



L A M P I E S B A A I

**CONSTITUTION
OF
THE HOMEOWNERS' ASSOCIATION
OF
LAMPIESBAAI ESTATE**

Registration no:9208/081/18/3

Amended – Approved by AGM 11 Dec 2021

1. NAME

The name of the Association is LAMPIESBAAI HOMEOWNERS' ASSOCIATION

2. DEFINITION

In this Constitution, unless the context indicates the contrary the following words shall have the meanings hereinafter assigned to them:

2.1 "Architectural Review Committee" means the committee established by EXCO and whose functions are described in Clause 17;

2.2 "the Association" shall mean the LAMPIESBAAI HOMEOWNERS' ASSOCIATION;

2.3. "days" shall mean calendar days;

2.4 "Erf" means a portion of land situated on the Estate registered or capable of being registered in a deeds registry;

2.5 "the Estate" shall mean the Township Area currently known in its entirety as LAMPIESBAAI and which comprises a subdivision of erf 2636, St Helena Bay;

2.6 "EXCO" means the Executive Committee of the Association referred to in article 6;

2.7 "Local Authority" means the Local Authority that has jurisdiction over the Estate being the Saldanha Bay Municipality;

2.8 "member" shall mean a member as defined in clause 4 hereof; 2

2.9 "person" shall include a Company, Club, Partnership, Trustees for the time being of a Trust, or other Association of persons entitled in law to hold title of immovable property;

2.10 "resident member" shall mean a resident member as defined in Clause 6.3 hereof;

2.11 Words importing the singular number shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter gender shall include the masculine and feminine genders;

3. OBJECTIVES OF THE ASSOCIATION

The objectives of the Association are:

- 3.1. to oversee, regulate and control the harmonious development of the Estate and to ensure and promote the general high standard of the Development;
- 3.2. to own, control, improve and maintain the Common Property and enforce the Environmental Management Plan that may be implemented;
- 3.3. to own, control, improve and maintain and to insure where necessary the building, structures, installations, and equipment relating to the Common Property;
- 3.4. to institute, control and pay for measures relating to security;
- 3.5. to promote, advance and control the communal interests of owners and residents;
- 3.6. to control the nature and position of buildings, structures, installations, and equipment relating to the erven or sectional title units and to ensure compliance with the approved Design Guidelines and controls for the Estate;
- 3.7. to take action including the imposition of fines, or the institution of proceedings in a court of law, as may be deemed fit by EXCO, in relation to the non-compliance by any Member of any of the requirements of this Constitution or the Estate rules;

4. MEMBERS

- 4.1. The Association shall be organized without capital, and membership thereof shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more erven in the Estate.
- 4.2. Upon registration of ownership, membership of the Association shall be automatic and compulsory and members shall be obliged to comply with the provisions of this Constitution.
- 4.3. No person shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf in the Estate provided that in the event of a member subdividing his erf or opening a sectional title register in respect of his erf then he shall be substituted as a member of the Association by:
 - 4.3.1. any homeowners' association (whether or not registered as a Section 21 company in terms of the Companies Act No. 61 of 1973) which may be constituted for purposes of administering the communal affairs of the registered owners of the portions of such subdivided erf; or
 - 4.3.2. the body corporate of the sectional title scheme registered in respect of such erf; which substitution shall become effective as from the date upon which such homeowners'

association is constituted or, in case of a Section 21 company, is registered or the body corporate comes into being in terms of the relevant provisions of the Sectional Titles Act No. 95 of 1986; provided further that in the event of a member subdividing his erf and no homeowners' association is formed for purposes of administering the communal affairs of the registered owners of the portions of such subdivided erf then the registered owners of such portions shall each become a member of the Association upon registration of such ownership.

- 4.4. Each member shall be entitled to ONE (1) vote of each erf owned in the Estate. Ownership of an erf in undivided shares shall constitute only one membership, which membership shall be represented by one individual in terms of the provisions of Clause 7.10 hereof.
- 4.5. Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of one or more erven in the Estate to the new member.
- 4.6. Every member shall pay a monthly subscription to the Association, the amount of which shall be determined by EXCO in terms of Clause 9 hereof. The subscription so determined shall be payable in respect of each erf owned by a member.
- 4.7. Although the LAMPIESBAAI Development (or such other name as it may in future be known as) will be undertaken in phases, only one overall Association will be established. However, should the Saldanha Bay Municipality or its successor in title, when approving the relevant development Plan or any subdivision or other scheme in respect of an erf, impose a condition in terms whereof a specific portion/s of the development or such erf should have its own set of conduct rules, then such rules will be subject to the provisions of this Constitution.

Rights and Obligations of Members

- 4.8. Every Member shall comply with:
 - 4.8.1. the provisions of this Constitution, the Estate Rules and all other rules or regulations made or promulgated by the Association or EXCO;
 - 4.8.2. any agreement concluded by the Association or EXCO insofar as such agreement may directly or indirectly impose rights or obligations on a Member;
 - 4.8.3. any directive given by the Association, or EXCO, in the enforcement of the provisions of this Constitution.
- 4.9. Save as may be provided for herein, the rights and obligations of a Member are not transferable, and every Member shall:
 - 4.9.1. to the best of his ability further the objects and interests of the Association;

- 4.9.2. observe all directives made or given pursuant to the provisions of the Constitution, and
- 4.9.3. be jointly liable with the other Members for expenditure incurred in connection with the Association.
- 4.10. The Member shall not let or otherwise part with the occupation of his Erf, whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by all the provisions of the Constitution, the Management Rules and all other rules or regulations made or promulgated by the Association or EXCO. Members shall at all times remain bound by the provisions of the Constitution and will be required to ensure and procure compliance therewith by such occupier. Members shall be liable for the acts or omissions of all persons occupying his Erf whether lawfully or unlawfully including without limitation guests, employees, invitees, contractors, sub-contractors, or agents.
- 4.11. The Member shall not be entitled to exhibit any signboards, notices, advertising boards, neon signs and nameplates on the interior or exterior of buildings situated on an Erf or anywhere within the Development on Common Property without the prior written approval of EXCO and subject to any conditions that may be imposed by EXCO.

5. EXERCISE OF POWERS OF THE ASSOCIATION

The powers of the Association other than those to be exercised by the members in a General Meeting, shall be exercised by the Executive Committee (EXCO).

6. EXECUTIVE COMMITTEE

Composition

- 6.1. The number of EXCO members shall be determined from time to time by the members of the Association in a General Meeting, provided that there shall not be less than THREE (3) nor more than SEVEN (7) EXCO members.

Election of members

- 6.2. EXCO members shall be elected annually at the Annual General Meeting and shall, subject to the provisions herein contained, remain in office until the following Annual General Meeting.
- 6.3. Not only resident members but all members shall be eligible for election to EXCO. A resident member shall be a member who resides permanently in the Township Area, provided that any member who resides for not less than EIGHT (8) months in a calendar year in the Estate shall be deemed to be a resident member.
- 6.4. Nominations of candidates for election to EXCO at any meeting shall be in writing, signed by TWO (2) members and accompanied by the written consent of the candidate nominated, so as to be received at the *domicilium* of the Association not later than FORTY-EIGHT (48) hours before the meeting.

6.5. EXCO members may fill any vacancy in their number or co-opt any additional member, provided that the number of EXCO members shall not exceed SEVEN (7). Any EXCO member so appointed or co-opted shall hold office until the next Annual General Meeting when he shall retire and be eligible for re-election as though he had been elected at the previous Annual General Meeting.

6.6. Only members in good standing may be elected to EXCO.

Vacation of Office

6.7. An EXCO member shall cease to hold office as such if:

- 6.7.1. by notice in writing to EXCO, he resigns his office;
- 6.7.2. he is or becomes of unsound mind;
- 6.7.3. he surrenders his estate as insolvent or his estate is sequestrated;
- 6.7.4. he is convicted of an offence which involves dishonesty;
- 6.7.5. he absents himself from THREE (3) consecutive meetings of EXCO without special leave of absence from EXCO;
- 6.7.6. by resolution of a General Meeting of the Association, he is removed from his office;
- 6.7.7. he ceases to be a member; or
- 6.7.8. he is in arrears with payment of his monthly levies for a period of 3 months.

Meetings and Procedures

6.8. EXCO members may give notice of convening meetings, meet together for the dispatch of business, adjourn, or otherwise regulate their meetings as they think fit. It shall not be necessary to give notice of a meeting to any EXCO member for the time being absent from the Republic.

6.9. An EXCO member may at any time convene a meeting of EXCO by giving to the other EXCO members no less than TEN (10) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in case of urgency such shorter notice as is reasonable in the circumstances may be given.

6.10. TWO (2) EXCO members shall form a quorum where EXCO consists of either THREE (3) or FOUR (4) members; THREE (3) EXCO members shall form a quorum where there are FIVE (5) or SIX (6) members, and where there are SEVEN (7) EXCO members, FOUR (4) members shall

form a quorum. If at any meeting a quorum is not present within THIRTY (30) minutes of the appointed time of the meeting, such meeting shall stand adjourned to the third business day thereafter at the same time.

- 6.11. If the number of EXCO members falls below the number necessary to form a quorum, the remaining EXCO members may continue to act, but only for the purpose of convening a General Meeting of members.
- 6.12. At the commencement of the first meeting of EXCO members after each Annual General Meeting, EXCO members shall elect a Chairman from their number who shall hold office as such until the end of the next ensuing Annual General Meeting provided that should the Chairman during his term of office resign or cease to be a member of EXCO, the members of EXCO shall elect a new "Chairman" and such Chairman shall hold office for the remaining period in respect of which the first mentioned Chairman was elected and he shall have the same rights of voting.
- 6.13. All matters at any meeting of EXCO shall be determined by a majority of those present and voting.
- 6.14. EXCO members may from time to time appoint a person to be Secretary of the Association, to fulfil the normal functions of a Secretary and, inter alia, to attend all meetings and keep minutes thereof.

Powers of EXCO

- 6.15. The management and administration of the Association shall vest in EXCO which may exercise all such powers of the Association and do, on behalf of the Association, all such acts including the making of rules as may be exercised and done by the Association itself and as are not by its Constitution required to be exercised or done by the Association in General Meeting. Without in any way limiting the generality of the foregoing, such powers shall include, but not be limited to, the following:
 - 6.15.1. The determination of what constitutes appropriate standards for community living and the maintenance of properties in the Township Area;
 - 6.15.2. the performance of such acts as are necessary to accomplish the objects expressed or implied herein;
 - 6.15.3. to draft and implement rules, regulations, and directives pertaining to
 - architectural and building guidelines applicable to the development of the Estate and units; and
 - codes of conduct or estate rules applicable to everyone taking occupation on the Estate, including visitors of members;

- 6.15.4. to impose fines or penalties in respect of any contravention of the rules, directives and guidelines referred to in clause 6.15.3;
- 6.15.5. the investment and re-investments of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 6.15.6. the operation of a banking account with all powers required by such operations;
- 6.15.7. the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- 6.15.8. the employment and payment of agents, consultants, servants, and any other parties;
- 6.15.9. to institute proceedings in the name of the Association, to defend actions in the name of the Association and to appoint legal representation for this purpose; in particular and without derogation from the generality of the foregoing, the power to sue shall include the right to sue members for the payment of arrear monthly subscriptions and/or for the carrying out of their obligations in terms of the Constitution;
- 6.15.10. the levying of a monthly subscription payable by members as provided in Clauses 4 and 9 hereof and subject to the said Clauses, the determination from time to time and as frequently as they may consider necessary or expedient, of the amount of the subscription to be paid to the Association by its members;
- 6.15.11. to prescribe the architectural style and the materials to be used in respect of any buildings to be erected or in respect of any alterations or additions to be carried out to existing buildings and in particular to control the exterior design of such buildings and the materials and colours used so as to ensure an attractive, aesthetic and pleasing character to the buildings in the Estate. Should any disputes arise regarding the architectural style and materials to be used, EXCO shall be entitled to appoint an aesthetic committee to determine the architectural style and material to be used;
- 6.15.12. the provisions of 6.15.11 shall apply mutatis mutandis to other site works on a member's property, including, but not limited to, fences, pergolas, boundary walls and paving;

Validity of Acts of EXCO Members

- 6.16. Any act performed by EXCO members shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any EXCO member, be as valid as if such EXCO member has been duly appointed in office.

Remuneration

6.17. EXCO members shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in connection with and incidental to the performance of their duties as EXCO members but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

Indemnity

6.18. No EXCO member shall be liable to the Association or any member thereof, or to any other person whomsoever for any act or omission by himself, by the Association or by its servants or agents. An EXCO member shall be indemnified by the Association against any loss or damage suffered by him in consequence of any purported liability, provided that such EXCO member has, upon the basis of information known to him, or which should reasonably have been known to him, acted in good faith and without gross negligence.

7. MEMBER'S MEETINGS

7.1. Annual General Meetings shall be held once in every year at such a time and place as may be determined by EXCO, but so that no more than FIFTEEN (15) months shall be allowed to elapse between any TWO (2) such successive meetings. The business to be done at the Annual General Meeting shall include:

7.1.1 a report on the affairs of the Association, which report is to be submitted by EXCO and which report shall be available for inspection at the *domicilium citandi et executandi* of the Association and such other address as may be determined by the EXCO at least SEVEN (7) days prior to the Annual General Meeting;

7.1.2 the election of members to EXCO;

7.1.3 the adoption of the Balance Sheet and accounts;

7.1.4 the consideration of any Resolutions concerning the affairs of the Association of which due notice has been given;

7.1.5 Appointment of Auditor for the ensuing year;

7.1.6 any other business.

Special General Meeting

7.2. EXCO may call a Special General Meeting whenever it thinks fit. Special General Meetings shall also be called upon the written request of not less than TEN (10) members, directed to the Chairman of EXCO.

Notice of Meetings

7.3. An Annual General Meeting shall be convened by giving not less than TWENTY-ONE (21) days' notice in writing and the Minutes of the previous Annual General Meeting shall be sent to members together with the notice convening the meeting. A Special General Meeting shall be called by giving not less than FOURTEEN (14) days' notice in writing. Such notice shall be inclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting and the general nature of the matter to be discussed; provided that any meeting shall, notwithstanding that it is called by shorter notice than that specified, be deemed to have been correctly called if it is so agreed by NINETY PERCENT (90%) of the members present.

Validity of Meetings

7.4. The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that meeting. The provisions of this Clause shall not apply to EXCO meetings.

Quorum

7.5. No matter shall be discussed at any meeting unless a quorum is present when the meeting commences. For all purposes, the quorum shall be not less than TEN (10) or half of the total number of members, whichever shall be the lesser, and consisting of members present in person or represented by proxy.

Adjournment

7.6. If within a half hour from the time appointed for the holding of a meeting, a quorum is not present, the meeting, if convened on the requisition of member, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum. All members of the Association shall be given notice of such adjourned meeting.

Chairman

7.7. The Chairman of EXCO shall preside at every General Meeting, but in the absence of the Chairman, the members present shall choose a Chairman from the members of EXCO, or if no such members are present, they shall choose some member present to be Chairman of the meeting.

Votes

7.8. At the General Meetings, a Resolution put to the vote of the meeting shall be decided on a poll which shall be taken immediately in accordance with the following provisions:

- 7.8.1. Each member present in person shall have ONE (1) vote for every erf registered in his name;
- 7.8.2. Each person present as proxy for a member shall have ONE (1) vote for every erf registered in the name of the member for whom he is proxy;
- 7.8.3. Each member and person present as proxy for a member shall orally announce how he casts each vote to which he is entitled as aforesaid;
- 7.8.4. All resolutions shall be by simple majority of those members present in person or proxy at the meeting and voting;
- 7.8.5. The Chairman of the meeting shall count the votes cast for and against the Resolution and shall declare it carried or lost as the case may be;
- 7.8.6. A declaration by the Chairman of the result of the poll and an entry thereof in the Minute Book of the Association shall be conclusive evidence of that fact.

Incapacity

- 7.9. Should any member be declared incapable of managing his own affairs, or a prodigal or insolvent, or in the case of a Company, placed under Judicial Management, or into liquidation, such member shall be represented by his *Curator Bonis*, Trustee, Judicial Manager or Liquidator as the case may be, who shall be entitled to vote on his behalf, either personally or by proxy.

Co-Ownership

- 7.10. If two or more persons are joint registered owners of an erf, then in voting upon any question, the vote of the senior, who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other registered owners of the erf, and for this purpose, seniority shall be accepted to the exclusion of the votes of the other registered owners of the erf, and for this purpose, seniority shall be determined by the dates of birth of the joint owners as recorded in Deeds Registry, Cape Town. In the event of an erf being jointly owned by a natural person and a Company, then in such event the vote of the natural person, whether in person or by proxy, shall be accepted to the exclusion of the votes of the directors of the Company.

Proxy

- 7.11. Votes may be given either personally or by proxy.
- 7.12. The instrument appointing a proxy shall be in writing by the appointer, or common form, or any form approved by EXCO under the hand of the appointer or his Attorney or agent, duly authorized in writing, or if such appointer is a Company, under the hand of an officer duly authorized as such.

- 7.13. The instrument of appointing a proxy, together with the Power of Attorney (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the *domicilium citandi* of the Association at least TWENTY-FOUR (24) hours before the time appointed for holding the meeting, or adjourned meeting, at which the person named in such instrument proposes to vote, otherwise the person so named shall not be entitled to vote in respect thereof.

Companies/Trusts

- 7.14. Any Company which is a member of the Association may, by Resolution of its Directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of the Association and the person so authorized shall be entitled to exercise the same powers on behalf of the Company which he represents as that Company could exercise if it were an individual member of the Association. The foregoing provisions shall apply mutatis mutandis in the case of a Trust.

THE STATUS OF THE ASSOCIATION

8. The Association shall be an Association in terms of Section 29 of Ordinance 15 of 1985 in terms whereof:

- 8.1. It shall have legal personality, capable of suing and being sued in its own name;
- 8.2. None of the members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by EXCO in terms hereof; and
- 8.3. It shall be not for profit, but for the benefit of the members of the Association.

9. MONTHLY SUBSCRIPTION

- 9.1. The Association, through EXCO, shall be entitled to levy a monthly subscription to defray the costs of managing and administering the Association, which costs shall include, but not be limited to, the costs of security, garden services to maintain public open spaces and the maintenance of communal buildings.
- 9.2. It is recorded that each and every owner of an Erf in the Estate shall be liable for the payment of monthly subscriptions, as ~~and~~ may be imposed by the Association, and/or EXCO in terms of this Constitution
- 9.3. The monthly subscriptions will be applied to meet all the expenses which the Association has incurred or to which EXCO reasonably anticipates the Association will be put in the attainment

of the Association's objects or pursuit of the Association's business. Such subscription may be fixed and collected monthly in advance.

9.4. The amount of the monthly subscription shall be determined annually by EXCO by using the annual budget of the Association as prepared by EXCO and the number of building opportunities allocated to each erf as basis for such calculation. For purposes, hereof:

9.4.1. A single residential erf shall be regarded as a single (one) building opportunity;

9.4.2. The number of building opportunities in respect of all other erven shall, in respect of each such erf, be the maximum number of residential sectional title units which, in the case of a sectional title scheme, may be erected on that erf and, in the case of a subdivision of such erf, the maximum number of residential units/portions into which such erf may be subdivided, in both cases, regard being had to the Ministerial Approval and Development Agreements.

9.4.3. An erf which comprises the consolidation of one or more single residential erven shall be regarded as many building opportunities as the number of erven that were consolidated.

9.5. The annual budget of the Association shall be accepted by majority vote of the members of the Association in person or represented by proxy present in Annual General Meeting.

9.6. The monthly subscription shall commence on the date fixed by EXCO. The first monthly subscription shall become due and payable on the day fixed for commencement. The monthly subscription for every subsequent calendar month shall become due and payable on the first day of each such subsequent calendar month.

9.7. If the monthly subscription is not paid within TEN (10) days of the due date, same shall bear interest from the date of delinquency at a rate per annum equivalent to the prime overdraft rate charged from time to time by the Association's Bankers plus FIVE PER CENT (5%) and the Association may institute legal proceedings against the member for the recovery thereof and the costs on an attorney and own client scale of such proceedings shall be added to the subscription and interest. A member whose subscription together with any interest and costs is unpaid shall not be entitled to vote at any General Meeting.

9.8. In addition to Clause 9.7., the EXCO may, in its sole discretion levy a monthly administration fee, in respect of any attempts to recover arrear subscription from members.

10. FINANCIAL YEAR AND ACCOUNTS

10.1. The financial year of the Association ends at end of February of each year.

10.2. EXCO shall cause proper books of account of the administration and finance of the Association to be kept at the *domicilium* of the Association and shall produce an annual audited Balance Sheet.

10.3. EXCO shall cause to be laid before the Association in Annual General Meeting, the annual independently audited Financial Statements.

11. DOMICILIUM

11.1. For all purposes arising out of this Constitution including the giving of notices and the serving of legal process, the Association and each member choose *domicilium citandi et executandi* as follows:

11.1.1. The Association - PO Box 734, Lampiesbaai, 7390 St. Helena Bay; and

11.1.2. Each Member - At the erf registered in the name of the owner whether or not such erf is vacant

provided that the Association or any member may at any time by notice change his *domicilium citandi et executandi* to some other address, which new address shall be in the Republic of South Africa and shall not be a Post Office box or post restante; and provided further that such change shall become effective only FOURTEEN (14) days after receipt of the notice in question.

11.2. Any written notice which may be required to be given in terms of this Constitution may be delivered by hand or may be given by the dispatch of such notice in writing by pre-paid registered post, in which event such notice shall be deemed to have been received FIVE (5) days after the posting thereof from any Post Office within the Republic of South Africa. The exhibition of the certificate of registered item shall be full and complete proof of the date of dispatch of the said notice.

12. WINDING UP

12.1 The Association may be wound up by a Resolution of the members in General Meeting provided that:

12.1.1 NINETY PER CENT (90%) of members present or represented at the meeting, duly convened, [~~and, provided Clause 12 is still applicable, the Developer,~~] vote in favour thereof; and

12.1.2 the relevant local authority consents thereto.

12.1.3 In the event of such winding up, it shall be the duty of EXCO, or a Receiver to be appointed by it, to convert the Association's assets into cash, pay all the liabilities of

the Association and thereafter distribute the rest to all the members in accordance with the number of erven registered in the name of each member. If, within a period of TWELVE (12) months from such distribution, EXCO or the Receiver is unable to find, locate or trace any member, such member's share shall then be paid to the Guardians' Fund or such other fund as may be required by Law.

13. RULES AND REGULATIONS AND AMENDMENTS OF THE CONSTITUTION

Any amendment or addition to the Constitution may be effected only by a Resolution passed by a Seventy-Five Percent (75%) majority at a General Meeting, after written notice thereof setting out such amendment or addition in full, has been given in the notice calling the meeting;

14. INTERPRETATION / DISPUTES

14.1. Any dispute whatsoever between members or between the Association and a member/s concerning the interpretation of this Constitution and/or any rules and regulations of the Association shall, subject to the provisions of Clauses 15.2 or 15.3, as the case may be, be referred for decision to a practicing Senior Advocate of the Cape Bar of not less than FIVE (5) years standing, or in the event of a dispute in the case of Clauses 6.15.11 and 6.15.12, to an Architect of not less than FIVE (5) years standing, agreed upon by the parties to the dispute, who shall then, acting as an expert and not as an Arbitrator, determine the dispute and his decision shall be final and binding upon the parties and capable of being enforced in a Court of Law.

14.2. In the event of the parties being unable to agree upon the Senior Advocate who should be appointed to determine the dispute, then he shall be nominated by the President of the Cape Bar Council.

14.3. In the event of the parties being unable to agree upon the Architect who should be appointed, he shall be nominated by the President of the Cape Provincial Institute of Architects.

14.4. Notwithstanding anything to the contrary herein contained, EXCO shall at its sole discretion be entitled to institute proceedings in the Court having jurisdiction for any relief to which it is entitled under the provisions of this Constitution, including the recovery of arrear subscription.

15. RESTRICTION ON ALIENATION

15.1. No Member shall in any manner Alienate or transfer an erf unless:

- 15.1.1. the proposed transferee, new shareholder of a company or new members of a close corporation has irrevocably bound himself to become a Member of the Association and to observe its Constitution for the duration of his ownership of the relative Erf;
- 15.1.2. EXCO has given its prior written consent thereto and has issued a clearance that all amounts owing to the Association by such Member have been paid and that the Member is not in breach of its Constitution or rules;
- 15.1.3. the Association has given its prior written consent thereto and has issued a clearance certificate which will only be issued if a clearance fee is paid by the Member concerned to the Association and
- 15.1.4. the proposed transferee acknowledges in writing that upon the registration of transfer of the erf into his name he shall *ipso facto* become a Member, subject always to the provisions of the Association's Constitution.
- 15.2. The provisions of Clause 15.1 shall apply *mutatis mutandis* to any alienation or transfer of an undivided share in any Erf.
- 15.3. Restrictions will be registered against the title deeds of all Erven in order to give effect to the terms of this Clause. The Members shall however be bound by this Clause whether or not such restrictions are registered.
- 15.4. Each Member shall comply with all conditions imposed by the Local Authority or any other statutory body relating to Erven and shall be solely responsible for non-compliance with such conditions.
- 15.5. It is recorded that a clearance certificate from EXCO is required by any Member prior to transfer of any Erf. Further, that an inspection and clearance fee, as determined by EXCO from time to time, will be payable by the owner of the Erf to the Association, prior to transfer of any such Erf by the owner.
- 15.6. A Clearance Certificate may be refused if any amount is owing by a Member to the Association from any cause whatsoever.

16. SUBMISSION OF PLANS

- 16.1 No Member may commence with any construction or erection of any new improvements which falls outside of those improvements already approved in terms of the initial Site Development Plan including any additions or alterations to any existing structures on an Erf, before the approval of the plans for such improvements by an Architectural Review Committee to be established and appointed by EXCO.
- 16.2. A full set of the proposed building plans, supporting plans and information drafted by a registered architect as required in terms of the Design Guidelines, indicating both

construction and design details shall be submitted to the Architectural Review Committee for consideration and approval.

- 16.3. the Member concerned shall submit the building plans to the Local Authority for approval after it was approved by the Architectural Review Committee.
- 16.4. The Architectural Review Committee shall certify that the building plans comply with the Site Development Plan, the building and Landscaping Guidelines and all other relevant conditions.
- 16.5. Having obtained the approval of the Architectural Review Committee, the Member concerned shall comply with all conditions and standards imposed by the Local Authority or other statutory body insofar as these may be additional to the requirements of the Association, and
- 16.6. The Association may impose a scrutiny fee, which if imposed will be paid by the Member concerned, as well as any additional scrutiny fees should any amended or further plans be required or submitted.
- 16.7. Whenever they consider that the appearance of any Erf or buildings owned by a Member is such as to be unsightly or injurious to the amenities of the surrounding area or the Estate generally, EXCO may serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the Member fail within a reasonable time, as specified in such notice, to comply therewith, EXCO or their employees, agents or contractors may enter upon the Land or buildings concerned and take such steps as may be necessary and recover the costs thereof from the Member concerned, which costs shall be deemed to be a debt owing by that Member to the Association. EXCO shall be obliged in giving such notice to act reasonably. In the event of any dispute, the Member shall bear the onus of establishing that EXCO acted unreasonably.

17. RULES AND CODE OF CONDUCT MADE BY ASSOCIATION

17.1. Subject to the provisions of this Constitution and to any directions given by the Association in general meeting and to any conditions imposed by the Local Authority or the Developer or any other statutory body, EXCO may make rules, codes of conduct and may vary or modify the same from time to time, in connection with:

17.1.1. the determination or control of security measures;

17.1.2. the control of the building operations and the conduct of builders and contractors;

17.1.3. the control and conduct of persons for the prevention of nuisance of any nature to any resident;

17.1.4. the control and conduct of persons using the Common Property;

- 17.1.5. the use of roads, infrastructure, services amenities and facilities in the Common Property including the right to charge a reasonable fee for the use of the amenities and facilities;
 - 17.1.6. the furtherance and promotion of any of the objects of the Association and for the better management of the affairs of the Association and for the advancement and protection of the interests of the Members and residents.
- 17.2. For the enforcement of any rules or any of the provisions of this Constitution generally EXCO may:
- 17.2.1. give notice to the Member concerned to remedy any breach within such period as they may determine;
 - 17.2.2. take or cause to be taken such action as they deem fit to remedy the breach of which the Member concerned may be guilty and debit the cost thereof, which shall be a debt due to the Association, to his monthly subscription account, and which shall be payable as part of his subscription on the first day of the following month, and
 - 17.2.3. impose a fine on the Member concerned which amount shall be a debt due to the Association, shall be debited to his monthly subscription account, and which shall be payable as part of his subscription on the first day of the following month.
- 17.3. Should EXCO institute legal proceedings against any Member or resident for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member concerned, calculated as between attorney and own client, including tracing fees and collection commission
- 17.4. In the event of any breach of the rules or of any of the provisions of this Constitution by any person residing on an Erf or his guests, employees, contractors, and sub-contractors or agents, such breach shall be deemed to have been committed by the Member himself; but without prejudice to the foregoing, EXCO may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the Member concerned.

18. PENALTIES

- 18.1. Any owner or occupant contravening any of the terms and conditions of this Constitution, may receive a written warning from EXCO or its agent, as well as a penalty, the amount to be determined by EXCO from time to time, for each infringement. Should the transgressor be a guest of an inhabitant, EXCO reserves the right to act in terms of this rule against such inhabitant, who shall be liable for the behaviour of his guest. This reservation does not impinge on any other rights EXCO may have against any such transgressor or inhabitant.

18.2. Each penalty may be levied against the Member's monthly subscription account for each infringement and each Member will be liable to pay such amount promptly.

19. GENERAL

19.1. The provisions of this Constitution shall be binding upon all Members and, insofar as they may be applicable to all persons occupying any Erf through or under any Member, whatsoever the nature of such occupation.

19.2. No Member ceasing to be a Member of the Association for any reason, nor such Member's executors, curators, Trustees or liquidators, shall have any claim upon or interest in or right to the funds or any land or other asset of the Association.

19.3. The Association may claim from any Member or his estate all arrear payments and interest or other sums due to the Association at the time of his ceasing to be a Member for any reason.

19.4. Any person using any of the services, Land or facilities of the Association within the Estate does so entirely at his own risk.

19.5. The EXCO, may appoint service providers for the provision of any kind of service or product to the Development, the Members or Occupant. The Members, and/or Occupants will be bound by such appoint being made. This condition will be binding and of full force and effect on all appointments to be made or agreements to be concluded with such service providers, as may be provided for in the Constitution, or in the discretion of the EXCO.