



**BRACKENRIDGE ESTATE  
HOME OWNERS' ASSOCIATION  
CONSTITUTION**

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## **1. NAME, ESTABLISHMENT AND JURISDICTION**

**1.1** The name of the Association is the **BRACKENRIDGE ESTATE HOME OWNERS' ASSOCIATION**;

**1.2** The Association is constituted and has been established as a Home Owners' Association pursuant to the provisions of Section 29 of the Land Use Planning Ordinance No. 15 of 1985 in respect of the Township laid out on Erf No. 8230 Plettenberg Bay situate in the Municipality of Plettenberg Bay Division of Knysna, Western Cape Province.

## **2. THE ASSOCIATION**

### **2.1 MAIN BUSINESS**

The Main Business of the Association is the promotion, advancement and protection of the interests of the Members, in their capacity as such, at BRACKENRIDGE ESTATE.

### **2.2 MAIN OBJECTS**

**2.2.1** The main objects of the Association shall be to promote the communal interest of the Members and shall include but not be limited to:

**2.2.1.1** The care, maintenance, upkeep and control of the Common Area, i.e. that portion of the development that does not form part of the layout for residential erven, including all services constructed within the Common Area and to ensure that Municipal Services are supplied to BRACKENRIDGE ESTATE;

**2.2.1.2** The formulation and enforcement of rules and regulations at BRACKENRIDGE ESTATE;

**2.2.1.3** The formulation and enforcement of aesthetic and environmental standards and Architectural Design Guidelines at BRACKENRIDGE ESTATE;

**2.2.1.4** The provision and maintenance of access and egress control, and the management of the security at BRACKENRIDGE ESTATE;

**2.2.1.5** To own Common Property and any improvements erected thereon and to have servitudes registered in its favour over erven in BRACKENRIDGE ESTATE for the benefit of one or more erven in BRACKENRIDGE ESTATE;

**2.2.1.6** The preservation of the low-density residential nature of BRACKENRIDGE ESTATE and the implementation of the Environmental Management plan.

2.2.1.7 To utilise such portion/s of the common property specifically for the benefit of the functioning of the Association's Township, provided that such action has been authorised by Special Resolution of the Association.

2.2.2 Without limiting the generality of the powers specifically referred to below, the Association shall, subject to this constitution, have the power to do such acts as may be necessary to accomplish the objects referred to herein.

## **2.3 MEMBERSHIP**

2.3.1 Membership of the Association shall be compulsory for every registered owner of an Erf, and the transferee of an Erf shall be deemed to have become a Member of the Association, subject to all the obligations of membership, forthwith upon registration of transfer of an Erf into his name.

**2.4** A Member shall not be entitled to sell or transfer an Erf unless it is a condition of the sale and / or transfer that:

2.4.1 the transferee shall become a Member of the Association;

2.4.2 the registration of the transfer of the Erf into the name of that transferee shall *ipso facto* constitute the transferee as a Member of the Association;

2.4.3 he first obtains the written consent of the Association, which consent shall be given without undue delay provided the purchaser of such Erf agrees in writing to abide by these presents, and provided the Member shall have paid all amounts due by him to the Association for the period up to the date of transfer of the Erf;

**2.5** Whenever a Member sells any Erf owned by him, he shall be obliged to:

2.5.1 give the Association notice in writing of the sale;

2.5.2 ensure that all monies due to the Association in accordance with clause 2.4.3 has been paid, or that provision has been made to the satisfaction of the Association for the payment thereof;

2.5.3 furnish the Association with a Municipal Rates Clearance Certificate before transfer of the Erf into the name of the Purchaser may take place.

**2.6** The registered owner of an Erf may not resign as a Member of the Association or cease to be a Member of the Association.

**2.7** The rights and obligations of a Member shall not be transferable and every Member shall:

- 2.7.1 to the best of his ability further the objects and interests of the Association;
  - 2.7.2 observe all rules and regulations;
  - 2.7.3 not subdivide or consolidate his erven nor may he obtain any authority or permission to change the use of his Erf without the prior written consent of the Association.
  - 2.7.4 not be entitled, without the prior written approval of the Trustee Committee, to make any alterations to any building on Erven or do anything that will affect the architectural style or aesthetic appearance of the buildings within BRACKENRIDGE ESTATE;
  - 2.7.5 be obliged to submit any building plan, whether such plan is for new construction, renovation, alteration and / or addition, to the Architectural Review committee referred to in paragraph 2.9.3 hereunder for examination and approval and signature prior to the submission of such plan to the Municipality or other local authority for approval;
- 2.8** Nothing contained in the Constitution shall prevent a Member from ceding his rights in terms of the Constitution as security to the Mortgagee of the Member's Erf.

## **2.9 RULES, ARCHITECTURAL GUIDELINES AND OTHER REGULATIONS**

- 2.9.1 All Members, their employees, guests, invitees and persons claiming right of entry into or residency in the BRACKENRIDGE ESTATE must comply with and adhere to this Constitution and any rules and regulations issued by the Association.
- 2.9.2 2.9.2 Rules and regulations govern, *inter alia*:
  - 2.9.2.1 the Members' rights of use, access to, occupation and enjoyment of the Common Area;
  - 2.9.2.2 the control of pets and other animals at BRACKENRIDGE ESTATE;
  - 2.9.2.3 the external appearance of and the maintenance and use of the Common Area and the buildings or other improvements erected thereon;
  - 2.9.2.4 the external appearance and maintenance of buildings or other improvements or structures erected at BRACKENRIDGE ESTATE and on Erven, architectural and aesthetic style and design criteria, and the type of plants and maintenance of gardens;

- 2.9.2.5 the execution of building work within BRACKENRIDGE ESTATE and to impose fees to be paid to the Association by the Member on submission of plans to the Architectural Review committee, as follows:
  - 2.9.2.5.1 A non-refundable scrutiny fee in such amount as determined by the Trustee Committee from time to time, and
  - 2.9.2.5.2 A building fee in such amount as is determined by the Trustee Committee from time to time to provide for reinstating damage to the Estate during building operations. Should damage exceed the determined amount, the Member shall be billed by the Association for the difference. Any dispute in this respect shall be resolved in terms of Clause 23, Dispute Resolution.
- 2.9.2.6 the code of conduct at BRACKENRIDGE ESTATE required of builders, other contractors and owners wishing to execute work within BRACKENRIDGE ESTATE;
- 2.9.2.7 the conditions of access to and egress from BRACKENRIDGE ESTATE;
- 2.9.2.8 security and the communications infrastructure within BRACKENRIDGE ESTATE;
- 2.9.2.9 dispute and disciplinary measures relating to Members and others having access to BRACKENRIDGE ESTATE in relation to matters affecting BRACKENRIDGE ESTATE;
- 2.9.2.10 the furtherance and promotion of the affairs of the Association;
- 2.9.2.11 the management of the affairs of the Association;
- 2.9.2.12 the conduct of the Trustee Committee;
- 2.9.2.13 the conduct at BRACKENRIDGE ESTATE of Members and any person resident on or entering the Estate;
- 2.9.2.14 any matter that may assist the Association and its representative organs in administering and governing the activities of the Association generally;
- 2.9.2.15 the utilization of Erven and dwellings at BRACKENRIDGE ESTATE;

2.9.2.16 the determination and imposition of fines, which shall become a debt owing to the Association.

2.9.2.17 The conditions of access to and egress from an Erf which shall not be altered without the prior written consent of the Association;

2.9.3 There shall be appointed an Architectural Review committee consisting of an architect, at least one Trustee Member, and the Building Control Officer, who need not be a Member. The architect and Building Control Officer shall be nominated by the Home Owners Association from time to time.

2.9.4 The Architectural Review Committee

2.9.4.1 shall, in any deliberations be bound by the Architectural Design Guidelines and other relevant rules and regulations in force at the time;

2.9.4.2 may recommend changes to the Architectural Design Guidelines for consideration by the Trustee Committee and / or Association in general meeting; and

2.9.4.3 shall ensure that all building plans are approved by the Architectural Review Committee and are signed by the Member's architect prior to submission to the Municipality for any approval under the National Building Regulations and Building Standards Act 103 of 1977.

**2.10** Dwellings of BRACKENRIDGE ESTATE shall be for single-family occupation, whether by Members, their guests or tenants. Exceptions to this clause shall be subject to the prior written approval of the Association.

## **2.11 MEMBERS' OBLIGATION**

2.11.1 Each Member undertakes to the Association that he shall comply with:

2.11.1.1 the provisions of this Constitution;

2.11.1.2 any rule or regulation;

2.11.2 A Member who enters into a lease or use agreement of whatsoever nature in terms of which the use or enjoyment of an Erf is given to a third party, must make the strict compliance with this Constitution and all rules and regulations issued in terms hereof by such third party a condition of such agreement;

2.11.3 Where the contravention of the Constitution, a rule or regulation by a third party in clauses 2.9.1 or 2.11.2, other than a Member, incurs any liability of whatsoever nature to the Association, the Member through whom the

third party has obtained entry into the BRACKENRIDGE ESTATE shall in the stead of such person who has committed the contravention be liable to the Association.

### **3. LEGAL STATUS AND LIMITED LIABILITY**

**3.1** The Association is a body corporate and as such:

- 3.1.1 its assets, liabilities, rights and obligations vest in it independently of its members;
- 3.1.2 it may not distribute any of its profits and gains to any person and it will use its funds solely for the objects for which it has been established and for investment;
- 3.1.3 it will have perpetual succession;
- 3.1.4 it may sue or be sued in its own name.

**3.2** The members will not by reason of their membership be liable individually, jointly or severally for the liabilities and obligations of the association.

### **4. FINANCIAL AFFAIRS**

#### **4.1 FINANCIAL YEAR END**

The financial year-end of the Association shall be the 30<sup>th</sup> September of each year, and may be changed only by Ordinary Resolution of Members.

#### **4.2 LEVIES**

- 4.2.1 Levies shall be made on Members as from the date of registration of transfer into the name of the member, for the purposes of meeting all the Expenditure which the Association has properly incurred, or to which it may be reasonably anticipated that the Association will necessarily or reasonably be put by way of:
  - 4.2.1.1 maintenance, repair, improvement and keeping in order and condition of the Common Area;
  - 4.2.1.2 erection of or alterations to buildings;
  - 4.2.1.3 payment of all rates and other charges payable by the Association in respect of the Common Area;
  - 4.2.1.4 payment for gardening service/s, security and all other services rendered to the Common Area to the Association;



- 4.2.1.5 payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, the Common Area and the Association's affairs and the execution of its objects.
- 4.2.2 As and when it becomes necessary the Association shall be entitled to impose special levies by special resolution taken at a General Meeting on members in addition to the annual levies should the needs for such additional levies arise or circumstances so dictate.
- 4.2.3 If the annual levy is not paid within thirty (30) days of due date or should a member be in arrears for three months if the levy is paid monthly, then such levy shall become delinquent, and the Association may institute legal proceedings against the member for the recovery thereof and the costs as between attorney and own client of such proceedings shall be added to the levy due by the delinquent member. A member whose levy is delinquent for the current year shall not be entitled to be nominated as a member of the Trustee committee or to vote at a General Meeting.
- 4.2.4 A Member who is in arrears with any amount payable to the Association shall be liable to pay interest on the amount outstanding from time to time. Interest on arrears shall be levied at the prime overdraft rate charged by the Home Owners Association's bank. Interest will be compounded monthly.

#### **4.3 INCOME TAX EXEMPTION**

- 4.3.1 The sole object of the Association must be to manage the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable.
- 4.3.2 The Association is not permitted to distribute its funds to any person other than to similar association of persons.
- 4.3.3 On dissolution the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act, 1962.
- 4.3.4 Any amendments to the Constitution must be submitted to the Commissioner for the South African Revenue Service.

### **5. MEETINGS**

#### **5.1 VOTING**

Unless otherwise provided, at every General Meeting every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name

provided that if an Erf is registered in more than one name, they shall jointly have one vote.

## **6. THE TRUSTEE COMMITTEE**

The Trustee Committee members shall consist of not less than four (4) and not more than seven (7) persons who shall be Members or the spouses of Members. Any Trustee Committee member shall be eligible for re-election.

## **7. VACATION OF OFFICE**

A Trustee Committee member shall cease to hold office as such if:

- 7.1** by notice in writing to the Trustee Committee that he resigns his office;
- 7.2** he is or becomes of unsound mind;
- 7.3** he surrenders his estate as insolvent or his estate is sequestrated;
- 7.4** he is convicted of an offence which involves dishonesty;
- 7.5** he absents himself from three consecutive meetings of the Trustee Committee members without special leave of absence from the Trustee Committee;
- 7.6** by resolution of a general meeting of the Association he is removed from his office;
- 7.7** he or his spouse, as the case may be, ceases to be the registered owner of an Erf or his subscription becomes delinquent in terms of Clause 4.2.3.

## **8. TRUSTEE MEETINGS AND PROCEDURES**

- 8.1** The Trustee Committee members shall meet at such time and place as shall be decided by the Trustee Committee from time to time, provided that meetings may be conducted by way of an electronic medium.
- 8.2** Three Trustee Committee members may at any time convene a meeting of the Trustee Committee by giving to the other Trustee Committee members no less than 10 days written notice of the proposed meeting, which notice shall specify the reason for calling such a meeting; provided that in cases of emergency such shorter notice as is reasonable in the circumstances may be given.
- 8.3** Four Trustee Committee members shall form a quorum at any meeting of the Trustee Committee. Should a quorum not be reached the meeting will be held a week later and whoever is present will constitute a quorum.
- 8.4** Any matter at any meeting of the Trustee Committee members shall be determined by a majority of those present and voting. In the event of any equality of votes, the Chairman of any meeting shall have a casting as well as a deliberate vote.

- 8.5** The Trustee Committee may from time to time appoint a Secretary and a Treasurer, or a Secretary/Treasurer.
- 8.6** The Trustee Committee shall keep minutes of all its meetings, which shall be available for inspection by any member on request.
- 8.7** Should a Trustee Committee Member resign or cease to hold office, the remainder of the Members may nominate a Member or spouse of a Member to act as a Trustee Committee Member in the stead of the Member who resigned or became unable to act.

## **9. POWERS**

The Management and Administration of the Association shall vest in the Trustee Committee which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself. Without in any way limiting the generality of the foregoing, such powers shall include but not be limited to the following:

- 9.1** the performance of such acts as are necessary to accomplish the objects expressed or implied in this Constitution;
- 9.2** the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 9.3** the operation of a banking account with all powers required by such operations;
- 9.4** the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- 9.5** the employment and payment of agents, servants and any other parties;
- 9.6** the making, amendment and repeal of rules and regulations which shall be binding upon Members as if they form part of this Constitution;
- 9.7** the right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 9.8** the levying of a subscription payable by Members as provided in Clause 4.2 hereof;
- 9.9** the preservation of the architectural theme of the Development and the adjudication upon any proposed extension, addition and/or alterations to the property or erections situate thereon within the Development in accordance with the Architectural Design Guidelines.
- 9.10** to enforce servitudes registered over erven in BRACKENRIDGE ESTATE in favour of the Association for the benefit of Members of the Association.

**9.11** to develop, alienate, sell or let such portion/s of the common property specifically for the benefit of the functioning of the Association's Township, provided that such action has been authorised by Special Resolution of the Association.

**9.12** to, on behalf of the Association, give notice to a Member that unless the Member pays the electricity charges levied on the Member within 14 days from it becoming due and payable, or make arrangements for payment of such electricity charges to the satisfaction of the Trustee Committee, the Association will disconnect the supply of electricity to an Erf or erven of the Member. Should the Trustee Committee disconnect the supply of electricity in terms of this clause, then electricity will not be reconnected to the Erf or erven unless and until the Member, in addition to paying the outstanding electricity charges and interest thereon, also pays such reconnection fee as from time to time determined by the Trustee Committee.

## **10. VALIDITY OF ACTS OF THE TRUSTEE COMMITTEE MEMBERS**

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

## **11. REMUNERATION**

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

## **12. INDEMNITY**

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

## **13. GENERAL MEETINGS OF THE ASSOCIATION**

**13.1** The Association shall before 15 March in each year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, and shall specify the meeting as such in the notices calling the Meeting.

**13.2** Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.

**13.3** All general meetings other than Annual General Meetings shall be called special general meetings.

**13.4** The Trustee Committee may, whenever it thinks fit, convene a special general meeting.

**13.5** A special resolution means a resolution passed at an Annual General Meeting or any other General Meeting whereat Members present in person or by proxy represent not less than 50% of the total vote and passed by a majority of at least 75% of the total votes represented by Members present in person or by proxy.

#### **14. NOTICE OF MEETINGS**

**14.1** A General Meeting shall be convened on not less than twenty-one (21) days' notice in writing.

**14.2** All notices shall be sent to the Member's email address, or by normal post to the Member's elected address, or to the Member's fax number, or delivered to and receipted personally by the Member, whichever mode of notification has been elected by the Member in writing. If posted, the notice shall be deemed to be delivered 7 days after the date on which it was posted. If a Member has failed to elect a specific notification, notice shall be sent by email or post at the address supplied to the Association at the time of becoming the registered owner or subsequent notice. Any amendment of address or notification made shall be effected in writing to the Association. It is the Member's responsibility to update his contact details as and when necessary with the Association whenever such details change.

**14.3** The notice shall be inclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting and the general nature of the matter to be discussed, provided that any meeting shall, notwithstanding that it is called by shorter notice than that specified, be deemed to have been correctly called if it is so agreed by eighty per cent of the Members present.

#### **15. VALIDITY OF MEETINGS**

The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that meeting, provided that the notice requirements referred to in Clause 14 have been complied with.

#### **16. QUORUM FOR GENERAL MEETINGS**

No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. A quorum shall be Members present in person or by proxy and holding not less than 30% of the total number of votes available to be cast by Members at the time that the meeting commences. Should a quorum not be reached, the meeting will be held a week later at the same time and venue and whoever is present will constitute a quorum.

## **17. CHAIRMAN**

The Chairman of the Trustee Committee shall preside at every General Meeting.

## **18. VOTES**

Subject to Paragraph 5.1 above, at all General Meetings resolutions put to the vote shall take place by show of hands unless by majority vote the meeting decides that voting shall be by ballot, in which even the ballot shall take place immediately. Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:

- 18.1** each Member present in person shall have one vote for every Erf registered in his name;
- 18.2** each person present as proxy for a Member shall have one vote for every Erf registered in the name of the Member for whom he is proxy.
- 18.3** each Member and person present as proxy for a Member shall indicate clearly how he casts each vote to which he is entitled as aforesaid.
- 18.4** all resolutions shall, except as otherwise provided herein, be by simple majority of those Members present in person or proxy at the Meeting and voting.
- 18.5** the Chairman of the Meeting shall count the votes cast for and against the resolution and shall declare it carried or lost as the case may be.

## **19. AGENDA**

In addition to any other matters required to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 19.1** the consideration of the Chairman's report;
- 19.2** the election of the Trustee Committee;
- 19.3** the consideration of the report of the Auditors and fixing of their remuneration;
- 19.4** the confirmation of any budget proposed by the Trustee Committee;
- 19.5** the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 19.6** the confirmation of the annual subscription and any special levy determined by the Trustee Committee for the year.
- 19.7** this constitution may only be amended by a special resolution as defined in Clause 13.5.

## **20. PROXY**

Votes may be given either personally or by proxy.

- 20.1** The instrument appointing a proxy shall be in writing in the common form, or any form approved by the Trustee Committee under the hand of the appointer, or of his attorney duly authorized in writing, or if such appointer is a company, under the hand of an officer duly authorized in that behalf.
- 20.2** The instrument of appointing a proxy, together with the power of attorney (if any) under which it is signed or a certified copy thereof shall be deposited at the domicilium citandi of the Association at least three days before the time appointed for holding the meeting, or adjourned meeting, at which the person named in such instrument proposes to vote; otherwise the person so named shall not be entitled to vote in respect thereof.

## **21. ARCHITECTURAL DESIGN GUIDELINES**

This Constitution must be read with the Architectural Design Guidelines and should there be any conflict then the provisions of this Constitution will prevail.

## **22. BOUNDARY WALL/S OR FENCE**

Each Erf situated on any boundary of Brackenridge Estate will be made subject to the Association's right to have the boundary wall and/or fence of Brackenridge Estate erected on the Erf. The erection thereof will be done in such a way as to ensure the minimum encroachment onto the Erf, but the specification and dimensions of the wall or fence are in the discretion of the Association, provided the height and width thereof is reasonable, bearing in mind the security purpose thereof. The Association is entitled at all times to enter upon the relevant Erven in the Estate on which the security wall and/or fences is/are erected in order to maintain and/or repair and/or replace such wall and/or fence or to inspect it.

## **23. DISPUTE RESOLUTION**

- 23.1** In the event of a dispute, annoyance, aggravation or complaint between Members or a Member and the Association, an attempt must be made to settle the matter between the parties concerned. This should be done with consideration of tolerance.
- 23.2** If a matter in terms of clause 23.1 is not resolved within 30 (thirty) days of the occurrence of the dispute, annoyance, aggravation or complaint, it must be dealt with in accordance with the procedure as set out in this clause. This procedure is as follows:
- 23.2.1** The aggrieved Member or the Association, as the case may be, must issue a notice of dispute to the party who it is alleged has created the dispute or committed the offending conduct. Where it is alleged that a third party in clause 2.11.3 has created the dispute or offended, the notice must be

issued to the responsible Member in the stead of the person who has allegedly offended. A notice of dispute must contain the following information:

23.2.1.1 Full particulars of the Member issuing the notice.

23.2.1.2 Full particulars of the alleged dispute or offending conduct, including the names and details of the parties involved, date, time and place of the alleged conduct, and full particulars of the conduct itself.

23.2.1.3 Details of the manner in which it is requested that the dispute, annoyance, aggravation or complaint be resolved.

**23.3** Where a notice of dispute in clause 23.2.1 is not issued by the Association, a copy thereof must be sent to the Association on the same day that it is issued.

**23.4** Unless the dispute set out in a notice of dispute is resolved between the parties within a period of 30 (thirty) days after it was issued, it must be referred to the Trustee Committee for their determination and the issuing of a directive by them on how it should be dealt with. The Trustee Committee may direct that a matter be dealt with in one of the following ways:

23.4.1 That the matter be dealt with by way of arbitration in terms of this clause;

23.4.2 That the matter be referred to the Ombud as a dispute in terms of Section 38 of the Community Schemes Ombud Services Act, 2011 (Act No. 9 of 2011);

23.4.3 That the matter in their opinion is not capable of being resolved by way of arbitration or the Ombud and that it should be resolved by a court of law.

**23.5** Within 14 (fourteen) days from the date on which the Trustee Committee issued a directive in terms of clause 23.4, the parties involved in the matter must advise the Trustee Committee whether or not they intend to abide by the directive issued by the Trustee Committee. Should a party to whom a directive has been issued not advise the Trustee Committee within the aforesaid 14 (fourteen) period that he or she chose not to abide by the directive, then it will be deemed that he or she chose to abide by the directive. Should one or more of the parties not be prepared to abide by the directive of the Trustee Committee, then the Committee must take such action, if any, as it in the circumstances deems appropriate, including but not limited to bringing an application in the High Court for a declaratory order.

**23.6** Arbitration of a matter in terms of this clause shall be as provided for in the Arbitration Act, 1965 (Act No. 42 of 1965) in accordance with the following procedure:

23.6.1 The Association, Member, or whosoever refers the matter to arbitration, will be liable for the initial and upfront payment of the costs of referring



the matter so, excluding the costs incurred by the Association/Member against whom the arbitration is requested, as the case may be, but including the costs payable to arrange the arbitration and to pay the arbiter;

- 23.6.2 Arbitration will be conducted in an informal and summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence;
  - 23.6.3 Arbitration shall be called for within 30 (thirty) days of the issuing of a directive in clause 23.4.1 and shall commence as soon as reasonably possible after it is called for with a view to it being completed within 30 (thirty) days after it has been called for;
  - 23.6.4 The arbiter shall be a practicing advocate of not less than 5 (five) years standing practicing at the Knysna or George Bar, appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to agree to such appointment. Should the Members and/or the Association fail to agree on a suitable arbiter, then the president of the George Bar Association will be requested to appoint a suitable arbiter;
  - 23.6.5 An arbiter will not be appointed before the party responsible in terms of clause 23.6.1 has made payment or provided security for the payment of the costs for conducting the arbitration.
- 23.7** The arbiter shall in giving his award have regard to the principles contained in this Constitution, the rules and regulations, and shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances, and therefore the strict rules of law need not be observed or taken into account by him arriving at his decision.
- 23.8** The arbiter's decision shall be presented within 14 (fourteen) days after the conclusion of the arbitration in a written document and shall state the reasons for the decision. The decision by the arbiter shall include a determination as to the liability of the costs of and relating to the arbitration to be paid by either one or the other of the disputing parties or by both or all of them in such proportions as the arbiter shall determine in his or her sole discretion.
- 23.9** Each of the parties to the arbitration in terms of this clause irrevocably agree that the decision of the arbiter made at arbitration proceedings:
- 23.9.1 shall be final and binding on each of them; and
  - 23.9.2 shall be carried into effect immediately;
  - 23.9.3 may be made an order of any court of whose jurisdiction the parties are subject to upon application by either of the parties or the Association.

- 23.10** An arbitration hearing in terms of this clause shall be held in Plettenberg Bay at a suitable venue determined by the Association.
- 23.11** The Member or the Association, or whosoever refers a matter to be dealt with by the Ombud in accordance with the Community Schemes Ombud Services Act, 2011 must, within 14 (fourteen) days after the directive by the Trustee Committee was sent to him or her that the matter should be so dealt with, declare a dispute with the Ombud by following the procedures provided for in the Act. In such event the Member must, within the said 14 (fourteen) day period, notify the Association that the matter has been so referred. Insofar as the Association is concerned, a matter referred to the Ombud will, subject to clause 23.12, be stayed until a final ruling has been made thereon by the Ombud or an adjudicator to whom the matter has been referred by the Ombud.
- 23.12** The procedures provided for in this clause shall not exclude the Association or a Member, in appropriate circumstances, to sue for an interdict in a court of law.
- 23.13** Where the Association has declared a dispute or a Member has declared a dispute against the Association with the Ombud, the Member will be liable to pay the all-inclusive cost and expenses of the Association, including legal costs, if:
- 23.13.1 The Member withdraws the application to declare a dispute after the Association replied to a notice from the Ombud inviting it to respond thereto;
- 23.13.2 An adjudicator to whom the Ombud refers a dispute for adjudication dismisses an application brought against the Association;
- 23.13.3 An adjudicator grants the relief applied for by the Association against a Member or refuses the relief sought by a Member against the Association.

## **24. DOMICILIUM**

The domicilium of the Association shall be Plettenberg Bay.