

KLEIN SLANGKOP HOMEOWNERS ASSOCIATION

CONSTITUTION

Version 1,4

VERSION HISTORY

Version	Description
1,0	Prepared by Walker, Malherbe, Godley & Field Attorneys on behalf of the Klein Slangkop Homeowners Association
1,1	Amendments approved at AGM 1998, mainly relating to arbitration in the event of disputes
1,2	Amendments approved at AGM 2000, mainly to include the Environmental Management Plan as part of the management framework for KSHOA
1,3	Amendments approved at AGM 2003, relating to number of trustees.
1,4	Amendments approved at AGM 2015 incorporating Milkwood Rise

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1. ESTABLISHMENT

Klein Slangkop Home Owners Association is hereby constituted, as a body corporate, with powers to sue and be sued in its own name independent of its members in terms of the provisions of Section 29 of the Ordinance and shall come into effect on the first transfer in the development being registered.

2. INTERPRETATION

In this agreement unless the context indicates otherwise the following words will have the following meaning:

- | | | |
|------|---------------------------------|---|
| 2.1 | “the Association” | means one of the Trustees of the Association |
| 2.2 | “scheme” | means the residential plots and private open space of the proposed subdivision of a portion of the remainder of the Cape Farm 948 (Klein Slangkop Development)) including the seven residential erven, public open space and roads comprising the subdivided erf 4694, known as Milkwood Rise. ^{1A} |
| 2.3 | “month” | means calendar month |
| 2.4 | “plot” | means any subdivided erf of the Scheme |
| 2.5 | :the Developer” | means Kommetjie Estates Limited |
| 2.6 | “Member” | means a member of the Association |
| 2.7 | “ a Trustee” | means one of the Trustees of the Association |
| 2.8 | “the Local Authority” | means the Local Authority with authority over the Scheme |
| 2.9 | “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 |
| 2.10 | “The Manual” | means the architectural design manual a copy of which is annexed hereto and which can be amended from time to time with the approval of the Fish Hoek/ Kommetjie /Noordhoek Transitional Metropolitan Substructure or its successors in title which consent shall not be unreasonably withheld |
| 2.11 | "Ordinance | means the Land Use Planning Ordinance 15 of 1985 |
| 2.12 | "Environmental Management Plan" | means the Klein Slangkop Environmental Management Plan, a copy of which is annexed hereto, and which can from time to time be amended with the approval of the Local Authority, which consent shall not be unreasonably withheld. ¹ |

3. MAIN OBJECT

The main object of the Association is:

- 3.1 The control over the architectural standards of the Scheme in accordance with the Manual.
- 3.2 The security of the Members and occupants of the Scheme.
- 3.3 The care, maintenance and control of private open spaces, private roads, recreational areas, washing lines and other joint facilities and services and amenities of the Scheme.

¹ Approved AGM 2000

^{1A} Approved AGM 2015

- 3.4 The enforcement of the provisions of the Environmental Management Plan.²

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 in the Scheme and their successors in title. Against registration of transfer of a plot into the name of each purchaser, such owner 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 person shall jointly and severally be deemed to be one Member.
- 5.3 On ceasing to be a registered owner of a plot, the membership of the Association shall ipso facto cease.
- 5.4 Members shall not be entitled to sell and transfer any plot unless it is a condition of transfer that the purchaser -
- 5.4.1 becomes a member of the Association against transfer;
- 5.4.2 the purchaser accepts in writing to be bound by this Constitution and the Manual referred to.
- 5.5 An owner of a plot shall not be entitled to resign as a Member of the Association and such owner's rights and obligations as a Member are not transferable save in the case of death, insolvency or mental incapacity where such obligations will vest in the Executor, Trustee or the Curator of such owner.
- 5.6 Where a purchaser takes possession of a plot before registration of transfer has been completed, such purchaser shall be regarded as the de facto owner of the plot, and shall ipso facto become a Member of the Association from the date of possession and be bound by this Constitution.³

6. LEVIES

- 6.1 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.
- 6.2 The Trustees shall estimate the amount which shall be required to meet the expenses *from* time to time and recommend the appropriate levies. The Trustees may include in such recommended levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 6.3 Such levies shall be payable in equal monthly installments on the first day of every month in respect of each plot, the first payment to be made not later than the first day of the month immediately following the month during which the transfer is registered, or possession is taken, whichever occurs first.⁴
- 6.4 The Trustees may, from time to time in respect of exceptional expenses, recommend to a general meeting that a special levy be levied upon the Members.
- 6.5 The obligation of a Member to pay a levy shall cease upon transfer of such plot to another, without prejudice to the Association's right to recover arrear levies.
- 6.6 No Member shall transfer his plot until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.

² Approved AGM 2000

³ Approved AGM 2000

⁴ Approved AGM 2000

- 6.7 No Member shall be entitled to any of the privileges of membership unless and until all levies and other sums (if any) which are due and payable to the Association in respect of his membership thereof have been paid.

7. MANUAL

- 7.1 The specifications contained in the Manual prepared by the architects of the Developer set the tone for the architectural development of the Scheme.
- 7.2. Buildings and any other structure shall be constructed in accordance with the specifications contained in the Manual and in terms of a site layout determined by the Trustees from time to time. Before submitting building plans or any amendment of building plans for approval to the 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 written consent of the Trustees first had and obtained.
- 7.3 The Manual may only be amended by a Special Resolution and with the approval of the Fish Hoek/Kommeijie/Noordhoek Transitional Metropolitan Substructure which approval shall not be unreasonably withheld.
- 7.4 The Trustees may delegate the approval of building plans to an architect or other suitable professional.
- 7.5 The Trustees may in their discretion impose a plan fee for the approval of the plans.
- 7.6 The architects to be used by any Member for the design of any building or structure to be constructed on any plot shall be selected by the Trustees.
- 7.7 The Trustees shall be entitled to adopt a landscaping design for the scheme and members shall be required to adhere to such design and any restrictions contained therein.

8. CONTRACTS

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

9. BREACH

- 9.1 Should any Member:
- 9.1.1 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
- 9.1.2 commit any other breach of any of the provisions of this Constitution read with the Manual and the Environmental Management Plan⁵ and fail to commence remedying that breach within a period of 7 days after receipt of written notice requiring same and fail to complete the remedying of such breach within a reasonable time;
- then and in either such events, 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;
- 9.1.3 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
- 9.1.4 in the case of Clause 9.1.2, to remedy such breach and immediately recover the total costs Incurred by the Trustees or the Association in so doing from such Member.

⁵ Approved AGM 2000

- 9.2 Should the Trustees instruct Attorneys arising out of any breach by the 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, as between attorney and own client, tracing fees and collection commission.
- 9.3 Without prejudice to all or any of the right 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 maximum overdraft rate of interest charged by the Association's bankers from time to time calculated from due date for payment until the actual date of payment of such amount, both dates inclusive, such rate of interest as determined by the Manager of the Association's bankers to be final and binding on the parties.

10. TRUSTEES

- 10.1 There shall be a Board of Trustees of the Association which shall consist of not less than 3 (three) and not more than 6 (six)⁶ Members to be elected at each Annual General Meeting to hold office for 2 (two) years. The Developer shall be entitled to appoint one Trustee for as long as it has an interest in the Scheme. Until such time as sufficient erven are transferred to purchasers to enable the Board of Trustees to be formed the Developer shall constitute the interim Board of Trustees
- 10.2 A Trustee shall be deemed to have vacated his office in circumstances where at common law or by statute he would be obliged to vacate such office and also should such Trustee become disqualified to act as director of companies.
- 10.3 Should a vacancy occur between meetings the remaining Trustees shall be entitled to meet to fill such vacancy
- 10.4 The Trustees shall appoint from amongst themselves a Chairman and Vice Chairman. The Chairman shall have a casting vote.
- 10.5 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 which shall be held not later than 12 months after the first transfer has been registered.
- 10.6 The Trustees shall be entitled to 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.
- 10.7 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 perform all such acts on behalf of the Association and manage the affairs of the Association and do all that is necessary on behalf of the Association in fulfillment of its objects. No decision taken by an ordinary or a special resolution of Members shall invalidate any prior act of the Trustees.
- 10.8 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 10.9 The Trustees shall have the right to co-opt additional Trustees (*subject to 10.1*)⁷. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees until the next official meeting.

⁶ Approved AGM 2003

⁷ Approved AGM 2003

11. PROCEEDINGS OF THE TRUSTEES

- 11.1 The Trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 11.2 The quorum necessary for the holding of any meeting of the Trustees shall be 3 (Three).
- 11.3 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.

12. GENERAL MEETINGS OF THE ASSOCIATION

- 12.1 The Association shall meet annually in general meeting.
- 12.2 General Meetings shall be held at such time, place and date. as the Trustees shall decide from time to time.
- 12.3 All General Meetings other than Annual General Meetings shall be called Special General Meetings.
- 12.4 At the written request of at least 10 (ten) Members the Trustees shall convene a Special General Meeting.

13. NOTICE OF MEETINGS

General and Special General Meetings shall be held on 21 (twenty- one) days' written notice which notice shall indicate the time, date and place of the meeting and the proposed agenda, provided that 75% (Seventy Five Percentum) of the Members may agree in writing to short notice.

14. QUORUM

- 14.1 A quorum of a General or Special Meeting shall be at least 5 (five) Members personally present or represented by proxy-
- 14.2 If within half an hour of the time appointed for the commencement of the meeting a quorum is not present, the meeting, shall be adjourned to the same day in the 6next 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 the members present shall be a quorum.

15. PROCEDURE AT GENERAL MEETINGS

- 15.1 The Chairman of the Trustees shall preside at all 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 a Point a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 15.2 The Chairman shall be entitled to conduct the meeting in such manner as he decides in his sole discretion and may 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 could have been transacted at the meeting from which the adjournment took place.
- 15.3 Except as otherwise set forth, all general meetings shall be conducted in accordance with generally accepted practice.

16. 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 duly authorized agent in writing, but need not be in any particular form, provided that where a Member is more than one person, all such persons shall sign the instrument appointing a proxy on such Member's behalf.

17. VOTING

At every meeting, every Member in person or by proxy and entitled to vote shall have one vote for each plot registered in such person's name.

18. OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, 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.

19. ACCOUNTS

- 19.1 The accounts and books of the Association shall be open to the inspection by Members at all reasonable times during normal business hours.
- 19.2 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 which accounts need only be audited should the Members so decide at a General Meeting.

20. 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 address for the purpose of the service of notices.

21. INDEMNITY

- 21.1 All Trustees shall be indemnified by the Association against any liability *bona fide* incurred by them in such capacity
- 21.2 A Trustee shall not be liable for any acts, or omissions or losses or expenses of the Association unless such Trustee has acted *male fide*.

22. AMENDMENTS TO CONSTITUTION

This Constitution may only be amended by Resolution adopted at a General Meeting of Members.

23. COMMON AREAS

The Association shall take all steps necessary to register all common property such as private roads, swimming pool (if applicable), security gate area and shall be responsible for the proper maintenance and upkeep of such areas.

24. DOMICILIUM

The address and domicile of the Home Owners Association shall be such address as the Board of Trustees may select from time to time after despatch of written notification of such address to the Local Authority and all members by registered post.

25. ENVIRONMENTAL MANAGEMENT PLAN⁸

- 25.1 The Environmental Management Plan (EMP) defines guidelines for the sound environmental management of Klein Slangkop, and defines the responsibilities of the Homeowners Association, its Members and Trustees, residents and contractors in respect of, inter alia, construction activities, planting and landscaping, water and refuse management, pollution avoidance and the protection of the environment.
- 25.2 Members are required to adhere to the terms and provisions of the Environmental Management Plan.
- 25.3 The Environmental Management Plan may only be amended by a Resolution passed in a General Meeting and with the approval of the Local Authority.

26. ARBITRATION⁹

- 26.1 Should any disputes or differences arise between the Member and the Home Owners Association or its Trustees, relating to the interpretation of the provisions of the Constitution or the Building Guidelines, then such differences or disputes shall be reviewed and decided by an Arbitrator nominated by either party and acceptable to both
- 26.2 In the event that both parties are unable to agree on an Arbitrator, then the parties shall accept an Arbitrator nominated by the President-in-Chief for time being of the Institute of South African Architects.
- 26.3 The award of the Arbitrator shall be final and binding on both parties.
- 26.4 The Arbitrator shall determine the costs of arbitration and shall direct by whom and in what manner the same shall be borne and paid

This Constitution is hereby approved by the under mentioned Cape Metropolitan Council in accordance with the provisions of Section 29(2)(b)(Hi) of the Land Use Planning Ordinance 15 of 1985

DATE.

SIGNATURE

for: CAPE METROPOLITAN COUNCIL AND DULY AUTHORISED THERETO

⁸ Approved AGM 2000

⁹ Approved AGM 1998