

CONSTITUTION OF THE

RESTAURANT OPERATORS

ASSOCIATION

1. NAME

The name of the Association shall be the **RESTAURANT OPERATORS ASSOCIATION** (hereinafter referred to as “the Association”).

2. LEGAL STATUS OF THE ASSOCIATION

- (1) The Association is and shall continue to be an unincorporated association enjoying a distinct and separate legal entity separate from that of its members, with the power to acquire, to hold and to alienate property of every description whatsoever, and with the capacity to acquire rights and obligations and have perpetual succession.
- (2) All actions or suits, proceedings at law or arbitration shall be brought by or against the Association in the name of the Association and the Executive Committee may authorise any person or persons to act on behalf of the Association and to sign all such documents and to take all such steps as may be necessary in connection with any such proceedings.

3. A NON-PROFIT ASSOCIATION

- (1) The Association is not formed and does not exist for the purpose of carrying on any business that has as its object the acquisition of gain or profit by the Association or its individual members.
- (2) The income and assets of the Association shall be applied solely for investment and for the promotion of the objects for which it is established.

- (3) No part of the income or assets of the Association shall be paid, directly or indirectly, by way of dividend, donation or otherwise, to any person other than by way of payment for services rendered to the Association.
- (4) The Association shall not be entitled to carry on any trading or other profit-making activities or participate in any business, profession or occupation carried on by any of its members or provide to any of its members financial assistance or any premises or continuous services or facilities for the purpose of carrying on any business, profession or occupation.

4. RIGHTS OF MEMBERS

- (1) Membership of the Association does not and shall not give any member a right to any of the monies, property or assets of the Association but only confers upon such member the privilege of membership subject to such charges and reasonable restrictions as the Executive Committee may from time to time determine and subject to any applicable law.
- (2) All members of the Association shall be bound by this Constitution and any rules of the Association that may be in force from time to time. No member shall be absolved from the adherence to or application of the Constitution or such rules of the Association by reason of the fact that such member may not have received a copy or notice thereof.

5. LIABILITY OF MEMBERS

- (1) No member shall be liable to the Association or any third party for any bona fide act carried out on behalf of the Association.
- (2) In any event the liability of members shall be limited to the amount of unpaid subscriptions or other monies owing by them to the Association.

6. OBJECTS OF THE ASSOCIATION

The objects of the Association shall be to:-

- (1) Promote, enhance and protect the communal interests of the members of the Association with particular emphasis on the participation of the Association

representing the restaurant industry in the establishment of an independent tourism board truly representative of the tourism industry in the area to promote and facilitate the development of tourism in Plettenberg Bay and its environs;

- (2) Seek the appointment of an elected member of the Association to the Board of such tourism body so as to ensure that the interests of members of the Association are properly represented in such forum;
- (3) As part of such Board to enter into constructive dialogue with the Bitou Municipality and/or any other provincial, local, governmental, environmental, private or other interested or affected organisation in order to encourage the beneficial participation of such organisations in the development and funding of a vibrant tourism industry in the Plettenberg Bay area to the benefit of a wide spectrum of residents in the area;
- (4) Bring pressure to bear on any party or parties that threaten the interests of the members of the Association either in general or with regard to their individual business interests;
- (5) Take such legal or other action on behalf of any individual or group of members or the entire Association as may be appropriate in the circumstances to enforce the rights and interests of the members of the Association;
- (6) Arrange and partake in communal activities of interest or beneficial to the members of the Association;
- (7) Obtain the opinion of expert consultants with regard to the interests and rights of the members of the Association;

7. POWERS OF THE ASSOCIATION

Subject to the provisions of clause 3 above, the Association shall have all and any powers as may be necessary for the proper attainment of the objects set out in clause 6 above, and without derogating from the generality of such powers, shall in particular have the following express powers: -

- (1) To represent the interests of members on a tourism board to be constituted in Plettenberg Bay for the purposes of promoting the development of and furthering the interests of the tourism industry in the area and to that end to participate in discussions and negotiations with the Bitou Municipality or any

other local, governmental, environmental, private or any other organisation or person whatsoever in relation to the establishment of an independent tourism body and the funding thereof;

- (2) To seek and negotiate advantageous purchasing, procurement and other opportunities on behalf of its members;
- (3) To institute, conduct, defend, compound or abandoned any legal or other proceedings on behalf of the Association or any of its members or officers as shall be necessary in order to achieve the objects of the Association;
- (4) To raise and collect from its members or any third party or parties such fees, subscriptions, special purpose funds, collections and donations as shall be necessary to enable the Association to carry out its objects, providing that the Association shall not impose any fee, levy or subscription on its members, other than the original joining fee and annual fee without a resolution passed at an Annual or extraordinary general meeting ratifying the imposition of such fee, levy or subscription;
- (5) To employ and pay from Association funds such experts, consultants, legal practitioners, professional, office and other staff as shall be necessary to effectively achieve the objects of the Association;
- (6) To establish and publish a newsletter for the benefit of its members and/or interested persons;
- (7) To acquire any movable or immovable property for the Association, including acquiring such property by sectional title, as shall be calculated to benefit the Association and to advance its objects and to maintain, improve and alter such property;
- (8) To open banking and other accounts in the name of the Association into which to deposit monies paid to the Association and to draw, accept, endorse, make and execute bills of exchange, promissory notes, cheques and any other negotiable instruments connected with the business and affairs of the Association;
- (9) To invest and deal with any monies of the Association not immediately required for the purposes of the Association;
- (10) To enter into and secure the fulfilment of any contracts or engagements entered into by the Association with any third party;

- (11) To establish, promote or assist in establishing or promoting and to subscribe to or become a member of any Association or society who's objects are similar or partly similar to the objects of the Association;
- (12) To support and subscribe to any institution or society which may be for the benefit of the Association;
- (13) To make donations, execute exchanges, leases and any other form of contract whatsoever including sales and purchase of property of any kind whatsoever for the benefit of the Association.

8. MEMBERSHIP OF THE ASSOCIATION

- (1) Any owner or operator of a restaurant or takeaway food outlet within the Bitou area who subscribes to the aims and objectives of the Association shall be eligible for membership of the Association:
- (2) Where the owner or operator of a restaurant is a company, closed corporation, trust or other legal entity capable of exercising rights of ownership, such entity shall be represented by a natural person nominated by such entity in writing.
- (3) The Executive Committee may, in its sole discretion, admit any other person or organization as a special member of the Association on such terms and conditions and subject to such limitations as the Executive Committee may deem appropriate.

9. CANVASSING, REMOVAL AND RE-INSTATEMENT OF MEMBERS

- (1) The Executive Committee may from time to time determine and decide on such ways and methods as they deem appropriate to canvass potential members from the owners and operators of restaurants in the Bitou area.
- (2) Subject to the terms and conditions of this Constitution a person or organisation who is eligible for membership shall provide such information, sign such documentation and pay such amounts as the Executive Committee may from time to time determine in terms of this Constitution.
- (3) Should any ineligible candidate be inadvertently admitted as a member, the Executive Committee may declare his or her membership void and shall give

him or her notice to that effect and with effect from the date of such notice such candidate shall cease to be a member.

- (4) The Executive Committee may in its sole and absolute discretion withdraw the membership of any member on written notification to such member in the event that, by majority decision, the Executive Committee are of the view that the behaviour of such member is unduly disruptive, brings the name of the Association into disrepute or is in any other way destructive of the aims, objectives or interests of the Association.
- (5) The Executive Committee shall have the power to reinstate or re admit a member who, for any reason whatsoever, had his/her membership withdrawn or relinquished membership of the Association, on such terms and conditions as the Executive Committee shall determined in each particular case

10. RESIGNATIONS

A member may resign his or her membership by notice to the Executive Committee. Any membership fees and or contributions paid by a member who resigns his or her membership of the Association shall be forfeited and be deemed to be an unconditional donation to the Association.

11. FEES AND LEVIES

- (1) The entrance and annual fees for members shall be in such sums as the Executive Committee may from time to time determine. In addition to the entrance and annual fees the Executive Committee may from time to time determine special levies and fees that shall be paid by members.
- (2) The Executive Committee may determine different fees and levies for different members based on such criteria as the Executive Committee may deem fair and equitable from time to time.
- (3) A member who has not paid his or her fees and/or any special levy within three months after it has become due shall forthwith and without notice cease to be a member of the Association.

12. COMPILATION OF THE EXECUTIVE COMMITTEE

- (1) Subject to sub-clause (2) below the Executive Committee shall consist of:
 - (a) A Chairman;
 - (b) A Vice Chairman who shall be tasked with chairing meetings in the absence of the Chairman;
 - (c) A Treasurer;
 - (d) A Secretary;
 - (e) A minimum of one and a maximum of five ordinary members.
- (2) The inaugural Executive Committee of the Association shall comprise the following persons who shall serve until the first Annual General Meeting of the Association:-
 - (a) Chairman :-
 - (b) Vice Chairman :-
 - (c) Secretary :-
 - (d) Treasurer :-
 - (e) Ordinary Member :-
- (3) The Executive Committee shall be empowered to appoint further ordinary members so as to increase the number of ordinary members to a maximum of five.
- (4) The Executive Committee shall have the power to appoint sub-committees for any special purpose determined by the Executive Committee on such terms and conditions as shall be determined by the Executive Committee and the persons sitting on such sub-committees may not necessarily be members of the Executive Committee.
- (5) The Executive Committee shall have the power to co-opt third parties onto the Executive Committee for such purposes and for such duration as the Executive Committee shall determine whether or not such persons are members of the Association.

**13. ELECTION OF EXECUTIVE COMMITTEE AND MANAGEMENT OF
THE AFFAIRS OF THE ASSOCIATION**

- (1) Other than the inaugural Executive Committee, the Executive Committee shall be appointed at the Annual General Meeting of the Association commencing with the Annual General Meeting to be held in 2010.
- (2) Subject to the provisions of clause 12(5) of the Constitution, only a member who is a restaurant owner and operator may be elected to the Executive Committee, providing that a majority vote of restaurant owners and operators at an Annual General Meeting and entitled to vote may waive such requirements in respect of a candidate who is a member of the Association in good standing but is not both a restaurant owner and operator.
- (3) Each inaugural or elected member of the Executive Committee shall hold office for a period extending from the date of his or her appointment to the next Annual General Meeting, provided that any member may be re-elected as a member of the Executive Committee without restriction.
- (4) Any member of the Executive Committee shall forthwith be deemed to have resigned and cease to be a member of the Executive Committee upon the passing of a unanimous resolution by the remainder of the Executive Committee requiring that such member resign from the Executive Committee.
- (5) Any member of the Executive Committee may resign from the Executive Committee at any time upon the presentation of a letter of notice to the Chairman.
- (6) In the event of the removal or resignation of a member of the Executive Committee, the remaining members of the Committee may but shall not be required to appoint a replacement by way of a majority vote of such members.
- (7) The management and control of the affairs of the Association shall vest in the Executive Committee which shall have full power and authority to do any act, matter or thing which could or might be done by the Association. In addition to such general power and authority hereby conferred and without any way limiting such general power and authority, the Executive Committee shall specifically have the following powers: -

- (a) to appoint such employees, agents and servants for the performance of such permanent, temporary or special services as they deem fit, and to invest such persons with such powers as they may think necessary or expedient and to determine the duties and salaries, fees or emoluments payable to such persons as they may deem appropriate;
 - (b) to enter into dialogue and negotiations with any business or other entity of whatever nature in its endeavours to give fulfilment to the objects of the Association and to reach agreement with such organisation on any matter affecting the interests of one or more of the members of the Association;
 - (c) to determine the nature of and proceed with such legal and other action as the Executive Committee may decide in its sole discretion either in the name of the Association or the names of any one or more of its members as shall be necessary to fulfil the objects of the Association and/or protect the rights or interests of one or more of its members;
 - (d) to engage, instruct and pay for from Association funds, such legal counsel, attorneys and other experts or consultants as shall be required in the sole discretion of the Executive Committee to fulfil and enforce the objects of the Association generally or the rights of one or more members of the Association;
 - (e) to execute any contracts in the name of the Association;
 - (f) to make and give receipts, releases and other discharges for monies payable to the Association and make claims and demands on behalf of the Association;
 - (g) to appoint persons who shall be entitled, on the behalf of the Association, to sign bills of exchange, cheques, receipts and negotiable instruments;
 - (h) to make rules and regulations for the regulation of the affairs of the Association, its members, employees, agents and servants;
 - (i) to delegate to any Sub-Executive Committee all or any of the powers vested in the Executive Committee.
- (8) The election of members of the Executive Committee or any other matter which in the opinion of the Chairman or any two or more members of the Executive Committee acting jointly, affects all members and can not be

satisfactory resolved other than by a secret ballot by the members, may be determined by a postal vote.

- (9) The Secretary shall prepare the documentation necessary for a ballot in terms of subparagraph (4). The documentation in terms of this paragraph shall include the reason for the ballot and the draft resolution/s and the Secretary shall procure that such documents and resolution/s are distributed to all members of the Association to the addresses of members held in the Association records. Such documentation shall reflect the period within which members are to submit their vote for or against the resolution/s which period shall not be less than seven working days from the date of despatch of such documentation.
- (10) A member shall vote for or against a resolution/s presented in terms of clause (8) above by indicating on the draft resolution/s whether he or she is in favour of or against such resolution/s and sending same in the manner as indicated on the resolution/s to the address indicated on such resolution to reach the recipient address on or before the date specified.
- (11) The Chairman and Secretary shall jointly count the votes for and against the resolution/s and shall advise all members of the outcome of the ballot in writing.
- (12) The secretary shall keep a registrar of all members of the Association, together with their addresses and the manner in which members choose to be communicated with. When the particulars or address of a member changes, he or she shall forthwith notify the secretary of such change in writing failing which the Secretary shall be entitled to use the members address of record and the despatch of any notice or documentation to such address shall be deemed to be good and sufficient service upon the member.
- (13) The Treasurer shall ensure that proper accounting records are kept of all financial affairs of the Association. A full report of the financial affairs of the Association shall be distributed to all members whenever so directed by the Chairman, but at least once per year prior to each Annual General Meeting.
- (14) All financial records kept and distributed in terms of this clause shall be endorsed by the Chairman , the Secretary and at least one other member of the Executive Committee and certified as a true and correct reflection of the financial transactions and records contained therein.

14. ANNUAL GENERAL MEETING OF THE ASSOCIATION

- (1) The Annual General meeting of the Association shall be held before 31st March each year commencing in the year 2010 at a venue determined by the Executive Committee. A formal notice of the Annual General Meeting, together with the Agenda will be forwarded to each member at least 14 days prior to the date of the Annual General Meeting at the last e-mail or other address for each member held by the Secretary in the records of the Association.
- (2) An agenda of matters to be raised and resolutions to be considered at such meeting shall accompany such notice.
- (3) The meeting shall be chaired by the Chairman or in his absence the Vice Chairman or in the absence of both the Chairman or the Vice Chairman by a member elected to preside over the meeting by those members present at the meeting.
- (4) The Chairman, Vice Chairman or other party presiding over the meeting shall enjoy a casting vote in addition to a deliberative vote in the event of an impasse at the meeting.
- (5) The business to be conducted at the Annual General Meeting will include:
 - (a) consideration of the annual report of the Chairman and the Executive Committee.
 - (b) consideration of the annual accounts prepared in accordance with Section 13(12) together with the annual financial report of the Treasurer.
 - (c) consideration of any resolutions for alteration of the constitution in accordance with Section 17(1) of which correct notice has been given or has deemed to have been given in accordance with such Section.
 - (d) consideration of any other resolution of which correct notice has been given or is deemed to have been given.
 - (e) Election of an Executive Committee in terms of Section 13(1) of this constitution.
- (6) The quorum at an Annual General Meeting shall be thirty percent of the members in good standing and entitled to vote. In the event that a quorum is not present within 15 minutes of the time at which the meeting is due to

commence, the meeting shall be stood down and reconvened without further notice to members at the same venue and time seven days hence and the members present and in good standing and entitled to vote at such meeting shall constitute a quorum.

- (7) Any member whose annual fee and other dues are paid up to date shall be deemed to be in good standing and entitled to vote at any meeting of the Association.
- (8) Any member may by written proxy in a form approved by the committee appoint another member in good standing to represent such party's interests and vote on behalf of such party at any Annual General or special meeting of the Association.
- (9) Any business, resolution or question to be dealt with at an Annual General Meeting of the Association shall be decided by majority vote of those present by a show of hands.

15. SPECIAL MEETINGS OF THE ASSOCIATION

- (1) Any group of five or more members of the Association shall have the right to require that the Secretary give notice of a special meeting of the Association by providing the Secretary with a written request for such meeting signed by the parties stating the reasons why the meeting is requested.
- (2) A meeting in terms of this clause shall be convened by the Secretary by notice of such meeting to be posted or delivered to each member not less than 14 days prior to the date of such meeting which notice shall contain an agenda of matters to be discussed at the meeting.
- (3) The quorum for a special meeting of the Association shall be fifty percent of all members. If a quorum is not present upon the date fixed for the meeting and within fifteen minutes after the time fixed for the meeting, such meeting shall be dissolved and reconstituted seven days hence at the same time and at the same venue. At such reconvened meeting the members present and entitled to vote shall constitute a quorum.
- (4) Any business, resolution or question to be dealt with at a special meeting of the Association shall be decided by majority vote of those present by a show of hands. The Chairman, Vice Chairman or in their absence other elected by

those present to preside over the meeting shall have a casting as well as a deliberative vote in the event of an impasse.

16. CAUSUS OMMISSUS

In the event that the provisions of this constitution are silent on any matter upon which the Executive Committee are called to make a decision, the Executive Committee shall be empowered to determine such issue in a manner consistent with the provisions of and the spirit and intent of this constitution and such determination shall be deemed to be in terms of this constitution.

17. AMENDMENT TO THE CONSTITUTION

- (1) The provisions of this constitution may be amended at an Annual General or Special Meeting of the Association called for such purpose provided that members are given due written notice of such proposed amendment or amendments as required in the holding of such meetings.
- (2) An amendment shall require a vote of not less than two thirds of those members in good standing in attendance at a duly constituted meeting.

18. INDEMNITY

Any member, officer or servant of the Association shall be indemnified by the Association against all costs, losses and expenses which he or she may incur or become liable for by reason of any act or thing done by him or her in good faith in the discharge of his or hers duties, unless the loss in question is caused by his or her own failure to follow the lawful instructions of the body or person in the Association duly authorised to give such instructions, gross negligence, dishonesty or breach of trust.

19. WINDING-UP OF THE ASSOCIATION

The Association may be dissolved by a resolution of a two thirds majority of the members thereof. In the event of such resolution being passed, the Chairman shall cause the Association to be liquidated and the surplus funds and assets of the Association after winding-up and after payment of all debts and obligations of the Association, provided that any such surplus exists, shall be transferred to such other association or organisation with similar aims and objectives as the Association, in whole or in part, as the Executive Committee shall determine.

Executed at Plettenberg Bay this.....day of 2009.

NAME	SIGNATURE
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