

CONSTITUTION

WHALE ROCK HEIGHTS HOMEOWNERS' ASSOCIATION REGISTERED AS THE "PLETTENBERG HEIGHTS" HOMEOWNERS' ASSOCIATION

1. NAME

The name of the Association is "**WHALE ROCK HEIGHTS HOMEOWNERS' ASSOCIATION**"

2. DEFINITIONS

In this constitution, unless the context indicates the contrary:

- 2.1 The "Association" shall mean **WHALE ROCK HEIGHTS HOMEOWNERS' ASSOCIATION**;
- 2.2 The "Committee" shall mean the Board of Trustees of the Association;
- 2.3 The "Council" shall mean the Bitou Municipality;
- 2.4 the "Developer" shall mean **WHALE ROCK DEVELOPMENTS (PROPRIETARY) LIMITED** Registration number 1999/011298/07;
- 2.5 the "Township Erven" shall mean 34 (Thirty Four) Group Housing erven herein referred to as the Summer Place Erven and 76 (Seventy Six) Single Residential Erven as well as 1 (One) Business Erf as shown on the Township Layout included in the "Volume of Documents" accompanying each Deed of Sale by the Developer to Individual Purchasers, or in the approved General Plan of Subdivision;
- 2.6 the "Township Area" shall include the whole of the area as shown on the Township Layout and General Plan of Subdivision;
- 2.7 "Person" shall include a company, club, trust, partnership or other association of persons entitled by law to hold title to immovable property;
- 2.8 "Member" shall mean a Member as defined in clause 5 hereof;
- 2.9 "Special Levy" shall mean a levy made by the Committee on Members in terms of Clause 4.9 hereof other than levies which arise from the approval of the estimated income and expenditure at an Annual General Meeting in terms of Clause 21.6.

- 2.10 "Special Resolution" shall mean a resolution passed by 80% (Eighty percent) of the Members present at a General Meeting, either personally or by proxy, called for that purpose, in terms of clause 19, to enable the Association to act in a way other than would be the usual;
- 2.11 the "Consultant Architect " shall mean the architect appointed by the Developer or the Committee for the purpose of Aesthetic approval and approval of final working drawings before submission to the local authority;
- 2.12 other definitions as required by circumstances.

3. **ESTABLISHMENT OF HOME OWNERS' ASSOCIATION**

- 3.1 The Association is a Body Corporate established in accordance with Section 29(1) of the Cape Land Use Planning Ordinance of 1985 (Ordinance No. 15 of 1985), as amended.
- 3.2 The Association shall be a legal entity separate from the Members thereof and shall exist in perpetuity.
- 3.3 The Association may sue and be sued in its own name.
- 3.4 All assets, liabilities, rights and obligations of the Association shall vest in it independently of its Members.
- 3.5 All income and assets of the Association shall be applied solely for the promotion of the objects of the Association and for investment.

4. **OBJECTS**

The objects of the Association are to:

- 4.1 promote and enforce standards, not the least of which should be the congenial atmosphere in the Township Area in such a way that Members may derive the maximum collective benefit therefrom;
- 4.2 promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the Township Area in order to achieve the harmonious development thereof;
- 4.3 control and maintain the common services and land, if and where applicable;
- 4.4 promote a safe and secure environment for all Members and their families or tenants by securing the perimeters of the property and controlling access in the most cost effective way;
- 4.5 where the Council is not prepared to provide such service to erven or any of them in the Township Area, to purchase water in bulk from the relevant authority and to charge each owner or occupant for the usage by that particular erf as

metered by the Association including a surcharge of not more than 10% of the cost thereof to cover the costs thereof;

- 4.6 employ a worker or workers to attend to the removal of refuse and to attend to any other tasks as the Committee may see fit;
- 4.7 lay down such conduct rules as the Association may find necessary to harmonise the different needs and aspirations of all owners or owners of particular erven. The inaugural set of rules as compiled by the Developer and contained in the Volume of Documents forming part of the Deed of Sale of each erf from the Developer to individual purchasers, will be in force until replaced or repealed by the Association in terms of this Constitution;
- 4.8 acquire the necessary finances from Members to attain its set objectives by collecting monthly or annual levies as budgeted in for from time to time in terms hereof; and
- 4.9 make a special levy on Members to meet financial obligations of the Association in addition to the levies in clause 4.8;

and the Association shall have the powers to do such acts as are necessary to accomplish these objects.

5. **MEMBERS**

- 5.1 Membership of the Association shall be evidenced by registered ownership in the Deeds Registry, Cape Town, of one or more erven in the Township Area.
- 5.2 Upon registration of ownership of the erf in the name of a purchaser, membership of the Association by such purchaser shall be automatic and obligatory and Members shall be obliged to comply with the provisions of this Constitution.
- 5.3 No Person shall be entitled to cease to be a Member of the Association while remaining the registered owner of an erf in the Township Area.
- 5.4 Membership shall be transferred by the registration of a deed of transfer in the Deeds Registry, Cape Town, and passing transfer of one or more erven in the Township Area from the previous Member to the new Member.
- 5.5 A Member may not sell or transfer an erf unless the Member first obtains the written consent of the Association thereto, which consent shall not unreasonably be withheld if all levies due by the Member to the Association have been paid or secured to the satisfaction of the Association.
- 5.6 No Member may make an application to alter the use rights, zoning, subdivide or develop an erf belonging to such Member without the prior written consent of the Association.
- 5.7 Upon registration of an erf in the name of a Member, such Member shall forthwith provide the Association with his or her full particulars, including physical address, postal address, telephone and facsimile number and email address. In the case of a Member who is not a natural Person, a duly authorised natural Person will be nominated by the Member for the purpose of all dealings with the Association, and the aforesaid particulars of such natural Person must be provided to the Association. Whenever particulars provided in terms of this

subclause change, the Member must forthwith supply the altered particulars to the Association.

5.8 All Members, their employees, invitees and Persons claiming right of entry into or residence in the Township Area through a Member must comply with and adhere to this Constitution, and all Rules issued by the Association.

5.9 A Member who enters into a lease or use agreement of whatsoever nature in terms of which the use or enjoyment of his or her erf is given to a third party, must make the strict compliance with this Constitution and all Rules issued in terms hereof by such third party a condition of such agreement.

5.10 Where the contravention of the Constitution or a Rule by a Person in subclause 5.8 or 5.9, other than a Member, incurs any liability of whatsoever nature to the Association, the Member through whom the Person has obtained entry into the Township Area shall in the stead of the Person who has committed the contravention be liable to the Association.

6. **CESSATION OF MEMBERSHIP**

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrear levies or other sums due from him to the Association at the time of his ceasing to be a Member.

7. **PRIVATE TOWNSHIP**

The Township will be administered as a Private Township and all streets and private public places including all services installed will vest in the Homeowners' Association who will be responsible for the maintenance and upkeep and replacement thereof from a special fund to which owners of Township Erven will be obliged to contribute to as part of their levies.

8. **LEVIES AND SCRUTINY FEES**

8.1 The Association shall from time to time at its annual general meetings approve of a budget for the forthcoming year of all expenses which the Association reasonably anticipates it will be liable for either by way of charges payable by the Association in respect of its goals, and/or for services to be rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management and affairs of the Association, and/or any other expenditure of whatsoever nature that may be incurred in connection with the Association and recover from its Members such amount by imposing a monthly or annual levy. No levies will however be payable in respect of erven that remain registered in the name of the Developer for a period of five years from the date of establishment of the association, unless a dwelling has been erected upon such erf.

8.2 In determining the amount of the levies payable the Association shall take into account income, if any, earned by the Association.

8.3 The Association may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature such as for

maintenance, upkeep and eventual replacement of infrastructural services, where the Association may be liable therefore.

- 8.4 Scrutiny fees for approval of Building Plans will be charged as provided for in the rules.
- 8.5 The following moneys will for all intents and purposes be deemed to be a levy due by a Member to the Association:
- 8.5.1 any monthly, annual or special levy;
- 8.5.2 fines and penalties imposed by the Association on a Member in terms of the conduct rules;
- 8.5.3 all costs, expenses, charges and disbursements incurred by the Association in any action and/or proceedings taken and/or instituted to determine and/or obtain and/or enforce a levy and/or any other amount of whatsoever nature due by the Member to the Association.
- 8.6 A levy due by a Member to the Association that is not paid within a period of 30 (thirty) days from becoming due or demanded, will bear interest at the prime rate, reckoned from the due date of such amount until it is paid. Prime rate shall mean the prime bank overdraft rate of interest charged from time to time by the Association's bankers to its corporate customers in respect of unsecured overdraft facilities, as certified by any Manager for the time being of such Bank, whose appointment and authority it shall not be necessary to prove.
- 8.7 Any invoice, certificate or other document issued by or on behalf of the Association stating that an amount (and the interest thereon) is due by a Member to the Association will serve as sufficient proof of such amount (and interest) being due as well as the date on which it became payable.
- 8.8 The Association shall be entitled to demand, sue or recover any amount due by a Member to the Association by instituting action in any Magistrate's Court having jurisdiction, to which jurisdiction Members are deemed to have consented in terms of Section 45 of the Magistrate's Court Act. These provisions shall not preclude the Association from instituting proceedings in any other court which may have jurisdiction in respect of the claim or Person of the Member concerned. In any legal proceedings instituted by an Association against a Member the Association will be entitled to its legal costs in such proceedings on an attorney client scale.

9. **BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS**

- 9.1 The Association shall have the power to:
- 9.1.1 enforce the design guidelines as prepared by the Developer's architect and as have been included in the rules upon Members in order to harmonise the architectural style and design criteria of, and the materials to be used in all buildings erected or to be erected in the Township Area as appear from the rules;
- 9.1.2 do such acts as are necessary to accomplish the purposes expressed or implied herein, which acts shall include, *inter alia*, the examination and approval or refusal of building plans, whether such be for new buildings, renovations, alterations or additions;

9.1.3 compel Members to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such Member; and without in any way limiting the generality of the foregoing, to call upon a Member in writing to remove or alter within a specified period, anything erected contrary to the requirements laid down pursuant thereto and failing which, to apply to Court for any appropriate order; and

9.1.4 to appoint professional advisors, e.g. an architect to scrutinise all plans to ensure that the necessary architectural controls have been met.

9.2 Members shall be obliged to submit all building plans for renovations, alterations or additions, and the Homeowners' Association attend thereto, in accordance with the procedures and time limits laid down in the rules.

10. **POSITION OF DEVELOPER**

Notwithstanding anything herein contained the Developer will *ipso facto* be a Member of the Association and be entitled to 1 (one) vote for every Township erf not yet transferred to someone else, whether such erf is registerable or not.

11. **OTHER PROFESSIONALS**

Save as specifically provided otherwise in this Constitution, the Committee shall at all times have the rights to engage, on behalf of the Association, the services of an Accountant, an Auditor, an Attorney, an Advocate, an Architect, an Engineer, and/or any other Person, whatsoever, whether a Member of a profession or not, for any reasons considered necessary by the Trustee Committee in its discretion and on such terms as the Trustee Committee may decide, subject to the provisions of these presents, provided that any expenditure incurred in respect of the above, shall not exceed 5% (five percent) of the total annual levy for the year in question unless authorised by a General Meeting or financed by special levy.

12. **VOTING**

12.1 At every General Meeting, every Member in Person or by proxy and entitled to vote shall have one vote for each Township erf registered in his name provided that if a Township erf is registered in more than one Person's name, then they shall jointly have one vote.

12.2 Save as expressly provided for in these presents, no Person other than a Member who has paid every levy and any other sum which may be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting.

13. **COMMITTEE**

13.1 There shall be a Board of Trustees of the Association and referred to herein as the Committee consisting of at least 3 but not more than 7 trustees.

13.2 A Trustee shall be a natural Person, but need not himself be a Member. However, by accepting his appointment to office as such, a Trustee shall be deemed to have agreed to be bound by the provisions of these presents.

- 13.3 All the initial Members of the Committee shall be appointed by the Developer.
- 13.4 The Committee shall include not less than one representative of the Developer for as long as it is a Member.

14. **REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

14.1 Save as set forth in clause 14.2 below, each Trustee shall hold office until the Annual General Meeting, following his appointment, whereupon he shall be deemed to have retired, although being eligible for re-election.

14.2 A Trustee shall be deemed to have vacated his office as such upon:

- 14.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 14.2.2 his making any arrangement or entering into any compromise with his creditors;
- 14.2.3 his conviction of an offence involving dishonesty;
- 14.2.4 his becoming or being declared to be of unsound mind;
- 14.2.5 his resignation in writing being delivered to the Chairman;
- 14.2.6 his death;

provided that anything done in good faith by a Person who has ceased to be a trustee and in his capacity as such, shall be valid until the fact that he is no longer a trustee has been recorded in the Minute Book of the Committee.

14.2.7 Upon any vacancy occurring on the Committee prior to the next Annual General Meeting, the remaining Trustees shall co-opt another Person to serve as Trustee.

15. **OFFICE OF TRUSTEES**

15.1 The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.

15.2 The first Chairman, and Vice-Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices until the first Annual General meeting following the date of their appointment.

15.3 Within 7 (Seven) days of the holding of such Annual General Meeting, the Committee shall meet and shall elect from their number the Chairman and Vice-Chairman, who shall hold office until the following Annual General Meeting.

15.4 The office of Chairman or Vice-Chairman shall *ipso facto* be vacated by a Trustee holding such office upon his ceasing to be a trustee for any reason. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Committee shall immediately meet to appoint one of their number as a replacement in such office. No one Trustee shall be appointed to more than one of the aforesaid offices.

- 15.5 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Committee, and all General Meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Committee or these presents, including to allow or refuse to permit invitees to be heard at any such meeting, provided, however, that invitees shall not be entitled to vote at any meeting.
- 15.6 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or by the Committee.
- 15.7 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman or Vice-Chairman, as the case may be, but, save as aforesaid, they shall not be entitled to any other remuneration, fees and/or salary in respect of the performance of such duties.

16. **FUNCTIONS AND POWERS OF THE COMMITTEE**

- 16.1 Subject to the express provisions of these presents, the Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may exercise all such powers of the Association and do all such acts for and on behalf of the Association as may be exercised and done by the Association, and as are not in law or by these presents required to be exercised or done by the Association in General Meeting, subject nevertheless to such regulations as may be prescribed by the Association in General Meeting from time to time, provided that no regulation made by the Association in General Meeting shall invalidate any prior act of the Committee which would have been valid if such regulation had not been made.
- 16.2 The Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 16.3 The Committee shall have the right to co-opt onto the Committee any Person chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of a Trustee.
- 16.4 The Committee may from time to time, when necessary, make special levies upon Members or call on them to make special contributions of all such expenses of the Association necessary or expedient for the objects thereof or to protect or enhance the rights and interests of the Association or the Members. A special levy may be made in one sum or by such instalments and at such time or times as the Committee shall deem fit.
- 16.5 The Committee shall as its major function exercise such controls as it may deem fit to further the main business and objects of the Association and in particular to scrutinize all building plans and to implement the guidelines laid down by the Developer.

17. **PROCEEDINGS OF THE COMMITTEE**

- 17.1 The Committee may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of these presents.

- 17.2 Meetings of the Committee shall be held as determined by the Trustees.
- 17.3 The quorum necessary for the holding of any meeting of the Committee shall be 50% of the present number of Trustees.

18. **GENERAL MEETINGS OF THE ASSOCIATION**

The Association shall before the last day of the 4th month after the financial year end of the Association, (which at present is end June but may be amended from time to time by the Trustees), in each calendar year, hold its Annual General Meeting and no further General Meeting will be held in that particular year unless called for by **the Committee** or at least one third of all Members. General Meetings of the Association shall take place at such place(s) as shall be determined by the Committee from time to time.

19. **NOTICE OF MEETINGS**

An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by 21 (Twenty one) days' notice in writing or by email, where available, to Members. The notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a Special Resolution, particulars thereof. Where a Special General Meeting is to be called by the Trustees **or** at the written request of Members in terms of clause 18, only 7 days notice need to be given of such meeting, but full particulars of the matter to be discussed need to be set out in such notice and no other business shall be conducted at such meeting.

20. **QUORUM**

- 20.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be twenty percent (20%) of the Members entitled to vote either by being personally present or by Proxy.
- 20.2 If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, and in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint. The Members then present in Person or by proxy shall be deemed to be a quorum and may proceed to transact business.

21. **AGENDA AT MEETINGS**

In addition, to any other matters required these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 21.1 the consideration of the Chairman's report to the Committee;
- 21.2 the election of the Committee;

- 21.3 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;
- 21.4 the consideration of the balance sheet of the Association for the financial year preceding the date of the meeting;
- 21.5 the consideration of the report of the Auditors;
- 21.6 the consideration of the budget and levies for the next financial year; and
- 21.7 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the Annual General Meeting.

22. **PROCEDURE AT GENERAL MEETINGS**

- 22.1 The Chairman shall preside as such at all General Meetings, provided that should he not be present within ten (10) minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting, provided that if neither is present, those present shall elect a Chairman to preside at that meeting, from amongst their number.
- 22.2 The Chairman may, with the consent of any General Meeting at which a quorum is present and/or if so directed by the meeting, adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 22.3 Except as otherwise set forth in these presents, all General Meetings shall be conducted in accordance with generally accepted secretarial practice.

23. **PROXIES**

- 23.1 Any Member may be represented at a General Meeting by a proxy, who need not be a Member. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that, where a Member is more than one Person, any one of these Persons may sign the instrument appointing a proxy on such Member's behalf; where a Member is a company, the instrument may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where the Member is an association of Persons, the instrument may be signed by the secretary thereof.
- 23.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof, shall be deposited at the office of the Managing Agent at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the Person named in the instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of 3 (three) months from the date of its execution.

- 23.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation has been received by the Committee prior to the time fixed for the holding of the meeting.

24. **ACCOUNTS**

The Association in General Meeting or the Committee may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

At each Annual General Meeting the Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by reports of the Committee and there shall be attached to the notice sent to Members convening each Annual General Meeting, copies of such accounts and balance sheet and of any other documents required by law to accompany same.

25. **ELECTRICITY AND WATER**

- 25.1 Each Member will be responsible for the electricity connection upon his property as well as for the connection thereof to the Municipal grid.
- 25.2 Although each house will have a separate water meter the Council may only meter water at a common meter for the whole scheme which means that the Association will have to read each individual meter and recover the usage from each occupant.
- 25.3 In the event of any occupant not having paid an account rendered to him or her by the Association for the usage of electricity for a period, and such occupant failing to pay the amount despite having received a final notice giving him or her 7 days in which to pay the outstanding amount, the Association will have the right to cut off the electricity supply to such occupant.
- 25.4 All street lamps in the Private Township will be on a separate meter as well as the irrigation of the private public places and the Association will recover the cost of these expenses as part of the monthly levy from the owners of that Private Township.

26. **OCCUPANTS**

- 26.1 No Person other than the registered owner will be allowed to apply for a private water connection unless such application is requested by both the owner and such other occupant in the format prescribed by the Trustees and the payment of a deposit. Despite the fact that an application has been approved by the Trustees, the owner will be held responsible for all actions of such Person and his or her co-occupiers of the property and also for all water used by such an occupant.

26.2 A tenant or other occupant must prior to it taking occupation accept the terms of this Constitution as well as the Conduct Rules issued thereunder as binding upon them before an application in terms of clause 26.1 will be approved by the Association.

27. **COUNCIL'S FUNCTIONS**

27.1 Council shall retain the right to intervene in and undertake the functions and activities of the Home Owners' Association or to appoint an agent or other Person to undertake such business as is necessary to ensure all the above for any period of time and that Members of the Homeowners' Association shall be responsible for the financial implications of such actions and that all relevant costs shall be borne by all the Members jointly and/or separately.

27.2 The Association shall not amend or in any way alter the conditions contained herein without the prior written consent of the Council.

28. **CHANGING THE CONSTITUTION**

The Constitution may only be added to or amended by a Special Resolution of Members.

29. **CHANGING THE RULES**

The Rules can be changed from time to time by direction of the Trustees.

30. **DOMICILIUM**

The *domicilium citandi et executandi* in respect of the Whale Rock Heights Homeowners Association will be the registered address of the managing agent and that of individual Members will be the property at Whale Rock Heights registered in the name of such Member.

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