

**CONSTITUTION  
OF THE  
MARINA DA GAMA  
ASSOCIATION**

**(formerly known as the Eastlake Association)**

**Updated so as to incorporate amendments adopted before and  
including March 2018**

**1. NAME**

The name of the association is: **THE MARINA DA GAMA ASSOCIATION**  
- formerly known as the Eastlake Association

**2. DEFINITION**

In this Constitution, unless the context indicates the contrary

2.1 “the Association” shall mean the Marina da Gama Association;

2.2 “the Township Area” shall mean Marina da Gama Extension Numbers 1, 2 and 4 Township Area;

2.3 “person” shall include a company, partnership or other association of persons entitled by law to hold title to immovable property;

2.4 “member” shall mean a member as defined in clause 5 hereof;

2.5 “lessee” shall mean any person having a lease on any property in the Township Area;

2.6 “resident member” shall mean a resident member as defined in clause 7 hereof.

2.7 words importing the singular number shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter gender shall include the masculine and feminine genders.

**3. HEADNOTES**

The headnotes to the clauses in this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

**4. OBJECTS AND POWERS OF THE ASSOCIATION**

The objects of the Association are:

4.1 Primarily, to manage the collective interests’ common to all its members and the collection of subscriptions for which members are liable.

4.2 to promote and enforce standards for high density community living in the Township Area in such a way that members may derive the maximum collective benefit therefrom. The aforementioned standards shall extend to all services and amenities in the Township Area, and such facilities, including the facilitation of security services, commenting on business licences and rezoning applications,

which will maintain the Township Area as a safe and attractive environment for its residents.

- 4.3 to promote acceptable aesthetic, environmental and architectural styles and design criteria for the Township Area in order to achieve harmonious development thereof and to control the design and development of all properties therein and the Association shall have the powers to do such acts as are necessary to accomplish these objects.

## **5. MEMBERS**

- 5.1 The Association shall be organised without capital and membership thereof shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more erven or sectional title units in the Township Area. Upon registration of ownership, membership of the Association shall be automatic and members shall be obliged to comply with the provisions of this Constitution. No person shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf or sectional title unit in the Township Area.
- 5.2 Each member shall be entitled to one vote for each erf or sectional title unit owned in the Township Area. Ownership of an erf or sectional title unit in divided shares shall constitute only one membership, which membership shall be represented by one individual in terms of the provisions of clause 10 hereof.
- 5.3 Membership shall be transferred by the registration of a deed of transfer in the Deeds Registry at Cape Town, passing transfer of one or more erven or sectional title units in the Township Area from the previous member to the new member.
- 5.4 Every member shall pay an annual subscription to the Association the amount of which shall be determined by ExCom in terms of clause 12 thereof. The subscription so determined shall apply equally to all erven or Sectional Title Units and shall be payable in respect of each erf or Sectional Title Units owned by a member.
- 5.5 Should any owner let any erf or sectional title unit owned by him to a lessee, he shall be obliged, and undertakes to ensure that such lessee complies with the provisions of this Constitution. A lessee may become an associate member of the Association by payment of the annual subscription. An associate member shall be entitled to attend meetings of the Association but shall not be entitled to vote at any meeting.

## **6. COMMITTEES**

The powers of the Association other than those to be exercised by the members in general meeting, shall be exercised by the following two committees, namely:

6.1 the Executive Committee (“ExCom”); and

6.2 the Marina da Gama Architectural and Environmental Committee (“ArchCom”).

## **7. EXECUTIVE COMMITTEE (“EXCOM”)**

### **7.1 Composition**

7.1.1 ExCom as elected at each AGM shall consist of not more than 12 (twelve) persons who shall be resident members or the spouses of resident members – provided that ExCom shall be entitled to co-opt additional members which may result in the number exceeding 12 (twelve). Any ExCom member shall be eligible for re-election.

### **7.2 Election at Annual General Meeting**

7.2.1 ExCom members shall be elected annually at the Annual General Meeting and shall, subject to the provisions herein contained, remain in office until the following Annual General Meeting. If more than twelve candidates are nominated, a ballot shall be held amongst those members present or represented by proxy to determine which members shall form the ExCom. That the appointment of EXCOM members will follow an approval style voting system that allows for each member to vote for any number of candidates on the ballot sheet. The twelve members with the highest number of votes will be appointed to EXCOM.

7.2.2 A resident member who is neither delinquent in terms of clause 12.5 or owes any other monies in any form to the Association, or the resident spouse of a non-delinquent resident member, shall be eligible for election and co-option to EXCOM. A resident member or spouse shall be a member or spouse who resides permanently in the Township Area, provided that any member or spouse who resides for not less than eight months in a calendar year in the Township Area shall be deemed to be a resident member or spouse.

7.2.3 Nominations of candidates for election to EXCOM at any meeting shall be in writing, signed by two members in good standing and the candidate nominated, so as to be received at the *domicilium* of the Association not later than 28 days before the annual general meeting. These names will then be included in the notice of the meeting to be sent out to members.

7.2.4 ExCom members may fill any vacancy in their number or co-opt any additional member.

Any ExCom member so appointed or co-opted shall hold office until the next Annual General Meeting when he shall retire and be eligible for re-election as though he had been elected at the previous Annual General Meeting.

7.2.5 LIMITATIONS OF TERM

Members of ExCom may not continue in service, either by re-election or by co-option to ExCom by the sitting committee, for an extended period of more than 5 years without taking a minimum of a 2-year break from ExCom

### **7.3 Vacation of Office**

An ExCom member shall cease to hold office as such if

7.3.1 by notice in writing to ExCom he resigns his office;

7.3.2 he is or becomes of unsound mind;

7.3.3 he surrenders his estate as insolvent or his estate is sequestrated;

7.3.4 he is convicted of an offence which involves dishonesty;

7.3.5 he absents himself from three consecutive meetings of ExCom without special leave of absence from ExCom;

7.3.6 by resolution of a General Meeting of the Association he is removed from his office;

7.3.7 he ceases to be a resident member or his subscription becomes delinquent in terms of clause 12.4.

### **7.4 ExCom Meetings and Procedures thereat**

7.4.1 ExCom shall meet at such time and place as shall be decided by ExCom from time to time, provided that it shall meet within 10 business days of an Annual General Meeting. It shall not be necessary to give notice of a meeting to any ExCom member for the time being absent from the

Republic. Meetings may be called by the Chairman or in his absence the Vice Chairman. Meeting times shall be chosen so as to maximise attendance of EXCOM members, and with sufficient advance notice given.

- 7.4.2 Three ExCom members may at any time convene a meeting of ExCom by giving to the other ExCom members no less than 10 *business days* written notice of the proposed meeting, which notice shall specify the reason for calling such a meeting; provided that in cases of emergency such shorter notice as is reasonable in the circumstances may be given.
- 7.4.3 Six members shall form a quorum at any meeting of ExCom. If at any meeting a quorum is not present within 30 minutes of the appointed time of the meeting such meeting shall stand adjourned to the same day of the following week at the same time.
- 7.4.4 If the number of ExCom members falls below the number necessary to form a quorum, the remaining members may continue to act but only for the purpose of convening a General Meeting of members.
- 7.4.5 At the commencement of the first meeting of ExCom members after each Annual General Meeting, ExCom shall elect from its members a Chairman and Vice Chairman, who shall be ipso facto Chairman and Vice Chairman of the Association. The Chairman and Vice Chairman so elected shall hold office as such until the end of the next ensuing Annual General Meeting. If the Chairman vacates his office or is removed therefrom by members at a general meeting, then the Vice Chairman shall automatically become the Chairman and he shall hold office for the remaining period in respect of which the first mentioned Chairman was elected. ExCom shall elect a new Vice-Chairman at the meeting following immediately upon the vacation of office by the former Chairman.
- 7.4.6 All matters at any meeting of ExCom 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 as well as a deliberative vote.
- 7.4.7 ExCom may from time to time appoint a Secretary and a Treasurer, or a Secretary/ Treasurer, who shall hold office until the end of the next Annual General Meeting. Should the Secretary or Treasurer not be an elected member of ExCom, he shall have no vote at meetings.
- 7.4.8 ExCom shall keep minutes of meetings.

7.4.9 That a resolution in writing, signed after due discussion by email by the members of EXCOM, for the time being present in the Republic and being not less than are sufficient to form a quorum, shall be as valid and effective as if it had been passed at a meeting of EXCOM duly convened.

## **7.5 Powers**

The management and administration of the Association shall vest in ExCom which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself and as are not by its Constitution required to be exercised or done by the Association in general meeting or by ArchCom. Without in any way limiting the generality of the foregoing, such powers shall include, but not be limited to, the following:

- 7.5.1 the determination of what constitutes appropriate standards for community living and the maintenance of properties in the Township Area;
- 7.5.2 the performance of such acts as are necessary to accomplish the objects expressed or implied herein;
- 7.5.3 the investment and reinvestment of monies of the Association not immediately required provided that such monies 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 in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985).
- 7.5.4 the operation of a banking account with all powers required by such operations;
- 7.5.5 the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association; provided that any single project involving expenses of over R100 000 (one hundred thousand rand) must be approved by members of the Association. The increase in limit will be directly linked to the increase in annual subscriptions. This approval can be carried out by an electronic ballot and will require a majority of 60% of those voting to pass”
- 7.5.6 the employment and payment of agents, servants and any other parties;

- 7.5.7 the making, amendment and repeal of rules which shall be binding upon members as if they form part of this Constitution;
- 7.5.8 the formation of sub-committees and the delegation of such powers to such sub-committees as ExCom may deem necessary;
- 7.5.9 the right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 7.5.10 the levying of a subscription payable by members as provided in clauses 5 and 12 hereof;
- 7.5.11 the considering of appeals from members of the Association regarding decisions of ArchCom;
- 7.5.12 the co-option of additional members at its discretion from time to time;
- 7.5.13 the right to request

- the Master Builder Association of the Western Cape, or
- the Chairman for the time being of the Association of Arbitrators (South Africa), or
- the President for the time being of the Law Society of the Cape of Good Hope, or
- Equillore Pty Ltd

to appoint an Arbitrator from its panel of arbitrators or members and then to request the duly appointed Arbitrator to require any member, who in the opinion of the Association, has

- (1) failed to maintain his/her property to the standard determined to be appropriate under 7.5.1
- (2) failed to obtain and or/comply with approved plans required under 8.4 for the construction and/or alteration of the building on his/her property
- (3) failed to comply with the Design Manual and/or Design Regulations which are annexures to the Constitution;

to appear before the Arbitrator at an office selected by the Arbitrator at a time and date determined by the Arbitrator in consultation with the member: the Arbitrator may then

- conduct an informal enquiry into the member's alleged failure without the need for formal documentation or compliance with rules of evidence
- rule whether or not the member has, in fact, failed to comply with the provisions of the Constitution and/or Design Manual and/or Design Regulations; and if so

- rule that the member shall be liable for the costs of the appearance and a fine payable to the Association by reason of such failure; provided that fines in respect of failures under
  - (1) shall not exceed R500.00 under
  - (2) shall not exceed R5000.00 and under
  - (3) shall not exceed R5000.00.

The Arbitrator may also rule when payment of the fine shall be due and that the fine shall be payable repeatedly and at intervals stipulated by him until the failure has been remedied.

The Association shall, if the fine be not paid by due date, thereafter be entitled to institute legal proceedings, in the Magistrates' Court in the Magisterial District of Simons Town Cape, to enforce payment of the fine and the amount by which it has been increased under the previous paragraph together with all costs incurred relative to the appearance and the legal proceedings in accordance with the guideline/tariff for non-litigious fees laid down by the Law Society of the Cape of Good Hope.

#### **7.6 Validity of acts of ExCom members**

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

#### **7.7 Remuneration**

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

#### **7.8 Indemnity**

No ExCom member shall be liable to the Association or to any member thereof, or to any other person whomsoever for any act or omission by himself, by the Association or by its servants or agents. An ExCom member shall be indemnified by the Association against any loss or damage suffered by him in consequence of any purported liability, provided that such member has, upon the basis of information known to him, or which

should reasonably have been known to him, acted in good faith and without gross negligence.

## **8. THE ARCHITECTURAL AND ENVIRONMENTAL COMMITTEE (“ARCHCOM”)**

### **8.1 Composition**

ArchCom shall consist of three (3) persons, namely:

8.1.1 a member of ExCom, who shall not be the Chairman of ExCom, appointed by the remaining members of ExCom.

8.1.2 an architect or other suitably qualified person appointed by ExCom.

8.1.3 a resident member, or the spouse of a resident member, who may be a member of ExCom, but not the Chairman, may be appointed by ExCom.

### **8.2 Term of Office**

ArchCom members appointed pursuant to 8.1.2 and 8.1.3 shall be appointed for a period of two years commencing 1st September, save that initially the person appointed pursuant to 8.1.2 shall be appointed for one year only commencing 1st September 1986. A new member appointed by ExCom to replace a member who has vacated office shall serve such member's unexpired term. ArchCom members appointed pursuant to 8.1.2 and 8.1.3 may only serve a maximum of five years consecutive service.

### **8.3 Meeting and procedures thereat**

8.3.1 ArchCom shall meet from time to time, as it may deem necessary, primarily to perform its duties as set out herein. ArchCom shall keep and maintain a record of all actions or decisions taken by it at all meetings and without in any way limiting the generality of the foregoing, the passing of plans, the giving of waivers and the reasons therefor shall all be expressly noted in the minutes and copies of all plans passed shall be retained. The member appointed pursuant to 8.1.1 shall carry out the duties of Secretary and Treasurer of ArchCom.

8.3.2 the minutes of ArchCom meetings shall be tabled at the next ExCom meeting unless this falls within one week of the ArchCom meeting in which event the minutes may be tabled at the following ExCom meeting.

8.3.3 any two members shall constitute a quorum.

8.3.4 the person appointed pursuant to 8.1.3 shall be Chairman of ArchCom.

8.3.5 all matters shall be determined by a majority of votes of those present and voting; provided that in the event of there being an equality of votes,

the matter shall be referred for decision to the next meeting of ArchCom, which shall be held within 30 business days.

- 8.3.6 the provisions of Clause 7.3 shall apply *mutatis mutandis*, to ArchCom members but in addition any ArchCom member may be removed from office by a majority vote of ExCom taken at a meeting of ExCom called specifically for such purpose of which notice shall be given in the notice convening the meeting. The person appointed pursuant to 8.1.2 shall not be required to comply with 7.3.7, unless he is a member.
- 8.3.7 an ArchCom member may at any time convene a meeting of ArchCom by giving to the other ArchCom members no less than 10 *business days* written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in the case of urgency such shorter notice as is reasonable in the circumstances may be given. It shall not be necessary to give notice of a meeting to any ArchCom member for the time being absent from the Republic.

#### **8.4 Powers**

ArchCom shall have the following powers:

- 8.4.1 to prescribe the architectural style and the design criteria of, and the materials to be used in, all buildings erected or to be erected in the Township Area and, in particular, to control the design of the exterior of such buildings and the materials and colours used on such exteriors, to ensure an attractive, aesthetic and pleasing character to the buildings in the Township Area;
- 8.4.2 to prescribe design criteria of, and the materials to be used in, other site works on properties in the Township Area, including, but not limited to, fences, pergolas, walls and paved pathway;
- 8.4.3 to attain the objects set out above by adopting and applying the aims and concepts as set out in the Marina da Gama Design Manual and the Marina da Gama Design Regulations which are annexed to this Constitution and marked "A" and "B" respectively. The Design Manual which has been marked up as at February 2010 is the current and valid Design Manual.
- 8.4.4 to do such acts as are necessary to accomplish the purposes expressed or implied herein, which acts shall include, *inter alia*:
  - 8.4.4.1 the examination and approval or refusal of building plans for all or any of the items mentioned in paragraphs 8.4.1, 8.4.2 and

- 8.4.3 above whether in respect of new constructions, renovation, alteration or addition to existing buildings and the charging of a fee therefor, which will accrue to the Association;
- 8.4.4.2 the making of, entering into and carrying out of contracts or agreements for any of the purposes herein contained;
- 8.4.5 to prescribe standards to ensure that all properties are stabilised to prevent movement of windblown sand;
- 8.4.6 to control the construction and maintenance of water-fronts and bank edges to the properties in the Township Area, as well as the jetties, piers, or any other structures in the water area, including their design and the materials used in the construction thereof, either within or adjacent to the boundaries of such properties;
- 8.4.7 to compel members to comply with the requirements laid down pursuant to sub-clauses 8.4.1, 8.4.2, 8.4.3, 8.4.5 and 8.4.6 above, and in particular to comply with building plans as approved by the local authority and ArchCom, and failing compliance therewith to take steps to remedy such non-compliance at the cost of the member; and, without in any way limiting the generality of the foregoing, to call upon a member in writing to remove or alter within a specified period any thing erected contrary to the requirements laid down pursuant hereto, and failing which to require ExCom to apply to Court on behalf of and in the name of the Association for an appropriate order.
- 8.4.8 in the event that ExCom takes legal steps to ensure compliance with the prescribed standards and the Design Manual, to require that costs on an attorney and own client scale shall be paid by the contravenor charged in accordance with the guidelines for non-litigious fees laid down by the Law Society of the Cape of Good Hope.

## **8.5 Compensation**

The architect or other suitably qualified person appointed in terms of 8.1.2 shall be remunerated by the Association for his services.

## **8.6 Indemnity**

Neither ArchCom nor any of its members shall be liable for any damage, loss or prejudice suffered, or claimed, on account of any decision or action taken by ArchCom, provided that ArchCom and its members have, upon the basis of

information known to them or which should reasonably have been known to them, acted in good faith and without gross negligence.

## **8.7 Recusation**

Any member of ArchCom who has an interest in the outcome of the decision made by ArchCom pursuant to the provisions of clause 8.4.4 shall recuse himself from the meeting at which the decision is made and shall not be entitled to vote on such decision. If two or more members recuse themselves then the matter in question shall be referred to ExCom for decision.

## **8.8 Waivers and amendments to the Design Manual and Design Regulations**

8.8.1 Any waiver of the Marina da Gama Design Manual or the Marina da Gama Design Regulations granted by ArchCom shall not be of any force and effect until such waiver has been approved by ExCom in writing and minuted. The reasons for any waiver requested by ArchCom shall be recorded in the minutes of the ArchCom meeting at which the waiver was requested

8.8.2 ArchCom shall be entitled to repeal, amend or add to (collectively referred to as “amend”) the Design Manual or the Design Regulations, annexures “A” and “B” hereto. Any such amendment shall however be of no force and effect unless and until it has been;

8.8.2.1 approved by not less than 75% of the members of ExCom; and

8.8.2.2 ratified by not less than 75% of the members present and entitled to vote at the next Annual General Meeting or Special General Meeting after written notice of the proposed amendment has been given in the notice calling the meeting.

## **8.9 Right of Appeal**

Any member who has submitted plans to ArchCom for consideration and approval as required in terms of clause 9 shall be entitled to appeal to ExCom against the decision of ArchCom. The member shall lodge a notice of appeal which shall;

8.9.1 be in writing and shall be lodged with the Chairman of ExCom within 30 business days of such member having been notified of the decision, and

8.9.2 set out full and precise details of the decision, or the part thereof, that is being appealed against; and

8.9.3 set out fully the grounds of his appeal and the relief that he is asking for.

ExCom shall be entitled at its absolute discretion to determine the procedure to be followed by it in hearing the appeal and the amount of any fee and monetary deposit to be paid by the member on the submission of the appeal. It shall not be necessary for ExCom to observe the strict rules of evidence or the usual formalities or procedures when hearing the appeal nor shall ExCom be obliged to give any reasons for its decision on the appeal.

## **9. SUBMISSION OF PLANS**

A member shall be obliged to submit building plans, whether such plans are for new construction, renovations, alterations or additions, to ArchCom for examination and approval pursuant to the provisions and powers conferred upon it by clause 8.4 and to obtain such approval prior to the submission by the member of such plans to the local municipality, or other statutory body or authority, whose duty it is to approve such plans.

## **10. MEETINGS OF THE ASSOCIATION**

10.1 Annual General Meetings of members shall be held once in every year, within four (4) months of the financial year-end, at such time and place as may be determined by ExCom, but so that no more than fifteen (15) months shall be allowed to elapse between any two such successive meetings. The business to be done at the Annual General Meeting shall include:

10.1.1 the receipt of a report on the affairs of the Association;

10.1.2 the election of members to ExCom;

10.1.3 the adoption of the minutes of the previous Annual General Meeting;

10.1.4 the adoption of annual financial statements;

10.1.5 The appointment of the Association's Auditor who shall be registered with the recognised body whose term of office may not extend to a period of greater than 5 (five) years.

10.1.6 the consideration of any resolutions concerning the affairs of the Association of which due notice has been given; these resolutions may be debated at the meeting but must be voted on without amendment

10.1.7 any other business;

## **10.2 Ordinary General Meetings**

ExCom may call an ordinary general meeting of members whenever it thinks fit. Ordinary general meetings shall also be called upon the written request of not less than twenty- five (25) members, directed to the Chairman of ExCom, who will place the request before ExCom at the following meeting after which the request was received. ExCom will organize the meetings and distribute the necessary documentation.

An ordinary general meeting is a meeting other than an annual general meeting and is called to deal with an urgent matter than requires immediate resolution, via a formal resolution, that cannot be delayed until the annual general meeting. All members need to be informed of the meeting.

## **10.3 Notice of Meetings**

An Annual General Meeting shall be convened on not less than fifteen (15) business day notice in writing. An ordinary general meeting shall be called by not less than ten (10) business days notice in writing. The notice shall be inclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting and the general nature of the matter to be discussed; provided that any meeting shall, notwithstanding that it is called by shorter notice than that specified, be deemed to have been correctly called if it is so agreed by ninety per cent of the members present.

## **10.4 Validity of Meeting**

The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that meeting.

## **10.5 Quorum**

No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. For all purposes, the quorum shall be not less than 60 (sixty) members present in person.

## **10.6 Adjournment**

If within a half hour from the time appointed for the holding of a meeting, a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next

week at the same time and place and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum. All member of the Association shall be given notice of such adjourned meeting.

### **10.7 Chairman**

The Chairman and failing him the Vice-Chairman of ExCom shall preside at every General Meeting, but if there be no such Chairman or Vice-Chairman, the members present shall choose a Chairman from the members of ExCom, or if no such members are present, they shall choose some member present to be chairman of the meeting.

### **10.8 Votes**

At all general meetings resolutions put to the vote shall be decided by ballot. Voting shall take place in accordance with the following provisions:

10.8.1 each member present in person shall have one vote for every erf or sectional title unit registered in his name.

10.8.2 each person present as proxy for a member shall have one vote for every erf or sectional title unit registered in the name of the member for whom he is proxy.

10.8.3 each member and person present as proxy for a member shall indicate clearly how he casts each vote to which he is entitled as aforesaid.

10.8.4 all resolutions shall, except as otherwise provided herein, be by simple majority of those members present in person or proxy at the meeting and voting.

10.8.5 the chairman of the meeting shall count the votes cast for and against the resolution and shall declare it carried or lost as the case may be.

10.8.6 a declaration by the Chairman of the result of the voting and an entry thereof in the minute book of the Association shall be conclusive evidence of that fact.

### **10.9 Incapacity**

Should any member be declared incapable of managing his own affairs, or a prodigal, or insolvent, or in the case of a company placed under judicial management, or into liquidation, such member may be represented by his

curator bonis, trustee, judicial manager, or liquidator as the case may be, who shall be entitled to vote on his behalf, either personally or by proxy.

#### **10.10 Co-ownership**

If two or more persons are joint registered owners of an erf or sectional title unit, then in voting upon any questions, the vote of the senior, who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other registered owners of the erf, or sectional title unit and for this purpose, seniority shall be determined by the dates of birth of the joint owners as recorded in the Deeds Registry, Cape Town. In the event of an erf or sectional title unit being jointly owned by a natural person and a company then in such event, the natural person shall cast a vote on behalf of such membership.

#### **10.11 Proxy**

10.11.1 Votes may be given either personally or by proxy

10.11.2 The instrument appointing a proxy shall be in the specific form as approved by ExCom.

10.11.3 The Instrument of appointing a proxy, together with a power of attorney (if any) under which it is signed may be delivered to the offices of the Marina da Gama Association until midday on the day of the meeting or by hand at the meeting. This proxy will be valid for the specific meeting and for any adjournment of the meeting.

10.11.4. The proxy holder may not be a "delinquent member"

10.11.5 A certified copy of the ID or passport of the person signing the proxy must be attached to the proxy form.

#### **10.12 Companies**

Any company which is a member of the Association may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Association and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as that company could exercise if it were an individual member of the Association.

### **10.13 Electronic Communication**

The distribution of information to residents, including notices to all general meetings will be taken to be sufficient if sent by Electronic Communication to an Electronic Address furnished to the Association by the member. Those members that have not furnished an electronic address will receive the necessary documentation by ordinary mail.

### **10.14 Process of counting and validation of votes and proxy votes at General Meetings of Members:**

A minimum of 2 persons will be appointed by ExCom to open the ballot box, validate the eligibility of the proxy votes and proxy holder; and tally all the votes. No member of ExCom, nor any candidate standing for election, may become involved in the processes involved therein, but will be entitled to be present during the counting of votes.

### **10.15 A recount of the vote is required under the following circumstances:**

10.15.1 Contested ExCom election – the difference between the number of votes cast for that of the lowest candidate appointed and votes cast for the highest non-elected candidate differ by less than 5%

10.15.2 An ordinary or special resolution is within 5% of the required percentage

### **10.16 Process of recounting the vote:**

10.16.1 At least 2 resident members, who are not delinquent in terms of clause 12.5 or the resident spouse of a non-delinquent resident member, will be appointed to assist with the recount of the votes

10.16.2 No member of ExCom, nor any candidate standing for election, may assist in the recount of the voting for election to ExCom.

10.16.3 In the event that there is a demand by a member for the recount to be performed by the independent auditor, such costs will be borne by that member if there is no change affected to the outcome of the decision.

## **11. THE STATUS OF THE ASSOCIATION**

The Association shall be an association:

- 11.1 with legal personality, capable of suing and being sued in its own name, and
- 11.2 none of whose members in their personal capacities shall have any right, title or interest to or in the property funds or assets of the Association, which shall vest in and be controlled by ExCom in terms hereof, and
- 11.3 not for profit, but for the benefit of the owners and occupants of immovable property situated in the Township Area, and
- 11.4 with the right to acquire, hold and alienate property, both movable and immovable.

## **12. ANNUAL SUBSCRIPTIONS**

- 12.1 The Association, through ExCom, shall be entitled to levy an annual subscription to defray the costs of managing and meeting the requirements of the Association. Such subscription may be fixed and collected annually in advance.
- 12.2. The amount of the annual subscription shall be R205 per Erf or Sectional Title Unit, payable only in the official South African currency (rands), as from 1st March 2010. ExCom shall be entitled at its discretion to increase the annual subscription from time to time provided ExCom shall not be entitled to increase the subscription by more than 10% per annum, rounded off to the nearest R10.00.
- 12.3 The annual subscription shall commence on the 1<sup>st</sup> March each year. The first annual subscription shall become due and payable on the day fixed for commencement. The subscription for any year after the first year shall become due and payable on the first day of March of the said year.
- 12.4 Should a person be a member for less than 6 months of the period from 1<sup>st</sup> March to 28 February of the following year then the subscription shall be determined by ExCom.
- 12.5 If the annual subscription is not paid within 60 business days of due date, then such member shall become delinquent and the Association shall institute legal proceedings, however, such proceedings may in individual recorded specific cases be avoided by a majority vote of ExCom meeting in committee, against the member for recovery of the annual subscription together with costs charged on an attorney and own client scale in accordance with the guidelines for non-litigious fees laid down by the Law Society of the Cape of Good Hope; such a member may not while delinquent
  - 12.5.1 vote at any general meeting.

12.5.2 nominate candidates for election to ExCom.

12.5.3 serve on ExCom or ArchCom.

12.5.4 Request an Ordinary General Meeting in terms of Clause 10.2

12.6 In accordance with the Municipal By-Law, Section 62(1)(a)(viii), the Association may prohibit transfer of a land unit arising from sub-division in the Marina da Gama (Extensions 1, 2 and 4). Such consent will be withheld if the owner is not up-to-date with annual subscriptions as imposed by the Association in terms of clause 5.4.

### **13. FINANCIAL MATTERS**

13.1 ExCom shall cause proper accounting records of the administration and finance of the Association to be kept at the domicilium of the Association or such other place or places as it may think fit.

13.2 ExCom shall cause to be laid before the Association in Annual General Meeting, audited annual financial statements and a report by ExCom on the affairs of the Association.

13.3 The Annual Financial Statements shall be available and laid before the Annual General Meeting.

13.4 The association's financial year-end shall be the last day of February in each year.

13.5 Income tax exemption

13.5.1 The sole object of the association must be to manage the collective interests common to all of its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable.

13.5.2 The association is not permitted to distribute its funds to any person other than to a similar association of persons

13.5.3 On dissolution, the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in the terms of section 10(1)(e)(iii) of the Act.

13.5.4 Any amendments to the constitution must be submitted to the Commission for the South African Revenue Services.

13.5.5 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 1997 of 1990), and in securities listed on a stock

exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (act 1 of 1985).

13.5.6 The association is not, or was not knowingly a party to, or does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of any liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by a person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.

13.5.7 Annual returns of income tax together with financial statements be submitted to the Tax Exemption Unit.

#### **14. DOMICILIUM**

14.1 For all purposes arising out of this agreement including the giving of notices and the serving of legal process, the Association and each member chooses *domicilium citandi et executandi* as follows:

14.1.1 the Association at its office at Shop 8, Eastlake Village Centre, Eastlake Drive, Marina da Gama, Cape Town 7945.

14.1.2 each member - at the erf or sectional title unit registered in his name, provided a dwelling house has been erected thereon, and in the event of such erf or sectional title unit being vacant land, then at the address as recorded by the Local Authority for the purpose of rendering accounts for rates in respect of the erf, provided that the Association or any member may at any time by notice change his *domicilium citandi et executandi* to some other address which new address shall be in the Republic of South Africa and shall not be a Post Office box or Post Restante; and provided further that such change shall become effective only fourteen *business days* after receipt of the notice in question.

14.2 Any notice which may be required to be given in terms of this Constitution shall be given

- Electronically to those who have given written instructions to the Association to do so
- By post to those who have changed their *domicilia citandi et executandi* under Clause 14.1.2; such notice shall be deemed to have been received five business days after posting

- By way of delivery to the remaining members at their domicilium citandi et executandi chosen without change under 14.1.2.

## **15. WINDING UP**

15.1 The Association may be wound up by a resolution of the members in general meeting provided that ninety percent of the members present or represented at the meeting, duly convened, vote in favour thereof; and in the event of such winding up, it shall be the duty of ExCom, or a trustee to be appointed by it, to convert the Associations Assets into cash, pay all liabilities of the Association and thereafter pay the remaining assets to a similar association of persons, which is also exempt from tax in terms of section 10 (1) (e) (iii) of the Act. The Association shall not, in the event of such winding up, distribute its funds to any person other than to a similarly exempt association of persons. Notwithstanding anything contained above or elsewhere in this constitution, the Association may not be wound up unless with the written consent of the Municipality of the City of Cape Town.

## **16. AMENDMENTS TO THE CONSTITUTION**

16.1 Any amendment or addition to the Constitution, with the exception of clauses 5.1, 8.4.4, 8.8.2, and 15 may be effected only by a resolution passed by a two-thirds (2/3) majority of the total of the members present at the time of voting and entitled to vote at a General Meeting, together with valid proxy votes, after written notice thereof has been given in the notice calling the meeting. Clauses 5.1, 8.4.4, 8.8.2, and 15 shall be amended in the following manner only (the percentages stated being the percentage majority vote, stipulated in Clauses 16.1.1 and 16.1.2 respectively, by the total of the members present at the time of voting and entitled to vote at a General Meeting, together with valid proxy votes):

16.1.1 Clauses 5.1 and 15 - Ninety per cent vote by members;

16.1.2 Clauses 8.4.4 and 8.8.2 - Seventy five per cent vote by members;

16.2 The provisions of Clause 16.1 may not be amended by a bare majority vote of members, but only by the majority vote stipulated in each instance.

16.3 Any amendment to this constitution made after the General Meeting at which the addition of this sub-clause was approved shall be submitted to the Commissioner of the South African Revenue Services.

16.4 Notwithstanding anything contained above or elsewhere in this constitution, Clauses 1,2,4,5,11 and 15 of this constitution shall not be altered or amended in

any way without the prior written consent of the Municipality of the City of Cape Town.

**17. NON-LIABILITY OF MEMBER**

No member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of, the Association.

**18. INTERPRETATION**

18.1 Should any dispute or doubt arise as to the interpretation or meaning of this Constitution or any Rules and Regulations of the Association, ExCom shall be the final arbiter and its decision shall be binding upon the members.

18.2 Apart from questions of interpretation, any other dispute whatsoever which may arise shall be referred for decision to a practising senior advocate of the Cape Bar of not less than five years standing, agreed upon by the parties to the dispute, who shall then determine the dispute. In the event of the parties being unable to agree upon the senior advocate who should be appointed to determine the dispute, then he shall be nominated by the President of the Cape Bar Council.

18.3 Should the parties be unable to agree whether the dispute relates to a question of interpretation or not, then the practising senior advocate aforementioned, agreed upon by the parties, or failing agreement, nominated by the President of the Cape Bar Council, shall determine on the basis of a written statement of facts as submitted to him on behalf of the parties (and if any party fails to give him such written statement of facts, on the statement of facts given to him by the other party), whether the dispute is one of interpretation or not to enable the dispute to be determined either by ExCom or by the senior advocate, as the case may be.

18.4 The Arbitrator shall not be bound to follow strict principles of Law, but may decide the matter submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or taken into account by him in arriving at his decision. The parties desire that such decision be arrived at as expeditiously and as informally as possible without any pleadings or discovery of documents, and without it being necessary to observe the strict rules of evidence, or the usual strict formalities or procedures. In the absence of agreement between the parties, the procedure to be followed shall be laid down by the Arbitrator.

- 18.5 Without in any way limiting, or derogating from, the generality of his powers, the Arbitrator shall, in addition, be entitled to make such order as to the payment of legal costs and other expenses incurred by the parties to the arbitration as he deems just and equitable in all the circumstances.
- 18.6 The parties irrevocably agree that the decision of the Arbitrator on any matter in dispute shall be final and binding upon all of them, whether they were parties to the dispute or not, and may be made an order of any competent Court. Notwithstanding the reference in this clause 18 to “an Arbitrator”, any such Arbitrator shall act as an expert and shall not therefore be bound by the provisions of any arbitration laws for the time being in force.