

**Dated 21 July 2001**

**With Amendments dated 22 December 2001 and 17 December 2004,**

**With Amendments dated 19 December 2007, 17 December 2008 and 15 December 2009,**

**With Amendment dated 20 December 2011, 19 December 2018,**

**With amendments dated 10 February 2024**

## BELVIDERE HOME OWNERS ASSOCIATION

# CONSTITUTION

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## 1. INTERPRETATION

- 1.1 Clause headings are for convenience and are to be disregarded in construing this Constitution.
- 1.2 If any provision of this Constitution is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.

## 2. DEFINITIONS

In this Constitution, unless specifically otherwise provided, the following terms shall have the meanings respectively stated: -

“Architecture Committee” means a sub-committee specially constituted and appointed by the Executive Committee in terms of Clausen 12.7.

“Association” means the BELVIDERE HOME OWNERS ASSOCIATION.

“Accountant” means the Accountant of the Belvidere Home Owners Association, who shall be an independent Chartered Accountant or a member of an independent firm of Chartered Accountants, registered with the South African Institute of Chartered Accountants. The Accountant shall review the annual financial statements and their appointment shall be confirmed annually at the Annual General Meeting.

“Belvidere Estate” means the township resulting from the subdivision of Erf 327 Belvedere, Division of Knysna, as indicated on General Plan 12063 and defined as the Belvidere Estate Local Council Area in Schedule 1 of Government Notice 963 dated 04 May 1990.

“Belvidere House” means the original residence and associated outbuildings situated on Erf 500 Belvidere Estate.

“Belvidere Manor” means the residential erven and private open spaces resulting from the subdivision of Erf 500 Belvidere Estate.

“Belvidere Park” means the residential erven and private open spaces resulting from the subdivision of Erf 329 Belvidere Estate.

“Building Design Manual” means the document prepared by the Development Company as amended from time to time, a current copy of which is available from the Association office.

“Chairperson” means the Chairperson of the Executive Committee.

“Common Property” means that portion of Belvidere Estate not being residential or commercial erven, including all areas leased by the Belvidere Home Owners Association.

“Constitution” means the document originally prepared by the Development Company, as amended from time to time, a current copy of which is available from the Association office.

“Council” means the Knysna Local Municipality and its predecessors or successors in title

- “Development Company means the original developer of Belvidere Estate, Belvidere Estate (Pty) Ltd, all of whose rights and obligations in respect of the development and/or management of Association have been assigned to the Association by written agreement on or about 17December 1997.
- “due date” means the date as specified by which full payment is due.
- “erf” means one of the erven.
- “erven” means the erven resulting from the subdivision of Erf 327 Belvedere, Division of Knysna.
- “Executive Committee” means the Executive Committee of the Association, elected in terms of Clause 11 of this Constitution.
- “in good standing” means a Member who has paid his/her Levy and has complied with all the requirements of a Member as set out in the Constitution.
- “in writing” means written, printed or lithographed or partly one and partly another.
- “Leased Property” means erven 328, 331 ,499 and 501 leased from Council in terms of a 99year notarial deed of lease, and any further areas leased by the Belvidere Home Owners Association from time to time.
- “Levy” means the Annual Levy and any other Levy that the Executive Committee proposes and is approved of at the Annual General Meeting.
- “Member” means a member of the Association.
- “Registered Owner” means the party or parties acquiring ownership and taking transfer of one or more erf or erven resulting from the subdivision of Erf 327 Belvedere, Division Knysna.
- “Regulations” means the rules, instructions or controls of conduct which are formulated and proposed by the Members and/or the Executive Committee and adopted by a Special Resolution at a General Meeting.
- “Resolution” means a resolution other than a Special Resolution passed at an Annual General Meeting or a Special General Meeting by a simple majority of the Members present or represented by proxy at such meeting.
- “Shop Site” means Erf 330.
- “Special Resolution” means a resolution passed at an Annual General Meeting or a Special General Meeting whereat the Members present in person or represented by proxy at the meeting number 25% (twenty five per centum) or more of the total membership of the Association and of which 75% (seventy five per centum) or more are in favour.
- “these presents” means this Constitution and regulations of the Association from time to time in force.
- “Vice Chairperson” means the Vice-Chairperson of the Executive Committee.

Unless the context otherwise requires, any words importing the singular shall include the plural and vice versa, and words importing any one gender shall include the other gender.

### 3. STATUS

The Association, duly formed in terms of Section 29 (1) of the Land Use Planning Ordinance No.15/85, shall:

- 3.1 have legal persona and be capable of suing and being sued in its own name;
- 3.2 not operate for profit but for the benefit of the Members; and
- 3.3 have the right to acquire and dispose of immovable property

### 4. AIM AND MAIN BUSINESS OF THE ASSOCIATION

- 4.1 The sole object of the Association is to manage the collective interests common to all Members, which includes expenditure applicable to the common property of such Members and the collection of levies for which such Members are liable.
- 4.2 To achieve this aim the Executive Committee shall be responsible for the following tasks :
  - 4.2.1 the general management and administration of the Belvidere Home Owners Association and its assets and the general protection of the interests of its members as owners of Erven;
  - 4.2.2 to safeguard and ensure the maintenance of the Development Concept of Belvidere Estate as specified in Annexure 1;
  - 4.2.3 to formulate regulations for the purpose of achieving the aims and main business of the Association as set out in Section 4.1;
  - 4.2.4 to take an active interest in the work of the Council and to keep the Council informed of the views and requirements of the ratepayers of Belvidere Estate;
  - 4.2.5 to make representations to the Council regarding works, proposals, schemes and undertakings relating to Belvidere Estate, and to co-operate with the Council in the efficient administration and development of Belvidere Estate;
  - 4.2.6 to arrange periodic meetings between Members of the Association and:
    - 4.2.6.1 officials of other public bodies concerned with local government and administration or affected by the local municipal administration;
    - 4.2.6.2 the Executive Committee and members of any civic or similar association existing in the Council or adjoining areas;
    - 4.2.6.3 any Department or Sub-Department of State or Government agency or statutory body;
    - 4.2.6.4 any other third party with experience or interest in local government;

- 4.2.7 where representations to the Council have been unsuccessful, to make representations to the appropriate higher authority on any matter deemed to be of sufficient importance to Belvidere Estate and the welfare and interest of the members to warrant such a course, and to take whatever action it considers appropriate, including the institution of legal proceedings and the appointment of Counsel;
- 4.2.8 to do all acts as are necessary to accomplish the fulfilment of the foregoing objects, including but not restricted to powers specifically contained in this Constitution.

## 5. MEMBERSHIP

- 5.1 Every Registered Owner of an Erf in the remaining portion of Erf 327 and Erf 500 Belvidere Estate shall upon registration of transfer into his/her name of an Erf ipso facto become a Member and be subject to the terms contained herein, provided that:
- 5.1.1 where any such owner is more than one person, all the Registered Owners of that Erf shall be deemed to be one Member but be jointly and severally liable to the Association for the obligations of being a Member;
- 5.1.2 each new Member of a Close Corporation, Trustee of a Trust or a Shareholder of a Company which is a Registered Owner will be bound by the terms of Clause 6.2;
- 5.1.3 the previous Member/Trustee/Shareholder will be obliged in terms of this provision to advise the new Member/Trustee/Shareholder of the provisions of the Constitution before occupation is given in accordance with Clause 6.3;
- 5.1.4 The individual members of a Close Corporation, trustees of a Trust, or shareholder of a Company being a Registered Owner shall appoint one of their number to be the representative of the body and advise the Association of the name and address of such representative, who shall receive all communication from the Association and have the right to vote on behalf of the Registered Owner unless a proxy is issued.
- 5.2 The Belvidere Park Home Owners' Association representing all the erven resulting from the subdivision of Erf 329 shall also be a Member.
- 5.3 A Registered Owner may not resign as a Member.
- 5.4 The rights and obligations of a Member shall not be transferable and every Member shall:
- 5.4.1 observe all regulations made by the Association;
- 5.4.2 comply with the decisions of the Architecture Committee in interpreting the Building Design Manual.

## 6. MEMBERS OBLIGATIONS

- 6.1 Each Member undertakes to the Association that he/she shall comply with the provisions of the Constitution and any regulations adopted in terms of the Constitution;
- 6.2 A Member shall not transfer an Erf unless:
- 6.2.1 the consent of the Home Owners Association to the transfer has first been obtained in terms of Clause 12.11;
  - 6.2.2 it is a condition of transfer that the transferee becomes a Member of the Home Owners Association;
  - 6.2.3 the registration of the transfer of that Erf into the name of that transferee shall automatically constitute the transferee as a Member of the Home Owners Association.
- 6.3 No Member shall let or otherwise part with the occupation of his/her Erf (which shall include the sale of a member's interest in a Close Corporation, a new appointment of a trustee in a Trust and a transfer of shares in a Company), whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by this Constitution. The Member shall, nevertheless, remain bound by this Constitution and is required to ensure compliance therewith by such occupier, as long as the member remains the owner of the Erf.
- 6.4 Any Member who fails to make payment to the Association on due date of any annual Levy or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of these presents, may, if so determined by a Resolution at a meeting of the Executive Committee:
- 6.4.1 be charged interest on arrear amounts at the prime rate quoted by the Association's bankers, plus 5 (five) percentage points per annum from the due date to the date of payment;
  - 6.4.2 be liable for and pay all legal costs including costs as between attorney and own client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such member to the Association.
- 6.5 No Member ceasing to be a Member of the Association for any reason shall (nor shall any Member's executor, curator, Trustees or liquidators) have any claim upon or interest in the funds or other property of the Association. However, this clause shall be without prejudice to the rights of the Association to claim from such Member or his/her estate any arrear levies or other sums due from him to the Association at the time of his/her so ceasing to be a Member, provided that nothing contained in this Constitution shall prevent a Member from ceding his/her rights in terms of the Constitution as security to the mortgagee of that Member's Erf.

## 7. FINANCE

- 7.1 Annual levies shall be due on 1 January of each year.
- 7.1.1 The amount of the annual Levy for membership shall be based on a budget, which shall be approved by the Members at the Annual General Meeting and shall be in effect from 1 January each year, being for the period 1 October to 30 September.
- 7.1.2 The Levy shall be applied by the Executive Committee in carrying out the aim and business of the Association.
- 7.2 The Executive Committee shall cause all monies received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a General Meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of the Association or investment in terms of Clause 7.3.
- 7.3 Funds available for investment may only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act, 1990 (Act No.97 of 1990) and/or in securities listed on a stock exchange as defined in Section 1 of the Stock Exchange Control Act, 1985 (Act No.1 of 1985).
- 7.4 Interest on monies invested shall be used by the Association for any lawful purpose.
- 7.5 The Executive Committee shall have the authority to nominate those persons who have the power to sign cheques, withdrawal forms or approve electronic banking payments provided that each cheque, form or electronic banking payment shall be signed or approved by at least two persons unless the amount is less than R500,00 (five hundred rand) in which case only one authorised signature or approval shall be required.
- 7.6 Special Levies:
- 7.6.1 The Executive Committee may, from time to time, make special levies upon Members, other than Belvidere Park which shall not be liable to any special levy. Such levies may be imposed and be payable in one sum or by such instalments and at such time or times as the Executive Committee shall think fit. The maximum amount of any such special levy may not in total in an uninterrupted twelve month period exceed 20% (twenty per centum) of the annual Levy as paid by Members. Should the special levy be greater than 20% (twenty per centum), the same shall require authorisation of the Members by way of a Special Resolution.
- 7.6.2 Any amount due by a Member by way of a levy shall be a debt due by him/her to the Association payable within such time as determined by the Executive Committee. The obligation of a Member to pay a levy shall cease upon his/her ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall, under any circumstances, be refundable by the Association upon his/her ceasing to be a Member. A Member's successor-in-title to an Erf shall be liable as from the date upon which he/she becomes a Member pursuant to the transfer of that Erf, to pay the levy attributable to that Erf.
- 7.6.3 No Member shall be entitled to any of the privileges of membership, including voting rights, unless and until he/she shall have paid every levy/levy and other sum (if

any), which shall be due and payable to the Association in respect of his/her membership thereof.

- 7.7 At each Annual General Meeting, the Executive Committee shall present the reviewed financial statements of the Association conducted by an Accountant for the preceding financial year. The financial year of the Association will end on 30 September of each year.
- 7.8 The Belvidere Park Home Owners Association shall pay one annual levy only.
- 7.9 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 7.10 On dissolution of the Association the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of Section 10(1)(e)(iii) of the Income Tax Act.

## 8. MEETINGS OF ASSOCIATION

### 8.1 Notice of Meetings

8.1.1 Not less than 30 (thirty) days' notice of Annual and Special General Meetings shall be given in writing to each Member. 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 these presents, the general nature of that business, and in the case of a Special Resolution, the terms and effect of the Resolution and the reasons for it shall be given in such manner as may be prescribed by the Executive Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a General Meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed by the Members entitled to attend and vote thereat as set out in Clause 8.4. hereunder.

8.1.2 A notice of a meeting shall be in writing and shall be given or served by the Association upon any Member, either personally or by post properly addressed to the Member at such Member's domicilium citandi et executandi in terms of Clause 15.2.

8.1.3 Annual General Meetings of the Association shall take place at such place/places as shall be determined by the Executive Committee from time to time.

8.1.4 The accidental omission to give notice of a meeting or of any resolution to a Member, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any Member, or other persons entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

8.2 The Annual General Meeting shall be held during December of each year.



- 8.3 A Special General Meeting may be convened when considered necessary by the Executive Committee, and shall also be convened on the requisition in writing of at least 20 (twenty) members of the Association.
- 8.4 Notwithstanding that it is called by shorter notice than provided in Clause 8.1.1 an Annual General Meeting or Special General Meeting shall be deemed to have been duly called if it is so agreed by a majority vote of members present in person or by proxy at the meeting, and provided also that this majority vote represents not less than 15% (fifteen per centum) of the total voting rights of all members.
- 8.5 Every notice of a General Meeting shall embody an Agenda. Any member wishing to have a matter discussed at an Annual General Meeting, shall give full details in writing to the Association not later than the first day of the month of November prior to the month in which the meeting is to be held. The Chairperson at his/her discretion may, however, in matters of urgency, accept a motion, duly seconded, of which proper notice has not been given. In the case of Special General Meetings, the purpose shall be distinctly stated in the notice of meeting and no resolution shall be passed at any special meeting on a matter which has not been included in the notice.
- 8.6 The Chairperson of the Executive Committee, or in his/her absence, the Vice-Chairperson of the Executive Committee, shall preside at all meetings of the Association. In the event of neither being present within five minutes after the appointed time of the meeting, the Members present shall elect a Chairperson for the meeting from amongst the other Members of the Executive Committee.

## 9. REPRESENTATION, QUORUM AND VOTING

- 9.1 A Member may appoint as his/her representative in the Association, a proxy whose name is registered with the Chairperson of the Association as his/her voting representative.
- 9.1.1 The instrument appointing a proxy shall be in writing signed by the Member concerned or his/her duly authorised agent, but need not be in any particular form, provided that where a Member is more than one person, any one of these persons may sign the instrument appointing a proxy on such Member's behalf.
- 9.1.2 In the case of a Close Corporation, a Trust, or a Company, the provision to appoint a proxy shall be given to and on behalf of such an entity by the representative appointed in terms of Clause 5.1.4.
- 9.1.3 No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution unless the relevant time period is specifically stated in the instrument.
- 9.1.4 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 Executive Committee at least 1 (one) hour before the time fixed for the holding of the meeting.
- 9.2 At any General Meeting of the Association a quorum shall exist if twenty or more members are present in person. No business shall be transacted unless such a quorum is present, except as provided for in Clause 9.2.2 below:
- 9.2.1 If, by half an hour after the time appointed for a General Meeting, a quorum is not present, the meeting, if convened upon the requisition of Members, shall

be dissolved.

9.2.2 In any other case, it shall stand adjourned to the same day in the next week at the same time and place or, if that day be a Public Holiday, to the next succeeding day other than a Public Holiday, and if at such adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the Members present shall constitute a quorum.

9.2.3 At every General Meeting, every Member in person or by proxy, and entitled to vote, shall be allocated one vote for every erf of which they are the Registered Owner.

9.3 In the event of an equality of votes, the Chairperson of the Meeting shall have a casting as well as a deliberative vote.

9.4 The Chairperson of a meeting shall have the right to cause the vote on any motion to be conducted by means of a secret ballot when such a course appears to him to be desirable, provided that the voting on any motion shall be so conducted if demanded by not less than five Members present.

9.5 All decisions taken at General meetings shall be by Ordinary Resolution and carried by a simple majority of all the votes cast thereon except for those requiring a Special Resolution in terms of this Constitution. An abstention shall not be counted as a vote for or against the Resolution in question.

9.6 If at any General Meeting a Resolution put to the vote of the meeting shall be decided on a show of hands and shall include all proxy votes; the Chairperson shall declare the result of the vote. This declaration shall be recorded and the record shall be conclusive proof of the vote. The record will show the number of hands and the number of proxy votes taken into consideration.

## 10. MINUTES OF THE PROCEEDINGS

Minutes of proceedings at all meetings of the Association shall be kept and copies thereof shall be distributed to Members no later than 60 (sixty) days after each meeting.

## 11. ELECTION OF EXECUTIVE COMMITTEE AND APPOINTMENT OF OFFICE BEARERS

11.1 The Executive Committee shall comprise at least 5 (five) but no more than 8 (eight) Members or their spouses

11.2 The appointment of Members for the Executive Committee shall be:

11.2.1 Restricted to Members or their spouses in good standing and residing permanently with Belvidere only;

11.2.2 Proposed by any member in good standing, and accepted by the nominee, in writing;

11.2.3 Elected by resolution of Members at an Annual General Meeting, by ballot if required

11.3 Retiring Executive Committee Members may stand for re-election, but no Executive Committee Member shall serve as Chairperson for any one period in excess of 3 (three) full years.

- 11.4 A Member shall be deemed to have vacated his/her office upon:
- 11.4.1 His/her estate being sequestrated, whether provisionally or finally, or his/her surrendering his/her estate;
  - 11.4.2 His/her making any arrangement or composition with his/her creditors;
  - 11.4.3 His/her conviction for any offence involving dishonesty;
  - 11.4.4 His/her becoming of unsound mind or being found lunatic;
  - 11.4.5 His/her resigning from such office in writing delivered to the Chairperson;
  - 11.4.6 His/her death;
  - 11.4.7 His/her being removed from office at an Annual General Meeting or a Special General Meeting by a Special Resolution of the Members of the Association, present in person or by proxy, before the termination of his/her period of office; providing that anything done in the capacity of a Member of the Executive Committee, in good faith, by a person who ceases to be a Member of the Executive Committee, shall be valid until the fact that he is no longer a Member has been recorded in the Minute Book of the Executive Committee.
- 11.5 Any vacancy on the Executive Committee shall be filled by co-option by the Executive Committee; any such co-opted person shall hold office with full voting rights until the next Annual General Meeting when he shall be eligible for re-election.
- 11.6 Within 7 (seven) days of the holding of such Annual General Meeting, the Executive Committee shall meet and shall elect from their own number a Chairperson, Vice Chairperson, Treasurer and Chairperson of the Architecture Committee. Notwithstanding the foregoing or clause 11.5 above the Executive Committee may if necessary, elect to appoint and co-opt a Treasurer of appropriate experience and qualification, who need not be a member of the Association and such Treasurer will have full voting rights. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Executive Committee shall immediately meet to appoint one of their number as a replacement in such office.
- 11.7 Save as otherwise provided herein, the Chairperson shall preside at all meetings of the Executive Committee, and all General and Special Meetings of Members, and shall perform all duties incidental to the Office of Chairperson and such other duties as may be prescribed by the Executive Committee or by Members.
- 11.8 The Vice Chairperson shall assume the powers and duties of the Chairperson in the absence of the Chairperson, or his/her inability or refusal to act as Chairperson, and shall perform such other duties as may from time to time be assigned to him/her by the Chairperson or the Executive Committee.
- 11.9 The Executive Committee shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Executive Committee Members, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

## 12. POWERS OF THE EXECUTIVE COMMITTEE

In all cases not otherwise provided for, the functions of the Association shall be vested in the Executive Committee. In particular, the Executive Committee shall have power, subject to any restrictions imposed or directions given by a General Meeting of Members:

### RELATING TO GENERAL MANAGEMENT:

- 12.1 to manage and control the business and affairs of the Association;

- 12.2 to deal with all matters relating to finance and authorise any expenditure that may be necessary in furtherance of the objects of the Association save that any credit facilities extended to the Belvidere Home Owners Association shall not, at any one time, exceed the reserve fund of the Belvidere Home Owners Association without being authorised by a resolution of Members at a General or Special General Meeting;
- 12.3 to appoint other persons and sub committees for special projects provided that such appointed persons shall enjoy no voting rights on the Executive Committee;
- 12.4 to vary, cancel or modify any of their decisions from time to time;
- 12.5 to undertake the following actions as required provided that the costs involved are within the constraints of the annual budget as determined in terms of Clause 7.1.1:
  - 12.5.1 to employ on behalf of the Association, agents, servants and any other party, and the payment of such persons;
  - 12.5.2 to enter into agreements with third parties on behalf of the Association for any purposes of the Association;
  - 12.5.3 to institute or defend legal actions in the name of the Association and to appoint legal representatives for such purpose.
- 12.6 to report at each General Meeting of the Association on any developments regarding matters of interest to the Association which may have occurred since the previous General Meeting;

RELATING TO THE MAINTENANCE OF THE DEVELOPMENT CONCEPT:

- 12.7 to appoint an Architecture Committee which shall consist of a minimum of four suitably qualified persons, for the following purposes:
  - 12.7.1 to consider and approve all proposed building plans in respect of any new development and in respect of any improvement to land or buildings within Belvidere Estate;
  - 12.7.2 to ensure that no building and/or structure shall be erected, altered or extended on Belvidere Estate nor any building operation commenced without the prior approval of the Architecture Committee and the Knysna Municipality and that such building and/or structure shall be of approved design;
  - 12.7.3 to ensure that all plans are considered in terms of the Building Design Manual which specifies standards and colours for inter alia dwellings, carports, walls, fences, any alterations and/or additions including swimming pools;
  - 12.7.4 to take all such decisions as may be necessary and within the Architecture Committee's powers to ensure the maintenance of the original Development Concept as interpreted by the Architecture Committee;
  - 12.7.5 to withhold permission to proceed with construction should the Architecture Committee decide the Development Concept is being prejudiced;
  - 12.7.6 to advise the Executive Committee on any matters which in the Architecture Committee's view could prejudice the Development Concept;

- 12.7.7 to obtain professional advice from an independent architect approved by the Executive Committee in cases which in the Architecture Committee's sole discretion are contentious or where the Architecture Committee cannot reach agreement amongst its Members or in cases where there is dispute with the applicant, and to do so at the cost of the applicant but only after allowing the applicant the right to modify such application to resolve the matter.
- 12.7.8 to apply a policy of 'maintenance and upkeep' which will
- (a) ensure that each and every property continues to conform to the appearance that pertained when the building or structure as initially approved or when modifications or additions thereto including repainting, were approved by the Architecture Committee, and
  - (b) require the Architecture Committee to recommend to the Executive Committee that the right to transfer the property from the present owner to any purchaser be withheld until its appearance as described in paragraph (a) above has been restored.

#### RELATING TO REGULATIONS:

- 12.8 to propose new or amended regulations for consideration by the Association in a General Meeting;
- 12.9 to propose regulations governing inter alia:
- 12.9.1 the Member's rights of use and enjoyment of the Common Property;
  - 12.9.1 the external appearance of and the maintenance of the Common Property and the buildings or other improvements erected thereon in terms of the Building Design Manual of the Association;
  - 12.9.2 the maintenance of the Development Concept.

#### RELATING TO THE TRANSFER OF PROPERTY:

- 12.10 to acquire and dispose of immovable property if authorised by a special resolution;
- 12.11 to provide the written consent of the Association to the transfers of Erven in the Estate, other than those in Belvidere Park and Belvidere Manor, in order to ensure that the following condition is embodied in the Deed of Transfer relating to each Erf resulting from the sub-division of Erf 327, other than the residential Erven included in Erf 329 and 500, as a condition of title:
- "The Erf shall not be transferred without the written consent of Belvidere Home Owners Association of which the Transferee and his/her Successors in Title shall be a Member".
- Such consent shall not be withheld, provided that:

12.11.1 the Registered Owner of the Erf in question has fulfilled all his/her obligations to the Association in terms of this Constitution including financial obligations and compliance with the decisions of the Architecture Committee in interpreting the Building Design Manual.

12.11.2 the Agreement of Sale concluded between the Registered Owner and the Purchaser of the said Erf contains the following term:

“The Purchaser specifically agrees, by affixing his/her signature hereto, to become a Member of the Belvidere Home Owners Association upon registration of the aforementioned property in his/her name and further specifically agrees to abide by the provisions of the Constitution of the Association, any regulations made in terms thereof and any agreements referred to therein, insofar as those agreements may directly or indirectly impose obligation on him/her”.

### **13. MEETINGS OF THE EXECUTIVE COMMITTEE**

13.1 The Executive Committee shall meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of the Constitution.

13.2 Executive Committee meetings shall be held at least once every three months.

13.2.1 The quorum necessary for the holding of any meeting shall consist of four Executive Committee Members with powers to vote.

13.2.2 The Chairperson, or in his/her absence, the Vice Chairperson, shall preside, but in the absence of both, an acting Chairperson shall be elected from amongst those present who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

13.2.3 In the event of an equality of votes, the Chairperson of the meeting shall have a casting as well as a deliberative vote.

13.2.4 A Member of the Executive Committee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute with the Association by virtue of any interest he may have therein.

13.2.5 Members of the Executive Committee may not make loans on behalf of the Association to Members or to themselves.

13.2.6 A Member of the Executive Committee who absents himself without leave from two consecutive meetings of the Executive Committee and fails to furnish satisfactory reasons for such absence, shall vacate office.

13.3 The Executive Committee shall arrange that minutes are kept of all its meetings, which minutes shall be reduced to writing without undue delay after the meeting has closed, and shall then be certified correct by the Chairperson of the meeting; and

13.3.1 cause such minutes to be kept of all meetings of the Executive Committee in a minute book of the meeting kept for the purpose.

13.4 On the written application of any Member, the Executive Committee shall make all minutes of their proceedings available for inspection by such Member.

13.5 All Resolutions recorded in the minutes of any meeting 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 shall be of any force or effect, or shall be binding upon the Members or any of the Executive Committee unless such Resolution is competent and within the powers of the Executive Committee.

13.6 A Resolution signed by 6 (six) of the 8 (eight) Members now incorrect of the Executive Committee shall be valid in all respects as if it had been duly passed at a meeting of the Committee duly convened subject to confirmation at the next Executive Committee meeting. ***This needs to be rewritten to have a quorum of the executive committee ( in terms of the 5 up to 8 members ) amendment approved at AGM***

#### 14. INDEMNITY

14.1 All the Members of the Executive Committee and its sub-committees are indemnified by the Belvidere Home Owners Association against any liabilities bona fide incurred by them in their capacities as such, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.

14.2 A Member of the Executive Committee or any sub-committee shall not be liable for the acts, or omissions of the Auditors or of any of the other Executive Committee Members whether in their capacities as such or as Chairperson or Vice Chairperson, or for any loss or expense sustained or incurred by the Belvidere Home Owners Association through the insufficiency or deficiency of any security in or upon which monies of the Belvidere Home Owners Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited or for any loss or damage occasioned by any error of judgement or oversight on his/her part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his/her duties or in relation thereto unless occurring as a result of mala fides, breach of duty or breach of trust.

#### 15. DOMICILIUM

15.1 The Executive Committee shall from time to time determine the address constituting the domicilium citandi et executandi of the Belvidere Home Owners Association and notify all Members in writing of a change thereof, which is currently recorded as:

Belvidere House  
Duthie Drive  
Belvidere Estate Knysna.

15.2 The domicilium citandi et executandi of each Member shall be the street address of the erf registered in his/her name; provided that he shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be in the Republic of South Africa, and that change shall only be effective on receipt of written notice thereof by the Association at its domicilium.

Members are entitled to nominate an e-mail address for service of notice of meetings and all other documentation relating to meetings provided that the e-mail address must be nominated in writing. Failing nomination of an e-mail address in writing, notices will be served on the domicilium address as stipulated above.

## 16. OWN RISK

Any person using any of the services, land or facilities of the Belvidere Home Owners Association, including Leased Property, does so entirely at his/her own risk.

## 17. ARBITRATION

17.1 Any dispute, question or difference arising at any time between Members or between

Members and the Executive Committee, out of or in regard to:

17.1.1 any matter arising out of these presents, or

17.1.2 the rights and duties of any of the parties mentioned in these presents, or

17.1.3 the interpretation of these presents,

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.

17.2 Arbitration shall be held in Knysna informally and otherwise in terms of 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.

17.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:

17.3.1 primarily an accounting matter – an independent accountant;

17.3.2 primarily a legal matter – a practising counsel or attorney of not less than 10 (ten) years' standing;

17.3.3 primarily an architectural or building related matter – an arbitrator appointed by the President for the time being of the Association of Arbitrators;

17.3.4 any other matter – an independent and suitably qualified person appointed by the Auditors;

as may be agreed upon between the parties to the dispute.

17.4 If agreement cannot be reached on whether the question in dispute falls under Clauses 17.3.1, 17.3.2 or 17.3.3 or upon a particular arbitrator in terms of Clause 17.3.3., within 3 (three) business days after the arbitration has been demanded, then:



- 17.5 the President for the time being of the Law Society of the Cape of Good Hope shall determine whether the question in dispute falls under Clauses 17.3.1, 17.3.2 or 17.3.3, or
- 17.6 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of Clause 17 within 7 (seven) business days after the parties have failed to agree, in order that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) business days referred to in Clause 17.2 above.
- 17.7 The arbitrator shall make his/her award within 7 (seven) business days after completion of the arbitration and shall, in giving his/her award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Belvidere Home Owners Association as he, in his/her sole discretion, may deem fit.
- 17.8 The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the High Court of South Africa upon the application of any party to the arbitration.
- 17.9 Should a matter be determined in terms of Clause 17.5 as not within a stated category or unsuitable for arbitration, the Executive Committee retains the right on behalf of and in the name of the Association to institute legal proceedings against such Member.

## 18. PROPERTY

All property acquired by the Association shall vest in the Association and any person ceasing to be a Member shall forfeit all rights, title and interest thereon.

## 19. AMENDMENT OF CONSTITUTION

- 19.1 The Constitution of the Association may from time to time be amended, added to, or revoked but only by Special Resolution at a General Meeting of which notice in writing specifying the proposed Special Resolution has been duly given.
- 19.2 Proposals for amendment shall be submitted in writing to the Executive Committee at least 30 (thirty) days prior to the meeting at which the amendment is to be considered.
- 19.3 The Building Design Manual may be amended by the joint agreement of the Architecture Committee and the Executive Committee of the Association, provided that the Chairperson reports on any such amendments at the next Annual General Meeting.
- 19.4 The regulations as proposed in terms of Clause 12.8 and 12.9 and formulated in terms of Clause 4.2.3 may from time to time be adopted, amended, added to, or revoked but only by a Special Resolution at a General Meeting of which notice in writing specifying the proposed Special Resolution has been duly given. Notwithstanding anything in this Constitution no such regulation shall adversely affect the lawful use of a Member's own erf.

19.5 All clauses specifically referring to the relationship with the Belvidere Park Homeowners Association or effecting this relationship may only be amended by Special Resolution at a General Meeting and with a similar resolution passed by the BPHOA.

19.6 Any amendment to the Constitution must be submitted to the Commissioner for the South African Revenue Service.

**20. NON-LIABILITY OF MEMBERS**

No Member shall incur any personal liability or responsibility in respect of any claim made or action taken by or against the Association arising from any cause whatsoever.

ACCEPTED .....  
CHAIRPERSON DATE

## ANNEXURE 1. TO BHOA CONSTITUTION

## (a) EXTRACT FROM THE DEVELOPER'S BROCHURE OF 1987

"Belvidere Estate is the last remaining piece of prime real estate on the Knysna Lagoon. Its location, size, beauty, his/hertory, original development concept and particularly its large lagoon frontage make it unique in South Africa."

"The Belvidere area has a strong English country village flavour with its famous tiny Norman-style church, oaks and his/hertoric houses. The DEVELOPMENT CONCEPT is to preserve this feel by grouping the stands in cul-de-sacs with stretches of open fields and copses of trees between them. ...Roads have been kept to the perimeter of the Estate and designed to reduce vehicle speed."

"Existing birdlife will be protected and further encouraged by a planting programme of the correct trees and shrubs..."

"The architectural style and quality of all buildings is controlled. The basic design concept is for new buildings to harmonise with the 19<sup>th</sup> century Eastern Cape architecture of the existing his/hertoric Belvidere buildings. The aim is not to exactly reproduce a Georgian or Victorian village, but rather to create a variety of aesthetically pleasing homes well suited to modern living, that reflect our traditional Eastern Cape Colonial Georgian and simple Victorian architecture."

"As an owner you will be able to build your home amongst established trees and natural fauna. You will live on an estate where more than half the land will remain as parkland and open space."

## (b) EXTRACT FROM THE BUILDING DESIGN MANUAL

"His/hertoric Belvidere House...sets the architectural theme for the Estate. The Belvidere Estate architectural concept is for exteriors of new structures to harmonise with our 19<sup>th</sup> century Eastern Cape vernacular architecture, of which Belvidere House is an important example...."

"The character of the architecture has an English influence and not a Cape Dutch, and is determined by restraint, clear plain surfaces, effective forms and refined details. The walls were either thick, plastered masonry, wide timbers, planks or corrugated iron, generally painted white. Roofs were either moderately pitched of slate, thatch, shingles or corrugated iron, or flat with parapets. The windows were modestly sized and slightly higher than double square proportion. Decoration was restricted to features such as balconies, door and window surrounds and simple fretwork."