

CONSTITUTION
OF
THE SKULPIESBAAI HOME OWNERS' ASSOCIATION

1. NAME

The name of the association shall be "The Skulpiesbaai Home Owners' Association" which is an association established in terms of Section 29 of Cape Ordinance No 15 of 1985.

2. DEFINITIONS

2.1 In this Constitution, unless the context indicates the contrary:

2.1.1 "the Association" shall mean The Skulpiesbaai Home Owners' Association;

2.1.2 "the Development Site" shall mean Portion 90 (a portion of portion 51) of the farm Platte Bosch No 485, in the Hessequa Municipality, Riversdale Division, Western Cape Province;

2.1.3 "the Developer" shall mean Wonderdeals 4 Proprietary Limited, registration number 2005/043808/07, or its successors-in-title;

2.1.4 "person" shall include a company, close corporation, partnership, trust or other association of persons entitled by law to hold title to immovable property;

2.1.5 "member" shall mean a member as defined in clause 4.1 hereof;

2.1.6 "The Development" shall mean the entire scheme of Development undertaken by the Developer and comprising the land and improvements thereon of and on the Development Site, and

- 2.1.7 words importing the singular number shall include the plural and the converse shall also apply; the masculine gender shall include the feminine and neuter genders and the neuter gender shall include the masculine and feminine genders.

3. **OBJECTS OF ASSOCIATION**

- 3.1 The objects of the Association are:

- 3.1.1 The maintenance of all civil and electrical services within the Association's property;
- 3.1.2 The promotion and enforcement of standards for community living on the Development Site in such a way that members may derive the maximum collective benefit therefrom;
- 3.1.3 The promotion of acceptable aesthetic, environmental and architectural styles and design criteria for the Development Site in accordance with the relevant architectural and landscaping guidelines in order to achieve harmonious development and maintenance thereof and to control the design, development and maintenance of all properties therein, with particular reference to the Architectural & Landscaping Guidelines and Rules approved by the local authority, and
- 3.1.4 The maintenance of the private open space and related common structures within the Development.

4. **MEMBERS**

- 4.1 Membership of the Association shall be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more erven of the Development Site. Upon registration of ownership, membership of the Association shall be automatic and members shall be obliged to comply with the provisions of this Constitution. No person shall be entitled to cease to be a member of the Association while remaining the registered owner of an erf of the Development Site.
- 4.2 Each member shall be entitled to one vote for each erf owned of the Development Site.

4.3 Membership shall be transferred by the registration of a deed of transfer in the Deeds Registry at Cape Town, passing transfer of one or more erven of the Development Site from the previous member to the new member.

4.4 Every member shall pay a monthly levy to the Association, which levy shall be determined by the Association during a general meeting. Until the levies have been determined by the members in general meeting, the levies shall be determined by the Developer.

5. EXECUTIVE COMMITTEE

5.1 The powers of the Association, other than those to be exercised by the members in a general meeting, shall be exercised by the Executive Committee (Excom).

5.2 Excom shall consist of 3 members, who shall all be members of the Association.

5.3 Excom shall meet at such time and place as shall be decided by Excom from time to time, provided that it shall meet within 14 days of an Annual General Meeting. Special meetings may be called by the Chairman.

5.4 Two Excom members may at any time convene a meeting of Excom by giving to the other Excom member no less than 10 days' written notice of the proposed meeting, which notice shall specify the reason for calling such a meeting, provided that in cases of emergency such shorter notice as is reasonable in the circumstances may be given.

5.5 Two members shall form a quorum at any meeting of Excom. If at any meeting a quorum is not present within 10 minutes of the appointed time of the meeting, such meeting shall stand adjourned to the same day of the following week at the same time.

5.6 If the number of Excom members falls below the number necessary to form a quorum, the remaining members may continue to act but only for the purposes of convening a general meeting of members.

5.7 Excom shall keep minutes of meetings held and decisions taken, which minutes shall be tabled at the next Excom meeting and Excom shall make a full annual report at the Annual General Meeting.

- 5.8 At the Annual General Meeting a Chairman, Secretary and Treasurer shall be appointed from the elected Excom members, who shall ipso facto be Chairman, Secretary and Treasurer of the Association. The Chairman, Secretary and Treasurer so elected shall hold office as such until the end of the next ensuing Annual General Meeting.
- 5.9 All management decisions shall be taken by unanimous decision. In the event that consensus cannot be obtained, the chairman shall have a casting as well as a deliberative vote.
- 5.10 The management and administration of the Association shall vest with the Developer until such time as the first Annual General Meeting following the registration of transfer of the last remaining erf in the Development from the Developer to a third party purchaser, is held. At such meeting the members shall elect the first Excom. The Developer or Excom, as the case may be, may exercise all such powers of the Association and do, on behalf of the Association, all such acts as may be exercised and done by the Association itself and as are not by its Constitution required to be exercised or done by the Association in general meeting. Without in any way limiting the generality of the foregoing, such powers shall include but not be limited to the following:
- 5.10.1 The determination of what constitutes appropriate standards for community living on the Development Site;
- 5.10.2 The performance of such acts as are necessary to accomplish the objects expressed or implied herein;
- 5.10.3 The investment and re-investment of monies of the Association not immediately required, in such manner as may from time to time be determined;
- 5.10.4 The operation of a banking account with all powers required for such operations;
- 5.10.5 The making of, entering into and carrying out of contracts or agreements for any of the purposes of the Association;
- 5.10.6 The employment and payment of agents, servants and any other parties;
- 5.10.7 The making, amendment and repeal of rules which shall be binding upon members as if they form part of this Constitution;

- 5.10.8 The right to sue and to defend actions in the name of the Association and to appoint legal representatives for this purpose, and
- 5.10.9 The performance of such acts as are required to ensure the security of persons and property on the Development Site.
- 5.11 Any act performed by Excom members shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any Excom member, be as valid as if such Excom member has been duly appointed in office.
- 5.12 Excom members shall not be entitled to any fees or salary in respect of the performance of their duties as Excom members.
- 5.13 No Excom member shall be liable to the Association or to any member thereof, or to any other person whomsoever for any act or omission by himself, by the Association or by its servants or agents. An Excom member shall be indemnified by the Association against any loss or damage suffered by him in consequence of any purported liability, provided that such member has, upon the basis of information known to him, or which should reasonably have been known to him, acted in good faith and without gross negligence.

6. **GENERAL MEETINGS**

- 6.1 Annual General Meetings of members shall be held once in every calendar year at such time and place as may be determined by Excom, but so that no more than 15 months shall be allowed to elapse between any two such successive meetings. The business to be done at the Annual General Meeting shall include:
- 6.1.1 The receipt of a report on the affairs of the Association;
- 6.1.2 The adoption of the minutes of the previous Annual General Meeting;
- 6.1.3 The adoption of the balance sheet and accounts;
- 6.1.4 The consideration of any resolutions concerning the affairs of the Association of which due notice has been given;

- 6.1.5 The determination of the monthly levy to be charged out against all members of the Association to give proper effect to the carrying out of the objects of the Association for the ensuing year, and
- 6.1.6 Any other business.
- 6.2 The first Annual General Meeting shall be called by the Developer and shall be held within 180 days from the first transfer of an erf of the Development Site.
- 6.3 Excom may call an ordinary general meeting of members whenever it thinks fit.
- 6.4 Ordinary general meetings may also be called upon the written request of not less than 10 members, directed to the Chairman of Excom.
- 6.5 An Annual General Meeting shall be convened on not less than 21 days' notice in writing. An ordinary general meeting shall be called by not less than 14 days' notice in writing. The notice shall be inclusive of the day on which it is given and shall specify the place, the day and the hour of the meeting and the general nature of the matters to be discussed.
- 6.6 The accidental omission of giving notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings of that meeting.
- 6.7 No matters shall be discussed at any meeting unless a quorum is present when the meeting commences. For all purposes, the quorum shall be members present in person or by proxy and being not less than 13 members.
- 6.8 If within a half hour from the time appointed for the holding of a meeting a quorum is not present, the meeting, if convened at the request of members, shall stand adjourned for half an hour at the same place. If at such adjourned meeting a quorum is still not present, the members present shall be a quorum. In any other case it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

- 6.9 The Chairman of Excom shall preside at every General Meeting, but if there be no such Chairman, the members present shall choose a Chairman from the members of Excom, or if no such members are present, they shall choose some member present to be chairman of the meeting.
- 6.10 At all general meetings resolutions put to the vote, save for resolutions for the election of a member to Excom or his removal therefrom which shall be decided by ballot voting, shall take place by show of hands unless by majority vote the meeting decides that voting shall be by ballot, in which event the ballot shall take place immediately. Voting, whether by show of hands or by ballot, shall take place in accordance with the following provisions:
- 6.10.1 Each member present in person shall have one vote for every erf registered in his name;
- 6.10.2 Each person present as proxy for a member shall have one vote for each erf registered in the name of the member for whom he is proxy;
- 6.10.3 Each member and person present as proxy for a member shall indicate clearly how he casts each vote to which he is entitled as aforesaid;
- 6.10.4 All resolutions shall, except as otherwise provided herein, be by majority vote of those members present in person or proxy at the meeting and voting; In the event that a majority cannot be obtained, the chairman shall have a casting as well as a deliberative vote.
- 6.10.5 The Chairman of the meeting shall count the votes cast for and against the resolution and shall declare it carried or lost, as the case may be;
- 6.10.6 A declaration by the Chairman of the result of the voting by show of hands or ballot and the entry thereof in the minute book of the Association shall be conclusive evidence of that fact.
- 6.10.7 Votes may be given either personally or by proxy.
- 6.10.8 The instrument appointing a proxy shall be in writing in any form approved by Excom under the hand of the appointer, or if such appointer is a company, under the hand of a duly authorised officer.

- 6.11 Any legal person which is a member of the Association may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Association and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represent as that company could exercise if it were an individual member of the Association.

7. **LEGAL STATUS**

- 7.1 The Association shall come into existence on the date on which this Constitution is approved by the Hessequa Municipality.

- 7.2 The Association shall be a body corporate:

- 7.2.1 with legal personality, capable of suing and being sued in its own name, and

- 7.2.2 none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by Excom in terms hereof, and

- 7.2.3 not for profit, but for the benefit of the owners of immovable property situate on the Development Site, and

- 7.2.4 with the right to acquire, hold, lease and alienate property, both movable and immovable.

8. **LEVIES**

- 8.1 The Association, through Excom, shall be entitled to levy an annual levy to defray the costs of managing and administering the Association and for the provision of services. Such levies may be fixed annually but shall be collected monthly in advance.

- 8.2 The levies shall commence immediately on the registration of transfer.

8.3 If a monthly payment due in advance on account of the annual subscription is not paid within 7 (seven) days of the due date, the Association may institute legal proceedings against the member for the recovery thereof. The costs of such proceedings shall be paid by such member on the scale as between attorney and client and shall be added to the levy. Interest will be charged at the prime overdraft rate charged from time to time on overdue amounts from the due date until paid in full. A member whose levy is not paid on due date shall not be entitled to:

8.3.1 vote at any general meeting;

8.3.2 serve on Excom,

whilst any payment is outstanding.

8.4 Excom shall cause proper books of accounts of the administration and finance of the Association to be kept at the domicilium of the Association or such other place or places as it may think fit.

8.5 Excom shall cause to be laid before the Association in Annual General Meeting, books of account, balance sheets and reports of the Association.

9. **NOTICES**

9.1 Any notice or communication required or permitted to be given in terms of this Constitution shall be valid and effective only if in writing, but it shall be competent to give notice by telefax or email.

9.2 Any notice to a member:

9.2.1 sent by prepaid registered post to the domicile shall be deemed to have been received on the 7th day after posting (unless the contrary is proved);

9.2.2 delivered by hand to a responsible person during ordinary business hours at the domicile shall be deemed to have been received on the day of delivery;

9.2.3 sent by telefax to the chosen telefax number, shall be deemed to have been received on the date of dispatch unless the contrary is proved, or

9.2.4 sent by email shall be deemed to have been received on the first business day following the date of sending of such email.

9.3 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a member shall be an adequate written notice or communication notwithstanding that it was not sent to or delivered to the chosen domicile.

10. **AMENDMENTS TO CONSTITUTION**

Once approved by the Hessequa Municipality, this Constitution shall not be altered or amended in any way save with the consent of the said municipality and after such alteration or amendment has been approved by the members in general meeting.

11. **PERSONAL LIABILITY OF MEMBERS**

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

CERTIFICATE OF APPROVAL

I, the undersigned, hereby certify that this Constitution of The Skulpiesbaai Home Owners' Association was this day approved by the Hessequa Municipality.

Signed at _____ on the _____ day of _____ 2015.
