



CONSTITUTION

OF THE SUMMERVALE LIFESTYLE ESTATE

HOME OWNERS' ASSOCIATION

1. **NAME**

The name of the Association is the SUMMERVALE LIFESTYLE ESTATE HOME OWNERS' ASSOCIATION.

2. **DEFINITIONS**

2.1 In this Constitution, unless the contrary is indicated:

2.1.1 "the Association" shall mean the SUMMERVALE LIFESTYLE ESTATE HOME OWNERS' ASSOCIATION;

2.1.2 "Area" shall mean the Remainder of Erf 5070 The Strand, including any subdivision thereof;

2.1.3 "Developer" shall mean WHITE WAVES TRADING (PTY) LTD
Registration number 2002/030110/07, or its successors in title or assigns;

2.1.4 "Development" shall mean Summervale Lifestyle Estate or any phase thereof;

2.1.5 "person" shall include a juristic person or body corporate, including the trustees of a trust or other entity entitled in law to hold title to immovable property;

2.1.6 "erf" shall mean any subdivision of the Area as approved of by the local authority, including a sectional title unit.

2.2 Words importing the singular shall include the plural and the converse shall also apply; the masculine gender shall include feminine and neuter

genders and the neuter gender shall include the masculine and feminine genders.

3. **HEADINGS**

The headings 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. **OBJECTS OF THE ASSOCIATION**

4.1 The objects of the Association are:

4.1.1 to promote and enforce standards within the Area so as to ensure that members may derive the maximum collective benefit from the tranquil atmosphere and peaceful co-existence within the Development;

4.1.2 to manage, own and maintain the private road reserve; private open space, and all services and amenities constructed for the mutual benefit of members;

4.1.3 to control the aesthetic appearance of all land and buildings within the boundaries of the Area.

4.2 The Association shall have the power to do such acts as are necessary and reasonably required to give effect to the provisions of the Constitution.

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 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 persons shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf within the Area, and members shall ensure that their tenants comply with this Constitution.

5.2 Each member shall be entitled to 1 (one) vote for each registered erf owned in the Area. 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 at Cape Town.

- 5.4 No member shall be entitled to let his/her erf unless it is a specific condition of such lease that the lessee be handed a copy of the Constitution of the Association and that such lessee undertakes to abide by the conditions thereof as far as they affect the conduct of inhabitants.
- 5.5 Members of the Association are obliged to comply with all provisions of the Constitution, as well as the Rules and Regulations that may be prescribed by the Trustees from time to time, failing which the Trustees may take corrective action at the cost of the members. Without detracting from the generality of the foregoing, they may give written notice to members to rectify the breach of any provision within the time stipulated, failing which a court may be approached for a suitable order.

6. **EXERCISE OF POWERS**

- 6.1 The powers of the management and administration of the Association vest in the Trustees, who may exercise such powers and perform such acts on behalf of the Association unless specifically reserved for the members at a General Meeting. Without limiting the generality of the foregoing, such powers will include, but not be limited to, the following:
- 6.2 the determination of suitable standards for community life and the management and maintenance of erven within the Development;
- 6.3 the performance of all such acts that are necessary to achieve the goals that are set out or can be inferred from this Constitution;
- 6.4 the investment and re-invest of funds of the Association that are not needed immediately, in a way that is to be determined from time to time;
- 6.5 the operation of a bank account, with all powers necessitated by such operation;
- 6.6 the drafting, conclusion and execution of contracts or agreements that are required in order to achieve the goals;
- 6.7 the employment and remuneration of agents, employees and other parties;
- 6.8 to take legal action in the name of the Association; to defend legal actions in the name of the Association and to appoint legal representatives for this purpose. Without detracting from the generality of the foregoing, the power to institute legal action will include the right to summons members for the payment of arrear levies, and/or the due performance of their obligations in terms of this Constitution. Any costs incurred in this regard will be payable by the member concerned;

- 6.9 to draft or amend Rules and Regulations from time to time that will be applicable to all members and residents within the Development in order to achieve the goals of the Association;
- 6.10 to prescribe and enforce the architectural style and the material to be used in respect of any buildings to be erected, or in respect of any alterations or additions to be carried out to existing buildings, and in particular to control the exterior design of such buildings and the materials used and the landscaping, so as to ensure an attractive, aesthetically pleasing character of all buildings within the Development. These prescriptions shall also apply to other works on an erf, including but not limited to, fences, pergolas, boundary walls and paving;
- 6.11 the appointment of one or more approved agents to conduct all marketing of properties within the Development so as to ensure that the security of the Development is not compromised and that the regulations regarding the placement of advertising boards are adhered to.
- 6.12 The Trustees shall be limited by the budget and contract periods as are determined at the Annual General Meeting from time to time. For any amounts and/or contracts that exceed the approved amounts, a Special General Meeting will be called in order to approve such amount or contract.
- 6.13 No acts of the Trustees will be void merely because of a flaw in the appointment of a Trustee, and all acts will be valid as if the Trustee had been duly elected.

7. **TRUSTEES**

7.1 Composition

7.1.1 The number of Trustees shall be determined from time to time at a General Meeting of the members of the Association, and shall consist of registered owners of erven in the Area, provided that there shall be no less than 5 (five) Trustees.

7.1.2 the first Trustees shall be:

- 3 (three) representatives nominated by the Developer; and
- 3 (three) representatives elected by the owners of erven in the Area.

7.2 Elections at an Annual General Meeting

- 7.2.1 Trustees shall be elected annually at the Annual General Meeting and shall remain in office until the following Annual General Meeting, whereafter they may be re-elected.
- 7.2.2 Trustees may fill any vacancy in their number or co-opt any additional member. Any Trustee so appointed or co-opted shall hold office until the next Annual General Meeting when he/she shall retire and be eligible for re-election as though he/she had been elected at the previous Annual General meeting.
- 7.2.3 The Trustees will arrange their meetings at will and will hold their first meeting within 14 days after every Annual General Meeting to confirm any guidelines for future meetings, on the understanding that at least 50% of all Trustees from time to time will form a quorum for meetings of Trustees. The guidelines for the meetings will be available to any member of the Trustees on demand.
- 7.2.4 The Trustees will elect a chairman, vice-chairman and secretary on their first meeting. The chairman will have a casting vote at meetings of the Trustees.

7.3 Vacation of office

A Trustee shall cease to hold office as such if:

- 7.3.1 he/she resigns by on written notice to the Association;
- 7.3.2 he/she is or becomes of unsound mind;
- 7.3.3 he/she surrenders his/her estate as insolvent or if his/her estate is sequestrated;
- 7.3.4 he/she is convicted of an offence which involves dishonesty;
- 7.3.5 he/she is absent from 3 (three) consecutive meetings of Trustees without special leave of absence by the remaining Trustees;
- 7.3.6 by resolution of a General Meeting of the Association, he/she is removed from his/her office;
- 7.3.7 he/she ceases to be a member of the Association.

7.4 Remuneration of Trustees

Trustees shall be entitled to be reimbursed for all reasonable and bona fide expenses incurred by them in connection with the performance of their duties. Except as is specifically provided for above, no Trustee shall be entitled to any compensation, fees or salary for the performance of his/her duties unless approved by a General Meeting of members.

7.5 Indemnity

No Trustee shall be liable vis-à-vis the Association, or any member, or any other person whatsoever for any act or omission by him/herself, or the Association, or its employees or agents. A Trustee is indemnified by the Association against any loss or damage suffered as a result of any deemed liability, on condition that the Trustee acted in good faith and without gross negligence or dishonesty.

7.6 Imposition of fines

The Trustees may impose fines on members of the Association that act in contravention of this Constitution or the Rules of the Association from time to time, which fines shall be determined by means of a majority decision of members at the Annual General Meeting, with the understanding that members may be held liable for the actions or omissions of their tenants.

8. **MEETINGS**

8.1 Annual General Meetings

Annual General Meetings shall be held at least once every year at such time and place as may be determined by Trustees, but so that no more than 15 (fifteen) months shall elapse between any 2 (two) such successive meetings. The first meeting shall be held within 6 (six) months after the transfer of the first erf in the Area from the Developer. The motions for determination at the Annual General Meeting shall include, but not be limited to:

- 8.1.1 the receipt of a report on the affairs of the Association, including the determination of the budget for the following year; and
- 8.1.2 the elections of members as Trustees.
- 8.1.3 The Annual General Meeting shall be held on no less than 21 (twenty one) days' written notice to each member, to which notice shall be annexed the minutes of the previous Annual meeting; the financial account of the previous year; the agenda; nomination and proxy forms.

8.2 Special General Meetings

8.2.1 Trustees may call a special General Meeting whenever they deem it to be in the interest of the Association. Such a meeting shall also be called upon the written request of not less than ten (10) members, directed to the Chairman of Trustees.

8.2.2 A Special General Meeting shall be held on no less than 10 (ten) days' written notice to each member. The notice shall state the place, date and time of the meeting, as well as the nature of the issue under discussion.

8.3 Quorum at meetings of members

No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. For all purposes, the quorum shall be not less than 30 (thirty) percent of the total number of members of the Association, consisting of members present in person or represented by proxy.

8.4 Adjournment

If, within 30 (thirty) minutes from the time stated for the start of the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place. If a quorum is not achieved at the adjourned meeting within half an hour from the appointed time, the members present shall constitute a quorum. It shall not be necessary to give formal notice of such postponed meeting to members.

8.5 Chairman

The Chairman of Trustees shall preside at every General Meeting, but if he/she is not present at such meeting, the members present shall choose a Chairman from the Trustees, or if no Trustees are present, any other member present may act as Chairman.

8.6 Voting

At all General Meetings, a resolution put to the vote shall be determined by a poll which shall be held immediately in accordance with the following provisions:

8.6.1 Each member present in person or represented by proxy shall have 1 (one) vote for every erf registered in his/her name.

- 8.6.2 Each member and person present as proxy for a member shall have one vote for each erf represented, to be expressed by way of a show of hands, unless the meeting decides that a secret ballot is to be held.
- 8.6.3 All resolutions shall be taken by majority vote of those members present in person or represented by proxy.
- 8.6.4 The Chairman of the meeting shall count the votes for and against the resolution and shall declare it passed or dismissed as the case may be.
- 8.6.5 A declaration by the Chairman of the result of the poll and entry thereof in the minutes of the Association shall be conclusive evidence of that fact.

8.7 Incapacity

Should any member be declared incapable of managing his/her own affairs, or a prodigal or insolvent, or in the case of a Company, placed under Judicial Management, or in liquidation, such member shall be represented by his/her curator; trustee; judicial manager or liquidator as the case may be, who shall be entitled to vote on his/her behalf, either personally or by proxy.

8.8 Co-ownership

If two or more persons are jointly registered owners of an erf, then the registered owners shall decide who shall vote, and only 1 (one) vote shall be allowed in respect of that erf.

8.9 Proxy

- 8.9.1 Votes may be cast either personally or by proxy. The written instrument appointing a proxy, duly signed, shall be delivered to the *domicilium citandi* of the Association or handed to a Trustee at least 24 (twenty four) hours before the starting time of a meeting or adjourned meeting.
- 8.9.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by Trustees under the hand of the grantor, or his/her attorney or agent, duly authorised in writing, or if such appointee is a company, under the hand of an officer duly authorised on its behalf.

8.10 Juristic Persons

Any juristic person that is a member of the Association may, through resolutions of its directors or other governing body, authorize such person as it think fit to act as its representative at any meeting of the Association. This shall apply *mutatis mutandis* in the case of a Trust.

9. **STATUS OF THE ASSOCIATION**

The Association shall automatically come into existence simultaneously with the registration of transfer of the first subdivided portion of the Area, and be an association -

- 9.1 with legal personality, capable of suing and being sued in its own name, and capable of owning immovable property;
- 9.2 none of the members of which shall have any right, title of interest to or in the property, funds or assets of the Association in their personal capacity, which shall vest in and be controlled by Trustees in terms hereof;
- 9.3 not for profit, but for the benefit of the owners and occupants of immovable property situated within the Area.

10. **SUBMISSION OF BUILDING PLANS**

- 10.1 Members shall be obligated to submit all building and sewerage plans for any new construction, renovations, alterations or additions to the Trustees for examination and approval prior to the submission of such plans to the Local Authority, and the Trustees shall make its decision known to the applicant within 2 (two) weeks of having received the plans.
- 10.2 If any member is dissatisfied with the decision of Trustees, he/she shall be entitled to call a meeting of all members and put his/her case to the vote, to be determined by simple majority of members present at the meeting of which at least 10 (ten) days' notice was given.
- 10.3 Until such time as all phases of the Development shall have been completed, the Developer shall have the sole and exclusive right to approve or reject building plans.

11. **LEVIES**

- 11.1 The Trustees shall have the power to establish a levy fund in the amount as may be necessary, in the opinion of the Trustees, to cover all costs which may be necessary in order to achieve the goals of the Association.
- 11.2 The levies shall be payable in equal shares by all registered owners in respect of each erf owned within the Development.
- 11.3 No erf may be sold or transferred without the prior written consent of the Association. Consent may be refused if any portion of the levy in respect of any erf remains due and payable.
- 11.4 Any levy imposed in terms of this Constitution shall be due and payable from the moment that the resolution is taken, and the Trustees may institute action for payment in any court, including a Magistrates' Court with jurisdiction, against any persons that were members of the Association at the time when the resolution was adopted.
- 11.5 Interest at a rate equal to ABSA Bank's prime lending rate from time to time shall be payable on all levies that remain unpaid for more than 7 (seven) days after the date on which it became due and payable.

12. **ACCOUNTING RECORDS**

- 12.1 The Trustees shall ensure that proper accounting records of the administration costs and finances of the Association are kept at the *domicilium* of the Association, or such other place or places as they may deem necessary, and shall have an audited balance sheet and income statement prepared annually.
- 12.2 The Trustees shall present the annual audited balance sheet and income statement to the Association for approval at the Annual General Meeting.
- 12.3 The financial year of the Association shall run from the 1st of March until the last day of February the following year.
- 12.4 The appointment of an auditor shall take place at the Annual General Meeting.

13. **ADDRESSES FOR NOTICES**

- 13.1 For purposes of all matters flowing from this constitution, including the giving of notices and service of legal documents, the Association and members appoint their *domicilium citandi et executandi* as follows:

13.1.1 the Association: P O Box 961, Somerset West, 7129;

13.1.2 each member: at the erf that is registered in a member's name.

13.2 The Association and any member may change his/her *domicilium citandi et executandi* to any other address within the Republic of South Africa. The change shall only take effect 10 (ten) days after the proper dispatch of the notice of change of address.

13.3 Any notice that is required to be given in terms of this Constitution, shall be given by means of delivery by hand or postage by pre-paid registered post. In the latter case, the notice shall be deemed to have been received 10 (ten) days after the date of postage. Presentation of proof of dispatch or delivery shall be conclusive proof of the date of such dispatch or delivery.

14. **AMENDMENTS TO THE CONSTITUTION**

14.1 This Constitution may be amended at an Annual General Meeting of the Association. Each amendment shall be approved by 50% plus 1 of the total number of members personally present or represented by proxy.

14.2 The Constitution may also be amended at any other stage, provided that 75% of all members grant their written consent to the amendments.

14.3 Should the local authority so require, any amendment to the Constitution shall be subject to approval by the local authority.

15. **INTERPRETATION AND DISPUTES**

15.1 Any dispute between members or Trustees regarding the interpretation of this Constitution shall be referred for determination by a practising Advocate of the Cape Bar with at least 5 (five) years' experience. Should the parties be unable to decide on the advocate to be appointed, he/she shall be nominated by the President of the Cape Bar Council. In determining the dispute, the advocate shall act as an expert and not an arbitrator. His/her decision shall be final and binding on the parties, and may be enforced by any court, including the Magistrates' Court with jurisdiction over the Area.

15.2 Notwithstanding anything to the contrary contained herein, the Trustees shall have the power to institute action in any competent court for any

remedy to which they are entitled by virtue of the provisions of this Constitution, including the collection of arrear levies.

- 15.3 Should a dispute arise with regard to the correct interpretation of any clause in either the English or the Afrikaans versions of this Constitution, the Afrikaans version shall enjoy preference and be deemed to be binding.