CONSTITUTION

OF THE

THEEWATERSKLOOF COUNTRY ESTATE

HOMEOWNERS' ASSOCIATION

Revised May 2015

Approved by local council on 15 September 2015

CONSTITUTION OF THE THEEWATERSKLOOF COUNTRY ESTATE HOME OWNERS' ASSOCIATION

1. NAME

The name of the association is: Theewaterskloof Country Estate Home Owners' Association

which is an association established in terms of Section 29 of the Land Use Planning Ordinance, Cape Ordinance No 15 of 1985.

2. DEFINITIONS

In this Constitution unless the context indicates the contrary

2.1 "the Association" shall mean the Theewaterskloof Country Estate Home Owners' Association.

2.2 'The Estate" shall mean those portions of the development which have been subdivided and registered as land units for purposes of erecting thereon residential or holiday dwellings together with all private, general or special usage areas appertaining thereto and including roads, parking areas, designated green areas and recreational areas.

2.3 'person' shall include a company, close corporation, partnership, trust or other associations of persons entitled by law to hold title to immovable property;

2.4 "member" shall mean a member as defined in Clause 4 hereof;

2.5 'the Development" shall mean the entire scheme of the Development undertaken or to be undertaken in future by the Developer, and comprising the land and improvements thereon on the Remainder of Portion 31 of the Farm Zeekoekraal No 80, Caledon and the Remainder of the Farm Zeekoekraal No 70, Caledon Division.

2.6 "land unit" means a portion of land registered or capable of being registered in a deeds registry and may include a servitude right;

2.7 "owner" means, in relation to immovable property or any interest in immovable property, the person in whose name that property or in whose favour that interest in immovable property is registered;

2.8 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. OBJECTIVES OF THE ASSOCIATION

3.1 The objectives of the Association are: -

3.1.1 the promotion, advancement and protection of the Members' Group and communal interests

3.1.2 the control over and maintenance of services and amenities arising from the Subdivision of the Estate.

3.1.3 The promotion and enforcement of standards for community living on the Estate in such a way that members may derive the maximum collective benefit there from.

3.1.4 The promotion and maintenance of acceptable aesthetic, environmental, and architectural styles and design criteria, for the Estate in order to achieve harmonious development thereof, and to control the design and development of all properties therein.

3.1.5 The management and maintenance of all water and storm water services, roads, recreation areas and facilities, public and private open spaces, refuse disposal, drains and sewerage works, and electricity layout; and all other improvements made, erected or constructed for the benefit of members, nothing excluded.

4. MEMBERS

4.1 Membership of the Association shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more land units on the Estate. Upon registration of ownership of a land unit, 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 a land unit in the Estate.

4.2 Each member shall be entitled to one vote for each land unit owned on the Estate.

4.3 Where two or more persons own one land unit, the registered owners of that land unit shall be deemed jointly and severally to be one member of the Association.

4.4 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 land units on the Estate from the previous member to the new owner.

4.5 Every member shall pay levies to the Association which can be paid annually in advance or monthly in advance. Levies are to be determined by EXCOM and ratified in General Meeting. Water levies and any other consumption or volume related levies can be determined by EXCOM and implemented with subsequent reference to a General Meeting.

4.6 A member shall not sell, alienate or give transfer of an erf unless:

4.6.1 the ASSOCIATION acting through EXCOM or the Estate manager has issued a prior written clearance that all outstanding levies and all amounts of whatever nature owing to the ASSOCIATION by such member have been paid,

4.6.2 the member has complied with all provisions contained in this constitution and any annexure thereto or any rule or regulation made in terms of this constitution relating to the architectural and development guidelines of the township and with all rules and regulations in relation to the approval and compliance with approved building plans.

5 EXCOM: Structure, Powers and Responsibilities

5.1 EXCOM shall consist of 7 (seven) members of the Association. Spouses of individual members may be elected in lieu of the member.

5.2 The representatives on the EXCOM shall be elected at Annual General Meetings. At every AGM the two longest serving representatives shall be obliged to resign and new representatives be appointed for at least these two positions.

5.3 Representatives obliged to resign under Sub-clause 5.2 will however be eligible for re-election.

5.3.1 EXCOM members may fill any vacancy in their number by co-opting additional members, provided that the number of EXCOM members shall not exceed 7. Any co-opted member shall hold office until the next Annual General Meeting when he shall retire.

5.4 An EXCOM member shall cease to hold office as such if;

5.4.1 by notice in writing to EXCOM he resigns his office;

5.4.2 he is or becomes of unsound mind;

5.4.3 he surrenders his estate as insolvent, or his estate is sequestrated;

5.4.4 he is convicted of an offence which involves dishonesty;

5.4.5 he absents himself from three consecutive meetings of EXCOM without special leave of absence from EXCOM;

5.4.6 by resolution of a general meeting of the Association he is removed from office;

5.4.7 he ceases to be a member of the Association.

5.5 EXCOM shall meet at such time and place as shall be decided by EXCOM from time to time, provided that it shall meet within 14 days of an Annual General Meeting. It shall not be necessary to give notice of a meeting to any EXCOM member for the time being absent from the Republic. Special meetings may be called by the Chairman.

5.6 Four 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.

5.7 Four members shall form a quorum at any meeting of EXCOM. If at any meeting a quorum is not present within 10 minutes of the appointed time of the meeting, such meeting shall stand adjourned to the same day of the following week at the same time

5.8 If the number of EXCOM members falls below the number necessary to form a quorum, the remaining members may continue to act but only for the purposes of convening a general meeting of members.

5.9 EXCOM shall keep minutes of meetings held and decisions taken, which minutes shall be tabled at the next EXCOM meeting and EXCOM shall make a full annual report at the Annual General Meeting.

5.10 At the commencement of the first meeting of EXCOM members after each Annual General Meeting, EXCOM shall elect from its members a Chairman, a Secretary and a Treasurer who shall ipso facto be Chairman, Secretary and Treasurer of the Association. The Chairman, Secretary and Treasurer so elected shall hold office as such until the end of the next ensuing Annual General Meeting.

5.11 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 the casting as well as deliberative vote.

5.12 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 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 aforegoing, such powers shall include but not be limited to the following:-

5.12.1 The determination of what constitutes appropriate standards for community living in the Estate;

5.12.2 The performance of such acts as are necessary to accomplish the objects expressed or implied herein;

5.12.3 The investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;

5.12.4 The operation of a banking account with all powers required for such operations;

5.12.5 The making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;

5.12.6 To take up money under security of property movable or immovable and to appear before any Registrar of Deeds, or any official with like duties and powers, or any Magistrate, Notary Public or other competent authority, and to make and execute all such Mortgage Bonds or other securities as may be requisite or necessary in that behalf or to secure debts due by the Association before the passing of such Bonds or that may become due thereafter under obligation of the Association and property of every description.

5.13 No profit or gain arising from any transaction entered into by EXCOM with a third party or a member shall be distributed.

5.14 Any surplus remaining at the end of each financial year shall be reinvested for the sole benefit of the members.

5.15 All transactions entered into by EXCOM are entered on behalf of the members and for their sole benefit.

5.16 The employment and payment of agents, managers, employees, maintenance staff and servants and any other persons;

5.17 The making, amendment and repeal of rules which shall be binding upon members as if they form part of this Constitution;

5.18 The right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;

5.19 The performance of such acts as are required to ensure the security of persons and property on the Estate.

5.20 The management of such rights as may exist in favour of the Association.

5.21 The appointment and remuneration of Trustees to perform any functions which have legally been delegated.

5.22 Any act performed by an EXCOM member 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 appointed in office.

5.23 EXCOM members shall not be entitled to any fees or salary in respect of the performance of their duties as EXCOM members, but shall be entitled to reimbursement of all bona fide expenses incurred including travelling and subsistence expenses occasioned in the course of the exercise of their duties and such remuneration as the Annual General Meeting may approve.

5.24 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.

5.25 EXCOM may delegate its administrative functions to paid Trustees with the approval of the Annual General Meeting to the extent and limits prescribed by the Annual General Meeting.

6 GENERAL MEETINGS

6.1 An Annual General Meeting of members shall be held once in every year at such a time and place as may be determined by EXCOM, but so that no more that 15 months shall be allowed to elapse between any two such successive meetings. The business to be done at the Annual General Meeting shall include:-

6.1.1 The receipt of a report on the affairs of the Association;

6.1.2 The election of members to EXCOM;

6.1.3 The adoption of the minutes of the previous Annual General Meeting;

6.1.4 The adoption of the balance sheet and accounts;

6.1.5 The consideration of any resolutions concerning the affairs of the Association of which due notice has been given;

6.1.6 The ratification of the monthly levy to be charged out against all members of the Association to give proper effect to the carrying out of the objects of the Association for the ensuing year;

6.1.7 The ratification of rules made in terms of paragraph 5.17 and of rules concerning the use of facilities and conduct of members and access to facilities.

6.1.8 Any other business

6.2 EXCOM may call an ordinary general meeting of members whenever it thinks fit.

6.3 Extraordinary general meetings shall also be called upon the written request of not less than 20% of members, directed to the Chairman of EXCOM.

6.4 An Annual General Meeting shall be convened on not less than 21 days notice in writing. An ordinary general meeting shall be called by not less that 14 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 ninety per cent of the members present.

6.5 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.

6.6 No matter shall be discussed at any meeting unless a quorum is present when the meeting commences. For this purpose, the quorum shall be members present in person or by proxy and being not less than 25% of the entire Home Owners Association

6.7 If within a half hour from the time appointed for the holding of a meeting a quorum is not present, the meeting, if convened at the request 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.

6.8 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 person present to be Chairman of the meeting.

7 VOTING

7.1 At all general meetings, resolutions put to vote, save for resolutions for the election of a member to EXCOM or his removal there from which shall be decided by ballot voting, shall take place immediately. Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:-

7.1.1 Each member present in person shall have one vote for every land unit registered in his name;

7.1.2 Each person present as proxy for a member shall have one vote for each land unit registered in the name of the member for whom he is proxy; no person may hold more than three (3) proxies

7.1.3 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;

7.1.4 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;

7.1.5 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;

7.1.6 A declaration by the Chairman of the result of the voting by show of hands or ballot and the entry thereof in the minute book of the Association shall be conclusive evidence of the fact;

7.1.7 Votes may be given either personally or by proxy;

7.1.8 The instrument appointing a proxy shall be in writing in any form approved by EXCOM under the hand of the appointer, or of his attorney duly authorised in writing, or if such appointer is a company, under the hand of a duly authorised officer.

7.1.9 When EXCOM considers it necessary to maximise the number of members to participate in the decision-making process, a Postal Vote may be conducted to gain approval or rejection by members. This vote should only be for specific items on the agenda of a general meeting.

7.1.10 Any company or corporation or trust which is a member of the Association may, by resolution of its directors or other governing body, 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.

8 LEGAL STATUS

8.1 The Association shall be a body corporate:-

8.1.1 with legal personality, capable of suing and being sued in its own name, and

8.1.2 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 hereof, and

8.1.3 not for profit, but for the benefits of the owners of land units situate in the The Estate, and

8.1.4 with the right to obtain, hold, lease and alienate movable or immovable property, with the right to take up money under security of property movable and immovable and to make and execute all such Mortgage Bonds as may be requisite or necessary.

8.1.5 The dissolution of the Association will not be possible unless the express approval of the Overberg Regional Council (or its successor) is obtained in writing and subject to

a special general meeting of the members where 100% of the members agree to the dissolution of the association.

8.1.6 In the event of the dissolution of the association, any residual funds in the accounts of the association shall be distributed equally between the members.

9 LEVIES

9.1 The Association, through EXCOM, shall be entitled and authorised from time to time, to levy contributions from the members for the purpose of meeting all the expenses the Association has incurred, or to which EXCOM reasonably anticipate the Association will be put by way of maintenance, repair, improvement and keeping in good order and condition the common areas, and for the provision of services, maintenance and in general to fulfil its obligations as envisaged in Clause 3 above. Such levies may be fixed annually but shall be collected annually in advance or monthly in advance. In the case of Special Levies, these must be paid by a specific date.

9.1.1 The levies shall commence on date of transfer and shall be payable annually in advance or monthly in advance

9.2 If a monthly payment due in advance on account of the annual levy is not paid within 7 (SEVEN) days of due date, the Association may institute legal proceedings against the member for the recovery of the full annual levy. The costs of such proceedings shall be paid by such member on the scale as between attorney and client and shall be added to the levy. Interest will be charged at the prime overdraft rate charged from time to time on overdue amounts from the due date until paid in full. In the case of unpaid levies of any nature, EXCOM has the mandate to block property transfers. A member whose levy is not paid on due date shall not be entitled to :-

9.2.1 vote at any general meeting;

9.2.2 nominate candidates for election to EXCOM;

9.2.3 serve on EXCOM.

Whilst any payment is outstanding.

9.3 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.

9.4 EXCOM shall cause to be laid before the Association in Annual General meeting all books of account, balance sheets and reports of the Association.

9.5 All net income however derived shall be capitalised to the levy fund of the Association and may only be applied for the common benefit of the Association in such manners as are approved by the Annual General Meeting.

10 NOTICES

Any 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 prepaid post, in which event such notice shall be deemed to have been received seven days after the posting from any Post Office within the Republic of South Africa.

The chosen address for the purposes of notice to a member shall *ipso facto* be the chosen *domicilium citandi et executandi* of that member.

11 AMENDMENTS TO CONSTITUTION

This Constitution shall not be altered or amended in any way save with the consent of the appropriate Local Authority and after such alternation or amendment has been approved by the members in general meeting with a special majority of 80% of those members present at a General Meeting providing that the number of members voting in favour of the alteration or amendment shall be not less than 20% of the entire Homeowners Association Membership.

12 PERSONAL LIABILITY OF MEMBERS

12.1 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.

12.2 Every member of EXCOM, the Secretary and all other officers or servants of the Association shall be indemnified by it against all claims for damages, etc arising out of occupation of office, and it shall be the duty of EXCOM out of the funds of the Association to pay all costs, losses and expenses which any such officer or servant, whilst acting reasonably within the scope of his authority, may incur or become liable by reason of any contract into or act or deed done by him or such officer or servant, or in any way in the discharge of his duties including travelling expenses.

12.3 No member of EXCOM, the Secretary or any other officer or servant of the Association shall be liable for the acts, receipts, neglects or defaults of any other member of EXCOM or officer or servants, or for loss of expenses happening to the Association through the insufficiency or deficiency of title to any property acquired by order of EXCOM on behalf of the Association, or for the insufficiency or deficiency or any security in upon which any monies of the Association shall be invested, or for any loss or damage arising from the insolvency or delictual act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same shall happen through his own dishonesty.

13. RULES

Without limiting the generality of Clause 5.17 above, the following rules shall form part of this constitution and of any rules adopted by the Association: -

13.1 Only staff employed within the The Estate may be accommodated within the Estate;

13.2 No trees, plants, endemic shrubs or fynbos within the Estate may be removed without EXCOM's prior consent;

13.3 Only domestic animals may be kept on the Estate.

13.4 Architectural guidelines laid down from time to time by EXCOM via the Aesthetics Sub-Committee and approved by the Local Authority and conforming to National Building Regulations, shall apply to buildings, structures, fences and works. EXCOM has been mandated to take legal action in the case of non-approved deviations.

13.5 Every homeowner must maintain all buildings, structures and gardens on their property to a standard similar to the majority of properties on the Estate. EXCOM has been mandated to take appropriate action including legal action in the case of non-compliance. Whenever EXCOM consider that the appearance of any erf or building in the Estate vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the Estate generally, they may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. EXCOM shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that EXCOM acted unreasonably.

Any legal or other costs incurred by the ASSOCIATION in pursuance of this clause will be recoverable from the homeowner.

13.6 Access and admission to the Estate and all its facilities and the use thereof shall be limited to members, their immediate family and bona fide guests. House owners may lease to tenants subject to requirements laid down from time to time by EXCOM. These requirements can be found in the Rules of the Homeowners Association. Bona fide tenants will, therefore, have access to the Estate.

13.7 EXCOM shall from time to time promulgate rules of conduct for the use of all facilities and may impose fines for contravention against the member responsible for his family, guests and tenants.