



**BODY CORPORATE OF AVALON SPRINGS SS 28/1988 AND BODY CORPORATE  
OF AVALON SPRINGS MOUNTAIN CHALETS SS 97/2009**

**NOTICE** is hereby given of a **Combined Special General Meeting** of the Members to pass **special and ordinary resolutions**, which meeting is to be held at 17:00 (5pm) on 10 November 2021 at The Peninsula All Suite Hotel or via Microsoft Teams.

**AGENDA**

1. Welcome.
2. Notice convening the meeting.
3. Present, apologies and acceptance of proxies.
4. Establishment of a quorum for the passing of special and ordinary resolutions and/or any amendments thereto.
5. History and Explanation
6. Body Corporate of Avalon Springs No.28/1988
  - 6.1 To consider, and if deemed fit, to pass with or without amendment, Special Resolution 1.
  - 6.2 To consider, and if deemed fit, to pass with or without amendment, Special Resolution 2.
  - 6.3 To consider, and if deemed fit, to pass with or without amendment, the Ordinary Resolution.
7. Body Corporate of Avalon Springs Mountain Chalets No. 97/2009
  - 7.1 To consider, and if deemed fit, to pass with or without amendment, Special Resolution 1.



- 7.2 To consider, and if deemed fit, to pass with or without amendment, Special Resolution 2.
- 7.3 To consider, and if deemed fit, to pass with or without amendment, the Ordinary Resolution.

**(the History and Explanations for the Special Resolutions and the Special Resolutions are set out hereunder)**

**BY ORDER OF THE BOARD**

Per: 

Registered Office

Uitvlucht Street

Montagu, 6720

**Tel:**

**E-Mail:**

**Date:**

1. A Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, speak and vote in his stead. A proxy need not be a Member of the Body Corporate.
2. Proxy forms, duly completed, should be returned so as to reach the registered office of the Managing Agent, for administrative purposes, not less than **48 (forty-eight)** hours before the appointed time of the meeting.
3. The **special resolutions** must be passed as special resolutions in accordance with the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011 by at least 75% of the votes exercised on the resolution.



## **BODY CORPORATE OF AVALON SPRINGS SS 28/1988 AND BODY CORPORATE OF AVALON SPRINGS MOUNTAIN CHALETS SS 97/2009**

**("the Bodies Corporate")**

The Directors of **MONTAGU SPRINGS PROPERTIES PROPRIETARY LIMITED** (Registration No. 1982/010863/07 – the **"Hotel Property"**) and the Trustees of the **BODY CORPORATE OF AVALON SPRINGS SS 28/1988 ("ASBC")** and **BODY CORPORATE OF AVALON SPRINGS MOUNTAIN CHALETS SS 97/2009 ("MCBC")** have resolved, subject to the passing of special resolutions referred to below, to upgrade/renovate/refurbish (reconstruct) the hot spring pools and facilities constructed on the Hotel Property.

The hot spring pools and facilities are those in existence when Montagu Springs Properties Proprietary Limited purchased the Hotel Property.

Use of the hot spring pools and facilities are a major facility, feature and the attraction of Avalon Springs Resort for use by the hotel guests, Bodies Corporate Members, their guests and day visitors.

A visual presentation of the proposed upgrade/renovation/refurbishment (reconstruction) of the hot spring pools and facilities constructed on the Hotel Property will be presented by the Managing Agent at this meeting.

### **HISTORY AND EXPLANATION**

- 1. MONTAGU SPRINGS PROPERTIES PROPRIETARY LIMITED** (Registration No. 1982/010863/07 – the **"Hotel Property"**) registered in favour of the Bodies Corporates Notarial Deeds of Servitude, K 0751/2004 in favour of the **BODY CORPORATE OF AVALON SPRINGS SS 28/1988 ("ASBC")** and K 1860/2007 in favour of the **BODY CORPORATE OF AVALON SPRINGS MOUNTAIN CHALETS SS 97/2009 ("MCBC")** providing the Members of the Bodies Corporate whilst in occupation of their units, their guests residing with them and their visitors, with rights of use of allocated and demarcated hot springs pools and facilities.
- 2.** The servitude in favour of ASBC allowed use by its members of the hot springs pools and facilities allocated and demarcated as at April 2004, but, **excluded** its Members from using the hot pool springs and facilities allocated and demarcated for the exclusive use of the Hotel guests **as at April 2004** and may not have free use of any facilities that may be constructed **after April 2004**.

3. The servitude in favour of MCBC **allowed** its Members the use of the hot pool springs and facilities allocated and demarcated **as at the date of registration** of the Notarial Deed of Servitude **(2007)** but **excluded** the Members the use of the hot springs and facilities that may be constructed after the date of registration of the Notarial Deed of Servitude.
4. The Hotel company has considered redeveloping the hot spring pools and facilities at its own cost without a capital contribution from the Bodies Corporate. If the Hotel company were to do so, given the provisions in the servitudes referred to in **2 and 3** above, the servitudes currently in place would become null and void, which means the Members and their resident guests will not have free access to, and use of, the pools and will have to pay a day visitor rate. This is due to the provision in the current servitudes which states that the Members and their resident guests only have access to current structures and facilities.
5. Due to the proposal being a complete redevelopment of the hot spring pools and facilities, the Bodies Corporate right of use will fall away as referred to in **4** above, unless the special resolutions herein contained are passed.
6. In terms of both Notarial Deeds of Servitude currently in place, the Hotel company is responsible for the upkeep and maintenance of the hot spring pools and facilities, provided that **ASBC and MCBC shall contribute** towards annual insurance, maintenance and repair costs of the hot spring pools and facilities in an amount agreed upon by the Hotel company and the Trustees of the Bodies Corporate at the annual budget meeting of the Trustees of the Bodies Corporate.
7. The cost splits have been determined and approved at the previous annual budget meetings based on the foot traffic at the hot spring pools and facilities.
8. In calculating the cost splits between the Hotel, ASBC and MCBC the Trustees have determined that, in view of the Covid pandemic and negative effect on occupancies, in determining the costs split, this should be based on the average foot traffic for 2017, 2018 and 2019. If needed, the Managing Agent will give further explanation on this in the meeting.
9. Also, to be taken into consideration is that in view of Covid, the day visitor numbers will be restricted. It is anticipated that this restriction will be limited to a maximum of 350 day visitors per day.
10. The Managing Agent, having considered the above and with the Trustees' approval, the current cost split is Hotel company 41%, ASBC 25% and MCBC 34%.

11. The cost split in **10** above will be applicable to the capital contribution for reconstruction of the hot spring pools and facilities by the Hotel, ASBC and MCBC and will be the budgeted cost split in the servitudes for the maintenance and repair of the hot spring pools and facilities, subject to annual revision at the Bodies Corporate budget meetings.
12. The Trustees of the Bodies Corporate propose, for your consideration and the passing of Special Resolutions 1 below (Special Resolutions of ASBC and MCBC below), that the Bodies Corporate, with the Hotel company, contribute to the capital cost of this project in the percentages referred to in **10** above.
13. The estimated capital cost of this project is R25,538,833.00 inclusive of VAT which includes a 10% contingency fee increase, to be raised by a **special levy in proportion to the cost split above** by raising 50% of the cost in November 2021 and payable in December 2021 and 50% raised in May 2022 payable in June 2022.
14. The special levy liability for the Hotel, ASBC and MCBC are –
  - Hotel – R10,470,922
  - ASBC – R6,384,708
  - MCBC – R8,683,203
15. The member levy contributions are tabled below.

Special levy per week					
Body Corporate	Current Annual levy VAT inclusive	Proposed Special Levy Based on new % splits	Payable in December 2021	Payable in June 2022	
A Type	5 438	3 821	1 911	1 911	
B Type	7 798	5 480	2 740	2 740	
C Type	10 455	7 347	3 673	3 673	
D Type	5 999	4 215	2 108	2 108	
Mountain Chalets	8 340	6 202	3 101	3 101	

16. On passing of the Special Resolutions 1 for the reconstruction of the hot spring pools and facilities, the existing Notarial Deeds of Servitude concerning the hot spring pools and facilities will require cancellation and **draft Notarial Deeds of Servitudes in substitution are annexed hereto marked 1 for ASBC and 2 for MCBC.**
17. The schedule of title conditions registered in favour of **ASBC** records that -  
The property of ASBC shall be entitled to the exclusive use of a parking servitude for 30 motor vehicles over the Remainder of Erf 2093 (the Hotel property), and
18. The schedule of title conditions registered in favour of **MCBC** records that –



The property of MCBC shall be entitled to the exclusive use of a parking servitude for 28 motor vehicles over the Remainder of Erf 2093 (the Hotel property).

19. Notarial Deeds of Servitude relating to these rights were not registered and the parking servitudes which have been registered in the schedule of conditions of the sectional title schemes in favour of ASBC and MCBC are in general terms and in terms of the conditions pertaining to MCBC, the location of these parking areas may be varied by the owner of the Hotel property from time to time.
20. Likewise, in respect of the Hotel Property (Remainder of Erf 2093), the parking servitudes registered against Remainder Erf 2093 are in accordance with the extracts above i.e., in general terms. There is no reference to the location of the parking area in either of the servitudes.
21. During the visual presentation, it will be brought to your attention that the amended servitude areas will include a recreation area currently a **parking area** and this area and parking bays will require relocation which the Directors of the Hotel property and Managing Agent will attend to as provided for in the reserved rights to the Bodies Corporate.
22. As it is within the discretion of the Hotel company to vary the location of the parking areas for ASBC and MCBC and without registered notarial deeds of servitudes in respect of the parking areas, no special resolutions are required to be passed in respect of this relocation.
23. The financial interests of the related parties and the Directors of the Hotel company, Trustees and Managing Agent in this project are required to be disclosed for transparency.

#### **Financial interests and related parties –**

##### **Trustees of ASBC**

Hedley Adams, George Miller, Mike O’Sullivan and Weston Dickson are nominated by and represent time share owner clubs owning weeks in the property of the Body Corporate.

##### **Trustees of MCBC**

Hedley Adams and Weston Dickson are nominated by and represent time share owner clubs owning weeks in the property of the Body Corporate.



Director of Montagu Springs Properties Proprietary Limited (the Hotel)

Weston Dickson is a Director of Montagu Springs Properties Proprietary Limited which is the owner on which the hot spring pools and facilities are constructed and Montagu Springs Properties Proprietary Limited is the Managing Agent of the Bodies Corporate – ASBC and MCBC.

Managing Agent of Montagu Springs Properties Proprietary Limited (the Hotel)

Leisure Options (Pty) Limited is the Managing Agent of the Hotel.  
Weston Dickson and his son, Robert Nicolas Dickson are the Directors of Leisure Options (Pty) Limited.

Set out separately below are the special resolutions to be passed by **THE BODY CORPORATE OF AVALON SPRINGS SS 28/1988** and **THE BODY CORPORATE OF AVALON SPRINGS MOUNTAIN CHALETS SS 97/2009**





## THE BODY CORPORATE OF AVALON SPRINGS SS 28/1988

### SPECIAL RESOLUTIONS

#### **SPECIAL RESOLUTION 1 – redevelopment of the hot spring pools and facilities constructed on Remainder of Erf 2093**

To **authorise and approve** that the hot spring pools and facilities constructed on Remainder of Erf 2093 be redeveloped in accordance with the visual presentation provided at the Special General Meeting of the Body Corporate held on 10 November 2021, at a cost of R25,538,833.00 (twenty-five million, five hundred and thirty-eight thousand, eight hundred and thirty three rand) inclusive of VAT which includes a 10% contingency fee increase.

Further to **authorise and approve** that the capital cost contribution by the Members of the Body Corporate shall be a special levy contribution of **25%** (twenty five percent) of the total capital cost payable as to 50% raised in November 2021 and payable in December 2021 and the balance of 50% raised in May 2022 and payable in June 2022.

Further to **authorise and approve** that payment arrangements will be entertained in the raising of the special levy payable in December 2021 and June 2022.

#### **Effect of Special Resolution 1:**

In passing this special resolution the Members of the Body Corporate will have approved and authorised the redevelopment of the hot spring pools and facilities constructed on Remainder of Erf 2093 as presented at this meeting at a total capital cost of R25,538,833.00 (twenty-five million, five hundred and thirty-eight thousand, eight hundred and thirty-three rand) inclusive of VAT which includes a 10% contingency fee increase.

The liability of the Body Corporate shall be 25% of the total capital cost, to be raised as a special levy, as to 50% in November 2021 payable in December 2021 and 50% raised in May 2022 and payable in June 2022.

The Managing Agent will entertain payment arrangements for the payment of the special levy payable in December 2021 and June 2022.





## **SPECIAL RESOLUTION 2 – amendment and substitution of the Notarial Deed of Servitude**

### **K 0751/2004 in favour of the BODY CORPORATE OF AVALON SPRINGS SS 28/1988.**

To **approve and authorise** the amendment of the Notarial Deed of Servitude K 751/2004 in favour of the Body Corporate of Avalon Springs SS 28/1988 and substitution of the provisions with the provisions contained in draft Notarial Deed of Servitude, **annexed marked 1** to this notice.

### **Effect of Special Resolution 2:**

The registration of the Notarial Deed of Servitude, **annexed marked 1** to this notice, will provide Members and their resident guests with use rights of those hot springs pools as indicated on the Plan annexed to the Notarial Deed of Servitude free of charge for the period whilst in occupation in their units. However, they will not be entitled to such free use of any facilities that may be constructed on the property after certification of completion by the Structural Engineer of the plans of the buildings and facilities.

Members can use the hot spring pools and facilities only during such times when the use of the respective sections are allocated to Members in terms of the timeshare allocation by the Body Corporate and shall be restricted to occupiers of the section who have checked in at the reception desk of the hotel with the bona fide intention of sleeping over in the section.

Day visitors to members shall pay the applicable entrance fee for use of the hot springs pools and facilities as well as all other charges normally levied to day visitors to the hot spring pools and facilities.

Day visitors having paid the applicable entrance fee and subject to availability, shall only have use the hot springs pools and facilities allocated and demarcated for Day Visitors, and under the same terms and conditions applicable to Day Visitors as determined by the Hotel.

Day visitors shall announce themselves at the reception desk of the Hotel and wait in the reception area for the occupiers of the relevant section to escort them onto the property.



The Hotel, as owner of the property on which the hot spring pools and facilities are located, shall have the right to determine from time to time the access route over to the hot water springs and swimming pool area.

Whilst the owner of the Hotel is responsible for the upkeep and maintenance of the hot spring pools and facilities, the Body Corporate shall initially contribute 25% percent towards the annual insurance, maintenance and repair costs and the running costs of the hot springs and pool facilities, whereafter the contribution shall be agreed upon annually between the Hotel owner and the Trustees of the Body Corporate at the annual budget meeting of the Trustees of the Body Corporate.

**ORDINARY RESOLUTION – To give effect to the Special Resolutions**

That the Board of Trustees is, and with the passing of the Special Resolutions 1 and 2, hereby authorised to take all such actions and to do all such things as may be necessary, on behalf of the Body Corporate, to give effect to the said Special Resolutions.

Further that the Board of Trustees is authorised to appoint ROBERT NICOLAS DICKSON and any Trustee or person employed by the Managing Agent to undertake all tasks, administration and payments associated with the Special Resolutions and to sign all relevant and/or required and/or necessary documentation on behalf of the Board of Trustees in order to give effect to the abovementioned Special Resolutions.



## THE BODY CORPORATE OF AVALON SPRINGS MOUNTAIN CHALETS No 97/2009

### SPECIAL RESOLUTIONS

#### **SPECIAL RESOLUTION 1 – redevelopment of the hot spring pools and facilities constructed on Remainder of Erf 2093**

To **authorise and approve** that the hot spring pools and facilities constructed on Remainder of Erf 2093 be renovated in accordance with the visual presentation provided at the Special General Meeting of the Body Corporate held on 10 November 2021, at a cost of R25,538,833.00 (twenty-five million, five hundred and thirty-eight thousand, eight hundred and thirty-three rand) inclusive of VAT which includes a 10% contingency fee increase.

Further to **authorise and approve** that the capital cost contribution by the Members of the Body Corporate shall be a special levy contribution of **34%** (thirty four percent) of the total capital cost payable as to 50% raised in November 2021 and payable in December 2021 and the balance of 50% raised in May 2022 and payable in June 2022.

Further to **authorise and approve** that payment arrangements will be entertained in the raising of the special levy payable in December 2021 and June 2022.

#### **Effect of Special Resolution 1:**

In passing this special resolution the Members of the Body Corporate will have approved and authorised the redevelopment of the hot spring pools and facilities constructed on Remainder of Erf 2093 as presented at this meeting at a total capital cost of R25,538,833.00 (twenty-five million, five hundred and thirty-eight thousand, eight hundred and thirty-three rand) inclusive of VAT which includes a 10% contingency fee increase.

The liability of the Body Corporate shall be 34% of the total capital cost, to be raised as a special levy, as to 50% in November 2021 payable in December 2021 and 50% raised in May 2022 and payable in June 2022.

The Managing Agent will entertain payment arrangements for the payment of the special levy payable in December 2021 and June 2022.



**SPECIAL RESOLUTION 2 – amendment and substitution of the Notarial Deed of Servitude K 1860/2004 in favour of the BODY CORPORATE OF AVALON SPRINGS Mountain Chalets No 97/2009.**

To **approve and authorise** the amendment of the Notarial Deed of Servitude K1860/2007 in favour of the Body Corporate of Avalon Springs Mountain Chalets No SS 97/2009 and substitution of the provisions with the provisions contained in draft Notarial Deed of Servitude, **annexed marked 2** to this notice.

**Effect of Special Resolution 2:**

The registration of the Notarial Deed of Servitude, **annexed marked 2** to this notice, will provide Members and their resident guests with use rights of those hot springs pools as indicated on the Plan annexed to the Notarial Deed of Servitude free of charge for the period whilst in occupation in their units. However, they will not be entitled to such free use of any facilities that may be constructed on the property after certification of completion by the Structural Engineer of the plans of the buildings and facilities.

Members can use the hot spring pools and facilities only during such times when the use of the respective sections are allocated to Members in terms of the timeshare allocation by the Body Corporate and shall be restricted to occupiers of the section who have checked in at the reception desk of the hotel with the bona fide intention of sleeping over in the section.

Day visitors to members shall pay the applicable entrance fee for use of the hot springs pools and facilities as well as all other charges normally levied to day visitors to the hot spring pools and facilities.

Day visitors having paid the applicable entrance fee and subject to availability, shall only have use the hot springs pools and facilities allocated and demarcated for Day

Visitors, and under the same terms and conditions applicable to Day Visitors as determined by the Hotel.

Day visitors shall announce themselves at the reception desk of the hotel and wait in the reception area for the occupiers of the relevant section to escort them onto the property.



The Hotel, as owner of the property on which the hot spring pools and facilities are located, shall have the right to determine from time to time the access route over to the hot water springs and swimming pool area.

Whilst the owner of the Hotel is responsible for the upkeep and maintenance of the hot spring pools and facilities, the Body Corporate shall initially contribute 34% percent towards the annual insurance, maintenance and repair costs and the running costs of the hot springs and pool facilities, whereafter the contribution shall be agreed upon annually between the Hotel owner and the Trustees of the Body Corporate at the annual budget meeting of the Trustees of the Body Corporate.

**ORDINARY RESOLUTION – To give effect to the Special Resolutions**

That the Board of Trustees is, and with the passing of the Special Resolutions 1 and 2, hereby authorised to take all such actions and to do all such things as may be necessary, on behalf of the Body Corporate, to give effect to the said Special Resolutions.

Further that the Board of Trustees is authorised to appoint ROBERT NICOLAS DICKSON and any Trustee or person employed by the Managing Agent to undertake all tasks, administration and payments associated with the Special Resolutions and to sign all relevant and/or required and/or necessary documentation on behalf of the Board of Trustees in order to give effect to the abovementioned Special Resolutions.

## NOTARIAL DEED OF SERVITUDE

### BE IT HEREBY MADE KNOWN THAT

On this the \_\_\_\_\_ day of \_\_\_\_\_ 2021, before me, **SUSANNA VIVIER**, Notary Public practising at Cape Town appeared

DEBALIZE WENDY PINTO

She being duly authorised hereto by:

1. **MONTAGU SPRINGS PROPERTIES PROPRIETARY LIMITED  
1982/010863/07**

By virtue of a Special Power of Attorney executed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021 by \_\_\_\_\_ he/she being duly authorised thereto by virtue of a resolution of the Directors passed at \_\_\_\_\_ on the \_\_\_\_\_ day of 2021, which Special Power of Attorney and a certified copy of the Resolution are filed in my protocol.

2. **THE BODY CORPORATE OF SCHEME KNOWN AS AVALON SPRINGS  
SS 28/1988**

(Hereinafter called The Body Corporate)

By virtue of a Special Power of Attorney executed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021 by \_\_\_\_\_ he/she being duly authorised thereto by virtue of a special resolution of the Members of the Body Corporate passed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021, which Special Power of Attorney and a certified copy of the Special Resolution are filed in my protocol.

And the Appearers declared that:

### WHEREAS:

1. **MONTAGU SPRINGS PROPERTIES (PROPRIETARY) LIMITED** is the owner of

REMAINDER ERF 2093 MONTAGU in the Langeberg/ Cape Winelands Municipality, Division Montagu, Province of the Western Cape

IN EXTENT 1,9300 (One comma Nine Three Zero Zero) Hectares

By Certificate of Consolidated Title No T7914/1987

("the Servient Tenement")

2. A hotel and certain hot water springs with pools and other amenities are situated on the Servient Tenement.
3. A time share scheme operates in respect of the units in the Sectional Title scheme known as AVALON SPRINGS SS 28/1988 situate of Erf 2796 MONTAGU in the Langeberg/ Cape Winelands Municipality, Division Montagu, Province of the Western Cape.
4. In terms of Notarial Deed of Servitude K751/2004 Members of The Body Corporate of the Scheme known as Avalon Springs SS 28//1988 are entitled to the right to use certain of the hot springs swimming pools and facilities on the Servient Tenement allocated and demarcated as at April 2004.
5. The parties wish to redevelop the hot spring pools and facilities and have reached agreement on the use of the pools and facilities and contributions by the parties to the costs of redevelopment and maintenance and the ongoing running costs thereof.

**NOW THEREFORE** the appearers declared that:

Notarial Deed of Servitude K751/2004 is hereby amended by the deletion in its entirety of the provisions contained the said Notarial Deed of Servitude, and the substitution of the following:

1. Members of the Body Corporate of AVALON SPRINGS SS 28/1988 shall be entitled to use those hot springs pools and facilities on the Servient Tenement as indicated on the Plan, Annexure A hereto, for the use by the owners and their resident guests free of charge for the period whilst in occupation in their units.
2. Members of the Body Corporate shall not be entitled to use those hot springs pools and facilities on the Servient Tenement other than described in 1. above, nor shall they be entitled to such free use of any facilities that may be constructed on the Servient Tenement after certification of completion by the Structural Engineer of the plans of the buildings and facilities as per Annexure A hereto.
3. Members of the Body Corporate shall be entitled to exercise the rights contained herein only during such times when the use of the respective sections is allocated to Members of the Body Corporate in terms of the timeshare allocation by the Body Corporate and shall be



restricted to occupiers of the section who have checked in at the reception desk of the hotel on the Servient property with the bona fide intention of sleeping over in the section. The number of occupiers in a section shall not exceed the maximum permitted number of occupiers per section as determined by the Body Corporate. Day visitors to Members of the Body Corporate shall announce themselves at the reception desk of the hotel on the Servient property and wait in the reception area for the occupiers of the relevant section to escort them onto the property.

4. Day visitors to Members of the Body Corporate shall pay the applicable entrance fee for use of the hot springs pools and facilities on the Servient tenement as well as all other charges normally levied to day visitors to the hot spring pools and facilities on the Servient Tenement. Day visitors to Members of the Body Corporate shall, having paid the applicable entrance fee and subject to availability, only have use the hot springs pools and facilities allocated and demarcated for Day Visitors, and under the same terms and conditions applicable to Day Visitors as determined by the Servient Tenement.

5. The Servient Tenement shall be subject to a servitude right of way in general terms in favour of the Members of the Body Corporate, their family and invitees in occupation of Avalon Springs units for the purpose of access to the hot water springs and swimming pool area situated on the Servient Tenement.

6. The owner of the Servient Tenement shall have the right to determine from time to time the access route over the Servitude Tenement to the hot water springs and swimming pool area on the Servient Tenement.

7. The Members of The Body Corporate shall not cause or allow to be caused by their family, invitees, or visitors any damage to the hot water springs and swimming pool facilities in the exercise of their servitude rights.

8. The Members of the Body Corporate, their family, invitees or visitors shall not obstruct or in any way interfere with the free flow of traffic over the Servient Tenement.

9. The Members of the Body Corporate, their family, invitees and visitors shall exercise their servitude rights in a reasonable and considerate manner subject to all rules and regulations imposed by the owner of the Servient Tenement from time to time.

10. The owner of the Servient Tenement shall be responsible for the upkeep and maintenance of the hot spring pools and facilities on the Servient Tenement subject to the provisions of paragraph 11 below.

11. The Body Corporate shall initially contribute 25% percent towards the annual insurance, maintenance and repair costs and the running costs of the hot springs and pool facilities, whereafter the contribution shall be agreed upon annually between the owner of the Servient Tenement and the Trustees of the Body Corporate at the annual budget meeting of the Trustees of the Body Corporate.

12. It shall be the duty of the Members of the Body Corporate to ensure compliance with the agreement by their lessees, occupiers, guests and family members.

13. This Notarial Deed shall be registered in the Deeds Office and shall be binding on the successors in title to the Servitude Areas.

14. The Body Corporate shall be responsible for all costs of this Notarial Deed including, transfer duty and deeds office registration fees.

**AND** the appearers further declared that the value of the aforesaid servitude right of way shall be R100,00 (One Hundred Rand).

Thus done and signed by me at Cape Town on the day, month and year aforewritten, in the presence of the undersigned witnesses and of me, the Notary Public.

AS WITNESSES:

1. ....

2. ....

.....

QUOD ATTESTOR

NOTARY PUBLIC  
Susanna Vivier  
(LPC NO. 80852)

## NOTARIAL DEED OF SERVITUDE

### BE IT HEREBY MADE KNOWN THAT

On this the \_\_\_\_\_ day of \_\_\_\_\_ 2021, before me, **SUSANNA VIVIER**, Notary Public practising at Cape Town appeared

DEBALIZE WENDY PINTO

She being duly authorised hereto by:

1. **MONTAGU SPRINGS PROPERTIES PROPRIETARY LIMITED**  
**1982/010863/07**

By virtue of a Special Power of Attorney executed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021 by \_\_\_\_\_ he/she being duly authorised thereto by virtue of a resolution of the Directors passed at \_\_\_\_\_ on the \_\_\_\_\_ day of 2021, which Special Power of Attorney and a certified copy of the Resolution are filed in my protocol.

2. **THE BODY CORPORATE OF SCHEME KNOWN AS AVALON SPRINGS MOUNTAIN CHALETS SS 97/2009**

(Hereinafter called The Body Corporate)

By virtue of a Special Power of Attorney executed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021 by \_\_\_\_\_ he/she being duly authorised thereto by virtue of a special resolution of the Members of the Body Corporate passed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021, which Special Power of Attorney and a certified copy of the Special Resolution are filed in my protocol.

And the Appearers declared that:

### WHEREAS:

1. **MONTAGU SPRINGS PROPERTIES (PROPRIETARY) LIMITED** is the owner of

REMAINDER ERF 2093 MONTAGU in the Langeberg/ Cape Winelands Municipality, Division Montagu, Province of the Western Cape

IN EXTENT 1,9300 (One comma Nine Three Zero Zero) Hectares

By Certificate of Consolidated Title No T7914/1987

("the Servient Tenement")

2. Certain hot water springs with pools and other amenities are situated on the Servient Tenement.
3. A Sectional Title scheme known as AVALON SPRINGS MOUNTAIN CHALETS SS 97/2009 has been opened on Erf 5339 (A PORTION OF ERF 2093) MONTAGU.
4. In terms of Notarial Deed of Servitude K1860/2007 Members of The Body Corporate of the Scheme known as Avalon Springs Mountain Chalets SS 97/2009 are entitled to the right to use certain of the hot springs swimming pools and facilities on the Servient Tenement allocated and demarcated as at July 2007.
5. The parties wish to redevelop the hot spring pools and facilities and have reached agreement on the use of the pools and facilities and contributions by the parties to the costs of redevelopment and maintenance and the ongoing running costs thereof

**NOW THEREFORE** the appearers declared that:

Notarial Deed of Servitude K1860/2007 is hereby amended by the deletion of Paragraph D. and the substitution of the following:

**D. SERVITUDES OVER REMAINDER ERF 2093 MONTAGU IN FAVOUR OF AVALON SPRINGS MOUNTAIN CHALETS SS 97/2009 SITUATED ON ERF 5339 (A PORTION OF ERF 2093) MONTAGU**

1. Members of the Body Corporate of AVALON SPRINGS MOUNTAIN CHALETS SS 97/2009 shall be entitled to use those hot springs pools and facilities on the Servient Tenement as indicated on the Plan, Annexure A hereto, for the use of timeshare and whole owners and their resident guests free of charge for the period whilst in occupation in their units.

2. Members of the Body Corporate shall not be entitled to use those hot springs pools and facilities on the Servient Tenement other than described in 1. above, nor shall they be entitled to such free use of any facilities that may be constructed on the Servient Tenement after certification of completion by the Structural Engineer of the plans of the buildings and facilities as per Annexure A hereto.

3. Members of the Body Corporate shall be entitled to exercise the rights contained herein only during such times when the use of the

respective sections is allocated to Members of the Body Corporate in terms of the timeshare allocation by the Body Corporate and shall be restricted to occupiers of the section who have checked in at the reception desk of the hotel on the Servient property with the bona fide intention of sleeping over in the section. The number of occupiers in a section shall not exceed the maximum permitted number of occupiers per section as determined by the Body Corporate. Day visitors to Members of the Body Corporate shall announce themselves at the reception desk of the hotel on the Servient property and wait in the reception area for the occupiers of the relevant section to escort them onto the property.

4. Day visitors to Members of the Body Corporate shall pay the applicable entrance fee for use of the hot springs pools and facilities on the Servient tenement as well as all other charges normally levied to day visitors to the hot spring pools and facilities on the Servient Tenement. Day visitors to Members of the Body Corporate shall, having paid the applicable entrance fee and subject to availability, only have use the hot springs pools and facilities allocated and demarcated for Day Visitors, and under the same terms and conditions applicable to Day Visitors as determined by the Servient Tenement.

5. The Servient Tenement shall be subject to a servitude right of way in general terms in favour of the Members of the Body Corporate, their family and invitees in occupation of Avalon Springs Mountain Chalet units for the purpose of access to the hot water springs and swimming pool area situated on the Servient Tenement.

6. The owner of the Servient Tenement shall have the right to determine from time to time the access route over the Servitude Tenement to the hot water springs and swimming pool area on the Servient Tenement.

7. The Members of The Body Corporate shall not cause or allow to be caused by their family, invitees, or visitors any damage to the hot water springs and swimming pool facilities in the exercise of their servitude rights.

8. The Members of the Body Corporate, their family, invitees or visitors shall not obstruct or in any way interfere with the free flow of traffic over the Servient Tenement.

9. The Members of the Body Corporate, their family, invitees and visitors shall exercise their servitude rights in a reasonable and considerate manner subject to all rules and regulations imposed by the owner of the Servient Tenement from time to time.

10. The owner of the Servient Tenement shall be responsible for the upkeep and maintenance of the hot spring pools and facilities on the Servient Tenement subject to the provisions of paragraph 11 below.

11. The Body Corporate shall initially contribute 34% percent towards the annual insurance, maintenance and repair costs and the running costs of the hot springs and pool facilities, whereafter the contribution shall be agreed upon annually between the owner of the Servient Tenement and the Trustees of the Body Corporate at the annual budget meeting of the Trustees of the Body Corporate.

12. It shall be the duty of the Members of the Body Corporate to ensure compliance with the agreement by their lessees, occupiers, guests and family members.

13. This Notarial Deed shall be registered in the Deeds Office and shall be binding on the successors in title to the Servitude Areas.

14. The Body Corporate shall be responsible for all costs of this Notarial Deed including, transfer duty and deeds office registration fees.

**AND** the appearers further declared that the value of the aforesaid servitude right of way shall be R100,00 (One Hundred Rand).

Thus done and signed by me at Cape Town on the day, month and year aforewritten, in the presence of the undersigned witnesses and of me, the Notary Public.

AS WITNESSES:

1. ....

2. ....

.....

QUOD ATTESTOR

NOTARY PUBLIC  
Susanna Vivier  
(LPC NO. 80852)

Prepared by me,

CONVEYANCER  
VIVIER SUSANNA

## POWER OF ATTORNEY

I/We, the undersigned, \_\_\_\_\_, duly authorised hereto by virtue of a special resolution passed at Cape Town on the \_\_\_\_\_ by

**THE BODY CORPORATE OF AVALON SPRINGS MOUNTAIN CHALETS  
SS 97/2009**

hereby nominate, constitute and appoint

DEBALIZE WENDY PINTO

with power of substitution to be my lawful Attorney and Agent in my name, place and stead, to appear before a Notary Public at CAPE TOWN, and then and there to execute and cause to be registered in the Office of the Registrar of Deeds, CAPE TOWN, a Notarial Deed substantially in the form of the draft Deed hereunto annexed which has been initialled by me for purposes of identification;

and generally for effecting the purposes aforesaid to do or cause to be done whatsoever shall be requisite, as fully and effectually, for all intents and purposes, as I might or could do if personally present and acting herein - hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my said Attorney and Agent shall lawfully do, or cause to be done, by virtue of these presents.

SIGNED AT                      ON THE              DAY OF    2021

**AS WITNESSES :**

1. \_\_\_\_\_

2. \_\_\_\_\_



**RESOLUTION OF THE DIRECTORS OF  
MONTAGU SPRINGS PROPERTIES (PROPRIETARY) LIMITED  
CO NO 1982/010863/07**

**PASSED AT A MEETING HELD AT  
ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.**

**RESOLVED THAT** the company enters into a Notarial Deed of Servitude substantially in the form of the draft Deed hereunto annexed;

**RESOLVED FURTHER THAT** \_\_\_\_\_

is hereby authorised on behalf of the Company to settle the terms of the Notarial Deed and sign all documents and perform any act necessary or ancillary to the registration of the aforementioned Notarial Deed of Servitude.

**SIGNED:**

\_\_\_\_\_  
  
\_\_\_\_\_

**All Directors to sign.**

**SPECIAL RESOLUTION OF THE BODY CORPORATE OF AVALON SPRINGS  
SS28/1988**

**PASSED AT A MEETING HELD AT CAPE TOWN  
ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_**

**2021**

**RESOLVED THAT** the Body Corporate enters into a Notarial Deed of Servitude substantially in the form of the draft Deed hereunto annexed;

**RESOLVED FURTHER THAT** \_\_\_\_\_

is hereby authorised on behalf of the Body Corporate to settle the terms of the Notarial Deed and to sign all documents and perform any act necessary or ancillary to the registration of the aforementioned Notarial Deed of Servitude.

**SIGNED:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**TRUSTEES**





# AVALON SPRINGS BODY CORPORATE

## NOTIFICATION, APPOINTMENT OF PROXY AND ACCEPTANCE MANDATE

Note: In terms of section 6(5) of the Sectional Titles Schemes Management Act 2011 a member must be represented in person or by proxy at meetings of the Body Corporate and a person may not act as a proxy for more than two members of the Body Corporate.

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### Scheme Details

Name of Scheme: AVALON SPRINGS BODY CORPORATE  
SS Number / Year: SS28/1988

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To: C/O MONTAGU SPRINGS (PTY) LTD T/A AVALON SPRINGS HOTEL

I/We, the undersigned owner(s) and member(s) give notice to the Body Corporate of the above scheme that I/we appoint a proxy to speak and vote at the general meetings (including) and on the terms set out below.

Member name(s): \_\_\_\_\_

Unit numbers: \_\_\_\_\_

Proxy name (insert one full name): \_\_\_\_\_

This appointment applies to the special general meeting to be held on **10 November 2021**

Special conditions or instructions to proxy: (if left blank, the appointment is unconditional)

AGENDA ITEM		FOR	AGAINST	ABSTAIN
6.1	<u>Special Resolution 1:</u> To consider, and if deemed fit, to pass with or without amendment, Special Resolution 1.			
6.2	<u>Special Resolution 2:</u> To consider, and if deemed fit, to pass with or without amendment, Special Resolution 2.			
6.3	<u>Special Resolution 3:</u> To consider, and if deemed fit, to pass with or without amendment, the Ordinary Resolution.			

(Indicate directions to proxy by way of a cross (X) in the space provided above)  
Unless otherwise instructed, the proxy may vote as he thinks fit.

Signature(s) of members giving mandate:

	_____/_____/_____ DD                      MM                      YYYY
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*Please note that should you be signing on behalf of a legal or juristic person, then a resolution from that particular legal or juristic person is required authorizing the signatory to sign on behalf of the particular entity*

Signature of person accepting mandate:

	_____/_____/_____ DD                      MM                      YYYY
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## **NOTES TO NOTIFICATION, APPOINTMENT OF PROXY AND ACCEPTANCE OF MANDATE**

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We would like to highlight the following provisions of the Sectional Titles Schemes Management Act, 2011 (The Act) Sectional Titles Schemes Management Regulations (The Regulations) which was promulgated subsequent to the last annual general meeting

**In terms of the Act –**

**6.**

(5) A Member may be represented in person or by proxy at such meeting: Provided that a person must not act as a proxy for more than two members

(6) When votes are calculated in value, each member's vote is calculated either –

- (a) as the total of the quotas allocated to the sections registered in the member's name: or
- (b) in accordance with a rule made in terms of section 10(2), whichever is applicable.

(7) When votes are calculated in number, each member has one vote.

***Please note that legal entities may be represented by a person authorized in terms of a Letter of Representation without restriction on the number of legal entities that person represents***

**In terms of the Regulations –**

**20.**

- (2) Except for special and unanimous resolutions, a member is not entitled to vote if –
    - (a) a member fails or refuses to pay the Body Corporate any amount due by that member after a court of adjudicator has given judgement or order for payment of that amount; or
    - (b) that member persists in the breach of any of the conduct rules of the scheme referred to in section 10(2) (b) of the Act after a court or an adjudicator has ordered that member to refrain from breaching such a rule.
  - (3) For the purposes of any vote, the values of votes of any sections registered in the name of the Body Corporate are considered abstentions.
  - (4) Where a member is as such a trustee for a beneficiary, that member exercises voting rights to the exclusion of persons beneficially interested in the trust and such persons are not entitled to vote.
  - (5) A member's appointment of a proxy in terms of section 6(5) of the Act and the proxy's acceptance of the mandate must, except in the case of an appointment in a mortgage bond, be substantially in the prescribed form and must be –
    - (a) Delivered to the Body Corporate 48 hours before the time of the meeting; or
    - (b) Handed to the chairperson before or at the start of the meeting.
  - (6) A proxy need not be a member, but must not be the managing agent or an employee of the managing agent of the Body Corporate.
  - (7) When two or more persons are entitled to exercise one vote jointly, that vote may be exercised only by one person, who may or may not be one of them, jointly appointed by them as their proxy.
  - (8) the outcome of each vote, including the number of votes for and against, must be announced by the chairperson and recorded in the minutes of the meeting.
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# MOUNTAIN CHALETS BODY CORPORATE

## NOTIFICATION, APPOINTMENT OF PROXY AND ACCEPTANCE MANDATE

Note: In terms of section 6(5) of the Sectional Titles Schemes Management Act 2011 a member must be represented in person or by proxy at meetings of the Body Corporate and a person may not act as a proxy for more than two members of the Body Corporate.

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### Scheme Details

Name of Scheme: MOUNTAIN CHALETS BODY CORPORATE  
SS Number / Year: SS98/2008

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To: C/O MONTAGU SPRINGS (PTY) LTD T/A AVALON SPRINGS HOTEL

I/We, the undersigned owner(s) and member(s) give notice to body corporate of the above scheme that I/we appoint a proxy to speak and vote at the general meetings (including adjournments) and on the terms set out below.

Member name(s): \_\_\_\_\_

Unit numbers: \_\_\_\_\_

Proxy name (insert one full name): \_\_\_\_\_

This appointment applies to the special general meeting to be held on **10 November 2021**

Special conditions or instructions to proxy: (if left blank, the appointment is unconditional)

AGENDA ITEM		FOR	AGAINST	ABSTAIN
7.1	<u>Special Resolution 1:</u> To consider, and if deemed fit, to pass with or without amendment, Special Resolution 1.			
7.2	<u>Special Resolution 2:</u> To consider, and if deemed fit, to pass with or without amendment, Special Resolution 2.			
7.3	<u>Special Resolution 3:</u> To consider, and if deemed fit, to pass with or without amendment, the Ordinary Resolution.			

(Indicate directions to proxy by way of a cross (X) in the space provided above)  
Unless otherwise instructed, the proxy may vote as he thinks fit.

Signature(s) of members giving mandate:

	_____/_____/_____ DD                      MM                      YYYY
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*Please note that should you be signing on behalf of a legal or juristic person, then a resolution from that particular legal or juristic person is required authorizing the signatory to sign on behalf of the particular entity*

Signature of person accepting mandate:

	_____/_____/_____ DD                      MM                      YYYY
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## **NOTES TO NOTIFICATION, APPOINTMENT OF PROXY AND ACCEPTANCE OF MANDATE**

---

We would like to highlight the following provisions of the Sectional Titles Schemes Management Act, 2011 (The Act) Sectional Titles Schemes Management Regulations (The Regulations) which was promulgated subsequent to the last annual general meeting

**In terms of the Act –**

**6.**

(5) A Member may be represented in person or by proxy at such meeting: Provided that a person must not act as a proxy for more than two members

(6) When votes are calculated in value, each member's vote is calculated either –

- (a) as the total of the quotas allocated to the sections registered in the member's name: or
- (b) in accordance with a rule made in terms of section 10(2), whichever is applicable.

(7) When votes are calculated in number, each member has one vote.

***Please note that legal entities may be represented by a person authorized in terms of a Letter of Representation without restriction on the number of legal entities that person represents***

**In terms of the Regulations –**

**20.**

- (2) Except for special and unanimous resolutions, a member is not entitled to vote if –
    - (a) a member fails or refuses to pay the Body Corporate any amount due by that member after a court of adjudicator has given judgement or order for payment of that amount; or
    - (b) that member persists in the breach of any of the conduct rules of the scheme referred to in section 10(2) (b) of the Act after a court or an adjudicator has ordered that member to refrain from breaching such a rule.
  - (3) For the purposes of any vote, the values of votes of any sections registered in the name of the Body Corporate are considered abstentions.
  - (4) Where a member is as such a trustee for a beneficiary, that member exercises voting rights to the exclusion of persons beneficially interested in the trust and such persons are not entitled to vote.
  - (5) A member's appointment of a proxy in terms of section 6(5) of the Act and the proxy's acceptance of the mandate must, except in the case of an appointment in a mortgage bond, be substantially in the prescribed form and must be –
    - (a) Delivered to the Body Corporate 48 hours before the time of the meeting; or
    - (b) Handed to the chairperson before or at the start of the meeting.
  - (6) A proxy need not be a member, but must not be the managing agent or an employee of the managing agent of the Body Corporate.
  - (7) When two or more persons are entitled to exercise one vote jointly, that vote may be exercised only by one person, who may or may not be one of them, jointly appointed by them as their proxy.
  - (8) the outcome of each vote, including the number of votes for and against, must be announced by the chairperson and recorded in the minutes of the meeting.
-

