

# **CONSTITUTION OF THE TIERBOSKLOOF HOME OWNERS ASSOCIATION**

**APRIL 1999**

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## INDEX

Clause	Description	Page
1	Name	1
2	Definitions	1
3	Headnotes	3
4	The Status of the Association	4
5	Objects, Powers, and Duties of the Association	4
6	Members	6
7	Executive Committee	7
8	Vacation of Office by Excom Members	7
9	Validity of Acts of Excom Members	8
10	Excom Meetings and Procedures Thereat	8
11	Powers and Duties of Excom	10
12	Remuneration of Excom Members	11
13	Indemnity	12
14	Annual General Meeting of the Association	12
15	General Meetings and Notice of Meetings	13
16	Quorum	14
17	Voting	14
18	Agenda	15
19	Proxy	16
20	Levies	16

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<b>21</b>	Special Levies	18
<b>22</b>	Water Accounts	19
<b>23</b>	Accounts of the Association	19
<b>24</b>	Domicilium	20
<b>25</b>	Amendments to the Constitution	21
<b>26</b>	Communal and Private Areas	22
<b>27</b>	Subdivision	23
<b>28</b>	Submission and Approval of Plans	23
<b>29</b>	Density Controls	24
<b>30</b>	Design Manual, Environmental Contract, Code of Conduct	25
<b>31</b>	Obligations of Council, Developer and Association	25
<b>32</b>	Breach	25
<b>33</b>	Arbitration and Legal Process	26

# CONSTITUTION OF THE TIERBOSKLOOF HOME OWNERS ASSOCIATION

## 1. NAME

The name of the association shall be:

**THE TIERBOSKLOOF HOME OWNERS ASSOCIATION**

## 2. DEFINITIONS

2.1 In this Constitution, unless the context indicates the contrary:

2.1.1 **"Association"** shall mean the Tierboskloof Home Owners Association.

2.1.2 **"Building Restriction Area"** shall mean any portion of a Member's erf registered in such Member's name, which is subject to a servitude in favour of all other Members of the Association restricting such Member from constructing any erection excluding boundary fencing over such restricted area and/or limitation of the height of the building to be erected on such area.

2.1.3 **"Communal Area"** shall mean that portion of Tierboskloof depicted as erf 6272 (roads and road reserve), 6276 (Skaife Path), 6241 and 6262 (Nature Area which includes swimming pool and Skaife Cottage) and 6239 (Pumphouse) on General Plan No. 4890/1992 registered in the name of the Association and to which public right of access is strictly controlled.

2.1.4 **"Private Area"** shall mean that portion of Tierboskloof depicted as erf 6260 (tennis court) and 6285 (squash court) on General Plan No. 4890/1992 registered in the name of the Association and to which the Public shall have no right of access.

- 2.1.5 **"Nature Area"** shall mean erven 6241 and 6262 (which includes Swimming Pool and Skaife Cottage) and remainder erf 1482 (which is zoned Pubic Open Space and over which Council has agreed to grant the Association a lease for 10 years renewable in terms of Clause 31.1.5 (which is Clause 8.6 of the Council Agreement 2.1.21). Referred to in Clause 31 hereof.
- 2.1.6 **"Council"** shall mean the South Peninsula Municipality, previously known as the Western Cape Regional Services Council, or its successors.
- 2.1.7 **"Design Manual"** shall mean the Building and Landscape Design Manual annexed hereto marked "A".
- 2.1.8 **"Environmental Contract"** shall mean the contract which must be signed by a Member, his builder and the Association prior to commencement of any type of building work on any erf and annexed hereto marked "B".
- 2.1.9 **"Tierboskloof"** or **"Estate"** shall mean the subdivision established on remainder erf 1482 Hout Bay, by virtue of General Plan No. 4890 of 1992.
- 2.1.10 **"Member"** shall mean the registered owner of any erf in Tierboskloof.
- 2.1.10.1 Where a Close Corporation, Limited Company, Trust or other such legal entity is the registered owner, all members, directors, trustees, or any persons in an executive position within such legal entity, jointly and severally, shall be liable for the due fulfillment of all obligations arising from such membership.
- 2.1.10.2 Where more than one person are the registered owners of an erf they shall jointly be deemed to be one Member but shall be jointly and severally liable for the due fulfillment of all obligations arising from such membership.

- 2.1.11 **"Excom"** shall mean the Executive Committee constituted in terms of Clause 7 hereof.
- 2.1.12 **"General Meeting"** shall mean either a Special General Meeting or an Annual General Meeting.
- 2.1.13 **"Code of Conduct"** shall mean the rules and regulations of Tierboskloof, annexed hereto marked "C", compliance with which is binding upon all members.
- 2.1.14 **"Road Reserve"** shall mean that portion of erf 6272 abutting both sides of all roads in Tierboskloof which shall not be built upon nor alienated in any way by any Member.
- 2.1.15 **"Constitution"** shall mean this Constitution and Annexures "A", "B" and "C".
- 2.1.16 **"Developer"** shall mean Tigerbush Investments (Proprietary) Limited and its appointed representatives.
- 2.1.17 **"Day"** shall mean consecutive days.
- 2.1.18 **"Month"** shall mean calendar month.
- 2.1.19 **"Year"** shall mean the financial year 1 March to 28 February or such other date as may be agreed by the Association from time to time.
- 2.2 Unless the context otherwise requires, any words importing the singular number shall also include the plural number, and vice versa, and words importing any one gender only shall include the other two genders.

### 3. HEADNOTES

The headnotes to the clauses in this Constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

#### **4. THE STATUS OF THE ASSOCIATION**

The Association shall be an Association with separate legal personality, capable of suing and being sued in its own name, and 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 on behalf of its Members in terms of, and subject to the provisions of the Constitution, and not be for profit, but for the benefit of the Members and/or approved occupants of any erf in Tierboskloof.

#### **5. OBJECTS, POWERS AND DUTIES OF THE ASSOCIATION**

5.1 The objects, powers and duties of the Association are:

- 5.1.1. to control the nature of the buildings to be erected on the erven which comprise Tierboskloof with a view to promoting acceptable aesthetic environmental and architectural styles and design criteria in a rural setting so that Members may derive the maximum collective benefit therefrom;
- 5.1.2. to own and to control, improve and maintain the Communal and Private Areas;
- 5.1.3. to control and maintain all amenities in Tierboskloof including any portion of the hiking and trail system, dams, pools, parks, parking areas, landscaped gardens and any other open spaces established within Tierboskloof not included in the Communal and Private Areas, for the general benefit of Members and/or approved occupants of the properties within Tierboskloof, as are by law or by agreement vested in and/or under the control of Council, the control of which amenities will be delegated to the Association by agreement;
- 5.1.4. to enter into any specific agreement with Council contemplated in Clause 5.1.3. above;
- 5.1.5. to ensure compliance by Members and Council with the conditions of establishment of Tierboskloof with particular reference to conditions dealing with aesthetic and building restrictions and requirements, and where necessary, to ensure that Council enforces such conditions of establishment;

- 5.1.6. to ensure compliance of land usage control in accordance with the Design Manual (Annexure "A") and the terms hereof;
- 5.1.7. to ensure and implement compliance by Members of a co-ordinated landscaping plan for Tierboskloof as contained in the Design Manual (Annexure "A");
- 5.1.8. to oppose the sale, disposal and/or transfer of any erf in the event of any Member having failed to comply with the provisions hereof and any proposed subdivision of any of the erven in Tierboskloof. The written consent of the Association to each sale, disposal and/or transfer of each erf shall be obtained by the Member prior to such sale, disposal and/or transfer;
- 5.1.9. to appoint any professional or committee of professionals to furnish advice with regard to the carrying out of the Association's objects;
- 5.1.10. to employ any agent to carry out the Association's objects;
- 5.1.11. to act as liaison between the Members and Council regarding the landscaping and aesthetic usage of the property and the buildings erected or to be erected on the erven;
- 5.1.12. to implement and control the basic concepts of the development relating to security, landscaping, parking and exterior finishes at all times, as detailed in the Design Manual (Annexure "A");
- 5.1.13. to ensure that all Members maintain their erven in a clean and tidy condition and adhere to the specifications imposed by any Landscape Architects appointed by the Association from time to time;
- 5.1.14. to administer general security arrangements at Tierboskloof, with particular reference to access control of the Public and the nature and type of security to be provided from time to time, excluding the security arrangements of any particular building on an erf;



- 5.1.15. to enact any rule or regulation necessary to ensure the orderly compliance by Members of any of the objects of the Association, and to amend and/or to repeal any rules or regulations so made, which rules and regulations so made, shall be binding upon all Members by virtue of their membership;
  - 5.1.16. to promote and enforce environmental and behavioral standards for community living in Tierboskloof (2.1.10) in accordance with the Constitution in order to enhance and preserve the rural nature of Tierboskloof in such a way that Members may derive the maximum collective benefit therefrom;
  - 5.1.17. to promote all facets of nature conservation and to encourage the reintroduction of indigenous flora and fauna in Tierboskloof;
  - 5.1.18. to take such measures as are necessary from time to time to ensure maintenance of security of Members and their properties within Tierboskloof.
- 5.2 The Association shall have the powers to do such acts as are necessary to accomplish these objects, including the appointment of an Executive Committee (2.1.12) to carry out its objects.

## **6. MEMBERS**

- 6.1 Membership of the Association shall be compulsory and automatic upon the registration of an erf in Tierboskloof into the name of the Member. Members shall be obliged to acquaint themselves and to comply with the provisions of this Constitution, including Annexures <sup>W</sup>A", "B", and "C", by which they are bound.
- 6.2 No Member shall be entitled to cease to be a Member of the Association while remaining the registered owner of an erf in Tierboskloof or be entitled to resign therefrom.
- 6.3 When a Member ceases to be a registered owner of an erf in Tierboskloof he shall ipso facto cease to be a Member of the Association.

- 6.4 Membership shall be transferred by the passing of transfer of any erf in Tierboskloof from the previous Member to the new Member.
- 6.5 Membership shall be transferred by the passing of transfer of any erf in Tierboskloof from the previous Member to the new Member.
- 6.6 Members shall not be entitled to sell, dispose of and/or transfer an erf in Tierboskloof unless it is a condition of the relevant deed of sale, disposal and/or transfer document that the proposed new owner becomes a Member of the Association and is bound by the terms and conditions hereof.
- 6.7 Any Member who acquires ownership of any property in Tierboskloof either by way of sale in execution, insolvency, inheritance, Court Order or otherwise, shall not only be bound by Condition E of the Title Deed but also fully observe, be bound by and comply with all requirements, obligations and duties set out in this Constitution and all its Annexures and any duly ratified additions or amendments thereto including any other agreements entered into by Excom on behalf of the Association and/or for its Members.

## **7. EXECUTIVE COMMITTEE**

Excom shall consist of not less than five or more than seven members who shall be resident at Tierboskloof. Any Excom member shall be eligible for re-election.

## **8. VACATION OF OFFICE BY EXCOM MEMBERS**

8.1 An Excom member shall cease to hold office if:

- 8.1.1 by notice verbally or in writing to Excom he resigns his office;
- 8.1.2 he is or becomes of unsound mind;
- 8.1.3 he surrenders his estate as insolvent or his estate is sequestrated;
- 8.1.4 he is convicted of an offence which involves dishonesty;
- 8.1.5 he absents himself from three consecutive meetings of Excom

- without special leave of absence from Excom;
- 8.1.6 by resolution of a General Meeting of the Association he is removed from office;
- 8.1.7 he ceases to be the registered owner of an erf at Tierboskloof;
- 8.1.8 his levy becomes delinquent in terms of Clause 20.
- 8.2 In the event of a member of Excom resigning or for any reason ceasing to be a Member, the remaining members of Excom may co-opt a new member of Excom from amongst the Members of the Association.
- 8.2.1 Such co-opted Member may serve until the next General Meeting of the Association, at which the co-opted Member's membership shall be confirmed or another Member be elected to fill the vacancy.
- 8.2.2 Should such a condition arise within the first six months following an Annual General Meeting, Excom shall be obliged to call a General Meeting within three months of such co-option to obtain ratification of such.
- 8.2.3 Excom may co-opt any other Member of the Association subject to Clauses 7 and 8.

## **9. VALIDITY OF ACTS OF EXCOM MEMBERS**

- 9.1 Any act performed by any Excom member shall, notwithstanding the fact that it is, after the performance of the act, discovered that there was some defect in the appointment or continuance in office of said Excom member, be as valid as if such Excom member has been duly appointed in office at a General Meeting.
- 9.2 No Excom member may make decisions unilaterally on behalf of Excom without the consent of the other Excom members in terms of Clause 10.3.

## **10. EXCOM MEETINGS AND PROCEDURES THEREAT**

- 10.1 Excom shall meet at such time and place as shall be decided by Excom from time to time.

- 10.2 Excom members may at any time convene a meeting of Excom by giving the other Excom members no less than three days 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.
- 10.3 Where Excom consists of five members, three shall form a quorum. Where Excom consists of more than five members, four shall form a quorum, subject to the special provisions of Clause 30.2.
- 10.4 Within seven days of an Annual General Meeting Excom shall meet and elect from its members a Chairman and a Vice Chairman. The Chairman and Vice Chairman so elected shall hold office until a new Chairman and Vice Chairman are elected.
- 10.5 All matters at any meeting of Excom shall be determined by a majority of those present and voting. In the event of an equality of votes, the Chairman of any meeting shall have a casting as well as a deliberative vote. Should the Chairman not be present at an Excom meeting, a voting matter may be held over until the next meeting, unless urgent, in which case the Vice Chairman or, failing him, a temporary Chairman, either of whom shall have a casting vote, shall be appointed by the members of Excom present at the meeting, provided Clause 10.3 has been complied with.
- 10.6 Excom may from time to time appoint a Secretary and a Treasurer, or Secretary/Treasurer.
- 10.7 Excom shall keep minutes of all its meetings, which shall be available for inspection by any Member on request.
- 10.8 Excom shall keep all Members informed of pertinent progress, developments, plans and any other matters pertinent to Tierboskloof and to the Members of the Association, through a newsletter or informal meeting, such communication to be on a regular basis as decided at a General Meeting but in any event not less than quarterly.

## 11. POWERS AND DUTIES OF EXCOM

The management and administration of the Association shall vest in Excom which may exercise all such powers and duties of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself. Without in any way limiting the generality of the foregoing, such powers and duties shall include the following:

- 11.1 the performance of such acts as are necessary to accomplish the objects, powers and duties expressed or implied herein;
- 11.2 the investment and re-investment of monies of the Association, not immediately required, in such manner as may from time to time be determined;
- 11.3 the operation of a banking account with all powers required by such operation;
- 11.4 the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- 11.5 the employment and payment of agents, servants and any other parties, including Auditors;
- 11.6 the amendment of Annexures "A", "B" and <sup>W</sup>C", as contemplated in Clause 30 hereof;
- 11.7 the right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 11.8 the imposing of any levy payable by Members as provided for in Clauses 20 and 21 hereof;
- 11.9 the levying of an entrance fee in respect of the Communal Areas or Public Open Space within Tierboskloof;

- 11.10 the preservation of the architectural theme of Tierboskloof and the adjudication upon any proposed building, extension, addition and/or alteration to any building or any erf within Tierboskloof in accordance with the Design Manual (Annexure "A");
- 11.11 the appointment of any sub-committee and/or the co-option of other Members, if they deem it to be in the interests of the Association, and to grant them such powers and duties or terms of reference as Excom may consider necessary; and
- 11.12 to promote and enforce environmental and behavioural standards for community living in Tierboskloof in order to enhance and preserve the rural nature of Tierboskloof in accordance with the Constitution (2.1.1.6) and in such a way that Members may derive the maximum collective benefit therefrom;

## **12. REMUNERATION OF EXCOM MEMBERS**

- 12.1 Excom members shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in connection with and incidental to the performance of their duties as Excom members.
- 12.2 Excom shall be entitled to appoint any person, including any member of Excom, as a paid employee of the Association, either part- or full-time, provided that a job description and salary scale, which may vary from time to time, has been determined by Excom.
- 12.3 Any appointment shall be disclosed to Members in writing within thirty days of such together with a relevant motivation.

### **13. INDEMNITY**

- 13.1 No Excom 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, 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/her 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.
- 13.2 Every Member of the Association shall be deemed by virtue of his membership, to have waived, as against every other Member, the Auditors and everybody else engaged to perform any function or duty on behalf of or for the benefit of the Association, all claims and rights of action which such Member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or any reference to such Member made at any General Meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or otherwise injurious to the dignity, reputation, business or financial interest of such Member whether such statement be true or false
- 13.3 No member of Excom shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of, the Association.

### **14. ANNUAL GENERAL MEETING OF THE ASSOCIATION**

The Association shall, within two months of the end of each Financial Year, hold its Annual General Meeting.

## 15. GENERAL MEETINGS AND NOTICE OF MEETINGS

- 15.1 A General Meeting may be called by Excom and shall be convened on no less than twenty-one days notice in writing by registered or recorded mail. 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 80% of the Members present.
- 15.2 Excom may call a Special General Meeting from time to time in accordance with Clause 15.1.
- 15.3 A Special General Meeting may also be called by any Member of the Association who shall submit a written request for such meeting to Excom provided that:
- 15.3.1 it be signed by a proposer and seconder;
  - 15.3.2 at least 20% of the paid-up Members of the Association have also signed it.
  - 15.3.3 the purpose for which the meeting is called is clearly stated.
  - 15.3.4 the notice period for such meeting conforms to the requirements of Clause 15.1.
- 15.4 The accidental omission of giving notice to, or the non-receipt of a notice of a meeting by any Member or person entitled to receive such notice shall not invalidate the proceedings of the meeting.



## 16. QUORUM

No matters shall be discussed at any General Meeting unless a quorum is present when the meeting commences. A quorum shall be Members present in person or by proxy and holding not less than 50% of the total number of votes available to be cast by Members at the time that the meeting commences.

- 16.1 If within half an hour from the time appointed for a General Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the Members present in person or by proxy and entitled to vote shall be a quorum.
- 16.2 The Chairman of Excom shall preside at every General Meeting. In his absence the Vice Chairman shall preside, or failing him, the meeting shall elect a Chairman for the purpose of that meeting.

## 17. VOTING

At all General Meetings resolutions put to the vote shall take place by a show of hands unless by majority vote the meeting decides that voting shall be by ballot, in which event the ballot shall take place immediately. Save for the purposes of a resolution required in terms of Clauses 25, 26 and 27 a simple majority vote shall carry a resolution.

- 17.1 Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:
- 17.1.1 each Member present shall have one vote for every erf registered in his name;
- 17.1.2 each person present as proxy for a Member shall have one vote for every erf registered in the name of the Member for whom he is proxy;
- 17.1.3 each Member and each person present as proxy for a

Member shall, where voting is by a show of hands, indicate clearly how he casts each vote to which he is entitled as aforesaid;

- 17.1.4 all resolutions shall, except as otherwise provided herein, be by simple majority of those Members present in person or by proxy at the meeting and voting;
- 17.1.5 the appointed Secretary of Excom and up to three Members shall jointly and/or severally count the votes cast for and against the resolution and shall declare it carried or lost, as the case may be and, in the event of there being an equal number of votes for and against, the presiding Chairman shall have a casting vote.

## **18. AGENDA**

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

- 18.1 the consideration of the Chairman's report;
- 18.2 the election of Excom;
- 18.3 the consideration of the report of the Auditors and fixing of their remuneration;
- 18.4 the confirmation of any budget proposed by Excom;
- 18.5 the confirmation of the Annual Levy and any Special Levy determined by Excom for the coming year;
- 18.6 the consideration of any other matters raised at the meeting including any resolutions proposed or adopted by such meeting, and the voting upon any such resolutions.

## **19. PROXY**

Votes may be exercised either personally or by proxy.

- 19.1 A proxy shall be in writing on the form provided by Excom, or any form approved by it, signed by the appointer, or signed in accordance with a power of attorney, or where the appointer is a legal entity, by an officer duly authorised.
- 19.2 A proxy, together with the power of attorney (if any) under which it is signed or a notarially certified copy thereof, shall be produced upon registration of attendance at the meeting, or adjourned meeting, at which the person named in the proxy proposes to vote.

## **20. LEVIES**

- 20.1 The Association, through Excom, shall be entitled to determine and to levy an annual amount (the "Annual Levy") for the purpose of meeting all expenses which the Association has incurred or to which Excom reasonably anticipates the Association will be put and to defray the costs of managing and administering the Association to achieve its objects set out in Clause 5.
- 20.2 The Annual Levy shall become binding upon Members upon adoption by the Association at its Annual General Meeting, and shall become due and payable by Members within 30 days after the Annual General Meeting.
- 20.3 The amount of the Annual, or any Special Levy that each Member shall be obliged to pay shall be one sixty-seventh of the total levy payable.
- 20.4 Members shall pay their portion of the Annual Levy monthly in advance by bank debit order, provided that a proper and acceptable bank debit order has been arranged prior to the first day of the month on which the Annual Levy becomes due and payable,

to make payment monthly on the first day of each and every month in each and every year to the bank account of the Tierboskloof Homeowners Association.

- 20.5 In the event of any levy being in arrears for a period of-thirty days or more, the defaulting Member shall become delinquent and Excom shall, having first given such member due notice in writing recovery thereof.
- 20.6 All legal costs incurred by the Association in enforcing its right herein as well as any costs incurred in the collection of same, such costs to be on the attorney and client scale, and which shall be calculated on the Cape Law Society Non-Litigious tariff in force from time to time, shall be recoverable from the delinquent member who shall not be considered to have discharged his obligations thereto until all such legal costs have been paid in full to the Association.
- 20.7 No delinquent Member shall be entitled to any of the privileges of membership unless and until he has paid every levy and other sum (if any) for which he is liable In terms of this Constitution. In particular and without limiting the generality hereof he shall not be entitled to :
- 20.7.1 vote at any General Meeting;
  - 20.7.2 nominate candidates for election to Excom;
  - 20.7.3 serve on Excom;
  - 20.7.4 make presentations or complaints to Excom in respect of the performance of Excom, the Association or any of the Members thereof;
  - 20.7.5 Make use of any of the amenities of Tierboskloof.
- 20.8 An owner is not entitled to a refund of any contributions made in terms of the Constitution.

20.9 No portion of profits or assets may be distributed by or to any owner.

20.10 On expropriation of common property, the proceeds must be paid proportionately to all homeowners.

## **21. SPECIAL LEVIES**

Should an emergency or other unexpected contingency arise, the Association may, through Excom, determine and collect a Special Levy ("Special Levy") from Members, from time to time, which will be in addition to the Annual Levy.

21.1 The Special Levy shall become due and payable by Members upon receipt of account of such in terms of Clause 24 hereof, from Excom.

21.2 Excom shall call and convene a General Meeting within thirty days of such notice to inform Members of the circumstances necessitating such Special Levy and to obtain ratification for such from Members, always providing that the matter has not already been ratified in advance at a previous General Meeting.

21.3 Should any Special Levy, so ratified, not have been paid within thirty days of receipt of the notice given in terms of Clause 21.1 hereof, Excom shall have the same powers of collection of such Special Levy from Members as those contemplated in Clause 20.5 and delinquent Members shall not be entitled to their privileges as contemplated, mutatis mutandi, in Clause 20.6 hereof.

21.4 Should Members not return a vote in favour of the said Special Levy all payments made by Members in respect of such shall, with any interest earned thereon, be immediately reimbursed to them.

## **22. WATER ACCOUNTS**

Each Member shall be responsible for the payment of his own water account, per the reading of the water meter situated at his erf. The Association shall render water accounts to Members from time to time which shall become due and payable on demand.

22.1 Should any water account remain outstanding for thirty days or more following receipt of such demand a penalty, to be determined by Excom, from time to time, which shall not exceed 25% of any outstanding account, may be imposed and shall be added to said account and shall be payable forthwith, together with such account, by the delinquent Member.

22.2 Should such water account, including any penalty, remain outstanding for sixty days or more, the Association, through Excom, shall have the right to suspend the water supply to the erf of the delinquent Member until such time as the account, including the penalty and a reconnection fee, the amount of which to be determined by Excom from time to time, have been paid in full.

22.3 In addition to the above, should such account remain unpaid for a period in excess of sixty days, the Association, through Excom, shall have the right to take legal proceedings against the delinquent Member to recover any outstanding amounts in which case the provisions of Clauses 20.5 and 20.6 hereof shall, mutatis mutandi, apply.

## **23. ACCOUNTS OF THE ASSOCIATION**

23.1 Excom shall cause proper books of account 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.

23.2 Excom shall cause to be laid before the Association at the Annual

General Meeting, books of account, balance sheets and reports of the Association which accounts shall give a true reflection of the financial position of the Association as at the end of each year, which shall be the last day of February.

23.3 At least once a year the accounts of the Association shall be examined and the correctness of the income and expenditure account and the balance sheets ascertained by the Auditors.

23.4 The accounts and books of the Association shall be open to Members in good standing at all reasonable times during normal business hours.

## **24. DOMICILIUM**

24.1 For all purposes under this Constitution, whether in respect of court process, notices or other documents or communications of whatsoever nature, the Association and each Member (the "party/ies") choose domicilium citandi et executandi as follows:

24.1.1 the Association at : Tierboskloof Homeowners Association, Tierboskloof, Andrews Road, Hout Bay (PO Box 26807, Hout Bay 7872) Telephone/Telefax : (021) 790 6185.

24.1.2 each Member at : the erf registered in his name or, alternatively, the physical address supplied by each Member to the Association for levy purposes.

24.2 Any notice or communication required or permitted to be given in terms of this Constitution shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

24.3 The parties may by notice change the physical address chosen as their domicilium citandi et executandi to another physical address in South Africa or their telefax number, provided that the change shall become effective on the tenth day from the deemed receipt of the notice by the addressee.

- 24.4 It shall be the obligation of each member to ensure that the Association is correctly informed of his domicilium, including telefax number and e-mail address if any, at all times.
- 24.5 Any notice to the parties:
- 24.5.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domicilium citandi et executandi shall be deemed to have been received on the tenth day after posting (unless the contrary is proved);
  - 24.5.2 delivered by hand to a responsible person during ordinary business hours at its domicilium et executandi shall be deemed to have been received on the day of delivery; or
  - 24.5.3 sent by telefax (where a party has for this purpose advised the other of its telefax number) to its chosen telefax number shall be deemed to have been received on the day sent;
- 24.6 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

## **25. AMENDMENTS TO THE CONSTITUTION**

- 25.1 Subject to Clauses 26, 27 and 30, any resolution at a General Meeting which proposes any amendment to the Constitution shall be agreed to and ratified by not less than 75% of all Members of the Association, whether present at the meeting or not.
- 25.1.1 Should the required number of Members not be present at such General Meeting, Excom shall be instructed and empowered to canvass and obtain the required percentage ballot from individual Members in writing within 30 days of such General Meeting, failing which the resolution shall be deemed to have failed.



## 26. COMMUNAL AND PRIVATE AREAS

- 26.1 The right of all paid-up Members to enjoy the Communal and Private Areas in which they share is inviolate and such right may not be expropriated, or prejudiced in any way by any decision of the Association or by Excom on behalf of the Association except by resolution of 100% of all Members, and in this respect it is recorded that without such resolution neither the whole nor any portion of the Communal or Private Area shall be:
- 26.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
  - 26.1.2 mortgaged; or
  - 26.1.3 subjected to any rights, whether registered in the Deeds Registry or not, or use, occupation or servitude, other than the general servitude in favour of Council for services (save those enjoyed by Members in terms hereof);
- 26.2 Neither, the whole nor any part of the Communal or Private Area. shall be built upon, improved or enhanced in value by construction of buildings, erections, facilities or amenities, the cost of which directly or indirectly to the Association exceeds R30 000-00 of buildings, erections, facilities or amenities, the cost of which directly or indirectly to the Association exceeds R30 000-00 without the agreement and ratification of such by 75% of all Members of the Association as contemplated, mutatis mutandi, in Clause 25.1 above.
- 26.3 Excom may undertake capital projects that have not been voted on and agreed to by a General Meeting provided that:
- 26.3.1 the completed cost of the project does not exceed R60 000-00 (CPI linked); and

- 26.3.2 can be funded from an excess of income over expenditure within the year of commencement.

## **27. SUBDIVISION**

No amendment, revision of or exclusion from the Constitution shall be entitled to change the fundamental provisions of this Clause which shall be inviolate within this Constitution in perpetuity and which states that no Member shall sub-divide any erf in Tierboskloof registered in their name without the written consent of all the other Members of the Association.

## **28. SUBMISSION AND APPROVAL OF PLANS**

28.1 No Member shall commence the erection of, alteration or addition | to any building or other structure on any erf within Tierboskloof or / permit the same unless the plans thereof have been submitted to and approved by Excom on behalf of the Association, in accordance with the procedures as set out in the Design Manual (Annexure "A").

28.1.1 A Member or prospective member proposing to erect a building or other structure or to add to or alter any building or other structure on his erf shall cause plans and specifications clearly indicating the nature and quality of the proposed works to be prepared and shall submit such plans and specifications to Excom for approval prior to such time as the plans and specifications are submitted to Council.

and/or other advice as Excom may, in its discretion, deem desirable.

28.1.2 If Excom is satisfied that the proposal conforms in all respects with the Design Manual (Annexure "A") it shall approve the said proposal, subject to any Council conditions which may pertain.

28.2 No Member shall be entitled to apply to Council and/or any other competent authority for :

- 28.1.1 a relaxation of building lines unless such relaxation has first been applied for to and approved by Excom;
- 28.1.2 a deviation from the existing use zoning of any erf within Tierboskloof unless such deviation has first been applied for to and approved by Excom.

## **29. DENSITY CONTROLS**

- 29.1 No Member, which includes the representative of any legal entity which is a member, shall allow his erf to be occupied by more than one family.
- 29.2 For the purposes of this Constitution a family shall be limited to :
  - 29.2.1 the Member and his/her spouse;
  - 29.2.2 the lawful children of a Member and/or the children of his/her spouse, if any;
  - 29.2.3 a parent of a Member and his/her spouse, if any; and
  - 29.2.4 any occasional visitor from time to time; or
  - 29.2.5 a tenant of the Member of an erf and such tenant's spouse;
  - 29.2.6 the lawful children of such tenant or the lawful children of such tenant's spouse, if any;
  - 29.2.7 a parent of such tenant and/or a parent of his/her spouse,
  - 29.2.8 a parent of such tenant and/or a parent of his/her spouse, if any; and
  - 29.2.9 any occasional visitors from time to time.
- 29.3 Nothing herein shall exclude any live-in companion, nurse and/or

medical assistant and domestic help.

29.4 No habitation of any mobile home or caravan, wherever situated within Tierboskloof, shall be permitted.

### **30. DESIGN MANUAL, ENVIRONMENTAL CONTRACT, CODE OF CONDUCT**

30.1 All Members are bound by the terms of the Design Manual, the Environmental Contract and the Code of Conduct, attached hereto as Annexures "A", "B" and "C", respectively.

30.2 Excom may amend Annexures "A", "B", and "C" from time to time by resolution if supported by 4 out of 5, or 5 out of 6, or 6 out of 7 members, as the case may be.

30.3 Where such amendment is made Excom shall, within 30 days of the resolution effecting the amendment, notify all Members in writing of the terms of the amendment and the motivation thereof.

### **31. OBLIGATIONS OF COUNCIL, DEVELOPER AND ASSOCIATION**

All Members, through the Association, the Developer and Council are bound in perpetuity to the terms of the Council Agreement which is attached hereto as Annexure "D".

### **32. BREACH**

32.1 Without derogating from the right of the Association to sue for and claim arrear and/or unpaid levies and/or other amounts in terms of clauses 20, 21 and 22 herein, and if, in the opinion or sole discretion of the Association, arbitration as provided for in Clause 33 below is considered in the circumstances to be unsuitable, prejudicial and/or impractical, any Member who fails to make payment to the Association on due date of any monthly levy or other amount payable by such Member, or who otherwise

breaches or fails in the observance of any of the provisions of this Constitution shall, if so determined by Excom:

- 32.1.1 be invited to attend a meeting of Excom by notice in writing delivered to such Member not less than 7 days prior to the holding thereof, and such Member shall be given the right to speak thereat, and to be represented legally, but not to be present at the voting or to take part in the proceedings, other than as allowed by the Chairman of such meeting;
- 32.1.2 be fined by an amount to be determined by Excom from time to time in terms of Clause 12.2 of the Code of Conduct (Annexure "C");
- 32.1.3 be ordered to pay to the Association or any Member or other person aggrieved by the breach or failure in question, compensation by an amount to be determined by Excom based on the particular circumstances; and/or
- 32.1.4 be prohibited from having any claim upon or interest in the funds or other property of the Association until such time as the breach or failure has been deemed by Excom to have been rectified.

### **33. ARBITRATION AND LEGAL PROCESS**

- 33.1 Any dispute whatsoever which may arise shall, subject to the provisions of Clause 33.7, be referred to Excom to decide whether the dispute in fact relates to either:
  - 33.1.1 a legal question;
  - 33.1.2 a dispute relating to physical design or landscaping; or
  - 33.1.3 a dispute relating to the value of a property or properties as a whole for purposes of determining the levy or the amount of all the levies.

33.2 Thereafter, the dispute:

33.2.1 if legal, shall be referred for decision either to a Senior Advocate of the Cape Bar or an Attorney who has been practicing for not less than 10 years and who is a member of the Cape Law Society;

33.2.2 if relating to physical design or landscaping, to a qualified Architect of not less than 10 years standing; or

33.2.3 if an accounting matter to a qualified Accountant of not less than 10 years standing;

all of which appointees shall be agreed upon by the parties to dispute. The said appointees shall then determine the dispute.

33.3 In the event of the parties being unable to agree upon an appointee as provided for above within 3 days of being requested to do so, then an arbitrator shall be nominated by:

33.3.1 in the case of an Advocate, the President of the Cape Bar Council, or, in the case of an Attorney, the President of the Cape Law Society;

33.3.2 in the case of an Architect, the President-in-Chief of the Institute of South African Architects; or

33.3.3 in the case of an Accountant, the President of the Cape Society of Chartered Accountants.

33.4 The arbitrator shall not be bound to follow strict principles of law, but may decide the matter submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of law need not be observed or taken into account by him in arriving at his decision. The parties desire that such decision be arrived at as expeditiously and as informally as possible without any pleadings. In the absence of agreement between the parties, the procedure to be followed shall be laid down by the arbitrator.

33.5 Without in any way limiting or derogating from the generality of his powers the arbitrator shall, in addition, be entitled to make such order as to the payment of legal costs (which shall be in accordance with the Cape Law Society's non-litigious tariff as promulgated and in force from time to time) and other expenses

incurred by the parties to the arbitration as he deems just and equitable in all the circumstances.

- 33.6 The parties irrevocably agree that the decision of the arbitrator on any matter in dispute shall be final and binding upon all of them, whether they were parties to the dispute or not, and may be made an order of any competent court.
- 33.7 Notwithstanding anything to the contrary contained in Clause 33, Excom shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of this Constitution and any of its Annexures, including any amendments or additions thereto.



