

# **VITA PAZ VII**

**HOME OWNERS' ASSOCIATION**

**CONSTITUTION**

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## Contents

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1.	NAME .....	3
2.	DEFINITIONS.....	3
3.	HEADNOTES .....	3
4.	THE STATUS OF THE ASSOCIATION .....	3
5.	OBJECTIVES AND POWERS OF THE ASSOCIATION.....	4
6.	MEMBERS.....	5
7.	BOARD OF DIRECTORS.....	5
8.	VACATION OF OFFICE .....	6
9.	BOARD MEETINGS AND PROCEDURES .....	6
10.	POWERS.....	6
11.	VALIDITY OF ACTS OF BOARD MEMBERS .....	7
12.	REMUNERATION.....	7
13.	INDEMNITY .....	7
14.	GENERAL MEETINGS OF THE ASSOCIATION.....	7
15.	NOTICE OF MEETINGS .....	7
16.	VALIDITY OF MEETING .....	8
17.	QUORUM .....	8
18.	CHAIRMAN.....	8
19.	VOTES.....	8
20.	AGENDA.....	8
21.	PROXY .....	9
22.	SUBSCRIPTIONS .....	9
23.	ACCOUNTS.....	9
24.	DOMICILIUM .....	10
25.	AMENDMENTS TO THE CONSTITUTION.....	10
26.	NON-LIABILITY OF MEMBER .....	10
27.	DEALING WITH THE PRIVATE OPEN SPACE .....	10
28.	INTERPRETATION/ARBITRATION.....	10
29.	SUBMISSION OF PLANS .....	11
30.	SUBDIVISION.....	11

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# **CONSTITUTION OF VITA PAZ VII HOME OWNERS ASSOCIATION**

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## **1. NAME**

The name of the association is **VITA PAZ VII HOME OWNERS ASSOCIATION**

## **2. DEFINITIONS**

In this Constitution, unless the context indicates the contrary

- a. "the Association" shall mean the VITA PAZ VII Home Owners Association; established for the Development at the instance of the Ekurhuleni Metropolitan Municipality in terms of the Conditions of Establishment and being a community scheme is subject to the provisions of the Community Schemes Ombud Service Act No. 9 of 2011.
- b. "municipality" shall mean Ekurhuleni Metropolitan Municipality its successors in title or assigns
- c. "Design Guidelines" means the Design Guidelines prepared by the project architects CSVK Architects as updated from time to time.
- d. "Design Review Committee" means the committee constituted in terms of Clause 5(a) ii hereof.
- e. "the Development" shall mean all erven, excluding Erf 716 shown on diagram SG No. 3032/2008 being the General Plan of Sonneveld Extension 20 township.
- f. "the Developer" shall mean VITA PAZ VII Construction CC or its successors in title.
- g. "member" shall mean any registered owner of an erf, excluding Erf 716, in the Development including the Developer in its capacity as the registered owner of any erf depicted on the General Plan or Plans of the Development and 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.
- h. "Board" means the Board of Directors of the Section 21 Company.
- i. "private open space" means Erf 768 Sonneveld Extension 20 township depicted as private open space, and to be registered in the name of the Home Owners Association.
- j. "Private road" means Erf 767 Sonneveld Extension 20 township.
- k. 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 gender shall include the masculine and feminine 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:

- a. not for gain duly incorporated in terms of section 21 of the Companies Act No. 61 of 1973;
- b. a community scheme as defined in the Community Schemes Ombud Service Act No. 9 of 2011 and therefore being subject to the provisions of the Community Schemes Ombud Service Act No. 9 of 2011;

- c. with separate legal personality, capable of suing and being sued in its own name;
- d. none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the Board in terms of, and subject to the provisions of this Constitution; and
- e. not for profit, but for the benefit of the owners and occupants of immovable property situate in the Development.

## 5. OBJECTIVES AND POWERS OF THE ASSOCIATION

The objectives and powers of the Association are:

- a. to strictly adhere to the architectural guidelines and inter alia ensure the following:
  - i. compulsory adherence to the Design Guidelines;
  - ii. The appointment of a Design Review Committee (D.R.C.) to evaluate building plans and to certify that they comply with the Design Guidelines; the D.R.C. is to be composed of at least the following persons, namely:
    - a member of the Board who shall not be the chairman of the Board, appointed by the remaining members of the Board
    - a registered architect appointed by the Board
- b. to take transfer of and to control, preserve and maintain the private open space and private road by inter alia attending to the following:
  - i. ongoing stormwater management
  - ii generally maintaining the property of the Association
  - iii provision and maintenance of any essential services that may be required and which the local authority cannot provide;
  - iv maintenance of the access and security systems;
- c. to control and maintain all amenities in the Development ;
- d. to ensure compliance by members of the conditions of establishment of the Development, with particular reference to conditions dealing with aesthetic and building restrictions and requirements, and where necessary to ensure that the relevant authority enforces such conditions of establishment;
- e. to object to any subsequent proposed subdivision of any of the erf in the Development;
- f. to appoint any professional or committee of professionals to furnish advice with regard to the carrying out of the Association's objects;
- g. to employ any agent to carry out the Association's objectives;
- h. to ensure that all members maintain their property in a clean and tidy condition and adhere to the specifications imposed by any Consultant appointed by the Developer from time to time;
- i. to administer general security arrangements for the Development to be provided from time to time, excluding the security arrangements of any particular erf;

- j. to enact any rule or regulation necessary to ensure the orderly compliance by the owner of an erf of any of the objects of the Association, and to amend and 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;
- k. to impose on and enforce payment by any recalcitrant member of any penalty for failing to comply with this Constitution or any rule or regulation;
- l. the Association shall have the powers to do such acts as are necessary to accomplish these objectives;
- m. to regulate the keeping of pets within the development such that only those pets that can be kept under the owners' control at all times will be permitted;
- s. to prevent boreholes on the development.
- t. to ensure that the members do not at any time impinge upon the privacy of the properties outside of the perimeter fence.
- u. To promote and enforce standards preventing any nuisances or disturbances to the other members.

## **6. MEMBERS**

- a. Membership of the Association shall be compulsory and automatic upon the registration of any of the erven in the Development in the name of the member and members shall be obliged to comply with the provisions of this Constitution and any rules or regulations made in terms hereof.
- b. No person shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf in the Development or be entitled to resign therefrom.
- c. When a member ceases to be a registered owner of an erf in the Development he shall ipso facto cease to be a member of the Association.
- d. Membership shall be transferred by the passing of transfer of any erf in the Development from the previous member to the new member.
- e. A member shall not be entitled to sell or transfer an erf or undivided portion thereof in the Development unless it is a condition of the Deed of Sale that the new purchaser becomes a member of the Association.
- f. Members shall be obliged to pay the levies as determined and this obligation shall apply to the Developer as the owner of any unsold erven, such obligation of the Developer being qualified in clause 15 of the Conduct Rules and Architectural Guidelines of the Vita Paz VII Homeowners Association.
- g. Members shall not be entitled to lease their property unless it is a specific condition of the lease that the lessee be handed a copy of the constitution and that such lessee undertake to abide by the conditions thereof as far as they may affect such lessee.

## **7. BOARD OF DIRECTORS**

- a. The Conditions Of Establishment of Sonneveld Extension 20 township stipulate that a Home Owners Association is to be established.
- b. It has been elected that the Home Owners Association shall be an Association not for gain duly incorporated in terms of Section 21 of the Companies Act no. 61 of 1973.

## **8. VACATION OF OFFICE**

A Board member shall cease to hold office as such if:

- a. by notice in writing to the Board he resigns his office;
- b. he is or becomes of unsound mind;
- c. he surrenders his estate as insolvent or his estate is sequestrated;
- d. he is convicted of an offence which involves dishonesty;
- e. he absents himself from three consecutive meetings of Board without special leave of absence from Board;
- f. by resolution of a general meeting of the Association he is removed from his office;
- g. he ceases to be a registered owner of an erf in the township or his subscription becomes delinquent in terms of Clause 22 e.

## **9. BOARD MEETINGS AND PROCEDURES**

- a. The Board shall meet at such time and place as shall be decided by the Board from time to time.
- b. Three Board members may at any time convene a meeting of the Board by giving to the other Board members no less than 10 days written 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.
- c. Four members shall form a quorum at any meeting of the Board.
- d. All matters at any meeting of the Board 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 deliberate vote.
- e. The Board may from time to time appoint a Secretary and a Treasurer, or a Secretary/Treasurer.
- f. The Board shall keep minutes of all its meetings, which shall be available for inspection by any member on request.

## **10. POWERS**

The Management and Administration of the Association shall vest in the Board of Directors which may exercise all such powers 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 shall include but not be limited to the following:

- a. the performance of such acts as are necessary to accomplish the objects expressed or implied herein;
- b. the investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- c. the operation of a banking account with all powers required by such operations;
- d. the making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- e. the employment and payment of agents, servants and any other parties;

- f. the making, amendment and repeal of rules which shall be binding upon members as if they form part of this Constitution;
- g. the right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose;
- h. the levying of a subscription payable by members as provided in Clause 22 hereof.
- i. The preservation of the architectural guidelines of the Development and the adjudication upon any proposed extension, addition and/or alterations to the property or erections situate thereon within the Development in accordance with the Design Guidelines.

#### **11. VALIDITY OF ACTS OF BOARD MEMBERS**

Any act performed by Board members shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any Board member, be as valid as if such Board member has been duly appointed in office.

#### **12. REMUNERATION**

Board 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 Board members but save as aforesaid, shall not be entitled to any other remuneration, fees or salary, in respect of the performance of such duties.

#### **13. INDEMNITY**

No Board members 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. A Board member shall be indemnified by the Association against any loss or damage suffered by him 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.

#### **14. GENERAL MEETINGS OF THE ASSOCIATION**

- a. The Association shall before 25 March in each year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, and shall specify the meeting as such in the notices, calling the Meeting.
- b. As soon as 20 erven have been transferred the First Annual General Meeting shall be convened unless this has already transpired at the instance of the Developer.
- c. Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Board shall decide from time to time.
- d. All general meetings other than Annual General Meetings shall be called special general meetings.
- e. The Board may, whenever they think fit, convene a special general meeting.

#### **15. NOTICE OF MEETINGS**

A General Meeting shall be convened on not less than twenty-one (21) 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 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 eighty per cent of the members present.

**16. VALIDITY OF MEETING**

The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that meeting.

**17. QUORUM**

No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. Save for the purposes of a Resolution required in terms of Clauses 25 and 27 hereof a Quorum for all other purposes shall be members present in person or by proxy and holding not less than 60% of the total number of votes available to be cast by members at the time that the meeting commences.

**18. CHAIRMAN**

The Chairman of the Board shall preside at every General Meeting.

**19. VOTES**

At all general meetings resolutions put to the vote, shall take place by 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. Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:-

- a. each member present in person shall have one vote for every erf registered in his name.
- b. 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.
- c. 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.
- d. the Developer or its duly authorised representative shall have one vote for each untransferred erf still registered in its name.
- e. all resolutions shall, except as otherwise provided herein, be by simple majority of those members present in person or proxy at the meeting and voting.
- f. 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.

**20. 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:

- a. the consideration of the Chairman's report.
- b. the election of the Board and appointment of a Chairman.
- c. the consideration of the report of the Auditors and fixing of their remuneration.
- d. the confirmation of any budget proposed by the Board.
- e. the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions.
- f. the confirmation of the annual subscription as proposed by the Board for the year.



**21. PROXY**

Votes may be given either personally or by proxy.

- a. The instrument appointing a proxy shall be in writing in the common form, or any form approved by the Board under the hand of the appointer, or of his attorney duly authorised in writing, or if such appointer is a company, under the hand of an officer duly authorised in that behalf.
- b. The instrument of appointing a proxy, together with the power of attorney (if any) under which it is signed or a notarially certified copy thereof shall be deposited at the domicilium citandi of the Association at least three days before the time appointed for holding the meeting, or adjourned meeting, at which the person named in such instrument proposes to vote; otherwise the person so named shall not be entitled to vote in respect thereof.

**22. SUBSCRIPTIONS**

- a. The Association, through the Board, shall be entitled to levy an annual subscription for the purpose of meeting all expenses, which the Association has incurred or to which the Board reasonably anticipates the Association will be put and to defray the costs of managing and administering the Association to achieve its objects.
- b. Payment of the annual subscription may be effected as follows:-
  - i. a once off payment equal to the annual subscription payable within 30 days from the date referred to in (c) below; and
  - ii. in monthly instalments, in advance to cover the annual subscription payable in any year.
- c. The annual subscription shall commence on a date to be determined by the Board. The first subscription shall become due and payable on the day fixed for commencement.
- d. The Board may from time to time determine and collect special levies from members in addition to the annual subscriptions should the need for such additional levies arise or circumstances so dictate.
- e. If the annual subscription is not paid within ninety days of due date, or should a member be in arrear for three months if the subscriptions are paid monthly, then such subscription shall become delinquent, and the Association may institute legal proceedings against the member for the recovery thereof and the costs of such proceedings shall be added to the subscription due by the delinquent member. A member whose subscription is delinquent for the current year shall not be entitled to:
  - i. nominate candidates for election to the Board.
  - ii. Serve on the Board.
- f. The Board shall be obliged to impose a penalty levy as determined by it from time to time against members or their successors in title who fail to "commence" and/or "complete" building construction within the time limitations imposed on the members when purchasing their properties, the details of which are set out more fully in their respective Deeds of Sale. Such penalty levy shall be stipulated as three times the normal annual levy until such time as determined otherwise by a duly appointed Board.

**23. ACCOUNTS**

- a. The Board shall cause proper books of accounts 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 deem fit.

- b. The Board shall cause to be laid before the Association at its Annual General Meeting, books of account, balance sheets and reports of the Association.
- c. 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.

#### **24. DOMICILIUM**

For all purposes arising out of this constitution including the giving of notices and the serving of legal process, the Association and each member chooses domicilium citandi et executandi as follows:

- a. the Association at 74 Farquharson Road, Sonneveld, Brakpan.
- b. each member - at the erf registered in his name provided that a member may by written pre-paid post addressed to the Association at the domicilium citandi et executandi referred to in (a) above change his domicilium to some other physical address in South Africa.

Any notice which may be required to be given in terms of this Constitution may be given by the despatch of such notice in writing by pre-paid post, in which event, such notice shall be deemed to have been received ten days after the posting thereof from any Post Office within the Republic of South Africa.

Alternatively a notice advising of, but not being limited to, the Annual General Meeting of the Association, may be delivered by hand to a member at the erf registered in his name.

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

Any amendment or addition to the Constitution must be passed by a resolution of not less than 75% (SEVENTY FIVE PER CENT) of members present, and entitled to vote, at a general meeting.

#### **26. NON-LIABILITY OF MEMBER**

No member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of, the Association.

#### **27. DEALING WITH THE PRIVATE OPEN SPACE**

Neither the whole nor any portion of the Private Open Space shall be:

- a. sold, let, alienated, otherwise disposed of, subdivided or transferred, or
- b. mortgaged, or
- c. subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude, other than those existing in the conditions of establishment; or
- d. built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a Special Resolution of the Association passed at the Annual General Meeting of the Association at which not less than 75% of members entitled to vote at the meeting are present and vote in favour of the proposed Resolution.

#### **28. INTERPRETATION/ARBITRATION**

- a. Should any dispute or doubt arise as to the interpretation or meaning of this Constitution or any Rules and Regulations of the Association, a member shall submit such matter in writing to the Board for consideration.
- b. Should a member, upon receipt of the written response of the Board, not accept the reply received from the Board, the member shall invoke the provisions of inter alia sections 38 and 39 of the Community Schemes Ombud Service Act No. 9 of 2011.

- c. Should the Ombud not have powers to order relief not contemplated in section 39 of the Community Schemes Ombud Service Act No. 9 of 2011, the Board shall be the final arbiter and its decision shall be binding upon the members.

**29. SUBMISSION OF PLANS**

No Member shall submit any plans to the Municipality or commence the erection of, or alteration or addition to any building or other structure on any erf or permit the same unless the plans thereof have first been submitted to and approved by the Design Review Committee in accordance with the procedures set forth in the Architectural Guidelines. Alteration includes changing of external finishes, materials and colour schemes or any other item included or referred to under the Design Guidelines.

**30. SUBDIVISION**

No Member shall be entitled to subdivide any erf registered in his name.