

# CONSTITUTION

## CANAL EAST HOME OWNERS ASSOCIATION

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### 1. NAME

The name of the Association is **CANAL EAST HOME OWNERS ASSOCIATION**.

### 2. DEFINITIONS

In this constitution, unless the context indicates the contrary:

- 2.1 "The Association" shall mean **CANAL EAST HOME OWNERS ASSOCIATION**.
- 2.2 "The Developer" shall mean Garden Cities Incorporated Association not for Gain, No 1928/000607/08.
- 2.3 "Common Area" shall mean all public open spaces, public roads and erven registered in the name of the Association for purposes of administration, surveillance, security or access monitoring.
- 2.4 "Development" shall mean the erven with dwelling units designated as "CANAL EAST" on parent property Remainder Erf 20989 Milnerton, plus the public roads and public open spaces servicing the members of the Association as indicated on the layout plan annexed hereto.
- 2.5 "Effective Date" shall mean the date of registration of the first transfer of an erf in the Development in the name of a Member or of the Association.
- 2.6 "Local Authority" shall mean the City of Cape Town or competent authority acting as its successor in title.
- 2.7 "Managing Agent" shall mean such person or entity with whom the Association may contract from time to time to undertake any of the functions of the Association.
- 2.8 "Member" shall mean a Member as defined in clause 4 hereof.
- 2.9 "Person" shall include a company, close corporation, club, trust, partnership or other association of persons entitled in law to hold title to immovable property.

- 2.10 "Tryall North Property Owners Association" shall mean the over-arching homeowners association that controls the entire Phase 9 and 10 development area and, in the discretion of Garden Cities, any of its future developments for the benefit of its members.
- 2.11 "Services" shall mean all services within the Township Area not taken over by the City of Cape Town or other competent authority.
- 2.12 In this Agreement, unless the contrary obviously follows from the context:
- 2.12.1 any gender shall include the other genders;
- 2.12.2 any reference to a natural person shall include legal *personae* and *vice versa*;
- 2.12.3 the singular shall include the plural and *vice versa*.

### 3. OBJECTIVES

- 3.1 The objectives of the Association are to:
- 3.1.1 promote, enforce and protect the communal interests of its Members, with the object, *inter alia*, of creating and maintaining a congenial and secure atmosphere in the Development in such a way that Members may derive the maximum collective benefit therefrom in the long term;
- 3.1.2 raise the level of security in and about the Development and in designated areas thereof for the benefit of its Members by means of *inter alia* (where appropriate and practical) surveillance, access monitoring, inspections or patrols, community crime watch and such other measures as the Association may deem to be effective, but without in any way guaranteeing safety or security or incurring any liability or culpability on account of any crime that may be committed or incident that may occur within the Development at any time;
- 3.1.3 promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Development in order to achieve harmonious development thereof;
- 3.1.4 control any exterior alterations, changes of colour finishes or design of all buildings erected on erven within the Development;
- 3.1.5 control and maintain such common services as are not taken over by the City of Cape Town or by the Tryall North Property Owners Association and for which the Association will be responsible from time to time (including verges adjacent

to the Development and outside erf boundaries of Members), as envisaged in terms of Section 29 of the Land use Planning Ordinance 15/1985;

- 3.1.6 to maintain and clean, sweep, improve and control all landscaped areas within the Development and outside the erven of Members;
- 3.1.7 regularly collect from Members such levies per erf (including special levies and interest on levies in arrears) as the Association may determine from time to time in a rational, fair and practical manner (on the basis of proportional or equal allocation of costs and benefits); in order to meet its obligations and to pay its accounts. In addition the Association shall be obliged to collect from Members and pay over such levies as the Tryall North Property Owners Association may from time to time impose;
- 3.2 The Association shall have all the powers reasonably required to meet its objectives and to do whatever may be necessary to accomplish these objectives.

#### **4. MEMBERSHIP**

- 4.1 Membership of the Association shall be evidenced by registered ownership in the Deeds Registry, Cape Town, of one or more erven in the Development.
- 4.2 Upon registration of ownership of an erf in the Development in the name of any purchaser, membership of the Association by such purchaser shall be automatic and obligatory and all Members shall be obliged to comply with the provisions of this Constitution.
- 4.3 No person shall be entitled to terminate, cede or assign his/her membership of the Association while remaining the registered owner of an erf in the Development.
- 4.4 Each Member shall have 1 (One) vote per erf owned in the Development. Joint ownership of an erf by several parties in undivided shares shall constitute only one Member, which Member shall have one undivided vote as set out hereunder.
- 4.5 Membership shall be created (and terminated) by the registration of transfer of ownership in the Deeds Office at Cape Town, whereby one or more erven in the Development is transferred to a new owner who thereby shall become a Member.
- 4.6 No Member may sell, transfer, mortgage or otherwise alienate his/her property in the Development without the prior consent in writing of the Association, and without expressly in writing making the purchaser aware of this Constitution in the deed of sale.

- 4.7 All Members shall be jointly liable for the expenditure and other liabilities of the Association.

## 5. COMMITTEE

- 5.1 Prior to the registration of the first transfer of any erf in the name of a Member, the management of Garden Cities shall appoint 3 (Three) members who shall constitute the interim Committee pending the election of a representative Committee at the first annual general meeting (AGM) as set out hereunder.
- 5.2 As soon as less than 25 (Twenty Five) erven in the Development (or at such earlier stage as Garden Cities in its entire discretion may decide) remain unsold and not registered in the names of purchasers, a general meeting of Members shall be called for the election of the Committee as envisaged herein.
- 5.3 The affairs of the Association shall be managed by a Committee consisting of 5 (Five) members who shall be elected by majority vote at each AGM and shall remain in office for 1 (One) year. Provided that not more than one Committee member may be a non-Member elected or appointed on the basis of relevant skill or knowledge. This latter condition shall not apply in respect of persons appointed by Garden Cities in terms of clause 5.5 or 5.14 or by the City of Cape Town in terms of clause 5.14
- 5.4 The members of the Committee shall, after proposal and seconding, be elected by poll or (if the meeting so determines) by a show of hands of Members attending the general meeting of the Association. Subsequent Committees shall be likewise elected at each successive annual general meeting of the Association. No Member shall be eligible for election unless:
- 5.4.1 he/she has been duly proposed and seconded in writing by two other Members;  
and
- 5.4.2 such proposal, countersigned by the candidate, has been handed to the Secretary not later than the last day (excluding Saturdays, Sundays and public holidays) preceding the meeting;  
and
- 5.4.3 his/her levy payments are not in arrears. This requirement shall not apply to non-Members elected on account of particular skills or knowledge.
- 5.5 The Committee shall consist of:  
A Chairperson;  
A Secretary;  
A Treasurer;  
Two additional members  
with any 3 (Three) Committee members forming a quorum.

Provided that, while 25 (Twenty Five) or more residential erven in the Development remain unsold, Garden Cities shall be entitled to nominate the Chairperson and Treasurer of the Committee.

- 5.6 Every Committee member shall cease to hold office:
- 5.6.1 at every annual general meeting (but shall be eligible for re-election);  
or
- 5.6.2 if he/she becomes unsound of mind or is disqualified from acting as a director in terms of the provisions of the Companies Act.
- 5.7 The Committee may fill casual vacancies on the Committee by co-opting any other person or eligible Member of the Association who may so serve until the next annual general meeting.
- 5.8 Committee members shall receive no remuneration apart from reimbursement for reasonable expenses incurred on behalf of and for the benefit of the Association, and as approved by the Committee.
- 5.9 No Committee member shall be liable to the Association or to any Member thereof or to any other person whomsoever for any act or omission by himself/herself, the Association or its servants or agents. Every member of the Committee is hereby indemnified against any loss or damage suffered by him/her in consequence of any alleged liability, provided that such Member has on the basis of information available to him/her at the time, acted honestly and in good faith without gross negligence.
- 5.10 Committee meetings shall be held regularly as determined by the Chairperson from time to time, but in any event at least once every 3 (Three) months.
- 5.11 The Committee shall cause proper books of account of the administration and finances of the Association to be kept and a competent person shall draw financial accounts annually.
- 5.12 The Secretary shall keep proper minutes of all meetings of the Committee.
- 5.13 In the event of a deadlock the Chairperson shall have a casting vote.

- 5.14 In the event of the Committee subsequent to completion of the Development regularly failing to act, or to act in the interest of its Members, or of a Committee not being properly elected within the time period stipulated in clause 6.1 for a regular AGM, or upon petition from at least 50 (Fifty) Members, Garden Cities, failing which the City of Cape Town, shall in its entire discretion be entitled (but not obliged) to appoint suitable persons (at a reasonable remuneration determined by the appointer and to be paid by the Association) to act as members of the Committee pending a proper general meeting where Members can elect a new Committee that may include persons previously appointed in terms of this clause 5.14.

## **6. MEETINGS OF THE ASSOCIATION**

- 6.1 The annual general meeting of the Association shall be held on a date as determined by the Committee during each successive year, provided that such meeting shall not be held later than 15 (Fifteen) months after the previous annual general meeting. The Secretary shall post or deliver to each Member written notice of the annual general meeting, accompanied by the agenda, at least 3 (Three) weeks before the date of the meeting.
- 6.2 Special general meetings may be called upon 3 (Three) weeks' written notice by the Secretary whenever the Committee considers it desirable and shall in any event be called upon the request in writing of at least 50 (Fifty) Members. The Secretary shall include the agenda with the notice of the special meeting.
- 6.3 The Chairperson shall preside at all meetings and in his/her absence the Secretary shall preside. In the absence of both of them the Members present shall elect an acting chairperson for that meeting.
- 6.4 At all meetings votes on any matter shall be cast by a show of hands unless the chairperson of that meeting requires a poll.
- 6.5 In the event of a deadlock the chairperson of that meeting shall have a casting vote.
- 6.6 The quorum at all general meetings shall be Members holding in aggregate at least 40 (Forty) erven.
- 6.7 The Secretary shall keep minutes of the proceedings of the Association.

## **7. POWERS OF THE ASSOCIATION**

- 7.1 The management and administration of the Association shall vest in the Committee who may exercise all such powers of the Association and do or refrain from doing, on behalf of the Association, whatever may be exercised and done by the Association itself.
- 7.2 Without in any way limiting the generality of the foregoing, the Committee shall be entitled to:
- 7.2.1 perform all such acts as are necessary to accomplish the objectives expressed or implied herein;
  - 7.2.2 determine what constitutes appropriate standards, designs and styles as set out in clauses 3.1.1 to 3.1.4 and for the maintenance of properties in the Development;
  - 7.2.3 invest and re-invest monies of the Association not immediately required, in such manner as the Committee may from time to time determine;
  - 7.2.4 operate a bank account in the name of the Association;
  - 7.2.5 enter into and fulfil contracts or agreements for any purpose of the Association;
  - 7.2.6 employ and pay employees, contractors, agents, servants and any other parties such as auditors, attorneys, architects, engineers and other professional consultants;
  - 7.2.7 form sub-committees and to delegate such powers to the sub-committees as may be deemed necessary;
  - 7.2.8 sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
  - 7.2.9 collect or instruct agents to collect levies payable by Members as provided in clause 3.1.7 hereof.

- 7.2.10 grant or withhold (pending payment of any levies in arrears or fulfilment of his/her obligations by the Member concerned) its consent to the alienation of any erf in the Development, provided that such consent shall not be unreasonably withheld.

Provided always that the Association shall be subservient to the constitution of the Tryall North Property Owners Association and that the Committee shall have no authority to do or cause to be done anything that may be in conflict with such constitution or the directives of the Tryall North Property Owners Association.

## **8. CONDUCT RULES**

- 8.1 Subject to any restrictions imposed or directions given at a general meeting, the Committee may from time to time make, amend and repeal rules which shall apply in the Development and which shall be binding upon Members as if it forms part of this Constitution. Without limiting the generality thereof, such rules may have regard to:
- 8.1.1 the right to determine and control all security measures in the Development, including the right to determine access to and egress from the Development and to or from the erven or any other area in the Development;
- 8.1.2 the furtherance and promotion of the objectives of the Association, the management thereof and for the advancement of the interests of its Members.
- 8.1.3 building, environmental and aesthetic requirements. In this regard the Committee shall have the power (subject to the Association's standard requirements) to:
- 8.1.3.1 frame and enforce specifications in order to harmonise the architectural style and design criteria of, and the materials to be used in all buildings erected or to be erected in the Development;
- 8.1.3.2 examine and approve or refuse building plans, whether such be for new constructions, renovations, alterations or additions;
- 8.1.3.3 regulate the preservation of the environment, including the right to control and to require the cultivation of trees and other vegetation;



- 8.1.3.4 compel Members to comply with its building and aesthetic requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such member. Without in any way limiting the generality of the foregoing, the Committee may in writing call upon a Member to remove or alter within a specified period anything erected contrary to the requirements laid down pursuant thereto and failing compliance, to apply to Court for an appropriate order.
- 8.1.3.5 require Members to submit all building plans for new constructions, renovations, alterations or additions to the Committee for examination and comment by an architect appointed by the Association (prior to the submission of such plans to the Association and to the Local Authority for approval). The Committee shall communicate its decision to the applicant within 2 (Two) weeks of such plans being submitted to it.
- 8.2 Members shall be obliged to communicate any requests or complaints regarding the Development to Garden Cities and/or the local authority via the Committee only.
- 8.3 For the enforcement of any of its rules the Association may:
- 8.3.1 take or cause to be taken such steps as it may consider necessary to remedy the breach of any rule and to debit the cost thereof to the Member concerned as a debt payable to the Association;  
and/or
- 8.3.2 impose fines or other penalties (reasonably in proportion to the severity of the breach or problem concerned) as approved and reviewed by the annual general meeting;  
and/or
- 8.3.3 take any other lawful action, including court proceedings, as may be appropriate in the circumstances.
- 8.4 Any breach of the rules by a Member, his/her staff, dependents, guests or tenants shall be deemed to have been committed by the Member himself/herself who shall be liable for such breach and the consequences thereof. Without prejudice to the foregoing, the Association may in its entire discretion take steps against the Member concerned and/or against the party actually committing the breach.
- 8.5 The Association shall be entitled to recover all costs incurred and arising from any legal proceedings from the Member concerned (or from the guest or tenant of such Member) on the scale as between attorney and client, including tracing fees and collection commission.

## **9. NO ALIENATION OF COMMON AREAS**

Neither the whole nor any portion of any erf forming part of the Common Area shall be:

- 9.1 sold, let, alienated, subdivided, transferred or otherwise disposed of;  
or
- 9.2 mortgaged;  
or
- 9.3 subjected to any rights (whether registered in any deeds registry or not) of use, occupation or servitude (other than the general servitudes in favour of the City of Cape Town or any other competent authority, and those enjoyed by the Members in terms hereof);

without a prior special resolution of the Association (i.e. a vote of at least 75% of Members consenting) and the prior written consent of the City of Cape Town.

## **10. STATUS OF THE ASSOCIATION**

The Association shall be an association as envisaged in Section 29 of the Land Use Planning Ordinance 15/1985:

- 10.1 with legal personality, capable of suing and being sued in its own name;  
and
- 10.2 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 the Committee in terms hereof;  
and
- 10.3 not for profit or gain, but for the benefit of the owners and occupants of immovable property situate in the Development  
and
- 10.4 that comes into effect on or before the date of registration of the first erf in the Development to be transferred.

## **11. AMENDMENT OF THE CONSTITUTION**

The Constitution of the Association may at any time be amended at a general or special meeting of the Members, provided that at least 75% (Seventy Five percent) of all Members vote in favour thereof, whether in person or by written proxy. Provided further that no alteration or amendment to the Constitution shall be made without the prior written consent of the City of Cape Town or its successor in title.

## 12. WINDING UP

- 12.1 The Association may be wound up by a resolution of the Members in general meeting provided that :
- 12.1.1 75% (Seventy Five *per centum*) of all Members, duly conveyed, vote in favour thereof;
- and
- 12.1.2 the City of Cape Town or its successor in title consents thereto in writing.
- 12.2 In the event of such winding up, it shall be the duty of the Committee, or a trustee appointed by it, to convert the assets of the Association into cash, pay all the liabilities of the Association and thereafter distribute the net residue (if any) to all the Members in proportion to the number of erven registered in the name of each Member.

## 13. LEVIES AND VETO

- 13.1 All levies imposed and specific expenses incurred by the Association in respect of any property shall be regarded as relating to such property concerned and any unpaid or arrear levies may be recovered from subsequent owners and successors in title of the owner of such property. Fines shall relate to the person of the Member concerned and shall not be recoverable from successors in title of a former Member subsequent to transfer of the property previously owned by such Member.
- 13.2 Garden Cities Incorporated Association not for Gain in its capacity as developer and owner of unsold and unregistered erven within the Development shall not be liable to pay levies to the Association on the basis of its ownership of any erf until and unless the house on such unsold and unregistered erf has been completed and is lawfully occupied with the approval of Garden Cities.

Garden Cities or its contractors shall contribute *pro rata* to the cost of joint security measures (such as regular patrols by security guards) that the Association and Garden Cities may share relating to phases partly handed over and partly under construction pending completion of such phase.

- 13.4 Garden Cities Incorporated Association not for Gain in its capacity as developer and owner of unsold and unregistered erven within the Development shall upon the transfer of an erf from Garden Cities to such purchaser thereof, in its entire discretion be entitled to issue on behalf of the Association and on the letterhead of the latter, any consent or waiver that may be required by the deeds office, by any bank registering a bond over the property or by any other competent authority relating to such transfer or bond, and the Association or its agents shall not be entitled to raise any fee or charge on the basis of such consent or waiver.
- 13.5 Garden Cities Incorporated Association not for Gain in its capacity as developer and owner of unsold and unregistered erven within the Development shall, as long as it appoints members of the committee in terms of clause 5.5, have the right to veto any resolution of the committee or of Members at a special or general meeting if in its entire discretion such resolution will adversely affect the building and delivery of houses in the Development until completion thereof.

## RULES

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1. Members who link burglar alarms to a monitoring system must in the first instance instruct the monitoring service to contact such owner/resident in the event of an alarm.
2. The prior consent in writing shall be required from the Association (or an architect nominated by it) for the following alterations, additions, demolitions, decorations or reconstructions:
  - (a) The erection of wendy houses, gazebos or lapas, whether prefabricated or built in situ;
  - (b) The conversion of single storey buildings to double or multi-storey;
  - (c) The erection of flat roof structures, carports and shades, or pergolas;
  - (d) The erection of Granny flats, garden walls and fences, or any structure housing animals or birds;
  - (e) Any deviation from the external colour scheme and materials used on the Property, including when effecting any repairs or maintenance;
  - (f) Any change in the design, architectural treatment, materials and finishes used in any alteration, addition, decoration, or reconstruction;
  - (g) Any solar heating system, burglar bars, security gates electrical and other security fencing or security equipment or installation, including the style, pattern and colour thereof. Provided that the required consent shall not be unreasonably withheld where the proposed installation conforms to the guidelines issued by the Home Owners Association.

The fee of the architect appointed by the Association (currently R300,00 plus VAT per application or per inspection) shall be payable by the applicant. The architect's fee shall increase to R1000,00 plus VAT if the works have already commenced or have been completed at the time of application. The architect shall furthermore at the cost of the Purchaser inspect major building work (i.e. all work not classified as minor works) at roof height stage and upon completion to ensure compliance.

3. No tree on any erf may be chopped down, killed or materially diminished in any way by or on behalf of any Member without the prior written consent of the Committee.

## PLAN OF DEVELOPMENT

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## CONDUCT RULES

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1. No Member may keep or allow on his/her erf any dog of a breed known to be large, noisy, quarrelsome, dangerous or a nuisance; or any other pets such as pigeons, fowl or geese of any kind or any other animal, reptile or bird which may endanger local fauna and flora.
2. No Member may play loud music, continue with any boisterous function or make any noise between 24h00 on Saturdays or 22h00 on any other day and 08h00 on the following day.
3. Each Member shall ensure that water from irrigation or from other use in and about his/her erf does not spill into adjacent erven and does not cause any nuisance or disturbance to neighbours.
4. Members shall promptly remove or cause to be removed all garden refuse. The Member concerned shall, at the request of the Committee, remove any branches or plants overhanging onto or over any adjacent erf.
5. No Member shall without the prior approval in writing of the Committee plant or allow any weeds, invading plants, poisonous plants or trees or shrubs which in the sole discretion of the Committee may cause nuisance or other problems. (The Committee is unlikely to permit any "nuisance" tree such as Port Jackson, silky oak, rubber tree, weeping willow or any other tree or shrub known to cause problems with drainage, foundations or water pipes, or that sheds excessive quantities of leaves, branches or seeds).
6. Each Member shall forthwith inform the Committee of the sale of his/her property in the Development and stipulate the anticipated date of registration of transfer as well as the identity of the purchaser.
7. No Member shall allow the exterior of the buildings on the property registered in his/her name to deteriorate or become dirty or untidy and shall be obliged to maintain same in good order and condition.
8. No change to the external colour scheme shall be permitted without the prior written permission of the Committee.
9. No alteration or addition to any structure on the property registered in the Member's name shall be permitted unless the Committee has approved plans for such alteration or addition in writing, prior to the commencement thereof.

10. Each Member acknowledges that the property purchased by him/her forms part of a group of houses designed to form an aesthetic entity and this shall be the primary consideration of the Committee in deciding whether or not to grant any permission sought in terms hereof. Any decision by the Committee in this regard shall be final and binding on Members.
11. All private garden areas shall be kept in a neat and tidy state by the Member who owns such garden area.
12. No Member shall park or leave any derelict vehicle, boat or caravan on his/her property in a position where it is visible from any street or public place.
13. No Member shall do, or cause to be done, on his/her property anything that is a source of injury or disturbance to any neighbour or other resident in the Development.
14. No Member shall conduct any profession, business or home industry from his/her erf without the prior approval in writing of the Committee. (The Committee is unlikely to permit any trade or business involving visits by a significant number of clients or customers, the regular delivery of goods to or from the Development, requiring extensive changes to the structure or layout of the building on the erf concerned, or which involves any organic or chemical substance or any other aspect which may cause disturbance or intrude upon the privacy of Members.)