

Annexure: Delegation of Authority (Constitution)

3. DEFINITIONS

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

1985 Ordinance	means the Land Use Planning Ordinance, 1985 (No 15 of 1985).
2014 Act	means the Western Cape Land Use Planning Act, 2014 (No 3 of 2014).
2015 By-law	means the Saldanha Bay Municipality By-law on Municipal Land Use Planning published in the Extraordinary Provincial Gazette (No 7468 of 13 August 2015) to take effect when the 2014 Act comes into operation in the Saldanha Bay Municipal Area.
Annual Budget	means the document tabled annually by the Committee at the AGM for consideration and approval, containing an appropriate exposition of the expected income and expenditure of the HOA for the following financial year with comparisons, as appropriate, with the income and expenditure of previous financial years, significant movements of funds, or any other report reflecting on matters affecting the future financial sustainability of the HOA.
AGM	means the Annual General Meeting of the Members of the HOA as contemplated in paragraph 17 of the Constitution.
Approval of 6 December 1994	means the approval by the Premier of the Western Cape of the rezoning and subdivision of Erven 1, 2 and 3, St Helena Bay (Phase 1, Shelley Point) in accordance with the relevant provisions of the Land Use Planning Ordinance, 1985 (No.15 of 1985) and the Municipal Ordinance, 1974 (No 20 of 1974).
Amending Approval of 14 March 1996	means the amendments approved by the Premier of the Western Cape to the Approval of 6 December 1994.
Attorney	means a legal practitioner who is admitted and enrolled as such under the Legal Practice Act, 2014, as amended.
Auditors	means a firm of auditors appointed by the HOA as prescribed in this Constitution, consisting of a person or persons accredited to perform an audit in terms of the Auditing Professions Act, 2005, as amended.
Building Design and Construction Rules	means the Rules pertaining to the matters contemplated in paragraph 10.1.2.
Business Day	means weekdays other than Saturdays, Sundays, and South African Public Holidays.
Chairperson	means the Chairperson of the Trustee Committee, duly elected in accordance with this Constitution.

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

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

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and on behalf of the HOA and the Committee, and includes any person duly appointed to act in the capacity of Estate Manager.

General Meeting

means any properly constituted Meeting of Members contemplated in paragraph 17 of the Constitution.

General Rules

means the Rules pertaining to the matters contemplated in paragraph 10.1.1.

HOA

means the Shelley Point Home Owners Association, established in accordance with the provisions of the Land Use Planning Ordinance, 1985 (No.15 of 1985), read with the Western Cape Land Use Act, 2014 (No 3 of 2014), as amended.

Levy

means an amount payable by a Member to the HOA as a Debt, determined from time to time by the Committee, and/or the Members at a General Meeting, and/or a Statutory Body, and, depending on the context, refers to Monthly, Special, Statutory, Penalty and Clearance Levies.

Levy-related Debt

means a Debt arising from the non-payment of Monthly, Special, Statutory, or Penalty Levies, inclusive of the interest on such Levies.

Local Authority

means, depending on the context, the West Coast District Municipality and/or the Saldanha Bay Municipality.

Management

means the Estate Manager or his delegate.

Managing Agent

means a person or entity providing certain agreed governance, management, administrative and related support services to the HOA, for reward, whether monetary or otherwise, who is not an employee of the HOA.

Member

means the owner, or collectively, the co-owners, of an Erf, or a Unit Erf, situated within the perimeter of the Estate and reflected as an owner or co-owner in the records of the Deeds Registry concerned in accordance with the provisions of the Deeds Registries Act, 1937 (No 47 of 1937), as amended.

Member Eligible to Vote

means, except regarding the veto right of the Developer in accordance with paragraph 9.21 of this Constitution, read with paragraph 9.15 to 9.18, a Member who has paid in full all Debts due and payable to the HOA and who's membership has not been suspended by the HOA after following due process.

Membership Register

means the document and the information prescribed in paragraph 8.10. to 8.14 of the Constitution.

Membership Rights

means the rights of Members embedded in this Constitution.

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Month	means a calendar month.
Monthly Levy	means a monthly amount payable by a Member to the HOA as a Debt, determined by the Members at a General Meeting, and payable in accordance with the provisions of paragraph 9 of the Constitution.
Municipality	means the Saldanha Bay Municipality situated within the West Coast District Municipality, established by Notice PN484/2000 issued in terms of the Local Government: Municipal Structures Act, 1998 (No 117 of 1998), as amended.
Notice	means any Written communication from the HOA or its authorised delegates or agents and Notified shall have a cognate meaning.
Office	means, depending on the context, the administrative office of the HOA or the Offices of its Managing Agent.
Officials of the Committee	means the Chairperson and the Deputy Chairperson elected in accordance with the provisions of paragraph 14.11.
PAIA	means the Promotion of Access to Information Act, 2000 (No 2 of 2000), as amended.
PAJA	means the Promotion of Administrative Justice Act, 2000 (No 3 of 2000), as amended.
Penalty	means, depending on the context, an additional amount payable to the HOA as a Debt, arising from the non- and/or late-payment of any Levy, or the transgression of the provisions of the Constitution or the Rules, calculated in accordance with the Schedules of Transgressions and Penalties contained in the Rules.
Penalty Levy	means an amount payable by a Member to the HOA as a Debt for the transgression of the provisions of the Constitution, or the Rules as indicated in the Notice Delivered to a Member and calculated with reference to the amount of the Monthly Levy.
POPIA	means the Protection of Personal Information Act, 2013 (No 4 of 2013) and the Codes and Regulations promulgated in terms thereof, as amended from time to time.
Present at a Meeting	means a Member Eligible to Vote: (a) who is present at the meeting in person, or can participate in the meeting by signing in on the on-line electronic facility provided by the Committee; (b) who, in instances of legal entities or co-ownership, is duly represented in person at the meeting as contemplated in this Constitution, or the designated representative can participate in the meeting by signing in on the on-line electronic facility provided by the Committee; (c) who is represented by way of a properly prepared

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and signed proxy by the person or entity designated in the proxy who is present in person at the meeting or can participate in the meeting by signing in on the on-line electronic facility provided by the Committee.

Property of the HOA

means the property registered in the name of the HOA in the relevant Deeds Registry and which the HOA is statutory obliged to maintain, such as streets, parking areas, and all other open areas outside the cadastral boundaries of private property within the perimeter of the Estate, which is not Coastal Public Property, as well as the golf course (See paragraph 3.1 of the Amending Approval of 14 March 1996).

Public Servitude

means, depending on the context, a servitude registered on the Property of the HOA (automatically by law, or otherwise) for purposes of service delivering to the Estate by relevant authorities, or as Designated Coastal Access Land in accordance with section 18 of the National Environmental Management: Integrated Coastal Management Act, 2008, as amended (2014), or as public coastal access routes in accordance with the Approval of 6 December 1994, the Amending Approval of 14 March 1996, or any other applicable approved Town Planning and Resource Use Permit.

Rules

means the General Rules and the Building Design and Construction Rules made, amended, repealed, interpreted, and aligned by the HOA and the Committee, as contemplated in paragraph 10 of this Constitution, and include the HOA approved governing guidelines and “constitutions” of constituent parts or sub-divisions of the HOA.

Schedules of Transgressions and Penalties

means the information contained in the Rules, describing possible transgressions of the provisions of the Constitution and the Rules, and indicating the remedial actions the HOA is entitled to impose as well.

Special Levy

means an amount payable by a Member to the HOA as a Debt, approved by the Members at a General Meeting with the view to financing special capital and other approved projects, and payable as determined by the Members at the Meeting.

Special Resolution

means a decision of the Members taken in accordance with the provisions of paragraphs 17.2.2, 17.8.5 and 17.8.6 of the Constitution.

Statutory Levy

means an amount payable by a Member to the HOA as a Debt, arising from a statutory obligation of the HOA and/or the Member.

Trustee

means one of the members of the Committee.

Trustee Committee

means the Committee consisting of the Trustees duly elected by the Members at the AGM, including those Trustees duly co-opted by the Trustee Committee in accordance with the provisions of this Constitution.

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

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

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