House Rule Servitude Land

1. Introduction

1.1. The two Bodies Corporate of Dolphin Beach and Dolphin Four together form a separate entity known as the Body Corporate in a Homeowner's Association for Dolphin Beach and Dolphin Four.

1.1. The basic reason for this Homeowner's Association is to manage the common land shared between these two Bodies Corporate. The common property area is mostly situated in two sets of servitude land.

Extract from the Home Owner's Association founding document: ("That a Home Owners Association be established, in terms of Section 29(1) of the Land Use Planning Ordinance No.15 of 1985, to ensure that the common areas, including the dune area situated within the servitude area, registered over Public Open space, Erf 10066, Table View Milnerton in favour of Erf 15584, and the road access and security areas, are controlled, managed and maintained, the details of the Home Owners Constitution, being to the satisfaction of the Council's Attorneys, to ensure that common responsibilities cannot be abrogated or rescinded at any time in the future.")

1.2. The dune area is covered under National Deed of Servitude K 774 1992 and the roadworks is covered under the National Deed of Servitude K 39 1994.

2. Extract from the Dune Notarial Deed of Servitude

2.1. To keep the document concise only an extract of the Dune Notarial Deed of Servitude is presented:

2.2. "And whereas the Owner, with a view to facilitating the erection and operation of a complex including a resort hotel on Erf 15584, requested the Municipality to consent to the reconstruction and stabilisation of certain sand dunes situated on a portion on remainder of Erf 10066 Milnerton and the planting thereof and the installation of the infrastructure necessary for the future management and protection thereof (all of which is hereinafter referred to as "the works") ----- --.

2.3. And whereas the Municipality consent to the aforementioned request subject to the Owner assuming certain obligations inter alia relating to the management and protection of "the works".

2.4. And whereas the Owner has completed the works in accordance with the requirements of the CSIR, the Municipality, the Owner wish to record their agreement with regard to the management and protection of the works including the rights and obligations of the Owner relating thereto and to register the terms and conditions thereof as a servitude.

2.5. The Municipality hereby grants to the **Owner** (which includes successors in title the intention being that the owner for the time being of Erf 15584 **shall be solely liable for the fulfilment of the obligations contained herein and shall enjoy the benefits granted herein**) the servitude **right to access in perpetuity to the portion of remainder of Erf 10066 Milnerton within the area with a uniform width of 80 eighty meters**, the North Eastern boundary ---- ----- (the said portion being hereinafter referred to as the "servitude area") so as to enable the Owner to exercise the rights granted to the Owner and to fulfil the obligations imposed upon the Owner in terms hereof.

2.6. The Owner shall manage and protect the works in a condition substantially as they are at the date of execution hereof at the sole and exclusive costs of the Owner. If any dispute should arise between the Owner and Municipality with regard to the steps required for such management and protection such disputes shall forthwith to the CSIR or successor thereto for decision. ------- ------- -------.

2.7. The Owner shall exercise its rights and carry out its obligations in terms of the servitude in such a manner as **not to interfere with the legitimate rights of access to and over the servitude area enjoyed by the general public** (Remainder Erf 10066 Milnerton having being zoned as public open space/recreational area) and carry out all work required in order to fulfil the Owner's obligations in terms of this servitude in such a manner as shall disrupt and interfere as little as reasonably possible with the rights consequently enjoyed by the general public over the servitude area.

2.8. The Owner shall not use or cause or permit any part of the servitude area for the display of advertisements of any description whatsoever without the prior written consent of the Municipality ----- -------. **Notwithstanding the foregoing the Owner shall be entitled to erect notices on the servitude area to protect the sand dunes and infrastructure erected thereon and to caution against the abuse of such area. In addition to ensure that there will be no vehicle movement across the sand dunes and that the general public will utilise the constructed pathways in the servitude area the Owner shall be entitled to erect fences on the boundaries of or within the servitude area to achieve such objectives. In particular, the Owner shall be entitled to determine for the public the points of ingress and egress from the servitude area.**

2.9. The Owner shall not remove or cause or permit be removed from the servitude area any soil, clay or gravel or other matter upon or below the surface of the servitude area without the prior written consent of the Municipality ------ -------.

3. By-laws by the Cape Town City for Recreational Areas

3.1. The objects of the Cape Town By-law on recreational areas are to:

3.1.1. protect and preserve parks for the benefit of the public;

3.1.2. regulate proper use and enjoyment of parks by members of the public;

3.1.3. standardise the fees prescribed for the reservation of parks for private events and functions; and

3.1.4. provide for matters incidental thereto.

3.2. Application of By-law: This By-law applies to:

3.2.1. All parks under the ownership or control of the Municipality;

3.2.2. Any park which is lawfully controlled and managed by a person other than the Municipality in terms of an agreement concluded between such person and the Municipality.

4. Specific Rules Applicable to Dolphin Beach/Dolphin Four Notarial Deed of Servitude

4.1. <u>Classification of Owners of Servitude area</u>

4.1.1. The Owner category is defined as all Owners with their families, friends, rentals and guests staying at Dolphin Beach and Dolphin Four. (Residents and friends)

4.2. Classification of General Public to Servitude area

4.2.1. The general public is defined as those people who visit the servitude area and does not stay at Dolphin Beach/Dolphin Four.

4.3. Terms and Conditions

4.3.1. The Municipality reserves the right to determine the terms and conditions for access into the servitude area.

4.3.2. The Homeowner's Association as the manager of the servitude area may make rules to control access and the conduct of all people on the servitude area.

4.3.3. A person who is allowed access into a park must observe and comply with all the notices displayed at any area of the servitude area, including the entrance thereto; and obey any lawful instruction in accordance to these rules given to him or her by the security officials of Dolphin Beach. Notices must be erected on each lawn area and to all entrances and exits.

4.4. Entrance into Servitude Area

4.4.1. The general public is allowed onto the servitude area within the allocated hours as displayed;

4.4.2. The general public may only enter a park through the gates provided for that purpose as indicated on a notice displayed at or near the entrance to the servitude area.

4.4.3. Owner's may make use of the servitude area during all hours of the day and night.

4.5. Maximum number of Visitors

4.5.1. The Homeowner's Association reserves the right to determine the maximum number of persons who may be present in the dune servitude area at any one time:

4.6. Closure and Restriction of Access

4.6.1. The Homeowner's Association may close or restrict access to the servitude area or part thereof for the purpose of maintenance, safety and restoration or protection of trees and natural vegetation.

4.6.2. A notice is posted that the servitude area will be locked for the general public from 18h00 in the evening until 08h00 the next morning. This rule must be shown on all the servitude notices.

4.7. Exclusion and Removal from Servitude Area

4.7.1. Security (specifically authorised by the Homeowner's Association of Dolphin Beach/Four) may exclude or remove from the servitude area any person who:

- Is in a state of intoxication or under the influence of narcotics;
- Behaves in a manner which is disorderly, unseemly or disruptive to other persons visiting the servitude area; or
- Commits, or is reasonably suspected by an authorised official to have committed, an offence or any other act which is in contravention of any provision of the Municipal By-law on recreational areas.

- Failure or refusal by a person to leave a park upon being ordered by the Security staff.

4.8. Private Events and Functions

4.8.1. Any person who wishes to apply for the reservation of an area of the servitude or part thereof for a private event or function must submit an application to the Estate Manager or Hotel Manager;

4.9. Rights of Refusal and Cancellations

4.9.1. The Trustees may

- refuse to grant an application for the private event or function; or
- cancel any approval if such application is already approved, if it is suspect on reasonable grounds that the event or function applied for is either unlawful or is likely to result in public disturbance.

4.10. Private Use of Servitude Area

4.10.1. Where an application for the private use of a park or part thereof is granted by the Hotel Manager or Estate Manager such event may only be used for the purpose indicated; and

4.10.2. A person who applies for the private use of the servitude area must, subsequent to the approval of such application, sign an agreement obtainable from the Hotel Manager or Estate Manager for the park in question setting out the terms and conditions of the private use thereof.

4.11. Public announcement and advertising

4.11.1. Authority for a private event or function may only be given by the Estate Manager or in the case of a function in the hotel and restaurant by the Hotel Manager.

4.11.2. An approval of an application for the use of the servitude area for a private event or function does not absolve the applicant from due compliance with these rules.

4.11.3. An applicant must, before vacating the park at the end of the private event or function concerned, remove every poster, notice, decoration, flag, emblem, sign and other form of advertisement or direction erected or affixed by or at the instance of such person and make good any damage caused by such removal.

4.12. General Provisions

4.12.1. Food and alcoholic beverages

- The preparation and cooking of food in the servitude area is restricted to Owners and hotel staff and must be done under clean and hygienic conditions.
- The slaughtering or skinning of an animal for any purpose whatsoever is not allowed in the servitude area.
- Selling or displaying for sale any items, goods or services; or bring into, consume or sell any alcoholic beverage or other intoxicating substance, is prohibited in the servitude area.

4.12.2. Starting of a fire.

- A person may only start a fire in the servitude area in a recognised braai drum.

- Such person may not leave the fire unattended or depart from the place where the fire is burning or smouldering without first ensuring that such fire is completely extinguished.

4.12.3. Vehicles

- Access of vehicles of any kind is prohibited in dune servitude area.
- Traffic signage and parking signs in the road servitude must strictly be adhered too;

4.13. Facilities reserved for Children

4.13.1. Where a facility or equipment in the servitude area is reserved for children, the use of such facility or equipment must be restricted to persons not older than 12 years of age.

4.13.2. Dolphin Beach security may require any person to produce documentary proof of age of any person intending to use a facility or equipment referred to, failing which such person may be refused access to the facility or equipment concerned.

4.14. Animals

4.14.1. Guide and service dogs are allowed in the servitude area.

4.14.2. Dolphin Beach is a pet friendly resort and as such registered pets are allowed on the servitude area. The registration process of pets is available in the Manager's office.

4.14.3. Any person who brings an animal into the servitude area must keep it under proper control and ensure that any excrement by such animal is immediately removed and disposed of in a waste bin or other receptacle provided for that purpose.

4.15. Plants and Gardens in the Servitude Area

4.15.1. If, in the opinion of the Trustees, any tree or group of trees in the servitude area requires legal protection, a tree preservation order in respect of the tree or group of trees concerned will be indicated next to the plants.

4.15.2. Any person who cuts, uproots or causes any damage whatsoever to a tree or group of trees to which a tree preservation order relates, commits an offence.

4.16. Prohibited Conduct

4.16.1. A person entering or visiting the servitude area must at all times act in strict compliance with the provisions of these House Rules. A short notice is displayed at the entrance to the Servitude Area.

4.16.2. All persons entering or visiting a park may not

- conduct himself or herself in a manner which is inappropriate, improper or indecent;
- cause a nuisance, annoyance or disturbance to any other person visiting the park;
- destroy or remove any tree, flower or plant growing in any part of the park;
- deposit or throw any rubbish, paper or other waste matter or thing anywhere other than in a receptacle provided for such purpose;
- shoot or injure any bird or animal or throw a stick, stone or other object with the intent to injure any bird or animal or interfere with any fish in a fountain;

- bathe or wash any dog or other animal in any pond or fountain;
- drive, ride or park any vehicle or cause or permit any vehicle to be within the area. Lawn mowers and other garden vehicles are allowed to attend to the garden.
- damage, tamper with or destroy any equipment, amenity or structure;
- lie on a bench or seating place or use it in such a manner that it prevents others from using it;
- use any park facility or water resources, including a pond, fountain, stream, dam or pond to swim, bathe, walk, or place or wash clothes or other things;
- skate on roller skates or on a skateboard or similar device;
- build, erect, place, create, remove or modify any structure, amenity, pathway, trail, jump or ramp;
- play or conduct any game of any nature that will cause injury or potentially disturb to other users.
- sell, offer or display for sale or hire any commodity or article or distribute any pamphlet, book, handbill, or other printed or written matter;
- carry, possess or discharge a firearm, slingshot, bow and arrow, dart devise or airgun;
- engage in any other conduct in contravention of the Municipal By-law, the Municipality's Nuisance and Health By-laws or any other applicable law;
- sleep over or camp in the servitude area;
- remove any gravel, sand, sod, turf or mould
- pollute or contaminate in any way the water in any water resource, including a fishpond, fountain, stream, dam or pond; and
- perform any act that may detrimentally affect the health of any visitors to the servitude area.

4.17. Enforcement

4.17.1. Offences and penalties

- A person who contravenes, refuses or fails to comply with any provision of this rule, may be requested by Dolphin Beach security to vacate the servitude area;
- refuses or fails to comply with this rule is guilty of an offence.
- Transgressions by Owners and associated guests could be fined a sum of R 1 000 and for repeated offences up to R 5 000.
- General public will be requested to leave the park immediately if the provisions of this rule is not complied with.

5. Appointment of Security to Regulate Discipline on Servitude Area

5.1. The Homeowner's Associations hereby authorises the Security at Dolphin Beach/Four to ensure that these rules are enforced on both Servitude areas.