

CONSTITUTION OF THE ADMIRAL ISLAND AND PELICAN BAY
HOMEOWNERS' ASSOCIATION

1. NAME

The name of the Association is the
ADMIRAL ISLAND and PELICAN BAY HOMEOWNERS' ASSOCIATION

2. DEFINITION

In this Constitution, unless the context indicates the contrary:

- 2.1 "the Association" shall mean the Admiral Island and Pelican Bay Homeowners' Association;
- 2.2 "the Township Area" shall mean the Township Area as shown on Annexure "A" hereto and which comprises the erven described on General Plan No. , being a subdivision of Erf 581 Laaiplek;
- 2.3 "the Developer" Ile Plaisance Investments (Proprietary) Limited (Registration Number : 1999/022767/07) or its successors in title;
- 2.4 "person" shall include a Company, Club, Partnership, Trustees for the time being of a Trust, or other Association of persons entitled in law to hold title to immovable property;
- 2.5 "member" shall mean a member as defined in Clause 5 hereof;
- 2.6 "resident member" shall mean a resident member as defined in Clause 7 hereof;
- 2.7 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;
- 2.8 "days" shall mean all calendar days.

3. HEAD NOTES

The head notes 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. OBJECTS OF THE ASSOCIATION

The objects of the Association are :

- 4.1 through its Executive Committee (EXCOM) to promote and enforce standards for community-living in the Township Area in such a way that members may derive the maximum collective benefit there from;
- 4.2 to control the private open spaces, public open spaces and security of the Township Area for the mutual benefit of members, and the Association, through EXCOM, shall have the power to do such acts as are necessary and reasonably required to give effect to the provisions of this Constitution, which acts shall include, but not be limited to, the following :
 - 4.2.1 to provide services such as security to the Township Area;
 - 4.2.2 to maintain the communal facilities, private open spaces and public open spaces for the benefit of the members;
 - 4.2.3 to maintain and insure communal buildings for the benefit of the members;
 - 4.2.4 to make rules to promote and enforce standards for community living in the Township Area;
 - 4.2.5 to maintain basic aesthetic standards in the Township Area.

5. MEMBERS

- 5.1 The Association shall be organised 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 Township 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 Township Area
- 5.2 Each member shall be entitled to ONE (1) vote for each erf owned in the Township Area. Ownership of an erf in undivided shares shall constitute only one membership, which membership shall be represented by one individual in terms of the provisions of Clause 8.10 hereof.
- 5.3 Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of one or more erven in the Township Area to the new member.
- 5.4 Every member shall pay a monthly subscription to the Association, the amount of which shall be determined by EXCOM in terms of Clause 10 hereof. The subscription so determined shall be payable in respect of each erf owned by a member.
- 5.5 Only one overall Association will be established subject to the provisions of this Constitution.

6. EXERCISE OF POWERS OF THE ASSOCIATION

The powers of the Association other than those to be exercised by the members in General Meeting, shall be exercised by the Executive Committee (EXCOM).

7. EXECUTIVE COMMITTEE

7.1 Composition

The number of EXCOM members shall be determined from time to time by the members of the Association in General Meeting, provided that there shall not be less than THREE (3) nor more than SEVEN (7) EXCOM members.

7.2 Election at Annual General Meeting

7.2.1 EXCOM members shall be elected annually at the Annual General Meeting and shall, subject to the provisions herein contained, remain in office until the following Annual General Meeting.

7.2.2 Nominations of candidates for election to EXCOM at any meeting shall be in writing, signed by TWO (2) members and accompanied by the written consent of the candidate nominated, so as to be received at the domicilium of the Association not later than FORTEEN (14) days before the meeting.

7.2.3 EXCOM members may fill any vacancy in their number or co-opt any additional member, provided that the number of EXCOM members shall not exceed SEVEN (7) and provided further that a vacancy of a resident member may only be filled by a resident member. Any EXCOM member so appointed or co-opted shall hold office until the next Annual General Meeting when he shall retire and be eligible for re-election as though he had been elected at the previous Annual General Meeting.

7.2.4 No non-paying members may be elected to EXCOM.

7.3 Vacation of Office

An EXCOM member shall cease to hold office as such if

7.3.1 by notice in writing to EXCOM, he resigns his office;

7.3.2 he is or becomes of unsound mind;

- 7.3.3 he surrenders his estate as insolvent or his estate is sequestrated;
- 7.3.4 he is convicted of an offence which involves dishonesty;
- 7.3.5 he absents himself from THREE (3) consecutive meetings of EXCOM without special leave of absence from EXCOM;
- 7.3.6 by resolution of a General Meeting of the Association, he is removed from his office;
- 7.3.7 he ceases to be a resident member;
- 7.3.8 he is in arrears with payment of his monthly levies for a period of 3 months.

7.4 Meetings and Procedures thereat

- 7.4.1 EXCOM members may give notice convening meetings, meet together for the dispatch of business, adjourn or otherwise regulate their meetings as they think fit. It shall not be necessary to give notice of a meeting to any EXCOM member for the time being absent from the Republic.
- 7.4.2 An EXCOM member may at any time convene a meeting of EXCOM by giving to the other EXCOM members no less than TEN (10) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in case of urgency such shorter notice as is reasonable in the circumstances may be given.
- 7.4.3 TWO (2) EXCOM members shall form a quorum where EXCOM consists of either THREE (3) or FOUR (4) members; THREE (3) EXCOM members shall form a quorum where there are FIVE (5) or SIX (6) members, and where there are SEVEN (7) EXCOM members, FOUR (4) members shall form a quorum, provided that, if there are members on EXCOM at the relevant time, at least ONE (1) such member must be present to form a quorum. If at any meeting a quorum is not present within THIRTY (30) minutes of the appointed time of the meeting, such meeting shall stand adjourned to the third business day thereafter at the same time.
- 7.4.4 If the number of EXCOM members falls below the number necessary to form a quorum, the remaining EXCOM members may continue to act, but only for the purpose of convening a General Meeting of members.
- 7.4.5 At the commencement of the first meeting of EXCOM members after each Annual General Meeting, EXCOM members shall elect a Chairman from their number who shall hold office as such until the end of the next ensuing Annual General Meeting provided that should the Chairman during his term of office resign or cease to be a member of EXCOM, the members of EXCOM shall elect a new "Chairman" and such Chairman 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.
- 7.4.6 All matters at any meeting of EXCOM shall be determined by a majority of those present and voting.
- 7.4.7 EXCOM members may from time to time appoint a person to be Secretary of the Association, to fulfill the normal functions of a Secretary and, inter alia, to attend all meetings and keep Minutes thereof.

7.5 Powers of EXCOM

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 including the making of rules as may be exercised and done by the Association itself and as are not by its Constitution required to be exercised or done by the Association in General Meeting. Without in any way limiting the generality of the foregoing, such powers shall include, but not be limited to, the following :

- 7.5.1 the determination of what constitutes appropriate standards for community-living and the maintenance of properties in the Township Area;
- 7.5.2 the performance of such acts as are necessary to accomplish the objects expressed or implied herein;
- 7.5.3 the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 7.5.4 the operation of a banking account with all powers required by such operations;
- 7.5.5 the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- 7.5.6 the employment and payment of agents, servants and any other parties;
- 7.5.7 to institute proceedings in the name of the Association, to defend actions in the name of the Association and to appoint legal representation for this purpose; in particular and without derogation from the generality of the foregoing, the power to sue shall include the right to sue members for the payment of arrear monthly subscriptions and/or for the carrying out of their obligations in terms of the Constitution;
- 7.5.8 the levying of a monthly subscription payable by members as provided in Clauses 5 and 10 hereof and subject to the said Clauses, the determination from time to time and as frequently as they may consider necessary or expedient, of the amount of the subscription to be paid to the Association by its members;
- 7.5.9 to prescribe by way of rules, architectural regulations or otherwise the architectural style and the materials to be used in respect of any buildings to be erected or in respect of any alterations or additions to be carried out to existing buildings and in particular to control the exterior design of such buildings and the materials and colours used so as to ensure an attractive, aesthetic and pleasing character to the buildings in the Township Area. Should any disputes arise regarding the architectural style and materials to be used, EXCOM shall be entitled to appoint an aesthetic committee to determine the architectural style and materials to be used, which committee shall have the final decision regarding disputes relating to compliance with the architectural regulations;
- 7.5.10 the provisions of 7.5.9 shall apply mutatis mutandis to other site works on a member's property, including, but not limited to, fences, pergolas, boundary walls and paving;

7.6 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.

7.7 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.

7.8 Indemnity

No EXCOM member shall be liable to the Association or 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 EXCOM 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.

8. MEETINGS

- 8.1 Annual General Meetings shall be held once in every year at such a time and place as may be determined by EXCOM, 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 :
- 8.1.1 a report on the affairs of the Association, which report is to be submitted by EXCOM and which report shall be available for inspection at the domicilium citandi et executandi of the Association and such other address as may be determined by EXCOM at least SEVEN (7) days prior to the Annual General Meeting;
 - 8.1.2 the election of members to EXCOM;
 - 8.1.3 the adoption of the Balance Sheet and accounts;
 - 8.1.4 the consideration of any Resolutions concerning the affairs of the Association of which due notice has been given;
 - 8.1.5 any other business.
- 8.2 Ordinary General Meeting
- EXCOM may call an Ordinary General Meeting whenever it thinks fit. Ordinary General Meetings shall also be called upon the written request of not less than TEN (10) members, directed to the Chairman of EXCOM.
- 8.3 Notice of meetings
- An Annual General Meeting shall be convened by TWENTY ONE (21) days notice in writing at the least and the Minutes of the previous Annual General Meeting shall be sent to members together with the notice convening the meeting. An Ordinary General Meeting shall be called by FOURTEEN (14) days notice in writing at the least. 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 NINETY PERCENT (90%) of the members present.
- 8.4 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 the proceedings of that meeting. The provisions of this Clause shall not apply to EXCOM meetings.
- 8.5 Quorum
- No matter shall be discussed at any meeting unless a quorum is present when the meeting commences. For all purposes, the quorum shall be not less than TWENTY (20) and consisting of members present in person or represented by proxy.
- 8.6 Adjournment
- If within a half hour from the time appointed for the holding of a meeting, a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned 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.
- 8.7 Chairman
- The Chairman of EXCOM shall preside at every General Meeting, but if there be no such Chairman, the members present shall choose a Chairman from the members of EXCOM, or if

no such members are present, they shall choose some member present to be Chairman of the meeting.

8.8 Votes

At all General 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 provisions:

- 8.8.1 each member present in person shall have ONE (1) vote for every erf registered in his name;
- 8.8.2 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;
- 8.8.3 each member and person present as proxy for a member shall orally alternatively in writing announce how he casts each vote to which he is entitled as aforesaid;
- 8.8.4 all resolutions shall be by simple majority of those members present in person or proxy at the meeting and voting;
- 8.8.5 the Chairman aided by another person/s at the meeting shall count the votes cast for and against the Resolution and shall declare it carried or lost as the case may be;
- 8.8.6 a declaration by the Chairman of the result of the poll and an entry thereof in the Minute Book of the Association shall be conclusive evidence of that fact.

8.9 Incapacity

Should any member be declared incapable of managing his own affairs, or a prodigal or insolvent, or in the case of a Company, 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.

8.10 Co-Ownership

If two or more persons are joint registered owners of an erf, then in voting upon any question, the vote of the senior, who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other registered owners of the erf, and for this purpose, seniority shall be accepted to the exclusion of the votes of the other registered owners of the erf, and for this purpose, seniority shall be determined by the dates of birth of the joint owners as recorded in Deeds Registry, Cape Town. In the event of an erf being jointly owned by a natural person and a Company, then in such event the vote of the natural person, whether in person or by proxy, shall be accepted to the exclusion of the votes of the directors of the Company.

8.11 Proxy

- 8.11.1 Votes may be given either personally or by proxy.
- 8.11.2 The instrument appointing a proxy shall be in writing by the appointer, on the common form, or any form approved by EXCOM, under the hand of the appointer or his Attorney or agent, duly authorised in writing, or if such appointer is a Company, under the hand of an officer duly authorised as such.
- 8.11.3 The instrument of appointing a proxy, together with the Power of Attorney (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the domicilium citandi of the Association at least TWENTY FOUR (24) hours 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.

8.12 Companies/Trusts

Any Company which is a member of the Association may, by Resolution of its Directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of the Association and the person so authorized 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.

9. THE STATUS OF THE ASSOCIATION

The Association shall be an Association in terms of Section 29 of Ordinance 15 of 1985 in terms whereof :

- 9.1 it shall have legal personality, capable of suing and being sued in its own name;
- 9.2 none of the 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 hereof; and
- 9.3 it shall be not for profit, but for the benefit of the members of the Association.

10. MONTHLY SUBSCRIPTIONS

- 10.1 The Association, through EXCOM, shall be entitled to levy a monthly subscription to defray the costs of managing and administering the Association, which costs shall include, but not be limited to, the costs of security, garden services to maintain private open spaces and public open spaces and the maintenance of communal buildings. The monthly subscriptions will be applied to meet all the expenses which the Association has incurred or to which EXCOM reasonably anticipates the Association will be put in the attainment of the Association's objects or the pursuit of the Association's business. Such subscription may be fixed and collected monthly in advance.
- 10.2 The amount of the monthly subscription shall be determined annually by EXCOM by using the annual budget of the Association as prepared by EXCOM and the number of building opportunities allocated to each erf as basis for such calculation. For purposes hereof
 - 10.2.1 a single residential erf shall be regarded as a single (one) building opportunity;
 - 10.2.2 An erf which comprises the consolidation of one or more single residential erven shall be regarded as, as many building opportunities as the amount of erven that were consolidated.
- 10.3 The monthly subscription shall commence on the date fixed by EXCOM. The first monthly subscription shall become due and payable on the day fixed for commencement. The monthly subscription for every subsequent calendar month shall become due and payable on the first day of each such subsequent calendar month.
- 10.4 If the monthly subscription is not paid within TEN (10) days of the due date, same shall bear interest from the date of delinquency at a rate per annum equivalent to the prime overdraft rate charged from time to time by the Association's Bankers plus FIVE PERCENT (5%) and the Association may institute legal proceedings against the member for the recovery thereof and the costs on an attorney and own client scale of such proceedings shall be added to the subscription and interest. A member whose subscription together with any interest and costs is unpaid shall not be entitled to vote at any General Meeting.
- 10.5 Notwithstanding anything to the contrary herein contained, for the purposes of Clause 10 the Developer shall be deemed to be the registered owner of ONE (1) erf only. The Developer may in its sole discretion make such additional payments to the Association as it may deem necessary.

11. FINANCIAL YEAR AND ACCOUNTS

- 11.1 The financial year of the Association ends on 31st June of each year.

- 11.2 EXCOM shall cause proper books of accounts of the administration and finance of the Association to be kept at the domicilium of the Association and shall produce an annual audited Balance Sheet.
- 11.3 EXCOM shall cause to be laid before the Association in Annual General Meeting, the annual independently audited Balance Sheet.

12. DOMICILIUM

- 12.1 For all purposes arising out of this Constitution, including the giving of notices and the serving of legal process, the Association and each member choose domicilium citandi et executandi as follows :
- 12.1.1 the Association – c/o MARINA CENTRE
PORT OWEN DRIVE
PORT OWEN 7365
- 12.1.2 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 shall not be a Post Office box or post restante; and provided further that such change shall become effective only FOURTEEN (14) days after receipt of the notice in question.
- 12.2 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, 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.

13. WINDING UP

- 13.1 The Association may be wound up by a Resolution of the members in General Meeting provided that :
- 13.1.1 NINETY PER CENT (90%) of members present or represented by proxy at the meeting, duly convened, vote in favour thereof; and
- 13.1.2 the relevant local authority consents thereto;
- 13.2 In the event of such winding up, it shall be the duty of EXCOM, or a Receiver to be appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to 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, EXCOM or the Receiver is unable to find, locate or trace any member, such member's share shall then be paid to the Guardians' Fund or such other fund as may be required by Law.

14. RULES AND REGULATIONS AND AMENDMENTS TO THE CONSTITUTION

Any amendment or addition to the Constitution may be effected only by a Resolution passed by a TWO-THIRDS (2/3rds) majority at a General Meeting, after written notice thereof setting out such amendment or addition in full, has been given in the notice calling the meeting;

15. INTERPRETATION/DISPUTES

- 15.1 Any dispute whatsoever between members or between the Developer and a member or members concerning the interpretation of this Constitution and/or any rules and regulations of the Association shall, subject to the provisions of Clauses 16.2 or 16.3, as the case may be,

be referred for decision to a practicing Senior Advocate of the Cape Bar of not less than FIVE (5) years standing, or in the event of a dispute in the case of Clauses 7.5.9 and 7.5.10, to an Architect of not less than FIVE (5) years standing, agreed upon by the parties to the dispute, who shall then, acting as an expert and not as an Arbitrator, determine the dispute and his decision shall be final and binding upon the parties and capable of being enforced in a Court of Law.

- 15.2 In the event of the parties being unable to agree upon the Senior Advocate who should be appointed to determine the dispute, then he shall be nominated by the President of the Cape Bar Council.
- 15.3 In the event of the parties being unable to agree upon the Architect who should be appointed, he shall be nominated by the President of the Cape Provincial Institute of Architects.
- 15.4 Notwithstanding anything to the contrary herein contained, EXCOM 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 subscription.

16. RESTRICTION ON ALIENATION

- 16.1 No member shall transfer his erf until EXCOM under the hand of a duly authorized EXCOM member or agent has certified that the member has at date of transfer fulfilled all his financial obligations to the Association and that the purchaser of such erf had agreed to be bound by the terms hereof. No erf or any interest therein shall be transferred without the written consent of the Association. Such consent shall not be withheld unless :
 - 16.1.1 such member is indebted to the Association in any way in respect of monthly subscriptions or other amounts which the Association may in terms of these presents be entitled to claim from him;
 - 16.1.2 the proposed transferee has not agreed to become a member of the Association;
 - 16.1.3 such member remains in breach of any of the provisions of these presents or any rules after notice from EXCOM requiring him to remedy such breach.
- 16.2 EXCOM or its agent in issuing the certificate referred to in Clause 17.1 shall be entitled to charge a reasonable fee therefore to be determined by EXCOM from time to time.

17. SUBMISSION OF PLANS

Members shall be obliged to submit any building plan, whether such plan is for new constructions, renovations, alterations or additions, to EXCOM for examination and approval prior to the submission of such plan to the Local Authority for approval. Should EXCOM not approve of a plan submitted in terms of this clause, they shall furnish the relevant member with their reasons in writing and any disputes arising will be resolved by the aesthetic committee appointed in terms of Clause 7.5.9 hereof.

18. SPECIAL CONDITIONS

- 18.1 The waterways in the Township Area are controlled by the Port Owen Marina Authority (POMA) and all members will be bound by the rules and regulations prescribed by POMA from time to time in all matters relating to waterways and jetty rights.
- 18.2 The final positioning of jetties by members shall be subject to approval of EXCOM and POMA.