

CONSTITUTION

CAPRICORN BEACH HOME OWNERS ASSOCIATION

A Body Corporate established
in terms of Section 29 of the Land Use
Planning Ordinance, 15 of 1985

1. ESTABLISHMENT IN TERMS OF STATUTE

The Capricorn Beach Home Owners Association is constituted, as a Body Corporate body in terms of Section 29 of the Land Use Planning Ordinance, No 15 of 1985 and in accordance with the conditions imposed by the City of Cape Town when approving the subdivision of Erf 153575 and 153589 Cape Town and shall come into existence simultaneously with the registration in the Deeds Office of the first Unit Erf.

2. INTERPRETATION

In this Constitution: -

2.1 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

“A Body Corporate” means a Body Corporate established in terms of The Sectional Titles Act Number 95 of 1986 (as amended) and which is established in respect of a Scheme registered in Terms of that Act which is built on a Unit Erf;

"The Association" means The Capricorn Beach Home Owners Association;

"the Office" means the registered office of The Association;

"Month" means calendar month;

"Year" means calendar year;

"in writing" means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

"the Unit Erven" and "Unit Erf" means the erven arising from the subdivision of Erf 153575 and Erf 153589 Cape Town including portions 2 and 6 or their subdivision and including, for the purposes of this Constitution, a Unit in a Sectional Title Scheme established in terms of The Sectional Titles Act No. 95 of 1986 (as amended) which scheme is built on any sub division of Erf 153575, Erf 153589 including portions 2 and 6 or any subdivision of those portions.

“the Private Area” in the context of this Constitution the private area shall include all land within the original boundary of erf 153575 and 153589 which is neither a public road nor a unit erf and the verges to public

sections of Sanderling Road, Spurwing Circle and Sandpiper Close plus the beach boardwalks all the way onto the beach.

- " Member" means a member of The Association;
- "the Trustee Committee" means the Board of Trustees of The Association;
- "a Trustee" means one of the Trustee Committee;
- "Chairman" means the Chairman of the Trustee Committee;
- "Vice-Chairman" means the Vice-Chairman of the Trustee Committee;
- "Auditors" means the Auditors of The Association;
- "the Council" means The City of Cape Town;
- "Business Day" means weekdays other than Saturdays, Sundays and Public Holidays;
- "Developer" means the Capricorn Beach Joint Venture or in the event of The Capricorn Beach Joint Venture disposing of land, then in respect of that land, their successors in title, save that for the purposes of sub-clauses 16.1, 35.1.1 to 35.1.1.3 "Developer" means the Capricorn Beach Joint Venture.
- "Special Resolution" means a resolution passed at a special general meeting of which not less than 21 (twenty one) clear days notice has been given specifying the intention to propose the resolution as a Special Resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands by not less than three-fourths of the total number of members present at that meeting who, at minimum, form a quorum for a general meeting.
- "The Regulations" The Regulations made, from time to time, by The Trustees or by The Members in General Meeting for the effective management of the day to day affairs of The Association and referred to in clause 11.1 below.
- "Managing Agent" A person appointed in accordance with the provisions of Clause 17.2
- "The Conduct Rules" The Conduct Rules created and in force from time to time for the control and management of the affairs of The Association and which may not be amended save by Special Resolution as provided for in this Constitution.

- 2.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing anyone gender only shall include the other two genders.
- 2.3 The Clause headings are used for convenience and shall be disregarded in interpreting this Constitution.

3. PURPOSE DESCRIBING THE MAIN BUSINESS

The main business of The Association is the management and control of the development known as Capricorn Beach and its several separate components whether commercial or residential in nature so as to enhance and protect the mutual interest of the Members in the Capricorn Beach Development, provided that where a Sectional Title Scheme established in terms of the Sectional Titles Act No. 59 of 1986 (as amended), is situated on a Unit Erf the functions of the Body Corporate established in terms of that Act will not be usurped but will be exercised subject to the provisions of paragraph 5.1 below.

4. MAIN OBJECTIVES: The main objectives of The Association are:

- 4.1. The control over (subject to the provisions of Paragraph 5) of all buildings and/or structures erected or to be erected on the Unit Erven ;
- 4.2. The control of and maintenance of the improvements, services and amenities in the Private Areas and the public road verges, the northern verge of Baden Powell Drive the south access Road to Capricorn Business Park and the beach boardwalks
- 4.3. The payment of all accounts for potable water and irrigation water used throughout Capricorn Beach and for the determination of the amounts to be paid by individual members for water and for the collection of that money, provided that where a member or a Sectional Title Body Corporate may be individually metered and charged for its/his water consumption by the relevant local authority The Association shall have no responsibility in that regard.
- 4.4. The promotion, advancement and protection of the communal and group interests of the members generally;
- 4.5. To take title to the Private Areas.

5. SECTIONAL TITLE SCHEMES

- 5.1. A Body Corporate will not, notwithstanding any other provisions of this Constitution, be relieved of any of its obligations arising from the Sectional Titles Act No 95 of 1986, provided that it will be obliged to carry out and give effect to its obligations as provided for in that Act subject to the provisions of this Constitution, The Conduct Rules and The Regulations.

6. **FINANCIAL YEAR END AND DOMICILIUM**

6.1. The financial year end of The Association is the end of December of each year.

6.2. The trustees will from time to time determine the The *Domicilium Citandi et Executandi* provided that:

6.2.1. Such address will be a physical address and will be situated within The Magisterial District in which The Association is located and will be either:

6.2.1.1. The address of the Chairperson of The board of Trustees or;

6.2.1.2. The address of any other duly elected resident trustee duly appointed in general meeting alternatively;

6.2.1.3. The address of any duly appointed Managing Agent.

6.3. The Trustees will give written notice to all the Owners of any change in such address.

7. **MEMBERSHIP**

7.1. Membership of The Association will be compulsory for every registered owner of a Unit Erf;

7.2. Each member of a Body Corporate will, individually, be a Member.

7.3. Membership will commence simultaneously with the transfer of a Unit Erven into the name of the Transferee

7.4. Membership of The Association will be limited to the registered owners of The Unit Erven provided that a person who is entitled to obtain a certificate of registered title to any such Unit Erf will be deemed to be the registered owner thereof;

7.5. Subject to the provisions of sub paragraph 7.1 where any such owner is more than one person, or a legal person, all the registered owners of that erf will be deemed jointly and severally to be one Member of The Association and shall nominate one owner to represent them and vote at meetings of The Association

7.6. When a member ceases to be the registered owner of a Unit Erf, he shall ipso facto cease to be a member of The Association.

7.7. A member shall not be entitled to sell or transfer a Unit Erf unless:

7.7.1. It is a condition of the sale that:

7.7.1.1. the transferee becomes a member of The Association

7.7.1.2. the registration of that Unit Erf into the name of the transferee shall ipso facto constitute the transferee as a member of The Association;

7.7.1.3. He first obtains the written consent of The Association to such transfer which consent shall be given provided that:

7.7.1.3.1. All amounts due by the member to The Association have been fully paid to The Association or provision has been made for the payment of such amounts to the satisfaction of the Trustees and;

7.7.1.3.2. The purchaser of such Unit Erf agrees, in writing, to abide by this Constitution, The Conduct Rules and The Regulations.

7.8. The registered owner of a Unit Erf may not resign as a member of The Association.

7.9. The Trustee Committee may issue a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.

7.10. The rights and obligations of a Member shall not be transferable and every Member shall:

7.10.1. to the best of his ability further the objects and interests of The Association

7.10.2. Observe The Conduct Rules, The Regulations and the provisions of This Constitution provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of that Member's Unit Erf.

7.11. The *domicilium citandi et executandi* of each member will be the address of the Unit Erf or Erven owned by that member.

8. ALTERATIONS TO UNIT ERVEN

8.1. The Provisions of this paragraph will apply notwithstanding any application made by a member to The Council for the consent of The Council to a departure relating to any structure/improvement erected or to be erected on a Unit Erf and notwithstanding that consent to such application may have been furnished by The Council, whether in whole or part. It is recorded that while the provisions of this clause 8 are enforceable between The Association and The Members they are not intended to nor do they derogate from the competency of The Council (or its successor) to do anything which it would, in terms of any Law, be entitled to do in relation to the Unit Erven or The Private Area.

8.2. A member may not without the written authority of the Trustees first having been obtained:

8.2.1. erect any new buildings and/or structures of any nature whatsoever on a Unit Erf;

- 8.2.2. Effect any changes or alterations to any existing building and/or structure on a Unit Erf including any change to the external colour scheme of same;
 - 8.2.3. construct any pergola, patio awning, shade port, carport, wendy house, wall or any other structures which may have the effect of affecting the external appearance of the improvements on a Unit Erf;
 - 8.2.4. install or affix burglar bars to any external windows or doors of the buildings on a Unit Erf,
- 8.3. A member who seeks the written approval of the trustees as contemplated in sub paragraph 8.2 must:
- 8.3.1. Submit to the chairperson or such other person nominated by the trustees from time to time detailed plans of the proposed work. The Trustees nominee, for this purpose, may be an architect registered with the South African Institute of Architects.
 - 8.3.2. Make payment of any reasonable disbursements and expenses which may be incurred by The Association in furnishing approval, including any professional fees and disbursements incurred by The Association in giving effect to the provisions of this paragraph. Such professional fees contemplated in this sub-paragraph will be based on the recommended tariff of The Institute of South African Architects for work of a similar nature.
 - 8.3.3. Make, simultaneously with the submission of the application, payment to The Association of a deposit in such amount as determined by the Trustees from time to time. Such deposit will be refunded to The Member upon the expiration of a period of 60 (sixty) days calculated with effect from the final completion of the works.
- 8.4. No application as envisaged in this paragraph will be deemed to be submitted until all the requirements in this sub - paragraph 8.3 have been wholly complied with.
- 8.5. The trustees may, in their sole discretion, require the plans to be prepared by an Architect registered with the South African Institute of Architects or its successor. The trustees may, in their sole discretion, require such detailed plans, elevations, perspectives or streetscapes they may deem necessary to assess the impact of the proposed work to the Development
- 8.6. The Trustees in considering an application made to them in accordance with the provisions of this Paragraph must be, acting and arriving at a decision in their sole discretion, be satisfied that the proposed work is:
- 8.6.1. Aesthetically Pleasing;
 - 8.6.2. In accordance with the general character and style of the buildings in the development known as Capricorn Beach when viewed as a whole as well as the character and style of that particular part of the overall development in which the relevant

structure is situated, be it a residential Sectional Title Scheme, a commercial component or a part of development which is comprised of individual self standing residential dwellings;

- 8.6.3. Complies, in all respects, with the contents of the relevant Site Development Plan and The Maximum Development Potential Plan as approved by The City of Cape Town for the Capricorn Beach Development.

9. LEVIES

- 9.1. The Trustee Committee shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which The Association has incurred, or to which the Trustee Committee reasonably anticipates The Association will incur by way of maintenance, repair, improvement and keeping in order and condition of The Private Area including, rates and other charges payable by The Association in respect of The Private Area, and all sewerage, refuse and water charges and all electricity consumption used in The Private Area and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of The Association, The Private Area and The Association's affairs.
- 9.2. In calculating levy contributions the Trustee Committee shall take into account, income, if any, earned by The Association.
- 9.3. It is recorded that the majority of Unit Erven in the Capricorn Beach development do not have individual water meters. In those instances where a Unit Erf does not have an individual water meter recording the water consumption for that Unit Erf then the charge for the water consumed by that Unit Erf forms part of the overall total water consumption charge/ of The Association and will be recovered from The Owner on a formula to be determined by The Trustee committee from time to time and will be recovered by The Association as part of The Levy Contribution charged to The Owner.
- 9.4. In those instances where a Unit Erf does have its own individual water meter a separate water levy/charge in respect of water consumed in respect of The Private Areas will be payable by the Owner of such Unit Erf calculated in accordance with a formula to be determined, from time to time, by the Trustee Committee.
- 9.5. The Trustee Committee shall estimate the amount which shall be required by The Association to meet the expenses during each year, together with such estimated deficiency as shall result from the preceding year, and shall make a levy upon the Members', equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly installments due in advance on the first day of each and every succeeding month of such year.
- 9.6. In the event that any building or part of any building which is built on a Unit Erf is used for a purpose other than a residential dwelling then the levy contribution payable in respect of that Unit Erf will be calculated by dividing the area in such building used for a non residential purpose

(delineated in square metres) by 80 (eighty) and multiplying the numerical result of this calculation by the amount of the single levy contribution that would, but for the provisions of this clause, be payable in respect of such Unit Erf.

- 9.7. The Trustee Committee, may from time to time, impose special levies upon the members in respect of any expenses which are not included in any estimate made in terms of 9.4 and such levies may be payable in one payment or by such installments and at such time or times as the Trustee Committee shall think fit.
- 9.8. Any amount due by a Member by way of a levy shall be a debt due by him to The Association and any such amount overdue for payment will bear interest at such rate of interest as determined by the trustees from time to time.
- 9.9. In the event that The Association institutes action against any member for recovery of any levy ,special levy or other contribution properly due by that member to The association then The Association will be entitled all legal costs on the scale as between attorney and own client together with collection commission.
- 9.10. The obligation of a member to pay a levy shall cease upon his ceasing to be a member of The Association, without prejudice to The Association's right to recover arrear levies.
- 9.11. No levies paid by a Member shall under any circumstances be repayable by The Association upon his ceasing to be a member provided that, in the event that a members account with the association may, on the termination of his membership, stand in credit, then the amount of such credit shall be refunded to the member within 21 days of the termination of his membership.
- 9.12. A Member's successor in title to a Unit Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that erf, to pay the levy attributable to that Erf.
- 9.13. The total estimated levy as contemplated in 9.4 shall be apportioned equally between the Unit Erven subject to the additional water charge referred to in subparagraph 9.3
- 9.14. Any special levies imposed by the Trustees shall be apportioned between the Members by the Trustees in an apportionment which the Trustees may regard as reasonable, regard being had of the direct benefits which the Member(s) may derive from the proposed expenditure for which the special levies are imposed.
- 9.15. No Member shall be entitled to any of the privileges of membership unless and until he shall have paid all amounts (if any) which are due and payable to The Association in respect of his membership.

10. DEALING WITH THE PRIVATE AREA

- 10.1. Neither the whole nor any portion of The Private Area shall be:

10.1.1.sold, let, alienated, otherwise disposed of, subdivided or transferred or

10.1.2.mortgaged; or

10.1.3.subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude, (save those enjoyed by the Members in terms hereof) without the specific prior written consent of the Council and the sanction of a Special Resolution of The Association provided that that no Member shall be entitled to unreasonably vote against any such Special Resolution or

10.1.4.built upon, improved or enhanced in value by the constitution of buildings, erections, facilities or amenities, the direct or indirect cost of which exceeds the amount to be determined annually by the members in the course of the Annual General Meeting of The Association.

10.2. It is specifically recorded that the Council will not now or at any time in the future take title to the Private Area and that the Council will not at any time in the future be responsible for the control, cleaning, repairing or maintenance of any structure or thing built on or under the Private Area, the sole responsibility for which shall rest with The Association.

11. CONTRACTS AND REGULATIONS

11.1. The Trustee Committee may from time to time:

11.1.1. Make regulations governing inter alia:

11.1.1.1. the members' rights of use, occupation and enjoyment of the Private Area;

11.1.1.2. the external appearance of and the maintenance of the Private Area and the buildings or other improvements erected thereon;

11.1.1.3. the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on Unit Erven.

11.1.2. Enter into agreement(s) with the local authority.

11.2. Each member undertakes to The Association that he shall comply with:

11.2.1. The provisions of this Constitution

11.2.2. Any regulations made in terms of this clause.

11.2.3. Any agreements concluded by The Association insofar as those agreements may directly or indirectly impose obligations on him.

12. BREACH

12.1. Should any member:

- 12.1.1. fail to pay on due date any amount due by that Member in terms of this Constitution or any regulation and remain in default for more than 7 (seven) days after being notified in writing to do so by the Trustees; or
- 12.1.2. commit any other breach of any of the provisions of this Constitution or any regulation made hereunder and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time then and in either such event, the Trustees shall be entitled on behalf of The Association, without prejudice to any other rights or remedies which the Trustees or The Association or any other Member may have in law, including the right to claim damages:
 - 12.1.2.1. to institute legal proceedings on behalf of The Association against such member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any Regulation made hereunder, as the case may be or;
 - 12.1.2.2. to remedy such breach and immediately recover the total cost incurred by the Trustees or The Association in so doing from such member.
- 12.1.3. Should the Trustees institute any legal proceedings against any member pursuant to a breach by that Member of this Constitution, The Conduct Rules or any Regulation, then without prejudice to any other rights which the Trustees or The Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or The Association, including attorney/client charges, tracing fees and collection commission.
- 12.1.4. Without prejudice to all or any of the rights the Trustees or The Association should any member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon at the publicly quoted prime rate of interest charged by The Association's bankers from time to time plus 5% calculated from the due date for payment until the actual date of payment of such amount.

13. CESSATION OF MEMBERSHIP

No Member ceasing to be a Member of The Association for any reason shall, (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of The Association, but this clause shall be without prejudice to the rights of The Association to claim from such Member or his estate any arrears levies or other sums due by him to The Association at the time of his so ceasing to be a Member.

14. **TRUSTEE COMMITTEE**

- 14.1. There shall be a Board of the Trustees of Association which shall consist of an odd number of Trustees not less than 3 (three) and not more than 9 (nine) Members.
- 14.2. Every Trustee must be a Member of The Association, or the spouse or partner of a Member.
- 14.3. Only Natural Persons may be Trustees.

15. **REMOVAL & ELECTION OF TRUSTEE MEMBERS**

- 15.1. Save as set forth in 16.2 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office.
- 15.2. A Trustee shall be deemed to have vacated his office as such upon:
 - 15.2.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 15.2.2. his making any arrangement or compromise with his creditors;
 - 15.2.3. his conviction for any offence involving dishonesty;
 - 15.2.4. his becoming of unsound mind or being found lunatic;
 - 15.2.5. his resigning from such office in writing delivered to the Chairperson.
 - 15.2.6. his death;
 - 15.2.7. his being removed from office by a Ordinary Resolution of the members, provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee, has been recorded in the Minute Book of the Trustee Committee
 - 15.2.8. his being removed from office by a unanimous resolution of the remaining trustees.
- 15.3. Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee.
- 15.4. In the event that a Trustee may, for any reason, be temporarily unable to perform his duties then the Trustees may, by a majority decision, appoint a alternate Trustee to act in his place.

16. OFFICE OF TRUSTEES

- 16.1. The first Trustee Committee, the first Chairman and Vice Chairman shall be appointed by the Developer, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.
- 16.2. Within 7 (seven) days of the holding of such Annual General Meeting and each thereafter, the Trustee committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall within 7 (seven) days meet to appoint one of their number as a replacement in such office.
- 16.3. Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or of Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 16.4. The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.
- 16.5. Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

17. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

- 17.1. Subject to the express provisions of this Constitution the Conduct Rules and The Regulations and any restrictions imposed or directives given by the members in General Meeting, the Trustee Committee shall manage and control the business and affairs of The Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this Constitution, may exercise all such powers of The Association and do all such acts on behalf of The Association as may be exercised and done by The Association and as are not by this Constitution required to be exercised or done by The Association in general meeting, subject nevertheless to such regulations or Rule as may be prescribed by The Association in

general meeting from time to time, provided that no regulation or Rule made by The Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation or Rule had not been made.

17.2. The Trustees will have the power to appoint, for and on behalf of The Association, such Agent or Employees as they deem fit in connection with the control, management and administration of the affairs of The Association and the exercise and performance of any or all of the powers and duties of The Association. Such Agent shall not be a Professional Officer as provided for in Clause 27 below but will be registered with the Estate Agency affairs Board and shall hold a Fidelity Fund Certificate issued by that board. The Trustees will have the power to determine the remuneration of such Managing Agent.

17.2.1. The Managing Agent will be appointed for an initial period of one (1) year and thereafter upon one month's written notice of termination by either party.

17.2.2. The trustees shall ensure that there is included in the contract of appointment of all managing agents a provision to the effect that if he is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the trustees may, without notice, cancel such contract of appointment, and that the managing agent shall have no claim whatsoever against The Association or any of The Members as a result of such cancellation.

17.2.3. Any one or more of The Members may, if the managing agent is in breach of the provisions of his contract or if he is guilty of any conduct which at common law would justify the termination of a contract between master and servant, require the trustees to cancel the managing agent's contract in terms of paragraph 17.2.2. The foregoing provisions shall in no way detract from the trustees' rights to cancel the managing agent's contract.

17.2.4. Any Member who require the trustees to cancel the managing agent's contract in terms of paragraph (17.2.3) shall furnish the trustees with such security as they in their discretion may determine and shall indemnify the trustees and The Association against –

17.2.4.1. all litigation costs reasonably incurred by the trustees in enforcing such cancellation against the managing agent; and

17.2.4.2. all other costs and damages arising out of such cancellation, purported cancellation or litigation for which the trustees or The Association might be liable up to the time such Member formally notifies the trustees that he no longer requires them to pursue the action.

17.2.5. The trustees shall not be required to cancel the contract of appointment of the managing agent unless and until The Member requiring cancellation in terms of paragraph 17.2.4 has

furnished them with the security and indemnity as specified in that clause.

17.2.6. The contract with the managing agent shall further provide for the appointment to be revoked, and such managing agent shall cease to hold office, if –

17.2.6.1. where the managing agent is a juristic person, an order is made for its provisional or final liquidation or, where the managing agent is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the managing agent is a company, it is placed under judicial management; or

17.2.6.2. the managing agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the managing agent is a company or a close corporation, any of its directors or members are convicted of an offence involving an element of fraud or an element of dishonesty, or;

17.2.6.3. a special resolution of the members of The Association is passed to that effect: Provided that in such event the managing agent so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.

17.2.7. The Trustees shall give reasonable prior notice to the managing agent of all meetings of the trustees and he may with the consent of the trustees be present thereat.

17.2.8. The trustees shall from time to time furnish to the managing agent copies with all minutes of the trustees meetings and of The Association.

17.3. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time

17.4. The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee this Constitution, The Conduct Rules or The Regulations in such reasonable manner as it shall decide from time to time.

17.5. The Trustee Committee may make regulations, not inconsistent with this Constitution or the Conduct Rules, or any regulations prescribed by The Association in general meeting:

17.5.1. As to disputes generally;

17.5.2. For the furtherance and promotion of any of the objects of The Association;

17.5.3. For the better management of the affairs of The Association;

17.5.4. For the advancement of the interests of The Members;

17.5.5. For the conduct of Trustee meetings;

17.5.6. to assist it in administering and governing its activities generally and shall be entitled to cancel, vary and modify any of the same from time to time.

18. PROCEEDINGS OF THE TRUSTEE COMMITTEE

18.1. **The Trustee** Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit, subject to any provisions of this Constitution

18.2. **Meetings** of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter

18.3. **The quorum** necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustees

18.4. **The Chairman** shall preside as such at all meeting of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

18.5. **Any resolution** of the Trustees will be passed by a simple majority of Trustees present and voting provided that in the event of an equality of votes The Chairperson shall have a deciding vote in addition to his deliberative vote.

18.6. **A Trustee** shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, The Association Members and Local Authority.

18.7. All competent resolutions recorded in the minutes of any Trustee Committee shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee

Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee

18.8. Save as otherwise provided in this Constitution, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

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

19. GENERAL MEETINGS OF THE ASSOCIATION

19.1. The Association shall, before the 31st May in each calendar year, hold a general meeting as its Annual General Meeting which shall be in addition to any other general meetings, during that year and shall specify the meeting as such in the notices in terms of clause 20.1 when below calling the meeting.

19.2. 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.

19.3. All general meetings other than Annual General Meeting shall be called special general meetings.

19.4. The Trustee Committee, may, whenever they think fit, convene a special general meeting.

19.5. In the event of no less than 50% (fifty percent) of The members requesting the Trustees to do so then the Trustees will be compelled to call a Special General Meeting do so within 21 (twenty One) days of such request having been received by them failing which The members concerned may call such meeting.

20. NOTICE OF MEETINGS

20.1. An annual General Meeting and a meeting called for the passing of a Special Resolution shall be called by 21 (twenty-one) days' notice in writing at the least, and a special general meeting, other than one called for the passing of a Special Resolution shall be called by 14 (fourteen) days' notice in writing at the least.

20.1.1. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business;

20.1.2. In the case of a Special Resolution the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are

under this Constitution entitled to receive such notices from The Association

20.1.3.A general meeting of The Association shall however, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if :

20.1.3.1. in the case of a meeting called as the Annual General Meeting, agreed to by all the members entitled to attend and vote thereat; and

20.1.3.2. in the case of a special general meeting, if so agreed to by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 75% (seventy five per centum) of the total voting rights of all members.

20.1.4. The accidental omission to give notice of a meeting or of any resolution or to give any other notification or present any document required to be given or sent in terms of this Constitution or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at or any resolution passed at any meeting.

21. VENUE OF MEETINGS

General Meetings of The Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time.

22. QUORUM

22.1. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being represent 33,3 % (one third) of the total votes of all Members of The Association entitled to vote for the time being save that not less than 3 (three) members must be personally present.

22.2. If within half -an - hour from the time appointed for the holding of a general meeting, a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. 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 Chairman of the meeting shall appoint and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting then the members present shall be a quorum.

23. AGENDA AT MEETINGS

- 23.1. In addition to any other matters required by this Constitution to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- 23.1.1.the consideration of the Chairman's report to the Trustee's Committee;
 - 23.1.2.the election of the Trustee Committee;
 - 23.1.3.The giving or imposing of any directions or restrictions on The Trustees;
 - 23.1.4.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;
 - 23.1.5.the consideration of the balance sheet of The Association for the last financial year of The Association preceding the date of such meeting;
 - 23.1.6.the consideration of the report of the Auditors;
 - 23.1.7.the consideration and approval with or without amendment the estimate of total income and expenditure for the financial year of the total levy for the calendar year during which such Annual General Meeting takes place;
 - 23.1.8.the determination of the value limit to be placed on improvements to the Private Area;
 - 23.1.9.the consideration and fixing of the remuneration of the Auditors for the financial year of The Association preceding the Annual General Meeting.

24. **PROCEDURE AT GENERAL MEETINGS**

- 24.1. The Chairman shall preside as such at all general meetings, provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 24.2. The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn from time to time and from place to place such meeting, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as for an original meeting. Save as aforesaid, the

Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjournment meeting.

24.3. Except as otherwise set forth in this Constitution all general meetings shall be conducted in accordance with generally accepted practice.

25. PROXIES

25.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of The Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, anyone of those persons may sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where an association of persons, by the secretary thereof.

25.2. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be delivered at the office of The Association 24 hours before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12(twelve) months from the date of its execution. Notwithstanding the provisions of this clause no proxy handed to the chairperson before the commencement of any General Meeting will be ineffective.

25.3. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

26. VOTING

26.1. At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Unit Erf registered in his name provided that if a Unit Erf is registered in more than one person's name then they shall jointly have one vote.

26.2. Save as expressly provided for in this Constitution no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to The Association in respect of or arising out of his membership, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

26.3. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a ballot is demanded by any person entitled to vote at such meeting.

- 26.4. Notwithstanding the provisions of 26.3 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote.
- 26.5. Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 26.6. An ordinary resolution (that is a resolution other than a Special Resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all the votes cast thereof, and votes in abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a ballot, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 26.7. Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and 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 if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

27. OTHER PROFESSIONAL OFFICERS

- 27.1. Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of The Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to any of the provisions of this Constitution, provided that any expenditure incurred in respect of the above, shall not exceed 5% (five per centum) of the total annual levy for the year in question unless authorised by a Special Resolution.

28. ACCOUNTS

- 28.1. The Association in general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of The Association, or any of them, and subject to such conditions and regulations, the accounts and books of The Association shall be open to the inspection of Members at all reasonable times during normal business hours.

- 28.2. At each Annual General Meeting the Trustee Committee shall lay before The Association a proper income and expenditure account for the immediately preceding financial year of The Association, or in the case of the first account, for the period since the incorporation of The Association, together with a proper balance sheet made up as at the last financial year end of The Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors if appointed, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in 13.1 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

29. **AUDIT**

Should the Trustees or the majority of the Members so require, the accounts of The Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors at least once a year.

30. **SERVICE OF NOTICES**

- 30.1. A notice shall be in writing and shall be given or served by The Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the Unit Erf owned by him.
- 30.2. No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require The Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 30.3. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 30.4. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

31. **INDEMNITY**

- 31.1. All Trustee members and the Auditors shall be indemnified out of the funds of The Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
- 31.2. Every Trustee member, every servant, agent and employee of The Association, and the Auditors shall be indemnified by The Association

against (and it shall be the duty of the Trustee Committee out of the funds of The Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee member, his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, The Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

- 31.3. A Trustee member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustee members, whether in their capacities as Trustee members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by The Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of The Association, or for the insufficiency or deficiency of any security ill or upon which any of the monies of The Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

32. **ARBITRATION**

- 32.1. Any dispute, question or difference arising at any time between Members or between Members and Trustees arising out of or in regard to any matters arising out of this Constitution, The Conduct rules or The Regulations; or the rights and duties of any of the parties mentioned in this Constitution, The Conduct Rules or The Regulations; or the interpretation of this Constitution, The Conduct Rules or The Regulations shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question. Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty-one) Business Days after it has been demanded.
- 32.2. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
- 32.2.1. primarily an accounting matter - an independent accountant;
- 32.2.2. primarily a legal matter - a practicing attorney of not less than 10 (ten) years standing;

32.2.3.any other matter - an independent and suitably qualified person appointed by the Auditors; as may be agreed upon between the parties to the dispute.

32.3. If agreement cannot be reached on whether the question in dispute falls under the provisions of clauses 32.2.1 and 32.2.2 or upon a particular arbitrator in terms of clause 32.2.3 within 3 (three) Business days after the arbitration has been demanded, then:

32.3.1.the President for the time being of the Law Society of the Cape of Good Hope shall determine whether the dispute falls under the provisions of 32.2.1 and 32.2.2;

32.3.2.the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 32.2.3 within 7 (seven) Business Days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) Business Days referred to in clause 32.1.

32.4. The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by The Association, as he in his sole discretion may deem fit.

32.5. The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration. ,

32.6. Notwithstanding anything to the contrary contained in 32.1 to 32.5 inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of The Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

33. EFFECTIVE DATE

The provisions hereof shall come into force simultaneously with the first passing of transfer of a Unit Erven.

34. AMENDMENTS TO CONSTITUTION AND RULES

This Constitution, or any part hereof, shall not be repealed or amended, and no new Conduct Rules shall be made or any Conduct Rule amended, save by a Special Resolution adopted at an Annual General Meeting or a General Meeting of the Members and save, further, that clauses, 1, 2, 3, 4, 7 9, 10, 33, 34, 36 and 37 or sub clause thereof may not be amended or repealed unless the prior written consent of the Council has been obtained.

35. COMPLETION OF DWELLINGS

- 35.1. All dwellings and any other improvements on a Unit Erf are to be completed by the owners of such Unit Erven within 2 (two) years from the date upon which each Unit Erf was sold by The Developer.
- 35.2. Any owner who has not completed the dwelling on his Unit Erf within the 2 (two) year period as contemplated aforesaid, shall be liable to pay The Association a penalty levy of R500.00 (five hundred Rands per month) for each month or part thereof for which the dwelling remains uncompleted, after expiry of the 2 (two) year period. This penalty levy shall be paid in addition to the levy payable by the Member in terms of clause 9 above. In the event of a dispute arising as to whether a dwelling is "completed" for the purposes of the provisions of this clause the board of trustees shall determine such dispute and their ruling will be final and binding.
- 35.3. Should a member be unable to complete the dwelling due to conditions beyond their control the penalty levy may be waived by the board of trustees. In the event of a dispute arising as to whether a condition is "beyond their control" the board of trustees shall determine such dispute and their decision will be final and binding.

36. ACCESS TO THE CAPRICORN BEACH DEVELOPMENT

It is recorded that officials, employees and contractors employed by the Council shall, at all times, have reasonable access to the Unit Erven and Private Area for purposes of inspecting and/or maintaining all Council services supplying and/or traversing any part thereof.

37. DEVELOPMENT GUIDELINES

- 37.1. It is recorded that the enforcement of these guidelines falls within the jurisdiction of the Council. The Council approved the rezoning of the original Erven and also the subdivision thereof into the Unit Erven and Private Area on the condition that:
- 37.1.1. All dwellings to be constructed on Unit Erven must comply with the prescribed development guidelines and, particularly, the approved development plans submitted to the Council by the Developer when applying for the approval as referred to in sub paragraph 37.1.
- 37.1.2. All dwellings which are to be erected on Unit Erven shall be constructed generally in compliance with the prepared development plans.

38. ESTATE AGENTS

- 38.1. A member will not, for the purposes of marketing a Unit Erf for the purposes of the disposal or letting of same, be entitled to contract with or otherwise employ the services of any person, whether natural or legal, who:
- 38.1.1. conducts the business of an Estate Agent or;

- 38.1.2. conducts the business of a property broker in the course of which business that person markets immovable property to members the public for sale or;
- 38.1.3. markets or attempts, in any way, to market a Unit Erf on behalf of a member whether for financial gain or otherwise

Unless that person has:

- a) Registered herself/himself/itself (and her/ his/ its employees) with The Association in the manner required by The Association from time to time as provided for in The Regulations (as they are amended from time to time);
- b) Paid to The Association all reasonable amounts required by the Association from time to time as provided for in The Regulations (as they are amended from time to time)
- c) Agreed, in writing, that she/he/it and, where applicable, her/his/its employees or representatives will abide by the provisions of The Regulations insofar as they relate to the marketing of Unit Erven within the confines of The Development which provisions may include directives describing the quantity, size, design and location of marketing signage.

- 39. This Constitution replaces and supersedes all and any previous versions of The Constitution of the Capricorn Beach Homeowners Association.