

**MISTY CLIFFS VILLAGE ASSOCIATION
CONSTITUTION**

1. NAME:

1. The name of the Association shall be THE MISTY CLIFFS VILLAGE ASSOCIATION.

2. COMPOSITION AND MEMBERSHIP:

1. The Membership of the Association shall consist of
 - a. registered owners of land in the area defined below as Misty Cliffs or their duly appointed representative/s or nominee/s; and
 - b. any other individuals or organisations whose membership shall in the opinion of the Executive Committee benefit the aims and objectives of the Association.
2. Each member who has paid the applicable annual membership subscription shall have one vote per erf. Those members who own more than one erf and who have paid the applicable membership subscription in respect of each erf, shall have a vote in respect of each erf which they own or represent.
3. The Executive Committee shall at its discretion decide whether those who have membership in terms of Clause 2.1 b) above shall be entitled to vote or not.
4. The Secretary or Treasurer shall keep and update a register containing the names and addresses of all the members of the Association including the dates on which annual membership subscriptions have been paid.
5. The voting rights of any member who has not paid the applicable annual membership subscription shall be suspended automatically until such time as applicable membership subscription, including arrears should the Executive Committee so decide, has been received .
6. A member whose voting rights have been suspended or terminated shall not be entitled to recover any part of the subscription already paid.
7. No member of the Association shall have any personal or individual right, title or interest in the assets or property of the Association nor shall profit directly or indirectly from such assets whether by income, capital, dividend or any other payment.

3. DEFINED AREA

1. The area which shall constitute Misty Cliffs for the purposes of eligibility for membership of this Association shall be
 - a. All the present erven from Erf 1 through Erf 78 Misty Cliffs
 - b. Any other erf or erven which in the opinion of the Executive Committee either forms a natural part of Misty Cliffs or shares an interest in the aims and objectives of Misty Cliffs.

4. STATUS

1. The Association shall be
 - a. A non profit organisation which shall not carry on business or any other enterprise whose main purpose is the acquisition of gain by individual members of the Association or its Executive Committee.
 - b. Liable only for debts incurred in the proper discharge of its duties and which have been approved by the Executive Committee. No individual member of the Association or its Executive Committee shall be liable personally for debts incurred by the Association.
 - c. A legal entity which may enter into contracts and be sued in its own name.
2. The Association may be dissolved only if two thirds of the members present at an Annual or Special General Meeting vote in favour of such dissolution. Upon dissolution all the assets of the Association shall be transferred:
 - a. to any similar public benefit organisation which has been approved in terms of section 30 of the Income Tax Act or
 - b. to any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has objects substantially similar to that of the Association.

5. OBJECTIVES AND AIMS

The objectives for which the Association is established are

1. To undertake any action or promote any activity which in the opinion of the Executive Committee serves to advance the interests of and benefit the community of Misty Cliffs.
2. To monitor and where applicable control the building of new houses as well as extensions and/or additions to and/or alterations of existing houses, in order to
 - a. ensure compliance with all relevant zoning, building, and other legislation, regulations and ordinances,
 - b. ensure compliance with all title deed conditions,

- c. where applicable and permissible, to subject plans to prior scrutiny and approval and to liaise with the local authority in connection therewith,
 - d. minimise the disturbance and damage to the environment and to the neighbouring community,
 - e. recommend building and design practices which are environmentally appropriate and accord with the guidelines and recommendations contained in structure plans and other municipal and planning guidelines.
3. To liaise and negotiate and engage with the Local Municipal and Provincial and other authorities having jurisdiction over Misty Cliffs with a view to advancing the interests of the community of Misty Cliffs.
 4. To promote awareness of the special environmental advantages enjoyed by Misty Cliffs and adjoining areas and encourage the preservation and maintenance of this environment as far as possible.
 5. To join and make common cause with any other association or body where this serves the interests of the Misty Cliffs community.
 6. No property or income shall be distributable to members or office-bearers, except as reasonable compensation for services rendered.
 7. Ancillary objects which are not in accordance with the sole objects of the Association are excluded.

6. POWERS:

In furtherance of the above objectives and aims, the Association shall have the following powers:

1. To establish and levy an annual subscription, the amount of which shall be decided upon from time to time by the Executive Committee, payable by those eligible to become members of the Association.
2. To open and maintain one or more bank accounts including current, investment and/or money market accounts for the purpose of holding funds of the Association.
3. To solicit and receive grants or donations from any source. The Association is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of the donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act (provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation).
4. To acquire by purchase, lease, or donation both movable and immovable property.
5. To borrow or raise money with or without giving security or pledging or mortgaging property of the Association, provided that the mortgage or pledge of any assets of the Association shall be subject to the prior approval of sixty percent of the members. Clause 4.1.(b) above applies to all such pledged or mortgaged assets and borrowings.
6. To establish and levy fees for the scrutiny of plans as well as financial deposits, and the terms upon which they may be held, for the purposes of making good damage caused by building, clearing or similar activities.
7. To spend the money raised by the Association whether by way of fees, donations or borrowings, and whether current funds or not, in such manner and upon such objects as shall in the opinion of the Executive Committee further the aims of the Association.
8. To carry on, do and transact any act, scheme or enterprise calculated to further the objectives of this Association.
9. To institute and/or defend legal proceedings.
10. To authorise any other person or body to act on its behalf, whether by power of attorney or otherwise.
11. The Association is prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the objects for which it has been established, or to invest the funds:
 - a. with a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);
 - b. in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
 - c. in such other prudent investments in financial instruments and assets as the Commissioner of the South African Revenue Service ("the Commissioner") may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations.
12. The Association will not be prohibited from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance.

13. The Association is prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that
 - a. the gross income derived from such business undertaking or trading activity does not exceed the greater of (i) 15 per cent of the gross receipts of the Association; or (ii) R25 000;
 - b. the undertaking or activity is (i) integral and directly related to the sole object of the Association; and (ii) carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in relation to taxable entities;
 - c. the undertaking or activity, if not integral and directly related to the sole object of the Association as contemplated in point 6.13.(b) above, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation, or
 - d. the undertaking or activity, if not integral and directly related to the sole object of the Association is approved by the Minister of Finance by notice in the Gazette, having regard to (i) the scope and benevolent nature of the undertaking or activity; (ii) the direct connection and interrelationship of the undertaking or activity with the sole purpose of the Association; (iii) the profitability of the undertaking or activity; and (iv) the level of economic distortion that may be caused by the tax exempt status of the Association carrying out the undertaking or activity.

7. OBLIGATIONS:

The Association shall be obliged:

1. To subject the Annual Financial Statements to review by an independent suitably qualified accounting officer, and ensure that they properly reflect the financial position of the Association,
2. To report to the members at an Annual General Meeting as to the financial condition of the Association and to make such Financial Statements available to the members at such Annual General Meeting.
3. To promote the objectives and aims of the Association to the best of its abilities.
4. To register with the Non Profit Organisations Board as a public benefit organisation and to submit annual financial statements to the Board annually.

8. EXECUTIVE COMMITTEE

1. The affairs and business of the Association, including the exercise of all the Obligations as well as of the Powers contained herein, shall be managed, controlled and run on behalf of the Association by an Executive Committee consisting of at least six members in good standing. Three members of the Executive Committee, who are not connected persons in relation to each other, shall accept the fiduciary responsibility of the Association, and no single person may directly or indirectly control the decision making powers relating to the Association.
2. The Executive Committee shall be elected by the members in good standing in terms of Clause 2.2 above at an Annual or Special General Meeting, either by secret ballot or by show of hands as the Chairperson for the time being may decide. The issuing of ballot papers shall be at the discretion of the Chairperson.
3. The Executive Committee shall remain in office until a new Executive Committee is elected.
4. The Executive Committee shall elect from among its own numbers a Chairperson, a Vice Chairperson, a Secretary, and a Treasurer.
5. The posts of Treasurer and Secretary may be held by one Executive Committee member, but such person shall only have one vote at Executive Committee meetings.
6. The Executive Committee shall have the right to co-opt additional members at its discretion, such co-opted Members shall have such voting rights as the Executive Committee shall decide.
7. Current Executive Committee Members may stand for re-election.
8. If at least two thirds of the Executive Committee members so decide, any Member of the Executive Committee may be removed from office on the following grounds
 - a. for failing to attend three consecutive meetings
 - b. for incompetence in executing the work of the Executive Committee
 - c. for actions which go contrary to the interests and aims of the Association
9. The Executive Committee shall at its discretion allocate various duties to its members and at its discretion appoint sub-committees to deal with various activities and to make recommendations to the Executive Committee.
10. No office bearer of this Association or member of the Executive Committee shall be personally accountable to any member for any act done or suffered to be done, or for

any omission to act, provided that the conduct of such office bearer was done in good faith.

9. MEETINGS OF EXECUTIVE COMMITTEE:

1. The Executive Committee shall meet at least every two months, at a time and place notified by the Secretary. It may meet more frequently as decided by its members.
2. The Chairperson shall preside at all meetings, and in his or her absence, the Vice Chairperson, or failing him or her, another member nominated by the Executive Committee shall preside.
3. Four Members of the Executive Committee shall form a quorum.
4. All issues other than those specified herein as needing a greater majority, shall be decided by simple majority vote. Each member of the Executive Committee shall have one vote. In the event of a drawn or tied vote, the Chairman shall have a deciding vote.
5. The Secretary shall record the minutes of each meeting and shall circulate such minutes to all members of the Executive Committee prior to the next meeting. If the Executive Committee deems it necessary, all minutes shall be approved and signed by the Chairperson and Secretary.

10. GENERAL MEETINGS:

1. The Annual General Meeting of the Association shall be held not later than the last day of December every year, which is three months after the end of the Association's financial year, 1st October to the 30th September. It shall be held at a time and place in or near Misty Cliffs as shall be decided by the Executive Committee.
2. The Secretary shall give each member of the Association at least 21 days notice of the proposed Annual General Meeting.
3. Such notice shall be accompanied by
 - a. an Agenda of issues to be raised at the Annual General Meeting
 - b. a notice of resolutions intended to be put to the Annual General Meeting including notice of any proposed amendments to the Constitution.
 - c. a proxy form to enable members to authorise another to vote on their behalf.
4. Notwithstanding such prior notice, any member in good standing may at the Annual General Meeting add any other matter to the Agenda and propose resolutions.
5. The Chairperson of the Executive Committee shall preside at all General Meetings. In the event of him or her being unavailable, the Vice Chairperson shall preside, and failing him or her, the meeting shall elect a person to serve as Chairperson for that Annual General Meeting who shall so serve until the close of that meeting.
6. Twenty five percent (25%), including proxies, of all members of the Association in good standing in terms of Clause 2.2 above shall form a quorum.
7. Only paid up members present, or by proxy, shall be entitled to vote at General Meetings.
8. A simple majority of votes of the members present, including proxies, shall decide any question except for those issues requiring a two thirds majority. The Chairperson shall have a deliberative but not a deciding or casting vote.
9. The results of voting at a General Meeting shall be announced immediately the results are known. Any objections not raised immediately after such announcement shall be ruled out of order.
10. In the event of an objection, or a dispute regarding the correctness of the counting of the number of votes during a show of hands, the Chairperson shall declare the vote invalid and order a revote either by show of hands or by secret ballot, after which the results announced shall be final.
11. The Minutes of the previous year's Annual General Meeting and any Special general Meetings, and the Financial Statements for the immediately preceding year shall be made available at the Annual General Meeting for inspection by any member.
12. If at any Annual or Special General Meeting the necessary quorum is not present within thirty minutes from the time appointed for the holding of such meeting, the meeting shall be adjourned until one week later, at a place and time of which members shall be notified. If at such adjourned meeting the prescribed quorum is not present, the members who are then present shall themselves constitute a quorum and may transact any business for which the meeting has been called.
13. The Executive Committee may at any time if it deems it necessary or expedient call a Special General Meeting.
14. The Secretary shall call a Special General Meeting upon receiving requests in writing by not less than 25% paid up members, specifying the reasons for requesting such a Special General Meeting. No business may be transacted at a Special General Meeting other than that referred to in the notice of such meeting.
15. If there are any expenses incurred in the calling of such Special General Meeting, these shall be paid by those who request the meeting.

16. A Special General Meeting shall be conducted in the manner specified for an Annual General Meeting.
17. The Executive Committee may, at its discretion, sanction either written or electronic mail (email) as the legitimate method of giving notice or as the expression of members' votes in lieu of attendance at any meeting required by this Constitution.

11. AMENDMENT OF CONSTITUTION:

12. This constitution shall be operative from the date upon which it is adopted and thereafter no amendment or alteration or variation to it shall be valid unless approved by a two-thirds majority of paid up members of the Association, including proxies, present at any General Meeting. At least 21 days written notice shall be given of the intention to introduce a resolution amending or varying this constitution.
13. A copy of this constitution, or of any other resolution of the Association, certified as such by the Chairperson or Secretary for the time being, shall be acceptable as evidence for any purpose whatsoever.
14. The Association is required to submit to the Commissioner a copy of any amendment to the Constitution.

Amended 12 August 2013