



IMHOFF'S GIFT HOMEOWNERS' ASSOCIATION
PO Box 48231 Kommetjie 7976

CONSTITUTION

1. ESTABLISHMENT

Imhoff's Gift Home Owners' Association is hereby constituted, as a body corporate, with power to sue and be sued in its own name.

2. INTERPRETATION

In these presents:

"the Association"	means the Imhoff's Gift Home Owners' Association
"month"	means calendar month
"the Township"	means the residential erven resulting from the subdivision of Erf 2732 Kommetjie
"plot"	means any one subdivided erf in the Township
"the Developer"	means Red Cliff Property (Pty) Ltd
"Member"	means a Member of the Association
"the Trustees"	means the Board of Trustees of the Association
"a Trustee"	means one of the Trustees
"the RSC"	means the Regional Services of the Western Cape
"Business Day"	means weekdays other than Saturdays, Sundays and Public Holidays.
"Special Resolution"	means a resolution passed at a general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, by not less than three-fourths of the Members entitled to vote at that meeting who are present in person or by proxy.
"The Manual"	means the architectural manual, a copy of which is annexed hereto and which can be amended from time to time.

3. MAIN OBJECT

The main object of the Association is the security of the Members and the control of the architectural standards at the Township according to the Manual.

4. FINANCIAL YEAR END

The financial year end of the Association is the end of February of each year.

5. MEMBERSHIP

5.1 Membership of the Association shall be compulsory for every registered owner of a plot who acquires same from the Developer and their successors in title. Upon registration of transfer of a plot into the name of each Purchaser, such person shall *ipso facto* become a Member of the Association and be bound by this Constitution.

5.2 Where more than one person is the registered owner of a plot such persons shall jointly and severally be deemed to be one Member.

6. When a Member ceases to be the registered owner of a plot, he or she shall *ipso facto* cease to be a Member.

7. A Member shall not be entitled to sell or transfer a plot unless it is a condition of the sale and transfer that:

7.1 the registration of transfer of that plot into the name of the transferee shall *ipso facto* constitute the transferee a Member of the Association:

7.2 the transferee agrees in writing to abide by this Constitution and the Manual.

8. The registered owner of a plot may not resign as a Member.

9. The rights and obligations of a Member shall not be transferable and every Member shall:

9.1 further the objectives and interests of the Association;

9.2 observe all resolutions made by the Association and the Trustees;

9.3 be jointly liable with all Members for all expenditure incurred by the Association;

provided that nothing contained in this Constitution shall prevent a Member from ceding his or her rights in terms of this Constitution as security to any Mortgagee of that Member's plot.

10. LEVIES

Levies will be imposed upon the Members for the purpose of covering the expenses of the Association from time to time by resolution of a general meeting of Members.

11. The Trustees shall estimate the amount which shall be required to meet the expenses from time to time and recommend appropriate levies. The Trustees may include in such recommended levies an amount to be held in reserve to meet anticipated future expenditure not of a recurrent or annual nature. Every such levy shall be payable in equal monthly instalments on the first day of every month in respect of each plot.

12. The Trustees may, from time to time, recommend special levies upon the members to a general meeting in respect of exceptional expenses.

13. The obligation of a Member to pay a levy shall cease upon his / her ceasing to be a Member, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable upon his / her ceasing to be a Member. A Member's successor in title to a plot shall, as from the date upon which he becomes a Member pursuant to the transfer of that plot, be liable to pay the levy attributable to that plot. No Member shall transfer his / her plot until the

Association has certified that the Member has at the date of transfer fulfilled all his / her financial obligations to the Association.

14. No Member shall be entitled to any of the privileges of membership unless and until every levy and other sum (if any) which shall be due and payable to the Association in respect of his / her membership thereof has been paid.
15. Notwithstanding the foregoing, no levies will imposed on Members prior to 1st March 1994.

16. SECURITY

- 16.1 All walls and fences on the boundaries of the Township shall be under the supervision of the Trustees.
- 16.2 The Association will be responsible for the maintenance of the exterior surface of boundary walls along Kommetjie Road.

17. MANUAL

- 17.1 The Manual shall set the tone for the architectural development of the Township.
- 17.2 Before submitting building plans for approval to the relevant local authority, all Members shall be obliged to submit same for approval to the Trustees who shall consider such plans against the norms laid down in the Manual. No Member shall be entitled to erect any building or structure (and without limiting the generality, any pool, fence, outbuilding, shed or wall) without the consent of the Trustees first had and obtained in writing.
- 17.3 The manual may be amended in the same manner as this constitution as set out in clause 54 below.
- 17.4 The Trustees may delegate the scrutiny and approval of building plans to an architect or other suitable professional.
- 17.5 The Trustees may in their discretion impose a plan fee for the approval of the plans.

18. CONTRACTS

The Trustees may from time to time appoint contractors or subcontractors to carry out any or all their functions in terms hereof.

19. BREACH

19.1 Should any Member:

- 19.1.1 fail to pay on due date any amount due by that Member in terms of this Constitution and remain in default for more than 7 days after being notified in writing by the Trustees: or
- 19.1.2 commit any other breach of any of the provisions of this Constitution and fail to commence remedying that breach within a period of 7 days after the receipt of written notice requiring same and fail to complete the remedying of such breach within a reasonable time:

then and in either such event, 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:

19.1.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of such obligations, as the case may be: or

19.1.4 in the case of clause **19.1.2** to remedy such breach and immediately recover the total cost incurred by the Trustees or the Association in so doing from the Member.

19.2 Should the trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution 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.

19.3 Without prejudice to all or any of the rights of the Trustees or 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 the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date for payment until the actual date of payment of such amount.

20. CESSATION OF MEMBERSHIP

No Member ceasing to be a Member of the Association for any reason shall (nor shall any such Member's executor, curator, 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 / her estate any arrears of levies or other sums due by him to the Association at the time of his / her so ceasing to be a Member.

21. TRUSTEES

There shall be a Board of Trustees of the Association which shall consist of not less than 3 (Three) and not more than 10 (ten) Members to be elected at each Annual General Meeting. In addition Red Cliff Property CC shall be entitled to appoint 1 (one) Trustee for as long as they have an interest in the Township.

22. A Trustee shall be deemed to have vacated his / her office as such upon:

22.1 His estate being sequestrated, whether provisionally or finally, or his / her surrendering his / her estate;

22.2 His / her conviction for any offence involving dishonesty;

22.3 His / her becoming unsound in mind or being found lunatic;

22.4 His / her resigning from such office;

22.5 His / her being removed from office by a Special Resolution of the Members.

23. Upon any vacancy occurring, the remaining Trustees shall be entitled to fill such vacancy by co-option.

24. The Trustees shall appoint from amongst themselves, a Chairperson and Vice-Chairperson.

25. The first Trustees and the first Chairman, and Vice-Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices until the First Annual General Meeting.
26. The Trustees shall be entitled to the reimbursement of all reasonable and bona fide expenses incurred by them in or about the performance of their duties, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
27. The Trustees shall manage and control the business and affairs of the Association and save as may be expressly provided herein, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not required to be exercised or done by the Association in general meeting, subject nevertheless to such resolutions as may be passed by the Association in general meeting shall invalidate any prior act of the Trustees which should have been valid if such resolution had not been passed.
28. The Trustees shall have the rights to vary, cancel or modify any of their decisions and resolutions from time to time.
29. The Trustees shall have the right to co-opt additional Trustees. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.

30. PROCEEDING OF THE TRUSTEES

The Trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

31. The quorum necessary for holding of any meeting of the Trustees shall be 3 (Three).
32. A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustees duly convened.

33. GENERAL MEETINGS OF THE ASSOCIATION

33.1 The Association shall in each calendar year, hold a general meeting as its Annual General Meeting.

33.2 General Meetings shall be held at such time and place as the Trustees shall decide.

34. All general meetings other than the Annual General Meetings shall be called Special General Meetings.
35. The Trustees may, whenever they think fit, convene a Special General Meeting, and shall do so upon the written request of at least 20 (Twenty) Members.

36. NOTICE OF MEETINGS

An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by 21 (twenty-one) days' notice in writing at least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by 14 (fourteen) days' notice in writing at the least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and the proposed agenda; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified,

be deemed to have been duly called if it is so agreed by Members holding not less than 75% (seventy five percent) of the total voting rights of all Members.

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

38. QUORUM

No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be 10 (ten) Members personally present.

39. If within half an hour from the time appointed for the holding of a general 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 place and time, or at such other place as the Chairman of the meeting shall appoint, 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 deemed to constitute a quorum.

40. PROCEDURE AT GENERAL MEETINGS

The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

41. The Chairman may, with the consent of any general meeting at which a quorum is present (and if directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.

42. Except as otherwise set forth, all general meetings shall be conducted in accordance with generally accepted practice.

43. PROXIES

A Member may be represented at a general meeting by a proxy, who need not be a Member. The instrument appointing a proxy shall be in writing signed by the Member concerned or his / her duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf.

44. VOTING

At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each plot registered in his or her name.

45. At any general meeting a resolution shall be decided by a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

46. Notwithstanding the provisions of 45 aforesaid, no poll may be demanded on the election of a Chairman of a general meeting or on any question of adjournment.

47. OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this Constitution, the Trustees shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, and any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustees and on such terms as the Trustees shall decide.

48. ACCOUNTS

The accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

49. At each Annual General Meeting the Trustees shall lay before the Association a proper income and expenditure account and balance sheet for the immediately preceding financial year of the Association, or in the case of the first year, for the period from the incorporation of the Association.

50. SERVICE OF NOTICES

Notices shall be in writing and shall be given or served by the Association upon Members, at the address of the plot owned by him or her, provided however, that a Member may require the Association to record an address within the Republic of South Africa which shall be deemed to be his / her address for the purpose of the service of notices, and provided also that with the consent of the Member/s concerned, notices may be served electronically by email or other electronic messaging system/s.

51. Any notice by post shall be deemed to have been received at the time when the letter containing same was posted.

52. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Member shall not invalidate the proceeding of that meeting.

53. INDEMNITY

53.1 All Trustees shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their said capacity.

53.2 A Trustee shall not be liable for the acts, receipts, neglects or defaults of any of the other Trustees or for any loss or expenses sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustees for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his / her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his / her office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

54. AMENDMENTS TO CONSTITUTION

This constitution may be amended from time to time by Special Resolution adopted at a General Meeting of Members.

Copy of document
Typed 19 March 2004

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Record of Substantive Amendments

1. Clause 12. Maximum number of Trustees raised from five to ten (AGM 5 Aug 2003)
2. Minor editorial amendments 1 November 2007
- 3.