

**THE CONSTITUTION
OF THE RENOSTERBOS ESTATE
HOME OWNERS' ASSOCIATION**

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CONSTITUTION OF THE RENOSTERBOS ESTATE HOMEOWNERS' ASSOCIATION

1. DEFINITIONS

1.1 In this Constitution and any Rules issued in terms hereof, unless the context otherwise indicates –

"amenities" means facilities designed or constructed to meet the communal needs of members of the Renosterbos Estate Homeowners' Association, including but not limited to private roads, security walls and fences, guardhouse and the like;

"Association" means the Renosterbos Estate Homeowners' Association;

"Board of Trustees" means all the Trustees of the Association duly appointed in terms of the provisions of this Constitution;

"building" means any building as defined in the National Building Regulations and Building Standards Act, 1977 (Act No 103 of 1977), as amended;

"common property" means such Portions of Erf 22979 Mossel Bay, Western Cape Province, not approved by the Municipality for development thereon of buildings, but for servitudes and real rights that vest in the Association or to which it has a legally enforceable right, areas designated as private open spaces by the

Municipality when approving a site development plan, private roads and land whether inside or outside of the boundaries of the development required for services to be provided to the Association and/or members of the Association;

- “Constitution”** means this Constitution of the Association;
- “Conservation Management Plan”** means the approved conservation management plan for the Renosterbos Estate, Hartenbosheuwels, Mossel Bay (Buscholtz, 2021) to guide alien vegetation management and fire management throughout the lifecycle of the development;
- “DEA&DP”** means the Department of Environmental and Development Planning, a body in charge of safeguarding the natural environment of the Western Cape and sustainably developing its landscape;
- "developer"** means Renosterbos Beleggings (Pty) Ltd, Registration Number 2020/820670/07 t/a Cape Estates Mossel Bay, or its nominee or successor in title;
- "development"** means the development of Erf 22979 Mossel Bay, Western Cape Province, by the subdivision and rezoning of a Portion or Portions thereof for the erection thereon of buildings, services or amenities as from time to time approved by the Municipality and/or any Government authority and/or entity from which

approval is required for the erection of such buildings, services or amenity;

“development period” means the period from the date of the approval of the Development by the relevant local authority until the Developer notifies the Association that the Development Period is at an end, or until all the erven have been registered in the names of the first owners; whichever shall first occur;

“Erf” means an erf or erven, registered in the Deeds Office as such, within the Renosterbos Estate;

“Erf 22979 ” means the erf designated by this number situate in the Municipality and Registration Division of Mossel Bay Western Cape Province;

“Levy” or “Levies” means the levy or levies referred to in paragraph 9 below;

"Member" means the registered owner of an erf or a Sectional Title Unit that stems from the subdivision of Erf 22979 Mossel Bay, Western Cape Province, as approved by the Municipality from time to time;

"Municipality" means the Mossel Bay Municipality;

“Operational Management Plan” (the OEMP) means the approved Operational Management Plan (21 August 2018) to be utilized as a tool to ensure that undue or avoidable adverse impacts of the operational activities are prevented; and that the positive benefits are enhanced;

- "phased development"** means the development or redevelopment of an area of Erf 22979, in accordance with any amendment and/or alteration of the subdivision or rezoning of such plan as approved by the Municipality;
- "Renosterbos Estate"** means the name by which the development will be known;
- "reserve fund levy"** means a once off levy against registration of transfer to the Homeowners Association for the credit of the reserve fund controlled by the Homeowners Association, which levy shall be equal to 1% (one per cent) of the fair market value of the property at the time of the alienation or deemed alienation;
- "resolution"** means a resolution other than a special resolution passed at an annual general meeting or any other general meeting by an ordinary majority of the total vote represented at such meeting by members present in person or by proxy;
- "Rule" or "Rules"** means the Rule or Rules issued by the Association as contemplated by this Constitution;
- "Sectional Title Unit"** means a residential section defined in the Sectional Titles Act, 1986 (Act No. 95 of 1986) as amended read in conjunction with the Sectional Schemes Management Act, 2011 (Act No. 8 of 2011) as amended and duly demarcated on a Sectional Title

Plan as drafted by an architect or land surveyor and accepted by the Land Surveyor General;

- "services"** means potable water supply, drainage, sewerage, storm water disposal, electricity supply or similar services;
- "special resolution"** means a resolution passed at an annual general meeting or any other general meeting where at members present in person or by proxy represent not less than 20% (twenty per centum) of the total vote and passed by a majority of at least 67% (sixty-seven per centum) of the total votes represented by members present in person or by proxy;
- "syndicate"** means a group of persons who owns property in the development;
- "sale/alienation of Sectional Title Unit or erf"** means the sale by conventional Deed of Sale and shall deem to include a change in shareholders or members of Companies or Close Corporations and include the sale of share(s) in a syndicated erf or Sectional Title Unit, or the vesting of an erf or Sectional Title Unit to the beneficiary of a trust;
- "Trustee Committee"** means the Trustee Committee tasked with the management of the Association.

1.2 In this Constitution and any Rules issued in terms hereof, unless the context otherwise indicates -

1.2.1 words importing the singular shall include the plural and *vice versa*;

1.2.2 words importing persons shall include any natural person, partnership, firm, syndicate, trust, society or other voluntary association, a close corporation, any company or body, whether corporate or not;

1.2.3 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;

1.2.4 Reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazette by the government of the Republic of South Africa from time to time and month will have a corresponding meaning;

1.2.5 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.

2. **ESTABLISHMENT OF HOMEOWNERS' ASSOCIATION**

2.1 The Association is a Juristic Person.

2.2 The Association shall be a legal entity separate from the members thereof and shall exist in perpetuity.

- 2.3 The Association may sue and be sued in its own name.
- 2.4 All assets, liabilities, rights and obligations of the Association shall vest in it independently of its members.
- 2.5 All income and assets of the Association shall be applied solely for the promotion of the objectives of the Association and for investment.

3. **OBJECTIVES OF THE ASSOCIATION**

- 3.1 The main objective of the Association is to exercise control over the common property, amenities, and services of the development.
- 3.2 To reach and realise its main objective, the Association shall have the power to do all such things and take all such action as it may in its sole discretion deem necessary or expedient to:
 - 3.2.1 establish and maintain a levy fund which is reasonably sufficient to cover the estimated annual operating costs for the replacement, repair, maintenance, management and administration of the amenities, common property and services, including payment of rates and taxes and other municipal charges, insurance premiums relating to the amenities, common property and services, and in general to discharge any duty or fulfilment of any other financial obligation of the Association;
 - 3.2.2 to utilise the monies paid as levies to the Association to pay for such goods and services in 3.2.1;

- 3.2.3 to appoint agents and employees to provide goods and services to the Association, provided that it shall be compulsory for the Association to employ external managing agents to attend to the administration of the affairs of the Association and assist the trustees in exercising their powers, duties and functions;
- 3.2.4 issue Rules that regulate the utilisation of amenities, common property and services. Rules to be issued may include but will not be limited to:
- 3.2.4.1. rules to ensure that the amenities, common property and services are at all times kept in a state of good repair, clean, tidy and hygienic, as the case may be;
 - 3.2.4.2 rules to regulate the conduct of Members on the common property and in particular regulating the use of the open spaces and private roads;
 - 3.2.4.3 rules to ensure the safety and security of persons and property on the common property and to require from all persons entering Renosterbos Estate to adhere and submit to procedures instituted to enhance the safety and security of persons and property in the development;
- 3.2.5 Formally represent the collective mutual interests of the Members of the Association in all matters that may directly or indirectly impact on the common property or the area or neighbourhood where Renosterbos Estate is situated.

3.2.6 In addition to the powers explicitly provided for, the Association will have such powers as may be reasonably necessary or expedient to give effect to the objectives of the Association.

4. **MEMBERSHIP**

- 4.1 Membership of the Association shall be compulsory for and limited to all owners of properties in Renosterbos Estate.
- 4.2 Where any Erf or Sectional Title Unit in the Estate is owned by more than one person, all the registered owners of such property shall together be deemed as to be one Member of the Association and shall together have the rights and obligations of one Member of the Association, provided however that the co-owners shall be jointly and severally liable for the due performance of any obligations towards the Association and shall nominate one of them to represent them and vote at meetings of the Association.
- 4.3 All members undertake to support the applications by the Developer in respect of future rezoning and/or subdivision of the development land to give effect to the Developer's intention to develop the development plan to its best potential.
- 4.4 Upon registration of an erf in the name of a Member, such Member shall forthwith provide the Association with his or her full particulars, including physical and postal address, telephone number and e-mail address(s). In the case of Member who is not a natural person, a duly authorised natural person will be nominated by the Member for the purpose of all dealings with the Association, and the aforesaid particulars of such natural person must be provided to the Association.

- 4.4 Whenever particulars provided in terms of paragraph 4.3 change, the Member must forthwith supply the altered particulars to the Association. Unless and until the Member receives acknowledgement from the Association that the altered particulars in this paragraph have been recorded by the Association, the particulars of such Member before they were altered shall be deemed to be the particulars as supplied in terms of paragraph 4.3.
- 4.5 All Members, their employees, guests, invitees and persons claiming right of entry into or residency in Renosterbos Estate must comply with and adhere to this Constitution and the Rules issued by the Association. The association may decline such persons (excluding members) entry to Renosterbos Estate for any non-compliance in its absolute discretion.
- 4.6 A Member who enters into a lease and/or or agreement of use of whatsoever nature, in terms of which the use and/or enjoyment of the property is given to a third party, ensure strict compliance with this Constitution and all Rules issued in terms hereof by such third party as a condition of such agreement.
- 4.7 Where the contravention of the Constitution or a Rule by a person in this paragraph 4, other than a Member, incurs any liability of whatsoever nature to the Association, the Member through whom the person has obtained entry into Renosterbos Estate shall in the stead of the person who has committed the contravention be liable to the Association.
- 4.8 A Member must use and enjoy the common property in such a manner as not to interfere unreasonably with the use and enjoyment thereof by other Members or any other person lawfully in Renosterbos Estate.
- 4.9 No member shall be entitled to any of the voting rights or privileges of membership of the Association (including voting rights), which rights and privileges shall be suspended, until he/she has paid every levy, subscription

or other sum (if any) which shall be due and payable to the Association in respect of membership thereof, but all obligations imposed on the Member by this Constitution, shall continue to apply during such suspension.

5. MANAGEMENT OF THE ASSOCIATION AND TRUSTEES

- 5.1 During the Development period, the affairs of the Association shall be managed and controlled by a Board of Trustees (the "Trustees Committee") consisting of 5 (five) Trustees:
- 5.1.1 3 (three) of whom shall be representatives of the Developer nominated and appointed to the Board of Trustees by the Developer, as he deems fit, (and not at a general meeting of Members); and
- 5.1.2 The remaining 2 (two) elected by majority votes by Members of the Association at a general meeting.
- 5.2 After termination or expiration of the Development Period, all trustees shall be appointed by the members, provided that both the residential property owners and Sectional Title Unit owners will at all times have at least one representative trustee.
- 5.3 A general meeting of Members shall be called for the purpose of electing the trustees as per paragraph 5.2 above.
- 5.4 The Trustees as per paragraph 5.3 above, shall after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines) of those Members who attend the general meeting of the Association.
- 5.5 Successive Trustees shall be elected likewise at each successive annual general meeting Association provided that no Member shall be eligible for election unless he/she shall have been duly nominated and seconded in

writing by other Members and such written nomination, duly endorsed by the nominee, shall have been handed to the secretary not later than the day preceding the meeting and provided further that such nominee's levies for the current year shall have been duly paid.

- 5.6 Nomination(s) for a Trustee to be appointed, received on the day of the meeting, will only be allowed in the sole discretion of the Chairman.
- 5.7 A Developer Trustee need not be a Registered Owner.
- 5.8 The Trustee Committee shall consist of a chairman, secretary/treasurer and 2 (two) trustees. The Trustees shall from their ranks elect a Chairman, provided that the Chairman shall for the duration of the Development Period be Developer Trustees. A quorum for any meeting of the Trustee Committee shall consist of 3 (three) trustees, of which 2 (two) shall comprise Developer Trustees during the Development Period. Should a quorum not be formed as aforesaid, the meeting shall stand adjourned until a time to be decided upon by the chairman. All matters at any meeting shall be determined by a majority of those present and voting. In the event of an equality of votes, the chairman of any meeting shall have a casting vote.
- 5.9 The trustees, except for the Developer Trustees during the Development Period, shall continue to hold office as such from the date of his/her appointment to office for a minimum period of 2 (two) years to the second annual general meeting following his/her appointment, at which meeting each Trustee shall be deemed to have retired from office as such, but shall be eligible for re-election.
- 5.10 The Trustees, other than Developer Trustees, shall cease to hold office:
- 5.10.1 by notice to the Trustee Committee if he/she resigns his office;
- 5.10.2 if he/she is removed from the office by an ordinary resolution of the members;

- 5.10.3 if he/she absents himself from 3 (three) consecutive meetings of the trustees without leave of absence
 - 5.10.4 upon his/her Estate being sequestrated, whether provisionally or finally;
 - 5.10.5 upon the commission by him/her of any act of insolvency; or
 - 5.10.6 upon proof and/or conviction of any offence involving dishonesty.
- 5.11 Without limiting the generality of the powers the Trustee Committee, it shall be entitled and obliged to on behalf of the Association, including but not limited to, do the following:
- 5.11.1 appoint agents, employees and such other persons as they deem necessary or expedient for permanent, temporary or special services to the Association, to invest such persons with such powers, duties and functions as the management committee may deem necessary and remunerate such persons;
 - 5.11.2 give effect to this Constitution;
 - 5.11.3 make and enforce Rules on behalf of the Association;
 - 5.11.4 determine special levies;
 - 5.11.5 enter into agreements on behalf of the Association;
 - 5.11.6 purchase and sell movable and immovable property on behalf of the Association;
 - 5.11.7 sue out, defend and settle legal actions in the name of the Association;

- 5.11.8 open and operate a banking account in the name of the Association and invest and re-invest moneys of the Association not immediately required;
 - 5.11.9 keep written records of everything done by them on behalf of the Association and make such records available for inspection by any Member of the Association;
 - 5.11.10 shall have all the power equivalent to a director of a company.
- 5.12 No Trustee shall be liable to the Association or any Member thereof or to any other person whomsoever, for any act or omission by himself, the Association or its servants or agents. Every Trustee is indemnified by the Association against any loss suffered by him in consequence of any purported liability provided that such Trustee has, upon the basis of information known to him, acted in good faith, without intent and without gross negligence and/or without dishonesty.
- 5.13 Meetings of the Trustees shall be held as frequently as may be decided by the Trustee Committee, and minutes shall be kept of all meetings and decisions.
- 5.14 Proper books of account of the administrator and finances of the Association shall be kept and financial accounts shall be audited annually by the Auditors.
- 5.15 Vacancies on the Trustees Committee may be filled by co-option at the instance of the majority vote of the Members. Co-opted Trustees will however have no voting power.

6. PHASED DEVELOPMENT

- 6.1 In the event that the Developer sells an erf to be developed to a third party developer, such developer will be considered to be a Nominal Member of the Association.
- 6.2 A Nominal Member of the Association will hold no rights in the Association other than the right to make a development proposal for the phase that he or she owns to the Municipality.
- 6.3 Upon the approval of a development proposal by a Nominal Member and by the entering into of a service level agreement by such Member with the Municipality, such Nominal Member will become a fully-fledged Member of the Association in respect of such property or properties once the development has been completed by the provision of services in respect thereof.
- 6.4 The developer shall, in its absolute discretion, be entitled to apply for and subject to approval by the local authority, vary the layout and/or zoning and/or size and/or boundaries of erven and/or the extent and position of streets comprising Renosterbos Estate and members shall be bound thereby and shall have no claim of whatever nature against the developer arising therefrom. Insofar as the consent of a member is required for any of the foregoing, the developer (represented by its authorised representative) is irrevocably granted a power of attorney to grant any/all such consents on behalf of members, as may be required.

7. DESIGN GUIDELINES

- 7.1 Renosterbos Estate is a phased development with specific prescribed architectural, design and esthetical guidelines.

- 7.2 The design guidelines of the Renosterbos Estate shall be overseen by a Design subcommittee chaired by an independent architect as appointed by the Trustees.
- 7.3 Except to the extent otherwise provided for in the design guidelines, all buildings to be erected in Renosterbos Estate must comply with the applicable zoning of a property in accordance with the Zoning Scheme Regulations of the Municipality.

8. MEETINGS OF MEMBERS AND VOTING RIGHTS

- 8.1 Notice of meetings, whether an Annual General Meeting, Special General Meeting or any other meeting shall be in writing and transmitted via e-mail to the Member's registered e-mail address.
- 8.2 If an Erf or Sectional Title Unit is registered in the name of more than 1 (one) person, all notices shall be given to the person named first in any register of Members which the Association may keep from time to time, and notice such delivered shall be sufficient notice to all the persons entitled to, or otherwise interested in the Erf or Sectional Title Unit (as applicable).
- 8.3 Annual general meetings and meetings calling for the passing of a special resolution shall be called with 21 days' clear notice, which days shall exclude the date of transmission of the notice and the date of the meeting. Any other general meeting shall be called with 14 days' clear notice, which days shall exclude the date of transmission of the notice and the date of the meeting.
- 8.4 Every paid-up Member present in person or by proxy at any meeting of the Association shall be entitled to vote and shall have one vote for each erf

registered in his or her name, provided that where an erf is registered in the name of more than one person, they shall jointly have one vote.

8.5 The Association shall, in addition to any other special general meeting during the year, before the end of June in each year hold an annual general meeting in respect of the financial year ending on the last day of February of that year.

8.6 The annual general meeting shall be held at such time and place as the Trustee Committee shall determine from time to time. At each annual general meeting, the records and books of account kept by the Trustee Committee or the Managing Agent in accordance with paragraphs 5.11.9 and 5.14 for the preceding financial year will be presented and the annual levy for the ensuing year shall be decided upon by members.

8.7 The Trustee Committee may whenever they deem fit convene a special general meeting and a special general meeting shall also be convened at the request of not less than 20% (twenty per centum) of Members calculated on the total votes of all Members of the Association or the Developer.

8.8 A Special Resolution will be required for: -

8.8.1 an amendment of the Constitution;

8.8.2 the sale or purchase of any fixed asset by the Association; and

8.8.3 the borrowing of money by the Association.

8.9 A quorum at a general meeting or special general meeting shall be 20% (twenty per centum) of Members calculated on the total votes of all members of the Association present in person or by proxy and no business shall be conducted unless a quorum is present and provided that during the

Development Period at least 1 (one) representative of the Developer is present at such meeting. Should a quorum not be obtained the meeting will be held a week later at the same time and place and whosoever is present at that meeting will constitute a quorum, provided that during the Development Period at least 1 (one) representative of the Developer is present at such meeting.

- 8.10 A resolution in writing signed by all the Members of the Association shall be as valid and effectual as if it has been passed at a general meeting of the Association.
- 8.11 At any annual general meeting or general meeting a resolution put to the vote at the meeting shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote thereon present in person or by proxy in accordance with this clause 8, provided that during the Development Period the Developer shall have 3 (three) times the total number of votes of all the other Members.
- 8.12 Voting on any question of adjournment shall be decided on an ordinary majority of votes represented by Members entitled to attend and vote there at present in person or by proxy.
- 8.13 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.
- 8.14 Unless any Member present in person or by proxy at a 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, or to the propriety or 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 of the

Association 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 resolution 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.

- 8.15 A Member may be represented at a meeting of the Members by proxy, who must be a member of the Association save for the Developer who's proxy need not necessarily be a Member.
- 8.16 To be effective at a meeting of the Members, a proxy together with the original or a certified copy of any power of attorney or other authority under which it is signed, must be lodged with the trustees of the Association at least 24 (twenty four) hours before the commencement of the meeting or adjourned meeting concerned.
- 8.17 If a proxy is received duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may vote or abstain from voting as he/she deems fit, unless the proxy indicates otherwise.
- 8.18 Voting at Members' meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded by the Chairman.
- 8.19 If a poll is duly demanded, it shall be taken in such a manner as the chairman of the Members' meeting may direct.

9. LEVIES

- 9.1 Annual levies shall be paid yearly, half yearly or monthly in advance. Monthly payments shall be made by proof of stop orders at a bank or similar financial institution.

9.2 Levies shall differ in respect of the type of dwelling / unit as follows:

9.2.1 Frail care units – no levies payable;

9.2.2 A Levy sliding scale shall be applicable to the following dwellings / units / erven:

9.2.2.1 Apartments: 1 (one) bedroom units 20% (twenty per centum) and 2 (two) bedroom units 30% (thirty per centum) of the levy determined for any erf exceeding 581m² (five hundred and eighty one square metres);

9.2.2.2 Erven between 200m² (two hundred square meters) and 580m² (five hundred and eighty square meters) - an amount equal to 85% (eighty five per centum) of the levy determined for any erf exceeding 581m² (five hundred and eighty one square metres); and

9.2.2.3 Erven 581m² (five hundred and eighty one square meters) and above 100% of the levy determined for any erf.

9.3 Subject to clause 9.2 above, in calculating the Levy payable by each Member, the Trustees shall as far as reasonably practical:

9.3.1 assign those expenses attributable to a particular Erf or Sectional Title Unit itself, to the registered owner thereof;

9.3.2 assign those expenses attributable to a particular Sectional Title development to the registered owners of Sectional Title Units in such development as determined by the Association and in terms

of the particular Sectional Title scheme charged by the Body Corporate;

- 9.3.3 assign those expenses relating to the Development generally and/or any other expenses not assigned, to the registered owners of all Erven and Sectional Title Units equally, provided however that the Board may in any case where the Trustees consider it equitable to do so, assign to any Member any greater or lesser share of such expenses as may be reasonable in the circumstances.
- 9.4 Subject to such restrictions and directions as may be imposed at a general meeting of the Association, special levies shall be paid upon demand.
- 9.5 Any amount due by a Member to the Association by way of a levy shall be a debt due by him to the Association and his obligation shall not cease merely as a result of his ceasing to be a member of the Association.
- 9.6 The following monies will for all intents and purposes be deemed to be a levy due by a Member to the Association:
- 9.6.1 any annual, special levy or reserve fund levy; and
- 9.6.2 all costs, expenses, charges and disbursements incurred by the Association in any action and/or proceedings taken and/or instituted to determine and/or obtain and/or enforce a levy and/or any other amount and/or enforcing any other obligation of any Member of whatsoever nature due by the Member to the Association.
- 9.7 A levy due by a Member to the Association that is not paid within a period of 30 (thirty) days from becoming due and payable, will bear interest at the prime rate plus 3% (three per centum) upon that, reckoned from the due date of such amount until it is paid. Prime rate shall be the rate of interest

charged from time to time by the Association's Bank in respect of unsecured overdraft facilities.

- 9.8 A Member may not sell or transfer any property unless the Member first obtains the written consent of the Association. The Association will be entitled to withhold its consent should any levies be outstanding in respect of the property to be transferred, or in the event that such Member is in contravention of any of the conditions hereof, including but not limited to non-compliance with architectural guidelines and/or non-compliance with approved building plans.
- 9.9 Any invoice, certificate or other document issued by or on behalf of the Association stating that an amount (and the interest thereon) is due and payable by a Member to the Association will serve as sufficient proof of such amount (and interest) being due as well as the date on which it became payable.
- 9.10 The Association shall be entitled to demand, sue or recover any amount due and payable by a Member to the Association by instituting action in any Magistrates Court having jurisdiction, to which jurisdiction Members are deemed to have consented in terms of Section 45 of the Magistrates Court Act. These provisions shall not preclude the Association from instituting proceedings in any other court which may have jurisdiction in respect of the claim or person of the Member concerned. In any legal proceedings instituted by the Association against a member the Association will be entitled to its legal costs in such proceedings on an attorney and own client scale.
- 9.11 Should any dispute arise at any time between any one more Member and the Trustees in regard to the determination and/or calculation of Levies, the decision by the auditors for the time being of the Association (acting as

experts and as arbitrators) in regard to such dispute, shall be final and binding on all parties.

- 9.12 The Trustees may enter into an agreement with the Developer in respect of any expense incurred by the Developer for the benefit of, or on behalf of the Home Owners Association, to apply set-off against any levies payable by the Developer.

10. RESERVE FUND LEVY

- 10.1 The Reserve Fund Levy is applicable to all erven on Erf 22979 Mossel Bay, Western Cape Province;
- 10.2 Upon the sale/alienation or deemed sale/alienation of a property in Renosterbos Estate, the transferor or the owner of the property shall pay a Levy against registration of transfer to the Home Owners Association for the credit of the reserve fund controlled by the Home Owners Association, which levy shall be equal to 1% (one per cent) of the fair market value of the Property.
- 10.3 Where a property is transferred from the estate of the transferor or from the joint estate of the transferor and his or her heir/s, such Alienation shall be exempt from the payment of the Reserve Fund Levy.
- 10.4 The Homeowners' Association will be entitled to withhold its written consent to the transfer of a property until the contribution has been paid or secured.

11. IN-HOUSE DISPUTE PROCEDURE AND THE OMBUDSMAN

- 11.1 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.

11.2 If a matter in terms of paragraph 11.1 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 rule.

11.3 Should the matter not be settled or resolved during the periods as above, 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 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:

11.3.1 Full particulars of the Member issuing the notice;

11.3.2 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;

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

11.3.4 Where a notice of dispute in paragraph 11.3 is not issued by the Association, a copy thereof must be sent to the Association or the managing agent on the same day that it is issued.

11.4 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 or other of the following ways:

- 11.4.1 That the matter be dealt with by way of arbitration in terms of this paragraph;
 - 11.4.2 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);
 - 11.4.3 That the matter in their opinion is not capable of being resolved by way of arbitration of the Ombud and that it should be resolved by a court of law.
- 11.5 Within 14 (fourteen) days from the date on which the Trustee Committee issued a directive in terms of paragraph 11.4, 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) day 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 Trustee Committee must take such action, if any, as they in the circumstances deem appropriate, including but not limited to bringing an application in the High Court for a declaratory order.
- 11.6 The Member of 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 Ombud Act. In such event the Member or the Association, as the case may be, must within the said 14 (fourteen) day period notify the Association or the Member that the matter has been so referred. Insofar as the Association is concerned, a matter referred to the Ombud will, subject to paragraph 10.7, 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.

11.7 The procedures provided for in this paragraph shall not exclude the Association or a Member, in appropriate circumstances, to sue for an interdict in a court of law.

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

11.8.1 The Member who refers the matter for arbitration will be liable for the initial and upfront payment of the costs of referring the matter so, excluding the costs incurred by the Member against whom the arbitration is requested, but including the costs payable to arrange the arbitration and to pay the arbiter;

11.8.2 Arbitration will be conducted in Mossel Bay at a suitable venue determined by the Association, 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;

11.8.3 Arbitration must be called for within 30 (thirty) days of the issuing of a directive and shall commence as soon as reasonably possible after it is called with a view to it being completed within 30 (thirty) days after it has been called for;

- 11.8.4 The arbiter shall be a practising advocate of not less than 5 (five) years standing practising at the 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;
- 11.8.5 An arbiter will not be appointed before the party responsible has made payment or provided security for the payment of his or her costs for conducting the arbitration.
- 11.9 The arbiter shall in giving their award have regard to the principles contained in this Constitution and the rules and shall decide the matter as submitted to them according to what they consider just and equitable in the circumstances and, therefore, the strict rules of law need not be observed or considered by them arising at their decision.
- 11.10 The arbiter's decision shall be presented within 10 (ten) days after the conclusion of the arbitration in a written document and shall state the reasons for the decision therein. 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.
- 11.11 Each of the parties to the arbitration in terms of this paragraph irrevocably agree that the decision of the arbiter made at arbitration proceedings:
- 11.11.1 shall be final and binding on each of them; and

11.11.2 shall be carried into effect immediately;

11.11.3 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.

11.12 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 incurred by the Association in the matter, including legal costs, if:

11.12.1 The Member withdraws the application to declare a dispute after the Association replied to a notice from the Ombud inviting it to respond thereto;

11.12.2 An adjudicator to whom the Ombud refers a dispute for adjudication dismisses an application brought against the Association;

11.12.3 An adjudicator grants the relief applied for by the Association against a Member or refuses the relief sought by a Member against the Association.

12. CONSERVATION MANAGEMENT

It is recorded that the Renosterbos Home Owners Association is obliged to the DEA&DP to maintain and enhance the ecological integrity of all private open spaces within the township area. In this regard the Renosterbos Home Owners Association will make use of the levy fund to meet the obligations and cover all elements of the OEMP and CMP relating to the following:

- 12.1. invasive alien plant control and herbicide budgets as outlined in the CMP;
- 12.2. firescaping and maintenance of the firebreaks as outlined in the CMP;
- 12.3. annual external environmental audit to be conducted to measure compliance with the OEMP and the CMP as required in the Environmental Authorization;
- 12.4. implementation of the fire management plan to be carried out every 10-15 years throughout the operation life cycle.

13. DISESTABLISHMENT OF THE ASSOCIATION

- 13.1 Should an application for the disestablishment of the Association be approved by the Municipality, then and in such event, the Association will apply to the Municipality for an appropriate incorporation of Renosterbos Estate as part of the city of Mossel Bay. In this regard it is recorded that Renosterbos Estate is and at all times during the existence thereof will be connected to services supplied by the Municipality.
- 13.2 In the event that an application in accordance with paragraph 12.1 is made, the ownership of erven in Renosterbos Estate will remain as registered in the Deeds Office and the ownership of the roads and private open space properties will be transferred to the Municipality at no cost to the Municipality.
- 13.3 On disestablishment of the Association in accordance with this paragraph, any remaining assets of the Association will be sold or otherwise converted to money that will be distributed amongst the Members of the Association equally.

14. AMENDMENT

- 14.1 No provision hereof shall be added to, amended, substituted, or repealed without the prior consent in writing of the Developer for as long as the Developer is a Member
- 14.2 Subject to the provisions of paragraph 13.1, such addition amendment, substitution or repeal shall require the approval of at least 67% (sixty seven per centum) of the total number of votes of Members of the Association given at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirement for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.