

Moquini Homeowners Association Constitution

1. NAME

The name of the association is: The Moquini Homeowners Association.

2. DEFINITIONS

In this Constitution, unless the context indicates the contrary

- a. "the Association" shall mean the Moquini Homeowners Association; established for the Development at the instance of the Mossel Bay Municipality in terms of Section 29 (1) of the Land Use Planning Ordinance 15/1985 when approving of the subdivision of the Remainder of Farm 284 Mossel Bay, in terms of Section 25 (1) read with Section 42 (1) of the said Ordinance as evidenced by this Constitution.
- b. "council" shall mean the Mossel Bay Municipality.
- c. "Design Manual" means the Design Manual annexed hereto, marked "C", prepared by The Planning Partnership in February 1996.
- d. "Development Plan" means the Development Plan prepared by The Planning Partnership No. 308607 dated July, 1996 reduced copy of which is annexed hereto, marked "B".
- e. "the Development" shall mean the subdivision established or to be established on the Remainder of Farm 284 Mossel Bay, by virtue of a General Plan in one or more phases.
- f. "the Developer" shall mean Moquini Coastal Estate (Pty) Limited or their successors in title to the Remainder of Farm 284 Mossel Bay.
- g. "the landscape framework plan" means the landscape framework plan prepared by The Planning Partnership.
- h. "Management Plan" means the report titled Moquini Environmental Management System being the environmental management report of the Development.
- i. "member" shall mean any registered owner of a land unit in the Development including the Developer in its capacity as the registered owner of any land unit depicted on the General Plan or Plans of the Development and where more than one person are the registered owners of a land unit they shall jointly be deemed to be one member but shall be jointly and severally liable for the due fulfillment of all obligations arising from such membership.
- j. "Excom" means the Executive Committee constituted in terms of Clause 7 hereof.
- k. "private open space" means that portion of the Development Plan No. 308607 depicted as private open space, numbered Erven 111, 112, 113 (*private nature reserve*) and 114 (*private road*) and to be registered in the name of the Homeowners Association and to which the Public's rights of access is to be strictly controlled.
- l. "Private roads" means the private roads as depicted on the annexed Development Plan No. 308607.
- m. "Approved plant species list" shall mean the approved species list annexed hereto.
- n. 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 gender shall include the masculine and feminine 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. THE STATUS OF THE ASSOCIATION

The Association shall be an association:

- a. With separate legal personality, capable of suing and being sued in its own name, and
- b. None of whose 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 Excom in terms of, and subject to the provisions of this Constitution, and
- c. Not for profit, but for the benefit of the owners and occupants of immovable property situate in the Development, and
- d. With the responsibility, according to Section 29(3)(g) of the By-Law on Land Use Planning, allow the Municipality to obtain consent from the members of the home owners association to transfer an erf in the event that the homeowners association ceases to function.

5. OBJECTS AND POWERS OF THE ASSOCIATION

The objects and powers of the Association are:

- a. To control the nature of the buildings to be erected on the land units numbered Erven 43 to 110 on the Development Plan No. 308607 with a view to promoting a high standard of development with acceptable aesthetic, environmental and architectural styles and design criteria in order to achieve a harmonious development so that members may derive the maximum collective benefit therefrom.
- b. To take transfer of and to control, improve, preserve and maintain the private open space and private roads.
- c. To control and maintain all amenities in the Development including any hiking and trail system, servitude areas, rivers, dams, pools and other open spaces established within the Development and not included in the private open space for the general benefit of members within the Development.
- d. To ensure compliance by members of the conditions of establishment of any subdivision of the Development, with particular reference to conditions dealing with aesthetic and building restrictions and requirements, and where necessary to ensure that the relevant authority enforces such conditions of establishment.
- e. To ensure compliance of the architectural style and character, design criteria, specifications and land usage control in accordance with the Design Manual.
- f. To ensure and implement compliance by members of a coordinated landscaping plan for the Development as contained in the Design Manual.
- g. To object to any subsequent proposed subdivision of any of the land units in the Development.
- h. To appoint any professional or committee of professionals to furnish advice with regard to the carrying out of the Association's objects.
- i. To employ any agent to carry out the Association's objects.

- j. To act as a liaison between the members and the Council regarding the landscaping and aesthetic usage of the property and the buildings erected or to be erected on the land units.
- k. To implement and control the basic concepts of the Development relating to security, landscaping, parking and exterior finishes at all times, as detailed in the Design Manual.
- l. To ensure that all members maintain their land units in a clean and tidy condition and adhere to the specifications imposed by any Consultant appointed by the Developer from time to time.
- m. To administer general security arrangements on the Development with particular reference to access control of the Public and the nature and type of security to be provided from time to time, excluding the security arrangements of any particular building on a land unit.
- n. To enact any rule or regulation necessary to ensure the orderly compliance by land unit owners of any of the objects of the Association, and to amend and to repeal any rules or regulations so made, which rules and regulations so made, shall be binding upon all members by virtue of their membership.
- o. To impose on and enforce payment by any recalcitrant member of any penalty for failing to comply with this Constitution or any rule or regulation referred to in Clause 5(n) above.
- p. To promote and enforce environmental standards for community living in the Development Area in order to enhance and preserve the nature of the development in such a way that members may derive the maximum collective benefit therefrom.
- q. To promote all facets of nature conservation to control the growth of alien vegetation and to encourage the reintroduction of indigenous flora and fauna in the Development.
- r. To amend the Design Manual from time to time as it may become necessary.
- s. To establish and maintain, if deemed expedient, suitable horse riding trails over the private open space.
- t. To agree to the amendment of the existing 5m servitude right-of-way and sewer servitude traversing the private open space.

and the Association shall have the powers to do such acts as are necessary to accomplish these objects.

6. MEMBERS

- a. Membership of the Association shall be compulsory and automatic upon registration of any of the erven numbered 43 - 110 in the Development in the name of the member and members shall be obliged to comply with the provisions of this Constitution and any rules or regulations made in terms hereof.
- b. No person shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf in the Development or be entitled to resign therefrom.
- c. When a member ceases to be a registered owner of an erf in the Development he

shall ipso facto cease to be a member of the Association.

- d. Membership shall be transferred by the passing of transfer of any erf in the Development from the previous member to the new member.
- e. A member shall not be entitled to sell or transfer an erf or undivided portion thereof in the Development unless it is a condition of the Deed of Sale that the new purchaser becomes a member of the Association.

7. EXECUTIVE COMMITTEE

- a. Excom shall consist of a minimum of five (5) persons who shall be members or the spouses of members, but the AGM can decide that more can be elected. Any Excom member shall be eligible for re-election.
- b. For the period commencing from the date of incorporation of the Association to the date of the First Annual General Meeting of the Association, the duties of Excom shall be carried out by the Developer.
- c. The Developer shall be entitled to nominate and appoint all five (5) initial members of Excom at the First Annual General Meeting of the Association.

8. VACATION OF OFFICE

An Excom member shall cease to hold office as such if

- a. by notice in writing to Excom he resigns his office;
- b. he is or becomes of unsound mind;
- c. he surrenders his estate as insolvent or his estate is sequestered;
- d. he is convicted of an offence which involves dishonesty;
- e. he absents himself from three consecutive meetings of Excom without special leave of absence from Excom;
- f. by resolution of a general meeting of the Association he is removed from his office;
- g. he ceases to be registered owner of a township erf or his subscription becomes delinquent in terms of Clause 21(e).

9. EXCOM MEETINGS AND PROCEDURES THEREAT

- a. Excom shall meet at such time and place as shall be decided by Excom from time to time.
- b. Three Excom members may at any time convene a meeting of Excom by giving to the other Excom members no less than 10 days written notice of the proposed meeting, which notice shall specify the reason for calling such a meeting; provided that in cases of emergency such shorter notice as is reasonable in the circumstances, may be given.
- c. Four members shall form a quorum at any meeting of Excom.
- d. Within seven (7) days of the First Annual meeting Excom shall meet and elect from its members a Chairman. The Chairman elected shall hold office as such until a new Chairman is elected.
- e. All matters at any meeting of Excom 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 a casting as well as a deliberate vote.
- f. Excom may from time to time appoint a Secretary and a Treasurer, or a

Secretary/Treasurer.

- g. Excom shall keep minutes of all its meetings, which shall be available for inspection by any member on request.
- h. Excom may fill any vacancy in their number. Any Excom member so appointed shall hold office until the next annual general meeting when he/she shall retire and be eligible for re-election as though he/she had been elected at the previous annual general meeting.

10. POWERS

The management and administration of the Association shall vest in Excom 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 shall include but not be limited to the following:

- a. The performance of such acts as are necessary to accomplish the objects expressed or implied herein;
- b. The investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- c. The operation of a banking account with all powers required by such operations;
- d. The making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- e. The employment and payment of agents, servants and any other parties;
- f. The making, amendment and repeal of rules provided that these rules must be approved by a majority of 75% of members present or represented by proxy at a general meeting and will then be binding upon members as if they form part of this Constitution;
- g. The right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- h. The levying of a subscription payable by members as provided in Clause 21 hereof;
- i. The preservation of the architectural theme of the Development and the adjudication upon any proposed extension, addition and/or alterations to the property or erections situated thereon within the Development in accordance with the Design Manual annexed hereto;
- j. The right to set a date for the purpose to decide any matter that could be voted on at a members' meeting by written consent or by means of electronic communication.
 - j.1. For members acting other than at a meeting, a resolution that could be voted on at a members' meeting may instead be -
 - j.1.1. submitted for consideration to the members entitled to exercise voting rights in relation to the resolution; and
 - j.1.2. voted on by written consent or electronic communication, by members entitled to exercise voting rights in relation to the resolution within 21 days after the resolution was submitted to them; and

j.1.3. only a vote sent by the member from the e-mail address furnished by the member to the managing agent will be valid.

j.2. A resolution contemplated in subsection (j.1) -

j.2.1. will have been adopted as if it is supported by a quorum and achieving the required majority for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted members meeting; and

j.2.2. if adopted, has the same effect as if it had been approved by voting at a Special General Meeting or Annual General Meeting.

Within 14 days after closure of the voting on a resolution in terms of this section, the Association must deliver a statement to the Members describing the results of the vote.

11. VALIDITY OF ACTS OF EXCOM MEMBERS

Any act performed by Excom members shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any Excom member, be as valid as if such Excom member has been duly appointed in office.

12. REMUNERATION

Excom members shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in connection with and incidental to the performance of their duties as Excom members but save as aforesaid, shall not be entitled to any other remuneration, fees or salary, in respect of the performance of such duties.

13. INDEMNITY

No Excom members shall be liable to the Association or to any member thereof, or to any other person whomsoever for any act or omission by himself, by the Association or by its servants or agents. An Excom 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, or which should reasonably have been known to him, acted in good faith and without gross negligence.

14. GENERAL MEETINGS OF THE ASSOCIATION

a. The Association shall on the first Friday of March each year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, and shall specify the meeting as such in the notices, calling the Meeting.

b. At the First Annual General Meeting the Developer shall be entitled to nominate the initial Excom referred to in Clause 7(c).

c. Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as Excom shall decide from time to time.

d. All general meetings other than Annual General Meetings shall be called Special General Meetings.

- e. Excom may, whenever they think fit, convene a special general meeting.
- f. Excom shall be obliged to convene a Special General Meeting upon receiving a written request by at least 14 members.

15. NOTICE OF MEETINGS

- a. A General Meeting shall be convened on not less than twenty-one (21) 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 eighty per cent of the members present.
- b. 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 the proceedings of that meeting.

16. QUORUM

No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. Save for the purposes of a Resolution required in terms of Clauses 24 or 26 hereof a quorum for all other purposes shall be members present in person or by proxy and holding not less than 36 actual votes available to be cast by members at the time the meeting commences.

17. CHAIRMAN

The Chairman of Excom shall preside at every General Meeting.

18. VOTES

At all general meetings resolutions put to the vote, shall take place by a show of hands unless by majority vote the meeting decides that voting shall be by ballot, in which event the ballot shall take place immediately. Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:

- a. Each member present in person shall have one vote for every erf registered in his name.
- b. 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 proxy.
- c. 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.
- d. The Developer or its duly authorized representative shall have one vote for each untransferred erf depicted on the Development Plan No. 308607 still registered in its name.
- e. All resolutions shall, except as otherwise provided herein, be by simple majority of those members present in person or proxy at the meeting and voting.
- f. 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.

19. AGENDA

In addition to any other matters required to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- a. The Consideration of the Chairman's report.
- b. The election of Excom.
- c. The consideration of the report of the Auditors and fixing of their remuneration.
- d. The confirmation of any budget proposed by Excom.
- e. The consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions.
- f. The confirmation of the annual subscription and any special levy determined by Excom for the year.

20. PROXY

Votes may be given either personally or by proxy.

- a. The instrument appointing a proxy shall be in writing in the common form, or any form approved by Excom under the hand of the appointer, or of his attorney duly authorized in writing, or if such appointer is a company, under the hand of an officer duly authorized in that behalf.
- b. The instrument of appointing a proxy, together with the power of attorney (if any) under which it is signed or a notarial certified copy thereof shall be deposited at the domicilium citandi of the Association at least three days before the time appointed for holding the meeting, or adjourned meeting, at which the person named in such instrument proposes to vote; otherwise the person so named shall not be entitled to vote in respect thereof.

21. SUBSCRIPTIONS

- a. The Association, through Excom, shall be entitled to levy an annual subscription for the purpose of meeting all expenses, which the Association has incurred or to which Excom reasonably anticipates the Association will be put and to defray the costs of managing and administering the Association to achieve its objects set out in Clause 5. Such subscriptions may be fixed and collected annually in advance and collected annually or monthly in advance.
- b. Excom shall be entitled at its discretion to increase the annual subscription from time to time.
- c. The annual subscription shall commence on a date to be determined by Excom. The first subscription shall become due and payable on the day fixed for commencement. The subscription for any year after the first year shall become due and payable on the first day of January of the said year if annual, and on the first day of each and every month if monthly.
- d. Excom may from time to time determine and collect special levies from members in addition to the annual subscriptions should the need for such additional levies arise or circumstances so dictate.
- e. If the annual subscription is not paid within one hundred and twenty days of due date, or should a member be in arrear for four months if the subscriptions

are paid monthly, then such subscriptions shall become delinquent, and the Association may institute legal proceedings against the member for the recovery thereof and the costs of such proceedings shall be added to the subscription due by the delinquent member. A member whose subscription is delinquent for the current year shall not be entitled to:

- i. Vote at any meeting;
- ii. Nominate candidates for election to Excom;
- iii. Serve on Excom.

22. ACCOUNTS

- a. Excom shall cause proper books of accounts of the administration and finance of the Association to be kept at the domicilium of the Association or such other place or places as it may think fit.
- b. Excom shall cause to be laid before the Association in Annual General Meeting, books of account, balance sheets and reports of the Association.
- c. At least once a year the accounts of the Association shall be examined and the correctness of the Income and Expenditure Account and the balance sheets ascertained by the Auditors.

23. DOMICILIUM

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

- a. The Association at c/o Status-Mark Property Management, 11 Meyer Street, Mossel Bay, 6506.
- b. Each member - at the erf registered in his name or any address furnished in writing by the member to Excom.
- c. A notice which may be required to be given in terms of this Constitution may be given by the dispatch of such notice in writing by pre-paid post, in which event, such notice shall be deemed to have been received ten days after the posting thereof from any Post Office within the Republic of South Africa.

24. AMENDMENTS TO THE CONSTITUTION

Any amendment or addition to the Constitution must be:

- a. Passed by a resolution of not less than 46 votes in favor, present or represented by proxy, and entitled to vote.
- b. Confirmed by the Council in writing.

25. NON-LIABILITY OF MEMBER

No member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of, the Association.

26. DEALING WITH THE PRIVATE OPEN SPACE

Neither the whole nor any portion of the Private Open Space shall be:

- a. Sold, let, alienated, otherwise disposed of, subdivided or transferred, or
- b. Mortgaged, or

- c. Subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude, other than the general servitude in favor of the Council for services, (save those enjoyed by the members of the Association in terms hereof); or
- d. Built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without
 - i. The sanction of a Special Resolution of the Association passed at the Annual General Meeting of the Association at which not less than 75% of members entitled to vote at the meeting are present and 75% of those members present vote in favor of the proposed Resolution, and
 - ii. The Developer as registered owner of any land unit or units depicted on the Development Plan 308607 confirms such Resolution, and
 - iii. The written consent of the Council,
 and provided that any improvements or enhancements shall comply with the provisions of the Design Manual as well as the Management Plan.

27. INTERPRETATION / ARBITRATION

- a. Should any dispute or doubt arise as to the interpretation or meaning of this Constitution or any Rules and Regulations of the Association, Excom shall be the final arbiter and its decision shall be binding upon the members.
- b. Apart from questions of interpretation, any other dispute whatsoever which may arise shall in the first instance be referred to Excom to decide whether the dispute in fact relates to any legal question or constitutes a dispute relating to physical design or landscaping. Thereafter the dispute, if legal, shall be referred for decision to a practicing senior advocate of the Cape Bar of not less than five years standing or if relating to physical design or landscaping to a qualified Architect of not less than 10 years standing, agreed upon by the parties to the dispute, who shall then determine the dispute. In the event of the parties being unable to agree upon a senior advocate or architect who should be appointed to determine the dispute, then the Arbitrator shall be nominated by either the President of the Cape Bar Council or the President-in-Chief of the Institute of South African Architects, as the case may be.
- c. The Arbitrator shall not be bound to follow strict principles of Law, but may decide the matter submitted to him according to what he considers just and equitable in the circumstances and therefore, the strict rules of Law need not be observed or taken into account by him in arriving at his decision. The parties desire that such decision be arrived at as expeditiously and as informally as possible without any pleadings or discovery of documents, and without it being necessary to observe the strict rules of evidence, or the usual strict formalities or procedures. In the absence of agreement between the parties, the procedure to be followed shall be laid down by the Arbitrator.
- d. Without in any way limiting, or derogating from the generality of his powers, the Arbitrator shall, in addition, be entitled to make such order as to the payment of legal costs and other expenses incurred by the parties to the arbitration as he deems just and equitable in all the circumstances.
- e. The parties irrevocably agree that the decision of the Arbitrator on any matter in

dispute shall be final and binding upon all of them, whether they were parties to the dispute or not, and may be made an order of any competent Court. Notwithstanding the reference in this Clause to “an Arbitrator”, any such Arbitrator shall act as a expert and shall not therefore be bound by the provisions of any arbitration laws for the time being in force.

28. SUBMISSION OF PLANS

No Member shall submit any plans to the Council or commence the erection of, or alteration or addition to any building or other structure on any land unit comprised within the Development or permit the same unless the plans thereof have first been submitted to and approved in accordance with the procedures set forth in the Design Manual.

29. SUBDIVISION

No Member shall be entitled to subdivide any land unit in the Development registered in their name.

30. PLANTING RESTRICTIONS

On account of the ecological sensitivity of the area and the importance to disturb such balance the following provisions will be applicable to the management of plants in the Development by members :

a. General

All members (or potential members) are requested to avail themselves of the contents of the Management Plan. Such plan offers comprehensive information on, amongst other things, the plant life in the area as well as which practices are preferred or otherwise.

b. Erven

Only indigenous species, as prescribed in the Management Plan, may be planted in erven. Alien plants must be removed. The indigenous plant life must be least disturbed.

c. Private Open Space

The indigenous plant life in such areas must be least disturbed. Any removal, replacement or new plantings of indigenous plants within such areas are subject to the consent of the estate manager. Only plant species as prescribed in the Management Plan may be planted. Alien plants must be removed from such areas.

31. ALIEN VEGETATION

All members shall be obliged to be conscious of the potential threat of alien vegetation and to assist in the control and eradication thereof as a matter of priority.

32. PETS

Excom shall formulate regulations with regard to the keeping of pets and specifically cats and dogs to prevent the killing of wildlife, destroying flora and fauna and being a nuisance to members.

33. EQUESTRIAN CENTER

The Equestrian Center provides a facility for the Moquini members. Should non-members make use of this facility they shall not be provided access to the Development without the permission of the Association furnished in terms of Section 26 and in accordance with any regulations prescribed by Excom from time to time.

34. RESIDENTIAL USE

The erven in the Development other than the erf designated for the Equestrian Center shall only be used for residential purposes.
