Dolphin Beach and Dolphin Four Home Owner's Association

Whereas:

1. Equikor Partners in Property Trust No 3 ("Equikor") was the registered owner of Erf 15584 Milnerton and remainder Erf 9368 Milnerton;

2. Equikor registered a scheme ("Dolphin Beach") in accordance with the provisions of the Sectional Titles Act No.95/1986 (the "Act") in respect of the said immovable property and buildings erected thereon;

3. In registering the Dolphin Beach scheme Equikor reserved the right to extend the scheme in terms of Section 25 of the Act. Such reservation entitled Equikor to develop portion of the common property in the scheme by the erection of further buildings and by the creation of exclusive use areas;

4. Equikor was desirous of registering a separate sectional scheme in respect of the final phase of the development;

5. The Body Corporate of the Dolphin Beach Building No.234/92 ("Dolphin Beach Body Corporate") upon establishment of that Body Corporate became the owner of the common property in the Dolphin Beach Scheme;

6. To give effect to the a foregoing Erf 15584 Milnerton was subdivided and the subdivided portion (Erf 19402 Milnerton) was sold by Dolphin Beach Body Corporate to Equikor to allow for transfer of Erf 19402 Milnerton back into the name of Equikor, registration of which transfer is to be effected simultaneously with registration of a scheme ("Dolphin Four") in accordance with the provisions of the Act in respect of Erf 19402 Milnerton and the buildings erected thereon;

7. The Administrator on 4 August 1993 under reference No. PB/2/8057/18 when upholding the appeal against the decision of the Council of the Municipality of Milnerton's refusal to grant such subdivision did so subject to, inter alia, the conditions as set out in the said Council's resolution C.147/4/1993 as under;

   7.1. That a Home Owners Association be established, in terms of Section 29(1) of the Land Use Planning Ordinance No.15 of 1985, to ensure that the common areas, including the dune area situated within the servitude area, registered over Public Open space, Erf 10066, Table View Milnerton in favour of Erf 15584, and the road access and security areas, are controlled, managed and maintained, the details of the Home Owners Constitution, being to the satisfaction of the Council's Attorneys, to ensure that common responsibilities cannot be abrogated or rescinded at any time in the future."

8. Upon establishment of the Body Corporate of the Dolphin Four Building ("Dolphin Four Body Corporate") shall become the owner of the common property in the Dolphin Beach Scheme;

9. It is the intention of the parties that transfer of units in the Dolphin Four Scheme shall be effected simultaneously with registration of that Scheme so that Dolphin Four Body Corporate shall come into existence simultaneously with registration of the Dolphin Four Scheme;

10. Upon establishment of the Dolphin Four Body Corporate that Body Corporate shall be the owner of the land unit as contemplated in Section 29(2)(c) of the Land Use Planning Ordinance No. 15 of 1985 ("Lupo") in substitution for Equikor;

Therefore it is agreed as follows:

1. The Home Owner's Association to be established upon registration of transfer of Erf 19402 Milnerton shall be known as "The Home Owners Association for Dolphin Beach and Dolphin Four" ("the Association").

2. The Association shall have as its members the owners of the land units arising from the aforementioned subdivision, who shall be jointly liable for expenditure incurred in connection with the Association. In accordance with the preamble hereto, upon establishment of the Dolphin FOUR Body Corporate the members shall be the Dolphin Beach Body Corporate and the Dolphin Four Body Corporate.

3. The Association shall, in accordance with the provisions of Section 29(2) (a) of Lupo be a Body Corporate.

4. The Association in accordance with the provisions of Section 29(2)(b) and (c) of Lupo, in this constitution, is empowered and has as its object the matters referred to therein and without detracting from the generality of those provisions the control over and the maintenance of common areas more particularly the exercise of all rights and compliance with all obligations arising out of Notarial Deed of Servitude No. K774/92 which, inter alia, deals with certain sand dune areas, as well as a Notarial Deed of Servitude of right of way depicted on diagram SG No. 7794/93 which servitude will be registered simultaneously with registration of transfer of Erf 19402 Milnerton, so that common responsibilities cannot be abrogated or rescinded at any time in the future.

5. If the Association fails to meet any obligation resting on it by virtue of the provisions of Section 29(2)(b)(1) or (c) of Lupo and the community concerned is, in the opinion of the Council of the Municipality of Milnerton (or its lawful successor), adversely affected by such failure, the said Council may take all steps required to rectify that failure, and recover from the members of the Association the amount of any expenditure incurred by it in relation to such steps.

6. Amounts so recovered shall, for the purposes of Section 29(2)(c) of Lupo, be deemed to be expenditure incurred in connection with the Association.

7. This constitution shall not be added t or amended in any manner without the prior written consent of the Council of the Municipality of Milnerton (or its lawful successor) being obtained to any such amendment or addition which shall have no force or effect without such written consent.

8. This Constitution shall be represented for all purposes by the Chairman for the time being of the Dolphin Beach Body Corporate and the Chairman for the time being of the

Dolphin Four Body Corporate. The decisions of the Association shall be made by a Committee comprising the said two Chairman and four members, being two from each of the Trustees of each Body Corporate appointed for such purposes by such Trustees. Committee members may fill any vacancy in their number provided each Body Corporate is at all times represented by and equal number of Committee members.

9. Not less than four Committee members shall constitute a quorum provided an equal number of Committee members from each Body Corporate are present. All matters at any meeting of the Committee shall be determined by a majority of votes of Committee members present and voting.

10. The Committee shall keep minutes of their proceedings which shall include a record of all resolutions and shall keep all minute books in perpetuity.

11. The Committees shall cause proper books of account and records to be kept so as fairly to explain all transactions.

12. Expenditure authorised by the Committee shall be funded by the Dolphin Beach Body Corporate and the Dolphin Four Body Corporate as to 75%/25% respectively in respect of all matters to be dealt with in terms of the constitution and without detracting from the generality of the a foregoing specifically in respect of the exercise of rights and fulfilment of obligations arising out of Notarial Deed of Servitude No. K774/92 aforementioned and maintenance costs in respect of the servitude area referred to in the Notarial Deed of Servitude of Right of Way aforementioned. Notwithstanding the provisions of Clause 9 and subject always to Clause 7, the Committee shall by unanimous resolution of all its members be entitled to vary the proportion of funding by each Body Corporate whether for a specific expense of generally.

13. The Committee shall appoint an auditor to hold office for a period of 12 months with the right of re-appointment. The Committee shall annually prepare a financial statement in conformity with generally accepted accounting practice which shall fairly present the state of affairs of the Association and its finances and transactions. The auditor shall satisfy himself as to the accuracy of the financial statement.

14. The Committee shall be entitled to elect one of their members to serve as Chairman of the Committee.

15. The “domicilium citandi et executandi” of Association shall be the address from time to time of the Managing Agents for the Dolphin Four Scheme and if no such managing agents are appointed it shall be the address of any Committee member resident in either the Dolphin Beach Scheme or the Dolphin four Scheme.

Note: Due to the availability of Trustees, it was arranged that the meeting could be constituted as prescribed; however, a minimum of the two Chairpersons may hold a meeting with the proviso that the decisions are ratified by the Board of Trustees of both Dolphin Beach and Dolphin Four.