

**CONSTITUTION OF GROENKLOOF DEVELOPMENT
HOMEOWNERS' ASSOCIATION**

1. **NAME**

The name of the Association is Groenkloof Development Homeowners' Association.

2. **DEFINITIONS**

In this constitution, unless the context indicates the contrary:

- 2.1 The "Association" shall mean Groenkloof Development Homeowners' Association.
- 2.2 "The Area" shall mean the subdivision of Portion of Portion 19 of the Farm Witteklip No. 123 Vredenburg as depicted on the draft general plan of the development known as Groenkloof Development attached hereto as Annexure A.
- 2.3 "Person" shall include a Company, Close Corporation, Partnership, Trustees for the time being of a Trust, Club or other Association of persons entitled by law to hold title of immovable property.
- 2.4 "Member" shall mean a member as defined in clause 5 hereof.
- 2.5 "Unit" shall mean an erf together with a dwelling, outbuilding(s), garden, driveway and all improvements of a permanent nature.
- 2.6 "The Developer" shall mean Silver Crow Properties 22 (Pty) Limited.
- 2.7 "The Committee" shall mean the Committee of the Association as constituted in terms of clause 6 hereof.
- 2.8 "Financial Year" shall mean the period commencing 1 March in a particular year and terminating on the last day of February of the following year.
- 2.9 "Design Guidelines" shall mean the architectural design guidelines attached hereto as Annexure "C".
- 2.10 Words imparting the singular shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders.



3. HEADNOTES

The headnotes 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. OBJECTIVES OF THE ASSOCIATION

The objectives of the Association are to:

- 4.1 Promote and enforce standards, not the least of which should be the congenial atmosphere in the Area in such a way that members may derive the maximum collective benefit therefrom.
- 4.2 Promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Area in accordance with the Design Guidelines in order to achieve harmonious development thereof, to enhance the ambiance thereof and in particular to preserve the view of property owners.
- 4.3 Ensure that members satisfactorily maintain their erven in the area and the buildings thereon.
- 4.4 In general, to do everything necessary to promote the wellbeing of all residents of the area.

The Association shall have the powers to do such acts as are necessary to accomplish these objectives.

5. MEMBERS

5.1 The Association shall be constituted without capital and membership thereof 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 person shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf in the Area.

5.2 Each member shall be entitled to one (1) vote for each erf registered in the member's name in the Area. Multiple 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, Cape Town, passing transfer of one or more erven in the Area from the previous member to the new member.



- 5.4 Should the registered owner or his successor in title sell, donate or in any manner alienate or transfer his property, such sale, donation, alienation or transfer of the erf shall be subject to the approval of the Committee, which approval shall not be unreasonably withheld.
- 5.5 Every member shall pay such levy, if any, as determined by the Association from time to time in order to implement the provisions of this Constitution.

6. COMMITTEE

The powers of the Association, other than those exercised by members in General Meeting, shall be exercised by the Committee.

6.1 Composition:

- 6.1.1 The Committee shall have as its members the members of the Association.
- 6.1.2 The Committee shall consist of a chairman, a secretary/treasurer, and two (2) members. Until such time as all the erven are sold in the Area the Developer shall be deemed to be the member for each unsold erf in the Area for the purposes of this Constitution. The Developer shall serve as Chairman of the Committee for the duration of such period. All matters at any meeting shall be determined by a majority of those present and voting. In the event of an equality of votes, the Chairman of any meeting shall have casting as well as a deliberative vote.
- 6.1.3 Committee members shall receive no remuneration, but will be entitled to a refund of expenses incurred in the execution of their duties within the budget as approved by the members.

6.2 Vacation of Office:

A Committee member shall cease to hold office as such if:

- 6.2.1 he is or becomes of unsound mind;
- 6.2.2 he surrenders his estate as insolvent or his estate is sequestrated;
- 6.2.3 he is convicted of an offence which involves dishonesty;
- 6.2.4 he ceases to be a member.

6.3 Meetings and Procedures thereat:

- 6.3.1 A Committee member may at any time convene a meeting of a Committee by giving the other members no less than fourteen (14) days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in



cases of urgency such shorter notice as is reasonable in the circumstances may be given.

- 6.3.2 At the commencement of the first meeting of the Committee, Committee members shall subject to clause 6.1.2 above, elect a Chairman from their number who shall hold office as such until the end of the financial year and such Chairman shall have a casting as well as a deliberative vote. A new Chairman shall, subject to clause 6.1.2 above, be elected for each financial year. If any Chairman vacates his office or is removed therefrom by the members, then the Committee members shall elect another Chairman who shall hold office for the remaining period in respect of which the first mentioned Chairman was elected and he shall have the same rights of voting.
- 6.3.3 A quorum at all meetings of the Committee / members shall consist of not less than 3 (three) members.
- 6.3.4 A resolution signed by the majority of Committee members, which has to include the signature of the Developer whilst being a member of the Committee, shall be deemed to be resolution of the Committee taken at a meeting constituted in terms of this clause 6.3.
- 6.3.5 In the event that a levy fund is introduced for the Association, Annual General Meetings shall be held once in every year at such time and place as may be determined by the Committee, but so that no more than fifteen (15) months shall be allowed to elapse between any two (2) such successive meetings. The business to be done at the Annual General Meeting shall include:
- 6.3.5.1 a report on the affairs of the Association;
 - 6.3.5.2 the adoption of the Balance Sheet and accounts for the past financial year;
 - 6.3.5.3 the adoption of an annual budget for the next financial year;
 - 6.3.5.4 the consideration of any Resolution concerning the affairs of the Association of which due notice has been given;
 - 6.3.5.5 the election of members of the Committee;
 - 6.3.5.6 any other business.

6.4 An Annual General Meeting shall be convened by not less than twenty one (21) days' notice in writing to every member's last known address and the Minutes of the previous Annual General Meeting, the financial accounts for the previous year, agenda, nomination an proxy forms as well as the budget for the next financial year shall be sent to members together with the notice convening the meeting.



6.5 Validity of Meeting:

The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate such meeting or its decisions.

6.6 Adjournment:

If a quorum is not present within thirty minutes from the time appointed for the holding of meetings, the meetings shall, if convened on the requisition of members, be dissolved. In such case it shall stand adjourned to the same day in the next week at the same time and place and if such adjournment meeting a quorum is not present within 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 given notice of such adjourned meeting.

6.7 Votes:

At all meetings a Resolution put to the vote of the meeting shall be decided on a poll which shall be taken immediately in accordance with the following provision:

6.7.1 each member present in person shall have one (1) vote for every erf registered in his name;

6.7.2 each person present as proxy for a member shall have one (1) vote for every erf registered in the name of the member for whom he is proxy;

6.7.3 except where state herein specifically to the contrary, all Resolutions shall be by simple majority of those members present in person or proxy at the meeting and voting;

6.8 Incapacity:

Should any member be declared incapable of managing his own affairs, or a prodigal or insolvent, or in the case of a Company, or a Close Corporation, placed under Judicial Management, or into liquidation, such member shall be represented by his Curator Bonis, Trustee, Judicial Manager or Liquidator as the case may be, who shall be entitled to vote on his behalf, either personally or by proxy.

6.9 Proxy:

6.9.1 Votes may be case either personally or by proxy;

6.9.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by a Committee under the hand of the appointer, or of his attorney or agent, duly authorised in writing, or if such appointer is a Juristic person, under the hand of an Officer duly authorised in that behalf;



6.10 Companies:

Any Company or Close Corporation which is a member of the Association shall, by Resolution of its Directors or Members, authorise such person as it thinks fit to act as its representative at any meeting of the Association and the person so authorised shall be entitled to exercise the same powers on behalf of the Company which he represents as that Company could exercise if it were an individual member of the Association. The foregoing provisions shall apply *mutatis mutandis* in the case of a Trust, Association, Club or Partnership.

6.11 Powers and/or duties of the Committee:

The management and administration of the Association shall be vested in the Committee which may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself. Without in any way limiting the generality of the foregoing, such powers and/or duties shall include, but not be limited to the following:

- 6.11.1 the determination of what constitutes appropriate standards for community living and the maintenance of properties in the Area;
- 6.11.2 the performance of such acts as are necessary to accomplish the objectives expressed or implied herein;
- 6.11.3 the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 6.11.4 the operation of banking accounts with all powers required by such operations;
- 6.11.5 the making of, entering into and carrying out of contracts or agreements for the benefit of the Association;
- 6.11.6 the employment and payment of agents, servants and any other parties;
- 6.11.7 to institute proceedings in the name of the Association, to defend actions in the name of the Association and to appoint legal representatives for this purpose; in particular and without derogating from the generality of the foregoing, the power to sue shall include the right to sue members for the payment of arrear levies and/or for the carrying out of their obligations in terms of the Constitution;
- 6.11.8 to make regulations and rules applicable to all owners and inhabitants of the Area in order to accomplish the objective of the Association;



- 6.11.9 performance of such acts as are required to ensure the security of persons and property in the Area;
- 6.11.10 the amendment and repeal of provisions of the Constitution or rules, subject to clause 12 below, which shall be binding upon members as if they form part of this constitution provided that such amendments have been passed by a majority of the Members present at a properly constituted meeting;
- 6.11.11 levying of a charge payable by members as provided in clause 8 hereof and, subject to the said clause, the determination, from time to time and as frequently as they may, in their sole and absolute discretion, consider necessary or expedient, of the amount of the levy to be paid to the Association by its member;
- 6.11.12 the keeping of a proper administration and accounting records;
- 6.11.13 the refusal of consent to the transfer of an erf in the Area, which consent shall not be unreasonably withheld;
- 6.11.14 the appointment of an auditor or a person qualified to act as financial officer of a Close Corporation to do an annual audit of the Association's financial records.
- 6.12 Indemnity:

No Committee member shall be liable to the Association or any member thereof, or to any other person whomsoever for any act of omission by himself, by the Association or by its servants or agents. A Committee member 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, acted in good faith and without gross negligence.

7. STATUS OF THE ASSOCIATION

The Association shall be an association:

- 7.1 with legal personality, capable of suing and being sued in its own name, and
- 7.2 none of whose members in their personal capacities shall have any right, title or interest to or in the funds or assets of the Association, which shall vest in, and be controlled by, the Committee in terms hereof, and
- 7.3 not for profit, but for the benefit of the owners and occupants of immovable property situated in the Areas, and



- 7.4 with the right to acquire, hold, lease offer a security and alienate movable property.

8. LEVIES

- 8.1 The Association, through the Committee, shall have the power:
- 8.1.1 to establish for administrative expenses a levy fund sufficient in the opinion of the Committee to defray all costs required to accomplish the objects of the Association;
 - 8.1.2 to require from the members whenever necessary, to pay the levy for the purpose of satisfying any claims against the Association;
 - 8.1.3 to determine from time to time the amounts to be raised for the purposes aforesaid and the contribution payable by each member in this regard;
- 8.2 Any contribution levied under any provision or sub regulation shall be due and payable on the passing or a resolution to that effect by the Committee and may be recovered by the Committee by action in any court including any magistrate's court of competent jurisdiction, from persons who are members at the time such resolution is passed. Interest at the prescribed rate shall be payable on all outstanding levy contributions unpaid seven (7) days after it become due and payable.

9. ACCOUNTS

- 9.1 The Committee shall in the event that a levy fund is introduced cause proper books of account of the administration and finance of the Association to be kept at the domicilium of the Association, or at such other place or places as it may consider necessary, and shall produce an annual audited Balance Sheet and an Income Statement;
- 9.2 The Committee shall cause to be laid before the Association in Annual General Meeting, the annual audited Balance Sheet, as well as an Income Statement.

10. DOMICILIUM

- 10.1 For all purposes arising out of this Agreement, including the giving of notices and the serving of legal process, the Association and each member chooses domicilium citandi et executandi as follows:

- 10.1.1 the Association: c/o MARAIS MÜLLER YEKISO INC
P O Box 3392
TYGER VALLEY



- 10.1.2 each member – at the erf registered in his name whether or not such erf is vacant land;

Provided that the Association or any member may at any time by notice change his domicilium citandi et executandi to some other address, which new address shall be in the Republic of South Africa; and provided further that such change shall become effective only fourteen (14) days after receipt of the notice in question.

- 10.2 Any written notice which may be required to be given in terms of this Constitution may be delivered by hand or may be given by the dispatch of such notice in writing by pre-paid registered post to the relevant domicilium citandi et executandi; in which event such notice shall be deemed to have been received five (5) days after the posting thereof from any Post Office within the Republic of South Africa, the exhibition of the certificate of registered item shall be full and complete proof of the date of dispatch of the said notice.

11. WINDING UP

- 11.1 The Association may be wound up by a Resolution of the members provided that:

- 11.1.1 all members present or represented at a meeting, duly convened, vote in favour thereof; and
- 11.1.2 the Developer, whilst it remains the registered owner of any property in the Area, consents thereto; and
- 11.1.3 the Local Authority consents thereto.

- 11.2 In the event of such winding up, it shall be the duty of the Committee or a Receiver to be appointed to it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest of all the members in accordance with the number of erven registered in the name of each member. If, within a period of twelve (12) months from such distribution, the Committee or the Receiver is unable to find, locate or trace any member, such member's share shall then be paid to the Guardian's Fund.

12. RULES AND REGULATIONS AND AMENDMENTS TO THE CONSTITUTION

Notwithstanding anything contained herein to the contrary:

- 12.1 any proposed:



- 12.1.1 rule or regulation or any proposed repeal of, or amendment or addition to, any rule or regulation by the Committee in terms of clause 6.12.10 hereinabove, and
- 12.1.2 amendment or addition to the Constitution.

shall whilst the Developer is a member of the Association, be submitted to the Developer for approval and shall be of no force or effect whatsoever unless and until same has been approved by the Developer.

- 12.2 Whilst the Developer is a member of the Association the Developer shall, subject to clause 12.3 hereunder, notwithstanding anything to the contrary contained herein, be entitled to make amendments or additions to the Constitution and shall be obliged to send by pre-paid registered post a copy of each amendment or addition to each member.
- 12.3 Any amendments to the Constitution and/or Design Manual shall require the consent of the Local Authority.

13. INTERPRETATION / DISPUTES

- 13.1 Whilst the Developer is a member of the Association, the Developer's interpretation of this Constitution and any rules and regulations of the Association shall be binding on the members;
- 13.2 Any other dispute whatsoever between members, including a dispute as to interpretation of this Constitution which arises after the Developer ceases to be a member, shall subject to the provisions of clause 13.4, be referred for decision to a practising Advocate of the Cape Bar of not less than ten (10) years' standing, or in the event of a dispute concerning the application and/or interpretation of the Design Guidelines, to SDV Architects, who shall then adjudicate the dispute and his decision shall be final and binding upon the parties and capable of being enforced in a Court of Law;
- 13.3 In the event of the parties being unable to agree upon the Advocate who should be appointed to determine the dispute, then he shall be nominated by the President of the Cape Bar Council;
- 13.4 Notwithstanding anything to the contrary herein contained, the Committee shall at its sole option be entitled to institute proceedings in the Court having jurisdiction for any relief to which it is entitled under the provisions of this Constitution including the recovery of arrear levies.



14. SUBMISSION OF PLANS

- 14.1 Members shall be obliged to submit all and or any building plan, whether such plan is for the construction of new building/s or for renovations, alterations or additions to existing building/s to Linkie de Villiers or such other architect appointed by the Home Owners' Association.
- 14.2 In respect of Erven 16201 to 16208 and Erven 16237, 16245, 16246 and 16247 the rear boundary walls have to confirm to the design as per the Architect. It is 1,8 metres high and basically consists of pears at 5 metre spacing with wall panels between. Walls panels are to be plastered and painted on both side with a plastered coping.
- 14.3 Members shall only be entitled to submit building plans for approval by the Local Authority after approval of such plans has been obtained from the Architects appointed by the Home Owners' Association.
- 14.3 Members shall only be entitled to proceed with the construction of any building or renovations, alterations or additions to existing buildings on receipt of approval of plans from the Local Authority in accordance with the provisions contained in this clause 14.
- 14.4 After completion of construction, the municipality will only issue a completion certificate after the Council has certified compliance with the approved plans as per 14.1 above.
- 14.5 The owner or builder will be required to attach the Letter of Compliance of the Architect to his application for a Completion Certificate.

15. GENERAL

- 15.1 A member shall, when constructing new building/s including boundary walls and/or fencing on an erf, be obliged to comply in full with the Design Guidelines and shall not make any alterations, additions or demolitions to the exterior of the buildings including boundary walls, and/or fences, nor shall he be permitted to paint or change the colour scheme of the outside or exterior of any wall or building and/or fence, without the written consent of Linkie de Villiers Architects or such other architect as appointed by the Home Owners' Association.
- 15.2 No member shall be entitled to dump waste or other material or matter within the area or on any erf and shall be liable for payment of the cost of rectifying the damage or removal of material or goods.
- 15.3 No member shall be allowed to display any advertisement or sign on his erf not do or suffer to be done on the same, anything which in the opinion of the Committee can be noisome, injurious, objectionable or detrimental or a public or a private nuisance or a source of damage or disturbance to any other owner, tenant or occupier or erven in the Area.



- 15.4 Every member shall observe and comply with the laws, ordinances, bylaws and regulations or rules imposed by any statutory or other authority.
- 15.5 No structure, vegetation, hedges, trees or object of whatever nature, exceeding the maximum height for residential buildings laid down by the appropriate local authority shall be permitted on any erf in the Area.
- 15.6 Funds available for investment, if any, may only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984 and in shares listed on a licensed stock exchange as defined in the Stock Exchange Control Act, 1985 (Act No. 1 of 1985).

