

# CONSTITUTION

## TUSCANY HEIGHTS HOME OWNERS ASSOCIATION

### 1. INTERPRETATION

1.1 In this Constitution the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

"Association" means the Tuscany Heights Home Owners Association;

"Common area" means the private roadway and internal private drains servicing the Erven and the storm water servitude area;

"Erven" means the erven resulting from the subdivision of ERF 34884 East London;

1.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other genders.

### 2. ASSOCIATION

2.1 The Home Owners Association created in terms of the Buffalo City Municipality consent in terms of the provisions of the Land Use Planning Ordinance No. 15 of 1985, in respect of the subdivision of Erf 34884 East London, is hereby constituted and comprises the below initial signatories.

2.2 The name of the Association shall be the Tuscany Heights Home Owners Association.

### 3. MEMBERS

3.1 Every registered owner shall upon registration of transfer into his name of an Erf ipso facto become a Member of the Association, subject to the conditions contained in this Constitution, provided that :-

3.1.1 A person who is entitled to obtain a Certificate of Registered Title to any of the aforementioned erven in terms of the Deeds Registries Act No. 47 of 1937 as amended, shall, for the purpose of this Constitution, be deemed to be the registered owner of such erf;

3.1.2 Where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one Member of the Association.

3.2 When a Member ceases to be the registered owner of an erf, he shall *ipso facto* cease to be a Member of the Association.

3.3 A Member shall not transfer a unit / erf unless it is a condition of such transfer that the transferee becomes a Member of the Association, and shall *ipso facto* upon registration of transfer be a Member of the

Association, subject, bound and entitled to the provisions of this Constitution.

- 3.4 A registered owner shall, so long as he is the registered owner of at least one erf, remain a Member of the Association and may not resign as a Member of the Association.
- 3.5 The rights and obligations of a Member shall not be transferable and every Member shall abide by and shall be subject to the provisions of this Constitution, further the objects and interest of the Association, and shall observe all by-laws and regulations made by the Association, provided that nothing contained in this Constitution shall prevent a Member from ceding rights in terms of this Constitution as security to the Mortgagee of the respective Members' erf.

#### 4. **OBJECTS**

The objects of the Association shall be:-

- 4.1 To control, maintain, replace, clean, repair, improve and keep in good order all areas, roadways, and all services common to, and or which serve and relate to the aforesaid erven following up to the aforesaid subdivision and development of the erven, to promote the common interest of the Members as registered owners of the immovable property;
- 4.2 To do all things necessary and relative to the reasonable and lawful requirements of the Buffalo City Municipality;
- 4.3 To enforce the observance of the rules of the Association and the provisions of the Constitution and to deal with an infringement thereof;
- 4.4 To open and operate an Association banking account, to provide for signatories of the bank account by resolution of the Association and to do all such other lawful things as are incidental or conducive to the attainment and performance of the objects of the Association;
- 4.5 To invest any monies of the Association not immediately required for any of these objects or purposes in such manner as may from time to time be determined.

#### 5. **LEVIES**

The Association shall impose levies upon the Members for the purpose of meeting all expenses which the Association has incurred or to which the Association reasonably anticipates it will be put to by way of maintenance, replacement, cleaning, repairing, improvement and keeping in good order and condition the common areas as it is required to do, and/or for payment of all rates and other charges payable by the Association in respect of the common area and/or the services rendered to it and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the common area and the Association 's affairs. In calculating levies, the Association shall take into account, income, if any, earned by the Association.

In addition thereto, the Members undertake in agreement with one another and with due regard to the rights and convenience of the others, to exercise their

reasonable rights of occupation and enjoyment in and to the private area, and furthermore undertake to ensure that the external appearance of, and the maintenance of the private areas are attended to in respect of the financial obligations which might be imposed upon them in agreement with one another which financial obligations shall furthermore include any such legal obligations which might be imposed upon them by the Local Authority . Funds so levied from the Members shall be utilised for the purpose aforesaid and in addition thereto, such expenditure as is required in respect of the Local Authority for rates and taxes, maintenance requirements and insurance if applicable, and each owner of land shall be levied to the extent of such proportionate share in respect of the expenditure aforesaid.

Should it at any time become apparent to the Members that the anticipated expenditure estimate is inadequate or should it become necessary for the Association to incur extraordinary expenses, it shall be entitled to require its Members to pay an additional levy to cover such extraordinary expenditure.

## 6. **MEETINGS**

- 6.1 The Association shall hold an Annual General Meeting at least once per year to be convened as soon as possible after the end of its financial year for the purpose of electing Trustees, approving its financial statements and such other business as any Member wishes to raise at such meeting.
- 6.2 Meetings shall be held upon SEVEN (7) days written notice to the Members for purposes of convening a meeting, provided that the Members may all agree to dispense with such notice in respect of any such meeting.
- 6.3 A quorum at all meetings shall be deemed to be at least 75% (seventy five percent) of registered owners of the erven mentioned above.
- 6.4 A resolution signed by all the Members of the Association shall be deemed to be as valid and effectual as a resolution passed at a properly convened meeting.

## 7. **TRUSTEES**

- 7.1 There shall be a Board of Trustees of the Association consisting of not less than three (3) persons elected at the Annual General Meeting. The Trustees shall appoint a Chairman subject to 7.2 below.
- 7.2 A Trustee must be a Member of the Association.
- 7.3 A Trustee shall be deemed to have vacated his office as such upon:-
  - 7.3.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
  - 7.3.2 his making any arrangement or composition with his creditors;
  - 7.3.3 his conviction for any offence involving dishonesty;
  - 7.3.4 his becoming of unsound mind or being found lunatic;
  - 7.3.5 his resigning from such office in writing;

7.3.6 his death;

7.3.7 his being removed from office by a resolution of the Members of the Association, requiring a two-thirds (2/3<sup>rds</sup>) majority of the total votes represented by Members entitled to attend and vote thereat, present in person or by proxy, before the termination of his period of office;

provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the minute book of the Trustees.

7.4 Should the office of a Trustee fall vacant prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining Trustees for the time being and shall hold office until the next General Meeting when he shall be eligible for re-election.

7.5 The quorum necessary for the holding of any meeting of Trustees shall be at least half the number of Trustees appointed.

## 8. **FINANCIAL**

8.1 The financial year end of the Association shall be the last day of February of each year;

8.2 The Trustees shall cause proper books of account and records to be kept so as to fairly explain the transactions and financial position of the Association, which records shall be open to inspection by any Member at all reasonable times.

8.3 The Trustees shall cause financial accounts for the previous financial year to be presented for approval at each Annual General Meeting of the Association.

## 9. **DOMICILIUM CITANDI ET EXECUTANDI**

9.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:-

9.1.1 Such address shall be situated in the Magisterial District of East London and shall be the address of the Chairman or other resident Trustee duly appointed at a General Meeting, or the administrative office of the Association;

9.1.2 The Trustees shall give notice to all Members of any change of such address.

9.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Erf registered in his name; provided that he shall be entitled from time to time to change the said *domicilium* but that any new *domicilium* selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its *domicilium*.

10. **AMENDMENT**

This Constitution may be amended at a General Meeting with the approval of seventy-five percent (75 %) of all Members provided not less than fourteen (14) days' notice of the proposed amendment has been served on all the Members.

11. **LEGAL PERSONA**

It is recorded that this Association constitute its own legal persona, quite separate and district from the Members who constitute the Association. The Association shall be entitled to institute action out of any Court, having jurisdiction for all or any of the obligations and duties imposed upon the Members in terms hereof and to take and receive transfer of the common areas and roadways in its name.

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