



# RULES OF RIVERHORSE VALLEY BUSINESS ESTATE MANAGEMENT ASSOCIATION NPC

Reg. No: 2003/022705/08

## 1. DEFINITIONS AND INTERPRETATIONS

- 1.1. "Association" - means the Riverhorse Valley Business Estate Management Association NPC (RHVBEMA)
- 1.2. "Development Code" - means the RHVBE Development Code which sets out the standards, conditions and specifications imposed by the Developer and the Association for building or improvements within the Estate
- 1.3. "Developer" – means Effingham Development Joint Venture (it being recorded that this is a joint venture between EThekwini Municipality and Tongaat Hulett Developments (Pty) Ltd (Reg No. 1981/012378/07), previously known as Moreland Developments (Pty) Ltd
- 1.4. "Estate Manager" – means a person employed by RHVBEMA to manage the day to day running of the estate
- 1.5. "Land" - means any land in the Estate including any subdivision capable of individual ownership, whether such land is improved or not, or a Sectional Title unit under the provisions of the Sectional Titles Act No. 95 of 1986, where a sectional title scheme has been established on any such land, and shall include any additional immovable property which the Developer may include as part of The Estate as provided for in Article 25 of the Association's Memorandum of Incorporation.
- 1.6. "Member" - means an Owner, Effingham Development Joint Venture as the Developer. All owners are by default members of the Association and subject to compliance to these Rules of The Estate, Memorandum of Incorporation and the Development Code and the Environmental Management Plan, and the payment of monthly levies.
- 1.7. "Owner" – means any person who is the registered owner of the Land or an undivided share in Land or a purchaser who has entered into a written contract with the Developer to purchase Land and all suspensive conditions under such purchase contract have been fulfilled provided such contract of sale is still of full force and effect and binding between the parties
- 1.8. "Open Space" - means verges, river and river bank
- 1.9. "Property" - means Land and improvements under the control of Members
- 1.10. "Road" - means all roads within the Estate which are designated municipal roads
- 1.11. "Estate" – means Riverhorse Valley Business Estate (RHVBE) as defined in the Memorandum of Incorporation

In these Rules, unless the context clearly indicates otherwise, any word herein contained and not herein defined, shall have the same meaning as that given to it in terms of the Memorandum of Incorporation.

Should there be any conflict between the provisions of these Rules and the provisions of the Memorandum of Incorporation, then the provisions of the Memorandum of Incorporation shall apply.

## 2. INTRODUCTION

- 2.1. In terms of the Article 8.5 of the Association's Memorandum of Incorporation, the Directors are given the power to make Rules, as well as the power to substitute, add to, amend or repeal same, for the purposes of management, control, administration, use and enjoyment of the Estate as a whole, and for the purposes of giving proper effect to the provisions of the Memorandum of Incorporation, and for any other purposes which they deem appropriate.
- 2.2. Any Rules made by the Directors are binding on all Members.
- 2.3. Any breach by a Member of the Memorandum of Incorporation or these Rules may result in the Directors imposing a financial penalty against such defaulting Member as provided for in Article 8.
- 2.4. Members will also be responsible for any contravention of these Rules by any tenant, agent, employee, contractor, invitee or any other person authorised to be on the Estate by such Member.
- 2.5. In view of the above, Members should ensure that it is a condition of any lease of such Member's unit on the Estate that the lessee shall be bound by the Memorandum of Incorporation and Rules of the Association and that any breach of the Memorandum of Incorporation or Rules by the lessee shall be deemed to be a breach of the Agreement of Lease entitling the Member as lessor to such remedies as may be appropriate.
- 2.6. The Directors of the Association may amend these Rules, by way of resolution, and such amendments shall be communicated promptly to Members in writing.

## 3. APPLICATION OF THESE RULES

These Rules shall apply to all Members from the date of promulgation.

## 4. OCCUPATION AND USE OF PROPERTIES

- 4.1. Occupation and use of Property shall, at all times, be in compliance with the Rules and the Memorandum of Incorporation. The Directors may, in their sole discretion, determine that any person, not being a Member, be denied access to the Estate and be required to leave in the event of such person breaching the Memorandum of Incorporation or the Association's Rules made in terms thereof. No Member shall use any building on such Member's Land, or allow any other person to use such buildings, for purposes not permitted by the Scheme, the Memorandum of Incorporation, the Association's Rules made in terms hereof or the title deeds to such Land.
- 4.2. Any harmful or flammable substances kept on the property must be kept in accordance with the local regulatory authority and in compliance with all health and safety requirements.
- 4.3. No commercial advertising of any nature shall be allowed on the verge of any Property, save for one "For Sale" or "To Let" sign which may be erected either on the fence or within the Property itself. The same ruling shall apply to the signage erected by security service providers.
- 4.4. In compliance with the conditions of title relating to all properties, a Member shall abide by the Development Code which shall include the Developer's and contractor's protocol, Environmental Management Plan, landscaping philosophy, and security protocols applicable from time to time.
- 4.5. Nothing may be placed on or attached to a building or any other structure without the prior written approval of the Association. The request for such approval may require the submission of a drawing, or plan to support the written application and which may be necessary to fully define the application. This will include, but is in no way limited to, external extraction units, plant equipment, awnings, etc. Even when not directly attached to the building.

5. UPKEEP AND MAINTENANCE OF PROPERTIES

- 5.1. All fences, landscaping, driveways, structures and the exteriors (including the cleaning and maintenance of roofs) of all buildings on Properties shall be maintained by the Member in a clean and tidy condition, be fittingly repaired, painted and properly kept according to clause 21.5 of the Memorandum of Incorporation;
- 5.2. Where in the opinion of the Association the condition of a property, including landscaping, is not to the required standard of the Estate as dictated by the Development Code, the Association shall give written notice to the Member to carry out the necessary improvements within a specified time.
- 5.3. Should the Member fail to carry out such work as requested, the Association shall be entitled to carry out the work and to recover the reasonable cost thereof from the Member, which amount shall be deemed to be part of the levy due by the Member.
- 5.4. All public open space shall be maintained by the Association in a good and proper order and condition and shall not be used in any manner or for any purpose which is likely to impair the appearance or amenity of the Estate in general.

6. LEVIES

- 6.1. In terms of the provisions of Article 14.4, levies are due in advance and are payable by all Members on the 1<sup>st</sup> day of each month. Payment of fines or any fees are due on receipt by a Member concerned of an invoice calling for such payment.
- 6.2. Should a Member not have paid his/her levies, fines or any fees due, as the case may be, by the 8<sup>th</sup> day of the month, such Member shall receive a first letter requesting settlement of such amount in arrears within 7 (SEVEN) days from the date of such letter.
- 6.3. Should a Member not have paid his/her levies, fines or any fees due, as the case may be, by the 15<sup>th</sup> to the 20<sup>th</sup> day of the month in question, such Member shall receive a second letter of demand detailing the amount in arrears and requesting settlement of such amount in arrears.
- 6.4. Should a Member not have made payment after the 20<sup>th</sup> day referred to in Paragraph 6.3 above, then such Member will be handed over to the Association's Attorneys with an authorisation from the Association, to proceed with legal action against such Member.
- 6.5. Any levies not paid within 30 (THIRTY) days of due date shall bear interest at 3% (THREE PERCENT) above the prime overdraft rate charged by the Standard Bank of South Africa from time to time, calculated and compounded monthly. Such interest shall be applied to the full amount overdue from the due date to the date of payment, both dates inclusive.
- 6.6. Any levies not paid within 60 (SIXTY) days of due date shall be handed over for Legal collection and all Legal fees will be applied to the full amount overdue from the due date to the date of payment, both dates inclusive.
- 6.7. Once Legal action has been implemented all levies due to the end of that financial year will become due and payable in advance.
- 6.8. In addition to the interest of 3% (THREE PERCENT) above prime rates referred to in Article 14.9 of the Association's Memorandum of Incorporation, a Member whose levy account has been handed over to the Attorneys, shall be liable for legal costs in terms of Article 8.8, incurred by the Association in recovering the arrear levies, fines or any fees from the Member concerned.
- 6.9. Levy amounts may not be withheld or reduced or off-set against any real or perceived non-provision of services, or for any other reason whatsoever.
- 6.10. All owners of vacant Land still to be developed are required, in terms of Article 10.4 of The Development Code are to pay a pavement deposit of R50 000.00 before construction commences.

7. SECTIONAL TITLE SCHEMES

7.1. Any sectional title scheme within The Estate shall include in its rules the following provision:

*“Notwithstanding anything contained herein or elsewhere it is recorded that the Rules of the Body Corporate, as set out herein, shall be subject to the provisions of the Memorandum of Incorporation of the Riverhorse Valley Business Estate Management Association NPC (hereinafter referred to as "the Association") and any Rules and regulations made in terms thereof. In the event of there being any conflict between the provisions of the Rules of the Body Corporate and the Memorandum of Incorporation or Rules of the Association, the Memorandum of Incorporation provisions shall apply in this regard.*

*Each member of the Body Corporate is obliged to become a member of the Association in accordance with the provisions of the Association's Memorandum of Incorporation and shall at all times comply with the Association's Memorandum of Incorporation and Rules.*

*In no way detracting from the generality of the aforesaid, it is recorded that each member of the Body Corporate shall be obliged to pay the Association a monthly levy calculated in accordance with the Memorandum of Incorporation. This levy shall, as provided for in the Association's Rules, be collected by the Body Corporate on the Association's behalf and paid to the Association.”*

8. VEHICLES/TRUCKS

8.1. No vehicle shall be parked, stored or left unattended within the Open Space or sidewalks on the Estate.

8.2. The speed limit throughout the Estate is 60 (Sixty) kilometres per hour. Any person found driving in excess of 60kph or in a dangerous manner will be subject to a fine by the Municipality.

8.3. All road signs shall have the same meaning as those used on public roads in KwaZulu-Natal and the failure by any person to obey same and give effect to such meaning shall constitute a contravention of these rules.

9. WASTE MANAGEMENT

9.1. The collection and removal of all waste accumulated by a Member is to be entirely that Member's responsibility, at his own cost and in compliance with any local regulatory authority and in compliance with any and all health and safety requirements thereto. RHVBEMA Waste Management Service Provider to collect, sort and recycle waste in public Open Space areas on the Estate.

10. FINES

10.1 Insofar as the Memorandum of Incorporation contemplate the Directors imposing fines upon a Member pursuant to a breach of the Memorandum of Incorporation and/or the Rules and/or the Design Code and/or of any directive of the Association, the Directors set out hereunder, as a guide only, the following categories and scales of fines:-

<u>OFFENCE</u>	<u>FIRST OFFENCE</u>	<u>SECOND OFFENCE OR DISREGARD</u>
Technical breach without malice aforethought, premeditated intent or due consideration.	R 2000.00 + Value Added Tax	R 5000.00 + Value Added Tax
Non-compliance	R 5000.00 + Value Added Tax	R 10 000.00 + Value Added Tax
Blatant Disregard	R 10 000.00 + Value Added Tax	R 20 000.00 + Value Added Tax
Environmental Management Plan Breach	As Per the Development Code	As Per the Development Code

10.2 The abovementioned fines and categories of offences shall be subject to amendment by the Directors from time to time at their discretion.

10.3 Fines imposed for the breach of or non-compliance with the Rules shall be deemed to be part of the levy due by the Member.

## 11 BREACH

11.1 Should any Member breach any of the Memorandum of Incorporation and/or the Rules and/or any provisions of the Design Code and/or any directive lawfully given by the Association then the Association shall give the Member written notice to remedy such breach within a period of time which the Association in its sole discretion deems reasonable given the nature of the breach.

11.2 The Association shall send such written notice to the Member at the Member's address of record as furnished by the Member to the Association. If sent by prepaid registered post to such address then it shall be deemed to have been received on the fourth day after posting and if delivered by hand to such address, then on the date of delivery.

11.3 Should the Member fail to remedy the breach within the time stated in the said notice then the Association at its sole discretion shall be entitled to either:-

11.3.1 Impose a fine upon the Member which shall be deemed to be a debt due by the Member to the Association and which shall be recoverable by ordinary civil process as provided for in Article 8.5 of the Memorandum of Incorporation; and/or

11.3.2 Refer the matter to arbitration as provided for in Article 24 of the Memorandum of Incorporation; and/or

11.3.3 Proceed by civil application or action in a court of competent jurisdiction for such relief as it may deem appropriate as provided for in Article 8 of the Memorandum of Incorporation; and/or

11.3.4 Proceed with the carrying out of any work or the doing of anything which the Association has called upon the Member to do, the cost of which shall be deemed to be a debt due by the Member to the Association; and/or

11.3.5 Take such other action as may lawfully be available to the Association.

## 12 DEVELOPMENT CODE, ENVIRONMENTAL MANAGEMENT PLAN AND SECURITY PROTOCOL

All Members are to ensure that they comply with the latest version of this documentation; copies of which are available from the Association.

## 13 DESIGN REVIEW COMMITTEE

13.1 All Owners by virtue of being Members of the Association are in accordance with the Development Code subject to the Design Review process which is overseen by the Design Review Committee. The Design Review Process is as follows:

- i. Pre-design conference
- ii. Presentation of conceptual design
- iii. Review of Submission Plans for Council approval
- iv. Design Review Approval
- v. Submission of plans to council
- vi. Final Design Approval

Final Design Approval will only be given upon final inspection of buildings on completion of construction to determine that all requirements of the Development Code have been met and ensuring that as-built plans are compliant with both the Design Review Committee and Council Town Planning.

## 14 DUE COMPLIANCE – CONSTRUCTION

- 14.1 It is in the interest of the Association's Members and their tenants that the conduct and performance of on-site contractors are exemplary throughout the Estate's development. To this end it is required that certain matters related to tendering and construction procedures are regulated by the Association.
- 14.2 Whether a negotiated or open tender, the nature of any construction tender is to be reported to the Association. The Association may require that an additional contract governing due performance be entered into between the Member and the Association.
- 14.3 All construction work shall be subject to the Development Code and The Environmental Management Plan. Most importantly contractors will be liable for penalties for offences relating to non-compliance to the Development Code and the Environmental Plan, which offences and penalties in the form of fines are listed within the Development Code. Failure by the contractor to pay the fines levied against them for non-compliance issues will result in those costs being recovered from the cash deposit as mentioned in Clause 14.5. In the event that a cash deposit has not been paid then those costs will be passed to the Member by way of adding the costs to the levy due by the Member as mentioned in Clause 10.3.
- 14.4 In the case of all developments and irrespective of tender procedures and the proposed appointment of a successful tenderer, it is required that the Association receives a full report on the successful tenderer and the position regarding bank guarantees. Where the successful tenderer's work is unknown to the Association, the Estate Manager may require such contractor to apprise the Association of previous work.
- 14.5 In all instances a cash deposit of R 50 000.00 is to be lodged with the Management Association to cover fines imposed, damages to the public and semi-public domain or failure to comply with the Association's conditions of plan approval or failure to complete the contract satisfactorily. The Design Review Committee may require that the retention be provided before plan approvals are granted. The deposit shall be lodged before the site is handed over to the Member to commence construction and shall be retained for a minimum of three (3) months after the issuing of the completion certificate.
- 14.6 Where, in the opinion of the Estate Manager, the risk of or actual damage to public infrastructure renders the standard deposit insufficient, the Estate Manager may require an additional deposit to be lodged with the Association.
- 14.7 A Clerk of Works, at the discretion of the Association, may be appointed to ensure due performance by contractors to protect the interests of the Association. The Clerk of Works shall report to the Design Review Committee in this regard.
- 14.8 Prior to commencing any construction work, Members are to furnish to the Association, for approval by the Estate Manager, full particulars of the following; contractors' intended site establishment, arrangements for contractors' entrances, materials and plant storage, fencing and hoarding details, site office arrangements, security of the site and ensuring security for adjacent sites. Members are also to furnish the Association with the name, address and contact numbers of the contractor.

## 15 SECURITY

- 15.1 Each individual Property Owner provides and is responsible for the security of their Property.
- 15.2 The Association retains a 24 hour Safe Guarding service provider for the Estate as a whole which is monitored by CCTVs and roaming security officers;
- 15.3 The control room is staffed 24/7 and may be contacted on 031 564 3931 for prompt assistance.
- 15.4 The dynamics of the Safe Guarding Service Provider can change from time to time;
- 15.5 The Safe Guarding Service Provider may be called upon to back up security provided on private property at the entrance to the property but may not enter the property. This service is only offered on condition that the Estate's response vehicle is free and available to do so and its attendance on the above does not prejudice its first and foremost duties and responsibilities to the Management Association, and the Management Association shall accept no liability in this regard based on Clause 15.1 above.

16 SIGNAGE, GRAPHICS AND LIGHTING

Signage, graphics and lighting to comply with clause 9 of the Development Code and is to be approved by the Design Review Committee before installation.

17 TRANSFER OF OWNERSHIP

17.1 Owners shall not be entitled to sell or otherwise transfer ownership of the Property unless it is a suspensive condition of such sale or other transfer that –

17.1.1 The Association grants its written consent to such sale or other transfer (which consent it shall be entitled to withhold in the event of any monies being due and owing to the Association by the Member or the Member being in breach of the latest version of any of the Memorandum of Incorporation of the Association or the latest version of any of the Rules made by the Association, and failing to remedy such breach);

17.1.2 The transferee, in a manner acceptable to the Association, agrees to become a member and is admitted as a member of the Association;

18 DISCLAIMER OF RESPONSIBILITY

18.1. The Association shall not be liable for any injury to any person, damage to or loss of any property, to whomever it may belong, occurring or suffered, upon the Estate regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring on the Estate. Members hereby acknowledge that they shall not, under any circumstances have any claim or right of action whatsoever against the Association for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

18.2. The Association and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with Member or any lessee for any injury or loss or damage of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the Estate, regardless of the cause thereof.

19 GENERAL

In addition to these Rules, all Members shall be required to comply with the Memorandum of Incorporation, Sectional Titles Act of 95 of 1986, Durban Town Planning Scheme and any other legislation and regulations applicable at RHVBE. Any reference to any statute, legislation or regulations shall be deemed to include any lawful amendments thereto or re-enactment thereof. In interpreting this document, no provision shall be construed in a limiting fashion or in accordance with *Eiusdem Generis* Rule.