/or **UNIT** has a **WATERWAY** or intertidal wetland boundary, the ecobelt vegetation and the slope of the ground underneath is not altered and is maintained in a healthy state as this is essential for the stability of the **WATERWAY** and wetland banks;
 - 8.13.14 ensure that, if intertidal wetland or beach forms part of their **ERF** and/or **UNIT**, this area is maintained in a natural, healthy state; that no filling, landscaping, unauthorised planting or removal of natural vegetation takes place;
 - 8.13.15 ensure that, if an intertidal wetland or beach forms part of their **ERF** and/or **UNIT**, that any damage caused by rain runoff is rectified as soon as reasonably possible so as not to affect the beach area or intertidal wetland boundary or **WATERWAY**;
 - 8.13.16 the **TIHOA** is afforded full access at all times to do all things reasonably necessary to construct and/or stabilise and/or maintain the **WATERWAY** edges and, if applicable, the communal boardwalk/s abutting the **MEMBER'S ERF** and/or **UNIT**.
- 8.14 No **MEMBER** shall apply for the subdivision or rezoning of their **ERF** with a view to procuring a variation or amendment or substitution of use rights.
- 8.15 No **MEMBER** shall conduct any business on an **ERF** or from a **UNIT** or use such **ERF** or a **UNIT** for purposes other than those for which it is zoned unless the **TRUSTEES** have, in writing, approved the use to which the **ERF** or **UNIT** (as applicable) is to be put; and the **LOCAL AUTHORITY** has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations. The **TRUSTEES** shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or

to approve the application subject to such conditions as the **TRUSTEES** deem necessary. The **TRUSTEES** shall not be entitled to grant approval if such proposed business involves visits by non-residents of **THESEN ISLANDS**. This restriction shall not apply to **MEMBERS** using a room for the general purposes of a study.

- 8.16 Should any **MEMBER** to whom permission has been granted for the conduct of a business change any aspect of such business then such **MEMBER** shall submit a fresh application in accordance with the provisions hereof to continue such business.
- 8.17 No **MEMBER** to whom approval has been granted for the conduct of a business shall be entitled to erect any sign or advertisement on their **ERF** and/or **UNIT** (or elsewhere within any sectional title scheme) or on any of the **COMMON PROPERTY** in **THESEN ISLANDS** in connection with such business.
- 8.18 No **MEMBER** shall permit the number of occupants of their **ERF** or **UNIT** to exceed 2 (two) persons per bedroom. The word "occupants" shall include but shall not be limited to any person who resides or stays on such **ERF** or **UNIT** on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the **OWNER** or whether such person pays rental or gives any other form of consideration in respect of such **ERF** or any portion thereof.
- 8.19 No **MEMBER** shall be permitted to conduct a guesthouse, "bed-and-breakfast" establishment or any other form of accommodation facility from a residence situated on any **ERF** or from a **UNIT**.
- 8.20 **MEMBERS** have the right to use any registered architect as long as the architect is registered with the South African Council for the Architectural Profession and has officially registered with the **TIHOA** as provided in the **DESIGN GUIDELINES**. A draftsman or architectural technologist may also be used for minor improvements.
- 8.21 **MEMBERS** shall not
- 8.21.1 be entitled to deviate from any plan approved by the **TIHOA**, or its authorised representative, unless written approval for such proposed deviation has been obtained from the **TIHOA**, or its authorised representative;
- 8.21.2 submit plans in respect of **IMPROVEMENTS** to the **LOCAL AUTHORITY** until such plans have been approved by the **TIHOA** or its duly authorised representative;
- 8.21.3 be entitled to challenge or contest any of the provisions of the **DESIGN GUIDELINES**;
- 8.21.4 have any claim of whatsoever nature against the **TIHOA** arising from any refusal of approval of plans and/or conditional approval and, in that regard, the discretion of the **TIHOA** or its duly authorised representative is absolute;
- 8.21.5 breach any restrictions applicable to the **MEMBER's ERF** and, in particular, coverage, floor area, height and building line restrictions applicable to **IMPROVEMENTS** on such **ERF**.
- 8.22 The **TIHOA**, or its duly authorised representative, shall be entitled to approve the registration of an architect, draughtsman or architectural technologist referred to in 8.20 on the condition that they adhere to all **RULES and REGULATIONS** and **DESIGN GUIDELINES** on **THESEN ISLANDS**.
- 8.23 A **MEMBER** shall not commence the construction or implementation of **IMPROVEMENTS** unless the **MEMBER's CONTRACTOR** together with the **MEMBER** and the **MEMBER's** architect have concluded a **CONDUCT AGREEMENT** and have lodged a copy thereof with the **TIHOA** and effected payment of a **CONTRACTOR's** deposit as provided for therein.
- 8.24 The construction or implementation of **IMPROVEMENTS** shall be undertaken only by a **CONTRACTOR** registered with the **TIHOA**.

- 8.25 A **MEMBER** shall in the event of the total or partial destruction of the **IMPROVEMENTS** on an **ERF** or **UNIT** due to any disaster, demolish all such destroyed **IMPROVEMENTS** within two (2) months of the event which led to the destruction and then within two (2) years of the event which led to the destruction thereof, erect a new residence on the **ERF** or **UNIT** which in all respects shall comply with the provisions of the **DESIGN GUIDELINES**.
- 8.26 Should the **TIHOA** take steps against a **MEMBER** pursuant to a breach of the **CONSTITUTION**, the **TIHOA** shall further be entitled to recover from such **MEMBER** who shall be liable to the **TIHOA** for payment of all the legal costs incurred on the scale as between attorney and own client.

9. The **DESIGN GUIDELINES**

- 9.1 The broad concepts of the **DESIGN GUIDELINES** constitutes an integral part of this **CONSTITUTION** and may not be changed. Minor amendments may be made from time to time by the **TRUSTEES** on proposal by the Design Review Panel.
- 9.2 All **IMPROVEMENTS** shall comply with the provisions of the **DESIGN GUIDELINES**.
- 9.3 No construction, erection or implementation of **IMPROVEMENTS** on an **ERF** or **UNIT** may commence prior to the approval of plans for such **IMPROVEMENTS** and, in this regard:
- 9.3.1 a full set of proposed plans prepared in accordance with the **DESIGN GUIDELINES** shall be submitted to the **TIHOA** or its duly authorised representative for approval. The **TIHOA** or its duly authorised representative shall be the sole judge as to whether the plans and specifications conform to the **DESIGN GUIDELINES** and its decision shall be final and binding upon the **MEMBER**;
- 9.3.2 the **TIHOA** or its duly authorised representative, shall be entitled to withhold approval subject to compliance with such modifications or amendments as the **TIHOA** or its duly authorised representative proposes to the plans submitted and/or such other conditions as may reasonably be imposed;
- 9.3.3 the **MEMBER** shall be liable for all costs in respect of the scrutiny and consideration of plans submitted by the **MEMBER** to the **TIHOA** or its duly authorised representative together with a partially refundable building deposit calculated on a sliding scale which is referenced in the **TIHOA** "Other Fees";
- 9.3.4 thereafter, the approved building plans shall be submitted to the **LOCAL AUTHORITY** for approval;
- 9.3.5 having obtained the approval of the **LOCAL AUTHORITY**, the **MEMBER** shall comply with all conditions and standards imposed by the **LOCAL AUTHORITY** insofar as these may be additional to the requirements of the **DESIGN GUIDELINES** read with the plans.
- 9.4 Any plans, notwithstanding approval by the **LOCAL AUTHORITY**, which have not been prepared and/or submitted and/or approved in compliance with the above, shall be invalid.

10. Title deed conditions and further obligations of members

- 10.1 The following condition will be embodied in the deed of transfer relating to each **ERF** and/or **UNIT** in **THESEN ISLANDS** as a condition of title:

"The within property shall not be transferred without the written consent of the **THESEN ISLANDS HOMEOWNERS ASSOCIATION** of which the within transferee and their successors in title shall automatically become a **MEMBER**", and the **TIHOA** shall be entitled, in its discretion, to embody in the deed of transfer or conditions of title relating to each **ERF** and/or **UNIT** in **THESEN ISLANDS** such further condition/s of title as it considers necessary with particular reference to implementation of or arising from agreements of sale of **ERVEN**.

- 10.2 The **TIHOA** may withhold the written consent referred to in clause 10.1 and 10.3 hereof if the **OWNER** has not complied with all provisions of this **CONSTITUTION** or their obligations (whether financial or otherwise) in terms thereof or in terms of applicable **RULES and REGULATIONS** and **DESIGN GUIDELINES**.
- 10.3 In addition a **MEMBER** shall not be entitled to **DISPOSE** of their **ERF** and/or **UNIT** unless:
- 10.3.1 it is a condition of any **DISPOSAL** that the transferee acknowledges that they become a **MEMBER** of the **TIHOA** upon registration of such transfer and that they agree to abide by the terms of this **CONSTITUTION**, the **RULES and REGULATIONS** and **DESIGN GUIDELINES**; and
- 10.3.2 the **TIHOA** has furnished its written consent to the **DISPOSAL** of the **ERF** and/or **UNIT**.
- 10.4 In granting its consent in terms hereof the **TIHOA** shall be entitled to charge such reasonable consent administration fees as the Trustees may from time to time determine.

11. The TIPT and further obligations of MEMBERS

- 11.1 It is recorded that the **TIPT** Property being the parkland area of 13.3737 hectares, a consolidation of 3 erven into Erf 13840, Knysna is held by the **TIPT** subject to the provisions of the **TIPT** Deed of Trust so as to ensure the Record of Decision issued to the **DEVELOPER** and the Section 19 Directive issued by **DWAF** is complied with. The **TIHOA** have the exclusive use of this area and the structures on this area, subject to the provisions of the **STEWARDSHIP AGREEMENT**, a copy of which is annexed hereto.
- 11.2 It is further recorded that in terms of the **STEWARDSHIP AGREEMENT**, **MEMBERS** acknowledge and understand that two servitudes were envisaged to have been registered over the **TIPT** Property, namely a General Servitude over the entire **TIPT** Property and a Servitude of Limited Application (**CCZ** only) with restrictive conditions in favour of **DWAF**. The Title Deeds do not reflect these servitudes as **DWAF** had not accepted their rights to the servitudes before registration but may accept their rights subsequent to the registration.
- 11.3 The permitted end use of the **TIPT** Property is as a landscaped private parkland area and **MEMBERS** of the **TIHOA** and all other users of the **TIPT** Property or persons entering the **TIPT** Property must acquaint themselves with the terms of the **STEWARDSHIP AGREEMENT** governing this area and the potential hazards that may exist and acknowledge and understand that they use the **TIPT** Property entirely at their own risk and subject further to the disclaimer of responsibility set out in clause 34 of this **CONSTITUTION** as well as all of the terms and conditions contained in the **TIPT** and the **STEWARDSHIP AGREEMENT** including, but not limited to, the obligations of the **TIHOA**, any rules regulating the use of the **TIPT** Property, the restrictive conditions, the disclaimers of responsibility and the indemnities contained therein.
- 11.4 All users of the **TIPT** Property and all persons entering the **TIPT** Property shall do so subject to indemnification of the **TIHOA** against any claims for loss or damage by them suffered on or about the **TIPT** Property or otherwise arising from their entry into or use of the **TIPT** Property.
- 11.5 No users of the **TIPT** Property may interfere or hinder any rehabilitation or remediation activity which is being undertaken on the **TIPT** Property by the **TIHOA**, the **TIPT**, the remediation consultant or any of their contractors.
- 11.6 If at any time, for whatsoever reason, it becomes possible to separate the **PPA** from the **CCZ** for future development purposes, this separation shall require, as per the **TIPT** Deed, **TIHOA** consent obtained by a **RESOLUTION** adopted by the **MEMBERS** at a Special General Meeting supported by at least 75% (seventy five percent) of the total number of **MEMBERS** of the **TIHOA**.
- 11.7 The **MEMBER** (an alternate **MEMBER/S**) elected to serve on the **TIPT**, as a Trustee on behalf of the **TIHOA**, shall be approved by the Board of **TRUSTEES** and ratified by the **MEMBERS** of the **TIHOA** at the Annual General Meeting or at a General Meeting called specifically for such purpose. The alternate representative may be the General Manager or a **MEMBER**.

12. Municipal Services: Takeover/Maintenance

12.1 In respect of water, electrical and sewerage systems for the entire **THESEN ISLANDS** the following shall apply:

12.1.1 it is recorded that upon completion by the **DEVELOPER** at their cost of such services to the satisfaction of the **LOCAL AUTHORITY** ownership in such services was automatically transferred to and vested in the **LOCAL AUTHORITY** free of charge;

12.1.2 the **LOCAL AUTHORITY** shall at all times, at its cost, be solely responsible, up to the consumer side of water meters, the electricity connection cable and the sewer connection up to the individual property boundary, for the maintenance of such services, as well as the reading of meters and the issuing of accounts to the individual property **OWNERS**;

12.1.3 electricity and water meters shall remain the property of the **LOCAL AUTHORITY** which retains ownership thereof;

12.1.4 all usual and normal conditions and fees for connections of water, sewer and electricity in terms of applicable by-laws shall apply;

12.1.5 the **LOCAL AUTHORITY** shall enjoy reasonable access to **THESEN ISLANDS** for the maintenance and inspection of the aforesaid services and for the reading of meters, subject to compliance with the security requirements from time to time of the **TIHOA**; and

12.1.6 no persons other than the authorised agents of the **LOCAL AUTHORITY** shall interfere with or connect to any municipal service or meter.

12.2 In respect of all other services including but not limited to maintenance and control of **WATERWAYS**, sea walls, roads, pavements, parklands and storm water disposal (i.e. only excluding water, electrical and sewer systems and centralised refuse removal) for the entire **THESEN ISLANDS**, the following shall apply:

12.2.1 upon completion by the **DEVELOPER** at its cost of such services to the satisfaction of the **LOCAL AUTHORITY** ownership in such services automatically vested in the **TIHOA** free of charge;

12.2.2 the **TIHOA** and its operating structures are responsible for the maintenance of such services, as well as the ongoing implementation of environmental protection procedures.

12.3 Refuse removal will be undertaken by the **LOCAL AUTHORITY** at standard refuse collection tariffs applicable from time to time, from each **ERF** and/or **UNIT** on **THESEN ISLANDS**. The service provided by the **LOCAL AUTHORITY** in respect of refuse removal from the said points will be at the **LOCAL AUTHORITY**'s normal service levels with regard to frequency and related aspects.

13. COMMON PROPERTY and facilities

13.1 The **TIHOA** has received free of consideration and at the cost of the **DEVELOPER** transfer of Erf 16435, Knysna and via the **STEWARDSHIP AGREEMENT** over Erf 13840, Knysna, the **COMMON PROPERTY** including any structures or facilities erected on the **COMMON PROPERTY**, and the risk therein passed to the **TIHOA** on transfer and acceptance and likewise all obligations in respect of maintenance and upkeep and liability for rates and taxes and all other outgoings in respect thereof became the responsibility of the **TIHOA** subject to the provisions of clause 12 above the **LOCAL AUTHORITY** bears no responsibility for the **COMMON PROPERTY** infrastructure.

14. WATERWAYS and JETTIES

- 14.1 Without detracting from the provisions of any other applicable clause in this **CONSTITUTION** it is specifically recorded that the **TIHOA** is responsible for the ongoing maintenance and management of the **WATERWAYS**, including the entrance sections from the estuary, to the satisfaction of the **LOCAL AUTHORITY** and such other authorities as the **LOCAL AUTHORITY** deems necessary. The **LOCAL AUTHORITY** bears no responsibility to ensure the maintenance of or accessibility to the **WATERWAYS**.
- 14.2 It is recorded that the **TIHOA** ratified and adopted, without modification, an agreement of lease concluded between South African National Parks of the one part and Thesen Properties (Proprietary) Limited and the **DEVELOPER** of the other part in respect of access channels to the **WATERWAYS** in respect whereof the **TIHOA** became the lessee in terms of the said lease and is solely liable for all the lessee's obligations and similarly enjoys all rights and benefits in terms of the agreement of lease.
- 14.3 Private and communal jetties, with the exception of those owned by the Dry Mill Sectional Title **MEMBERS**, remain the property of the **TIHOA** subject to the exclusive use of the **OWNER** of the **ERF** and/or **UNIT** served by such jetty as allocated by the **TIHOA**.
- 14.4 Communal jetties shall be maintained by the **TIHOA** and the actual cost of maintenance and insurance of each jetty and administrative charges connected therewith are due and payable on demand by the **OWNER** who has the use rights to such jetty.
- 14.5 Private jetties shall be maintained by the **TIHOA** and the actual cost of maintenance of each jetty and administrative charges connected therewith are due and payable on demand by the **OWNER** who has the use rights to such jetty. Insurance is payable by the registered owner of the **ERF** and/or **UNIT**.

15. Levies

- 15.1 The **TRUSTEES** shall
- 15.1.1 establish and maintain a **LEVY** fund for the purposes of meeting all expenses of the **TIHOA** for the control, management and administration of **THESEN ISLANDS** and for charges for the supply of any services required by the **TIHOA** and any rates or levies which may from time to time be imposed by the **LOCAL AUTHORITY** and/or other competent authority and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the **TIHOA** and the maintenance, repair and renewal of **COMMON PROPERTY** and facilities including the **WATERWAYS** and generally for achieving the objects set out in this **CONSTITUTION**;
- 15.1.2 estimate the amount which will be required by the **TIHOA** to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and must include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;
- 15.1.3 require **MEMBERS** whenever necessary to make contributions to such fund for the purposes of satisfying the expenses referred to in clauses 15.1.1 and 15.1.2, equal as nearly as is reasonably practical to such estimated amount.
- 15.2 The annual levies imposed on **MEMBERS** shall include a fixed and a variable amount. The fixed amount will comprise 50% of the total budgeted expenses **LEVIES** and shared equally by all **MEMBERS** irrespective of size or value of their **ERF** and/or **UNIT** and **IMPROVEMENTS**. The variable amount will also comprise 50% of the total budgeted **LEVIES** and will be apportioned on the basis of a Rand and/or Cent amount calculated on the square meterage of each **ERF** and/or **UNIT** size in accordance with the fixed percentages reflected in the Fixed Percentage Schedule which is available at the **TIHOA** offices for inspection.

A special Entry Fee Levy equivalent to 12 (twelve) times (one year) the applicable monthly levy instalment will be raised as an Entry Fee against all new **MEMBERS** on **DISPOSAL** of every **ERF** and/or **UNIT**, payable to the **TIHOA**. The only exceptions to this Rule are when there is a transfer from a company or close corporation or trust to an individual with no material change in “beneficial ownership, where transfer is a result of divorce and to one of the divorcing spouses, or where a **MEMBER** sells an **ERF** and/or **UNIT** and purchases a new one within 6 (six) months on **THESEN ISLANDS**. Where an existing **MEMBER** purchases a second or further **ERF** and/or **UNIT** on **THESEN ISLANDS**, the Entry Fee Levy will apply.

- 15.3 The **TRUSTEES** may, from time to time, make special levies upon **MEMBERS** effective from the date of passing of the applicable **RESOLUTION** in respect of such expenses referred to in clause 15.1 (which are not included in any estimate made in terms of clause 15.1.2) and such levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the **TRUSTEES** shall deem fit.
- 15.4 Any amount due by a **MEMBER** by way of a **LEVY** shall be a debt due by them to the **TIHOA** payable within such time as determined by the **TRUSTEES**. The obligation of a **MEMBER** to pay a **LEVY** shall cease upon their ceasing to be a **MEMBER** save that they shall remain liable for all levies calculated up to the date upon which they cease to be a **MEMBER**. No levies paid by a **MEMBER** shall be repayable by the **TIHOA** upon their ceasing to be a **MEMBER**, other than any element paid in advance or beyond the date of transfer. A **MEMBER's** successor in title to an **ERF** and/or a **UNIT** shall be liable as from the date upon which they become a **MEMBER** pursuant to the transfer of such **ERF** and/or **UNIT** (as the case may be) to pay the levies attributable to that **ERF** and/or **UNIT**. No **MEMBER** shall be entitled to transfer their **ERF** and/or **UNIT** until the **TRUSTEES** have certified that the **MEMBER** has, at the date of transfer, complied with all obligations and paid all amounts owing by them to the **TIHOA**.
- 15.5 In calculating levies, the **TRUSTEES** shall take into account income, if any, earned by the **TIHOA** from sources other than levies.
- 15.6 The decision of the **TRUSTEES** in calculating the levies shall be final and binding on all **MEMBERS**.
- 15.7 No **MEMBER** shall be entitled to vote or to enjoy any of the other privileges of membership unless and until they shall have paid every **LEVY** and other sum (if any) which shall be due and payable to the **TIHOA** in respect of their membership thereof.
- 15.8 All levies are due and payable by **MEMBERS** on the last day of the month in which such liability arose.
- 15.9 The **TRUSTEES** may authorise the levies to be paid annually or monthly. The **TRUSTEES** are entitled to accelerate payment of the levies due for any financial year/annual period in the event of a **MEMBER** falling into arrears.
- 15.10 **MEMBERS** shall be liable for payment of interest on outstanding amounts at a rate determined by the **TRUSTEES** from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which an amount becomes due and payable to the date of actual payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.

16. Breach

- 16.1 The **TRUSTEES** may on behalf of and in the name of the **TIHOA** institute legal proceedings in accordance with the provisions of this clause 16.
- 16.2 If any **MEMBER** fails in the observance of any of the provisions of this **CONSTITUTION**, or any **RULES and REGULATIONS** made in terms hereof, and/or fails to comply with the provisions of the **DESIGN GUIDELINES**, the **TRUSTEES** may on behalf of and in the name of the **TIHOA** serve notice on such **MEMBER** calling upon them to remedy such breach within a time specified in such notice and, failing timeous compliance:

- 16.2.1 call for an explanation and/or an apology; and/or
- 16.2.2 withdraw any consent previously given in respect of the matter in question, if applicable; and/or
- 16.2.3 call upon such **MEMBER** in writing to correct or remove or alter within a specified period any maintenance work or such portion of the **IMPROVEMENTS** or any addition erected contrary to the provisions of this **CONSTITUTION** read with the **DESIGN GUIDELINES**; and/or
- 16.2.4 impose a daily financial penalty, the amount of which shall be determined by the **TRUSTEES** from time to time; and/or
- 16.2.5 cause to be taken such action or steps as may be reasonably required to remedy the breach and the **MEMBER** concerned shall be liable to the **TIHOA** for all costs so incurred, which costs shall be deemed to be a debt owing by the **MEMBER** to the **TIHOA** and shall be due and payable upon demand; and/or
- 16.2.6 refers the matter to Arbitration as per Clause 35; and/or
- 16.2.7 institute proceedings in any court of competent jurisdiction for such relief as the **TRUSTEES** may consider necessary and for this purpose may appoint such attorneys or counsel as the **TRUSTEES** may deem fit.
- 16.3 If any **MEMBER** fails to make payment on due date of levies or other amounts payable by such **MEMBER**, the **TRUSTEES** may give notice to such **MEMBER** requiring them to remedy such breach within such period as the **TRUSTEES** may determine and should they fail to timeously remedy their breach, the **TRUSTEES** may, on behalf of the **TIHOA**, institute legal proceedings against such **MEMBER** without further notice.
- 16.4 In no way detracting from the generality of any other provision of this **CONSTITUTION** in the event of the **TIHOA** incurring any legal costs as a result of any breach of this **CONSTITUTION** or any **RULES and REGULATIONS** or the **DESIGN GUIDELINES** the **TIHOA** shall be entitled to recover in full all such legal costs from such responsible **MEMBER** on the scale as between attorney and own client (alternatively the highest permissible scale of legal fees) together with collection commission and any other expenses and charges incurred by the **TIHOA** in obtaining recovery, whether or not legal action is actually instituted.
- 16.5 Nothing in the foregoing shall derogate from or in any way diminish the right of the **TIHOA** to institute proceedings in any court of competent jurisdiction for recovery of any money due by any **MEMBER** arising from any cause of action whatsoever or for any other relief.
- 16.6 In the event of any breach of this **CONSTITUTION** by the **MEMBERS**, any members of their household, their invitees or **TENANTS**, such breach shall be deemed to have been committed by the **MEMBER** himself but, without prejudice to the foregoing, the **TIHOA** and/or **TRUSTEES** shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the responsible **MEMBER**.

17. TRUSTEES

- 17.1 Subject to the provisions of clause 18.7, the **TRUSTEES** of the **TIHOA** shall comprise a minimum of 5 (five) and maximum of 9 (nine) individuals
- 17.2 elected by the **MEMBERS** at the Annual General Meeting of the **TIHOA**.
- 17.3 On election, **TRUSTEES** will be appointed for an initial period of three years, with 3 (three) **TRUSTEES** standing down each year, inclusive of those who stand down or resign during any year, but who, subject to eligibility, may offer themselves for re-election but for a maximum of three successive periods i.e. 9 (nine) years.

- 17.4 In assessing which **TRUSTEES** will stand down at the end of years one and two or in the future periods, and in the absence of individuals volunteering to stand down, those individuals who have served as **TRUSTEES** the longest, since their last election, will stand down and subject to eligibility, including the maximum period of service of nine years, but may offer themselves for re-election.
- 17.5 Individuals prepared to make themselves available for consideration and election as a **TRUSTEE**, must be **MEMBERS** in good standing with the **TIHOA**. The nomination form must be signed by a Proposer together with a Secunder and with the Nominee signifying their acceptance. All three individuals must also be **MEMBERS** in good standing. The completed nomination form must be lodged with the **TIHOA** at least 24 (twenty-four) hours before the advertised time for the commencement of the meeting or adjourned meeting concerned.
- 17.6 A **TRUSTEE** shall, by accepting their appointment as such, be deemed to have agreed to be bound by the provisions of this **CONSTITUTION**.
- 17.7 A **TRUSTEE** shall be deemed to have vacated their office as such upon:
- 17.7.1 their estate being sequestrated, whether provisionally or finally or upon them surrendering their estate;
 - 17.7.2 their making any arrangement or composition with their creditors;
 - 17.7.3 their conviction for any offence involving dishonesty;
 - 17.7.4 their becoming of unsound mind or being found lunatic;
 - 17.7.5 their resigning from such office in writing;
 - 17.7.6 their being removed from office by a **RESOLUTION** of the **MEMBERS**;
 - 17.7.7 their becoming disentitled to exercise a vote in terms of this **CONSTITUTION**;
 - 17.7.8 their ceasing to be an **OWNER**;
 - 17.7.9 their being absent for 3 (three) consecutive regular meetings of the **TRUSTEES** without obtaining prior leave of absence.
- 17.8 Notwithstanding the fact that a **TRUSTEE** shall be deemed to have vacated their office as provided in clause 17.7, anything done by such **TRUSTEE**, in the capacity of a **TRUSTEE** in good faith, shall be valid until the fact that they are no longer a **TRUSTEE** has been recorded in the Minute Book of the **TRUSTEES**. Should the office of a **TRUSTEE** fall vacant prior to the next Annual General Meeting of the **TIHOA**, the vacancy in question may be filled by majority vote of the remaining **TRUSTEES** and the appointed co-opted **TRUSTEE** shall hold office until the next annual general meeting.
- 17.9 Within 7 (seven) days of the holding of each annual general meeting of the **TIHOA** the elected **TRUSTEES** shall meet and shall elect from their own number the **CHAIRPERSON** who shall hold office until the Annual General Meeting held next after their appointment, unless removed as **CHAIRPERSON** by a majority vote of **TRUSTEES**, provided that the office of **CHAIRPERSON** shall ipso facto be vacated by the **TRUSTEE** holding such office upon their ceasing to be a **TRUSTEE** for any reason. At the same time as the election of the **CHAIRPERSON**, the **TRUSTEES** shall elect from their own number a **VICE CHAIRPERSON** who, in the absence of the **CHAIRPERSON** from any meeting shall chair such meeting. In the event of any vacancy occurring in the aforesaid offices the **TRUSTEES** shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 17.10 Although the **CHAIRPERSON** is elected annually the maximum period an individual **TRUSTEE** may hold this office continuously is 6 (six) years.

- 17.11 Save as otherwise provided in this **CONSTITUTION**, the **CHAIRPERSON** shall preside at all meetings of the **TRUSTEES** and all General Meetings of the **TIHOA** and shall perform all duties incidental to the office of **CHAIRPERSON** and such other duties as may be prescribed by the **TRUSTEES** or by **MEMBERS** and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a **MEMBER's** spouse shall be entitled to speak at any meeting but shall not be entitled to vote save where validly appointed as a **MEMBERS** proxy.
- 17.12 If the **CHAIRPERSON** vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the **VICE CHAIRPERSON** shall chair such meeting. If neither are available, and with a quorum, the **TRUSTEES** present at such meeting shall elect another **CHAIRPERSON** for such meeting.
- 17.13 If any **CHAIRPERSON** vacates their office as **CHAIRPERSON** or no longer continues in office for any reason, the duly elected **VICE CHAIRPERSON** shall hold office as such for the remainder of the period of office of the first mentioned **CHAIRPERSON**. The **TRUSTEES** shall then elect another **VICE CHAIRPERSON** who shall hold office as such for the remainder of the period of office of the first mentioned **CHAIRPERSON**.
- 17.14 A **TRUSTEE** shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute or other matter concerning the **TIHOA**, by virtue of any direct or indirect interest they may have therein.
- 17.15 Contracts, as specified in the financial policy, concluded within the scope of the budget on behalf of the **TRUSTEES** shall be valid and binding when signed by the Portfolio **CHAIRPERSON** together with the General Manager or the **CHAIRPERSON** and one of two **TRUSTEES**, the latter specifically appointed as authorised signatories in terms of a **RESOLUTION** of **TRUSTEES** whereby the **TRUSTEES** bind the **TIHOA**.
- 17.16 Contracts concluded on behalf of the **TRUSTEES**, where contracts are outside the scope of the approved budget, shall be valid and binding when signed by the **CHAIRPERSON** and one of two **TRUSTEES**, the latter specifically appointed as authorised signatories in terms of a **RESOLUTION** of **TRUSTEES** whereby the **TRUSTEES** bind the **TIHOA**.
- 17.17 **TRUSTEES** shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as **TRUSTEES**, 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.
- 17.18 **TRUSTEES** may not make loans on behalf of the **TIHOA** to **MEMBERS** or to themselves.

18. Functions, powers and duties of TRUSTEES

- 18.1 Subject to the express provisions of this **CONSTITUTION**, the **TRUSTEES** shall direct, control, manage and administer the business and affairs of the **TIHOA**. They shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any executive and administrative staff or **MANAGING AGENT**, may exercise all such powers of the **TIHOA** and do all such acts on behalf of the **TIHOA** as may be exercised and done by the **TIHOA** and as are not by this **CONSTITUTION** required to be exercised or done by the **TIHOA** in General Meeting subject however to such **RULES and REGULATIONS** as may have been made by the **TIHOA** in general meeting provided that no **RULES and REGULATIONS** made by the **TIHOA** in General Meeting shall invalidate any prior act of the **TRUSTEES** which would have been valid if such **RULES and REGULATIONS** had not been made.
- 18.2 The **TRUSTEES** may appoint any number of committees and may delegate any of their authority to any such committee. Any committee so formed shall have a **TRUSTEE** on the committee and shall, in the exercise of the powers so delegated, conform to the provisions of the **CONSTITUTION**. The delegations of authority shall be determined at the first meeting of the **TRUSTEES** following the AGM.
- 18.3 Save as specifically provided in this **CONSTITUTION**, the **TRUSTEES** shall at all times have the right to engage on behalf of the **TIHOA** the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, **MANAGING AGENTS**, town planners, garden and landscape service providers, security service

providers, communication specialists or any other professional firm or person or General Manager and other employees in the interests of the **TIHOA**.

- 18.4 The **TRUSTEES** shall be authorised to arrange borrowing facilities at recognised financial institutions, up to 50% (fifty per centum) of the annual levies unless further increases are agreed by the **MEMBERS**.
- 18.5 The **TRUSTEES** shall have the right to vary, cancel or modify any of their decisions and **RESOLUTIONS** from time to time.
- 18.6 If a **TRUSTEE** has vacated their office as per Clause 17.7, the **TRUSTEES** shall have the right to co-opt any person or persons, up to a maximum of 3 (three) individuals, chosen by them, and who are also **MEMBERS** in good standing, to act as co-opted **TRUSTEES**. A co-opted **TRUSTEE** shall enjoy all the rights and be subject to all the obligations of the **TRUSTEES** provided that such co-opted **TRUSTEE** shall only serve until the next annual general meeting.
- 18.7 The **TRUSTEES** may, should they so decide, investigate any suspected or alleged breach by any **MEMBER** or **TRUSTEE** of this **CONSTITUTION** in such reasonable manner as they shall decide from time to time.
- 18.8 The **TRUSTEES** shall have the power to make, as well as the power to substitute, add to amend or repeal, **RULES and REGULATIONS** from time to time not inconsistent with this **CONSTITUTION** or any **RULES and REGULATIONS** adopted by ordinary **RESOLUTION** of the **MEMBERS** of the **TIHOA** in General Meeting, for the administration, use and enjoyment of **THESEN ISLANDS**, for the purposes of giving proper effect to the provisions of this **CONSTITUTION** and for any other purpose and in no way detracting from the generality of the aforesaid, the **TRUSTEES** may from time to time make **RULES and REGULATIONS**:
- 18.8.1 as to the resolution of disputes generally;
- 18.8.2 for the furtherance and promotion of any of the objects of the **TIHOA**;
- 18.8.3 for the advancement of the interests of **MEMBERS** generally;
- 18.8.4 for the conduct of **TRUSTEES** at meetings of **TRUSTEES** and meetings of the **TIHOA**;
- 18.8.5 to **LEVY** and collect contributions from **MEMBERS** in accordance with clause 15;
- 18.8.6 to **LEVY** and recover from **MEMBERS** moneys which are necessary to defray the necessary expenses of the **LOCAL AUTHORITY** or any other competent authority in the event of the **LOCAL AUTHORITY** or any other competent authority raising such charges, rates or taxes;
- 18.8.7 to assist it in administering and governing its activities generally.
- 18.9 Without in any way limiting the powers granted, the duties and powers of the **TRUSTEES** shall further specifically include:
- 18.9.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, renovations, additions to and **IMPROVEMENTS** of all **ERVEN** and **UNITS** in **THESEN ISLANDS** in strict accordance with the provisions of the **DESIGN GUIDELINES**. The **TRUSTEES** shall be entitled to require any **MEMBER**, who shall be obliged, to repaint or renovate their **IMPROVEMENTS** if in the reasonable opinion of the **TRUSTEES** such **IMPROVEMENTS** require essential repairs or have become dilapidated;
- 18.9.2 entering into agreements with third parties on behalf of the **TIHOA** for any purposes, including but not limited to security, gardens, communications, infrastructure maintenance and rehabilitation, etc;
- 18.9.3 the employment on behalf of the **TIHOA** of agents, servants and any other party and the payment of such persons;

- 18.9.4 the taking of steps in all matters of common interest in respect of the **TIHOA** and, without detracting from the generality thereof, such as common sewage, electricity supply, landscaping, maintenance of private roads and **WATERWAYS**, refuse facilities, removal of refuse and such like, where applicable;
 - 18.9.5 the institution or defence of actions and/or applications in the name of the **TIHOA** and to appoint legal representatives for such purpose;
 - 18.9.6 the maintenance of the highest standards of corporate governance as practised by companies in South Africa;
 - 18.9.7 the amendment, subject to the provisions of clause 9, of the **DESIGN GUIDELINES** from time to time as proposed by the Design Review Panel;
 - 18.9.8 be responsible for establishing and updating as appropriate **RULES and REGULATIONS** and the **DESIGN GUIDELINES** as part of this **CONSTITUTION** and to ensure that **MEMBERS** and/or **TENANTS** adhere to such.
- 18.10 The **TIHOA** is not permitted to distribute any of its funds to any person other than to a similar association of persons and only then upon its dissolution.
- 18.11 The **TRUSTEES** must publish any proposed **RULES and REGULATIONS** made in terms of clause 18.9 by way of notice to **MEMBERS** within a reasonable time and any **RULES and REGULATIONS** proposed by the **TRUSTEES** will take effect on the date specified in the notice.
- 18.12 Any **RULES and REGULATIONS** that take effect as contemplated in clause 18.12 will remain binding on an interim basis until put to a vote at the next General Meeting of the **TIHOA** and will become permanently binding if ratified by ordinary **RESOLUTION** of the **MEMBERS** failing which it shall cease to be of any further force or effect.
- 18.13 For the better management of the affairs of the **TIHOA** the **TRUSTEES** are empowered to establish, at their discretion, Portfolio Committees of the Board of **TRUSTEES** to attend to Finance and Risk, Gardens and Lifestyle, Security and Safety, Infrastructure, Design Review, Communication, Human Resources, Blue Flag and Environmental together with any other committee as necessary.

19. Proceedings of TRUSTEES

- 19.1 The **TRUSTEES** may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this **CONSTITUTION**.
- 19.2 Meetings of the **TRUSTEES** shall be held at least once every 3 (three) months.
- 19.3 The **TRUSTEES** undertake on election to attend as many **TRUSTEE** meetings as possible.
- 19.4 The **CHAIRPERSON** always has the right to convene meetings of **TRUSTEES**.
- 19.5 A **TRUSTEE** may, provided they have the support in writing of 2 (two) other **TRUSTEES**, at any time convene a meeting of **TRUSTEES** by giving to the other **TRUSTEES** not less than 14 (fourteen) days written notice of a meeting proposed by them, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 19.6 A **RESOLUTION** in writing signed affirmatively by all the **TRUSTEES** shall be valid and effectual as if it had been passed at a meeting of **TRUSTEES** duly called and constituted.

- 19.7 The quorum necessary for the holding of any meeting of **TRUSTEES** shall be 50 (fifty) percent plus 1(one) of the elected and co-opted **TRUSTEES**, with a minimum of 3 (three) **TRUSTEES** present personally or via video conference. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the **TRUSTEES** then present, provided there are at least 3 (three), shall be a quorum. (Participation of **TRUSTEES** by video conferencing or other audio visual means shall be announced for purposes of the quorum to ensure that no other person than the concerned **TRUSTEE** attending or have access to the proceedings of the meeting through video conferencing mode or other visual means).
- 19.8 Any **RESOLUTION** of the **TRUSTEES** shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a **RESOLUTION**, the **CHAIRPERSON** shall have a second or casting vote. **TRUSTEES** are encouraged to reach decisions by consensus rather than voting.
- 19.9 The **CHAIRPERSON** shall preside as such at all meetings of **TRUSTEES** provided that, should at any meeting of **TRUSTEES** the **CHAIRPERSON** not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, the appointed **VICE CHAIRPERSON** present shall chair the meeting, and in his absence, those present of the **TRUSTEES** shall vote to appoint a **CHAIRPERSON** for the meeting who shall thereupon exercise all the powers and duties of the **CHAIRPERSON** in relation to such meeting.
- 19.10 A **TRUSTEE** may not be represented by a proxy at a meeting of **TRUSTEES**.
- 19.11 The **TRUSTEES** shall:
- 19.11.1 ensure that minutes are taken of all scheduled meetings of the **TRUSTEES**, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the **CHAIRMAN** of the meeting;
 - 19.11.2 cause such minutes to be kept of all scheduled meetings of the **TRUSTEES** in a minute book of meetings of **TRUSTEES** kept for that purpose;
 - 19.11.3 keep all minute books of meetings of **TRUSTEES** in perpetuity;
 - 19.11.4 on the written application of any **MEMBER**, make minutes of scheduled **TRUSTEES** and General meetings available for inspection only by such **MEMBER** subject to all necessary steps being taken by the **TRUSTEES** to ensure the due and appropriate protection of privacy of persons and confidentiality of subject matter in any such inspection process.
- 19.12 All **RESOLUTIONS** recorded in the minutes of any meeting of **TRUSTEES** 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 **TRUSTEES** 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 **TRUSTEES**.
- 19.13 Save as otherwise provided in this **CONSTITUTION**, the proceedings at any meeting of **TRUSTEES** shall be conducted in such reasonable manner and form as the **CHAIRPERSON** of the meeting shall decide. Any meeting of the **TRUSTEES** may be conducted solely by one or more means of remote communication through which all of the **TRUSTEES** may participate with each other during the meeting, if the number of **TRUSTEES** participating in the meeting would be sufficient to constitute a quorum. Participation in a meeting by that means constitutes presence in person at the meeting.

20. MANAGING AGENT AND ESTATE MANAGER

- 20.1 The **TRUSTEES** shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a **MANAGING AGENT** to control, manage and administer the **THESEN ISLANDS** and to exercise such powers and duties as may be entrusted to the **MANAGING AGENT**, including the power to collect levies, provided that the **MANAGING AGENT**, shall be appointed for a year at a time, and unless the **TRUSTEES** notify the **MANAGING AGENT** to the contrary, such appointment will be automatically renewed from year to year.
- 20.2 The **TRUSTEES** shall ensure that there is included in the contract of appointment of a **MANAGING AGENT** a provision to the effect that if the **MANAGING AGENT** is in breach of any of the provisions of their contract or if they are guilty of conduct which at common law would justify the termination of a contract between master and servant, the **TRUSTEES** may, without notice, cancel such contract of appointment and the **MANAGING AGENT** shall have no claim whatsoever against the **TRUSTEES** and/or the **TIHOA** as a result of such cancellation.
- 20.3 The **TRUSTEES** shall also be entitled to appoint an estate manager and support staff to perform such management and administrative functions as the **TRUSTEES**, or the **MEMBERS** in General Meeting, may from time to time determine to be in the best interests of the **TIHOA**.

21. General Meetings of the TIHOA

- 21.1 The **TIHOA** shall, within 4 (four) months of each financial year end of the **TIHOA** hold an Annual General Meeting.
- 21.2 Such Annual General Meeting shall be held at such time and place being either physical or virtual or using a combination of the two, subject to the foregoing provisions, as the **TRUSTEES** shall decide from time to time.
- 21.3 The **TRUSTEES** may, whenever they deem fit, convene a General Meeting and a General Meeting shall also be convened on a requisition made by not less than 25 (twenty-five) **MEMBERS**, in good standing, or should the **TRUSTEES** fail to do so such meeting may be convened by the requisitionists themselves provided that notice thereof be given in terms of clause 22.
- 21.4 Notwithstanding anything contained in this **CONSTITUTION**, if the **TRUSTEES** call a meeting of **MEMBERS**, the **TRUSTEES** may determine that the meeting be held, subject to and in accordance with this **CONSTITUTION**, entirely or partially by means of telephonic, electronic or other communications facility that permits all participants to communicate adequately with each other during the meeting. In the event such a meeting is to be held, the **TRUSTEES** shall establish the procedures for the conduct thereof including, without limitation, the procedures for voting by telephonic, electronic or other communications facility.

22. Notice of General Meetings

- 22.1 An Annual General Meeting shall be called by not less than 21 (twenty-one) days' notice and a General Meeting by not less than 14 (fourteen) days' notice. The notice 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 this **CONSTITUTION**, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the **TRUSTEES** to such persons as are, under this **CONSTITUTION**, entitled to receive such notices from the **TIHOA**; provided that a General Meeting or an Annual General Meeting of the **TIHOA** shall, notwithstanding that it is called by shorter notice than that specified in this **CONSTITUTION**, be deemed to have been duly called if it is agreed to by not less than 60% (sixty per centum) of **MEMBERS** present or represented by proxy having a right to attend and vote at the meeting.
- 22.2 The inadvertent omission to give notice of any General Meeting or to present any document required to be

given or sent to a **MEMBER** in terms of this **CONSTITUTION**, shall not invalidate the proceedings at or any **RESOLUTION** passed at any meeting.

- 22.3 Notice of the Annual General Meeting and/or a General Meeting shall be placed in 2 (two) issues of the "Knysna-Plett Herald" or "CX Press" or "Action Ads" newspapers and in the event of all or any of those newspapers becoming defunct, in 2 (two) issues of the highest circulation English language newspaper distributed in Knysna. Notice shall also be served on the **MEMBERS** by direct email from the **TIHOA** and on the **TIHOA** electronic/internet platforms.
- 22.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

23. Proxies

- 23.1 A **MEMBER** may be represented at an Annual General Meeting and/or General Meeting by a proxy who must be a **MEMBER** or a **REPRESENTATIVE MEMBER** as referred to in clause 7.1.1, 7.1.2 or 7.1.3 above in good standing of the **TIHOA**.
- 23.2 The instrument appointing a proxy shall be in writing signed by the **MEMBER** concerned or his duly authorised agent but need not be in any particular form provided that where a **MEMBER** is more than one person a majority of those persons shall sign the instrument appointing a proxy on such **MEMBER's** behalf. Where a **MEMBER** is a Company, the proxy may be signed by any person authorised by resolution of the board of directors of the Company and, where a Close Corporation, by any person authorised by resolution of the members of such Close Corporation and where a Trust, by a person authorised by resolution of the duly appointed trustees for the time being of such Trust.
- 23.3 The instrument appointing a proxy and the power of attorney or other authority or resolution (if any) under which it is signed shall be lodged with the **TIHOA** at least 48 (forty eight) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy may be submitted electronically by e-mail to tihoa@thoa.co.za, provided that the Chairperson of the meeting shall approve the validity thereof and that the same shall be valid only for the specific meeting or the adjournment thereof.

24. Quorum at General Meetings

- 24.1 No business shall be transacted at any Annual General Meeting or General Meeting unless a quorum is present when the meeting proceeds to business and when any **RESOLUTION** is to be passed. The quorum necessary for the holding of any meeting shall be 15% (fifteen per centum) of the total **MEMBERS** entitled to attend and vote thereat either in person or by proxy.
- 24.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of **MEMBERS**, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the **MEMBERS** present shall constitute a quorum.

25. Agenda at General Meetings

In addition to any other matters required by legislation or by this **CONSTITUTION** to be dealt with at any Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 25.1 the consideration of the **CHAIRPERSON's** report on behalf of the **TRUSTEES**;
- 25.2 the consideration of the financial statements of the **TIHOA** for the last financial year of the **TIHOA** preceding

the date of such meeting;

- 25.3 the consideration of the budget, as presented by the **TRUSTEES** and confirmation of levies as currently levied by the **TRUSTEES**;
- 25.4 the election of **TRUSTEES**;
- 25.5 any other business pertinent to such meeting, including any **RESOLUTIONS** proposed for adoption by such meeting and the voting upon any such **RESOLUTIONS**.

26. Procedure at General Meetings

- 26.1 The **CHAIRPERSON** shall preside as such at all meetings provided that should the **CHAIRPERSON** not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the **VICE CHAIRPERSON** shall preside over the meeting and shall thereupon exercise all the powers and duties of the **CHAIRPERSON** in relation to such meeting. If both the **CHAIRPERSON** and the **VICE CHAIRPERSON** are not present then the **MEMBERS** shall elect from amongst the remaining **TRUSTEES** and failing any **TRUSTEES** from amongst the **MEMBERS** present a person to chair that particular meeting.
- 26.2 The **CHAIRPERSON** may, with the consent of any 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 that might have been transacted at the meeting from which the adjournment took place. No notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as for the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

27. Voting at General Meetings

- 27.1 At every Annual General Meeting or General Meeting every **MEMBER** in person or by proxy and entitled to vote shall be allocated voting rights of 1 (one) vote for each **ERF** and/or **UNIT**, including consolidated **ERVEN** and as such:
 - 27.1.1 **MEMBERS** owning **UNITS** in sectional title schemes established on any **ERF** shall be entitled to 1 (one) vote for each **UNIT** owned; and
 - 27.1.2 If an **ERF** or **UNIT** is registered in more than one person's name, the **OWNERS** shall jointly have 1 (one) vote allocated as aforesaid.
- 27.2 At any meeting of **MEMBERS** a **RESOLUTION** put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any **MEMBER**. If a poll is duly demanded it shall be taken in such manner as the **CHAIRPERSON** directs exercising voting rights in terms of clause 27.1 and the result of the poll shall be deemed to be the **RESOLUTION** of the meeting at which the poll was demanded.
- 27.3 Save as expressly provided for in this **CONSTITUTION**, no person other than a **MEMBER** duly registered and who shall have paid every **LEVY** and other sum (if any) which shall be due and payable to the **TIHOA** in respect of or arising out of their membership being as such "a **MEMBER** in good standing", shall be entitled to vote on any question, either personally or by proxy.
- 27.4 At any Annual General Meeting or General Meeting, for any **RESOLUTION** to be approved by **MEMBERS** it must be supported by more than 50% (fifty percent) of the votes exercised by **MEMBERS** entitled to attend and vote thereon present in person or by proxy in accordance with the value of votes recorded in clause 27.1 (an "ordinary **RESOLUTION**") save where this **CONSTITUTION** requires any **RESOLUTION** to be supported by a higher percentage of the votes exercised

- 27.5 Voting on any question of adjournment shall be decided on an ordinary **RESOLUTION** of **MEMBERS**.
- 27.6 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.
- 27.7 Unless any **MEMBER** present in person or by proxy at a meeting shall, before closure of the meeting, have objected to any declaration made by the **CHAIRPERSON** of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the **CHAIRPERSON** 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 of the **TIHOA** 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 **RESOLUTION** so recorded if such entry conforms with the declaration made by the **CHAIRPERSON** of the meeting as to the result of any voting at the meeting.

28. Minutes of meetings of the TIHOA

28.1 The TRUSTEES shall

28.1.1 ensure that minutes are taken of scheduled meetings of the **TRUSTEES**, Portfolio Committees and General meetings of the **TIHOA**, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the **CHAIRPERSON** of the meeting;

28.1.2 cause such minutes to be kept of all such meetings of the **TIHOA** in a minute book of meetings of the **TIHOA** kept for the purpose.

28.2 The **TRUSTEES** shall keep all minute books of meetings of the Trustees and general meetings of the **TIHOA** in perpetuity.

28.3 All **RESOLUTIONS** recorded in the minutes of any meetings of the **TIHOA** 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 **TIHOA** 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 **TIHOA**.

28.4 Save as otherwise provided in this **CONSTITUTION**, the proceedings at any meeting of the **TIHOA** shall be conducted in such reasonable manner and form as the **CHAIRPERSON** of the meeting shall decide.

29. Financial year end

The financial year end of the **TIHOA** is the last day of October of each year.

30. Books of Accounts and Records

30.1 The **TRUSTEES** shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the **TIHOA** including:

30.1.1 a record of the assets and liabilities of the **TIHOA**;

30.1.2 a record of all sums of money received and expended by the **TIHOA** and the matters in respect of which such receipt and expenditure occur;

- 30.1.3 a record of cash flow of **TIHOA**;
- 30.1.4 a register of **MEMBERS** showing in each case their domicilium citandi et executandi and communication detail;
- 30.1.5 individual ledger accounts in respect of each **MEMBER**.
- 30.2 The **TRUSTEES** shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.
- 30.3 At each Annual General Meeting the **TRUSTEES** shall lay before the **TIHOA MEMBERS** audited financial statements, including balance sheet, income and expenditure accounts and cash flow statement, for the immediate preceding financial year of the **TIHOA**. Such financial statements shall be drawn up in accordance with entity specific accounting policies and shall be accompanied by such additional reports and notes as may be necessary at the discretion of the **TRUSTEES**.

31. Deposit and investment of funds

- 31.1 The **TRUSTEES** shall cause all moneys received by the **TIHOA** to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the **TIHOA** and, subject to any direction given or restriction imposed at a General Meeting of the **TIHOA**, such moneys shall only be withdrawn for the purpose of payment of the expenses of the **TIHOA** or investment.
- 31.2 Any funds not required for disbursements may be invested in an account with any of the major South African Financial Institutions as approved by the **TRUSTEES** from time to time. Funds may also be invested in South African Government Bonds with a maturity date not exceeding 10 years. **TRUSTEES** may place limitations as to the Institutions selected as well as the maximum investment with such Institution.
- 31.3 Income on moneys invested shall be used by the **TIHOA** for any lawful purpose in the interests of the **TIHOA**.

32. Audit

- 32.1 Once at least in every year, the accounts of the **TIHOA** shall be examined and the correctness of the income and expenditure account, balance sheet and cash flow statement ascertained by the **AUDITORS**.
- 32.2 The duties of the **AUDITORS** shall be regulated in accordance with general practice and applicable professional standards.
- 32.3 The appointed **AUDITORS** should be present at the Annual General Meeting at which the financial statements are presented.

33. Indemnity

- 33.1 All the **TRUSTEES** are indemnified by the **TIHOA** against any liabilities bona fide incurred by them in their capacities as such and in the case of the **CHAIRPERSON** in his capacity as **CHAIRPERSON**, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court. Unless such costs, losses, expenses or claims are caused by the mala fide or gross negligence of such person.
- 33.2 A **TRUSTEE** shall not be liable for the acts, or omission of the **AUDITORS** or of any of the other **TRUSTEES**

whether in their capacities as **TRUSTEES** or as **CHAIRPERSON** or for any loss or expense sustained or incurred by the **TIHOA** through the insufficiency or deficiency of any security in or upon which moneys of the **TIHOA** are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgement or oversight on their part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of their duties or in relation thereto unless occurring as a result of mala fides, breach of duty or breach of trust.

33.3 It shall be the duty of the **TRUSTEES** to pay such indemnity out of the funds of the **TIHOA**.

34. Disclaimer of responsibility

34.1 The **TIHOA** shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon **THESEN ISLANDS** and/or the **TIPT** property regardless of the cause thereof nor shall the **TIHOA** be responsible for any theft of property occurring within **THESEN ISLANDS** and/or the **TIPT** property. **MEMBERS** shall not under any circumstances have any claim or right of action whatsoever against the **TIHOA** for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

34.2 The **TIHOA** and/or its agents shall not be liable to any **MEMBER** or any **TENANTS**, or their respective employees, agents, guests or invitees or any member of their household or any member of the public dealing with the **MEMBER** or any **TENANT** for any injury or loss or damage of any description which the **MEMBER** or any such other person may suffer or sustain whether directly or indirectly in or about **THESEN ISLANDS** and/or the **TIPT** property, regardless of the cause thereof.

34.3 **MEMBERS** indemnify the **TIHOA** and its **TRUSTEES**, employees, servants, agents and invitees and hold them harmless against all claims by any person arising from injury or loss or damage as contemplated in this clause 34.

34.4 The exclusions of liability and indemnity in this clause 34 will not apply in respect of any loss suffered by a person which is directly or indirectly attributable to the criminal acts or gross negligence of the **TIHOA** or any person acting for or controlled by the **TIHOA**, if the Consumer Protection Act No 68 of 2008 applies for the benefit of that person.

35. Arbitration

35.1 Should any dispute, question or difference arise between **MEMBERS** or between a **MEMBER** and **TRUSTEES** or the **TIHOA** out of or in regard to:

35.1.1 the interpretation of;

35.1.2 the effect of;

35.1.3 their respective rights or obligations under;

a breach of (save for non-payment of levies or any other amount due by a **MEMBER** in terms of this **CONSTITUTION**), this **CONSTITUTION**, such dispute shall be decided by arbitration in the manner set out in this clause 35.

35.2 In respect of any claim arising from non-payment of levies or any other amount due by a **MEMBER** to the **TIHOA** in terms of this **CONSTITUTION**, the **TIHOA** and **TRUSTEES** shall continue to enjoy common law rights and the remedies stipulated in this **CONSTITUTION** and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

35.3 The arbitration referred to in clause 35.1 shall:

- 35.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and
- 35.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and
- 35.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.
- 35.4 The arbitrator shall be a practising advocate or attorney of not less than 10 (ten) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing agreement on such appointment within the 7 (seven) day period, appointed by the President of the Cape Law Society or its successor.
- 35.5 The arbitrator shall in giving their award have regard to the principles contained in this **CONSTITUTION** and they shall decide the matter as submitted to them according to what they consider just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by them in arriving at their decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document which shall state the reasons for the decision. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by both in such proportion as the arbitrator may in the arbitrator's sole discretion determine.
- 35.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 35.6.1 shall be final and binding on each of them; and
- 35.6.2 shall be carried into effect immediately; and
- 35.6.3 may be made an order of any Court to whose jurisdiction the parties are subject upon application by any party or the **TIHOA**.
- 35.7 Notwithstanding anything to the contrary contained in this clause 35, the **TRUSTEES** shall be entitled to institute legal proceedings on behalf of the **TIHOA** by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this **CONSTITUTION**, the **RULES and REGULATIONS** and the **DESIGN GUIDELINES**.

36. Domicilium

- 36.1 The **TRUSTEES** shall from time to time determine the address constituting the domicilium citandi et executandi of the **TIHOA**, subject to the following:
- 36.1.1 for the time being – **TIHOA** Administration Office, **THESEN ISLANDS**, Long Street, Knysna. 6571; or
- 36.1.2 such address shall be the address of the **CHAIRPERSON** or of a resident **TRUSTEE** nominated by the **TRUSTEES** or the address of any duly appointed **MANAGING AGENT**;
- 36.1.3 the **TRUSTEES** shall give notice to all **MEMBERS** of any change of such addresses.
- 36.2 The domicilium citandi et executandi of each **MEMBER** shall be the street address of the **MEMBER's** **ERF** and/or **UNIT**.

- 36.3 It shall be competent to give notice by electronic e-mail or telefax where the **MEMBER's** e-mail address or telefax number is recorded with the **TIHOA** and a **MEMBER** who has provided the **TIHOA** with an electronic e-mail address or telefax number will be deemed to have authorised the **TIHOA** to use that address or number for the purposes of giving notices, documents, records, statements or the like to the **MEMBER** concerned
- 36.4 A **MEMBER** may by notice in writing to the **TIHOA** and/or **TRUSTEES** alter their domicilium provided such new address may not be a post office box or post restante and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.
- 36.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a **MEMBER** shall be adequate written notice or communication to such **MEMBER** notwithstanding that it was not sent to or delivered at their domicilium citandi et executandi.
- 36.6 Any notice to a **MEMBER**
- 36.6.1 sent to them by prepaid registered post in a correctly addressed envelope at their domicilium citandi et executandi shall be deemed to have been received on the 7th (seventh) day after posting (unless the contrary is proved); or
- 36.6.2 delivered by hand to a responsible person at their domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
- 36.6.3 successfully transmitted by electronic e-mail or by telefax to their chosen e-mail address or telefax number shall be deemed to have been received on the 1st (first) day after the date of transmission, unless the contrary is proved.
- 36.7 The inadvertent failure to give notice to any **MEMBER** or the failure by any **MEMBER** to receive a notice shall not vitiate any proceedings of the **TIHOA**.

37. Amendment

- 37.1 No provision hereof shall be added to, amended, substituted or repealed without the consent of the **MEMBERS** in terms of Clause 37.2.
- 37.2 Subject to the provisions of clause 37.1, such addition, amendment, substitution, or repeal shall require the approval of at least 67% (sixty-seven per centum) of the total number of votes of **MEMBERS** of the **TIHOA** exercised in person or by proxy at a General Meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirement for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.
- 37.3 Amendments not affecting the **LOCAL AUTHORITY** shall come into immediate effect but will still be submitted to the **LOCAL AUTHORITY** for endorsement. Where an amendment affects the **LOCAL AUTHORITY** (as per the Knysna By-law), the proposed amendment shall be submitted to the **LOCAL AUTHORITY** for its approval and only on such approval shall the amendment take effect.

38. Dissolution

- 38.1 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)(e)(i)(cc) of the Income Tax Act (Act 58 of 1962) as amended.