



# EASTFORD GLEN HOMEOWNERS' ASSOCIATION

# CONSTITUTION

**AMENDED 9<sup>th</sup> April 2024**

# CONSTITUTION

(Amended 9<sup>th</sup> April 2024)

## 1 NAME

The name of the Association is **Eastford Glen Homeowners' Association**.

## 2 DEFINITIONS

In this Constitution and Rules, unless the context indicates contrary;

- 2.1 "The Association" shall mean **Eastford Glen Homeowners' Association**;
- 2.2 "The Chairman" shall mean the member of the Association elected as chairman by the members in General Meeting;
- 2.3 "The Development" shall mean **Eastford Glen**, in the district of Knysna;
- 2.4 "The Lessee" shall mean any person having a lease or any temporary right of occupation on any property in the Development;
- 2.5 "The Member" shall mean an owner of a property as defined in clause 5 hereof;
- 2.6 "The Person" or "a person" shall include a company, a close corporation, a trust, a partnership or any other Association of persons entitled by law to hold title to immovable property;
- 2.7 "Registered Owner" shall mean the registered owner from time to time of any Erf forming a part of the Development;
- 2.8 "The Rules" shall include the House Rules, a copy of which is attached hereto marked Schedule I, the Eastford Glen Small Stands Building Design Manual (BDM), the Eastford Glen Large Stands BDM, the Eastford Vale BDM and the Eastford Cove BDM marked Schedules 2 to 5 respectively, and any subsequent Rules made by the Association;
- 2.9 Words importing the singular number shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter genders shall include the feminine and masculine genders;
- 2.10 The Committee shall mean those members of the Association elected in General Meeting to whom the management and administration of the Association is delegated as described in Clause 6 of this constitution;
- 2.11 A Special Resolution shall mean a resolution requiring the approval of 75 (seventy-five) per cent of the members present plus proxies at a General Meeting;
- 2.12 An Ordinary Resolution shall mean a resolution requiring the approval of a simple majority of the members present plus proxies at a General Meeting.

### **3 HEADNOTES**

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

### **4 OBJECTS AND POWERS OF THE ASSOCIATION**

The objects of the Association are:

- 4.1 to promote and enforce standards for high quality living in the Development in such a way that members may derive the maximum collective benefits therefrom;
- 4.2 to provide for the control over and the maintenance of buildings, services and amenities forming part of the Development, more particularly to enforce certain building regulations and design parameters as documented in the Development's Building Design Manuals in order to maintain a characteristic feeling for the Development; and the Association shall have the powers to do such acts as are necessary to accomplish these objects and any object implied herein. Without in any way limiting the generality of the foregoing, such powers shall include, but not be limited to the following;
- 4.3 the determination of what constitutes appropriate standards for community living and the maintenance of properties in the Development;
- 4.4 the investment and reinvestment of monies of the Association not immediately required in such manner as may from time to time be determined;
- 4.5 the operation of a banking account with all powers required by such operation;
- 4.6 the making, amendment and repeal of Rules which shall be binding upon members, lessees of and visitors to the Development as if they are members of the Association and bound by this Constitution;
- 4.7 the formation of sub-committees, including the Glen, Vale and Cove Aesthetics Committees and the Security Sub-committee, with powers confined to those as delegated by the members in General Meeting and documented in Clauses R.2.1 and R.2.2 of the House Rules;
- 4.8 the determination of fines to be imposed from time to time in respect of offences committed in respect of this Constitution, the House Rules and/or the Building Design Manuals of the Association by members or other offenders;
- 4.9 the right to sue and defend actions in the name of the Association and to appoint legal representatives for this purpose;
- 4.10 the levying of subscriptions and other amounts payable by members as provided in Clauses 5, 12 and 13;
- 4.11 the acquisition by purchase or otherwise and on-going maintenance of all common property, dam areas and other common facilities;
- 4.12 the incorporation and maintenance of design standards for the Development;
- 4.13 the incorporation, entrenchment and protection of the design constraints and

building specifications in the Building Design Manuals of the Association;

- 4.14 the establishment of suitable rules governing the use and maintenance of common facilities;
- 4.15 the ongoing maintenance and upgrading (if necessary) of the access road/s leading to the various Erven in the development.
- 4.16 the establishment and management of a fund, separate from the working finances of the Association, to cover the costs of major damage caused to the Development's infrastructure, which fund shall be invested in a secure investment and shall be used solely and exclusively for this purpose.

## **5 MEMBERS**

- 5.1 The Association shall be organised without capital and membership thereof shall be compulsory for every Registered Owner of an Erf in the Development which membership shall be evidenced by and limited to Registered Ownership in the Deeds Registry in Cape Town of one or more Erven in the Development. Upon registration of ownership, membership of the Association shall be automatic and members shall be obliged to comply with the provisions of this Constitution and the Rules of the Association as laid down from time to time.  
No person shall cease to be a member of the Association while remaining the Registered Owner of an Erf in the Development. A person who is entitled to obtain a Certificate of Registered Title to any Erf in the Development shall be deemed to be the registered owner thereof.
- 5.2 Each member shall be entitled to one vote for each Erf owned in the Development. Ownership of an Erf in undivided shares shall constitute only one membership, which membership shall be represented by one individual in terms of the provisions of Clause 10.9 and 10.11 hereof.
- 5.3 When a member ceases to be the registered owner of an Erf in the Development he shall **ipso facto** cease to be a member. Membership shall be transferred by the registration of a Deed of Transfer in the Deeds Registry in Cape Town, passing transfer of one or more Erven in the Development from the previous member to the new member. A member shall not transfer an Erf in the Development unless it is a condition of that transfer that the registration of the transfer of the property into the name of the transferee shall ipso facto constitute the transferee as a member of the Association.
- 5.4 Every member shall pay an annual subscription to the Association, the amount of which shall be determined in terms of Clause 12 hereof. The subscription so determined shall apply equally to all Erven and shall be payable in respect of each Erf owned by a member.
- 5.5 Should any member let any Erf owned by him to a lessee, he shall be obliged, and undertakes to ensure that such lessee complies with the provisions of this Constitution and the Rules of the Association. A lessee may become an associate member of the Association by payment of the annual subscription. An associate member shall be entitled to attend meetings of the Association, but shall not be entitled to vote at any of the meetings.

## **6 POWERS**

The Management and Administration of the Association shall be exercised by the members in General meeting, provided that the members in General Meeting shall be entitled to elect a member or members of the Association to be known as The Committee to whom the management and administration of the Association or portion thereof, including any of its Powers, may be delegated and/or to appoint Managing Agents and/or Estate Manager/s for this purpose. Those powers delegated shall be laid down from time to time in the House Rules. Any act performed without any proper authority by any member, may be ratified and confirmed by the members.

If, during the period between successive Annual General Meetings and the election of members to the committee, should one or more of those members including the Chairman become unable to fulfil their obligations to the Association, then the remaining committee members shall be obliged to co-opt to the committee, other members of the Association to fill the vacant positions until the following Annual General Meeting.

A member who is duly authorised to act on behalf of the Association shall be entitled to be repaid by the Association any reasonable and **bona fide** expenses incurred by him in connection with and incidental to the performance of his duties.

## **7 CHAIRMAN OF THE ASSOCIATION**

7.1 The Chairman of the Association who shall also be Chairman of the Committee as described in Clause 6 above shall be elected at each annual general meeting and he shall remain in office, unless he vacates in terms of the provisions of this constitution, until the following Annual General meeting when he shall retire but be eligible for re-election.

7.2 The Chairman shall cease office as such if:

7.2.1 by notice in writing to the Association he resigns his office;

7.2.2 he is or comes of unsound mind;

7.2.3 he surrenders his estate as insolvent or his estate is sequestered;

7.2.4 he is convicted of an offence which involves dishonesty;

7.2.5 he absents himself from two consecutive General Meetings;

7.2.6 by resolution of 2/3rds of members at a General Meeting, he is removed from office;

7.2.7 his annual subscription falls into arrears.

## **8 COMMITTEE**

The Committee shall consist of the chairman and six members, all members of the Association, except that where a spouse, including a common law spouse, of a member, is permanently resident on the property together with the member, then that spouse would be eligible to become a member of the committee and/or sub-committees of the Homeowners' Association in place of the member, with voting rights confined to the business/workings/functioning of the respective committee/s of which he or she may become a member. Written authorisation from the owner of the property delegating this responsibility must be obtained and eligibility of the designated person will be rescinded on instruction from the registered member.

Should the spouses no longer co-habit then only the member would be eligible for committee membership.

Where a right of occupancy is conferred by virtue of a will on a spouse, who is not a member, and that spouse is resident on the property, then that person will be eligible for membership of the HOA committee.

The committee members shall be elected by the members in General Meeting for a period of two years after which time they will stand down from office, but may be eligible for re-election.

Committee meetings shall take place when required but at least three times per year.

A quorum shall consist of five committee members and decisions shall be made by a simple majority.

## **9 INDEMNITY**

No Estate Manager/s and/or duly authorised Committee Member/s to whom the whole or any aspect of Management and Administration of the Association has been delegated shall be liable to the Association or to any member thereof or to any other person whomsoever for any act or admission by such Estate Manager/s or Committee Member/s, or by the servants, agents, contractors or employees of the Association.

Such Estate Manager/s and/or Committee Member/s shall be indemnified by the Association against any loss or damage suffered by any such other person or thing in consequence of any purported action by such Estate Manager/s or Committee Member/s provided that such Estate Manager/s and/or committee member/s 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.

## **10 MEETINGS OF THE ASSOCIATION**

### **10.1 ANNUAL GENERAL MEETINGS**

Annual General Meetings of members shall be held once in every year at such time and place as the members may agree, but so that no more than 15 months shall be allowed to lapse between any two such successive meetings. The business to be done at the Annual General Meeting shall include:-

10.1.1 the adoption of the minutes of the previous Annual General Meeting;

10.1.2 the receipt of a report on the affairs of the Association;

10.1.3 the adoption of the balance sheet and accounts;

10.1.4 the appointment of an independent accountant;

10.1.5 the consideration of any resolutions concerning the affairs of the Association of which due notice has been given to all members;

10.1.6 the appointment of Managing Agents and/or Estate Manager/s or the termination of such person's contracts including the establishment of the powers and functions of such Managing Agent and/or Estate Manager/s;

10.1.7 the election of a Chairman;

10.1.8 the election of a member or members to carry out the Management and Administration of the Association including members of the Aesthetics, Security and Nature sub-committees;

10.1.9 any other business.

## 10.2 ORDINARY GENERAL MEETINGS

Any member may call an Ordinary General Meeting of members.

## 10.3 PRESENCE AT MEETINGS

Each member shall be obliged to be present in person or represented by proxy at the Annual General Meeting and at any Ordinary General Meeting, failing which such members shall be deemed to have voted in favour of any resolution passed at such meeting by the remaining members.

## 10.4 NOTICE OF MEETINGS

An Annual General Meeting shall be convened on not less than 21 (Twenty One) days' notice in writing. An Ordinary General Meeting shall be called by not less than 14 (Fourteen) days' notice in writing. The notice shall be inclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting, the specific wording of any resolution for consideration and the general nature of the matters 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 all the members.

## 10.5 VALIDITY OF MEETING

The non-receipt of a Notice of the meeting by any person or member entitled to receive such notice, shall not invalidate the proceedings of that meeting, except to the extent that such proceedings have prejudiced, or on the balance of probability would materially prejudice, the financial or proprietary interests of the relevant member who did not receive, nor have received on his behalf, the aforesaid notice.

## 10.6 QUORUM

No matters shall be discussed at any meetings unless a quorum is present when a meeting commences. For all purposes, the quorum shall be members present in person or by proxy and be not less than 1/3rd of the total number of members.

## 10.7 ADJOURNMENT

If within half an hour of the time appointed for the holding of a meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within a half an hour from the time appointed for holding the meeting, the members present shall be a quorum. All members of the Association shall be forwarded notice of such adjourned meeting.

## 10.8 CHAIRING OF MEETINGS

In the absence of the Chairman of the Association, the members present shall elect a Chairman of the meeting to preside thereover. The Chairman of the meeting

shall keep, or cause to be kept, minutes of the meeting.

## 10.9 VOTES

At all General Meetings, resolutions put to the vote shall take place by a show of hands. Voting shall take place in accordance with the following provisions:

10.9.1 each member present in person shall have one vote for every Erf registered in his name;

10.9.2 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 a proxy;

10.9.3 each member and person present as proxy for a member shall indicate clearly how he casts each vote to which he is entitled as aforesaid;

10.9.4 all resolutions shall, except as otherwise provided herein, be by simple majority by those members present in person or proxy at the meeting and voting;

10.9.5 the Chairman of the meeting shall count the votes cast for and against the resolution and shall declare it carried or lost as the case may be;

10.9.6 a declaration by the Chairman of a result of the voting by show of hands and an entry thereof in the minute book of the Association shall be conclusive evidence of that vote;

10.9.7 the Chairman shall not have the casting vote in addition to his ordinary vote.

## 10.10 INCAPACITY

Should any member be declared incapable of managing his own affairs, or a prodigal, or insolvent, or in the case of a company placed into liquidation, such a member may be represented by his curator bonus, trustee, or liquidator as the case may be, who shall be entitled to vote on his behalf, either personally or by proxy.

## 10.11 CO-OWNERSHIP

Membership shall be limited to every Registered Owner and where any such owner is more than one natural person, then all such owners of that Erf shall be deemed jointly and severally to be one Member and where any such owner is a juristic person, then all of the Directors, Members, Trustees or such like of that juristic person shall be deemed jointly and severally to be one Member.

## 10.12 PROXY

10.12.1 Votes may be given either personally or by proxy;

10.12.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by the Chairman of the Meeting under the hand of the appointer, or his Attorney or Agent duly authorised in writing, or if such appointer is a company or close corporation, under the hand of an officer/member duly authorised on their behalf;

## 10.13 COMPANIES, CLOSE CORPORATIONS OR OTHER ASSOCIATIONS



Any Company, Close Corporation, Trust or other Association which is a member of the Association may, by resolution of its Directors, Members or other governing body, authorise such a person to act as its representative at any meeting of the Association and the person so authorised shall be entitled to exercise the same powers on behalf of the Company, Close Corporation or other Association which he represents as that Company, Close Corporation or Association could exercise if it were an individual member of the Association.

#### 10.14 RESOLUTIONS

At the Committee's discretion, resolutions may be approved by the Association other than in General Meeting, provided they are approved in writing by 75% of members in the case of a Special Resolution or by a simple majority of members in the case of an ordinary resolution as defined in Clause 18 below.

### **11 THE STATUS OF THE ASSOCIATION**

The Association shall be an Association:-

- 11.1 with legal personality, capable of suing and being sued in its own name;
- 11.2 none of those members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association; and
- 11.3 not for profit, but for the benefit of the owners and occupants of immovable property situate in the development;
- 11.4 with the right to acquire, hold and alienate property both movable and immovable.

### **12 ANNUAL SUBSCRIPTIONS**

- 12.1 The Association shall be entitled to levy an annual subscription from its members to defray the costs of managing and administering the Association and for the purpose of meeting all the expenses the Association has incurred or will incur, in particular the costs pertaining to the maintenance of the access roads referred to herein. An equal subscription for each Erf as originally surveyed and proclaimed by the Knysna Municipality at the time of development shall be levied from the member. Such subscription shall be fixed annually and shall be collected annually in advance. A member shall, however, only be obliged to pay a pro rata portion of the Annual Subscription where his membership has been for a portion of a year.
- 12.2 The Association shall be entitled, at its discretion, to increase the annual subscription from time to time.
- 12.3 The Annual Subscription for any year shall become due and payable on the 1st March of the said year.
- 12.4 Any amount due by a member by way of an annual subscription shall be due by him to the Association. A member's successor entitled to an Erf in the Development shall be liable as from the date upon which he becomes a member pursuant to transfer of that Erf, to pay the annual subscription attributable to that Erf. No member shall transfer his Erf in the Development until the Association has certified that the member has, at the date of transfer, fulfilled all his financial and all other obligations to the Association.

- 12.5 If the annual subscription of a member is not paid within 90 (Ninety) days of due date, then such subscription shall become delinquent and the Association may, notwithstanding the provisions of clause 15, institute legal action against the member for the recovery thereof and the costs of such action (on an attorney/client scale) shall be added to the subscription.
- 12.6 A member whose subscription is delinquent shall not be entitled to vote at any General Meeting or to serve as a Chairman of the Association until such arrear subscription has been paid.
- 12.7 Interest shall accrue to annual subscriptions and all other amounts owing to the Association by members for more than 60 (sixty) days to be charged at the Prime Rate of the Association's Bank plus 5% (five per cent) per annum, compounded monthly, as determined in March and September each year.
- 12.8 Notwithstanding that a member may be in dispute or disagreement with the Association, under no circumstances whatsoever may payment of annual subscriptions to the Association be with-held.

### **13 ADDITIONAL LEVIES AND OTHER AMOUNTS PAYABLE**

- 13.1 The Association shall be entitled to levy additional amounts from its members, from time to time when required, for the purpose of meeting additional expenses the Association has incurred or may incur. An equal amount for each erf, as originally surveyed and proclaimed by the Knysna Municipality at the time of development shall be levied from the member. These amounts may take the form of a "Special Levy" determined, from time to time, by the Association at a General Meeting. Other amounts may be determined, from time to time, by the Association and documented in its House Rules and Building Design Manuals (road levies, scrutiny fees, etc.) and shall include penalties for offences committed against the rules of the Association.
- 13.2 No member shall be entitled to vote at any General Meeting until all levies or other amounts owing to the Association have been paid in full.
- 13.3 No member shall transfer his Erf in the Development until the Association has certified in writing that the member has fulfilled all financial obligations to the Association.
- 13.4 If any amount owing by a member by way of Clause 13.1 is not paid within 90 (ninety) days of due date, then such amount will become delinquent and the Association may institute legal action against the member for the recovery thereof and the costs of such action (on an attorney/client scale) shall be added to the amount.
- 13.5 A member whose account is delinquent shall not be entitled to vote at any General Meeting or to serve as Chairman of the Association until such arrear amount has been paid.
- 13.6 Interest shall accrue to all amounts owing to the Association by members for more than 60 (sixty) days to be charged at the Prime Rate of the Association's bank plus 5% (five per cent) per annum, compounded monthly, as determined in March and September each year.

### **14 ACCESS ROADS**

- 14.1 The Association as the owner of the Erf/Erven upon which the access road to the various Erven in the Development is to run shall be obliged to maintain, and if necessary, upgrade such roads.
- 14.2 The Association shall not be entitled to alienate such Erf/Erven.
- 14.3 In the event of the members of the Association wishing the registration of a servitude to protect their rights of access by way of such access road then notwithstanding anything to the contrary herein contained, the Association shall be obliged to register such servitude subject to the approval by the members in General Meeting of a Special Resolution to this effect.

## **15 ACCOUNTS**

- 15.1 Proper books of account of the administration and finances of the Association shall be kept by the Association at the domicilium of the Association or such other place or places as decided on by the members in general meeting.
- 15.2 The Chairman of the Association shall cause to be laid before the Association in General Annual Meeting, books of account, balance sheets and reports of the Association.

## **16 DOMICILIUM**

- 16.1 For all purposes arising out of this Constitution, including the giving of notices and serving of legal process, the Association and each member chooses **domicilium citandi et executandi** as follows:
  - 16.1.1 the Association: Attention of Donald Curtis or any Director, A Chimes van Wyk Inc., attorneys of 58 Cathedral Street, George 6529;
  - 16.1.2 each member at the Erf registered in his name provided a dwelling house has been erected thereon, and in the event of such Erf being vacant land, then at the last address provided by the member to the Association;
  - 16.1.3 provided that the Association or any member may at any time by notice change his domicilium citandi et executandi to some other address, which new address shall be in the Republic of South Africa and shall not be a Post Office box or poste restante; and provided further that such change will become effective only 14 (fourteen) days after receipt of the notice in question;

The onus shall rest on the member to inform the Association of any change of address.
- 16.2 Any notice which may be required to be given in terms of this constitution may be given by hand or by the dispatch of such notice by Email, telefax transmission or by post to the last known address of the member in which event the notice shall be deemed to have been received 14 (fourteen) days after the dispatch. The non-receipt of such notice by any member shall not invalidate the proceedings at any meeting

## **17 WINDING UP**

The Association may be wound up by a unanimous resolution of all the members in General

Meeting in which event it shall be the duty of the Chairman or a Receiver for Creditors and Members to be appointed by the members in General Meeting, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter to distribute the rest to all the members in accordance with the number of Erven registered in the name of each member. If, within a period of 4 (four) months from such distribution, the Chairman or the Receiver is unable to find, locate or trace any member, such member's share shall then be paid to the Guardians Fund of the Master of the Supreme Court at Cape Town. The Association may not be wound up if it has assumed an obligation to maintain any of the services including but not restricted to the public roads of the Development.

## **18 DECISION REQUIRING A RESOLUTION OF MEMBERS**

18.1 Notwithstanding anything in this Constitution to the contrary, but subject however to the provisions of Clauses 12.4, 12.5 and 12.6 above and Clauses 13.2, 13.3 and 13.4 above, any decision of the Association:

18.1.1 which would have the effect of amending or repealing any part of this Constitution, or

18.1.2 which would result in material prejudice to the financial or proprietary interest of any member;

shall be made by Special Resolution requiring the consent of 75 (seventy-five) per cent of the members present plus proxies at a General Meeting, or in terms of Clause 10.14 above.

18.2 Any decision of the Association which would have the effect of amending or repealing any part of the House Rules and/or the Building Design Manuals shall be made by Ordinary Resolution requiring the consent of a simple majority of the members present plus proxies at a General Meeting, or in terms of Clause 10.14 above.

## **19 ARBITRATION**

In the event of a dispute between any of the members or between the Association and a member or members, that dispute shall be resolved by Arbitration. The Arbitrator shall be an independent person agreed upon between the parties and failing agreement, nominated by the Chairperson of the South Cape Bar Association. The Arbitrator shall be entitled to resolve the dispute according to what he regards as being just and equitable and in accordance with the spirit and the objects of this Association and he shall therefore not be bound by the strict rule of Law. The decision of the Arbitrator shall be final and binding on the parties.

## **20 EFFECTIVE DATE**

This Constitution and the Association shall come into operation simultaneously with the registration of the first transfer of any Erf in the Development.

## **21 FINANCIAL YEAR**

The financial year of the Association shall commence on the 1st March in each year and shall end at the end of February of the following year.