

THE COVE AT KAYSERS HOMEOWNERS ASSOCIATION CONSTITUTION

1. NAME

The name of the Association is THE COVE AT KAYSERS HOMEOWNERS ASSOCIATION.

2. DEFINITIONS

In this Constitution and Rules, unless the context indicates the contrary;

2.1 "The Association" shall mean THE COVE AT KAYSERS Homeowners Association;

2.2 "The Chairman" shall mean the chairman of the Association;

2.3 "The Development" shall mean THE COVE AT KAYSERS in the district of Kaysers Beach, Eastern Cape and as more fully described in the Sale Agreement to which this Constitution forms an Annexure;

2.4 "The Developer" shall mean Castlehill Trading 140 (Pty) Ltd;

2.5 "The Lessee" shall mean any person having a lease or any temporary right of occupation on any property in the Development;

2.6 "The Member" shall mean an owner of a property as defined in clauses hereof;

2.7 "The Person" or "a person" shall include a company, close corporation, a trust, a partnership or any other Association of persons entitled by law to freehold title to immovable property;

2.8 "Registered Owner" shall mean the registered owner from time to time of any Erf forming a part of the development;

2.9 "The Rules" shall mean the Initial Rules of the Association a copy of which is attached hereto as II and any subsequent Rules made by the Association;

2.10 "The Regulations" shall mean the Initial Regulations to be determined by the Association at its inaugural meeting;

2.11 Words importing the singular number shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter genders shall include the feminine and masculine genders.

3. HEADNOTES

The Headnotes to the clauses in this Constitution and Rules are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

4. OBJECTS AND POWERS OF THE ASSOCIATION

The objects of the Association are:

4.1 to promote and enforce standards for high quality low density, country living in the development in such a way that members may derive the maximum collective benefits therefrom and to adopt and ratify the arrangements set forth in the sale agreements at the inaugural meeting of the Association;

4.2 to provide for the control over the maintenance of buildings, services and amenities forming part of the development, more particularly to enforce certain building regulations and design parameters in order to maintain a characteristic feeling for the development; and the Association shall have the powers to do such acts as are necessary to accomplish these objects and any object implied herein. Without in any way limiting the generality of the foregoing, such powers shall include, but not be limited to the following:

- 4.2.1 the determination of what constitutes appropriate standards for community living and the maintenance of properties and the common property in the development;
- 4.2.2 the investment and reinvestment of monies of the Association not immediately required in such manner as may from time to time be determined;
- 4.2.3 the operation of a banking account with all powers required by such operations;
- 4.2.4 the making, amendment and repeal of Rules which shall be binding upon members, lessees of and visitors to the Development as if they are members of the Association and bound by this Constitution;
- 4.2.5 the formation of sub-committees and the delegation of such powers to such sub-committees as the members in general meeting may deem necessary;
- 4.2.6 the right to sue and defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 4.2.7 the levying of a subscription payable by members as provided in clauses 5 and 11;
- 4.2.8 the acquisition by purchase or otherwise and ongoing maintenance of all common property including, but not restricted to the gate, roads, swimming pool and tennis court dam areas and other common property and the adoption of the contractual arrangements between the developer and the Association including all the rights and the assumption of all the obligations;
- 4.2.9 the incorporation and maintenance of design standards for the development;
- 4.2.10 the incorporation, entrenchment and protection of the design constraints in the constitution of the Association;
- 4.2.11 the establishment and maintenance of a garden service for the common property for the benefit of the development and the individual members of the Association.

5. MEMBERS

- 5.1 The Association shall be organized without capital and membership thereof shall be compulsory for every Registered Owner of an Erf in the Development which membership shall be evidenced by and limited to Registered Ownership in the Deeds Registry in King Williams Town of one or more erven in the Development. Upon registration of ownership, membership of the Association shall be automatic and members shall be obliged to comply with the provisions of this Constitution and the Rules of the Association as laid down from time to time. No person shall cease to be a member of the Association while remaining the Registered Owner of an Erf in the Development. A person who is entitled to obtain a Certificate of Registered Title to any Erf in the Development shall be deemed to be the registered owner thereof.

- 5.2 Each member shall be entitled to one vote for each Erf owned in the Development. Ownership of an Erf in undivided shares shall constitute only one membership, which membership shall be represented by one individual in terms of the provisions of Clause 9 hereof.
- 5.3 When a member ceases to be the registered owner of an Erf in the Development he shall ipso facto cease to be a member. Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry at King Williams Town, passing transfer of one or more erven in the Development from the previous member to the new member. A member shall not transfer an Erf in the Development unless it is a condition of that transfer that the registration of the transfer of the property into the name of the transferee shall ipso facto constitute the transferee as a member of the Association.
- 5.4 Every member shall pay his subscription to the Association, the amount of which shall be determined in terms of Clause 11 hereof. The subscription so determined shall apply equally to all erven and shall be payable in respect of each erf owned by a member.
- 5.5 Should any member let any Erf owned by him to a lessee, he shall be obliged, and undertakes to ensure that such lessee complies with the provisions of this Constitution and the Rules of the Association. A lessee may become an associate member of the Association by payment of the annual subscription. An associate member shall be entitled to attend meetings of the Association, but shall not be entitled to vote at any of the meetings.
- 5.6 The Association shall come into being on the first transfer and the developer shall be obliged to convene the Inaugural Meeting within 90 days thereof and to ensure that appropriate parties are willing to serve on the association and shall be obliged to Chair that meeting or delegate the responsibility to the agent or the Seller's attorney as defined in the sale Agreement to which this Constitution is attached.

6. POWERS

The Management and Administration of the Association shall be exercised by the Committee elected by the members in a General meeting, provided that the members in a General Meeting shall also be entitled to elect a member of the Association to whom the management and administration of the Association including any of its Powers, may be delegated and/or to appoint Managing Agents for this purpose. Any act performed without any proper authority by any member, may be ratified and confirmed by the members.

A member who is duly authorized to act on behalf of the Association shall be entitled to be repaid by the Association any reasonable and bona fide expenses incurred by him in connection with and incidental to the performance of his duties.

7. CHAIRMAN AND COMMITTEE MEMBERS OF THE ASSOCIATION

- 7.1 The Chairman, together with a minimum of 4 and a maximum of 8 committee members shall be elected at any annual general meeting and they shall remain in office, until the following annual general meeting, unless they vacate their office in terms of the provisions of this constitution.
- 7.2 Any committee member shall cease to hold office as such if:
 - 7.2.1 by notice in writing to the Association he resigns his office;
 - 7.2.2 he is or becomes of unsound mind;
 - 7.2.3 he surrenders his estate as insolvent or his estate is sequestrated;
 - 7.2.4 he is convicted of an offence which involves dishonesty;
 - 7.2.5 he absented himself from two consecutive General Meetings;
 - 7.2.6 by a resolution of 25% of all members of a General Meeting he is removed from

- office;
- 7.2.7 his annual subscription becomes delinquent;

- 7.3 The first Chairman of the Association shall be the nominee of the developer and he shall remain in office subject to the provisions of this Constitution until the next Annual General Meeting.

8. INDEMNITY

No duly authorized member to whom the whole or any aspects of Management and Administration of the Association has been delegated shall be liable to the Association or to any member thereof or to any other person whomsoever for any act or admission by himself, or by the servants, agents, contractors or employees of the Association.

Such members 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 or which should reasonably have been known to him, in good faith and without gross negligence.

9. MEETINGS OF THE ASSOCIATION

9.1 ANNUAL GENERAL MEETINGS

Annual General Meetings of members shall be held once in every year at such time and place as the members may agree, but so that no more than 15 months shall be allowed to lapse between any two such successive meetings. The business to be done at the Annual General Meeting shall include:

- 9.1.1 the receipt of a report on the affairs of the Association;
- 9.1.2 the possible election of a member to carry out the Management and administration of the Association;
- 9.1.3 the adoption of the minutes of the previous Annual General Meeting;
- 9.1.4 the adoption of the balance sheet and accounts;
- 9.1.5 the consideration of any resolutions concerning the affairs of the Association of which due notice has been given to all members;
- 9.1.6 the appointment of Managing Agents or the termination of Managing Agents contracts;
- 9.1.7 the election of a Chairman;
- 9.1.8 any other business.

9.2 ORDINARY GENERAL MEETINGS

Any member on due notice and through the Chairman may call an Ordinary General Meeting of members.

9.3 PRESENCE AT MEETINGS

Each member shall be obliged to be present in person or represented by proxy at the Annual General Meeting and at any Ordinary General Meeting, failing which such members shall be deemed to have voted in favour of any resolution passed at such meeting by the remaining members.

9.4 NOTICE OF MEETINGS

An Annual General Meeting shall be convened on not less than 21 (Twenty One) days notice in writing. An ordinary meeting shall be called by not less than 14 (Fourteen) days notice in writing. The notice shall be inclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting and the general nature of the matter to be discussed; provided that any meeting shall, notwithstanding that it is called by shorter notice than that specified, be deemed to have been correctly called if it is so agreed by all the members.

9.5 VALIDITY OF MEETING

The non receipt of a Notice of the meeting by any person or member entitled to receive such notice, shall not invalidate the proceedings of that meeting, except to the extent that such proceedings have prejudiced, or on the balance of probability would materially prejudice, the financial or proprietary interests of the relevant member who did not receive, nor have received on his behalf, the aforesaid notice.

9.6 QUORUM

No matters shall be discussed at any meetings unless a quorum is present when a meeting commences. For all purposes, the quorum shall be members present in person or by proxy and be not less than 30% of the total number of members.

9.7 ADJOURNMENT

If within half an hour of the time appointed for the holding of a meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time place and if at such adjourned meeting a quorum is not present within a 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 forwarded notice of such adjourned meeting.

9.8 CHAIRING OF MEETINGS

In the absence of the Chairman of the Association the members shall choose a Chairman of the meeting to preside thereover. The Chairman of the meeting shall keep or cause to be kept minutes of the meeting.

9.9 VOTES

At all General Meetings, resolutions put to the vote shall take place by a show of hands. Voting shall take place in accordance with the following positions:

- 9.9.1 each member present in person shall have one vote for every erf registered in his name;
- 9.9.2 each person present as proxy for a member shall have one vote for every erf registered in the name of the member for whom he is a proxy;
- 9.9.3 each member and person present as proxy for a member shall indicate clearly how he casts each vote to which he is entitled as aforesaid;
- 9.9.4 all resolution shall, except as otherwise provided herein, be by simply majority by those members present in person or proxy at the meeting and voting;
- 9.9.5 the Chairman of the meeting shall count the votes cast for and against the resolution and shall declare it carried or lost as the case may be;
- 9.9.6 a declaration by the Chairman of a result of the voting by show of hands and an entry thereof in the minute book of the Association shall be conclusive evidence of that vote;
- 9.9.7 the Chairman shall not have the casting vote in addition to his ordinary vote.

9.10 INCAPACITY

Should any member be declared incapable of managing his own affairs, or a protocol, or insolvent, or in the case of a company placed into liquidation, such a member may be represented by his curator bonus, trustee, or liquidator as the case may be, who shall be entitled to vote on his behalf, either personally or by proxy.

9.11 CO-OWNERSHIP

If two or more persons are joint registered owners of an Erf, then in voting upon any question, the vote of the senior, who tenders a vote either in person or by proxy shall be accepted to the exclusion of votes of the other registered owners of the Erf, and for this purpose, seniority shall be determined by the dates of birth of the joint owners as recorded in the Deeds Registry King Williams Town. In the event of an Erf being jointly owned by a natural person, a company, close corporation or trust, then in such event a natural person shall cast a vote on behalf of such Membership.

9.12 PROXY

- 9.12.1 Votes may be given either personally or by proxy;
- 9.12.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by the Chairman of the Meeting under the hand of the appointer, or his Attorney or Agent duly authorized in writing, or if such appointer is a company or close corporation, under the hand of an officer/member duly authorized on their behalf;

9.13 COMPANIES, CLOSE CORPORATIONS OR OTHER ASSOCIATIONS

Any Company, Close Corporation, Trust or other Association which is a member of the Association may, by resolution of its Directors, Members or other governing body, authorize such a person to act as its representative at any meeting of the Association and the person so authorized shall be entitled to exercise the same powers on behalf of the Company, Close Corporation, or other Association which he represents at that Company, Close Corporation or Association could exercise if it were an individual member of the Association.

9.14 RESOLUTION

Resolutions may be taken by the Association other than in General Meeting, provided that they are signed by all members or by their representatives.

10. THE STATUS OF THE ASSOCIATION

- 10.1 The Association shall be an Association with legal personality, capable of suing and being sued in its own name;
- 10.2 None of the members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association; and
- 10.3 The Association shall not be for profit, but for the benefit of the owners and occupants of immovable property situate in the development;
- 10.4 The Association shall have the right to acquire, hold and alienate property both movable or immovable.

11. ANNUAL SUBSCRIPTIONS

- 11.1 The Association shall be entitled to levy subscriptions from its members to defray the costs of managing and administering the Association and for the purpose of meeting all the expenses the Association has incurred or will incur. Such subscription may be fixed and collected in advance. A member shall, however, only be obliged to pay a pro rata portion of the Annual Subscription where his membership has been for a portion of a year.
- 11.2 The Association shall be entitled, at its discretion, to increase the subscriptions from time to time and to vary the timing for payment thereof.
- 11.3 The Annual Subscription for any year becomes due and payable by each member on the first day of the month following registration of transfer of the Erf into his name, the initial monthly contribution being set at R200.00 (two hundred rand)
- 11.4 Any amount due by a member by way of an annual subscription shall be due by him to the Association. A member's successor entitled to an Erf in the Development shall be liable as from the date upon which he becomes a member pursuant to transfer of that Erf, to pay the annual subscription attributable to that Erf. No member shall transfer his Erf in a Development until the Association has certified that the member has, at the date of transfer, fulfilled all his financial obligations to the Association.
- 11.5 If the annual subscription of a member is not paid within 90 (Ninety) days of due date, then such subscription shall become delinquent and the Association may institute legal proceedings against the member for the recovery thereof and the costs of such proceeding (on an attorney/client scale) shall be added to the subscription.
- 11.6 A member whose subscription is delinquent shall not be entitled to vote at any General Meeting or to serve as a Chairman of the Association until such arrear subscription has been paid.

- 11.7 Each erf shall have an electricity and water metre which will record the usage of same emanating from that particular erf. The HOA shall acquire the services of a security company for the development of which one of its responsibilities shall be to record water and electricity readings. The HOA shall be billed in bulk by the relevant authorities for these services and then those bulk amounts shall be apportioned to each erf in accordance with the recorded usage thereon.

12. ACCOUNT

- 12.1 Proper books of account of the administration and finances of the Association shall be kept by the Association at the domicilium of the Association or such other place or places as decided on by the members in general meeting.
- 12.2 The Chairman of the Association shall cause to be laid before the Association in General Annual Meeting, books of accounts, balance sheets and reports of the Association.

13. RULES

The Committee shall have the power to make rules not inconsistent with the HOA constitution for the regulation of good relationships between members or in promotion of the objects of the association.

II. THE COVE AT KAYSERS HOMEOWNERS ASSOCIATION - INITIAL RULES

1. GENERAL

1.1 NO NUISANCE

A member will not do or suffer to be done on the property anything which in the opinion of the Association is noisy, unsightly, objectionable, and detrimental or a public or a private nuisance or any sort of damage or disturbance to any owner or lessee of erven in the Development.

1.2 NON COMPLIANCE

If any owner or lessee of any property in the Development, by act or omission, commits a breach of these or any subsequent rules, the Association may give such owner written notice to make good the breach within a time specified in the notice, and upon his failure to do so, the Association or any authorized person, may enter upon the property to take the necessary action to make good the breach, which action shall be in the entire discretion of the Association at the cost of which action may be recovered from any persons served with such notice. The aforesaid action will include, but not be limited to, the obtaining of gardening consultants or services.

2. APPROVAL OF BUILDING PLANS

All building plans, repainting and renovation plans are to be approved by the Homeowners Association in writing before being submitted for municipal approval.

3. BUILDINGS

All buildings on the property, including all walls, fences, gates and other structures, as well as gardens and courtyard areas exposed to public view, must be maintained in a neat and tidy condition, and in a state of good order and repair and every effort made to screen them from the public areas.

4. BUILDING ELEMENTS AND MATERIAL

4.1 House: House designs must remain within the following guidelines:

4.1.1 No dwelling area may be smaller than 100m² excluding outbuildings.

4.1.2 The height restriction for buildings is 8,5meters.

- 4.1.3 All external walls to be painted from PLASCON "Natural Neutral Inspirations" range, Earthcote 'N' range, Earthcote 'Off-white' range or similar approved. (Note that details and codes of colour specifications are required with application submission)
 - 4.1.4 No facebrick.
 - 4.1.5 Plastered and painted walls allowed or bagwalled and painted
- 4.2 Roofs: Roof designs must remain within the following guidelines:
- 4.2.1 Double pitch roofs between 30 and 40 degree pitch.
 - 4.2.2 Monopitch roofs between 15 degrees and 20 degrees.
 - 4.2.3 Flat roofs may not exceed 20% of overall coverage.
- 4.3 Boundary Walls: Wall design must remain within the following guidelines:
- 4.3.1 No pre-cast walls.
 - 4.3.2 Maximum height of 1.8 meter.

5. ENVIRONMENTAL MANAGEMENT

- 5.1. No rubble or refuse should be dumped or discarded in any public area.
- 5.2. A particular appeal is made to residents to leave open spaces they visit unharmed. Residents are requested to develop the habit of picking up and disposing of any litter in the open places.
- 5.3. Residents must ensure that there is no declared noxious flora in their gardens.
- 5.4. Residents are recommended to plant indigenous flora and can approach specialists from the area for advice.
- 5.5. Vacant stands must be kept clean on a regular basis to the satisfaction of the HOA, and if not maintained, the HOA reserves the right to clean the stand at the owner's expense.
- 5.6. The residents' use of open areas is entirely at their own risk at all times.
- 5.7. Feeding of birds:
 - 5.7.1. Residents may install birdfeeders and birdbaths which are ecologically and aesthetically acceptable. The HOA's decision on any dispute in this regard will however be final.
- 5.8. Dams:
 - 5.8.1. Fishing will only be allowed on a catch and release basis.

6. ROADS WITHIN THE DEVELOPMENT

The roads within the Estate are for the movement of all occupants, whether by foot or mechanical means. The speed limit on the roads within the development is 20 km/h. Speeding and reckless driving will not be tolerated.

7. PETS

Domestic pets will be allowed to be kept on the development by members/lessees. However, large or ferocious dogs must be kept within the member/lessee property and must not be free to roam.

8. LETTING AND RESELLING PROPERTY

- 8.1. Should any owner want to let or resell the property, he shall advise the HOA in writing in advance.
- 8.2. The appointed Estate Agent must ensure that the Buyer/Lessee is informed about and receives a copy of the Rules & Regulations, Building Guidelines and any other administrative regulations and conditions applicable at the time with regard to Building Contractor activity.
- 8.3. A clearance certificate must be obtained from the HOA certifying that all levies have been paid and no other monies are owing to the HOA.
- 8.4. Any approval granted to the Seller (in case of resale) or Lessor, prior to the time of sale or lease must be communicated to the Buyer or Lessee at the time of purchase or lease. Failing this, the Buyer or Lessee will have recourse against the Seller or Lessor.
- 8.5. The Seller or Lessor of a property in the estate shall ensure that the sale or lease agreement contains the following clauses:

SALE AGREEMENT: HOME OWNERS' ASSOCIATION

The Purchaser acknowledges that he/she, upon registration of the property into his/her name automatically becomes a member of the Home Owners' Association and agrees to do so subject to the Memorandum and Articles of Association."

CONDITIONS OF TITLE:

The Seller shall procure that, in addition to all other conditions of title and/or subdivision referred to above, the following conditions of title be inserted in the Deed of Transfer, in terms of which the Purchaser takes transfer of the property:

"Every owner of the stand or any interest therein, or any unit thereon, shall be subject to its constitution until he ceases to be an owner as aforesaid. Neither the stand, nor any interest therein, nor any unit thereon, shall be transferred to any person who has not

bound himself to the satisfaction of such Association to become a Member of the Home Owners' Association. The owner of the stand, or any interest therein or any unit thereon, shall not be entitled to transfer the stand or any interest or any unit thereon, without a clearance certificate from the Home Owners' Association that the provision of the Articles of Association have been complied with"

The term "Home Owners' Association" in the aforesaid conditions of title shall mean the Home Owners' Association. In event of the Registrar of Deeds requiring the amendments of such conditions, in any manner in order to effect registration of same, the purchaser of same hereby agrees to such amendment. The seller must personally ensure that the buyer is informed about and receives a copy of the Rules & Regulations, Architectural Guidelines and any other administrative regulations applicable at the time.

LEASE AGREEMENT:

"The Lessee acknowledges that upon occupation of the premises, he/she and his/her family, his/her visitors and staff shall adhere to the rules and regulations as contained in the Rules and Regulations of the Home Owner's Association. The Lessor must personally ensure that the Lessee receives a copy of these Rules, and any other administrative regulation applicable at the time and binds the Lessee to the rules and regulations in the lease."