

CONSTITUTION

OF THE

WHALE ROCK HEIGHTS

HOMEOWNERS' ASSOCIATION

INDEX

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|-----|---|------|----|
| 1. | NAME | | 3 |
| 2. | DEFINITIONS | | 3 |
| 3. | ESTABLISHMENT OF HOMEOWNERS' ASSOCIATION | | 4 |
| 4. | OBJECTIVES OF THE ASSOCIATION | | 4 |
| 5. | MEMBERSHIP | .... | 6 |
| 6. | CESSATION OF MEMBERSHIP | .... | 7 |
| 7. | PRIVATE ESTATE | .... | 7 |
| 8. | LEVIES | .... | 8 |
| 9. | BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS | .... | 9 |
| 10. | COMMITTEE | .... | 10 |
| 11. | FUNCTIONS AND POWERS OF THE COMMITTEE | .... | 11 |
| 12. | GENERAL MEETINGS OF THE ASSOCIATION | .... | 12 |
| 13. | NOTICE OF MEETINGS | .... | 12 |
| 14. | QUORUM | .... | 13 |
| 15. | AGENDA AT ANNUAL GENERAL MEETINGS | .... | 13 |
| 16. | VOTING | .... | 13 |
| 17. | PROCEDURE AT GENERAL MEETINGS | .... | 14 |
| 18. | PROXIES | .... | 14 |
| 19. | SERVICES | .... | 15 |
| 20. | NOTIFICATION | .... | 15 |
| 21. | INTERNAL DISPUTE RESOLUTION | .... | 16 |
| 22. | DISESTABLISHMENT OF THE ASSOCIATION | .... | 19 |
| 23. | AMENDING THE CONSTITUTION | .... | 20 |

CONSTITUTION OF THE WHALE ROCK HEIGHTS HOMEOWNERS' ASSOCIATION

1. NAME

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

2. DEFINITIONS

In this Constitution and any rules or regulations issued in terms hereof, unless the context indicates the contrary:

- 2.1 "**Architectural Guidelines**" means the guidelines regulating building in the Whale Rock Heights Private Estate;
- 2.2 "**Association**" means **WHALE ROCK HEIGHTS HOMEOWNERS' ASSOCIATION**;
- 2.3 "**Building Regulations**" means Building Regulations issued in accordance with clause 11.1.3 of the Constitution;
- 2.4 "**Committee**" means the Board of Trustees of the Association;
- 2.5 "**Common Property**" means those portions of the Whale Rock Heights Private Estate not registered in the name of individual owners but registered in the name of the Association and all servitudes and real rights that vest in the Association or to which it has a legally enforceable right;
- 2.6 "**Council**" means the Bitou Local Municipality;
- 2.7 "**erf**" means one of the erven;
- 2.8 "**erven**" means the erven resulting from the subdivision of erven 8573 and 8574 Plettenberg Bay as depicted on General Plans 4933 and 4934/2001 in the Municipality of Bitou, Division of Knysna, Western Cape Province;
- 2.9 "**Member**" means a Member as defined in clause 5 hereof;

- 2.10 **"person"** shall include a company, close corporation, club, trust, partnership or other association of persons entitled by law to hold title to immovable property;
- 2.11 **"Rules"** means Rules issued in accordance with clause 11.1.3 of the Constitution;
- 2.12 **"services"** means potable water supply, drainage, sewerage, storm water disposal, electricity supply or other communal services or amenities situate within the Whale Rock Heights Private Estate;
- 2.13 **"special levy"** means a levy made by the Committee on Members in terms of Clause 8 of the Constitution;
- 2.14 **"Special Resolution"** means a resolution passed by 80% (Eighty percent) of the Members present at a General Meeting, either personally or by proxy;
- 2.15 The **"Whale Rock Heights Private Estate"** means the erven and the common property.

3. **ESTABLISHMENT OF HOMEOWNERS' 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. **OBJECTIVES OF THE ASSOCIATION**

- 4.1 The main objective of the Association is to exercise control over the Whale Rock Heights Private Estate;

- 4.2 To reach and realize its main objective, the Association shall have the power to take such action as it may in its sole discretion deem necessary or expedient to:
- 4.2.1 Enforce the Constitution of the Association;
 - 4.2.2 Enforce the Architectural Guidelines in the Whale Rock Heights Private Estate;
 - 4.2.3 Subject to clause 19 maintain the services in the Whale Rock Heights Private Estate;
 - 4.2.4 Alter, improve and maintain buildings, services and the Common Property in the Whale Rock Heights Private Estate to such standard as is in keeping with the upmarket status of the Estate;
 - 4.2.5 Issue and enforce Rules and Building Regulations and directives that regulate the appearance, condition and utilization of erven, buildings, services and amenities in the Whale Rock Heights Private Estate. Rules and Regulations to be issued may include but will not be limited to:
 - 4.2.5.1 Rules to ensure that the Whale Rock Heights Private Estate and all erven, buildings, services and the common property are at all times kept in a state of good repair, clean, tidy and hygienic;
 - 4.2.5.2 Rules to regulate the conduct of Members in the Whale Rock Heights Private Estate and the use of their erven to promote congenial cohabitation in the Estate;
 - 4.2.5.3 Rules to promote a safe and secure environment for all Members and their families or tenants by securing the parameters of the Estate and controlling access; and
 - 4.2.5.4 Building Regulations regulating aspects pertaining to building in the Whale Rock Heights Private Estate.
 - 4.2.6 Facilitate the resolving of disputes between Members and a Member or Members and the Association;
 - 4.2.7 Institute appropriate legal action in court to give effect to the objectives of the Association;
 - 4.2.8 Determine annual levies and special levies payable by Members to finance the Association in the reaching and realization of its objectives; and

4.2.9 Impose and recover fines and penalties from Members for the contravention of the Constitution, Rules and Regulations issued by the Association;

4.2.10 Represent the collective mutual interests of its Members in the Bitou Municipal area.

4.3 In addition to the powers provided for, the Association will have such powers as may be reasonably necessary or expedient to give effect to the objectives of the Association.

5. **MEMBERSHIP**

5.1 Membership of the Association shall be compulsory for and limited to all owners of erven in the Whale Rock Heights Private Estate.

5.2 Upon registration of ownership of an erf in the name of a purchaser, membership of the Association by such purchaser shall be automatic and obligatory. No Person shall be entitled to cease to be a Member of the Association while remaining the registered owner of an erf in the Estate.

5.3 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 or other sums due by the Member to the Association have been paid or secured to the satisfaction of the Association.

5.4 No Member may make an application to alter the use rights, zoning, consolidate, subdivide or develop an erf or erven belonging to such Member without the prior written consent of the Association.

5.5 Upon registration of ownership 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 shall 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 by the Member.

5.6 All Members, their employees, invitees and persons claiming right of entry into or residence in the Estate through a Member must comply with and adhere to this Constitution, and all Rules and Building Regulations issued by the Association.

5.7 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 and Building Regulations issued in terms hereof by such third party a condition of such agreement.

- 5.8 Where the contravention of the Constitution or a Rule or Building Regulation by a person in sub clause 5.6 or 5.7, other than a Member, incurs any liability of whatsoever nature to the Association, the Member through whom the person has obtained entry into the Estate 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 or her to the Association at the time of their ceasing to be a Member.

7. **PRIVATE ESTATE**

- 7.1 The Whale Rock Heights Private Estate will be administered as a Private Estate and all Common Property including all communal services will vest in the Association who will, subject to clause 19, be responsible for the maintenance and upkeep and replacement thereof from the levy fund.

- 7.2 In respect of all of the erven in the Estate there shall be deemed to be implied services servitudes in favour of the Association and all of the Members thereof for the conveyance of services across the erven without compensation, in a position as may be reasonably required, including but not limited to servitudes for the passage of main and other water pipes, foul sewerage, electricity cables, telephone cables, radio and television cables, other electronic infrastructure, storm-water pipes and ditches and channels.

- 7.3 It shall be deemed that the implied servitudes in clause 7.2 are incorporated in the Title Deeds of the owners of all of the erven in the Estate.

- 7.4 In terms of the servitude entitlements of the Association and Members in terms of this clause, a Member shall allow access to his or her erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works in respect of the services to be conveyed over his or her erf.

- 7.5 In respect of the services for which the repair, maintenance and replacement the Association is responsible for in terms of this Constitution, the owners of erven shall be obliged, without compensation, to allow the following on his or her erf:

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7.5.1 Surface installations for services such as but not limited to mini-substations and street lights;

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7.5.2 Meter kiosks; and

7.5.3 Service pillars.

7.6 To allow for the use of the full width of an abutting street in the Estate and to provide a safe and proper slope to its bank where necessary by differences between the level of the street as constructed and the level of the land unit, and unless an owner elects to build retaining walls to the satisfaction of the Association and within a period to be determined by the Association, such owners shall allow the Association to excavate his or her erf as may, in the opinion of the Association, be required for the aforesaid purposes without compensation at the cost and expense of the Member. Monies expended by the Association will be deemed a debt due by the Member to the Association, payable on demand.

7.7 Whenever the Association deems it necessary, the owner of an erf will allow persons employed by the Association access to her or her erf for inspection, maintenance, repair or replacement, or for the making of emergency repairs that the Association deems necessary or expedient in respect of services that it provides to the Members of the Association.

8. **LEVIES**

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 the realising of its objectives, 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.

8.2 Annual levies shall be paid yearly, half-yearly or monthly in advance. Monthly payments shall be made by proof of a stop order at a bank or similar financial institution.

8.3 Special levies shall be paid upon demand.

8.4 Should a Member dispose of his or her erf, he or she shall not be entitled to any refund of any levy paid in advance but shall make his or her own arrangements with the purchaser for pro rata apportionment.

8.5 Any amount due by a Member to the Association by way of levy shall be a debt due by him/her to the Association and his or her obligations shall not cease merely as a result of his or her ceasing to be a Member of the Association.

8.6 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 services, where the Association may be liable therefore.

- 8.7 The following moneys will for all intents and purposes be deemed to be a levy due by a Member to the Association:
- 8.7.1 any monthly, annual or special levy;
 - 8.7.2 fines and penalties imposed by the Association on a Member in terms of the Rules and Building Regulations;
 - 8.7.3 all costs, expenses, charges, scrutiny fees for approval of Building Plans 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.
- 8.8 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 compound 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.
- 8.9 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.
- 8.10 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, 1994. 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 own client scale.

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

- 9.1 The Committee shall enforce the Architectural Guidelines of the Whale Rock Heights Private Estate on behalf of the Association;
- 9.2 The Architectural Guidelines and Building Regulations will be applicable to all building works in the Estate and will be in addition to the requirements of the Council's Town Planning Department for a particular erf.
- 9.3 It will be the duty of every owner to ensure that he or she establishes from the Council's Town Planning Department the development parameters applicable

to his or her erf, provided that any building work must also at all times comply with the Architectural Guidelines and Building Regulations of the Association;

9.4 To enforce the Architectural Guidelines the Committee shall have the power to:

9.4.1 interpret and issue directives on the Design Guidelines 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 Estate;

9.4.2 take such actions as, in their opinion, are necessary to accomplish the purposes expressed or implied in the Architectural Guidelines which actions shall include, *inter alia*, the examination and approval or refusal of building plans, whether such be for new buildings, renovations, alterations or additions;

9.4.3 compel Members to comply with its requirements and directives, 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

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

10. **COMMITTEE**

10.1 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.

10.2 A Trustee shall be a natural person, but need not himself be a Member provided that the Chairman elected by the Committee shall be a Member of the Association.

10.3 Save as set forth in clause 10.4 below, each Trustee shall hold office until the Annual General Meeting, following his or her appointment, whereupon he or she shall be deemed to have retired, although being eligible for re-election.

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

10.4.1 his or her estate being sequestrated, whether provisionally or finally, or him or her surrendering their estate;

10.4.2 he or she making any arrangement or entering into any compromise with their creditors;

10.4.3 his or her conviction of an offence involving dishonesty;

- 10.4.4 he or she becoming or being declared to be of unsound mind;
- 10.4.5 his or her resignation in writing being delivered to the Chairman;
- 10.4.6 his or her death;

provided that anything done in good faith by a person who has ceased to be a Trustee shall be valid until the fact that he or she is no longer a Trustee has been recorded in the Minute Book of the Committee.

- 10.4.7 Upon any vacancy occurring on the Committee prior to the next Annual General Meeting, the remaining Trustees may co-opt another person to serve as Trustee.
- 10.5 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 but, save as aforesaid, they shall not be entitled to any other remuneration, fees and/or salary in respect of the performance of their duties as Trustees. This clause will not be so interpreted that the Association may not enter into an employment agreement with a Trustee of whatsoever nature.

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

- 11.1 Subject to this Constitution and such restrictions and directions as may be imposed at a general meeting of the Association, the management and control of the affairs of the Association shall vest in the Committee which shall have full authority to exercise any power, function or duty of the Association. Without limiting the generality of the powers, functions or duties of the Committee, it shall be entitled and obliged to, on behalf of the Association, do the following:
 - 11.1.1 appoint agents, employees and such other persons as they deem necessary or expedient for permanent, temporary or special services to the Association, to invest such persons with such powers, duties and functions as the Committee may deem necessary and remunerate such persons;
 - 11.1.2 give effect to the Constitution;
 - 11.1.3 make, amend and enforce Rules and Building Regulations and issue directives on behalf of the Association;
 - 11.1.4 determine levies and special levies;
 - 11.1.5 enter into agreements on behalf of the Association;
 - 11.1.6 subject to clause 16.2.2 purchase and sell movable and immovable property on behalf of the Association;
 - 11.1.7 sue out, defend and settle legal actions in the name of the Association;

- 11.1.8 open and operate a banking account in the name of the Association and invest and re-invest moneys of the Association not immediately required;
- 11.1.9 keep written records of everything done by them on behalf of the Association and make such records available for inspection by any Member of the Association at such time and place as determined by the Committee; and
- 11.1.10 keep books of account of all business conducted by and on behalf of the Association and make such books available for inspection by any Member of the Association at such time and place as determined by the Committee.

11.2 Provided that a Trustee has, upon the information known to him or her, or which should reasonably have been known to him or her, acted in good faith and without gross negligence, no Trustee entrusted with the management and control of the affairs of the Association shall be liable to the Association or to any Member thereof or to any other person whomsoever for any act or omission by himself or herself, or by the servants, agents, contractors or employees of the Association. Such Trustee shall be indemnified by the Association against any loss or damage suffered by him or her in consequence of any purported liability.

11.3 The Committee may meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject thereto that the quorum necessary for the holding of any meeting of the Trustee Committee shall be 50% of the number of the Trustee Committee.

12. **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 Committee), 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 as shall be determined by the Committee from time to time.

13. **NOTICE OF MEETINGS**

13.1 An Annual General Meeting and a meeting called for the passing of a Special Resolution, shall be called by the Committee by 21 (twenty one) days' notice in writing 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 this Constitution, the general nature of that business, and in the case of a Special Resolution, particulars thereof.

- 13.2 Where a Special General Meeting is to be called by the Committee or at the written request of Members in terms of clause 12 only 7 (seven) 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.

14. **QUORUM**

- 14.1 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.

- 14.2 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.

15. **AGENDA AT ANNUAL GENERAL MEETINGS**

- 15.1 In addition to any other matters required by this Constitution to be dealt with at any Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting;

15.1.1 the consideration of the Chairman's report;

15.1.2 the election of the Committee;

15.1.3 the consideration of the financial statements of the Association for the last financial year preceding the date of such meeting;

15.1.4 the consideration and approval, with or without amendment, of the budget as presented by the Committee and confirmation of the levies for the next financial year;

15.1.5 any other business pertinent to such Meeting, including any resolutions proposed for adoption by such meeting and the voting upon such resolutions.

16. **VOTING**

- 16.1 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.

- 16.2 A Special Resolution will be required for:
- 16.2.1 An amendment of the Constitution or Architectural Guidelines;
 - 16.2.2 The sale or purchase of any fixed asset of the Association; and
 - 16.2.3 The borrowing of money by the Association.
- 16.3 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 or her membership shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting.

17. **PROCEDURE AT GENERAL MEETINGS**

- 17.1 The Chairman or a person nominated by him or her shall preside at all General Meetings, provided that should the Chairman or nominated person not be present within ten (10) minutes after the time appointed for the holding thereof, then a person elected as Chairman by those present at the Meeting shall preside at the Meeting.
- 17.2 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.
- 17.3 Except as otherwise provided for in the Constitution all General Meetings shall be conducted in accordance with generally accepted secretarial practice.

18. **PROXIES**

- 18.1 A Member may be represented at a General Meeting by a proxy who must be a Member of the Association, provided where a Member is a company, close corporation, association of persons or a trust, such proxy may be a duly authorised representative that is not a Member of the Association.
- 18.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his or her 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 proxy must be signed by a Director of the Company or by its secretary, where the Member is a Close Corporation the proxy must be signed by any member of such Close

Corporation, and where an association of Persons, the proxy must be signed by the secretary thereof, and where a Trust, the proxy must be signed by a Trustee of such Trust

- 18.3 An instrument appointing a proxy and the authority (if any) under which the instrument has been signed, shall be lodged with the Association at least 24 (twenty-four) hours before the scheduled time for the commencement of the Meeting. The instrument appointing a proxy shall be valid only for the specific Meeting or an adjournment thereof.

19. **SERVICES**

- 19.1 It is recorded that the erstwhile developer of the Whale Rock Heights Private Estate installed water, electrical and sewerage systems for the entire Estate to the satisfaction of Council. The Association shall not be liable towards a Member for any service not installed on its erf by the developer or where such service is faulty or inadequate for the development of an erf.
- 19.2 Due thereto that no building time restriction is applicable in the Estate, the Association shall only be liable for the maintenance, repair and replacement of communal services and service infrastructure connected to developed erven, and then only up to the boundary of the erf or in the case of electricity the meter kiosk where the electricity is connected.
- 19.3 Every Member shall be liable, at his or her own cost, to install and maintain or replace a water and electricity consumption meter of a type as approved by Council before water or electricity may be consumed or used, or before an erf may be developed.
- 19.4 Whenever water or electricity is provided in bulk to the Estate by Council, the Association shall pay Council and the metered usage thereof shall be recovered from the Members.
- 19.5 In the event of any Member not having paid an electricity account rendered to him or her by the Association for the usage of electricity for a period, and such Member 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 Member's erf.

20. **NOTIFICATION**

- 20.1 The official address of the Association that will serve as its *domicilium citandi et executandi* will be:
- 20.1.1 Physical address: As from time to time determined at a General Meeting of the Association, and until this is amended, Plett Property Management, 7 Gibbs Street, Plettenberg Bay;

20.1.2 Postal address: As from time to time determined at a General Meeting of the Association and until this is amended, Plett Property Management, 7 Gibbs Street, Plettenberg Bay 6600;

20.1.3 E-mail: As from time to time determined at a General Meeting of the Association and until this is amended: marc@seavalley.co.za

20.2 In order to facilitate expedient communication between Members and the Association, Members are encouraged to in all matters communicate with the Association by way of electronic mail. Whenever the electronic mail address of a Member or nominated person provided to the Association in accordance with clause 5.5 of this Constitution changes, he or she must forthwith advise the Association thereof and unless and until such a notice is received by the Association it will be deemed that a communiqué sent to a Member or nominee by electronic mail to the e-mail address provided was received on the same date that it was dispatched.

20.3 For the purposes of matters between the Association and its Members the *domicilium citandi et executandi* of a Member will be the erf or erven registered in such Member's name, provided that a Member may change his or her *domicilium citandi et executandi* to an address within the Republic of South Africa and provided further that such change shall only be effective on the receipt of written notice thereof by the Association.

20.4 Whenever a formal notice or process of court is served on a Member at his or her *domicilium* in terms of clause 20.3, a copy of such notice or process of court will be sent to his or her email address, if practically feasible.

21. INTERNAL DISPUTE RESOLUTION

21.1 In the event of a dispute, annoyance, aggravation or complaint between the Association and/or a Member and/or Members and/or persons in clauses 5.6 and 5.7, an attempt must be made by the parties concerned to settle the matter between themselves. This should be done with consideration of tolerance.

21.2 If a matter in terms of clause 21.1 is not resolved within 30 (thirty) days of the occurrence of the dispute, annoyance, aggravation or complaint, it may be dealt with in accordance with the procedure as set out in this clause. This procedure is as follows:

21.2.1 The aggrieved Member or the Association, whether it has received a complaint from a Member or not, may issue a notice of dispute to the Member who it is alleged has committed the offending conduct. Where it is alleged that a person in clauses 5.6 and 5.7 other than a Member has offended, the notice must be issued to the Member concerned in the stead of the person who has allegedly offended. A notice of dispute must contain the following information:

21.2.1.1 Full particulars of the Member issuing the notice.

- 21.2.1.2 Full particulars of the alleged offending conduct, including the names and details of the parties involved, date, time and place of the alleged offending conduct and full particulars of the conduct itself.
 - 21.2.1.3 Details of the manner in which it is requested that the dispute, annoyance, aggravation or complaint be resolved.
- 21.3 Where a notice of dispute in clause 21.2.1 is not issued by the Association, a copy thereof must be sent to the Association on the same day that it is issued.
- 21.4 Unless a notice of dispute becomes resolved between the parties within a period of 30 (thirty) days after it was issued, it must be referred to the Committee for their determination and the issuing of a directive by them on how it should be dealt with. The Committee may in their sole discretion direct that a matter be dealt with in one of the following ways:
 - 21.4.1 That the matter be dealt with by way of arbitration in terms of this clause;
 - 21.4.2 That the matter be referred to the Ombud in terms of the Community Schemes Ombud Services Act, 2011 (Act No. 9 of 2011);
 - 21.4.3 That the matter in their opinion is not capable of being resolved by way of arbitration or the Ombud and that it should be resolved by a court of law.
- 21.5 Within 14 (fourteen) days from the date on which the Committee issued a directive in terms of clause 21.4, the parties involved in the matter must advise the Committee whether or not they intend to abide by the directive issued by the Committee. Should a party to whom a directive has been issued not advise the Committee within the aforesaid 14 (fourteen) period that he or she chose not to abide by the directive, then it will be deemed that he or she chose to abide by the directive. Should one or more of the parties not be prepared to abide by the directive of the Committee, then the Committee must take such action, if any, as it in the circumstances deems appropriate, including but not limited to bringing an application in the High Court for a declaratory order.
- 21.6 Arbitration of a matter in terms of this clause shall be as provided for in the Arbitration Act, 1965 (Act No. 42 of 1965) in accordance with the following procedure:
 - 21.6.1 The Association, Member, or whosoever chooses to refer the matter to arbitration, will be liable for the initial and upfront payment of the costs of referring the matter so, excluding the costs incurred by the Association/Member against whom the arbitration is requested, as the case may be, but including the costs payable to arrange the arbitration and to pay the arbiter;
 - 21.6.2 Arbitration will be conducted in an informal and summary manner on the basis that it shall not be necessary to observe or carry out

either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence;

- 21.6.3 Arbitration shall be called for within 30 (thirty) days of the issuing of a directive in clause 21.4.1 and shall commence as soon as reasonably possible after it is called for with a view to it being completed within 30 (thirty) days after it has been called for;
- 21.6.4 The arbiter shall be a practicing advocate of not less than 5 (five) years standing practicing at the Knysna or George Bar, appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to agree to such appointment. Should the Members and/or the Association fail to agree on a suitable arbiter, then the president of the George Bar Association will be requested to appoint a suitable arbiter.
- 21.6.5 An arbiter will not be appointed before the party responsible has made payment or provided security for the payment of the costs for conducting the arbitration.
- 21.7 The arbiter shall in giving their award have regard to the principles contained in this Constitution and the Rules and Building Regulations and shall decide the matter as submitted to them according to what they consider just and equitable in the circumstances, and therefore the strict rules of law need not be observed or taken into account by them arising at their decision.
- 21.8 The arbiter's decision shall be presented within 14 (fourteen) days after the conclusion of the arbitration in a written document and shall state the reasons for the decision therein. The decision by the arbiter shall include a determination as to the liability of the costs of and relating to the arbitration to be paid by either one or the other of the disputing parties or by both or all of them in such proportions as the arbiter shall determine in his or her sole discretion.
- 21.9 Each of the parties to the arbitration in terms of this clause irrevocably agree that the decision of the arbiter made at arbitration proceedings:
- 21.9.1 shall be final and binding on each of them;
- 21.9.2 shall be carried into effect immediately; and
- 21.9.3 may be made an order of any court of whose jurisdiction the parties are subject to upon application by either of the parties or the Association.
- 21.10 An arbitration hearing in terms of this clause shall be held in Plettenberg Bay at a suitable venue determined by the Association.
- 21.11 The Member or the Association, or whosoever refers a matter to be dealt with by the Ombud in accordance with the Community Schemes Ombud Services Act, 2011 must, within 14 (fourteen) days after the directive by the Trustee Committee was sent to him or her that the matter should be so dealt with, refer

the matter to the Ombud by following the procedures provided for in the Act and the Regulations. In such event the Member must, within the said 14 (fourteen) day period, notify the Association that the matter has been so referred. Insofar as the Association is concerned, the matter referred to the Ombud will be stayed until a final ruling has been made thereon by the Ombud or an adjudicator to whom the matter has been referred by the Ombud.

21.12 Where the Association has declared a dispute or a Member has declared a dispute against the Association with the Ombud, the Member will be liable to pay the all-inclusive cost and expenses incurred by the Association in the matter, including legal costs, if:

21.12.1 The Member withdraws the application to declare a dispute after the Association replied to a notice from the Ombud inviting it to respond thereto;

21.12.2 An adjudicator to whom the Ombud refers a dispute for adjudication dismisses an application brought against the Association;

21.12.3 An adjudicator grants the relief applied for by the Association against a Member or refuses the relief sought by a Member against the Association.

21.13 The procedures provided for in this clause shall not exclude the Association or a Member, in appropriate circumstances, to sue for an interdict in a court of law.

22. **DISESTABLISHMENT OF THE ASSOCIATION**

22.1 Should an application for the disestablishment of the Association in terms of Section 15(2)(q) of the Bitou Bylaw on Municipal Land Use Planning, 2015 be approved by the Council, then and in such event the Association will:

22.1.1 make all reasonable efforts to amalgamate with a similar association in the area to the satisfaction of the Municipality; or

22.1.2 should the Association be unable to amalgamate with a similar association to the satisfaction of the Council, then the Association will apply to the Council for an appropriate incorporation of the Whale Rock Heights Private Estate as part of the township of Plettenberg Bay. In this regard it is recorded that the Whale Rock Heights Private Estate is and at all times during the existence thereof will be connected to services supplied by the Council

22.2 In the event that an application in accordance with clause 22.1.1 is made to incorporate the Whale Rock Heights Private Estate as part of the township of Plettenberg Bay, then and to the extent required by the Municipality ownership of the roads and service infrastructure of the Association will be transferred to the Council at no cost to the Council.

22.3 Unless otherwise agreed in terms of clause 22.1.1, any remaining assets of the Association will be sold or otherwise converted to money that will be distributed amongst the Members of the Association equally, should the Association be disestablished.

23. **AMENDING THE CONSTITUTION**

Whenever an amendment of the Constitution affects the Council in accordance with Section 29(6) of the Bitou By-Law on Municipal Land Use Planning, 2015, the amendment of the Constitution must also be approved by the Council.

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