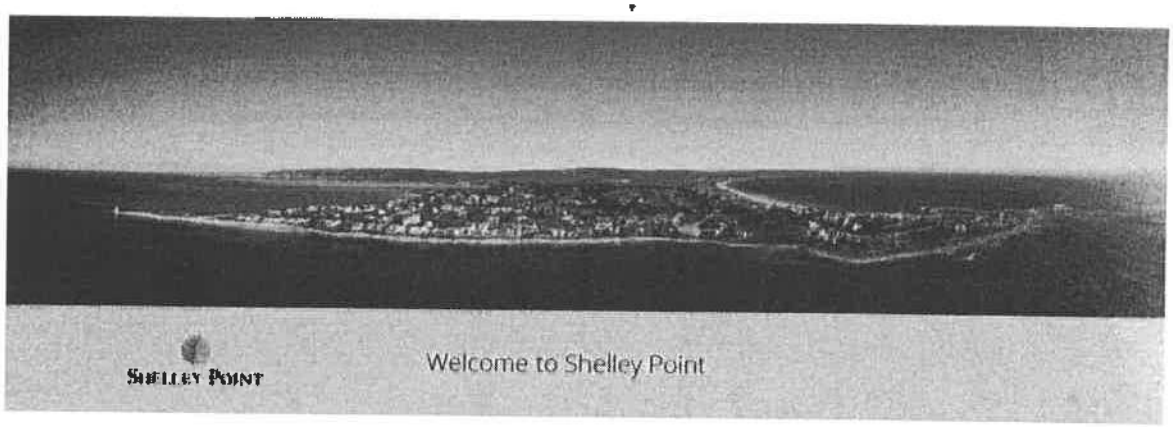
Shelley Point Home Owners' Association

CONSTITUTION

Dated

DECEMBER 2021



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1. HISTORICAL CONTEXT: ESTABLISHMENT OF THE HOME OWNERS' ASSOCIATION AND RELATED STATUTORY PROVISIONS

1.1 The Shelley Point Home Owners Association (HOA) was constituted as a Body Corporate in terms of Section 29 of the Land Use Planning Ordinance, (No15 of 1985), in accordance with the conditions imposed by the Premier of the Western Cape when approving in terms of Section 16 and 25 read with Section 42 of the 1985 Ordinance, as well as Section 137 of the Municipal Ordinance, 1974, the subdivisions of the Consolidated Erf comprising Erf No 3 and portions of Erven No's 1 and 2 in the Saldanha Bay Municipality, a local Municipality located within the West Coast District Municipality (Division of MALMESBURY) also known as the Shelley Point Estate.

1.2 Section 29 of the 1985 Ordinance in addition prescribes that the HOA must have a Constitution which must be approved by the Local Authority concerned.

1.3 The Constitution must contain provisions ensuring the HOA's control over and the maintenance of buildings, services and amenities arising from the subdivision concerned, and must provide for the implementation of the provisions of the 1985 Ordinance pertaining to Membership, and the liability of Members for expenditure.

1.4 According to the 1985 Ordinance, Members will be jointly liable for expenditure incurred in connection with the HOA. If the HOA fails to meet any obligation resting on it by virtue of the provisions of the Ordinance and the Members and/or the community is, in the opinion of the relevant Local Authority, adversely affected by such failure, the said Local Authority may take all steps required to rectify the failure and recover from the Members of the HOA the amount of any expenditure incurred by it in relation to such steps.

1.5 The 1985 Ordinance has been repealed by the Western Cape Land Use Planning Act, 2014 (No 3 of 2014) subject to the provision (section 78(1)) that any approval, designation, consent, right or authorisation issued, granted or in force in terms of a law repealed by the Act remains in force and is regarded to have been issued or granted in accordance with the Act and in terms of the corresponding provisions of applicable By-laws, subject to the conditions under which it was issued or granted, until withdrawn, amended, or extended in terms of applicable By-laws.

1.6 The Saldanha Bay Municipality By-law on Municipal Land Use Planning issued in accordance with the 2014 Act was published in an Extraordinary Provincial Gazette (No 7468, dated 13 August 2015) to take effect when the 2014 Act comes into operation in the Saldanha Bay Municipal Area. It provides, among others, that a home owners' association that came into being by virtue of a condition imposed under the 1985 Ordinance and that existed immediately before the commencement of this By-law, is regarded as an owners' association that came into being by virtue of a condition imposed by the Municipality in accordance with the 2015 By-law (See section 66 (7)).

1.7 The 2015 By-law, concurring with the 1985 Ordinance on the matters described in paragraph 1.1 to 1.4, establishes owners' associations as juristic persons which must have a constitution encapsulating provisions pertaining to the matters provided for in section 29(3) to (8) of the By-law. It, furthermore, prescribes processes and procedures (and the related legal matters) regarding owners' associations that ceased to function properly (See section 30), and, importantly, established the right of a land owner in relation to the development of land, to apply to the Local Authority for the disestablishment of a home owners' association, and/or the rectification of a failure by a home owners' association to meet its obligations in respect of the control over or maintenance of services (See section 15(2)(q) and (r)).

1.8 The legal status of the Estate and its constituent parts are therefore determined and regulated in accordance with the relevant provisions of the 2014 Act, as amended, and the relevant provisions of the 2015 By-law promulgated in accordance with empowering legislation, as amended from time to time by the Local Authority.

2. INTERPRETATION OF THE CONSTITUTION

This Constitution must be interpreted with due regard to the content of paragraph 1 and 3, the

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constitutional value framework and procedural provisions introduced by the Constitution of South Africa, 1996, as well as the provisions of national and provincial legislation and regulations and the By-laws of the Local Authority, as applicable, which will take preference over the Constitution and the Rules.

2.2 When a conflict occurs between the provisions of the Rules and the provisions of this Constitution, the provisions of this Constitution will take preference.

3. DEFINITIONS

3.1 The following words shall, unless the context clearly indicates a different meaning, have the meaning assigned to it in this paragraph:

1985 Ordinance	means the Land Use Planning Ordinance, 1985 (No 15 of 1985).
2014 Act	means the Western Cape Land Use Planning Act, 2014 (No 3 of 2014).
2015 By-law	means the Saldanha Bay Municipality By-law on Municipal Land Use Planning published in the Extraordinary Provincial Gazette (No 7468 of 13 August 2015) to take effect when the 2014 Act comes into operation in the Saldanha Bay Municipal Area.
Annual Budget	means the document tabled annually by the Committee at the AGM for consideration and approval, containing an appropriate exposition of the expected income and expenditure of the HOA for the following financial year, with appropriate comparisons with the income and expenditure of previous financial years, significant movements of funds, or any other report reflecting on matters affecting the future financial sustainability of the HOA.
AGM	means the Annual General Meeting of the Members of the HOA as contemplated in paragraph 17 of the Constitution.
Approval of 6 December 1994	means the approval by the Premier of the Western Cape of the rezoning and subdivision of Erven 1, 2 and 3, St Helena Bay (Phase 1, Shelley Point) in accordance with the relevant provisions of the Land Use Planning Ordinance, 1985 (No.15 of 1985) and the Municipal Ordinance, 1974 (No 20 of 1974).
Amending Approval of 14 March 1996	means the amendments approved by the Premier of the Western Cape to the Approval of 6 December 1994.
Attorney	means a legal practitioner who is admitted and enrolled as such under the Legal Practice Act, 2014, as amended.
Auditors	means a firm of auditors appointed by the HOA as prescribed in this Constitution, consisting of a person or persons accredited to perform an audit in terms of the Auditing Professions Act, 2005, as amended.
Building Design and Construction Rules	means the Rules pertaining to the matters

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	contemplated in paragraph 10.1.2.
Business Day	means weekdays other than Saturdays, Sundays, and South African Public Holidays.
Chairperson	means the Chairperson of the Trustee Committee, duly elected in accordance with this Constitution.
Clearance Certificate	means, subject to the provisions of paragraph 22.4, a written certification by the HOA that the owner of an Erf or Unit Erf has paid in full all Debts due and payable to the HOA (inclusive of any such additional amount/s the HOA may determine in the instance of the transfer of an Erf or Unit Erf), and that the owner has complied with the provisions of this Constitution and the Rules pertaining to the transfer of properties situated within the perimeter of the Estate.
Clearance Fee	means an additional amount, over and above the Clearance Levy imposed by the HOA, to cover administrative costs associated with the issuing of a Clearance Certificate.
Clearance Levy	means an amount, representing the total of at least 3 (three) Monthly Levies, payable in advance to the HOA before the issuing of a Clearance Certificate.
Coastal Public Property	means the property contemplated in section 7 of the National Environmental Management: Integrated Coastal Management Act, 2008 (No 24 of 2008), as amended (2014).
Committee	means, unless the context clearly indicates differently, the Trustee Committee of the HOA, consisting of the Trustees duly elected by the Members at the AGM and the Trustees duly co-opted by the Trustee Committee in accordance with the provisions of this Constitution.
Communal Property	means property of the HOA which may be used by Members, residents, and the public, subject to the provisions of this Constitution, the Rules, and the restrictions applicable to the Public Servitudes within the perimeter of the Estate.
Communal Facility	means a facility of the HOA situated on Communal Property which may be used by Members, residents, and the public, subject to the provisions of this Constitution and the Rules.
Constitution	means the Constitution of the HOA.
CSOS	means the Community Scheme Ombud Service Act, 2011 (No 9 of 2011) and the Regulations promulgated in terms of the Act, as amended from time to time.
Day	means weekdays.
Debt	means any amount, howsoever arising, owed and payable to the HOA, including but not limited to

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	amounts in respect of Monthly, Special, Statutory, Penalty and Clearance Levies; fees related to the issuing of Clearance Certificates; the transgression of the provisions of the Constitution and the Rules; late payment of amounts due and payable to the HOA; Community Centre services; and legal fees.
Delegate (HOA)	means the delegation of authority by the HOA to the Committee and mandating the Chairperson, or in his absence the Deputy Chairperson, or in his absence any member of the Committee authorised by the Committee to act in accordance with the delegated authority.
Delegate (Committee)	means the delegation of authority by the Committee to the Chairperson, or the Deputy Chairperson, or a committee of the Committee, or the Estate Manager to act in accordance with the delegated authority.
Delegation Framework	means, subject to the provisions of the Constitution prohibiting the delegation of certain actions, the approved document of the HOA containing a clear and detailed exposition of delegated authority and the associated restrictions, taking into account, among others, the reporting responsibilities of the delegated authorities and officials, the legal obligation to comply with the processes and procedures embedded in PAJA, PAIA and the principles of natural justice, and the imperative not to unduly restrict the authority of the Chairperson to represent the Committee as Chairperson in any matter, and the Estate Manager to act in accordance with the authority assigned to the position of Estate Manager.
Deliver	means the delivery of any Notice, either physically or electronically, to a Member in accordance with the addresses captured in the HOA's Member Register.
Designated Coastal Access Land	means the designated strips of land providing access to Coastal Public Property which are automatically subject to public servitudes, as contemplated in section 18 of the National Environmental Management Integrated Coastal Management Act, 2008 (No 24 of 2008), as amended (2014).
Developer	means Britannia Bay Developers (Pty) Ltd, and BBD shall have a cognate meaning.
Entitled to Exercise Membership Rights	means Members Eligible to Vote, participating in the formal activities of the HOA.
Erf	means an Erf and/or a Unit, depending on the context, regardless of its zoning, situated within the perimeter of the Estate.
Estate	means all the Phases of the development of the Shelley Point Estate, duly established in accordance with the provisions of the Land Use Planning Ordinance, 1985 (No.15 of 1985), the Western Cape Land Use Act, 2014 (No 3 of 2014), as amended, and

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	any other relevant statutory provision, to be managed in accordance with the terms and conditions of the applicable approved Town Planning and Resource Use Permits.
Estate Manager	means a person appointed as an employee by the HOA in the position of Estate Manager, or a position with a similar status, as the case may be, in accordance with the approved management structure and related delegation frameworks to undertake certain administrative and management functions of and on behalf of the HOA and the Committee, and includes any person duly appointed to act in the capacity of Estate Manager.
General Meeting	means any properly constituted Meeting of Members contemplated in paragraph 17 of the Constitution.
General Rules	means the Rules pertaining to the matters contemplated in paragraph 10.1.1.
HOA	means the Shelley Point Home Owners Association, established in accordance with the provisions of the Land Use Planning Ordinance, 1985 (No.15 of 1985), read with the Western Cape Land Use Act, 2014 (No 3 of 2014), as amended.
Levy	means an amount payable by a Member to the HOA as a Debt, determined from time to time by the Committee, and/or the Members at a General Meeting, and/or a Statutory Body, and, depending on the context, refers to Monthly, Special, Statutory, Penalty and Clearance Levies.
Levy-related Debt	means a Debt arising from the non-payment of Monthly, Special, Statutory, or Penalty Levies, inclusive of the interest on such Levies.
Local Authority	means, depending on the context, the West Coast District Municipality and/or the Saldanha Bay Municipality.
Management	means the Estate Manager or his delegate.
Managing Agent	means a person or entity providing certain agreed governance, management, administrative and related support services to the HOA, for reward, whether monetary or otherwise, who is not an employee of the HOA.
Member	means the owner, or collectively, the co-owners, of an Erf, or a Unit Erf, situated within the perimeter of the Estate and reflected as an owner or co-owner in the records of the Deeds Registry concerned in accordance with the provisions of the Deeds Registries Act, 1937 (No 47 of 1937), as amended.
Member Eligible to Vote	means, except regarding the veto right of the Developer in accordance with paragraph 9.21 of this Constitution, read with paragraph 9.15 to 9.18, a

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	Member who has paid in full all Debts due and payable to the HOA and who's membership has not been suspended by the HOA after following due process.
Membership Register	means the document and the information prescribed in paragraph 8.10. to 8.14 of the Constitution.
Membership Rights	means the rights of Members embedded in this Constitution.
Month	means a calendar month.
Monthly Levy	means a monthly amount payable by a Member to the HOA as a Debt, determined by the Members at a General Meeting, and payable in accordance with the provisions of paragraph 9 of the Constitution.
Municipality	means the Saldanha Bay Municipality situated within the West Coast District Municipality, established by Notice PN484/2000 issued in terms of the Local Government: Municipal Structures Act, 1998 (No 117 of 1998), as amended.
Notice	means any Written communication from the HOA or its authorised delegates or agents and Notified shall have a cognate meaning.
Office	means, depending on the context, the administrative office of the HOA or the Offices of its Managing Agent.
Officials of the Committee	means the Chairperson and the Deputy Chairperson elected in accordance with the provisions of paragraph 14.11.
PAIA	means the Promotion of Access to Information Act, 2000 (No 2 of 2000), as amended.
PAJA	means the Promotion of Administrative Justice Act, 2000 (No 3 of 2000), as amended.
Penalty	means, depending on the context, an additional amount payable to the HOA as a Debt, arising from the non- and/or late-payment of any Levy, or the transgression of the provisions of the Constitution or the Rules, calculated in accordance with the Schedules of Transgressions and Penalties contained in the Rules.
Penalty Levy	means an additional amount payable by a Member to the HOA as a Debt for the transgression of the provisions of the Constitution, or the Rules as indicated in the Notice Delivered to a Member and calculated with reference to the amount of the Monthly Levy.
POPIA	means the Protection of Personal Information Act, 2013 (No 4 of 2013) and the Codes and Regulations promulgated in terms thereof, as amended from time to time.

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Present at a Meeting	means a Member Eligible to Vote: **(a)** who is present at the meeting in person, or can participate in the meeting by signing in on the on-line electronic facility provided by the Committee; **(b)** who, in instances of legal entities or co-ownership, is duly represented in person at the meeting as contemplated in this Constitution, or the designated representative can participate in the meeting by signing in on the on-line electronic facility provided by the Committee; **(c)** who is represented by way of a properly prepared and signed proxy by the person or entity designated in the proxy who is present in person at the meeting or can participate in the meeting by signing in on the on-line electronic facility provided by the Committee.
Property of the HOA	means the property registered in the name of the HOA in the relevant Deeds Registry and which the HOA is statutory obliged to maintain, such as streets, parking areas, and all other open areas outside the cadastral boundaries of private property within the perimeter of the Estate, and the golf course, excluding any Coastal Public Property and Coastal Access Land (See paragraph 3.1 of the Amending Approval of 14 March 1996).
Public Servitude	means, depending on the context, a servitude registered on the Property of the HOA (automatically by law, or otherwise) for purposes of service delivering to the Estate by relevant authorities, or as Designated Coastal Access Land in accordance with section 18 of the National Environmental Management: Integrated Coastal Management Act, 2008, as amended (2014), or as public coastal access routes in accordance with the Approval of 6 December 1994, the Amending Approval of 14 March 1996, or any other applicable approved Town Planning and Resource Use Permit.
Rules	means the General Rules and the Building Design and Construction Rules made, amended, repealed, interpreted, and aligned by the HOA and the Committee, as contemplated in paragraph 10 of this Constitution, and include the HOA approved governing guidelines and "constitutions" of constituent parts or sub-divisions of the HOA.
Schedules of Transgressions and Penalties	means the information contained in the Rules, describing possible transgressions of the provisions of the Constitution and the Rules, and indicating the remedial actions the HOA is entitled to impose.
Special Levy	means an amount payable by a Member to the HOA as a Debt, approved by the Members at a General Meeting with the view to financing special capital and other approved projects, and payable as determined by the Members at the Meeting.
Special Resolution	means a decision of the Members taken in

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	accordance with the provisions of paragraphs 17.2.2, 17.8.5 and 17.8.6 of the Constitution.
Statutory Levy	means an amount payable by a Member to the HOA as a Debt, arising from a statutory obligation of the HOA and/or the Member.
Trustee	means one of the members of the Committee.
Trustee Committee	means the Committee consisting of the Trustees duly elected by the Members at the AGM and the Trustees duly co-opted by the Trustee Committee in accordance with the provisions of this Constitution.
Unbudgeted Expenditure	means expenditure not approved in the Annual Budget, totalling more than 5% of the Annual Budget, and/or an overspend exceeding R100 000 or 10%, whichever is the greater, of a budgeted line item, which the Committee is only permitted to incur with the pre-approval of the Members at a General Meeting, save in the case of expenditure necessitated by an Urgent Matter, or imposed on the HOA by a Local Authority, or otherwise prescribed by law, in which instances Members shall be advised in Writing of the decision of the Committee within 3 Business Days.
Unit	means a Unit defined and registered in accordance with the Sectional Titles Act, 1986 (No 95 of 1986), as amended
Unit Erven	means the erven, regardless of their zoning, registered in the name of the Developer in the Deeds Registry concerned in accordance with the provisions of the Deeds Registries Act, 1937, as amended.
Urgent Matter	means a matter, which, if not addressed before the next General Meeting, could cause irreversible harm or prejudice to the Estate, the Members, or the residents, and include, among others, the emergencies and disasters contemplated in paragraph 10.6.
Written	means hand-written, type-written, printed, lithographed, electronically processed, or any other process producing words in a visible form.
Year	means a calendar year.

3.2 Unless the context clearly requires a different meaning, words importing the singular number shall include the plural, and *vice versa*, and words signifying any one gender only shall include all genders.

3.3 The headings to the clauses in this Constitution are for reference purposes only and shall not be definitive in the interpretation of the provisions thereof.

4. THE STATUS OF THE CONSTITUTION

4.1 The HOA must have a Constitution that is approved by the Local Authority and must make provision for the matters specified in the 2015 By-law (see section 29(2) to (8)).

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4.2 Except as provided for in section 29(6) of the 2015 By-law, amendments to the Constitution must be approved by the Local Authority.

4.3 The Constitution of the HOA may include objectives not contained in section 29 of the 2015 By-law, aimed at resolving specific matters related to the establishment of the Estate, compliance with good governance practices, advancing and protecting the interests of Members, enhancing the effective and efficient functioning of the Estate and the HOA, and anything incidental thereto, provided it may not contain provisions that conflict with any By-law. The Constitution may, however, introduce design guidelines more restrictive than the rules provided for in the zoning scheme (See section 29(4) and (8)).

5. AMENDMENT OF THE CONSTITUTION

5.1 The Members of the HOA may resolve to amend the Constitution at a properly constituted AGM or a General Meeting set for this purpose, with two-thirds of the Members present at the Meeting voting in favour of the amendment, provided that the proposed amendments of the Constitution be sent to Members at least 21 calendar days before the Meeting with an invitation to the Members to comment on the proposals in Writing on or before 7 days before the scheduled Meeting, which comments must be consolidated by the Committee and tabled and considered at the Meeting, provided further that the amendments/replacement will only take effect subject to the provisions of paragraph 5.2 to 5.4 below, as applicable.

5.2 Notwithstanding the provisions of paragraph 5.1, the Developer will have a veto right regarding any proposed amendment of this Constitution aimed at imposing the payment of Levies on the Developer in conflict with the provisions of paragraph 9.15 to 9.17 below.

5.3 Notwithstanding the provisions of paragraph 5.1, the HOA may, in accordance with the Amending Approval of 14 March 1996, and section 18 of the National Environmental Management: Integrated Coastal Management Act, 2008, as amended (2014), not adopt any provision in the Constitution, or make any Rule in terms of this Constitution, excluding the public from using a Public Servitude to gain access to Coastal Public Property.

5.4 The Constitution of the HOA, and any amendments thereto, must be approved by the relevant Local Authority to ensure compliance with the statutory terms and conditions applicable to the Estate (See section 29(6) of the 2015 By-law for exceptions regarding certain amendments).

5.5 The HOA must submit the prescribed Scheme Governance Documentation to CSOS, when so directed in accordance with section 4(1) and paragraph 16 of the CSOS Act and Regulations, in support of CSOS's quest to monitor and promote good governance in community schemes.

6. STATUS OF THE HOME OWNERS' ASSOCIATION AND RELATED MATTERS

6.1 The HOA is regarded as an owners' association that came into being by virtue of a condition imposed by the Local Authority in accordance with section 29(1) of the 2015 By-law and is a juristic person, capable of suing and being sued in its own name and of acquiring movable and immoveable property (See section 29(2) and 66(7)).

6.2 The Communal Property and all other assets of the HOA shall be held in the name of the HOA and managed, maintained and controlled in accordance with the HOA's statutory and Constitutional mandate.

6.3 Save for exercising their Constitutional right to hold the HOA and the Committee accountable at any time, for the undue management, maintenance, and control of the assets of the HOA, Members have, subject to the provisions of paragraph 6.8, no claim of right to any of the assets of the HOA, unless so granted by a law, a competent court or tribunal.

6.4 The HOA functions as a non-profit association and manages, maintains, and controls the assets of the HOA exclusively for the benefit of its Members, with due account of its role and responsibilities as a member of the broader St Helena Bay community.

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6.5 The HOA may not, directly, or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person or entity who is a Member, or a Trustee, except:

6.5.1 As reasonable remuneration for goods delivered or services rendered to, or at the direction of the HOA;

6.5.2 As payment of, or reimbursement for, expenses incurred to advance a stated objective of the HOA;

6.5.3 As a payment of an amount due and payable by the HOA in terms of the *bona fide* agreement between the HOA and the Member; and

6.5.4 In respect of any legal obligation binding on the HOA.

6.6 In terms of the conditions of establishment of the Estate, the HOA has the right to operate an access control system to verify the identity of all persons entering and exiting the Estate in accordance with the main objective to enhance the security of all Members, residents, and the public.

6.7 Members, residents, guests, service providers, contractors, and the members of the public contemplated in paragraph 24 of this Constitution accessing the Estate *via* Public Servitudes (See, among others, paragraph 3.1(b)(i) of the Amending Approval of 14 March 1996), will only be allowed access to the Estate after complying with the verification and identification processes and procedures of the HOA, and agreeing to the road use, traffic rules and speed limits imposed by the HOA, and the payment of any penalty for the contravention of such.

6.8 Upon disestablishment of the HOA, as contemplated in section 15(2)(q) and 30(1)(a) of the 2015 By-law and after compliance with the provisions of section 15(2)(r), 29(7)(a), 30(3) and 30(4) of the 2015 By-law regarding the joint liability of Members, the net value of the HOA will be distributed equally to the Members at the time of the disestablishment.

7. OBJECTIVES AND FUNCTIONS OF THE HOME OWNERS' ASSOCIATION

Without limiting the mandate and responsibilities of the HOA, as per the applicable statutory frameworks (see paragraph 1 to 6 above), its main objectives and functions include, among others, the following:

7.1 To develop and promote the short- and long-term sustainability of the residential, sport, marine and terrestrial habitats of the Estate and all ancillary actions which are necessary to achieve the said sustainability;

7.2 To promote, advance and protect the communal and group interests of its Members, and to maintain and develop security, aesthetic, and environmental standards for the Estate;

7.3 To control and manage all aspects of the design, aesthetics and amenities of the Estate, the maintenance of all buildings, sport facilities, infrastructure, and Communal Areas, and the delivering of quality and efficient services to the HOA;

7.4 To enter into service agreements and other necessary agreements with the relevant Local Authorities or any other authority or supplier of services in connection with the Estate;

7.5 To institutionalise compliant governance and management processes and procedures;

7.6 To develop internal capacities and competencies enabling the HOA to effect all its obligations arising from the statutory provisions applicable to the Estate.;

7.7 To assess proposed new developments within the perimeter of the Estate with a view to actively

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supporting only those that are aligned with the ethos of the Estate as described in paragraph 7.1.

8. MEMBERSHIP

8.1 Membership of the HOA shall be compulsory for any person or entity (See paragraph 8.2.3) who is, in terms of the Deeds Registries Act, 1937, as amended, reflected in the records of the Deeds Registry concerned as a registered owner or co-owner of Erven and Unit Erven situated within the perimeter of the Shelley Point Estate. A person or entity reflected as the registered owner in the Deeds Registry is, subject to proof of the contrary, deemed to be the registered owner of the property.

8.2 Membership of the HOA shall be limited to the registered owners of Erven and Unit Erven provided that:

8.2.1 Where a Member is a legal entity (whether incorporated or not), such Member must designate a person to represent it with respect to the HOA. A power of attorney must be provided by the legal entity to the HOA evidencing the authority of the person, without derogating from the right of such Member to provide a separate authority (proxy) for purposes of any General Meeting.

8.2.2 With effect from the Effective Date of this Constitution, the shareholders, directors, trustees and/or members of a legal entity becoming a Member of the HOA, shall be liable, jointly, and severally, for the joint liability of the Entity as a Member of the HOA as contemplated in section 15(2)(r), 29(7)(a), 30(3) and 30(4) of the 2015 By-law, and, if not so liable by law, will be required to sign the necessary documentation to that effect in their personal capacity.

8.2.3 Where the registered ownership of an Erf or Unit Erf vests in more than one person or entity, the collective is within the context of this Constitution regarded as one Member of the HOA only, provided that all co-owners are jointly and severally liable for the joint liability of the co-owners as a Member of the HOA as contemplated in section 15(2)(r), 29(7)(a), 30(3) and 30(4) of the 2015 By-law. In instances of legal entities becoming co-owners, the provisions of paragraph 8.2.2 above must be complied with.

8.2.4 Where an Erf or Unit Erf is owned by more than one person or entity, such co-registered owners shall designate one of them to represent the others as Member. A power of attorney must be provided to the HOA evidencing such authority, without derogating from the right of the co-owners to provide a separate authority (proxy) for purposes of any General Meeting.

8.3 When a Member ceases to be a registered owner of an Erf or Unit Erf, he shall *ipso facto* cease to be a Member of the HOA.

8.4 A Member may not sell and transfer an Erf or Unit Erf, and the HOA will not give permission to that effect, unless it is a condition of the sale and transfer that:

8.4.1 The buyer agrees to become a Member of the HOA by virtue of his registered ownership and subscribes in writing to the values and the terms and conditions embedded in the HOA's Constitution and the Rules, as amended from time to time, and any agreement concluded by the HOA with a relevant Local Authority or any other external service provider, person, or entity;

8.4.2 The HOA has issued a Clearance Certificate;

8.4.3 The buyer signs a bank debit order in respect of the payment of the Monthly Levy, or has, to the satisfaction of the Committee, contemplated in Writing an alternative payment arrangement; and

8.4.4 A buyer, contemplated in paragraph 8.2.1 and 8.2.3, has complied with the provisions of paragraph 8.2.2.

8.5 The registered owner of an Erf or Unit Erf may not resign as a Member of the HOA.

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8.6 The Committee may, if so requested, issue a membership certificate to a Member in such a form as may be determined by the Committee.

8.7 The rights and obligations of a Member shall not be transferable, except in so far as a limitation of a Members rights is required, and agreed with the Member, with a view to securing a bond, loan or any other security on an Erf or Unit Erf.

8.8 Without derogating from the generality of the provisions of this Constitution and the legal provisions applicable to Members in general, Members of the HOA must subscribe, among others, to the following:

8.8.1 The furthering of the main objectives of the HOA as described in paragraph 7 above;

8.8.2 Building and protecting the good name and reputation of the Estate;

8.8.3 Observing the provisions of the Constitution and the Rules, as amended from time to time;

8.8.4 Conserving and restoring, where necessary, the natural habitat of the Estate;

8.8.5 Practising good neighbourship in accordance with legislative provisions, the Rules, and generally accepted conventions and sensitivities; and

8.8.6 Compliance with both the contextual and direct legal frameworks applicable to the Estate.

8.9 Members of the HOA are obliged to ensure the compliance of their guests/visitors and tenants with the provisions of paragraph 8.8 above, as applicable, and with the changes required by the context.

8.10 The HOA will maintain at its Administrative Office and/or the Offices of its Managing Agent a Register of the Members of the HOA (Membership Register).

8.11 Each Member will be obliged to provide the HOA with the information required to maintain and update the information contained in the Membership Register, and the onus in this regard rests solely upon Members, and Members will be liable and accountable for all consequences resulting from any inaccurate information furnished.

8.12 A Member may in Writing request an extract of the information of the Member captured in the Membership Register from the HOA and/or the Managing Agent, which information will subject to the provisions of paragraph 8.13, be provided to the Member in Writing within five Days.

8.13 The HOA is committed to protecting the personal information of Members as contemplated in the POPIA and is obliged to take appropriate steps to ensure full compliance with the prescripts of the Act and related Regulations.

8.14 Among the information required from Members, will be Written details of his service address for physical service (of documents, among others), and an Email address for email service.

8.15 For purposes of the serving of documentation pertaining to legal action, the HOA will regard the physical address of the Erf or Unit Erf of a Member as the *domicilium citandi et executandi* of the Member. If the Member wishes to change the physical address of serving, he must give Written notice to that effect to the HOA, with due acknowledgement of the fact that the acceptance by the HOA of the change in the physical address of the Member will have no bearing on the jurisdiction of the Magistrates' Court, as contemplated in section 28 of the Magistrates' Court Act of 1944, as amended.

8.16 The *domicilium citandi et executandi* for the HOA for purposes of legal action is the Office of the HOA at the Old Gate, Golden Mile Boulevard, Shelley Point 7382.

8.17 The *domicilium citandi et executandi* for any tenant/occupier of an Erf or Unit Erf for purposes of

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legal action is the physical address of the Erf or Unit Erf, and Members are obliged to submit to the HOA timeously signed documentation containing the necessary permission of the tenant/occupier involved.

8.18 A Member is not entitled to any Membership Rights, including without limitation the right to attend and vote at a General Meeting, unless and until the Member has paid every Levy-related Debt due and payable by the Member to the HOA.

9. LEVIES

9.1 The HOA is entitled to impose levies upon the Members and, save for Special and Statutory Levies aimed at the covering of certain ring-fenced expenditure or liabilities of the HOA, or imposed with a view to complying with any relevant statutory prescript pertaining to the maintenance of minimum reserve levels for community schemes, levies are imposed for the purpose of meeting all the expenses which the HOA has incurred, or reasonably anticipates to incur, related among others to the maintenance and repair of existing facilities, the payment for the services rendered to the HOA and its Members, to cover the expenses related to approved projects, and the payment of all other management and administrative expenses necessary to ensure the proper functioning of the HOA.

9.2 All Levies, and the adjustment thereof, imposed on Members must be approved by the Members of the HOA by way of an Ordinary Resolution at the AGM, or at a Special General Meeting set for this purpose.

9.3 Except in the case of Special Levies, Clearance Levies, or a decision of the Members taken at the AGM or a General Meeting to the contrary, Levies are due and payable in equal monthly instalments in advance on the first day of the month.

9.4 Depending on the decision of Members at the AGM or General Meeting, Special Levies may be made payable in a lump sum or instalments or a combination thereof payable at such time or times as resolved by the Members at the afore mentioned meetings.

9.5 Notwithstanding the provisions of subparagraph 9.2 the Committee may effectively increase existing Levies, and/or decide on a Special Levy, as appropriate, in instances when it becomes, in the opinion of the Committee, clear that the relevant Local Authority may, of its own accord or on application by any affected person, including a Member, intervene as contemplated in section 30 of the 2015 By-law, as the HOA has or would fail to achieve its statutory responsibility (object) to keep control over and the maintenance of buildings, services and amenities arising from the subdivision of the land on which the Estate was established, and to meet the joint liability of Members for expenditure incurred by the HOA, in particular expenses with regard to Rates and Taxes and/or any other obligation assumed by the HOA in terms of an agreement with the relevant Local Authority.

9.6 A decision of the Committee to effectively increase or raise Levies in accordance with the provisions of paragraph 9.5 above may only be taken after its proposals to avert an intervention by the relevant Local Authority as contemplated in section 30 of the 2015 By-law have been duly submitted to and declined by the AGM or a General Meeting.

9.7 In determining the amount and nature of Levies, the Committee shall calculate the amount and the cash-flow needed by the HOA to meet its annual and medium-to-long term financial needs by taking into account the estimated shortfall or surplus, if any, which may have resulted from the previous and/or the current financial years, the income, if any, earned by the HOA, accumulated reserves, if any, and advise the HOA on any adjustment of existing levies and/or the introduction of any other Levy.

9.8 Levies imposed by the HOA shall only be aimed at achieving a break-even Annual Budget, to finance approved special projects and to ensure the availability of adequate reserves to timeously replace or upgrade equipment and infrastructure and/or to comply with applicable statutory provisions in this regard.

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9.9 Subject to the provisions of paragraph 9.10 and 9.11 below the total Levy payable by Members shall be borne by Members in equal shares.

9.10 Acting on the advice of the Committee, the HOA is entitled to impose differentiated Levies on Erven and Unit Erven, based on the approved and registered business rights on said properties as well as other approved business activities performed from said properties which may not require formal registration, and any other relevant factor as the HOA may determine.

9.11 The HOA is also entitled to levy an amount on the Erven referred to in paragraph 9.10, to be held in reserve with a view to covering possible damage to infrastructure, the upgrading and/or early replacement of infrastructure and/or other risks associated with the said activities.

9.12 Affected Members of Erven and Unit Erven subjected to differentiated Levies as contemplated in paragraph 9.10 and 9.11 shall be entitled to be provided with detail regarding the calculation and determination by the HOA and, if not satisfied, deliver an objection in writing to the HOA within not more than one month after the delivery of a Written Notification by the HOA.

9.13 The HOA, represented by the Chairperson or his nominated representative, shall convene, as soon as reasonably possible, a meeting with the complainant/s and hear such further representations as the complainant/s may wish to make, and in consequence of such the Committee shall consider the objection and either reject the complaint or review the determination and provide the complainant/s with Written reasons for the rejection or revision.

9.14 The decision of the Committee as contemplated in paragraph 9.13 shall be tabled at the first next AGM or a General Meeting, depending on the circumstances, for approval or amendment and will take effect on a date determined by the Meeting. Differentiated Levies shall be revised annually with other Levies as contemplated in paragraph 9.2.

9.15 Notwithstanding any provision to the contrary in this Constitution, or any amended version thereof, the Developer will only commence paying Levies from 1 January 2030 on the Unit Erven still registered in its name on the said date and the Levies payable will be as determined by the HOA, subject to the same terms and conditions applicable to other Members of the HOA.

9.16 Paragraph 9.15 above shall not apply to any current or future developments of the Developer on Erf 5558 and the phase known as the "Kleinboot Hawe".

9.17 Notwithstanding any provision to the contrary in this Constitution, or any amended version thereof, Levies will only be payable by the Developer on the developments referred to in paragraph 9.16 once it has sold 90% of the Erven and/or Units, as applicable, and the Levies payable will be as determined by the HOA, subject to the same terms and conditions applicable to other Members of the HOA.

9.18 Further to paragraph 9.15 to 9.17 above, the Developer will quarterly disclose to the HOA the total number of Erven/Units sold in the said developments, the dates of the relevant transactions, and whether the transfer and registration of the property in the name of the buyer in the Deeds Office will be done following normal procedure and timeframes or not.

9.19 In instances where the normal procedure and timeframes for transfer and registration as contemplated in paragraph 9.18 above would not apply to a transaction and the transfer and registration has per agreement been deferred to a future date, the Developer will ensure the inclusion in their contract of sale of a clause compelling the buyer to pay the prescribed Levies to the HOA from the effective date of the transaction.

9.20 Subject to the provisions of paragraph 9.21 below regarding the veto power of the Developer, the Developer will not have any Voting Rights based on the ownership of Unit Erven or the developments contemplated in paragraph 9.15 to 9.17 above, until 1 January 2030 or selling 90% of the Erven, as applicable, whereafter Voting Rights will be determined in accordance with the provisions of the Constitution of the HOA at the time.

9.21 The parties explicitly agree that the Constitution of the HOA and any amendments thereto shall

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afford the Developer a veto power or right against any amendment of the Constitution, or any decision of the HOA or its delegates, which will have the effect of enforcing Levies against the Developer that is not in accordance with clauses 9.15 to 9.17 above.

9.22 Any amount due by a Member by way of a Levy shall be a Debt due by him to the HOA. Levies are payable by a Member without deduction, set-off or exchange and free of bank charges.

9.23 The obligation of a Member to pay a Levy shall cease upon him ceasing to be the registered owner of an Erf, without prejudice to the HOA's right to recover Levies in arrears.

9.24 Subject to the provisions of paragraph 9.25, Levies paid by a Member shall not be repayable by the HOA upon him ceasing to be a Member.

9.25 A Member's successor in title of an Erf or Unit Erf shall be liable to pay the Levy on the Erf or Unit Erf as determined in accordance with paragraph 9.1 to 9.24, as applicable, as from the date upon which he becomes a Member pursuant the transfer of an Erf or Unit Erf, and the previous member would be entitled to a refund representing the balance of any Levy amount paid in advance as a Clearance Levy.

9.26 The provisions of paragraph 9.25 shall with the necessary changes also apply to a buyer contemplated in paragraph 9.19.

10. RULES OF THE HOA

10.1 The Committee may, from time-to-time make, amend, and repeal Rules pertaining to:

10.1.1 Membership responsibilities in respect of the good order and discipline on the Estate, whilst enhancing and protecting the interests of Members, meeting the HOA's statutory obligations, facilitating the effective and integrated functioning of the constituent parts of the HOA, etc, all of which shall be contained in the General Rules of the Estate; and

10.1.2 The general external appearance of all buildings (existing and new) and all construction activity (new and additions or changes) on the Estate, and matters related thereto, all of which shall be contained in the Building Design and Construction Rules of the Estate.

10.2 The Rules contemplated in paragraph 10.1 shall be binding and equally applicable to all Members without any form of discrimination, and Members shall be accountable not only for their own actions but also for the actions of their visitors, tenants, occupants, employees, service providers, contractors, and invitees.

10.3 Any Rule applicable to a Member will, equally in context, be applicable to their visitors, tenants, occupants, employees, service providers, contractors, invitees, trusts and its beneficiaries, and will be applicable even if the Rule does not have a specific reference to them.

10.4 The Committee may conclude agreement(s) with the relevant Local Authorities governing the relevant matters set out in paragraph 10.1 above, and any other matter incidental thereto.

10.5 The Rules issued by the Committee will take effect on a date determined by the Committee, which shall be a date after Delivering a Notice to Members informing them of the content of and rationale for the contemplated Rules, and after affording the Members a reasonable opportunity to submit Written comments on the proposed Rules, which comments must be considered by the Committee. If so requested, the Committee must provide feedback to a Member or Members in general regarding the inputs received and, if a submission was not accepted the reasons for such, if so requested.

10.6 Notwithstanding the provisions of paragraph 10.5 above, in cases of Estate, District, Regional, Provincial or National Emergencies or Disasters, the Committee may issue new Rules, amend and/or interpret and align existing Rules, which will take immediate effect with a view to managing the emergency or disaster, and to give effect to any statutory directives.

10.7 The Rules issued by the Committee must be tabled at the first next AGM or General Meeting for *ex post facto* ratification, amendment, or repeal, depending on the decision of the respective Meetings, provided that, subject to the provisions of paragraph 10.8, the validity and/or enforceability of actions already taken by the Committee or a delegated authority in accordance with amended or repealed Rules, will not be affected by any amendment or repeal.

10.8 Notwithstanding the provisions of paragraph 10.7 regarding the validity and/or enforceability of the actions taken, any Debt incurred because of the application of a Rule, amended, or repealed, as contemplated in paragraph 10.7, will either be reduced or reversed, as the case may be, in accordance with the decision of the AGM or General Meeting.

10.9 The Rules must be issued within the constitutional mandate of the Committee as well as the approved Delegation Framework and will have no force and effect in as far as it conflicts with the regulations of the relevant Local Authorities, any other external authority, this Constitution or any decision of the AGM or a Special General Meeting.

10.10 The Committee may delegate its authority in terms of paragraph 10.1 and 10.6 to the Chairperson, or a dedicated committee of the Committee, subject to the provisions of paragraph 10.5 (if applicable), 10.7 and 10.9 above.

10.11 Save for the issuing, amending, and repealing procedure, internally, the provisions of the Rules have the same status as the provisions of this Constitution.

11. PENALTIES, REMEDIAL ACTIONS AND RELATED MATTERS

11.1 The HOA may, through its delegated authorities, impose Penalties arising from the non- and/or late-payment of any Levy, or the transgression of the provisions of the Constitution or the Rules.

11.2 The Committee shall, based on the determinations of a General Meeting, prepare appropriate Schedules of Transgressions and Penalties, forming an integral part of the Rules, containing, among others, the detail of the instances when Penalties may be imposed and the related amount/s, the procedure to be followed by the Committee in this regard, the rights and obligations of transgressors, and the consequential effect of non-compliance.

11.3 Penalties will be treated as a Debt and will be imposed in accordance with the Rules, and if the debtor is a Member, the Penalty will also be debited to the Member's Levy account.

11.4 Should any debtor fail to pay a Debt on the due date and remain in default for more than 7 days after being Notified, the Committee shall be entitled to institute legal proceedings against such debtor for payment of the Debt, without prejudice to any other right or remedy which the Committee or the HOA or any other Member may have in law, including the right to claim damages.

11.5 Should any person or entity transgressing the provisions of the Constitution or the Rules fail to commence remedying the transgression as specified in the Notice within a period of 7 days after the Delivery of the Notice to that effect and fail to complete the remedying actions within a reasonable time (not more than 30 days), the Committee shall be entitled, without prejudice to any other right or remedy which the HOA or the Committee or any other Member may have in law, including the right to claim damages, to effect the remedying actions and immediately recover the total cost incurred by the HOA in so doing from such transgressor, and if the transgressor is a Member, the amount will be regarded as a Debt and will be debited to the Member's Levy account.

11.6 Should the Committee institute any legal proceedings against any person or entity to recover a debt or any other amount owed and payable to the HOA the Committee shall, subject to the ruling of a competent court and the taxation of costs, as applicable, be entitled to recover from such person or entity all legal costs incurred by the Committee or the HOA on the scale as between attorney and client, and, if the person or entity is a Member, to debit the amount to the Member's Levy account.

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11.7 Subject to the Provisions of paragraph 22.4 the HOA shall not issue any Clearance Certificate unless all Debts due and payable to the HOA have been paid in full, regardless of any dispute that may exist regarding the respective Debts.

11.8 Without prejudice to any of the rights the HOA or the Committee under this Constitution, should any person or entity fail to pay any Debt on the due date, then such person or entity shall pay interest thereon at the publicly quoted prime rate of interest plus two percent, calculated from the due date of payment until the actual date of payment.

12. CESSATION OF MEMBERSHIP

12.1 The membership of a person or entity of the HOA, ceases with the transfer and registration of his property in accordance with the Deeds Registries Act, 1937, as amended, in the Deeds Registry in the name of another person. The former Member shall not (nor shall any of such Members' successors in title, in whichever capacity) have any claim upon or interest in the funds or any other asset of the HOA based on the membership of the HOA related to the transferred property.

12.2 The fact that a person ceases to be a Member of the HOA because of the transfer of a property to another person shall be without prejudice to the rights of the HOA and does not release such Member, his estate, or successor in title, as appropriate, from any liability to the HOA in respect of any Debt, the cause of which arose prior to the transfer of such property, nor otherwise relieve such former Member from any other obligations owed to the HOA during the period of his membership.

13. THE TRUSTEE COMMITTEE: ELECTION, CO-OPTION, AND RELATED CRITERIA

13.1 The HOA shall have a Committee consisting of elected and co-opted Members elected and co-opted in accordance with paragraph 13.2 to 13.4 of this Constitution.

13.2 The Committee shall consist of not less than 4 (four) and not more than 8 (eight) Members elected at the AGM, and not more than 2 (two) co-opted members, co-opted by the Committee based on their knowledge of the functioning of the HOA, and/or their expertise.

13.3 Elected and co-opted Members of the Committee must be Members eligible to exercise their Membership Rights.

13.4 Co-opted Members of the Committee are full and accountable Members of the Committee with voting rights, and the Committee may allocate certain portfolio responsibilities and specific tasks to them.

14. THE TRUSTEE COMMITTEE: TERM OF OFFICE, FILLING OF VACANCIES, APPOINTMENT OF OFFICIALS, CHAIRING OF MEETINGS AND RELATED MATTERS

14.1 The term of office of elected Trustees is, subject to the provisions of paragraph 14.3 to 14.5 below, the period between the date of the AGM electing the Trustee and the date of the third consecutive AGM.

14.2 The term of office of co-opted Trustees is the period between the date of co-option by the Committee and the date of the first following AGM.

14.3 A Trustee may be re-elected or co-opted, as applicable, multiple times provided that a maximum of only two consecutive terms may be served at a time.

14.4 With a view to ensuring continuity the terms of office of the Trustees will be scheduled at the first AGM after the approval of this Constitution, such that ideally one third of the elected Trustees' terms of office would expire each year.

14.5 Should one or more vacancies of elected Members in the Committee occur prior to the next AGM, the vacancy shall be filled by the Committee by way of co-opting a Member eligible to be elected to the Committee in terms of the provisions of this Constitution. The term of office of such an

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appointed Trustee will end at the following AGM.

14.6 The membership of a Member of the Committee (whether elected or co-opted) may be terminated by a decision of the Committee (with two-thirds of the Members of the Committee voting in favour of the motion) if the Committee is of the view that the Member is in breach of the provisions of this Constitution or the Rules and/or the provisions of any agreement of the HOA with external authorities or service providers; and/or found guilty of any offence in terms of the South African Law that would impact negatively on his ability to perform the functions associated with membership of the Committee; and/or no longer qualify in terms of the provisions of this Constitution to serve as a Trustee; and/or brought the name and reputation of the HOA and/or the Committee and/or the Estate in disrepute; and/or acted in a manner undermining the legitimacy and functioning of the governance and management structures of the HOA impacting negatively on the ability of the Committee or Management to effectively pursue the objectives of the HOA.

14.7 A decision of the Committee to terminate the membership of a Trustee as contemplated in Paragraph 14.6 may only be taken after the Committee has complied with the relevant provisions of the Constitution of South Africa, 1996, PAIA, PAJA, the general principles of natural justice, and the provisions of this Constitution.

14.8 The Committee (with a two-thirds of the Trustees voting in favour), is entitled to put a Trustee who is being investigated on precautionary suspension, with a view to applying the prescripts of paragraph 14.9 and 14.10, read with paragraph 14.6 and 14.7.

14.9 The decision of the Committee to precautionary suspend a Trustee, may only be taken after the Trustee involved has been informed in Writing of the intention to suspend him as a precautionary measure; been provided with the necessary detail regarding the nature of the investigation and the concomitant allegations; afforded a reasonable time and opportunity to respond to the investigation and allegations; and the Committee has taken time to consider the forthcoming response, if any.

14.10 A precautionary suspension of a Trustee should not exceed a period of three months and would be appropriate under circumstances where the Committee is of the view that the continued presence and participation of the said Trustee will undermine the functioning of the Committee and the legitimacy of the governance structures of the HOA. Should the nature of the investigation and the progress therewith necessitate the suspension of a Member of the Committee beyond the initial three months, a decision of the Members of the HOA at an AGM or a Special General Meeting, as appropriate, must be acquired.

14.11 The Trustees shall at the first meeting of the Committee following the AGM elect a Chairperson and a Deputy Chairperson from their own ranks (collectively referred to as the Officials of the Committee), from the Members who are elected to the Committee by the Members at the preceding AGM.

14.12 The term of office of the Officials of the Committee is the time between consecutive constituting meetings of the Committee as prescribed in paragraph 14.11, save for the Chairperson whose term of office expires as contemplated in paragraph 14.13.

14.13 With a view to ensuring continuity the Chairperson of the Committee at the time of an AGM shall remain in office until the first meeting of the Committee following the AGM, which shall be held within 60 (sixty) days following the AGM, at which time the Officials of the Committee shall be elected as prescribed in paragraph 14.11 above.

14.14 In the event of a vacancy occurring in any of the Offices of the Officials of the Committee, the Committee shall meet as soon as possible to fill the vacancy/vacancies in accordance with the provisions of paragraph 14.11.

14.15 Subject to the provisions of paragraph 14.6 to 14.10, the Trustees, inclusive of the Officials of the Committee, shall *ipso facto* vacate their respective seats on the Committee through passage of time or upon ceasing to be a Member of the HOA or a Trustee, as the case may be.

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14.16 Except for the Officials of the Committee elected in accordance with paragraph 14.11 and the concomitant responsibilities associated therewith in this Constitution and otherwise, the Committee shall decide on the Committee Portfolios, the associated mandate, and responsibilities, and allocate such to members of the Committee, with due regard to the duties of scheme executives as contemplated in the CSOS Regulations and the specialised skills, knowledge, and experience of the Trustees.

14.17 Save in instances of a conflict of interest, the presentation of the Chairpersons' Report to the AGM or the Committee, or any other eventuality justifying the recusal from a meeting or the vacating of the chair of the meeting, the Chairperson shall preside at all meetings of the Committee, the AGM, and all other General Meetings (inclusive of information sharing and briefing meetings).

14.18 The Chairperson shall perform all the duties of the Office of the Chairperson, and those incidental thereto (inclusive of those arising from the Delegation Framework), as well as such other duties as may be assigned to him by the Committee or the AGM or any other properly constituted meeting of the Members, and is entitled to exercise at any time the right to allow or refuse invitees to speak at a meeting, provided however, that no invitee shall be allowed to vote at a meeting.

14.19 The Vice-Chairperson shall assume the powers and duties of the Chairperson in the absence or acting in the capacity of the Chairperson, or the Chairperson's inability or refusal to act as Chairperson and shall perform such other duties as may from time to time be assigned to him by the Chairperson or the Committee.

14.20 Trustees shall be reimbursed in accordance with paragraph 6.5.2 above, for all reasonable and *bona fide* expenses incurred by them related to the execution of their duties as Trustees.

14.21 The Trustees may be paid an honorarium in accordance with paragraph 6.5.1, subject to the terms and conditions determined by the AGM in recognition of the time and effort spent by them in executing their duties as Trustees.

15. THE TRUSTEE COMMITTEE: ROLE AND MANDATE

15.1 The Members of the HOA must by way of a Delegation Framework ensure the empowerment of the Committee to execute its mandate effectively and efficiently.

15.2 Without derogating from the generality of the role and mandate of the Committee in terms of the provisions of this Constitution, the Rules and applicable legal frameworks, the role and mandate of the Committee will include the following:

15.2.1 To, with the assistance of the Estate Manager, give effect to the decisions of the General Meetings aimed at achieving the HOA's objectives and attaining the strategic outcomes envisioned by Members to ensure the long-term sustainability and financial independence of the Estate, and the unlocking of the full value of the investment of Members in the Estate at all levels;

15.2.2 To support the HOA in its quest to comply fully with the terms and conditions applicable to the establishment and continued functioning of the Estate in accordance with applicable legal provisions;

15.2.3 To oversee and direct the day-to-day functioning of the Estate as managed and controlled by the Estate Manager.

15.2.4 The concluding of agreements and the signing thereof regarding matters related to the effective and efficient functioning of the HOA, with due regard to the Constitutional and legal mandate of the Committee read with the Delegation Framework, and the obligation of executing specific tasks, priorities and timeframes identified and decided by the AGM or General Meetings;

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15.2.5 To take responsibility, with the support of Management, for the managing and monitoring of the income and expenditure related to the Annual Budget, with due cognisance of the Delegation Framework, the decisions of the HOA regarding Unbudgeted Expenditure, related legislative provisions, and to report quarterly on progress and significant budgetary movements;

15.2.6 To report regularly and appropriately to the Members on the activities of the Committee, in particular the progress made regarding important aspects pertaining to the core mandate and functions of the Committee, the specific tasks and projects mandated by the HOA, the challenges and opportunities experienced in the execution of the Committee's mandate, etc.;

15.2.7 To enhance the interests of the HOA and its Members and to protect the good name and reputation of the Estate, and to take appropriate actions to give effect to the afore mentioned responsibilities.

15.2.8 To act, in the person of the Chairperson or his delegated representative, as the internal and external communication and liaison body in all matters affecting the HOA, the Members and the Estate; and

15.2.9 To ensure the existence and regular updating of a policy and procedure framework, accessible to all Members and staff of the HOA, and in compliance with all applicable legal provisions with regard to all aspects of the governance and management of the Estate, which framework must include, among others, the following: Policy and procedure on good financial management, control and reporting; policy and protocol on administrative processes and procedures; policy on the protection and use of personal information of Members, policy on access to information and confidentiality; procurement policy; policy and procedures on buildings and related matters; human resources policy and procedures, policy on the enforcement of the Rules of the HOA and the consequences in instances of the contravention thereof, etc.

15.3 The Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time, inclusive of its decisions regarding Trustee Portfolios, and the number, mandate and composition of sub-committees or task teams of the Committee.

15.4 The Committee is compelled to conduct or commission any investigation into the affairs of the HOA should it suspect the contravention of any law, especially those placing a legal duty on the HOA to reporting any crime or suspicion thereof, any alleged breach of the provisions of this Constitution or the Rules of the HOA or the Committee.

15.5 It is incumbent upon the Committee to provide guidance to the HOA in developing a three-to-five-year development and management strategy for the Estate containing among others the strategic intent, priorities, goals and outcomes, an implementation plan articulating infrastructure and resource requirements and needs, timeframes and responsibilities, key milestones and reporting of progress.

16. THE TRUSTEE COMMITTEE: MEETING PROCEEDINGS

16.1 The Committee shall meet monthly with a view to giving effect to its role and executing its mandate as contemplated in paragraph 15 above.

16.2 The Committee shall, subject to the provisions of this Constitution, determine its meeting procedures and related matters.

16.3 The Committee shall meet in person or by applying available on-line communication options, or a combination of the aforementioned.

16.4 The quorum of meetings of the Committee is 50% plus 1 (one) of the Trustees, not considering any vacancies.

16.5 The Chairperson, as contemplated in paragraph 14.11 above, shall preside at all meetings of the

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Committee, provided that should at any meeting of the Committee, the Chairperson not be present within 5 (five) minutes after the time determined for the holding thereof, then the Vice-Chairperson shall act as Chairperson of the meeting, provided further that should the Vice-Chairperson also not be present within 5 (five) minutes of the time determined for the holding of the meeting, the Trustees present shall elect from their ranks a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

16.6 Minutes of the meetings of the Committee must be kept and must at least reflect the decisions of the Committee as well as the financial implications, if applicable, associated therewith, and whether the financial implications have been provided for and approved in the budget, or not, and the proposed funding thereof, as applicable. The minutes shall be prepared as soon as possible after the meeting in the agreed format, submitted to the Chairperson for revision and consideration, and formally submitted to the following meeting of the Committee for approval and signing by the Chairperson, whereafter it will become part of the official records of the HOA.

16.7 The minutes of the meeting of the Committee will be accessible at all reasonable times to a Trustee, the Auditors, the Members, and the relevant Local Authority, subject to the provisions of POPIA and subject to the signing of an undertaking by the individuals, groups, or professional individuals and/or their principals, to respect the confidentiality of the content of the said minutes and the use thereof for the purpose indicated in the request to gain access only.

16.8 Only the decisions of the Committee, as recorded in the minutes of properly constituted meetings and within the mandate and authority of the Committee, shall be valid and of full force and effect and will remain as such until varied or rescinded by an authorised authority.

16.9 A resolution signed by all the Trustees shall be valid as if it had been passed at a duly convened meeting of the Committee.

17. MEETINGS OF MEMBERS OF THE HOME OWNERS' ASSOCIATION

17.1 ANNUAL GENERAL MEETINGS AND SPECIAL GENERAL MEETINGS OF THE HOME OWNERS' ASSOCIATION

17.1.1 The HOA shall hold a General Meeting of Members each year which shall be constituted as its AGM, in addition to any other Special General Meeting/s called during that year.

17.1.2 The HOA shall hold its AGM as contemplated in paragraph 17.1.1 above on or before 31st December and shall announce the meeting in the Notice to its Members as the Annual General Meeting of the Home Owners Association in accordance with the provisions of this Constitution.

17.1.3 The AGM will be held at the time and place determined by the Committee and provision will be made for Members to attend and participate in the meeting by way of an appropriate on-line platform as well.

17.1.4 All General Meetings other than the AGM shall be called Special General Meetings.

17.1.5 The Committee may, whenever circumstances so necessitate, convene a Special General Meeting, in accordance with the provisions of this Constitution, and must convene such when so requested by at least 50 Members submitting to the Committee the resolutions to be passed at the proposed Special Meeting, accompanied with the rationale for such.

17.2 NOTICE OF MEETINGS

17.2.1 ANNUAL GENERAL MEETING

17.2.1.1 The AGM shall be called with at least 21 (twenty-one) days' Notice in writing.

17.2.1.2 When calculating the 21 (twenty-one) days' Notice, the day of issuing the Notice shall be excluded and the day of the meeting included.

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17.2.1.3 The Notice of the meeting shall specify the place, the day and the hour of meeting and must include the agenda of the meeting as contemplated in paragraph 17.5 below, as well as all relevant supporting documentation.

17.2.1.4 Notices shall be served as contemplated in paragraph 17.9 below.

17.2.2 **SPECIAL GENERAL MEETING (SPECIAL RESOLUTION)**

17.2.2.1 A Special General Meeting called for the passing of a special resolution, shall be called with at least 21 (twenty-one) days' Notice in writing.

17.2.2.2 When calculating the 21 (twenty-one) days' Notice, the day of issuing the Notice shall be excluded and the day of the meeting included.

17.2.2.3 The Notice of the meeting shall specify the place, the day and the hour of the meeting and contain the detail of the proposed Special Resolution, the reason/s why the Special Resolution should be adopted, with due reference also to the implications of the adoption of the Special Resolution for the HOA and its Members in general, and in particular the financial implications (indicating the possible carry through impact on the financial wellbeing of the HOA) and the effect the adoption of the Special Resolution may have on the ability of the HOA to achieve its objectives and to function effectively and efficiently.

17.2.2.4 The provisions of paragraph 17.2.1.4 above shall with the necessary changes apply to Special General Meetings where the adoption of a Special Resolution is envisaged.

17.2.2.5 The Meeting shall not discuss any other matter not related to the proposed Special Resolution.

17.2.3 **SPECIAL GENERAL MEETING (GENERAL)**

17.2.3.1 A Special General Meeting, other than one called for the passing of a special resolution, shall be called by at least 21 (twenty-one) days' Notice in Writing.

17.2.3.2 When calculating the 21 (twenty-one) days' Notice, the day of issuing the Notice shall be excluded and the day of the meeting included.

17.2.3.3 The Notice of the meeting shall specify the place, the day and the hour of meeting and contain an exposition of the agenda items, inclusive of any supporting documentation, as well as an indication of the reasons and related contexts justifying the decision of the Committee to call a Special General Meeting.

17.2.3.4 The provisions of paragraph 17.2.1.4 above shall with the necessary changes apply to Special General Meetings contemplated in paragraph 17.2.3.

17.2.3.5 The Meeting shall not discuss any other matter not included in the agenda as communicated in accordance with paragraph 17.2.3.3.

17.2.4 **NOTICE OF MEETINGS: CONDONATION**

17.2.4.1 Non-compliance with the provisions contained in paragraph 17.2.1.1, 17.2.2.1 and 17.2.3.1 may be condoned:

17.2.4.1.1 In the case of a meeting called as the AGM, by all the Members present at the Meeting; and

17.2.4.1.2 In the case of all Special General Meetings, by a 75% (seventy-five per centum) majority of the Members present at the Meeting.

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17.2.4.2 The accidental omission to give Notice of a meeting or any decision, or to give any other Notification, or present any document required to be given or sent in terms of these provisions, or the non-receipt of any such Notice, Notification or document to any Member or other person entitled to receive the same, shall not invalidate the proceedings of, or any decision passed at, any meeting.

17.3 VENUES OF MEETINGS

17.3.1 All General Meetings of the HOA shall take place at place/s determined by the Committee from time to time, provided that appropriate infrastructure must be available to enable on-line attendance and participation.

17.4 QUORUM

17.4.1 No business shall be transacted at any General Meeting of the HOA unless a quorum is present when the Meeting proceeds to business.

17.4.2 The quorum required for any General Meeting of the HOA shall be the total number of Members Eligible to Vote Present at the Meeting, representing at least 100 of the total number of votes of Members, provided that at least 20 (twenty) Members must be present in person or attending via the on-line platform provided by the Committee.

17.4.3 If within half an hour from the scheduled time of a General Meeting a quorum is not present, the meeting, if convened at the request of Members, shall be dissolved, but in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairperson of that meeting shall determine, and if at such adjourned meeting a quorum is not present within half an hour from the scheduled time of the meeting, the Members present shall be a quorum.

17.4.4 Subject to the provisions of paragraph 17.4.5, once a Meeting of the HOA constituted in accordance with this Constitution is quorate it remains quorate for as long as at least 40 % of the number of Members constituting a quorum is present at the Meeting.

17.4.5 In the event of a Meeting of the HOA becoming inquorate, for whatever reason, the Members present may discuss, or continue to discuss, the matters on the agenda of the Meeting and formulate recommendations for consideration at a quorate Meeting.

17.5 ANNUAL GENERAL MEETING: AGENDA

In addition to any other matter/s timeously placed on the agenda by the Committee of its own accord, or at the request of Members fourteen days before the scheduled date of the Meeting, the following matters must be on the agenda of an AGM for consideration, and may, except for paragraph 17.5.7 and 17.5.11, not be delegated to any other authority:

17.5.1 The consideration of the Chairman's Annual Report;

17.5.2 The election of Members, in accordance with the provisions of this Constitution, to fill vacancies on the Committee;

17.5.3 The consideration of resolutions proposed by Members or the Committee for adoption by such meeting, submitted in accordance with paragraph 17.6.3, and the voting upon any such proposed resolutions;

17.5.4 The consideration of the Annual Financial Statements for the previous financial year and any other related presentation or report;

17.5.5 The consideration of the Report of the Auditors and their fees for services delivered;

17.5.6 The appointment/confirmation of the appointment of Auditors and their fee structure for the next financial year;

17.5.7 The consideration of the appointment, if necessary, of any other person/firm or entity to deliver specified professional or other services to the HOA;

17.5.8 The consideration of the proposed Annual Budget of the HOA for the next financial cycle;

17.5.9 The consideration of the total Levy (as referred to in paragraph 9 above) for the next financial cycle;

17.5.10 The submission of any Policy or Rule for approval, amendment, or noting, as applicable; and

17.5.11 The submissions to CSOS as contemplated in paragraph 20.2.2 of this Constitution.

17.6 **GENERAL MEETINGS: PROCEDURES**

17.6.1 The Chairperson shall preside at all General Meetings, provided that should he not be present within five minutes after the scheduled time for the meeting, then the Vice-Chairperson shall act as Chairperson of the meeting, provided further that should the Vice-Chairperson also not be present within five minutes of the scheduled time of the meeting, then the Members Present at the Meeting Entitled to Exercise their Membership Rights, shall vote to appoint a Chairperson for the Meeting, who shall thereupon exercise all the powers and duties of the Chairperson at the Meeting.

17.6.2 The Chairperson may, with the consent of any General Meeting at which a quorum is present (and if so, directed by the Meeting), adjourn a Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Meeting other than the business announced in the initial Notice of the Meeting. Whenever a Meeting is adjourned for ten days or more, Notice of the Meeting shall again be given in the same manner as an initial Notice prescribed for such a Meeting in this Constitution. Save as aforesaid, the Members shall not be entitled to any Notice, or of the business to be transacted at an adjourned Meeting.

17.6.3 All resolutions and amendments of resolutions proposed by Members for adoption by a General Meeting shall be submitted to the HOA by Email or any other approved electronic medium on or before a time and date, and shall be seconded and in the format, as determined by the Chairperson and indicated in the relevant Notice of the General Meeting. The time and date of submission shall be at least 14 days before the scheduled date of the General Meeting, and resolutions not meeting the determined requirements shall be deemed not to have been submitted.

17.6.4 Except as prescribed differently in this Constitution, General Meetings shall be conducted in accordance with generally accepted meeting practice.

17.7 **PROXIES**

17.7.1 A Member may be represented at a General Meeting by a proxy, who need not be a Member of the HOA.

17.7.2 A proxy shall be in Writing and shall be signed by the Member concerned or his duly authorised agent and must be in the format determined by the Committee.

17.7.3 In instances where the ownership of an Erf vests in more than one natural person the owner authorised by his co-owner/s may sign the proxy and must, if so requested, provide proof of his authority to act on behalf of the co-owners.

17.7.4 In instances where the ownership is vested in a legal entity, the Chairperson of the Board, or the Secretary of the entity must sign the proxy and must, if so requested, provide proof of his authority to act on behalf of the entity in this matter.

17.7.5 Proxies and the supporting documentation indicating the authority to act shall be deposited at or emailed to the Administrative Office of the HOA or the Managing Agents during business

hours 5 working days before the scheduled time of the meeting.

17.7.6 Proxies issued for General Meeting shall expire 3 months after the date on which it was issued.

17.7.7 Proxies become null and void at the death of a Member, and similarly at revocation by the Member, provided the Committee be informed in writing of the latter.

17.8 **GENERAL MEETINGS: VOTING**

17.8.1 At any General Meeting, a Member Present at the Meeting shall have one vote for each Erf registered in his name provided that if an Erf is registered in the name of more than one person or entity, the registered owners shall jointly have one vote only.

17.8.2 Only Members of the HOA Entitled to Exercise their Membership Rights shall be entitled to be present at a General Meeting and to vote on any matter serving before the Meeting.

17.8.3 At any General Meeting a resolution put to the vote shall be decided as follows:

17.8.3.1 By a show of hands of the Members physically present or so represented at the meeting, unless the Chairperson before the commencement of the voting, either at the request of the majority Members Present at the Meeting, or because of the sensitivity of the matter to be voted on, rule that voting shall take place by way of a closed ballot; and

17.8.3.2 By using the voting facility provided for those Members who are acknowledged as Present at the Meeting by signing in on the on-line facility provided by the Committee.

17.8.4 An Ordinary Resolution or the amendment of an Ordinary Resolution shall be carried on a simple majority of the votes of the Members Present at the Meeting, and an abstention shall not be counted as a vote for or against the resolution in question.

17.8.5 A Special Resolution, or the amendment of a Special Resolution requires a two-thirds majority of the votes of the Members Present at the Meeting, and an abstention shall not be counted as a vote for or against the resolution in question.

17.8.6 In instances of an equality of votes, the Chairperson shall have an obligatory casting vote (a vote in addition to his vote as a Member Present at the Meeting).

17.8.7 Unless any Member Present at a Meeting has before closure of the Meeting objected to any declaration made by the Chairperson as to the result of any voting at the meeting, or the validity of the voting procedure, such declaration by the Chairperson shall be deemed to be a true and correct statement of the outcome of the voting, and the voting at the Meeting shall in all respects be deemed to have been properly and validly conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded provided that such entry conforms with the declaration made by the Chairperson as to the result of any voting at the Meeting.

17.9 **SERVING OF NOTICES**

17.9.1 Notices of General Meetings as contemplated in this Constitution shall be given to Members *via* Email to the Email address recorded in the Membership Register.

17.9.2 Any Notice *via* Email to the address recorded in the Membership Register shall deemed to be proof of the sending of the Notice to the Email address provided by the Member.

17.9.3 The accidental omission to give Notice of a Meeting to, or the non-receipt of the Notice of a Meeting by any person entitled to receive such, shall not invalidate the proceedings of any General Meeting.

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18. PROCUREMENT OF PROFESSIONAL SERVICE PROVIDERS

18.1 Subject to the provisions of this Constitution, the Delegation Framework, and the provisions of the Procurement Policy of the HOA, the Committee shall have the right to procure the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, or any other professional person or firm, for reasons deemed necessary by the Committee and on such terms and conditions as the Committee shall decide.

18.2 The right to procure contemplated in paragraph 18.1 is subject to the provision of the cost associated with the said procurement being approved in the Annual Budget or within the ambit of the Policy pertaining to Unbudgeted Expenditure.

19. FINANCIAL YEAR END

19.1 The financial year end of the HOA is the end of September of each year.

20. FINANCIAL STATEMENTS AND RELATED REPORTS

20.1 GENERAL

20.1.1 The HOA shall allow its Members access to the financial statements and other related financial records during business hours, subject to the terms and conditions determined by the Committee regarding the time and manner, and the provisions of prevailing legal provisions regulating the protection and confidentiality of information.

20.1.2 At each AGM the Committee shall table a proper income and expenditure account for the immediately preceding financial year, together with a proper balance sheet of the last financial year-end.

20.1.3 The information contemplated in paragraph 20.2 shall be accompanied by proper and extensive reports of the Committee and the Auditors, and there shall be attached to the Notice sent to Members convening an AGM a copy of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

20.2 AUDITED FINANCIAL STATEMENTS AND SUBMISSIONS TO COMMUNITY SCHEME OMBUD SERVICE (CSOS)

20.2.1 Once a year the financial accounts and related documents and information of the HOA shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors selected and appointed in accordance with the provisions of paragraph 17.5.6 read with paragraph 18.

20.2.2 The HOA must in accordance with the CSOS Act and Regulations annually submit to CSOS an Annual Return in the prescribed format, the Annual Financial Statements of the HOA, as well as any other prescribed document or information.

21. INSURANCE AND INDEMNITY

21.1 The insurance cover of the HOA must follow a proper risk assessment and provide adequate cover against replacement value, standard risks, and the amounts prescribed by the CSOS Act, 2011, as amended, and related regulations and directives regarding public liability and fidelity insurance.

21.2 The HOA must obtain a replacement valuation at least every 5 years of all buildings and improvements to the Communal Property it is obliged to insure and adjust the insurance value accordingly.

21.3 The HOA shall by way of appropriate insurance coverage provide full indemnity to members of the Committee against any form of public liability arising from the *bona fide* execution of their duties as Trustees.

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21.4 The Committee as a collective, shall not be liable to the HOA for any expenditure, loss or damage suffered by the HOA arising from the unauthorised or illegal act/s of any fellow Trustee, employee, professional service provider, or advisor, including, among others, the Auditors of the HOA.

21.5 The Trustees individually and as a collective, shall not be liable to the HOA for any expenditure, loss or damage suffered as a result of the insufficiency or deficiency of title to any property acquired by the Committee for or on behalf of the HOA, or for the insufficiency or deficiency of any security in or upon which any of the monies of the HOA shall be invested, or for any expenditure, loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities of effects shall be deposited, or for any expenditure, loss or damage occasioned by any error of judgement or lack of oversight on the part of a Trustee or for any other expenditure, loss, damage or misfortune which may happen during a Trustee's term of office, in whichever capacity in the Committee, resulting from the execution of any of the duties of his office/s or in relation thereto, unless the said expenditure, loss, damage or misfortune occurred as a result of gross negligence, unauthorised actions, *mala fides* or illegal behaviour and the like.

21.6 The provisions of paragraph 21 will have no effect on the joint liability of Members for the expenditure incurred by the HOA as contemplated in section 15(2)(r), 29(7)(a), 30(3) and 30(4) of the 2015 By-law.

22. RESOLUTION OF DISPUTES

22.1 Disputes between Members or between Members and Trustees or between Members and the HOA regarding the interpretation and/or application of this Constitution and/or the Rules shall be decided in accordance with the arbitration process and procedure developed in terms of the CSOS Act, 2011.

22.2 Without derogating from the right of Members and the HOA to revert to the process and procedure developed in terms of CSOS in the first instance, Members may resolve at a General Meeting to refer a dispute regarding the interpretation and meaning of the provisions of the Constitution and the Rules to an independent and knowledgeable external service provider to, after further consultation with the parties and the studying of relevant documentation, advise the HOA and the Members involved, as the case may be, on a possible resolution and/or the best way forward.

22.3 The outcome of the referral of a matter in terms of paragraph 22.2, will have no force or effect unless approved by the majority of Members present at a General Meeting, provided that any matter regarding the interpretation of the Constitution and the meaning of the provisions thereof, would require a majority vote of two-thirds of the Members Present at the Meeting, and provided further that should the HOA or any Member involved in the dispute not accept the outcome of the proceedings, the affected parties may revert to the provisions of paragraph 22.1 above.

22.4 Where the dispute between a Member and the HOA pertains to a non-levy-related Debt resulting in a delay in the issuing of a Clearance Certificate as contemplated in paragraph 11.7, the HOA shall agree to the issuing after the affected Member has submitted sufficient Written proof, certified by an Attorney, that the Member has paid into the Attorney's Trust Account an amount equivalent to the disputed outstanding Debt, and that the payment was made on condition that the Member will employ all reasonable measures to have the dispute resolved expeditiously in accordance with the provision of paragraph 22.1, and on condition further that the funds paid into the Trust Account of the Attorney will be released without delay and paid into the HOA's bank account, should the matter be resolved in favour of the HOA.

22.5 The provisions of paragraph 22.1 to 22.4 do not prohibit the affected Member, or the HOA, to approach a competent court for appropriate relief.

23. EFFECTIVE DATE

23.1 The provisions of this Constitution shall take effect, after following due internal processes regarding the repeal of the existing and the approval of this Constitution, on the date of approval

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of this Constitution by the relevant Local Authority.

24. PUBLIC ACCESS

24.1 Ownership of Coastal Public Property vests in the citizens of the Republic of South Africa and is held in trust by the State on behalf of the citizens. (See the National Environmental Management: Integrated Coastal Management Act, 2008, as amended, for more information).

24.2 The Coastal Public Property adjacent to the Estate consists, among others, of coastal waters, land submerged by coastal waters, the seashore, and any admiralty reserve owned by the State.

24.3 Members of the public are entitled to use and enjoy Coastal Public Property, subject to certain statutory restrictions, among others, that their usage and enjoyment do not adversely affect the rights of other members of the public to use and enjoy the property, do not hinder the State in the performance of its duty to protect the environment, and do not result in an adverse effect on the environment.

24.4 Members of the public have the right of reasonable access to Coastal Public Property, *via* Public Servitudes.

24.5 Coastal Public Property is governed and managed in accordance with the mandates of the respective competent authorities.

24.6 Subject to any By-laws issued by the Local Authority in accordance with section 18 of the National Environmental Management: Integrated Coastal Management Act, 2008, as amended (2014), that may be applicable to the Estate, or the conditions pertaining to any other approved Town Planning and Resource Use Permit affecting the Estate, the HOA is in accordance with the terms and conditions applicable to the establishment of the Estate obliged to allow the general public, due to the closure of the section of road R 46 within the perimeter of the Estate, alternative road access through the Estate to Shell Bay, subject to the access control measures the HOA may impose from time to time (See paragraph 4 of Annexure 1 of the Approval of 6 December 1994, paragraph 3.1(b)(i) of the Amending Approval of 14 March 1996, and Proclamation 1/2010 of 15 January 2010 issued in terms of the Western Cape Road Ordinance, 1976). Said alternative access is provided *via* the Old Gate, following the Golden Mile Boulevard, to the indicated parking area at Shell Bay.

24.7 The HOA, in conjunction with the Developer, furthermore complied with the terms and conditions of the establishment of the Estate pertaining to public access and related matters, through the registration of servitudes in favour of the general public in the deeds registry on Erf 3032 (Erf 245: Plan 2.063/7.3.2) and Erven 2973 and 2893 (Erven 227 and 233: Plan 2.063/7.3.2), indicated as roads, parking areas and open public areas in the Application for the Subdivision approved on 6 December 1994, as amended by the Amending Approval of 14 March 1996.

24.8 The HOA is furthermore obliged to conclude a contract with the Local Authority, as it is doing/confirming by adopting this clause in the Constitution and submitting the Constitution to the Local Authority for approval, whereby the HOA or any successor in title would not be allowed to unilaterally decide to deny the public road access as contemplated in paragraph 24.6 and 24.7 above, to the Coastal Public Property adjacent to the Estate (See paragraph 3.1 of Annexure 1 of the Approval of 6 December 1994, as amended by the Amending Approval of 14 March 1996).

24.9 Giving effect to the terms and conditions of the establishment of the Estate pertaining to public access, the HOA is also legally obliged to design and construct, to the satisfaction of the Local Authority, signage at the entrance of the Estate clearly indicating the agreed arrangements regarding access by the public.

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