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PLANNING AND ENVIRONMENT - BLAAUWBERG REGION

24 November, 2003

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Att: Riaan Kunz

Dear Sir

**HOME OWNERS ASSOCIATION CONSTITUTION: "BIRKDALE", ERF 33405,
PRECINCT C, ROYAL ASCOT DEVELOPMENT, MILNERTON**

This Council has, in terms of Section 29(2)(iii) of Ordinance No. 15 of 1985, approved the constitution submitted in respect of the Home Owners' Association, a copy of which is attached hereto.

Yours faithfully


for **C.G. RUDMAN**
MANAGER - URBAN PLANNING AND ECONOMIC DEVELOPMENT
BLAAUWBERG REGION

BIRKDALE At Royal Ascot

HOME OWNER'S ASSOCIATION CONSTITUTION

1. PRELIMINARY

1. The rules contained herein shall not be added to, amended or repealed without the written approval of the local authority.

2. INTERPRETATION

- 2.1 The following words shall, unless the context requires, have the meanings hereinafter assigned to them:

"accounting officer" – a person who, in terms of Section 60(2) of the Close Corporation Act, 1984, is qualified to perform the duties of an accounting officer;

"auditor" – an auditor qualified to act as such under the Public Accountants and Auditors Act, 1951 (Act No. 51 of 1951);

"association" – Birkdale Home Owner's Association;

"chairman" – the Chairman of the Trustee Committee;

"development" – the Unit Erven and the Private Area as shown on General Plan 4756/2003 being sub-division of Erf 32405 Milnerton known as Birkdale;

"developer" – Birkdale Developments CC;

"local authority" – the City of Cape Town, or any other local authority established or to be established to succeed in whole or in part such authority in exercising control over the local area of which the Development forms part;

"ordinance" – the Land Use Planning Ordinance (Ordinance 15 of 1985), as amended from time to time, as well as any regulations in force thereunder;

"member" – every registered owner of an erf. If a member consists of more than one person, such persons shall be jointly and severally liable *in solidum* for all obligations of a member in terms of this constitution;

"month" – calendar month;

"office" – the registered office of the Association being 22 Popham Road, Blaauwbergstrand, 7439;

"original erven" – Every Erf in the Development known as Birkdale also known as Precinct C 3 Royal Ascot Milnerton or any part of any of it;

“private area” – Erf 32481 Milnerton being the private road, in this development inclusive of all services thereon or there under;

“registered owner” – the registered owners of a Unit Erf;

“trustee” – a Member of the Trustee Committee;

“trustee committee” – the Board of Trustees of the Association;

“unit erven” – the residential erven resulting from the subdivision of Precinct C 3 Royal Ascot Milnerton, in the development known as Birkdale;

“year” – calendar year.

- 2.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and *vice versa*, and words importing any one gender shall include the other gender.
- 2.3 Words and expressions to which a meaning has been assigned in the Ordinance shall bear the meanings so assigned to them.

3. PURPOSE

MAIN OBJECTS

In accordance with the provisions of Section 29 of the Ordinance, the main objects of the Association are:

- 3.1 the care, maintenance, upkeep, repair and proper control of the Private Area, control over the design and maintenance of buildings and other improvements or services both erected or installed on Unit Erven and on the Private Area and the promotion, advancement and protection of the communal and group interests of the Members generally;
- 3.2 without limiting the generality of the foregoing:
 - 3.2.1 the maintenance and repairs to the Private Area shall be the sole responsibility of the Association;
 - 3.2.2 all maintenance, servicing and repairs to the stormwater and water supply piping, sewers and roads shall be the responsibility of the Association except for the electricity services, responsibility of which will be under the control of the City of Cape Town Electricity Department or its successors in title;
 - 3.2.3 to take transfer of the private area.

4. MEMBERSHIP

- 4.1 The Home Owners Association shall become into existence with the registration of the transfer of the first Erf;

- 4.2 Membership of the Association shall be compulsory for every registered owner of a Unit Erf and the purchaser of a Unit Erf will become a Member on registration of transfer of the Unit Erf purchased in his name.
- 4.3 Membership of the Association shall be limited to the registered owners of the Unit Erven provided that where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one Member of the Association.

ROYAL ASCOT MASTER PROPERTY OWNERS ASSOCIATION

It is recorded that a master property owners association shall be established for the benefit of all owners of erven or sectional title units within the Royal Ascot Development to control and maintain security, internal public roads, public and private open spaces, nature reserves, road reserves and other services and amenities within the development.

The purchaser shall become a member of the Royal Ascot Master Property Owners Association against transfer of the property and agrees to remain a member for as long as the Purchaser is the registered owner thereof.

A Member shall not be entitled to sell or transfer a Unit Erf without the prior written consent of the Association, which consent may only be withheld for the reasons described in 4.6 below, provided however that this clause will not apply to the Developer who may without such consent sell or transfer any Unit Erf.

To comply with paragraph 4.4 any Member, except the Developer, who wishes to sell his Unit Erf to a purchaser ("transferee") must in writing apply in a form as prescribed from time to time by the Association for consent by the Association to the sale of his Unit Erf. The aforesaid application must *inter alia* contain a full description of the identity and nature of the Purchaser and in the event that the Purchaser is a legal person or Trust any other particulars that the Association may require in respect of the members of the Purchaser.

- 4.4 The Association will grant its consent referred to in paragraph 4.4 if:
- 4.4.1 the transferee has in writing applied to become a Member of the Association, has in writing agreed to abide by the terms of this Constitution and all rules and all regulations passed by the Association or the Trustees and has in writing agreed that transfer of a Unit Erf into his name will ipso facto constitute him as a Member of the Association; and
- 4.4.2 the Member who wishes to pass transfer has paid to the Association all amounts due or that which may become due and owing to the Association by him prior to the expected transfer date.
- 4.5 Should the Association provide its consent registration of transfer will *ipso facto* constitute the transferee as a Member of the Association.
- 4.6 Notwithstanding anything to the contrary in these presents any person who becomes a Registered Owner of a Unit Erf without paragraph 4.6 having been complied with will from date of registration of transfer of the Unit Erf in his name be accepted by the Association as a Member.
- 4.7 The registered Owner of a Unit Erf may not resign as a Member of the Association.

11. DOMICILIUM CITANDI ET EXECUTANDI

- 5.1.1 The trustees shall from time to time determine the address constituting the *domicilium*

citandi et executandi of the Association.

12. TRUSTEES OF THE ASSOCIATION

- 6.1 The number of trustees shall be determined from time to time by the members of the Association in general meeting, provided that there shall be no less than two trustees.
- 6.2 With effect from the date of the establishment of the Association, all owners shall be trustees who shall hold office until the first general meeting of the members of the Association as contemplated in rule 11.1 whereupon they shall retire but shall be eligible for re-election.
- 6.3 The chairman of the trustees referred to in rule 6.2 shall be the developer concerned or his nominee, who shall hold office until the general meeting referred to in the said rule, when he shall retire as a trustee and as a chairman, but shall be eligible for re-election in terms of rule 8.6.

Election of Trustees

- 6.4 Save for the provisions of rule 6.2 the trustees shall be elected at the first annual general meeting and thereafter at each subsequent annual general meeting and shall hold office until the next succeeding annual general meeting, but they shall be eligible for re-election if so nominated.

Nominations

- 6.5 Nominations by owners for the election of trustees at any annual general meeting shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the domicile of the Association not later than 48 hours before the meeting – provided that trustees are also capable of being elected by way of nomination with the consent of the nominee given at the meeting itself should insufficient written nominations be received to comply with rule 6.1.

Vacancy in Number of Trustees

- 6.6 The trustees may fill any vacancy in their number. Any trustee so appointed 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.

Validity of Acts of Trustees

- 6.7 Any act performed by the trustees 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 trustee, be as valid as if such trustee had been duly appointed or had duly continued in office.

Indemnity

- 6.8.1 (a) Subject to the provisions of sub-rule (b), every trustee, agent or other officer or servant of the Association shall be indemnified by the Association against all costs, losses, expenses and claims which he may incur or become liable to by reason of any act done by him in the discharge of his duties, unless such costs, losses, expenses or claims are caused by the *mala fide* or grossly negligent act or omission of such person.
- (b) It shall be the duty of the trustees to pay such indemnity out of the funds of the Association.

- 6.8.2 The indemnity referred to in sub-rule (a) shall not apply in favour of any managing agent appointed in terms of rule 9.2.

13. DISQUALIFICATION OF TRUSTEES

Removal from Office

- 7.1 A Trustee shall cease to hold office as such –
- (a) if by notice in writing to the Association, he resigns his office;
 - (b) if he is or becomes of unsound mind;
 - (c) if he surrenders his estate as insolvent, or if his estate is sequestrated;
 - (d) if he is convicted of an offence which involves dishonesty;
 - (e) if by resolution of, as a general meeting of the Association, he is removed from his office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
 - (f) if he is or becomes disqualified in terms of section 218 or 219 of the Companies Act, 1973, from being appointed or acting as a director or as a company.

Replacement

- 7.2 The Association may, at a general meeting, appoint another trustee in the place of any trustee who has ceased to hold office in terms of rule 7.1 for the unexpired part of the term of office of the trustee so replaced.

8. MEETING OF TRUSTEES

QUORUM: CHAIRMAN: VOTING

When to be held and notice

- 8.1 Subject to the provisions of rule 8.2 below, the trustees may give notice convening meetings, meet together for the recognition of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give notice of a meeting of trustees to any trustee for the time being absent from the Republic, but notice of any such meeting shall be given to his alternate, if he has appointed one, where such an alternate is in the Republic.
- 8.2 A trustee may at any time convene a meeting of the trustees by giving to the other trustees not less than seven days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting – provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.

Quorum

- 8.3 At a meeting of the trustees, 50 percent of the number of trustees, but not less than two, shall form a quorum.
- 8.4 If the number of trustees falls below the number necessary to form a quorum, the remaining trustee or trustees may continue to act, but only for the purpose of appointing or co-opting additional trustees to make up a quorum or for the purpose of convening a general meeting of owners.
- 8.5 If at any meeting of trustees a quorum is not present within thirty minutes of the appointed time of the meeting, the meeting shall stand adjourned to the next business day at the same time, and the trustees then present, who shall not be less than two, shall form a quorum.

Chairman

- 8.6 At the commencement of the first meeting of trustees after an annual general meeting at which trustees have been elected, the trustees shall elect a chairman from among their number who shall hold office as such until the end of the next annual general meeting of the members of the Association and who shall have a casting, as well as a deliberative, vote, save where there are only two trustees.
- 8.7 The trustees at a trustees meeting, or the Association at a special meeting, in respect of either of which notice of the intended removal from office of the chairperson has been given, may remove the chairperson from his or her office.
- 8.8 If any chairman elected in terms of rule 8.6 vacates his office as chairman or no longer continues in office by virtue of the provisions in rule 8.7, the trustees shall elect another chairman who shall hold office as such for the remainder of the period of office of the first-mentioned chairman, and who shall have the same rights of voting.
- 8.9 If any chairman vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the trustees present at such meeting shall choose another chairman for such meeting who shall have the same rights of voting as the chairman.

Voting

- 8.10 All matters at any meeting of the trustees shall be determined by a majority of the votes of the trustees present and voting.
- 8.11 A trustee shall be disqualified from voting in respect of any contract, or any litigation or proposed litigations, with the Association, by virtue of any interest he may have therein.
- 8.12 As a resolution in writing signed by all the trustees for the time being present in the Republic and being not less than are sufficient to form as a quorum, shall be as valid and effective as if it had been passed as at a meeting of the trustees duly convened and held.

9. THE FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

General

- 9.1 The duties and powers of the Association shall, subject to the provisions of the Ordinance and these rules, and subject to any restriction imposed or direction given at a general meeting of the owners of sections, be performed or exercised by the trustees of the Association holding office in terms of these rules.

Powers

- 9.2 Subject to any restriction imposed or direction given at a general meeting of the Association, the powers of the trustees shall include the following:
- (a) To appoint for and on behalf of the Association such agents and employees as they deem fit in connection with –
 - (i) the control, management and maintenance of any building, private erven and amenities arising from the subdivision of precinct C 3 Royal Ascot and
 - (ii) the exercise and performance of any or all the powers and duties of the Association;
 - (b) to delegate to one or more of the trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation.

Contracts and Regulations

- 9.3 The Trustee Committee may from time to time:
- (a) make regulations governing *inter alia* the Member's rights of use, occupation and enjoyment of the Private Area;
 - (b) each Member undertakes to the Association that he will comply with:
 - the provisions of this Constitution;
 - any regulations made in terms of rule 9.3(a).

- 9.4 The trustees may not make loans on behalf of the Association to owners of units or to themselves.

Signing of Instruments

- 9.5 No document signed on behalf of the Association shall be valid and binding unless it is signed by a trustee and the managing agent, referred to in rule 4.6, or by two trustees.

10. DUTIES OF TRUSTEES

Statutory and General Duties

- 10.1 Without detracting from the scope of the additional duties specified in rules 10.3 to 10.23 inclusive, and subject to the provisions of such rules, the trustees shall perform the functions entrusted to the Association in terms of section 29 of Ordinance 15 of 1985 and in this constitution and described under the clause heading "Main Object".
- 10.2 The trustees shall do all things reasonably necessary for the enforcement of the rules in force.

Insurance

- 10.3 (a) At the first meeting of the trustees or so soon thereafter as is possible and annually thereafter, the trustees shall take steps to insure any buildings and improvements to the private area, to the full replacement value thereof against –

14. fire, lighting and explosion;

- (ii) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political recognized ;
- (iii) storm, tempest and flood;
- (iv) earthquake;
- (v) aircraft and other aerial devices or articles dropped therefrom;
- (vi) bursting or overflowing of water tank, apparatus or pipes;
- (vii) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
- (viii) housebreaking or any attempt thereat;
- (ix) loss of occupation or loss of rent in respect of any of the above risks;
- (x) such other perils or dangers as the trustees or any owner may deem appropriate.

- 10.4 At the first meeting of the trustees or as soon thereafter as is possible, the trustees shall take all reasonable steps –

- (a) to insure the owners and the trustees and to keep them insured against liability in respect of:

- (i) death, bodily injury or illness, and
- (ii) loss of or damage to property,

occurring in connection with the private area for a sum of liability of not less than Rand, which sum may be increased from time to time as directed by the owners in general meeting, and

Levies

- 10.5 The Trustee Committee shall from time to time charge levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by way of maintenance, repair improvement and keeping in order and condition of the Private Area, access roads over adjoining land, conduits, pipelines and other areas and structures on adjoining land which is also used by the Association and/or for payment of all rates and other charges payable by the Association in respect of the Private Area and/or, if applicable, for the payment of electricity consumed by street lighting and other lighting on the Private Area and any other electricity consumed or used on the Private Area and/or for the services rendered to it and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the Private Area and the Association's affairs. In calculating levies the Trustee Committee shall take into account income, if any, earned by the Association.

- 10.6 At every annual general meeting the Association shall approve, with or without amendment, the estimate of income and expenditure referred to in rule 10.5 and shall determine the amount estimated to be required to be levied upon the owners during the ensuing financial year.
- 10.7 Within fourteen days after each annual general meeting the trustees shall advise each owner in writing of the amount payable by him or her in respect of the estimate referred to in rule 10.4.2, whereupon such amount shall become payable in instalments, as determined by the trustees.
- 10.8 The trustees may from time to time, when necessary, make special levies upon the owners or call upon them to make special contributions in respect of all such expenses as are mentioned in rule 10.5 above and such levies and contributions may be made payable in one sum or by such instalments and at such time or times as the trustees shall think fit.
- 10.9 An owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such owners to the Association or in enforcing compliance with these rules, the conduct rules or obligations of the Association as defined in section 29 of the Ordinance.

Record of Rules and their Availability

10.10 The trustees shall keep a complete record of all rules in force from time to time.

10.11 The trustees shall on the application of –

- (a) an owner of an erf;
- (b) an occupant of an erf;
- (c) the prospective purchaser of an erf;
- (d) the holder of any registered mortgage bond;
- (e) the managing agent, and
- (f) the auditor or the accounting officer,

supply to any such person a copy of all rules in force, and may require them to pay a reasonable charge recognize.

Minutes

10.12 The trustees shall –

- (a) keep minutes of their proceedings;
- (b) cause minutes to be kept of all meetings of the Association in a minute book of the Association kept for the purpose;
- (c) include in the minute book of the Association a record of every unanimous resolution, special resolution and any other resolution of the Association.

10.13 The trustees shall keep all minute books in perpetuity.

- 10.14 On the written application of any owner or registered mortgagee of a unit, the trustees shall make all minutes of their proceedings and the minutes of the Association available for inspection by such owner and mortgagee.

Books of Account and Records

- 10.15 The trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association, including --
- (a) a record of the assets and liabilities of the Association;
 - (b) a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
 - (c) a register of owners of erven and of all other persons having real rights in such units (insofar as written notice shall have been given to the trustee by such owners or other persons) showing in each case their addresses; and
 - (d) individual ledger accounts in respect of each owner.
- 10.16 On the application of any owner or of the managing agent, the trustees shall make all or any of the books of account and records available for inspection by such owner or managing agent.
- 10.17 The trustees shall cause all books of account and records to be retained for a period of six years after completion of the transactions.

Annual Financial Estimate, Financial Statement and Report

- 10.18 Before every annual general meeting, the trustees shall cause to be prepared an recogniz estimate of the anticipated income and expenses of the Association during the ensuing financial year, which estimate shall be laid before the annual general meeting for consideration in terms of rule 12.2 hereof.
- 10.19 The estimate of expenses referred to in rule 10.18 shall include a reasonable provision for contingencies.
- 10.20 The trustees shall cause to be prepared a financial statement in conformity with generally accepted accounting practice, which statement shall fairly present the state of affairs of the Association and its finances and transactions as at the end of the financial year concerned.
- 10.21 The trustees shall cause copies of the schedules, estimate and audited statement referred to in rules 10.18 and 10.20 to be delivered to each owner, and to any mortgagee which has advised the Association of its interest, at least fourteen days before the date of the annual general meeting at which they are to be considered.
- 10.22 Delivery under the last preceding sub-rule shall be deemed to have been effected if the documents referred to are sent by prepaid post addressed to the owner at his *domicilium* referred to in rule 5, and to any mortgagee as aforesaid at the address of such mortgagee as reflected in the records of the Association.

Deposit and Investment of Funds

- 10.23 The trustees shall cause all monies received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank or building society in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of the Association or investment in terms of rule 4.3.

15. MEETING OF OWNERS

GENERAL MEETINGS

When to be Held

- 15.1 The first meeting of owners shall be held within sixty days of the establishment of the Association, at least seven days' notice of which shall be given in writing, and which notice shall be accompanied by a copy of the agenda of such meeting and details of the items referred to in rule 11.2.
- 15.2 The agenda for the meeting convened under rule 11.1 shall comprise at least the following:
- (i) the consideration, confirmation or variation of the insurances effected by the developer or the Association;
 - (ii) the consideration, confirmation or variation of an recogniz estimate of the anticipated income and expenses of the Association for the ensuing financial year;
 - (iii) the consideration and approval, with or without amendment, of the financial statements relating to the management, control and administration of the building from date of establishment of the Association to the date of notice of the meeting referred to in rule 11.1;
 - (iv) the taking of cession of such contracts relating to the management, control and administration of the building as may have been entered into by the developer for the continual management, control and administration of the building and the common property and in respect of which the developer shall be obliged to submit such contracts to the meeting;
 - (v) the appointment of an account officer;
 - (vi) the election of trustees; and
 - (vii) determination of the *domicilium citandi et executandi* of the Association.
- 15.3 An annual general meeting shall be held within four months before the end of each financial year.

- 15.4 Unless otherwise decided at a general meeting or by the trustees, the financial year of the Association shall run from the first day of March of each year to the last day of February of the following year.
- 15.5 The trustees may, whenever they think fit, and shall upon a request in writing made by a minimum of 25% of the owners, convene a special general meeting. If the trustees fail to call a meeting so requested within fourteen days of the request, the owners shall be entitled themselves to call the meeting.

Notice of General Meetings

16. Unless otherwise provided for in the Act, at least fourteen days' notice of every general meeting specifying the place as determined by special resolution of members of the Association, the date and the hour of the meeting and, in the case of special business, the general nature of such business, shall be given –
- (a) to all owners; and
 - (b) to all holders of registered mortgage bonds over units who have advised the Association of their interests.
17. The holders of registered mortgage bonds shall have the right to attend the meeting herein referred to and to speak at such meetings, but shall not be entitled to vote thereat.
- 11.8 The notice referred to in rule 11.6 shall be deemed to have been sufficiently given and delivered if delivered in accordance with rule 10.21.
- 11.9 The notice referred to in rule 11.6 shall be accompanied by the documents referred to in rule 10.21, except in the case of a meeting contemplated in rule 10.8 or a special general meeting.
- 11.10 Inadvertent omission to give the notice referred to in rule 11.6 to any person entitled to such notice or the non-receipt of such notice by such person shall, save in the case of the persons contemplated in rule 11.6(b) not invalidate any proceedings at any such meeting.
- 11.11 A general meeting of the Association may be called on shorter notice than that specified in rule 11.6, provided it is so agreed by all persons entitled to attend.
- 11.12 A special general meeting for the purposes of passing a unanimous or special resolution may be convened for a date 30 days or less after notice has been given to all the members of the Association if, in the opinion of the trustees, it is necessary due to the urgency of a matter or due to the specific nature of a matter to convene the meeting with such shorter period of notice.

18. PROCEEDINGS AT GENERAL MEETINGS

Ordinary and Special Business

- 18.6 If, at any meeting, the chairman of the trustees is not present within fifteen minutes after the time appointed for the holding of the meeting, or if he is unwilling or unable to act as chairman, the members present shall elect one of their number to be chairman.

19. VOTING AT GENERAL MEETINGS

Poll

- 19.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such a meeting.
- 19.2 Unless a poll be so demanded, a declaration by the chairman that a resolution has on the show of hands been carried, shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- 19.3 A demand for a poll may be withdrawn.
- 19.4 A poll, if demanded, shall be taken in such a manner as the chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.

Votes

- 19.5 On a show of hands the owner or owners of an erf, or if the owner is a juristic person, its proxy, shall have one vote – provided that the chairman shall be entitled, in his discretion, to change the manner of voting to one by poll and not by show of hands.

No Vote in Certain Circumstances

- 19.6 An owner shall not be entitled to vote at any general meeting if –
- (a) any contributions payable by him in respect of his erf have not been duly paid, or
 - (b) he persisted in breach of any of the conduct rules of the Association notwithstanding written warning by the trustees to refrain from breaching such rule – provided that any mortgagee shall be entitled to vote as such owner's proxy at any general meeting, even though paragraph (a) or the foregoing provisions of this paragraph may apply to such owner.

Joint Voters

- 19.7 When two or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by a person (who may not be one of them) jointly appointed by them as their proxy.
- 19.8 Notwithstanding sub-rule (1), where two or more persons are entitled to exercise one vote jointly, any one of them may demand a poll.

Proxies

- 19.9 Votes at a general meeting may be cast either personally or by proxy, whether on a poll or on a show of hands.
- 19.10 A proxy shall be appointed in writing under the hand of the appointer, or his agent, duly appointed in writing and shall be handed to the Chairman prior to the commencement of the meeting – provided that the foregoing provisions shall not apply in the case of any proxy created and contained in any registered mortgage bond, if such mortgage bond is produced at the meeting.

20. DUTIES OF OWNERS**Statutory and General**

- 14.1 An owner –
- (i) shall not use his erf or permit it to be used in such a manner or for such purpose as shall be injurious to the reputation of the development;
 - (ii) shall not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any licence relating to or affecting the occupation of the erf, or the carrying on of business on the property, or so contravene or permit the contravention of the conditions of title applicable to his erf or any other erf;
 - (iii) shall not make alterations which are likely to impair the use and enjoyment of other erven or the private area;
 - (iv) shall not do anything to his erf which is likely to prejudice the harmonious appearance of the building;
 - (v) shall not use any private area or portion thereof for any purpose other than intended in terms of its zoning and by resolution of the Association;
 - (vi) shall not construct or place any structure or building improvement on his erf without the prior written consent of the trustees and the local authority.

Design Manual

- 14.2 All buildings or improvements constructed on any Unit Erf must comply with the provisions of the Design Manual as annexed hereto.

Fence

- 14.3 No Member will be entitled to demolish, paint or change or in any way decorate or add to any part or portion of any fence that the Developer may construct on the perimeter of the development.
- 14.4 The Trustee Committee will be the only persons entitled to perform any of the actions referred to in 14.3 above to or in respect of such fence.

Colour Scheme

- 14.5 No alteration or addition or change to the colour scheme may be made to any building or structure on the unit erven without the consent of all the members of the Home Owner's Association.

Binding Nature

- 14.6 The provisions of these rules and of the conduct rules, and the duties of the owner in relation to the use and occupation of sections and common property shall be binding on the owner of any erf and any lessee or other occupant of any such property and it shall be the duty of the owner to ensure compliance with the rules by his lessee or occupant, including employees, guests and any member of his family, his lessee or his occupant.

Owner's Failure to Maintain

- 14.7 If an owner fails to repair or maintain his erf in a state of good repair and any such failure persists for a period of thirty days after the giving of written notice to repair or maintain given by the trustees or the managing agent on their behalf, the Association shall be entitled to remedy the owner's failure and to recover the reasonable cost of doing so from such owner.
- 14.8 Any dispute between the Association and an owner or between owners shall be determined in terms of these rules.
- 14.9 If such dispute arises, the aggrieved party shall notify the other interested party or parties in writing and copies of such notification shall be served on the trustees. Should the dispute or complaint not be resolved within 14 days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.
- 14.10 Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
- 14.11 Arbitration shall be held informally or otherwise, as the arbitrator may determine. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. Where possible the arbitration shall be concluded within 21 days after the matter has been referred to for arbitration in terms of sub-rule (2) or security for costs has been furnished.
- 14.12 The arbitrator shall make his or her award within 7 days from the date of the completion of the arbitration and shall in making his or her award, have regard to the principles laid down in terms of these rules. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he or she may determine and as he or she in his or her discretion, may deem appropriate having regard to the outcome of the arbitration.
- 14.13 The decision of the arbitrator shall be final and binding and may be made an order of the High Court upon application of any party to be affected by the arbitration.

21. STATUS OF THE ASSOCIATION

The Association shall be an association:

- 15.1 with legal personality, capable of suing and being sued in its own name;
- 15.2 none of whose members in their personal capacity shall have any right or title in the funds or assets of the Association, which shall vest in and be controlled by the Committee in terms hereof; and
- 15.3 not for profit but for benefit of the owners and occupants of properties in the development.

16. GENERAL

Commencement Date:

- 16.1 The Association has contemplated in terms of Section 29 of the Land Use Planning Ordinance shall take transfer of precinct C 3 Royal Ascot also known as Birkdale Village simultaneously with the registration of the first erf in the development.
- 16.2 This Constitution shall come into force simultaneously with the first registration of an erf in the development known as Birkdale.

17. PRIVATE AREA (COMMON PROPERTY)

Neither the whole nor any portion of the common property shall be:

- 17.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 17.2 mortgaged; or
- 17.3 subjected to any rights, whether registered in the Deeds Registry or not, of use, occupation or servitude other than the general servitude in favour of the local authority for services (and save those enjoyed by the members of the Association in terms hereof);

Without the section of a special restriction of the Association, provided that Erf 32481 Milnerton shall not be sold, let, alienated, otherwise disposed of, transferred or mortgaged at all without the written consent of the local authority.

HOUSE RULES

Animals, Reptiles and Birds

1. (1) An owner or occupant shall not, without the consent in writing of the trustees, which approval may not be unreasonably withheld, keep any animal, reptile or bird within the development.
- (2) When granting such approval, the trustees may prescribe any reasonable condition.
- (3) The trustees may withdraw such approval in the event of any breach of any condition prescribed in terms of sub-rule (2).

Refuse Disposal

2. (1) An owner or occupier of a section shall –
 - (a) maintain in a hygienic and dry condition a receptacle for refuse within his erf on such part of the private area as may be authorised by the trustees in writing;
 - (b) ensure that before refuse is placed in such receptacle, it is securely wrapped, or, in the case of tins or other containers, completely drained;
 - (c) for the purpose of having the refuse collected, place such receptacle within the area and at the times designated by the trustees;
 - (d) when the refuse has been collected, promptly return such receptacle to his section or other area referred to in paragraph (a).

Vehicles

3. (1) No owner or occupier shall park or stand any vehicle upon the private area or permit or allow any vehicle to be parked or stood upon the private area without the consent of the trustees in writing.
- (2) the trustees may cause to be removed or towed away, at the risk and expense of the owner of the vehicle, any vehicle parked, standing or abandoned on the private area without the trustees consent.
- (3) Owners and occupiers of property shall ensure that their vehicles, and the vehicles of their visitors and guests do not drip oil or brakefluid on the common property or in any other way deface the common property.
- (4) No owner or occupier shall be permitted to dismantle or affect major repairs to any vehicle on any portion of the private area or on his property.

Damage, Alterations or Additions to the Private Area

4. (1) An owner or occupier of an erf shall not mark, paint, drive nails or screws or the like into, or otherwise damage, or alter, any part of the private area including back stoep areas and/or braai areas without first obtaining the written consent of the trustees and municipality.

Appearance from Outside

5. The owner or occupier of a property shall not place or do anything on any part of the private area including balconies, patios, stoeps and gardens which, in the discretion of the trustees, is aesthetically displeasing or undesirable when viewed from the outside of the property.

Signs and Notices

6. No owner or occupier of an erf shall place any sign, notice, billboard or advertisement of any kind whatsoever on any part of the private erven or his/her property so as to be visible from outside the property without the written consent of the trustees first having been obtained.

Littering

7. An owner or occupier of an erf shall not deposit, throw or permit or allow to be deposited or thrown on the private area any rubbish, including dirt, cigarette butts, food scraps or any other litter whatsoever.

Laundry

8. An owner or occupier of a section shall not, without the consent in writing of the trustees, erect his own washing lines, nor hang any washing or laundry or any other items on any part of the building or the common property so as to be visible from outside the buildings or from any other erven.

Storage of Inflammatory Material and Other Dangerous Acts

9. An owner or occupier shall not store any material, or do or permit or allow to be done, any other dangerous act on his property or on the private area which will or may increase the rate of the premium payable by the Association on any insurance policy.

Letting of Properties

10. All tenants of properties and other persons granted rights of occupancy by any owner of the relevant erf are obliged to comply with these conduct rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy.

/zt/21.05.02

