

HOME OWNERS' ASSOCIATION

CERTIFICATE OF APPROVAL

THIS IS TO CERTIFY THAT THE CONSTITUTION OF OWNER'S ASSOCIATION WAS THIS DATY APPROVED BY COUNCIL IN TERMS OF SECTION 29(2)(B)(iii) OF THE LAND USE PLANNING ORDINANCE, 1985 (NO. 15 OF 1985)

SIGNED AND SEALED AT

THIS DAY OF

MUNICIPAL MANAGER
BERGRIVIER MUNICIPALITY

CONSTITUTION OF HOME OWNER'S ASSOCIATION

1. NAME

The name of the association isHOME OWNERS' ASSOCIATION, which is an Association established in terms of Section 29 of the Land Use Planning Ordinance 1985.

2. DEFINITIONS

In the constitution, unless the context indicates the contrary:

2.1 The "*Association*" shall meanHOME OWNER'S ASSOCIATION;

2.2 "*Common Area*" shall mean the public and/or private road reserve, park areas, public and/or private open space areas, depicted on the proposed sub divisional plan for ERVEN 2449 – 2453 and 2455 - 2461, PORTERVILLE (the PROPERTY), annexed hereto as *Annexure "A"* and as will more fully appear from the General Plan to be approved, in conformity to the above plan, however, subject to any amendments required for approval;

- 2.3 “*The First Owner*” shall mean the present registered owner of the PROPERTY, or the successor(s) in title of such registered owner, should it/they at any time hereafter transfer the property or the remaining component(s) thereof;
- 2.4 “*The Township Area*” shall mean the area depicted on a General Plan and/or General Plans to be approved in respect of the PROPERTY;
- 2.5 “*A Portion*” shall mean an erf depicted on the General Plan and/or any of the General Plans to be approved in respect of the Township Area;
- 2.6 “*Person*” shall include a Company, Close Corporation, Trust, Partnership or other Association of persons entitled by law to hold title to immovable property;
- 2.7 “*Member*” shall mean a member as defined in *Clause 5* hereof;
- 2.8 Words importing the singular 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. INCORPORATION

The Association will come into existence simultaneously with the registration of transfer of the first deducted sub-divided portion of the

Township Area, to any person other than the first owner OR transfer of the Common Area or portion thereof in favor of the Association, whichever occurs first.

4. OBJECTS

The objects of the Association are, at the costs of the Members, to:

- 4.1 Promote and enforce standards, not the least of which should be the congenial atmosphere in the Township Area in such a way that members may derive the maximum collective benefit there from;
- 4.2 Promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Township Area in order to achieve a harmonious development thereof, in particular to ensure that the rural character of the area and aesthetic quality be maintained by adhering to the design guidelines laid down by the Home Owners' Association;
- 4.3 Control and maintain the common area including the maintenance and reparation of all services and amenities and possibly also certain aspects of individual portions which may be deemed to be of common interest to the members;
- 4.4 Maintain and repair all services and amenities in the Township Area;

4.5 Take transfer of the Common Area and to control and maintain the Common Area as well as such aspects of individual erven as may be reasonable to give effect to objects stated above;

4.6 Undertake the upkeep and maintenance of the landscaping of private open spaces within the Township Area;

and the Association shall have the powers to do such acts as are necessary to accomplish these objects.

5. MEMBERS

5.1 Membership of the Association shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more portions in the Township Area;

5.2 Upon registration of ownership of a portion in the name of a purchaser, membership of the Association by such purchaser shall be automatic and obligatory and members shall be obliged to comply with the provisions of this constitution and any rules made in terms hereof;

5.3 No person shall be entitled to cease to be a member of the Association while remaining the registered owner of a portion in the Township Area;

5.4 Each member shall be entitled to 1 (ONE) vote for each developed and occupied portion owned by him in the Township Area.

The first owner shall have one vote for every portion owned by him and indicated on the General Plan to give him sufficient control for a reasonable period for the marketing of the unsold portions and to protect the interest of potential future buyers of portions. Ownership of a portion in undivided shares shall constitute only one membership, which membership shall be represented by one natural person having a proxy thereof at any meeting;

5.5 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 portions to the Township Area from the previous member to the new member;

5.6 A member shall not be entitled to sell his property unless it is a condition of the sale that:

5.6.1 the Purchaser becomes a Member of the Association;

5.6.2 the registration of transfer of the portion into the name of that Purchaser shall *ipso facto* constitute the transferee as a Member of the Association;

5.6.3 the Purchaser, by his signature on the Deed of Sale undertakes to abide by this constitution and the rules made in terms of this constitution.

5.7 as regards the Common Area and levies:

5.7.1 every member shall be entitled to enjoy the benefits of that part of the Common Area which is necessary for the exercising of his rights on and in respect of his property but shall be obliged to pay such levy as determined from time to time by the Association for the management, maintenance, upkeep, upgrading and/or replacing of the Common Area and/or private roads and lighting and/or improvements thereon, including a proportionate share of the rates and taxes attributable to any servitude are on any portion (for refund to the member who owns the portion concerned) if in the opinion of the Home Owners' Association the portion is so seriously prejudiced by the servitude that fairness and equality requires a payment to be made to the owner concerned, as well as insurance premiums, consumption of water and lighting in Common Area, access control measures and security services and payment of any other expenses necessary or reasonably incurred in managing the Association's affairs;

5.7.2 responsibility for the payment of levies shall commence on the member taking transfer of the portion and shall be payable annually in advance;

5.7.3 should any part of the common property be administered and/or maintained for the benefit of only some of the members the Home Owners' Association shall be entitled to levy the costs of such

administration and/or maintenance in whole or in part only against such benefiting owners while exempting the others in whole or in part of the responsibility therefore;

- 5.7.4 the first owner shall not be liable for payment of levies equal to that of the other members of the Association, should this have the effect that the first owner contributes to accumulated funds and/or other reserves not benefiting the first owner.

In determining the levies payable by the first owner the Association shall calculate the balance of the expenditure after taking into account the levies payable by the other members and the first owner shall be liable to pay the balance of the expenditure.

- 5.8 No member shall be entitled to let his portion unless it is a specific condition of the lease that the Tenant be handed a copy of the Constitution of the Association plus any rules made in terms thereof and such Tenant undertakes to be bound by and abide by the terms and conditions thereof as far as they may affect such Tenant;

- 5.9 Each deed for the transfer of a portion in the Township Area shall contain a condition of title to the effect and/or to procure that the portion held hereunder may not be transferred without the written consent of the Home Owners' Association to enable the Home Owners' Association to procure payment of arrears levies and other debts owing by the selling member concerned prior to the issuing of such consent.

Such consent shall not be unreasonably withheld.

6. MANAGEMENT

- 6.1 The affairs of the Association shall be managed and controlled by a Committee consisting, initially, of not less than 3 (THREE) registered owners of portions of the Township Area, (which may be, in the instance of a Trust, Company or Close Corporation, a Trustee, nominated director or member of that Trust, Company or Close Corporation), elected by majority vote and to remain in office for 1 (ONE) year. The number of committee members shall be determined by vote at each annual general meeting of the Association immediately prior to the election of the committee.
- 6.2 The members of the committee as envisaged under *clause 6.1*, and subsequent committees, shall, after proposal and seconding, be elected by ballot or show of hands (if the meeting so determines) of those persons who attend the general meeting of the Association, and successive committees shall be elected likewise at each successive annual general meeting of the Association, provided that no member who is not personally present at the meeting shall be eligible for election unless he has been duly proposed and seconded in writing by members and such written proposal endorsed by the candidate, has been handed to the secretary or to the chairperson at the meeting and provided that no member whose levy payment is in arrears shall be eligible for election. An existing member who has, however, not

indicated that he is not eligible for re-election, shall be eligible for election in his absence without his endorsement on a written proposal;

6.3 Until a committee has duly been elected by the members at the first Annual General Meeting and constituting meeting, the first owner (or his duly authorized nominee) shall act as and fulfill the functions and duties and shall have all the powers entrusted and given herein to the committee;

6.4 The committee, when elected, shall consist of a chairman, a secretary/treasurer and at least 1 (ONE) ordinary member and a majority of the members shall form a quorum. All matters at any meeting shall be determined by a majority of those present and voting. In the vent of an equality of votes, the Chairman of any meeting shall have a casting as well as a deliberative vote;

6.5 Committee members shall cease to hold office-

6.5.1 at every annual general meeting, but shall be eligible for re-election;

6.5.2 by notice to the committee if he resigns the office;

6.5.3 if he absences himself from 3 (THREE) consecutive meetings of the committee without leave of absence, and the committee resolves that his membership be terminated;

6.5.4 if he ceases to be a member of the Association;

6.5.5 in the event of his death.

6.6 Casual vacancies on the committee shall be filled by the remaining members of the committee or by co-option subject to confirmation at the next annual General Meeting;

6.7 Committee members shall receive no remuneration, but may be reimbursed for any reasonable expenses incurred in the carrying out of their duties;

6.8 For the period mentioned in 5.4 above the first owner shall in his capacity as such automatically be a member of the committee with the right to nominate in writing a representative to act in his place, whether on an *ad hoc* basis or for his full term of office.

During this period his vote shall in all matters be deemed to be a majority vote to enable him to have sufficient control for a reasonable period to finalize his marketing of the unsold portions and to protect the interests of potential future buyers of portions.

7. GENERAL MEETINGS

7.1 The annual General Meeting shall be held on a date fixed by the committee before the end of FEBRUARY and with 21 (TWENTY ONE)

days written notice thereof and the agenda shall be sent to all members by the secretary. A full annual report of the committee shall be tabled at every General Meeting, together with the proper audited income and expenditure account and balance sheet for the immediately preceding financial year and a draft budget for the next financial year. Each said committee meeting shall also deal with the election of committee members for the forthcoming year, adoption of financial reports and with the determination of the levy for the forthcoming year;

- 7.2 Special General Meetings may be called by the committee whenever they consider it desirable and shall be called upon the requisition thereto in writing of members holding four or more votes, in either events on 7 (SEVEN) days' written notice by the secretary specifying the business to be discussed;
- 7.3 At all meetings the chair shall be taken by the chairman or, in his absence the members present shall elect a chairman;
- 7.4 The chairman shall not have a casting vote and a quorum at all General Meetings shall consist of 50% (FIFY PERCENT) of the members;
- 7.5 At all meetings votes on any matter shall be by show of hands of those present, the majority vote to count, unless the meeting decides otherwise;

7.6 A member may be represented by any other person at a meeting by virtue of a written proxy signed by the absent member allowing such proxy holder to vote on behalf of the absent member. A proxy holder will not be entitled to speak at such meeting, but, upon request to the chairperson, he may be allowed to read a text for this purpose by the absent member.

He will, however, not be entitled to exercise, on behalf of the absent member, the right to reply in respect of any proposal tabled or seconded by him;

7.7 The first owner shall call the first general meeting of the Home Owners' Association, within 12 (TWELVE) months from approval of this Constitution by the Director: Urban Planning, Housing and Development.

8. POWERS

8.1 The management and administration of the Association shall vest 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;

8.2 Without in any way limiting the generality of the foregoing, such powers shall include, but not be limited to, the following:

- 8.2.1 the determination of what constitutes appropriate standards as set out in *clauses 4.1 and 4.2* and the maintenance of properties in the Township Area and to enforce Architectural and/or design guidelines;
- 8.2.2 the performance of such acts as are necessary to accomplish the objects expressed or implied herein, including maintenance of the Common Area;
- 8.2.3 the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 8.2.4 the operation of banking and savings accounts with all powers required by such operations;
- 8.2.5 the making of and entering into and carrying out of contracts or agreements on behalf of the Association;
- 8.2.6 the employment and payment of agents, servants and any other parties;
- 8.2.7 the performance of such acts as are required to ensure the security of persons and property in the Township Area;
- 8.2.8 the making, amendment and repeal of rules which shall be binding upon members as if they form part of this constitution (provided these

have been passed at a special meeting of members called for that purpose) and the formation of sub-committees and the delegation of such powers to such sub-committees as may be deemed necessary;

8.2.9 to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;

8.2.10 the levying of a special charge payable by members considered necessary or expedient, in the event of necessary expenses not provided for or in excess of items provided for in the draft budget, and to do whatsoever allowed in law to collect such levies;

8.2.11 the appointment of commissions to investigate, report and/or make recommendations to the committee on such matters as may be required by the committee and/or fulfill such tasks as the committee may request them to do;

8.2.12 the acquisition and disposing of fixed property and/or rights in and to fixed property by the registration of transfer thereof to and from the Association in the Deeds Office.

8.3 Committee members shall not be personally liable for any action performed in good faith in the course of their duties.

9. AESTHETIC AND ENVIRONMENTAL

9.1 The committee shall have the power to:

9.1.1 do such acts and to frame and enforce conditions on members as are necessary to accomplish the purposes expressed or implied herein, which acts shall include *inter alia*, the approval or refusal of building plans relating to external renovations, alterations or additions;

9.1.2 compel members to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the costs of such member;

9.1.3 to ensure that all members maintain their portions in a clean and tidy condition and, if deemed appropriate, to implement and control security measures within the Township Area.

9.2 Members shall be obliged to submit all building plans for external renovations, alterations or additions to the committee for approval prior to the submission of such plan to the Local Authority for approval, and shall not erect any entrance gates to their portions without prior approval of the Home Owners' Association and the Local Authority or any authority by which it may be substituted

9.3 No member shall be entitled to dump material or goods on the Common Area or on any portion not registered in the name of the

member and shall be liable for payment of the cost of rectifying the damage or removal of the material or goods;

9.4 Every member shall observe and not breach all or any laws, ordinances, by-laws and regulations or rules imposed by any statutory or other authority and, without detracting from the generality of the foregoing, shall observe and comply with the provisions of the *Road Traffic Act No 29/1989, as amended* (or any National or Provincial Act by which it may be replaced) as fully and effectually as though the servitude road were a public road as defined in terms of *Section 1 of the Ac;*

9.5 No structures of whatever nature shall be erected within servitudes right of way on either side of all internal roads and areas within these servitudes shall only be covered with lawn, unless otherwise approved by the Local Authority.

10. STATUS OF THE ASSOCIATION

The Association shall be an Association:

10.1 with legal personality, capable of suing and being sued in its own name and;

10.2 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 the committee in terms hereof, and;

10.3 not for profit, but for the benefit of the owners and occupants of immovable property situated in the Township Area, and;

10.4 with the right to acquire, hold, lease and alienate property, both movable and immovable.

11. AMENDMENTS TO CONSTITUTION

This constitution shall not be altered or amended in any way save at a General Meeting by the vote of no less than two thirds of all the members of the Association and the first owner, whilst it is a member and also the consent of the Local Authority with jurisdiction.

12. PERSONAL LIABILITY OF MEMBERS

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

13. REGISTRATION

13.1 If required by the Local Authority:

13.1.1 The Home Owners' Association shall register notarial servitudes for the use of municipal electrical services.

13.2 13.2 Notwithstanding *clause 3* above, the Association will for purposes only of registration of all or any of the above servitude rights in respect of the Common Area as well as taking transfer of the Common Areas either in favor of the Association or granted by the Association in favor of the Bergrivier Municipality, be deemed to have been established upon approval of this Constitution by the Bergrivier Municipality or any other substituting authority with jurisdiction in respect of such approval and the first owner is authorized to sign all necessary documents including but not limited to notarial servitude agreements or Powers of Attorney, on behalf of the Association.

DRAFTED FOR AND SIBMITTED FOR APPROVAL BY THE
UNDERSIGNED FIRST OWNER.