

# SUMMERWOOD AT PINEHURST HOME OWNERS' ASSOCIATION

## **ASSOCIATION CONSTITUTION**

(First amendment and approved on 1 November 2012.

Second amendment and approved by the Members  
at the Annual General Meeting on 1 November 2017 as well as  
approval of the City of Cape Town on 8 November 2017  
in terms of Section 98(b)  
of the City of Cape Town Municipal Planning By-Law 2015)

# SUMMERWOOD AT PINEHURST HOME OWNERS' ASSOCIATION

## CONSTITUTION

### 1. NAME

The name of the Association is **SUMMERWOOD AT PINEHURST HOME OWNERS' ASSOCIATION**.

### 2. DEFINITIONS

In this Constitution, unless the context indicates the contrary:

- 2.1 "The Association" shall mean SUMMERWOOD AT PINEHURST HOME OWNERS' ASSOCIATION.
- 2.2 "The Developer" shall mean Garden Cities Incorporated Association not for Gain, No. 1928/000607/08.
- 2.3 "Development" shall mean the Private Area and the residential erven within the boundaries of the Association as more fully depicted on the plan annexed hereto as Annexure "DA".
- 2.4 "The Effective Date" shall mean the date of registration of the first transfer of an erf in the Development into the name of a Member or of the Association, upon which date this Constitution shall also come into effect.

- 2.5 “Managing Agent” shall mean such person or entity with whom the Association may contract from time to time to undertake any of the functions of the Association.
- 2.6 “Member” shall mean a member as defined in Clause 4, hereof.
- 2.7 “Person” shall include a company, close corporation, club, trust, partnership or other association of persons entitled in law to hold title to immovable property.
- 2.8 “Private Area” shall mean erven 11506, 11556, 11567 Durbanville in the City of Cape Town, being the erven designated as Public as well as such portion(s) of Sub Phase B to be subdivided that are designated as Public Open Spaces.
- 2.9 “Services” shall mean all services for the Township Area installed by or on behalf of the Association and not taken over by the City of Cape Town.
- 2.10 “Local Authority” shall mean the City of Cape Town or the competent authority acting as its successor in title.
- 2.11 In this Agreement, unless the contrary obviously follows from the context:
- 2.11.1 any gender shall include the other genders;
- 2.11.2 any reference to a natural person shall include legal *personae* and *vice versa*;
- 2.11.3 the singular shall include the plural and *vice versa*.

### 3. OBJECTIVES

- 3.1 The objectives of the Association are to:
- 3.1.1 promote, enforce and protect the communal interests of its Members, with the object, *inter alia*, of creating and maintaining a congenial and secure atmosphere in the Development in such a way that Members may derive the maximum collective benefit therefrom in the long term;
- 3.1.2 promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Development in order to achieve harmonious development thereof;
- 3.1.3 control any exterior alterations, changes of colour finishes or design of all buildings erected on erven within the Development;

- 3.1.4 control and maintain such common services as are not taken over by the Oostenberg Municipality and for which the Association may be responsible from time to time, as envisaged in terms of Section 29 of the Land Use Planning Ordinance 15/1985;
  - 3.1.5 assume control of the Private Area on the Effective Date and thereafter to repair, maintain and service all amenities or improvements that may be erected thereon (inclusive of verges and sidewalks), and in particular the cleaning, sweeping, upkeep, improvement and control of all landscaped areas within the development and outside the erven of Members;
  - 3.1.6 regularly collect such uniform and equal levies per erf (including special levies and interest in levies in arrears), from Members as the Association may determine from time to time in order to meet its obligations and to pay its accounts. The Members are jointly liable for the expenditure incurred in connection with the Association.
- 3.2 The Association shall have all the powers reasonably required to meet its objectives and to do whatever may be necessary to accomplish these objectives.
- 3.3 The Association shall enforce any conditions of subdivisional approval or management plans listed in such conditions as set out in Section 62(1)(a)(iv) of the City of Cape Town Municipal Planning By-Law, 2015.

#### **4. MEMBERSHIP**

- 4.1 Membership of the Association shall be evidenced by registered ownership in the Deeds Registry, Cape Town, of one or more erven in the Development.
- 4.2 Upon registration of ownership of an erf in the Development in the name of any purchaser, membership of the Association by such purchaser shall be automatic and obligatory and all Members shall be obliged to comply with the provisions of this Constitution.
- 4.3 No person shall be entitled to terminate, cede or assign his/her membership of the Association while remaining the registered owner of an erf in the development.
- 4.4 Each Member shall have 1 (one) vote per erf owned in the Development. Joint ownership of an erf by several parties in undivided shares shall constitute only one Member, which Member shall be represented by one undivided vote as set out hereunder.

- 4.5 Membership shall be created (and terminated) by the registration of transfer of ownership in the Deeds Office at Cape Town, whereby one or more erven in the development is transferred to a new owner who thereby shall become a Member.
- 4.6 No Member may sell, transfer or otherwise alienate his/her property in the Development without the prior consent in writing of the Association, and without expressly in writing making the purchaser aware of this Constitution in the deed of sale.

## **5. COMMITTEE**

- 5.1 The affairs of the Association shall be managed by a Committee consisting of 5 (five) Members, elected by majority vote and to remain in office for 1 (one) year. Provided that not more than 2 (two) Committee members may be non-Members elected or appointed on the basis of particular skill or knowledge.
- 5.2 As from the date of approval of this Constitution by the City, the management of Garden Cities shall constitute the Committee until the Committee members have been elected as set out hereunder.
- 5.3 As soon as a minimum of 250 (two hundred and fifty) erven in the Development have been sold and registered in the names of the respective purchasers, a first general meeting of Members shall be called for the election of the Committee as envisaged herein.
- 5.4 The City of Cape Town must be notified within 60 (sixty) days of the first meeting having been held that the meeting has taken place and must be provided with a copy of the minute of the meeting.
- 5.5 The members of the Committee shall, after proposal and seconding, be elected by poll or (if the meeting so determines) by a show of hands of Members attending the general meeting of the Association. Subsequent Committees shall be likewise elected at each successive annual general meeting of the Association. No Member shall be eligible for election unless:
- 5.5.1 he/she has been duly proposed and seconded in writing by two other Members; and
- 5.5.2 such proposal, countersigned by the candidate, has been handed to the Secretary not later than the last day (excluding Saturdays, Sundays and public holidays) preceding the meeting; and

- 5.5.3 his/her payments are not in arrears. This requirement shall not apply to non-Members elected on account of particular skills or knowledge.
- 5.6 The Committee shall consist of:
- A Chairperson;
  - A Secretary;
  - An Auditor;
  - Two additional Members
- with any 3 (three) Committee members forming a quorum.
- Provided that while 10 (ten) or more residential erven in the Development remain registered in the name of the Developer (i.e. unsold), the Developer shall be entitled to appoint the Chairperson and one additional member of the Committee.
- 5.7 Every Committee member shall cease to hold office:
- 5.7.1 at every annual general meeting (but shall be eligible for re-election); or
  - 5.7.2 if he/she becomes unsound of mind or is disqualified from acting as a director in terms of the provisions of the Companies Act.
- 5.8 The Committee may fill casual vacancies on the Committee by co-opting any other person or eligible Member of the Association who may so serve until the next annual general meeting.
- 5.9 A Committee member shall be entitled to be reimbursed for reasonable expenses incurred on behalf of the Association, and as approved by the Committee.
- 5.10 No Committee member shall be liable to the Association or to any Member thereof or to any other person whomsoever for any act or omission by himself/herself, the Association or its servants or agents. Every member of the Committee is hereby indemnified against any loss or damage suffered by him/her in consequence of any alleged liability, provided that such member has on the basis of information available to him/her, acted honestly and in good faith without gross negligence.

- 5.11 Committee meetings shall be held regularly as determined by the Chairperson from time to time, but in any event at least once every 3 (three) months.
- 5.12 The Committee shall cause proper books of account of the administration and finances of the Association to be kept and financial accounts shall be drawn annually by a competent person.
- 5.13 The Secretary shall keep proper minutes of all meetings of the Committee.
- 5.14 In the event of a deadlock the Chairperson shall have a casting vote.

## **6. MEETINGS OF THE ASSOCIATION**

- 6.1 The applicant for approval of subdivision must call the first meeting of the Members of the Association within 60 (sixty) days of the transfer of 60% (sixty percent) of the land units arising from the subdivision or within 2 (two) years of the transfer of the first land unit, whichever is the earlier.
- 6.2 The annual general meeting of the Association shall be held on a date as determined by the Committee during each successive year, provided that such meeting shall not be held later than 15 (fifteen) months after the previous annual general meeting. The Secretary shall post or deliver to each Member written notice of the annual general meeting, accompanied by the agenda, at least 3 (three) weeks before the date of the meeting.
- 6.3 Special general meetings may be called upon 3 (three) weeks written notice by the Secretary whenever the Committee considers it desirable and shall in any event be called upon the request in writing of at least 12 (twelve) Members. The Secretary shall include the agenda with the notice of the special meeting.
- 6.4 The Chairperson shall preside at all meetings and in his/her absence the Secretary shall preside. In the absence of both of them the Members present shall elect an acting chairperson for that meeting.
- 6.5 At all meetings votes on any matter shall be cast by a show of hands unless the Chairperson of that meeting requires a poll.

- 6.6 In the event of a deadlock the Chairperson of that meeting shall have a casting vote.
- 6.7 The quorum at all general meetings shall be Members holding in aggregate at least 20 (twenty) votes.
- 6.8 The Secretary shall keep minutes of the proceedings of the Association.

## **7. POWERS OF THE ASSOCIATION**

- 7.1 The management and administration of the Association shall vest in the Committee which must enforce the provisions of the Constitution and may exercise all such powers of the Association and do or refrain from doing, on behalf of the Association, whatever may be exercised and done by the Association itself.
- 7.2 Without in any way limiting the generality of the foregoing, the Committee shall be entitled to:
- 7.2.1 perform all such acts as are necessary to accomplish the objectives expressed or implied herein;
  - 7.2.2 determine what constitutes appropriate standards, designs and styles as set out in clauses 3.1.1 to 3.1.3 and for the maintenance of properties in the Development;
  - 7.2.3 invest and re-invest monies of the Association not immediately required, in such manner as the Committee may from time to time determine;
  - 7.2.4 operate a bank account in the name of the Association;
  - 7.2.5 enter into and fulfil contracts or agreements for any purpose of the Association;
  - 7.2.6 employ and pay employees, contractors, agents, servants and any other parties such as auditors, attorneys, architects, engineers and other professional consultants;
  - 7.2.7 form sub-committees and to delegate such powers to the sub-committees as may be deemed necessary;
  - 7.2.8 sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
  - 7.2.9 collect or instruct agents to collect levies payable by Members as provided in clause 3.1.6 hereof;



- 7.2.10 grant or withhold (pending payment of any levies in arrears or fulfilment of his/her obligations by the Member concerned) its consent to the alienation of any erf in the Development, provided that such consent shall not be unreasonably withheld.

## **8. CONDUCT RULES**

- 8.1 Subject to any restrictions imposed or directions given at a general meeting, the Committee may from time to time make, amend and repeal rules which shall apply in the Development and which shall be binding upon Members as if same form part of this Constitution. Without limiting the generality thereof, such rules may have regard to:
- 8.1.1 the right to determine and control all such measures in the Development, including the right to determine access to and egress from the Development and to or from the erven or any other area in the Development;
- 8.1.2 the furtherance and promotion of the objectives of the Association, the management thereof and for the advancement of the interests of its Members;
- 8.1.3 building, environmental and aesthetic requirements. In this regard the Committee shall have the power (subject to Garden Cities' standard requirements) to:
- 8.1.3.1 frame and enforce specifications in order to harmonise the architectural style and design criteria of, and the materials to be used in all buildings erected or to be erected in the Development;
- 8.1.3.2 examine and approve or refuse building plans, whether such be for new constructions, renovations, alterations or additions;
- 8.1.3.3 regulate the preservation of the environment, including the right to control and to require the cultivation of trees and other vegetation;
- 8.1.3.4 compel Members to comply with its building and aesthetic requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such Member. Without in any way limiting the generality of the foregoing, the Committee may in writing call upon a Member to remove or alter within a specified period anything erected contrary to the requirements laid down pursuant thereto and failing compliance, to apply to Court for an appropriate order.
- 8.1.3.5 require Members to submit all building plans for new constructions, renovations, alterations or additions to the Committee for examination and approval (prior to the submission of such plan to Garden Cities and to the Local Authority for approval). The Committee shall communicate its decision to the applicant within 2 (two) weeks of such plans being submitted to it.

- 8.2 Members shall be obliged to communicate any requests or complaints regarding the Development to Garden Cities and/or the Local Authority Municipality via the Committee only.
- 8.3 For the enforcement of any of its rules the Association may:
- 8.3.1 take or cause to be taken such steps as it may consider necessary to remedy the breach of any rule and to debit the cost thereof to the Member concerned as a debt payable to the Association; and/or
  - 8.3.2 impose fines or other penalties as approved and reviewed by the annual general meeting; and/or
  - 8.3.3 take any other lawful action, including court proceedings, as may be appropriate in the circumstances.
- 8.4 Any breach of the rules by a Member, his/her staff, dependents, guests or tenants shall be deemed to have been committed by the Member himself/herself who shall be liable for such breach and the consequences thereof. Without prejudice to the foregoing, the Association may in its entire discretion take steps against the Member concerned and/or against the party actually committing such breach.
- 8.5 The Association shall be entitled to recover all costs incurred in any legal proceedings from the Member concerned (or guest or tenant of such Member) on the scale as between attorney and client, including tracing fees and collection commission.

## **9. DEALING WITH PRIVATE AREAS**

Neither the whole nor any portion of any erf forming part of the Private Area shall be:

- 9.1 sold, let, alienated, sub-divided, transferred or otherwise disposed of; or
- 9.2 mortgaged; or
- 9.3 subjected to any rights (whether registered in any deeds registry or not) of use, occupation or servitude (other than the general servitudes in favour of the City of Cape Town or any other competent authority, and those enjoyed by the Members in terms hereof); without a prior special resolution of the Association and the prior consent of the City of Cape Town.

## **10. STATUS OF THE ASSOCIATION**

The Association shall be an Association:

- 10.1 with legal personality, has perpetual succession, capable of suing and being sued in its own name; and
- 10.2 none of those 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 or gain, but for the benefit of the owners and occupants of immovable property situated in the Development.

## **11. AMENDMENT OF THE CONSTITUTION**

- 11.1 The Constitution of the Association may at any time be amended at a general or special meeting of the Members, provided that at least 75% (seventy five percent) of all Members vote in favour thereof, whether in person or by written proxy, provided that no alteration or amendment to the Constitution shall be made without the prior written consent of the City of Cape Town and, furthermore, provided that an amendment concerning a matter in Subsection (1)(a) of Section 62(4) of the City of Cape Town Municipal Planning By-Law, 2015 becomes effective only when certified by the City.
- 11.2 The City of Cape Town is exempt from liability for any damage which may be caused by its certification of the Constitution or any amendment thereof or by the loss of the Constitution lodged with the City.

## **12. WINDING UP**

- 12.1 The Association may be wound up by a resolution of the Members in a general meeting provided that:
  - 12.1.1 75% (seventy five *per centum*) of all Members, duly convened, vote in favour thereof; and
  - 12.1.2 the City of Cape Town or its successor in title consents thereto in writing.
- 12.2 In the event of such winding up, it shall be the duty of the Committee, or a trustee

appointed by it, to convert the assets of the Association into cash, pay all the liabilities of the Association and thereafter distribute the nett residue (if any) to all the Members in proportion to the number of erven registered in the name of each Member.

### **13. ASSOCIATION FAILING TO MEET AN OBLIGATION OR CEASING TO EXIST**

If the Association fails to meet any obligations in terms of its Constitution respectively and the City of Cape Town believes that the community is adversely affected by the failure, the City may take appropriate action to rectify the failure.

The City may recover any expenditure in respect of the action contemplated above from the Association or its Members, who are jointly liable.

The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.

If the Association ceases to function effectively or to carry out its obligations, the City may give the Association a binding instruction to:

- (a) hold a meeting and to reconstitute itself; or
- (b) dissolve itself, subject to the amendment of the conditions of approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed.

In determining whether to act in terms of the above, the City must have regard to:

- (a) the purpose of the Association;
- (b) who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
- (c) the costs of upgrading the internal engineering services and other infrastructure if the City is to take over the infrastructure;
- (d) the impact of the dissolution of the Association on its Members and the community;
- (e) any written representations from the Association and its Members.

If the Association is dissolved, the Members must jointly pay the costs of:

- (a) the transfer to the City of the Association's property which contains the internal engineering services and private open spaces;
- (b) the upgrading of the internal engineering services to the standards of the City.

In the event that the Association has ceased to function and an owner wishes to transfer a land unit in that event, the owner must obtain the consent of at least 60% (sixty percent) of the Members of the Association, which consent is deemed to be the consent of the Association.