

CONSTITUTION OF THE VILLAS HOMEOWNERS' ASSOCIATION

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PREAMBLE:

- A. The members are, or will become, members of the Thornhill Homeowners' Association, which applies to a larger area than just The Villas.
- B. This Constitution relates to the management and control of the right of way servitude for road/street purposes in respect of portion 22.
- C. Accordingly this Constitution of The Villas Homeowners' Association relates to the management and control of any road/street which has been or in the future may be built on portion 22.

AGREEMENT:

1. DEFINITIONS

In this agreement, clause headings shall not be taken into account in construing the contents hereof, and unless inconsistent with or otherwise indicated by the context:

- 1.1 "The Villas" means the residential development on portion 4 to 22 (inclusive), all being portion of 1 of erf 282 Modderfontein Extension 2;
- 1.2 "portion 22" means portion 22, being a portion of portion 1 of erf 282 Modderfontein Extension 2;
- 1.3 "The Villas Homeowners' Association" means the homeowners' association established and operating in terms of this constitution in respect of The Villas Homeowners' Association;
- 1.4 "member" means a member of The Villas Homeowners Association;
- 1.5 "unit" means a dwelling within the area of The Villas for a single family, as defined in the relevant Town Planning Scheme, with or without outbuildings, and whether held under tenure in terms of the Sectional Title Act No. 95 of 1986, as amended, or situated on its own residential, lot or individual subdivision of a residential lot, tenure or which may be registered in the Land Registrar of the Deeds Registry and included the erf on which the dwelling is erected.

2. LEGAL STATUS AND LIMITED LIABILITY

- 2.1 The Villas Homeowners' Association is a corporate common law body and as such:
 - 2.1.1 Its assets, liabilities, rights and obligations vest in it independently of its members;

- 2.1.2 It may not distribute any of its profits and gains to any person and it will use its funds solely for the objects for which it has been established and for investment;
 - 2.1.3 It will have perpetual succession;
 - 2.1.4 It may sue or be sued in its own name.
- 2.2 The members will not by reason of their membership be liable for the liability and/or obligations of The Villas Homeowners' Association.

3. OBJECTIVES

- 3.1 The objectives of The Villas Homeowners' Association are:
- 3.1.1 Insofar as these objectives are not the responsibility of the Thornhill Homeowners' Association, to control the aesthetic appearance of the land and buildings, the safety of persons and property, the promotion of communal and recreational interests of members and incidental matters, in the area of The Villas, including in particular.
 - 3.1.1.1 To ensure that erven are developed according to uniform aesthetic standards and that these standards are maintained thereafter;
 - 3.1.1.2 To maintain and control portion 22, in order to ensure that it at all times is utilized for road/street purposes for the benefit of The Villas;
 - 3.1.1.3 To maintain the entrance to The Villas, any common areas within the area of The Villas, and any municipal services which have not been handed over to the local authority;
 - 3.1.1.4 To levy funds and manage such funds in order to pay for the above responsibilities.
 - 3.2 In addition to The Villas Homeowners' Association is empowered to take any reasonable steps which are in the best interests of The Villas and which have been duly authorized in terms of this constitution.

4. POWERS

- 4.1 The Villas Homeowners' Association has corporate powers to enable it to achieve its objects, except only for such power as are expressly or impliedly excluded by this constitution or by its legal status as a common law corporate body.

5. MEMBERSHIP

- 5.1 Membership of The Villas Homeowners' Association shall be limited to the developer in its capacity as such (and represented by not more than 2 (two) nominees) and to any other person who is in terms of the Deeds Registries Act (and if applicable the Sectional Title Act) reflected in the records of the deeds office concerned as the registered owner of any land or unit in the area of The Villas.
- 5.2 Where any unit is owned by more than one person, all the registered owners of that unit shall together be deemed to be one member of the association and have the rights and obligations of one member of the association; provided however that all co-owners of any unit shall be jointly and severally liable for the due performance of any obligation to The Villas Homeowners' Association.
- 5.3 When a member becomes the registered owner of a unit, he shall become a member, of The Villas Homeowners' Association, and when he ceases to be the owner of any unit in the area of The Villas, he shall *ipso facto* cease to be a member of The Villas Homeowners' Association.
- 5.4 No member shall let or otherwise part with the occupation of his unit, whether temporarily or otherwise, unless he has agreed with the proposed occupier of such unit in favour The Villas Homeowners' Association that such occupier shall be bound by all the terms and conditions of this Constitution.
- 5.5 A registered owner of any unit may not resign as a member of The Villas Homeowners' Association.
- 5.6 The rights and obligations of a member shall not be transferable and every member shall:
- 5.6.1 To the best of his ability further the objects and interests in The Villas Homeowners' Association;
- 5.6.2 Observe all rules made by The Villas Homeowners' Associations or the trustees;
- 5.6.3 Sign all documents and do all things necessary to enable whatever servitudes may be required for the provision of security measures and for any other purposes required by The Villas Homeowners' Association for the purposes of retrieving its objectives, whether over a unit or in favour of any unit, access erf or any other erf within the area of The Villas.

6. LEVIES

- 6.1 The trustees may from time to time impose levies upon the members for the

purposes of meeting all expenses which The Villas Homeowners' Association has incurred, or to which the trustees reasonably anticipate The Villas Homeowners' Association will put in the attainment of its objects or the pursuit of its business.

- 6.2 The trustees shall not less than 30 (thirty) days prior to the end of each financial year, or so soon thereafter as is reasonably possible, prepare and serve upon every member at the address chosen by him an estimate in reasonable detail of the amount which shall be required by The Villas Homeowners' Association to meet the expenses during the following financial year and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The trustees may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 6.3 Each notice to each member shall specify the contribution payable by that member to such expenses and reserve fund.
- 6.4 Every such annual levy shall be payable in equal monthly instalments, due in advance on the first day of each and every month of each financial year.
- 6.5 In the event of the trustees for any reason whatsoever failing to prepare and serve the estimate referred to in 6.2 timeously, every member shall until service of such estimate as aforesaid continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice referred to in 6.2.
- 6.6 The trustees may from time to time impose special levies upon the members in respect of all such expenses as are mentioned in 6.1 and 6.2, which are not included in any estimate made in terms of 6.2, and may in imposing such levies determine the terms of payment thereof.
- 6.7 The trustees shall be empowered in addition to such other rights as the association may have in law as against its members to determine the rate of interest from time to time chargeable upon arrears levies, provided that such rate of interest shall not exceed the rate laid down in terms of the Usury Act No.73 of 1968, as amended.
- 6.8 Any amount due by a member by way of levy and interest shall be a debt due by him to The Villas Homeowners' Association. Notwithstanding that a member ceases to be such The Villas Homeowners' Association shall have the right to recover arrears levies and interest from him. No levies or interest paid by a member shall under any circumstance be repayable by The Villas Homeowners' Association upon his ceasing to be a member. Further, a member on ceasing to be such shall have no claim whatsoever on any other monies held by The Villas Homeowners' Association whether obtained by way of a sale of The Villas Homeowners' Association assets or otherwise. A member successor in title to a unit shall be liable as from the date upon which he becomes a member pursuant to the transfer of that unit, pay the levy and interest thereon attributable to that unit.

- 6.9 In calculating the levy payable by any member, the trustees shall as far as reasonably practical:
- 6.9.1 Assign those costs arising directly out of the unit itself to the member owning such unit;
 - 6.9.2 Assign a proportion of those costs attributable generally to a particular number of the units to the registered owners of such units;
 - 6.9.3 Pro rata in the case of a sectional title development to the participation quota of the member concerned;
 - 6.9.4 Assign those costs relating to the township area generally to the owners of all units.
- 6.10 The costs assigned to members in terms of 6.9 shall be done so equally provided, however, that the trustees may in any case where they consider it equitable to do so, assign to any members any greater or lesser share of the costs as may be reasonable in the circumstances.

7. RULES

- 7.1 Subject to any restriction imposed or direction given at a general meeting of The Villas Homeowners' Association, the trustees may from time to time make rules in regard to:
- 7.1.1 The maintenance and control of the street/road on portion 22, including the use thereof;
 - 7.1.2 The right to determine and control all security measures in the area of The Villas, subject to the rules in respect of the Thornhill Homeowners' Association;
 - 7.1.3 The right to determine access to and egress from the area of The Villas;
 - 7.1.4 For the furtherance and promotion of any of the objects of The Villas Homeowners' Association and/or for the better management of the affairs of The Villas Homeowners' Association and/or for the advancement of the interests of members and/or residents in the area of The Villas.
- 7.2 For the enforcement of any of the rules made by the trustees in terms hereof, the trustees may:
- 7.2.1 Give notice to the member concerned requiring him to remedy such breach within such reasonable period as the trustees may determine;

- 7.2.2 Take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be debt owing by the member concerned to The Villas Homeowners' Association; and/or
- 7.2.3 Impose a system of fines or other penalties; and/or
- 7.2.4 Take such other action including proceedings in court, as they may deem fit and defend any action by any member of any other person in terms of arbitration or proceedings in court.
- 7.3 In the event of the trustees instituting any proceedings against any member or other person within the area of The Villas for the enforcement of any of the rights of The Villas Homeowners' Association in terms hereof, The Villas Homeowners' Association shall be entitled to recover all legal costs so incurred from the member or other person concerned, calculated as between attorney and own client.
- 7.4 In the event of any breach of the rules of the constitution by the members of any member's household or his guest, tenants, employees, contractor's, sub-contractors, invitees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the trustees may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.