



CONSTITUTION OF THE HOMEOWNERS ASSOCIATION OF DIEPKLOOF HOUSING DEVELOPMENT



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OOSTHUIZEN MARAIS & PRETORIUS

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HOMEOWNERS ASSOCIATION OF
DIEPKLOOF HOUSING DEVELOPMENT

1. NAME

The name of the ASSOCIATION is DIEPKLOOF *HOMEOWNERS ASSOCIATION*.

2. DEFINITIONS

In this constitution, unless inconsistent with the context, the following terms shall have the following meanings:

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| 2.1 | A LAND UNIT: | An Erf in the Development together with the residential unit erected thereon; |
| 2.2 | A MEMBER: | An Owner of a LAND UNIT who in terms of the Bylaw automatically becomes a MEMBER of the ASSOCIATION upon the registration of such LAND UNIT in his name; |
| 2.3 | CALENDAR YEAR: | March of any year to the end of February of the following year; |
| 2.4 | MOOIKLOOF: | The Development of ERF 9295 PACALTSDORP, ERF 9645 PACALTSDORP, REMAINDER OF PORTION 23, REMAINDER OF PORTION 21 and PORTION 24 of the Farm HANSMOESKRAAL NO. 202, DIVISION GEORGE; |
| 2.5 | OUDEKLOOF: | Phase 1 of MOOIKLOOF; |
| 2.6 | BOSCHKLOOF: | Phase 2 of MOOIKLOOF; |
| 2.7 | DIEPKLOOF | Phase 3 of MOOIKLOOF; |
| 2.8 | The ASSOCIATION: | DIEPKLOOF HOMEOWNERS ASSOCIATION founded in terms of the Bylaw; |
| 2.9 | The BYLAW: | The Land Use Planning Bylaw of the George Municipality of 2015; |
| 2.10 | The CONSTITUTION: | The CONSTITUTION of the Homeowners |

- Association of the DIEPKLOOF Housing Development;
- 2.11 The DEVELOPER: **EARP CONSTRUCTION (PTY) LTD**
Registration Number 1973/000442/07;
- 2.11 The DEVELOPER TRUSTEES: The TRUSTEES appointed by the DEVELOPER;
- 2.12 The DEVELOPMENT: The DEVELOPMENT of THE REMAINDER OF PORTION 23 of the Farm HANSMOESKRAAL NO. 202, Municipality and Division George, Western Cape Province, to be subdivided in terms of a General Plan and subject to the Architectural Development Guidelines and the approval granted in terms of the Bylaw;
- 2.13 The LOCAL AUTHORITY: The George Municipality;
- 2.14 TRUSTEES: The Management of the Development by the Committee established in terms of 8.1 of the CONSTITUTION.

3. INTERPRETATION

- 3.1 The singular shall include the plural and *vice versa*;
- 3.2 any one gender shall include the other genders;
- 3.3 reference to natural persons includes created entities (corporate or non-corporate) and *vice versa*.

4. OBJECTIVES OF THE ASSOCIATION

The objectives of the ASSOCIATION are:

- 4.1 To further and maintain the standards and in particular the unique and distinctive character of the DEVELOPMENT in such a way that the MEMBERS get the largest joint benefit from it, and to promote future values.
- 4.2 To further and maintain the aesthetic, environmental and design of the DEVELOPMENT in order to create a harmonious DEVELOPMENT.
- 4.3 To be responsible for the maintenance and repair of the property including, but not limited to, the following:

natural environment, roads, streets, street lighting, landscaping, stormwater management, boundary fence, entrance gates, access control system, buildings and refuse removal, administration of the Development and/or private open spaces.

5. ESTABLISHMENT AND MEMBERSHIP

- 5.1** The ASSOCIATION has as MEMBERS the owners of LAND UNITS arising from the subdivision of THE REMAINDER OF PORTION 23 of the Farm HANSMOESKRAAL NO. 202, Municipality and Division George, Western Cape Province, in terms of a General Plan, which MEMBERS are co-liable for expenses incurred in connection with the ASSOCIATION. The ASSOCIATION comes into being when any person other than the DEVELOPER becomes the owner of a LAND UNIT or when a Certificate of Registered Title in respect of a LAND UNIT is registered in favour of the DEVELOPER. Membership of the ASSOCIATION is limited to the registered owner of the LAND UNIT(s) providing that:
- 5.1.1** where any such registered owner is more than one person, all the registered owners of that LAND UNIT jointly and severally are deemed to be one MEMBER of the ASSOCIATION.
- 5.2** When a MEMBER ceases to be a registered owner of a LAND UNIT, then he ceases *ipso facto* to be a MEMBER of the ASSOCIATION.
- 5.3** No MEMBER shall alienate a LAND UNIT unless it is made a condition of the alienation that:
- 5.3.1** the transferee becomes a MEMBER of the ASSOCIATION;
- 5.3.2** registration of transfer of that LAND UNIT to the name of the transferee *ipso facto* causes the transferee to be a MEMBER of the ASSOCIATION.
- 5.4** The registered owner of a LAND UNIT may not resign as MEMBER of the ASSOCIATION.
- 5.5** The Rights and Obligations of a MEMBER are not transferable and each MEMBER shall:
- 5.5.1** promote the objectives and interests of the ASSOCIATION to the best of his ability;
- 5.5.2** comply with all decisions of this ASSOCIATION and all its obligations under the CONSTITUTION provided that a MEMBER is entitled to cede his Rights under the CONSTITUTION as collateral to the Holder of a mortgage bond registered against that MEMBER's LAND UNIT.

6. STATUTORY AND GENERAL DUTIES

Over and above his obligations in terms of general Municipal Bylaws, as well as all applicable laws –

- 6.1** Each MEMBER shall see to it that all occupants of his LAND UNIT or visitors to his LAND UNIT comply with the rules and obligations of the ASSOCIATION;
- 6.2** No MEMBER shall use his LAND UNIT or any part of the communal property, nor allow it to be used, in a way or for a purpose that harms the character of the DEVELOPMENT;

- 6.3** No MEMBER shall transgress any law, Bylaw, proclamation, statutory rulings or the conditions of any license that pertains to or affects the occupation of his LAND UNIT or the communal property, or the title conditions pertaining to his LAND UNIT, nor allow them to be transgressed;
- 6.4** No MEMBER shall do anything on his LAND UNIT that could possibly change or harm the aesthetic appearance of the DEVELOPMENT;
- 6.5** No MEMBER shall erect or construct a structure or make an improvement on the LAND UNIT without building plans approved by the ASSOCIATION and the LOCAL AUTHORITY.
- 6.6** Each MEMBER shall maintain his LAND UNIT in such a way as to keep it aesthetically and otherwise acceptable;
- 6.7** No MEMBER shall erect any advertising boards of whatsoever kind on the LAND UNIT;
- 6.8** No MEMBER shall park any vehicle of any kind, nor allow any such vehicle to be parked, in a spot not expressly allocated to it. No trailers, caravans or boats shall be parked on a LAND UNIT without the written consent of the ASSOCIATION;
- 6.9** No MEMBER shall place or store any refuse or refuse containers within sight of other LAND UNITS or in public;
- 6.10** Each MEMBER shall keep only 2 (TWO) domestic animals and ensure that animals or birds housed on his LAND UNIT (if so permitted in terms of ASSOCIATION rules applicable to such LAND UNIT) shall not constitute a disturbance or nuisance to MEMBERS or their tenants or occupiers and the TRUSTEES shall, in their absolute discretion, be entitled to require the permanent removal from DIEPKLOOF of any animals or birds which, in the opinion of the TRUSTEES, constitute a disturbance or nuisance. Each MEMBER must ensure that his dog is kept on a leash in all road reserves, parkland and open areas within DIEPKLOOF and is properly controlled and, in particular, that no nuisance is caused by such dog and that the dog does not cause uncleared fouling of sidewalks and parkland within DIEPKLOOF;
- 6.11** Each MEMBER shall be obliged to keep tidy and maintain his LAND UNIT in such a way that it remains aesthetically and otherwise acceptable to the majority of owners and/or TRUSTEES, whose demands in this regard shall not be unreasonable;
- 6.12** Each MEMBER shall endeavour always to behave and act in a way that is in the best interest and to the best advantage of co-MEMBERS of the DEVELOPMENT;
- 6.13** No MEMBER shall drive any vehicle and/or motorcycle on any part of the communal property except on the designated roads, nor may any other person do so;
- 6.14** No MEMBER shall allow any builders and/or their employees to overnight on the premises or on communal property;

- 6.15** No MEMBER shall apply for the subdivision, consolidation or rezoning of his LAND UNIT with a view to procuring a variation or amendment or substitution of use rights;
- 6.16** Each MEMBER shall allow access to the LOCAL AUTHORITY or its appointed contractors for the purpose of refuse removal, water meter reading, maintenance inspection of municipal services or any other purpose deemed necessary by the LOCAL AUTHORITY;
- 6.17** No MEMBER shall conduct any business on a LAND UNIT for purposes other than those for which it is zoned unless the TRUSTEES have, in writing, approved the use to which the LAND UNIT (as applicable) is to be put; and the LOCAL AUTHORITY has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations. The TRUSTEES shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the TRUSTEES deem necessary. The TRUSTEES shall not be entitled to grant approval if such proposed business involves visits by non-residents of DIEPKLOOF;
- 6.18** Should any MEMBER to whom permission has been granted for the conduct of a business change any aspect of such business then such MEMBER shall submit a fresh application in accordance with the provisions hereof to continue such business;
- 6.19** Any LAND UNIT will only be occupied by no more than 2 (two) people per bedroom on a permanent basis unless otherwise permitted by the ASSOCIATION in writing.

7. MEMBER's FAILURE TO MAINTAIN

Should the MEMBER fail to repair or maintain his LAND UNIT as above, and/or any such failure continues for a period of 7 (SEVEN) days after written notice by the TRUSTEES or the manager on behalf of the TRUSTEES to repair or maintain his LAND UNIT, the COMMITTEE can remedy the MEMBER's failure and recover the reasonable costs related thereto from such MEMBER, which includes legal costs on a Lawyer and Client scale.

8. MANAGEMENT

8.1 The business and administration of the ASSOCIATION shall be managed and controlled by a COMMITTEE comprising of 3 (three) DEVELOPER TRUSTEES until the first General meeting of the ASSOCIATION whereupon the number shall be 5 (five) TRUSTEES comprising of 3 (three) DEVELOPER TRUSTEES and 2 (two) MEMBER TRUSTEES for as long as the DEVELOPER is a MEMBER. Upon the DEVELOPER ceasing to be a MEMBER all 5 (five) TRUSTEES shall be MEMBERS.

8.1.1 All the MEMBERS of the COMMITTEE as provided and stipulated in Clause 8.1 hereof, and all future COMMITTEES, shall, once such MEMBER has been duly nominated and seconded, be elected by way of ballot or a show of hands (should the meeting so decide) by the MEMBERS present at the General

Meeting of the ASSOCIATION.

- 8.1.2** Future COMMITTEES shall be elected in the same way at each ensuing Annual General Meeting of the ASSOCIATION, provided that no MEMBER shall be eligible for re-election unless duly nominated in writing and seconded by MEMBERS, which nomination shall also be signed and accepted in writing by the nominee, and submitted to the Secretary of the ASSOCIATION no later than the day preceding the meeting. No MEMBER shall be eligible unless his contributions and levies due to the ASSOCIATION have been settled in full.
- 8.2** The COMMITTEE shall comprise:
- 8.2.1** A Chairman, elected by the TRUSTEES, who shall have a casting vote, by a majority of votes;
- 8.2.2** A Secretary; elected by the TRUSTEES, by a majority of votes;
- 8.2.3** 3 (THREE) ordinary MEMBERS;
- 8.2.4** 3 (THREE) Committee MEMBERS shall form a quorum.
- 8.3** A MEMBER's term of office is valid from his appointment at the General Meeting.
- 8.4** Any vacancies on the COMMITTEE shall be elected by the remaining MEMBERS of the COMMITTEE.
- 8.5** COMMITTEE MEMBERS shall not be entitled to any remuneration for their services unless otherwise determined by way of a special decision by the MEMBERS.
- 8.6** No COMMITTEE MEMBER shall be liable to the ASSOCIATION or any MEMBER thereof or any other person whomsoever for any act or omission by himself or by the ASSOCIATION or his employees or agents. The MEMBERS of the COMMITTEE shall be and remain indemnified against all costs, claims, legal actions, expenses, losses or damage sustained by such MEMBER as a result of any alleged act or omission in the performance of his duties, provided that such COMMITTEE MEMBER, with the information at his disposal, acted in good faith and without gross negligence and dishonesty.
- 8.7** COMMITTEE meetings shall as far as possible be held once every 2nd month, or as otherwise determined by the COMMITTEE.
- 8.8** Proper account books and records must be kept of the finances and administration of the ASSOCIATION. Financial statements shall be prepared and audited annually by a Chartered Accountant or any registered Accountant. The financial year stretches from 1 March to 28 February the following year. The account books and records must be kept for a period of at least 6 (SIX) years after finalisation of the transactions, actions or proceedings. The COMMITTEE shall decide when accounting documents older than 6 (SIX) years can be destroyed.
- 8.9** Prior to the registration of all the LAND UNITS in the development from the DEVELOPER to PURCHASERS all consents needed from the ASSOCIATION

can be signed by any of the DEVELOPER TRUSTEES.

9. 9.1 MEETINGS

9.1.1 The Annual General Meeting of the ASSOCIATION shall be held within 4 months after year end on a date determined by the COMMITTEE. At least 21 (TWENTY-ONE) days' written notice of the meeting, together with the Agenda, must be sent to all the MEMBERS by the Secretary.

9.1.2 The COMMITTEE can when they in their discretion deem it essential, and must upon written request of 70% (SEVENTY PERCENT) of the MEMBERS, call a Special General Meeting after 14 (FOURTEEN) days' written notice of the meeting by the Secretary to all the MEMBERS, setting out the manner of business to be transacted at the meeting. Should the COMMITTEE fail to convene the meeting thus requested within 14 (FOURTEEN) days of receipt of such request, the MEMBERS concerned may convene the meeting themselves.

9.1.3 The Chairman and in his absence the Vice Chairman, shall preside at each meeting of the COMMITTEE. In the absence of both, the MEMBERS present shall appoint an acting Chairman from among their ranks by a majority of votes.

9.1.4 The Chairman shall have a casting vote. No decisions may be taken by any General Meeting unless a quorum is present at the time when a matter is put to the vote. The quorum needed for holding any General Meeting is 30% (THIRTY PERCENT) of MEMBERS that are eligible to vote at any given time, except for the amendment of the CONSTITUTION where the percentage will be 51% (FIFTY ONE PERCENT) of MEMBERS of the ASSOCIATION. All decisions at the General Meeting shall be taken by a clear majority of votes.

9.1.5 At all meetings, a matter is put to the vote by a show of hands by the MEMBERS present unless the meeting decides otherwise. The majority vote shall be binding.

9.2 PROXIES

9.2.1 Votes at a General Meeting may be cast by a MEMBER or by a proxy.

9.2.2 A proxy must be appointed in writing under the signature of the MEMBER or his agent, who was appointed properly and in writing, and the appointment must be delivered to the Chairman before the meeting commences.

9.2.3 A proxy need not be a MEMBER and may not be an employee of the ASSOCIATION.

10. AUTHORITY OF THE COMMITTEE

10.1 The control, management and administration of the ASSOCIATION shall vest in the COMMITTEE which may exercise all the powers of the ASSOCIATION and

transact all business on behalf of the ASSOCIATION as transacted by the ASSOCIATION itself.

10.2 Without prejudice to the generality of the aforementioned powers, the powers shall include the following, but not be limited thereto:

- 10.2.1** The setting of applicable standards, designs and styles of all houses and/or other buildings as set out in Clause 11 hereof;
- 10.2.2** To perform such actions as may be necessary for realising the objectives, whether spoken or unspoken, set out herein;
- 10.2.3** The entering into, conclusion and execution of contracts and agreements in respect of any of the objectives and purposes of the ASSOCIATION;
- 10.2.4** The employment and remuneration of agents, employees and any other parties, and the termination of their services;
- 10.2.5** The making, amendment and rescission of rules that shall be binding upon MEMBERS as if they form part of the CONSTITUTION (provided that they were adopted at a Special General meeting or Annual General meeting of MEMBERS convened for that purpose) as well as the formation of sub-committees and the delegation to such sub-COMMITTEE of such powers as may be necessary;
- 10.2.6** To take legal steps and defend actions in the name of the ASSOCIATION and to appoint legal representatives for that purpose;
- 10.2.7** Setting and charging contributions and levies payable by MEMBERS from time to time and as often as they in their sole and absolute discretion may deem necessary and expedient;
- 10.2.8** To enter into and conclude an agreement with the LOCAL AUTHORITY for electricity, gas, water, sanitary and other services to be delivered to the site or buildings referred to in the CONSTITUTION.

11. BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS

11.1 The COMMITTEE shall be qualified to:

- 11.1.1** Set and enforce on MEMBERS provisions and conditions in order to harmonise the architectural guidelines and building material in the DEVELOPMENT, so as to give effect to the purposes and objectives of the Architectural Development Guidelines;
- 11.1.2** To perform whatever actions may be necessary to realise the objectives and goals contained herein, whether spoken or unspoken, which actions shall include the inspection, approval or rejection of building plans, whether they be in respect of new constructions, renovations, alterations or additions;

- 11.1.3 To make MEMBERS comply with the requirements, failing which the necessary steps shall be taken to remedy such non-compliance at the cost of such MEMBER, and without prejudice to the generality of the foregoing, to give a MEMBER written notice to remove or change within a specific period of time anything that was erected that is contrary to the requirements imposed in respect thereof, failing which application will be made at the Court for an applicable court order;
- 11.1.4 To get professional advice in order to inspect and scrutinise all plans so as to ensure that the necessary architectural requirements and control measures have been complied with.
- 11.1.5 To ensure that all building plans do not exceed the building specifications as specified by the LOCAL AUTHORITY.

12. STATUS OF THE ASSOCIATION

The ASSOCIATION is:

- 12.1 a corporate body, capable of suing and being sued in its own name;
- 12.2 an ASSOCIATION of which none of the MEMBERS shall have in their personal capacity any right, title and interest in the property, funds or assets of the ASSOCIATION, which shall vest in and shall be controlled by the COMMITTEE in terms of the CONSTITUTION.

13. LEVIES

- 13.1 The ASSOCIATION shall, when it so decides, exact levies of its MEMBERS to pay the costs of maintaining, servicing and repairing any asset or to meet any liabilities the ASSOCIATION may have.
- 13.2 The levy is an amount payable by the MEMBER to the ASSOCIATION. A MEMBER's obligation to pay the levy to the ASSOCIATION lapses when he ceases to be a MEMBER of the ASSOCIATION, without prejudice to the right of the ASSOCIATION to recover overdue levies. No levies paid by a MEMBER shall be repayable to him upon the termination of his Membership. A MEMBER's successor in title to a LAND UNIT shall be liable from the date upon which he becomes a MEMBER on the grounds of his acquiring the right of ownership of the LAND UNIT. No MEMBER shall be entitled to transfer his LAND UNIT unless all his levies to the ASSOCIATION have been paid.
- 13.3 The levy payable by a MEMBER shall be the same amount for all MEMBERS irrespective of the extent of a LAND UNIT.

14. TRANSFER OF STREETS AND PRIVATE PLACES

All internal roads, associated stormwater drainage, street lighting and private open spaces will be transferred to the HOMEOWNERS ASSOCIATION on completion thereof, who will be responsible for the maintenance thereof.

15. ACCESS CONTROL

The LOCAL AUTHORITY or any contractor representing the LOCAL AUTHORITY must have 24 hour access to maintain or to repair the municipal services, when these services are required.

16. DISSOLUTION OF THE ASSOCIATION

16.1 The ASSOCIATION can be dissolved by a decision of the MEMBERS at a GENERAL MEETING, provided that:

16.1.1 90% (NINETY PERCENT) of MEMBERS vote in favour thereof; and

16.1.2 The LOCAL AUTHORITY is in agreement; and

16.1.3 The Developer is in agreement for as long as the Developer is a Member of MOOIKLOOF.

16.2 Upon such dissolution the COMMITTEE shall be obliged to convert into cash the ASSOCIATION's assets, settle all the debts and meet all the liabilities of the ASSOCIATION and thereafter to divide the balance among the MEMBERS in accordance with the number of LAND UNITS registered in the name of each MEMBER.

17. PHASES

17.1 The DEVELOPER intends to develop and market DIEPKLOOF in phases as the DEVELOPER deems fit and, for as long as the DEVELOPER is a MEMBER of the ASSOCIATION, the DEVELOPER shall enjoy unrestricted rights with regard to the marketing of DIEPKLOOF and, in particular, the right to erect signage within DIEPKLOOF.

17.2 The DEVELOPER shall, in its absolute discretion, be entitled to apply for and subject to approval by the LOCAL AUTHORITY, vary the layout and/or zoning and/or size and/or boundaries of LAND UNITS and/or the extent and position of streets comprising DIEPKLOOF and MEMBERS shall be bound thereby and shall have no claim of whatever nature against the DEVELOPER arising therefrom. Insofar as the consent of a MEMBER is required for any of the foregoing, the DEVELOPER (represented by its authorised representative) is irrevocably granted a power of attorney to grant any/all such consents on behalf of membership, as may be required.

18. MEMBERSHIP OF MOOIKLOOF PROPERTY OWNERS' ASSOCIATION

18.1 The individual developments making up MOOIKLOOF will establish the MOOIKLOOF PROPERTY OWNERS' ASSOCIATION whose objectives will be to further and maintain all shared interests of the developments including, but not limited to, safety and security, access control, identifying and establishing shared services beneficial to all its members, maintenance of areas adjacent to access roads and public open spaces and any ancillary issues.

18.2 The ASSOCIATION will become a member of the MOOIKLOOF PROPERTY OWNERS' ASSOCIATION at its inception, will obtain representation on its board/committee, and will remain a member thereof subject to its constitution.

18.3 The ASSOCIATION will be liable for payment of a monthly levy to the MOOIKLOOF PROPERTY OWNERS' ASSOCIATION as established by its board/committee from time to time.

19. AMENDMENT OF CONSTITUTION

The CONSTITUTION can only be amended by way of a vote taken by at least 51% (FIFTY ONE PERCENT) of the MEMBERS of the ASSOCIATION at a general meeting. Any amendment to the CONSTITUTION cannot be implemented without the written approval of the LOCAL AUTHORITY in terms of the relevant legislation.