
MASTER HOME OWNERS ASSOCIATION

BREAKWATER BAY ECO ESTATE

THE BRINK DEVELOPMENT

1. DEFINITIONS

- 1.1 In this Constitution and unless the context indicates otherwise the following words and expressions shall have the following meanings:
- 1.1.1 “**Authorised Representative**” means a person authorised to act as the representative of any natural person, body corporate, company or an association of persons as the case may be;
 - 1.1.2 “**Association**” means the Master Home Owners Association of Breakwater Bay and The Brink;
 - 1.1.3 “**Breakwater Bay**” means the residential development on Erf [], commonly known as Breakwater Bay Eco Estate at Herolds Bay;
 - 1.1.4 “**Chairman**” means the Chairman for the time being of the Board of Trustees appointed in terms of **Clause 9.4** below;
 - 1.1.5 “**Common Property**” means that part of the Development Area, excluding residential erven and units, for which the Association has assumed responsibility by virtue of an agreement/s between the Association and the Boards of Trustees of the Home Owners Associations of Breakwater Bay and The Brink including the entrance gatehouse to the Developments, shared services and any servitude areas;
 - 1.1.6 “**Companies Act**” means the Companies Act No 61 of 1973 and any amendment or modification thereof or substitution thereof from time to time;
 - 1.1.7 “**Constitution**” means the Constitution of the Association (with all annexures thereto) approved by the Council in terms of Section 29 of the Land Use Planning Ordinance No. 15 of 1985 and any amendments thereto effected in terms of this constitution;
 - 1.1.8 “**Council**” means the Municipality of George and its successor/s in title;
 - 1.1.9 “**Developments**” means the Breakwater Bay Eco Estate and The Brink Developments;
 - 1.1.10 “**Developers**” means collectively Samandev (Pty) Ltd and The Brink Development (Pty) Ltd;
 - 1.1.11 “**Development Approvals**” means the statutory approvals granted by any competent authority with jurisdiction at the approval of the Developments, including the environmental authorisations in terms of the Environment Conservation Act 73 of 1989, the National Environmental Management Act 107 of 1998 or any regulation promulgated under these Acts and the planning

authorisations granted in terms of the Land Use Planning Ordinance 15 of 1985 attached as **Annexures []**;

- 1.1.12 “**Development Area**” means the land comprising Portions A and B as indicated on **Annexure '[]'** hereto;
- 1.1.13 “**Development Periods**” means the Development Periods as defined in the respective Constitutions of Breakwater Bay and The Brink;
- 1.1.14 “**Erf**” means any erf, portion or subdivision of the development area and includes all improvements thereon;
- 1.1.15 “**Facilities**” means all and any facilities or amenities of whatsoever nature which may be provided within the development area;
- 1.1.16 “**Financial Year**” means the financial year of the Association which shall run from the first day of March in each year until the last day of February in the subsequent year;
- 1.1.17 “**Levy**” means the levy or levies referred to in **Clause 7** below;
- 1.1.18 “**Estate Manager**” means the Estate Manager appointed by the Trustees from time to time in terms of **Clause 12** below;
- 1.1.19 “**Member**” means a Member of the Association;
- 1.1.20 “**Minutes**” means the Minutes of a General Meeting or a Trustees’ Meeting, as the case may be;
- 1.1.21 “**Person**” means a natural person, juristic person and includes a close corporation, company, trust or an association of persons, as the case may be;
- 1.1.22 “**Registered Owner**” means a Registered Owner of an Erf or Sectional Title Unit as registered in the relevant Deeds Office;
- 1.1.23 “**Sectional Titles Act**” means the Sectional Titles Act No 95 of 1986 and any amendment or modification thereof or substitution thereof from time to time;
- 1.1.24 “**Services**” means such utilities and amenities for which the Association has assumed responsibility in respect of the Common Property and as may be provided by or on behalf of the Association for the Registered Owners and residents within the Townships and/or the Development Area;
- 1.1.25 “**The Brink**” means the residential development on Erf [], commonly known as The Brink at Herolds Bay;
- 1.1.26 “**Townships**” means collectively the Townships known as Breakwater Bay and The Brink;
- 1.1.27 “**Trustees**” means the Trustees of the Association;
- 1.1.28 “**Unit**” means a Unit (as defined in the Sectional Titles Act) in a sectional title scheme within the township.

2. INTERPRETATION

In this Constitution:

- 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 the singular shall include the plural and vice versa;
 - 2.2.2 a reference to any one gender shall include the other genders; and
 - 2.2.3 a reference to natural persons includes legal persons and vice versa.
- 2.3 Words and expressions defined in any clause herein shall, for the purpose of that clause and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in the clause in question.
- 2.4 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.
- 2.5 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 If any provision of this Constitution is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this constitution.
- 2.7 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.
- 2.8 The annexures to this Constitution are deemed to be incorporated in and form part of this constitution.
- 2.9 All references to the provisions of the Companies Act is in respect of procedural and accounting matters of the Association only and should be read with any changes required by the context.

3. COMMENCEMENT DATE AND STATUS

- 3.1 Notwithstanding the date of the official approval of this Constitution by Council, this Association shall be deemed to have been established as from the date of the establishment of the individual Home Owners Association of The Brink.
- 3.2 The Association will be established as a legal persona in accordance with Section 29 of the Land Use Planning Ordinance No 15 of 1985 on the official approval of this Constitution by the Council.
- 3.3 Pursuant to its Constitution the Association shall:
 - 3.3.1 be a legal entity and exist independently of its Members;

- 3.3.2 enjoy perpetual succession;
- 3.3.3 be capable of being sued or to sue with reference to any agreement entered into by the Association, any damage caused to any property of the Association or any matter arising from this Constitution;
- 3.3.4 not operate for profit for the benefit of the Members;
- 3.3.5 no Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees.

4. OBJECTIVES AND RESPONSIBILITIES OF THE ASSOCIATION

- 4.1 It is hereby recorded that the Developments were approved by virtue of the Development Approvals in an integrated manner in respect of the Development Area as a whole.
- 4.2 By virtue of the Development Approvals the two portions of the Development Area were identified as Portions A and B in the Development Approvals. The said Portion A is today known as Breakwater Bay and Portion B as The Brink;
- 4.3 In view of the differences between Breakwater Bay and The Brink as far as, for example the Architectural- Guidelines and Rules, the Estate Rules as well as the fact that the two Developments, although approved in terms of one statutory approval, were to be developed by different Developers and at different points in time, it was decided to also have individual Home Owners Associations for the two Developments for purposes of the management and regulation of the in-house affairs of the Developments. The constitutions of the two Developments were separately approved by Council;
- 4.4 By reason of the integrated nature of the Development Approvals, for example as far as shared services and infrastructure and various other co-responsibilities between the two Developments are concerned, the operational phases of the two Developments now necessitates the official approval of a Master Home Owners Association as envisaged in terms of Condition 3.1.1.16 of the Planning Approval granted by the Competent Authority for the administration of the Land Use Planning Ordinance 15 of 1985 on 1 March 2005. This document constitutes the Constitution of the Master Home Owners Association of the Developments.
- 4.5 The Association shall have the following objectives:
 - 4.5.1 to act as a Master Home Owners Association established in terms of Section 29 of the Land Use Planning Ordinance 15 of 1985 for the Townships which are being developed on the Development Area, and in particular to procure that the matters referred to in Sections 29(2)(b) and (c) of the Land Use Planning Ordinance 15 of 1985 be adhered to and complied with;
 - 4.5.2 to enter into agreements of servitude in its favour for the benefit of its Members;
 - 4.5.3 to manage, oversee and control all security aspects of the Developments;
 - 4.5.4 to enter into agreements for the provision of services, *inter alia* including the provision of water, electricity and sewerage services to the Association and where required to supply such services to the various Members of the Association;

- 4.5.5 to act as assignee of all the powers and functions of any body corporate in any Sectional Title Scheme;
- 4.5.6 to conclude agreements with the Boards of Trustees of Breakwater Bay and The Brink in respect of the Common Property.
- 4.6 The Association, through its Trustees, shall have all the powers that are necessary to accomplish the fulfilment of the foregoing objects including, but not restricted to, the powers specifically contained in this Constitution.
- 4.7 Without limiting the generality of 4.5.1 to 4.5.6, the Association shall have the following powers and functions:-
 - 4.7.1 The responsibility to maintain, repair, improve and keep in good order and condition those parts of the Common Property as well as the responsibility for the payment of all rates and taxes, all services charges and other taxes and/or levies charged and payable to the Council or any authority in respect of the said Common Property and shared services and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, and the Association's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Association or the pursuit of its business.
 - 4.7.2 The right to impose levies upon the Members of the Association for the purpose of meeting all the expenses which the Association has incurred or to which the Trustees reasonably anticipate the Association will incur in the attainment of the objects of the Association or the pursuit of its business.
 - 4.7.3 To ensure that all provisions of this Constitution are complied with by all Members/parties bound thereby.
 - 4.7.4 It is recorded that the body corporate of any sectional title scheme shall be liable as Members of the Association to pay the levies imposed on them in terms of this Constitution.
 - 4.7.5 To promote, advance and protect the township and the interests of the Association and all Members.
- 4.8 Pursuant to the objectives of the Association, the body corporate of any sectional title development in the Townships will not function independently as far as the Common Property is concerned, but shall assign its functions and powers to the Association;
- 4.9 The Association shall at all times promote environmental awareness and responsibility within the township and its Members from time to time. The Association shall be responsible, as far as its functions in respect of the Common Property is concerned, to strictly comply with the Development Approvals and the conditions thereof as well as any services agreement entered into between the Developers and the Council as far as it relates to the Common Property.
- 4.10 The Association shall be responsible to the Council in respect of payment of all rates and taxes, all services charges and other taxes and/or levies charged and payable to the Council in respect of the Common Property.

5. CONTROL BY ASSOCIATION

The responsibility for the management and control of the Common Property shall be transferred to the Association upon the official approval of this Constitution by Council.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership of the Association shall be compulsory for every Registered Owner of an Erf or Unit in the Development Area.
- 6.2 Membership of the Association shall be limited to the Registered Owners of erven or units in the township provided that:
- 6.2.1 the Developers shall be deemed to be a Member of the Association during the development period;
 - 6.2.2 that the body corporate of any Sectional Title Scheme shall be a Member of the Association;
 - 6.2.3 where any such Registered Owner is more than one person, all the Registered Owners of the Erf or Unit shall be deemed jointly and severally to be one Member of the Association and shall nominate one of them to represent them and to vote at meetings of the Association
- 6.3 When a Member ceases to be the Registered Owner of an Erf or an Unit, he shall *ipso facto* cease to be a Member of the Association, save for the developer who shall remain a Member of the Association during the development period.
- 6.4 The rights and obligations of the Members shall rank in accordance with the provisions of this Constitution.
- 6.5 Anything to the contrary hereinbefore contained or implied notwithstanding, the cessation of his membership shall in no way release a Member from any obligation undertaken by him prior to the cessation of his membership pursuant to:
- 6.5.1 any provision of the Constitution of the Association; or
 - 6.5.2 any further or ancillary guarantee, commitment or obligation which such Member may have undertaken.
- 6.6 Membership shall be personal to the natural persons or entities in question and may not be assigned or transferred by them to any other natural person or entity.
- 6.7 The Association shall maintain at their office a register of Members, which shall be open to inspection by Members.
- 6.8 The Trustees may by regulation provide for the issue of a membership certificate, which certificate shall be in such form as may be described by the Trustees;
- 6.9 The Trustees may by regulation further prescribe appropriate application documentation including inter alia the following:
- 6.9.1 an application to register as a Member of the Association;
 - 6.9.2 an undertaking by a proposed Member to comply with all the obligations imposed on Members in terms of the Constitution, which undertaking must be signed by the proposed Member and deposited with the Association prior to

the Association issuing a clearance certificate or consent to transfer a Unit or Erf in favour of such a proposed Member from any existing Member, provided always that this paragraph will not apply in respect of the transfer or alienation by the developer of an Erf or Unit in favour of a proposed Member.

- 6.10 The Registered Owner of an Erf or Unit shall not be entitled to resign as a Member of the Association.
- 6.11 Every Member is obliged to comply with:
- 6.11.1 the provisions of this Constitution and any rules or regulations passed by the Association in terms hereof;
 - 6.11.2 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member in its capacity as a Member;
 - 6.11.3 any directive given by the Trustees in enforcing the provisions of this Constitution.
 - 6.11.4 The rights and obligations of a Member are not transferable and every Member shall to the best of his ability further the objects and interests of the Association.
 - 6.11.5 The Members shall be jointly liable for expenditure incurred in connection with the Association. If a Member consists of more than one person such persons shall be jointly and severally liable in solidum for all obligations of a Member in terms of this Constitution.
 - 6.11.6 An ordinary Member shall not sell, alienate or give transfer of an Erf or Unit unless:
 - 6.11.6.1 the proposed transferee has irrevocably bound himself to become a Member of the Association and to observe the provisions of the Constitution for the duration of his ownership of the Erf and/or Unit;
 - 6.11.6.2 the Association acting through the Trustees or the Estate Manager has issued a prior written clearance that all outstanding levies and all amounts of whatever nature owing to the Association by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution; and
 - 6.11.6.3 the proposed transferee acknowledges that upon the registration of transfer of the Erf and/or Unit into his name, he shall ipso facto become a Member of the Association.
 - 6.11.6.4 the conditions set out in **Clause 6** above shall be incorporated in all Deeds of Sale in terms whereof a purchaser acquires any Erf or Unit.
 - 6.11.6.5 For the avoidance of doubt it is recorded that the provisions of this **Clause 6.11.6** does not apply to the Developers, that there will be no restriction whatsoever on the ability of the Developers to pass transfer of any Erf or Unit and that accordingly the developer does not need a clearance certificate from the

Association before it will be entitled to alienate or transfer any Erf or Unit to any person or entity.

7. LEVIES

- 7.1 The Association shall establish and maintain a Levy fund for the purposes of meeting all expenses of the Association in respect of:
- 7.1.1 the control, management and administration of the Common Property;
 - 7.1.2 in general the attainment of its main objects as described in its Constitution;
 - 7.1.3 the maintenance of Common Property and the costs of services such as electricity, water and sewerage consumed or used on the Common Property;
 - 7.1.4 the supply of any services rendered by the Association;
 - 7.1.5 payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
 - 7.1.6 the costs of the provision of security to the Townships; and
 - 7.1.7 in general the cost of fulfilling any of the obligations of the Association.
- 7.2 The Trustees shall estimate the amount which will be required by the Association to meet the expenses referred to in **Clause 7.1** during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;
- 7.3 The Association shall be entitled to require Members, in accordance with the procedures set out in **Clause 7.4** below, to make contributions to such Levy fund (in the form of levies), for the purposes of satisfying the expenses referred to in **Clause 7.1**.
- 7.4 The procedure for raising and collecting Home Owners Association Levies shall be as follows:
- 7.4.1 The Trustees shall submit the estimated expenditure referred to in **Clause 7.2** to the annual general meeting of the Association for consideration. It is recorded that:
 - 7.4.1.1 the meeting shall be obliged to approve the following items of expenditure that are charged to the Association by outside third parties:
 - 7.4.1.1.1 all rates and taxes payable by the Association to the local authority in respect of the Common Property, as well as any service charges payable by the Association to the local authority in respect of the Common Property;
 - 7.4.1.1.2 the costs of the developer's nominated provider of security services, including security guards, monitoring and surveillance;
 - 7.4.1.1.3 the fee payable to any Estate Manager with whom the Association has entered into an agreement.

- 7.4.1.2 The Association shall have a discretion in regard to approval of the level of services, and the cost thereof, that the Association requires in respect of e.g. cleaning, gardening, general maintenance, etc
- 7.4.2 The Association shall have its annual general meeting at least 60 (sixty) days prior to the Financial Year end of the Association and, subject to **Clause 7.4.1.1** above, decide on proposed increases of the levies and the amounts to be charged to Members in respect thereof.
- 7.4.3 The Association shall notify any Body Corporate at least 45 (forty five) days prior to their respective annual general meetings of the levies it has resolved to charge for the following year.
- 7.4.4 The Body Corporate must notify their Members at least 28 days before their annual general meetings, in compliance with the Sectional Titles Act, and give them the details of the increases in the levies which have been resolved upon by the Association's annual general meeting and communicated to the Body Corporate in terms of this **Clause 7.4.3** above, and which must be included in the budget of the Body Corporate that is tabled for approval.
- 7.4.5 At their annual general meetings the Body Corporate shall resolve to impose the following levies on its own Members:
- The levies imposed by the Association on the Members in question, as communicated to the Body Corporate in terms of **Clause 7.4.4**;
- 7.4.6 As assignee of all the powers and functions of the Body Corporate of any sectional title scheme, the Association shall be responsible to collect on behalf of the Body Corporate of the sectional title scheme the levies pertaining to the Members of that Body Corporate.
- 7.5 The Association may, from time to time by a resolution adopted by the Trustees, make special levies upon Members effective from the date of passing of the applicable resolution in respect of such expenses referred to in **Clause 7.1** which have not been included in the levies approved by the annual general meeting in terms of **Clause 7.4**, and such levies may be imposed and shall be payable in one sum or by such installments and at such time or times as the Trustees may determine in its resolution. The decision of the Trustees in calculating such special levies shall be final and binding on all Members.
- 7.6 Any amount due by a Member by way of a Levy shall be a debt due by him to the Association payable on such time or times as determined by the Trustees. The Trustees may determine that a levy is payable annually in advance in respect of the year for which it is calculated or in such monthly installments as it may determine.
- 7.7 Until such time as a new Levy pertaining to a forthcoming year has been determined pursuant to the provisions of this **Clause 7.4.2** above, every Member of the Association shall continue to pay the existing levy currently in force, on account of the new levy yet to be determined.
- 7.8 The obligation of a Member to pay a Levy shall cease upon his ceasing to be a Member, save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member.
- 7.9 No levies paid by a Member shall be repayable by the Association upon cessation of the Member's membership.

- 7.10 A Member's successor in title to a Erf or Unit shall be liable, as from the date upon which he becomes a Member pursuant to registration of transfer of such Erf or Unit in his name, to pay the levies attributable to that Erf or Unit.
- 7.11 A Member shall be obliged to pay interest on any Levy not paid on the due date at the Prime Rate plus 3 percentage points per annum calculated on the levies due from time to time from the due date until the date that the arrear levies have been paid in full to the Association.
- 7.12 The Association shall be entitled to require a Member to sign a debit order authority to allow the Association or its authorised agent to collect levies directly from an operating bank account.
- 7.13 If any Member fails to make payment on due date of levies and/or other amounts payable by such Member including interest, the Association may give notice to such Member requiring him to remedy such failure within such period as the Association may determine and should he fail timeously to make such payments, the Association may institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in recovering such amounts.
- 7.14 No Member shall (unless otherwise determined by the Trustees) be entitled to any of the privileges of membership including:
- 7.14.1 his right of access to and use of any of the Common Property;
- 7.14.2 his right to vote
- until he shall have paid every Levy and interest thereon and any other amount which may be due and payable by him to the Association.
- 7.15 The Association shall not be entitled to undertake on behalf of its Members any permanent works of major capital nature without the sanction of a resolution of the Members adopted during a general meeting of Members. In this sub-clause "works of a major capital nature" means works that will cost more than R250 000.00 (two hundred and fifty thousand Rand) (excluding Value Added Tax).
- 7.16 The Trustees shall impose levies upon the Members for the purpose of meeting all the expenses which the Association has incurred or which the Trustees reasonably anticipate the Association will incur in the attainment of the objectives of the Association or in pursuit of its business and generally for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the township, and the Association's affairs. From the date of the deemed establishment of this Association in accordance with **Clause 3.1**, the Association shall be entitled to impose levies.
- 7.17 In computing the Levy, the Trustees shall take into account all expenses relating to the sectional title scheme to be administered by the Association, pursuant to the provisions of the Sectional Titles Act.
- 7.18 Each notice to each Member shall specify the contribution payable by that Member to such expenses and Levy fund.
- 7.19 Every Levy shall be payable in equal monthly instalments due in advance on the first day of each and every month of each Financial Year.

- 7.20 In calculation of the Levy payable by any Member, the Trustees shall as far as reasonably practical:
- 7.20.1 Apportion those costs attributable generally to the sectional title scheme to the owners comprising the body corporate in respect of that sectional title development;
- 7.20.2 Apportion those costs relating to the Common Property to the owners of all erven and units equally, provided however that the Trustees may in any case where it considers it equitable to do so, apportion to any Member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 7.21 The Association may come to agreement with the Developers for the repayment by the Association to the developer of ongoing costs or expenses incurred by the Developers for the provision of services to the units/owners.
- 7.22 Should any dispute arise at any time between the Members and the Trustees in regard to the determination or calculation of the levies, the decision of the auditors for the time being of the Association (acting as experts and not as arbitrators) in regard to such dispute shall be final and binding on the Members and the Trustees.
- 7.23 In the event of any dispute arising in regard to the determination or calculation of any Levy, every Member shall until the determination of such dispute continue to pay the levies determined by the Trustees.

8. ENTRENCHED PROVISIONS

- 8.1 Every amendment of the following provisions of **Clauses 8.1 to 8.4** (both inclusive) of whatever nature including any addition thereto, deletion therefrom or substitution thereof shall require the approval of at least 75% (seventy-five per centum) of the total number of votes allocated to Members of the Association which majority shall be expressed at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirements for the convening of a meeting, set out in specific terms the proposed amendment.
- 8.2 the Association may register, where necessary, various service servitudes across the township in favour of the local authority, the developer and/or the Association, whether in respect of any separate erven, the Common Property;
- 8.3 the Association shall at all times be entitled to draw electricity from erven adjacent to sprinkler heads in road reserves for the purposes of powering the irrigation system for the verges of such road reserve. The cost thereof shall be borne by the Association but recovered as part of the Levy upon Members.
- 8.4 ownership of an Erf or Unit does not confer any right, including that of access, in respect of property owned by the developer, including any right or way or access across such property.

9. TRUSTEES

- 9.1 The Trustees of the Association shall for the development period be divided into two classes, namely Breakwater Bay Trustees and The Brink Trustees;
- 9.2 There shall be not more than ten (10) Trustees of the Association who shall be appointed in equal numbers from the Board of Trustees of Breakwater Bay and The Brink;

- 9.3 A trustee shall be a natural Person and shall not necessarily be a Member of the Association. A trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Constitution.
- 9.4 The Trustees shall appoint one of their number to act as Chairman for such term as they think fit, but not for longer than such person's tenure as a trustee.

10 REMOVAL AND ROTATION OF TRUSTEES

- 10.1 Save as set out in **Clause 10.2** below, each trustee shall continue to hold office as such from the date of his appointment to office until the annual general meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such but will be eligible for re-election to the board of Trustees at such meeting.
- 10.2 A trustee shall be deemed to have vacated his office as such upon:
- 10.2.1 his having become disqualified to act as a director in terms of the provisions of the Companies Act;
 - 10.2.2 his estate being sequestrated, whether provisionally or finally;
 - 10.2.3 the commission by him of any act of insolvency;
 - 10.2.4 his conviction for any offence involving dishonesty or any other serious criminal offence;
 - 10.2.5 his becoming of unsound mind or being found lunatic;
 - 10.2.6 his resigning from such office in writing;
- 10.3 Provided that anything done in the capacity of a trustee in good faith by a Person who ceases to be a trustee, shall be valid until the fact that he is no longer a trustee has been recorded in the minute book of the Association.
- 10.4 Upon any vacancy occurring in the Trustees prior to the next annual general meeting, the vacancy in question shall be filled by a Person nominated by those remaining for the time being of the Trustees.

11 TRUSTEES EXPENSES AND REMUNERATION

- 11.1 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees as may be approved by the board of Trustees.
- 11.2 Trustees shall be entitled to remuneration in respect of the performance of their duties as determined by the Association at a general meeting of the Association.

12 POWERS OF TRUSTEES

- 12.1 Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of any Estate Manager, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and

done by the Association and as are not by this Constitution required to be exercised or done by the Association in general meeting, subject however to such rules as may have been made by the Association in general meeting or as may be made by the Trustees from time to time.

- 12.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, Estate Manager or any other professional firm or Person or other employees whatsoever for any reasons deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 12.3 The Trustees shall further have the power to require that any construction of any nature within the township shall be supervised to ensure that the provisions of this Constitution and the rules are complied with and that all such construction is performed in a proper and workmanlike manner.
- 12.4 The Trustees shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 12.5 The Trustees shall be entitled to appoint committees consisting of such number of their Members and such outsiders, including an Estate Manager, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Trustees may from time to time deem necessary.

13 PROCEEDINGS OF TRUSTEES

- 13.1 The Trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 13.2 The quorum necessary for the holding of all meetings of the Trustees shall be five (5) Trustees present personally. If no quorum is present within fifteen (15) minutes after the time for commencement of the meeting then it shall stand adjourned for seven (7) days, or if that is not a business day, then to the next business day thereafter, and those Trustees present at the adjourned meeting shall constitute a quorum.
- 13.3 At any meeting of the Trustees, each Member trustee shall have one (1) vote.
- 13.4 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 Chairman of the Trustees shall have a second or casting vote.
- 13.5 The Trustees shall cause minutes to be kept of every Trustees meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the Chairman. All minutes of Trustees' meetings shall, after certification, be placed in a trustee's minute book to be kept in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies. The Trustees' minute book shall be open for inspection at all reasonable times by any trustee, the auditors, the Members and the Estate Manager.
- 13.6 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustees.

14 GENERAL MEETINGS OF THE ASSOCIATION

- 14.1 The Association shall within six (6) months after the end of the Financial Year hold a general meeting as its annual general meeting in addition to any other general meetings during that year, and shall specify the meeting as such in the notices in terms of section 179 of the Companies Act.
- 14.2 Such annual general meeting shall be held at such time and place as the Trustees shall decide from time to time.
- 14.3 All meetings of the Members other than annual general meetings shall be called general meetings.
- 14.4 The Trustees may, whenever they think fit, convene a general meeting. A general meeting may also be convened by the Trustees on a requisition made in terms of section 181 of the Companies Act, or should the Trustees not do so, may be convened by the requisitionists as provided for by and subject to the provisions of that section.

15 NOTICES OF MEETINGS

- 15.1 An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than twenty one (21) clear days' notice in writing and any other general meeting shall be called by not less than fourteen (14) clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such Persons as are, under this Constitution, entitled to receive such notices from the Association: provided that a meeting of the Association shall notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by not less than fifty one percent (51%) of the Members having a right to attend and vote at the meeting.
- 15.2 The annual general meeting shall deal with and dispose of all matters prescribed by the Companies Act, the consideration of the annual financial statements, the election of Trustees, the noting of the Levy for the Financial Year during which such annual general meeting takes place, the appointment of an auditor and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

16 PROXIES

- 16.1 A Member may be represented at a general meeting by a proxy, who must be a Member of the Association or a director, Member, partner or trustee of that Member, save for the developer whose proxy need not necessarily be a Member.
- 16.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the Association at least twenty four (24) hours before the commencement of the meeting or adjourned meeting concerned but the Trustees may from time to time determine that such documents:
- 16.2.1 are to be lodged at a particular place; or
- 16.2.2 are to be lodged a certain number of hours, not exceeding forty eight (48) in all, before the meeting; or

16.2.3 may be lodged at any time before or during the meeting.

Notwithstanding the foregoing the Chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

16.3 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period. The instrument appointing a proxy shall be in the form as prescribed by the Association. A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

17 QUORUM

17.1 No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, ten percent (10%) of the Members present in person or by proxy shall constitute a quorum, provided that at least five (5) Members are present in person at such meeting.

17.2 If within fifteen (15) minutes after the time appointed for the commencement of a general meeting or within such extended period as the Chairman of the board or, in his absence, the deputy Chairman, may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time on the same day of the next week (or if that day is not a business day, the first business day following that non-business day) or to such other place, time and day as the board may determine. If a quorum is not present at such adjourned meeting, the Members present shall constitute a quorum.

18 ADJOURNMENT BY CHAIRMAN WITH CONSENT OF MEETING

18.1 The Chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by majority vote. In the event of such an adjournment:

18.1.1 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 thirty (30) days or more in which event notice is to be given in the same manner as for the original meeting);

18.1.2 only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

19. VOTING RIGHTS OF MEMBERS

19.1 Members shall be entitled to vote only on the matters raised at every general meeting.

19.2 At every general meeting:

19.2.1 each Member, present in person or by proxy and entitled to vote, shall have one vote for each Erf or Unit registered in his name;

19.2.2 if an Erf or Unit is registered in the name of more than one (1) Person, then all such co-owners shall jointly have only one vote;

19.2.3 if any matter to be voted on relates to the sectional title scheme, voting on such matter shall be conducted in terms of the management rules of the

sectional title scheme and shall only be voted on by the Members of the body corporate of the sectional title scheme and be conducted in terms of such rules.

- 19.3 Save as expressly provided for in this Constitution, no Person other than a Member and who shall have paid every Levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting.
- 19.4 Voting at general meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded according to law.
- 19.5 Resolutions shall be passed by simple majority vote, save with respect to amendments to this Constitution, as provided for in **Clause 26** hereof.
- 19.6 If a poll is duly demanded it shall be taken in such manner as the Chairman of the meeting may direct either at once or after an interval or adjournment.
- 19.7 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by the Chairman whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 19.8 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:
- 19.8.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
- 19.8.2 the Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 19.9 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting whose decision shall be final and conclusive.
- 19.10 A declaration made in good faith by the Chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed, as the case may be.
- 19.11 Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a trustee or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the Members entitled to vote.

20 ACCOUNTING RECORDS

- 20.1 The Trustees shall cause such accounting records as are prescribed by section 284 of the Companies Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.

- 20.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Trustees think fit, and shall always be open to inspection by the Trustees.
- 20.3 The Trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by Members not being Trustees, and no Member (not being a trustee) shall have any right of inspecting any accounting records or documents of the Association except as conferred by the Companies Act or authorised by the Trustees.
- 20.4 The Trustees shall from time to time cause to be prepared and laid before the Association in general meeting such financial statements as are referred to in sections 286 and 288 of the Companies Act.
- 20.5 A copy of the annual financial statements which are to be laid before the Association in annual general meeting shall, not less than twenty one (21) days before the date of the meeting, be sent to every Member of the Association: provided that this article shall not require a copy of those documents to be sent to any Person of whose address the Association is not aware.

21 SERVICE OF NOTICES

- 21.1 The Association may give notices to any Member either personally, or by sending it by post in a prepaid letter addressed to such Member at his registered address or at the address (if any) within the Republic of South Africa supplied by him to the Association for the giving of notices to him.
- 21.2 Notice of every general meeting shall be given:
- 21.2.1 to every Member of the Association;
- 21.2.2 to the auditors for the time being of the Association;
- provided that no other Person shall be entitled to receive a notice of general meetings.
- 21.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 21.4 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 21.5 When a given number of days' notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.

22 INDEMNITY

- 22.1 All Trustees and the auditors shall be indemnified against any liabilities *bona fide* incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any Person/s by a court.
- 22.2 Every trustee, servant, agent and employee of the Association, and the auditors, shall be indemnified by the Association against (and it shall be the duty of the Trustees out of

the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such Person or Persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such Person or Persons in the discharge of any of his/their respective duties.

23 GENERAL

- 23.1 The Association may enter into agreements with any third party for the provision of Facilities and services to or for the Members and may Levy charges in respect of the provision thereof, or may pass on such costs direct to the Members.
- 23.2 The provisions of this Constitution shall be binding upon all Members and, insofar as they may be applicable to all Persons occupying any Erf or Unit by, through or under any Member, whatever the nature of such occupation.
- 23.3 No Member ceasing to be a Member of the Association for any reason shall (nor shall such Member's, executors, curators, Trustees or liquidators) have any claim upon or interest in or right to the funds or any property or assets of the Association.
- 23.4 The Association may claim from any Member or his estate any arrear levies and interest or other sums due from him to the Association at the time of his ceasing to be a Member.
- 23.5 Any Person using any of the services, land or Facilities of the Association does so entirely at his own risk.

24 DISPUTES

- 24.1 Any dispute arising out of or in connection with this Constitution must be determined in terms of **Clauses 24.2 to 24.11** (both inclusive), except when an interdict is sought for urgent relief, which may be obtained from a court of competent jurisdiction.
- 24.2 On a dispute arising, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within fourteen (14) days of such notice, either of the parties may refer the dispute to determination in terms of **Clauses 24.1 to 24.11** (both inclusive).
- 24.3 If a party exercises his right in terms of **Clause 24.2** to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of ten (10) years experience in their field:
- 24.3.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
- 24.3.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
- 24.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
- 24.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer;
- 24.3.5 if the dispute relates to any other matter, such other independent and suitably qualified Person.

- 24.4 If the parties are unable to agree either on the person referred to in **Clause 24.3** or on the classification of the dispute within a period of seven (7) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person in question shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope or its successor/s.
- 24.5 Any person agreed upon and nominated as aforesaid ("the expert"), shall in all respects act as an expert and not as an arbitrator.
- 24.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 24.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within twenty one (21) days or so soon thereafter as possible, after it has been demanded.
- 24.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 24.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between party and party or as between attorney and client.
- 24.10 The provisions of **Clauses 24.1 to 24.11** (both inclusive) constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw there from or claim in any such proceedings that it is not bound by such provisions.
- 24.11 The provisions of **Clause 24.1 to this Clause 24.11** (both inclusive) shall be deemed to be severable from the rest of this Constitution and shall remain binding and effective as between the parties notwithstanding that this Constitution may otherwise be cancelled or declared of no force and effect for any reason.

25 ESTATE MANAGER

- 25.1 The Trustees shall be entitled to appoint an Estate Manager to control, manage and administer the development and the Common Property and to exercise such powers and duties as may be entrusted to the Estate Manager, including the right to collect levies.
- 25.2 The terms and conditions of the appointment of the Estate Manager shall be in the discretion of the Trustees as the case may be.

26 AMENDMENT

- 26.1 No amendment of whatever nature to this Constitution shall be effected without the prior written consent of the local authority;
- 26.2 Every amendment of this Constitution of whatever nature including any addition thereto, deletion therefrom or substitution thereof shall require the approval of at least 75% (seventy five per centum) of the total number of votes allocated to Members of the Association which majority shall be expressed at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to comply with the requirements for the convening of a meeting, set out in specific terms the proposed amendment.