

CONSTITUTION OF CLOVER MANOR HOMEOWNERS' ASSOCIATION

1. NAME

The name of the Association is CLOVER MANOR HOMEOWNERS' ASSOCIATION.

2. DEFINITIONS

In this constitution, unless the context indicates the contrary:

- 2.1 The "Association" shall mean CLOVER MANOR HOMEOWNERS' ASSOCIATION.
- 2.2 The "Auditors" means the auditors of the Association from time to time.
- 2.3 "The Area" shall mean the subdivision of Erven 24340 KUILS RIVER as depicted on the general plan, GENERAL PLAN NO 51/2019 of the development known as CLOVER MANOR.
- 2.4 "Person" shall include an individual, Company, Close Corporation, Partnership, Trustees for the time being of a Trust, Club or other Association of persons entitled by law to hold title of immovable property.
- 2.5 "Member" shall mean a member as defined in clause 5 hereof.
- 2.6 "Unit" shall mean an erf together with a dwelling, outbuilding(s), garden, driveway and all improvements of a permanent nature.
- 2.7 "The Committee" shall mean the Committee of the Association as constituted in terms of clause 6 hereof.
- 2.8 "Financial Year" shall mean the period commencing 1 March in a particular year and terminating on the last day of February of the following year.
- 2.9 Words imparting the singular shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders.

3. HEADNOTES

The head notes 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. **OBJECTIVES OF THE ASSOCIATION**

The objectives of the Association are to:

- 4.1 Promote and enforce standards, not the least of which should be the congenial atmosphere in the Area in such a way that members may derive the maximum collective benefit therefrom.
- 4.2 Ensure that members satisfactorily maintain their erven in the area and the buildings thereon.
- 4.3 Promoting and providing security by way of electrical fencing and gated entrance.
- 4.4 In general, to do everything necessary to promote the wellbeing of all residents of the area.
- 4.5 To provide for the control, administration and management of private open space, private streets and other services and amenities arising from the approved subdivision and buildings on land under the Association's control for the benefit of all members.
- 4.6 The Association's ownership of private open space, private streets and internal engineering services arising out of the subdivision concerned.
- 4.7 To provide for control and maintenance over all services, landscaping, irrigation and amenities on the common areas arising from the approved subdivision concerned.
- 4.8 The promotion, advancement and protection of the communal and group interest of the members generally, including security.
- 4.9 The obligation to enforce certain conditions of subdivision approval or management plans listed in the conditions.
- 4.10 Where relevant, any further development which must form part of the Association and the procedures for incorporating the development.

The Association shall have the powers to do such acts as are necessary to accomplish these objectives and to enforce the provisions of this Constitution.

5. **MEMBERS**

- 5.1 The Association (with perpetual succession) shall be constituted without capital and membership thereof shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more erven in the 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 in the Area.

- 5.2 Each member shall be entitled to one (1) vote for each erf registered in the member's name in the Area. Multiple ownership of an erf in undivided shares shall constitute only one membership, which membership shall be represented by one individual.
- 5.3 Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry, Cape Town, passing transfer of one or more erven in the Area from the previous member to the new member.
- 5.4 Should the registered owner or his successor in title sell, donate or in any manner alienate or transfer his property, such sale, donation, alienation or transfer of the erf shall be subject to the approval/consent of the Association, which approval shall not be unreasonably withheld.
- 5.5 Every member shall pay such levy, if any, as determined by the Association from time to time in order to implement the provisions of this Constitution.

6. **COMMITTEE**

The powers of the Association, other than those exercised by members in General Meeting, shall be exercised by the Committee.

The developer must call the first meeting of the Owners' Association within 60 days of the transfer of 60% of the land units arising from the subdivision or within 2 years of transfer of the first land unit, whichever is the earlier.

6.1 Composition:

- 6.1.1 The Committee shall have as its members the members of the Association.
- 6.1.2 The members must at the first meeting of the Association elect the Trustees of the Association.
- 6.1.3 The Committee shall consist of a chairman, a secretary/treasurer, and two (2) members. Until such time as all the erven are sold in the Area the SELLER shall be deemed to be the member for each unsold erf in the Area for the purposes of this Constitution. The Developer shall serve as Chairman of the Committee for the duration of such period. All matters at any meeting shall be determined by a majority of those present and voting. In the event of an equality of votes, the Chairman of any meeting shall have casting as well as a deliberative vote.

6.1.4 Committee members shall receive no remuneration, but will be entitled to a refund of expenses incurred in the execution of their duties within the budget as approved by the members.

6.1.5 The Developer will within 60 days of the first meeting notify the City of Cape Town that the meeting has taken place and furnish the City with the minutes of the meeting.

6.2 Vacation of Office:

A Committee member shall cease to hold office as such if:

6.2.1 he is or becomes of unsound mind;

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

6.2.3 he is convicted of an offence which involves dishonesty;

6.2.4 he ceases to be a member.

6.3 Meetings and Procedures thereat:

6.3.1 A Committee member may at any time convene a meeting of the Committee by giving the other members no less than fourteen (14) days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.

6.3.2 At the commencement of the first meeting of the Committee, Committee members shall subject to clause 6.1.2 above, elect a Chairman from their number who shall hold office as such until the end of the financial year and such Chairman shall have a casting as well as a deliberative vote. A new Chairman shall, subject to clause 6.1.2 above, be elected for each financial year. If any Chairman vacates his office or is removed therefrom by the members, then the Committee members shall elect another Chairman who shall hold office for the remaining period in respect of which the first mentioned Chairman was elected and he shall have the same rights of voting.

6.3.3 A quorum at all meetings of the Committee or Annual General Meeting shall consist of not less than 3 (three) members.

6.3.4 A resolution signed by the majority of Committee members, which has to include the signature of the Developer whilst being a member of the Committee, shall be deemed to be resolution of the Committee taken at a meeting constituted in terms of this clause 6.3.

6.3.5 In the event that a levy fund is introduced for the Association, Annual General Meetings shall be held once in every year at such

time and place as may be determined by the Committee, but so that no more than fifteen (15) months shall be allowed to elapse between any two (2) such successive meetings. The business to be done at the Annual General Meeting shall include:

- 6.3.5.1 a report on the affairs of the Association;
 - 6.3.5.2 the adoption of the Balance Sheet and accounts for the past financial year;
 - 6.3.5.3 the adoption of an annual budget for the next financial year;
 - 6.3.5.4 the consideration of any Resolution concerning the affairs of the Association of which due notice has been given;
 - 6.3.5.5 the election of members of the Committee;
 - 6.3.5.6 any other business.
- 6.4 An Annual General Meeting shall be convened by not less than twenty-one (21) days' notice in writing to every member's last known address and the Minutes of the previous Annual General Meeting, the financial accounts for the previous year, agenda, nomination an proxy forms as well as the budget for the next financial year shall be sent to members together with the notice convening the meeting.
- 6.5 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 such meeting or its decisions.
- 6.6 Adjournment:
- If a quorum of at least 3 (three) members are not present within thirty minutes from the time appointed for the holding of meetings, the meetings shall, if convened on the requisition of members, be dissolved. In such case it shall stand adjourned to the same day in the next week at the same time and place and if such adjournment 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 members of the Association shall be given notice of such adjourned meeting.

6.7 Votes:

At all meetings a Resolution put to the vote of the meeting shall be decided on a poll which shall be taken immediately in accordance with the following provision:

6.7.1 each member present in person shall have one (1) vote for every erf registered in his name;

6.7.2 each person present as proxy for a member shall have one (1) vote for every erf registered in the name of the member for whom he is proxy;

6.7.3 except where state herein specifically to the contrary, all Resolutions shall be by simple majority of those members present in person or proxy at the meeting and voting.

6.8 Incapacity:

Should any member be declared incapable of managing his own affairs, or a prodigal or insolvent, or in the case of a Company, or a Close Corporation, placed under Business Rescue, or into liquidation, such member shall be represented by his Curator Bonis, Trustee, BR Practitioners or Liquidator as the case may be, who shall be entitled to vote on his behalf, either personally or by proxy.

6.9 Proxy:

6.9.1 Votes may be cast either personally or by proxy;

6.9.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by a Committee under the hand of the appointer, or of his attorney or agent, duly authorised in writing, or if such appointer is a Juristic person, under the hand of an Officer duly authorised in that behalf.

6.10 Companies:

Any Company or Close Corporation which is a member of the Association shall, by Resolution of its Directors or Members, 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 was an individual member of the Association. The foregoing provisions shall apply *mutatis mutandis* in the case of a Trust, Association, Club or Partnership.

6.11 Powers and/or duties of the Committee:

The management and administration of the Association shall be vested in the Committee 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. Without in any way limiting the generality of the foregoing, such powers and/or duties shall include, but not be limited to the following:

- 6.11.1 the determination of what constitutes appropriate standards for community living and the maintenance of properties in the Area;
- 6.11.2 the performance of such acts as are necessary to accomplish the objectives expressed or implied herein;
- 6.11.3 the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 6.11.4 the operation of banking accounts with all powers required by such operations;
- 6.11.5 the making of, entering into and carrying out of contracts or agreements for the benefit of the Association;
- 6.11.6 the employment and payment of agents, servants and any other parties;
- 6.11.7 to institute proceedings in the name of the Association, to defend actions in the name of the Association and to appoint legal representatives for this purpose; in particular and without derogating from the generality of the foregoing, the power to sue shall include the right to sue members for the payment of arrear levies and/or for the carrying out of their obligations in terms of the Constitution;
- 6.11.8 to make regulations and rules applicable to all owners and inhabitants of the Area in order to accomplish the objective of the Association;
- 6.11.9 performance of such acts as are required to ensure the security of persons and property in the Area;
- 6.11.10 the amendment and repeal of provisions of the Constitution or rules, subject to clause 17 below, which shall be binding upon members as if they form part of this constitution provided that such amendments have been passed by a majority of the Members present at a properly constituted meeting and becomes effective only when the City of Cape Town certified the amendment;
- 6.11.11 levying of a charge payable by members as provided in clause 8 hereof and, subject to the said clause, the determination, from time to time and as frequently as they may, in their sole and absolute discretion, consider

necessary or expedient, of the amount of the levy to be paid to the Association by its member;

- 6.11.12 the keeping of a proper administration and accounting records;
- 6.11.13 the refusal of consent to the transfer of an erf in the Area, which consent shall not be unreasonably withheld;
- 6.11.14 the appointment of an auditor or a person qualified to act as financial officer of an Association to do an annual audit of the Association's financial records.

6.12 Indemnity:

- 6.12.1 No Committee member shall be liable to the Association or any member thereof, or to any other person whomsoever for any act of omission by himself, by the Association or by its servants or agents. A Committee 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, acted in good faith and without gross negligence.
- 6.12.2 The City is exempt from liability for any damage which may be caused by its certification of a Constitution or amendment.

7. **STATUS OF THE ASSOCIATION**

The Association shall be an association:

- 7.1 with legal personality, capable of suing and being sued in its own name and has perpetual succession;
- 7.2 none of whose members in their personal capacities shall have any right, title or interest to or in the funds or assets of the Association, which shall vest in, and be controlled by, the Committee in terms hereof; and
- 7.3 not for profit, but for the benefit of the owners and occupants of immovable property situated in the Areas; and
- 7.4 with the right to acquire, hold, lease and offer a security and alienate movable property.

8. **GOVERNANCE**

A qualified managing agent, in co-operation with the Trustees will manage the Association.

9. **LEVIES**

9.1 The Association, through the Committee, shall have the power from time to time to impose levies upon the members (who are jointly liable for the expenditure of the Association) for the purpose of meeting all the expenses which the Association has incurred, or to which the committee reasonably anticipates the Association will be put to by way of:

9.1.1 maintenance, repair, improvement and keeping in order and condition of the common areas, including landscaping, sewerage treatment and township services; and/or

9.1.2 payment of all rates, refuse collection and other charges payable by the Association in respect of the common areas and/or for the services rendered to it;

9.1.3 payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the common areas and the Association's affairs.

In calculating levies, the committee shall take into account, income, if any, earned by the Association.

9.2 Any contribution levied under any provision or sub regulation shall be due and payable on the passing of a resolution to that effect by the Committee and may be recovered by the Committee by action in any court including any magistrate's court of competent jurisdiction, from persons who are members at the time such resolution is passed. Interest at the prescribed rate shall be payable on all outstanding levy contributions unpaid seven (7) days after it become due and payable.

10. **RESTRICTION ON GUEST HOUSES**

No member shall be entitled to operate a guest house on any property.

11. **PETS**

All members will be restricted to no more than 1 (one) dog or cat per property.

12. **ROOFS**

No roofing of corrugated iron or IBR roof sheeting will be allowed.

13. **BUILDING LINES**

A building line of a minimum of 1,5 metres will apply to all side boundaries.

14. **ACCOUNTS**

14.1 The Committee shall in the event that a levy fund is introduced cause proper books of account of the administration and finance of the Association to be kept at the *domicilium* of the Association, or at such other place or places as it may consider necessary, and shall produce an annual audited Balance Sheet and an Income Statement;

14.2 The Committee shall cause to be laid before the Association in Annual General Meeting, the annual audited Balance Sheet, as well as an Income Statement.

15. **DOMICILIUM**

15.1 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:

15.2 the Association:

15.1.2 each member – at the erf registered in his name whether or not such erf is vacant land;

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 provided further that such change shall become effective only fourteen (14) days after receipt of the notice in question.

15.3 Any written notice which may be required to be given in terms of this Constitution may be delivered by hand or may be given by the dispatch of such notice in writing by pre-paid registered post to the relevant *domicilium citandi et executandi*; in which event such notice shall be deemed to have been received five (5) days after the posting thereof from any Post Office within the Republic of South Africa, the exhibition of the certificate of registered item shall be full and complete proof of the date of dispatch of the said notice.

16. **WINDING UP**

16.1 The Association may be wound up by a Resolution of the members provided that:

16.1.1 all members present or represented at a meeting, duly convened, vote in favour thereof; and

16.1.2 the Developer, whilst it remains the registered owner of any property in the Area, consents thereto; and

16.1.3 the Local Authority consents thereto.

16.2 In the event of such winding up, it shall be the duty of the Committee or a Receiver to be appointed to it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest between all the members in accordance with the number of shares registered in the name of each member. If, within a period of twelve (12) months from such distribution, the Committee or the Receiver is unable to find, locate or trace any member, such member's share shall then be paid to the Guardian's Fund.

17. **RULES AND REGULATIONS AND AMENDMENTS TO THE CONSTITUTION**

Notwithstanding anything contained herein to the contrary:

17.1 any proposed:

17.1.1 rule or regulation or any proposed repeal of, or amendment or addition to, any rule or regulation by the Committee in terms of clause 6.11.10 hereinabove, and

17.1.2 amendment or addition to the Constitution,

shall whilst the Developer is a member of the Association, be submitted to the Developer for approval and shall be of no force or effect whatsoever unless and until same has been approved by the Developer.

17.2 Whilst the Developer is a member of the Association the Developer shall, subject to clause 17.3 hereunder, notwithstanding anything to the contrary contained herein, be entitled to make amendments or additions to the Constitution and shall be obliged to send by pre-paid registered post or e-mail a copy of each amendment or addition to each member.

17.3 Any amendments to the Constitution and/or Design Manual shall require the consent of the Local Authority.

18. INTERPRETATION / DISPUTES

- 18.1 Whilst the SELLER/Developer is a member of the Association, the Seller's interpretation of this Constitution and any rules and regulations of the Association shall be binding on the members;
- 18.2 Any other dispute whatsoever between members, including a dispute as to interpretation of this Constitution which arises after the Developer ceases to be a member, shall subject to the provisions of clause 13.4, be referred for decision to a practicing Advocate of the Cape Bar of not less than ten (10) years' standing, or in the event of a dispute concerning the application and/or interpretation of the Design Guidelines, to SDV Architects, who shall then adjudicate the dispute and his decision shall be final and binding upon the parties and capable of being enforced in a Court of Law;
- 18.3 In the event of the parties being unable to agree upon the Advocate who should be appointed to determine the dispute, then he shall be nominated by the President of the Cape Bar Council;
- 18.4 Notwithstanding anything to the contrary herein contained, the Committee shall at its sole option be entitled to institute proceedings in the Court having jurisdiction for any relief to which it is entitled under the provisions of this Constitution including the recovery of arrear levies.

19. GENERAL

- 19.1 No member shall be entitled to dump waste or other material or matter within the area or on any erf and shall be liable for payment of the cost of rectifying the damage or removal of material or goods;
- 19.2 No member shall be allowed to display any advertisement or sign on his erf not do or suffer to be done on the same, anything which in the opinion of the Committee can be noisome, injurious, objectionable or detrimental or a public or a private nuisance or a source of damage or disturbance to any other owner, tenant or occupier or erven in the Area;
- 19.3 Every member shall observe and comply with the laws, ordinances, bylaws and regulations or rules imposed by any statutory or other authority;
- 19.4 No structure, vegetation, hedges, trees or object of whatever nature, exceeding the maximum height for residential buildings laid down by the appropriate local authority shall be permitted on any erf in the Area;
- 19.5 Funds available for investment, if any, may only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984 and in shares listed on a

licensed stock exchange as defined in the Stock Exchange Control Act, 1985 (Act No. 1 of 1985).

20. **BREACH**

20.1 Any Member who fails to make payment to the Association on due date therefore of any monthly contribution or any other amounts payable by such Member in terms of this Constitution or any regulation made thereunder, or who otherwise breaches or fails in the observance of any of the provisions of these presents, may, if so determined by a resolution passed by not less than 3 (three) of the Trustees present at a meeting of the Trustee Committee:

20.1.1 be fined by the Association in such amount; and/or

20.1.2 be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question, such sum as **compensation**.

as in each case shall have been determined at such Trustee Committee meeting.

20.2 The Member concerned shall be invited to attend such Trustee Committee meeting by notice in writing delivered to such Member not less than 7 (seven) days prior to the holding thereof, and such Member shall be given the right to speak thereat, and to be represented legally, but not to be present at the voting or to take part in the proceedings, other than as allowed by the Chairman of **such meeting**.

20.3 The Trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees or the Association or any other Member may have in law, including the right to claim damages-

20.3.1 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made thereunder, as the case may be; or

20.3.2 to remedy such breach and immediately recover the total costs incurred by the Trustees or the Association in so doing from such Member.

20.4 Should the Trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation made thereunder, then without prejudice to any other rights which the Trustees or the Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees

or the Association, including attorney and own client charges, tracing fees and **collection commission**.

- 20.5 Without prejudice to all or any of the rights granted to the Trustees of the Association under this Constitution, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon at prime rate charged by the Association's bankers from time to time calculated from the due date of payment until the actual date of payment of such amount.

21. **CESSATION OF MEMBERSHIP**

No member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such member or his estate any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Member.

22. **ASSOCIATION CEASES TO FUNCTION**

Owner's Association which fails to meet an obligation or ceases to function:

If the Association fails to meet any obligations in this Constitution respectively and the City believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.

The City may recover any expenditure in respect of the action contemplated above from the Association or its members, who are jointly liable.

The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its members

If the Association ceases to function effectively or to carry out its obligations, the City may give the Association a binding instruction to:

- a) hold a meeting and to reconstitute itself; or
- b) dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed.

In determining whether to act in terms of the above, the City have regard to:

- a) the purpose of the Association;
- b) who will take over the maintenance of internal engineering services

and other obligations which the Association is responsible for, if at all;

- c) the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
- d) the impact of the dissolution of the Association on its members and the community;
- e) any written representations from the Association and its members.

If the Association is dissolved, the members must jointly pay the costs of:

- a) the transfer to the City of the Association's property which contains the internal engineering services and private open spaces;
- b) the upgrading of the internal engineering services to the standards of the City.

In the event that the Association has ceased to function and an owner wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% (Sixty Percent) of the members of the Association, which consent is deemed to be the consent of the Association.

23. **LODGEMENT OF CONSITUTION WITH THE CITY**

The Constitution or any amendment thereof must be lodged with the City and the Constitution to be certified by the City.
