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BLUE BERRY HEIGHTS

CONSTITUTION OF HOME OWNERS ASSOCIATION

1. NAME

The name of the Association is the Blue Berry Heights Home Owners Association.

2. DEFINITIONS

In this constitution, unless the context indicates the contrary:


- 2.1 "The Association" shall mean the BLUE BERRY HEIGHTS HOME OWNERS ASSOCIATION.
- 2.2 "The Township Area" shall mean the subdivided portions of Erf 1734 St Helena Bay, in the Municipality of Saldanha Bay, excluding the public road and public open spaces which are to be transferred to the Council.
- 2.3 "Person" shall include a company, club, trust, partnership or other association of persons entitled by law to hold title to immovable property.
- 2.4 "Member" shall mean a member as defined in clause 4 hereof.
- 2.5 "Council" shall mean the Council of the Municipality of Saldanha Bay.
- 2.6 "the Excom or Executive Committee" refers to the Executive Committee elected in terms of clauses 6 and 7.
- 2.7 "the Developer" means Vexma Properties 219 C.C. No. 2001/022126/23
- 2.8 "Architectural Guidelines and Design Criteria" means the documentation so titled prepared and compiled by Andre Marais, Create Architects, Langebaan upon the instruction of the Developer as the guideline to be followed for all construction within the Township Area.
- 2.9 "Architect" means Andre Marais, Create Architects, Langebaan or such other architect duly appointed by the Excom.

3. OBJECTIVES

The objects of the Association are to:

- 3.1 through the elected executive committee set and enforce standards for high density communal life within the Township Area, in such a way that all members may derive the maximum collective benefit there from by concentrating on the promotion of a sympathetic and conjugal atmosphere within the scheme;
- 3.2 promote and enforce acceptable aesthetic and architectural styles and design criteria for the Township Area in order to conserve the harmonious character thereof as envisaged by the Developer in the Architectural Guidelines and Design Criteria;
- 3.3 to acquire the necessary finances to attain its set objectives by the implementation of scrutiny fees levied on all applications in accordance with clause 7.5.8 (read with clause 16) or by means of an annual levy on members if approved of 70 % (Seventy Percent) of the members present at a duly convened General Meeting.;

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3.4 to appoint an architect or such other capable professional as may be required to undertake the function of scrutinizing all building plans of new structures to be erected within the Township Area or any additions to existing structures on behalf of the association and to make recommendations to the executive committee as to whether or not an application conforms with the architectural guidelines prior to such plans being lodged to the Local Authority for approval thereof.

3.5 to take such steps as may be necessary to accomplish these objects.

4. **MEMBERS**

4.1 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;

4.2 Upon registration of ownership an Erf within the Township Area 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;

4.3 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;

4.4 Membership shall be transferred by the registration of a deed of transfer in the Deeds Registry, Cape Town, passing transfer of one or more Erven in the Township Area from the previous owner to the new owner.

4.5 Each member shall be entitled to 1 (ONE) vote for each Erf of which he is the owner in the Township Area. Ownership of an Erf in undivided shares will entitle the owners to only one membership, which membership will be represented by one person in terms of the conditions of clause 8.10 hereunder.

5. **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 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 amount legally due from him to the Association at the time of him ceasing to be a member.

6. **COMMITTEE**

The powers of the Association, except where they have to be executed by the General Meeting, must be executed by the Executive Committee (Excom).

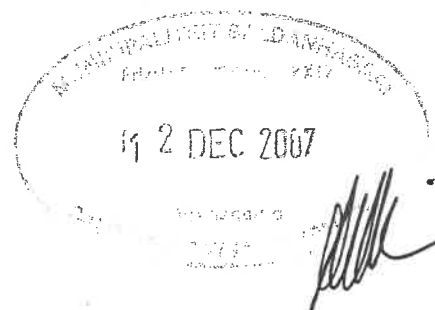
7. **EXECUTIVE COMMITTEE**

7.1 Composition:

7.1.1 The number of Excom member will be determined from time to time by the General Meeting with the provision that there will at no stage be less than two of more than five Excom members.

7.1.2 The address Excom is _____

7.2 Election by Annual General Meeting:



7.2.1 Only members, subject to 7.2.2, may be elected as members of Excom. The terms for which such members are elected are the period from election until the next General Meeting has appointed a new Excom. The elections are held annually at the Annual General Meeting. Members may serve for any number of terms as members of the Excom. Members will be elected by means of a secret ballot.

7.2.2 Only owners and their spouses, in the case of natural persons and representatives of owners in all other instances (duly authorised by written authority by such owners) will be eligible for election as members of the Excom.

7.2.3 Nominations of candidates for election on the Excom on any meeting shall be undertaken in writing and be signed by 2 (two) members and shall contain the name of the nominated candidate and lodged at the domicillium of the association by not later 14 (fourteen) days before such meeting.

7.2.4 The Excom members may fill any vacancy or co-opt members with understanding that the number of Excom members may not be more than 5 (five). Any Excom member that is appointed accordingly shall remain in office only until the next Annual General Meeting when he will be available for re-election. Any Excom member that is co-opted in the place of a member whose service has come to an end before the end of his terms, for whatever reason, will coincide with a service term of the member in whose place he has been co-opted.

7.3 Termination of office:

The office of a member of the Excom will be terminated when:

7.3.1 he gives written notice as such to the Excom;

7.3.2 he has become mentally disturbed;

7.3.3 he has surrendered his estate as insolvent or if he has been sequestrated;

7.3.4 he has been found guilty of an offence where dishonesty is an element;

7.3.5 he has been absent from more than 3 (three) consecutive meetings of the Excom without permission;

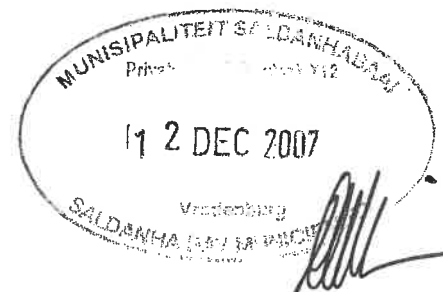
7.3.6 he has been removed from office by a decision of the General Meeting;

7.3.7 he is no longer residing within the township area.

7.4 Meetings and procedures:

7.4.1 Members of the Excom may give notice of meetings, meet for the continuous of business, adjourn or arrange their meetings as they may deem fit. It will not be necessary to give notices of a meeting to any member of the Excom if he is not within the republic.

7.4.2 Any member of the Excom may convene a meeting of the Excom by giving at least 5 (five) days notice of the meeting proposed by him to the other members of the Excom of which the reason for the calling of such meeting is set out for the understanding that in urgent matters shorter may be given depending upon the circumstances.

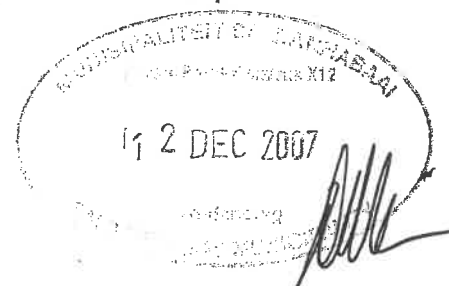


- 7.4.3 A quorum of the Excom will be made up by 3 (three) members of the Excom when there are 5 (five) or six members and when there are 7 (seven) members in the Excom 4 (four) members will form a quorum. Should there not be a quorum present at any meeting after 30 (thirty) minutes after predetermined time of the meeting such meeting will adjourned until the next business day at the same time.
- 7.4.4 At the commencement of the 1 (first) meeting of the Excom after each Annual General Meeting, the members of the Excom will elect a chairman from their midst who will be the office until the end of the next Annual General Meeting and such chairman will have a casting vote. When any chairman steps down from office or if his term is terminated by the members at General Meeting, the members of the Excom will elect another chairman who shall be in office for the remaining period for which his predecessor was elected for and he will have similar voting rights.
- 7.4.5 All matters on any meeting of the Excom will be determined by a simple majority of the member's present taking part in the vote.
- 7.4.6 The members of the Excom may from time to time appoint a person as secretary of the association to undertake the normal functions of a secretary and to attend all meetings and to keep minutes thereof.

7.5 Powers of the Excom:

The management and administration of the Association will vest in the Excom, who will exercise such powers of the Association and as such acts on behalf of the Association, that have not been reserved to be exercised or implemented as such by the General Meeting of the Association, in terms of this constitution. Without limiting the generality of the aforesaid, such powers may include but will not be limited to the following:

- 7.5.1 To set applicable standards for community life and in the township area;
- 7.5.2 The exercise of all acts necessary to attain the objectives as set out herein, whether expressly or impliedly.
- 7.5.3 The investment and reinvestment of funds of the Association that is not immediately required upon such a way as they may determine from time to time;
- 7.5.4 To operate a banking account with all powers required by such institution;
- 7.5.5 To draft, enter into and to give effect to agreements or contracts to the benefit of the Association;
- 7.5.6 To employ and remunerate professionals for services rendered as well as other parties;
- 7.5.7 To institute legal action in the name of the Association or to defend any action against the Association and to appoint a legal representative for such purposes. In the particular and without limiting the generality of the aforesaid he to have a right to issue summons against members for the payment of outstanding levies and/or for the execution of their duties in terms of the constitution for the cost of which would be for the account of particular member.
- 7.5.8 To approve of any additions or alterations to dwellings within the Township



Area as being in conformity with the architectural style of the township area and to ensure that similar building materials are used in the construction and in particular to ensure that the exterior design of such buildings as well as the materials and colours used thereon are such that it ensures that a decent and aesthetically acceptable character of the township area as contemplated in the Architectural Guidelines and Design Criteria.

7.5.9 The conditions of 7.5.8 will be mutatis mutandis applicable to all other works on township erven of members including fences, pergolas, boundary walls and paving.

7.6 The validity of acts by all members of the Excom

No act by a member of the Excom shall be invalid simply because of a problem with the appointment to or the continuance in office of that member of the Excom and such act shall be valid as if such member of the Excom has been duly nominated and appointed to such office.

7.7 Remuneration

Members of the Excom will be entitled to repayment of all reasonable and bona vide expenses incurred by them in connection and coherent with the exercise of their duties as members of the Excom, except for as far as provided no members of the Excom will be entitled to any remuneration, fees or salary for the exercise of his duties. No member of the Excom or his family will be entitled to enjoy the benefits of a contractual relationship with the Excom or the Association.

7.8 Indemnity

No member of the Excom be responsible unto the Association or any member thereof or to any other person whomever for anything done or not done by themselves, the Association or its employees or agents. A member is furthermore indemnified by the Association against any loss or damages suffered by him as a result of any deemed responsibility provided that such member acted according to the information available to him in good faith and without malice.

8. GENERAL MEETINGS

8.1 Over and above the special General Meeting referred to in clause 9 hereunder the members of the Association will hold ONE (1) Annual General Meeting each year at such place and time, not further than FIVE (5) kilometres from the township area as maybe determined by the Excom but in such a manner that no more than FIFTEEN (15) months will pass in between TWO (2) consecutive meetings. The matters to be dealt with at the Annual General Meeting will include the following:

8.1.1 A report on the matters of the Association;

8.1.2 The acceptance of the balance sheet and accounts of the previous financial year;

8.1.3 The consideration of any proposal affecting matters of the Association or which due notice was given;

8.1.4 The election of members of the Excom;

8.1.5 Any matters of which due written notice were given at least THIRTY (30) days prior to the date of such meeting.

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8.2 The Annual General Meeting will be called with no less than TWENTY ONE (21) days written notice to each member's last known address together with the minutes of the previous Annual Meeting, the financial accounts of the preceding year, the agenda, as well as nomination forms and a proxy form.

8.3 Special General Meetings:

The Excom may call a special General Meeting when it is deemed to be in the interest of the Association. At least one such special meeting shall be held annually as close as possible to the 20th December to approve the budget for the next financial year with or without amendments.

A special meeting will also be called for after receipt of a special written request by no less than TEN (10) members addressed to the Chairman of the Excom.

A special General Meeting will be called with no less than FOURTEEN (14) days written notice to each member. The notice will contain the place, the date and the time of the meeting as well as the general nature of the matters to be discussed, with the clear understanding, that any meeting will be considered to have been called in a due and proper fashion if 60 % (SIXTY PERCENT) of the members of the Association approves thereof despite the fact that shorter notice might have been given.

8.4 Legality of meetings:

The fact that no notice was mistakenly given of a meeting or the fact that any member normally entitled to such notice did not receive same will not invalidate such meeting or any of the decisions taken there at.

8.5 Quorum:

No matters will be discussed at any meeting unless a quorum is present. The quorum for all circumstances will be no less than one half of the total number of members.

8.6 Adjournment:

If a quorum is not present within THIRTY (30) minutes from the time stipulated for the commencement of the meeting, such meeting should, if convened at the request of members, be cancelled. In all other cases it will be adjourned until the corresponding day of the next week at the same time and to be held at the same place and if there is no quorum at such reconvened meeting within half and hour of time stipulated for such meeting, then the members present at such meeting will form a quorum. All members of the Association must receive notice of such an adjournment of the meeting.

8.7 The Chairman of the Excom will act as Chairman of each General Meeting but if the Chairman is not present the Vice Chairman will act in his place. If both should be absent a member of the Excom will act as Chairperson. If no member of the Excom is present, the meeting shall elect a Chairperson for such a meeting.

8.8 Voting:

At all General Meeting any motion that is tabled shall be put to the vote immediately in accordance with the following principals:

8.8.1 Each member present shall have ONE (1) vote for each Erf registered in his/her name;

8.8.2 Each person present by way of a Power of Attorney shall have one vote for each Erf registered in the name of the member he is representing;



8.8.3 Each member and each holder of a Power of Attorney of behalf of a member will vocally announce how he has brought out the votes that he is entitled to bring out;

8.8.4 All decisions will be taken by an ordinary majority of all members present in person or by proxy and who votes at the meeting;

8.8.5 The Chairman of the meeting will count all votes for and against a proposal and will declare that it has been accepted or rejected as the case may be;

8.8.6 A declaration by the Chairperson of the outcome of the voting and a recording thereof in the minutes of the Association will be sufficient proof that a resolution was made.

8.9 Incapacity:

In the event of a member being declared unfit to manage his own affairs or if he has been declared insolvent or as a wastrel or in the event a company if it has been placed under judicial management or in liquidation, such member will be represented by his/her curator bonis, trustee, judicial manager or liquidator as the case may be, who will be able to vote on behalf such member, either personally or by his representative under proxy.

8.10 Co-ownership:

In the event that an Erf is registered in the names of two co-owners, then when any matters are brought to the vote the vote of the older member who brings out the vote, in person or by proxy, will be accepted to the exclusion of the vote of the other registered owners of such Erf. The age of the co-owners will established by reference to their identity numbers as recorded on the Title Deeds in the Deeds Office Cape Town. Where the co-owners of an Erf are both natural person and a company, the vote of the natural person will count.

8.11 Proxy

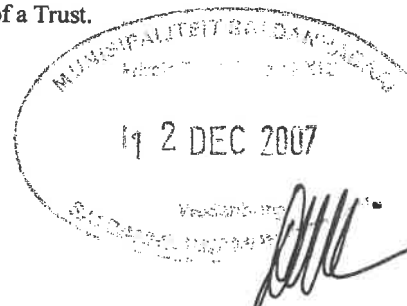
8.11.1 Votes may be brought out in person or by proxy.

8.11.2 All proxies should be given in writing and upon the normal manner or in any other format approved of by the Excom and shall be signed by the member, his attorney or agent acting under his/her written authority or if the member is accompany, is under signed by a official duly authorised thereto.

8.11.3 The written proxy to act on behalf of a member together with the Power of Attorney or a notarial copy thereof in terms of which such person signs the first proxy must be handed in at the domicilium citandi of the association by no later than TWENTY FOUR (24) hours before the time determined for the meeting or the adjourned meeting at which the person mentioned in such proxy must vote, and if this was not done such representative will not be allowed to bring out a vote at the meeting.

8.12 Company/Trust

Any company that is a member of the Association may authorised by a resolution of it's board of directors or any other management institution, any person that it may deem fit to represent it at any meeting of the Association and the person thus authorised shall be entitled to the same powers that the company he is representing would have had had it been a natural person. The same conditions will apply in the case of a Trust.



8.12 Disqualification:

No member who may otherwise in terms the constitution be entitled to take part in the affairs of the General Meeting or who may declare himself eligible for election as a member of the Excom will be entitled to do so if he is in breach of any obligation with regards to the approval of building plans by the Excom.

9. STATUS OF ASSOCIATION

The Association will be an Association:

- 9.1 with legal capacity that can sue and maybe sued in its own name and that may acquire moveable and immoveable property;
- 9.2 of which no member in his personal capacity will have any right to the title or interest to or in the property, funds or assets of the Association and which property funds or assets will vest in the Association and will be managed by the Excom in terms hereof;
- 9.3 that will not be an Association for gain but be for the benefit of the owners and occupiers of immoveable property situated within the township area.

10. LEVIES

10.1 The Association, through the Excom, will have the authority subject to any conditions or guidelines imposed by the General Meeting:

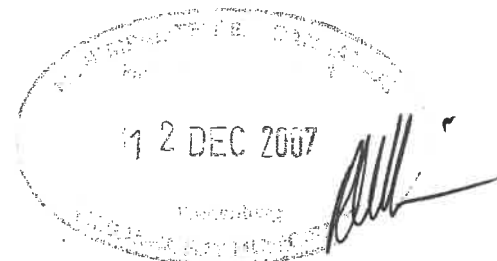
- (a) to administer a levy fund for administrative expenses that will be sufficient in the view of the Excom to cover all costs in attaining the objectives of the Association;
- (b) to require from members whenever it may be necessary to pay the levy to cover any claim against the Association;
- (c) to determine from time to time amounts that will be levied for the purposes set out above;
- (d) withhold the right to give transfer of a unit by a member unless all levies or other money due to the Excom relating to such unit has been paid or adequate provision has been made for the payment thereof to the Excom.

10.2 Any levy levied in terms of this constitution will be become due and payable upon demand from the time that the decision was made by the Excom and it can be recovered by the Excom in any way of any action in any court including the Magistrate's Court with adequate jurisdiction from persons who were members at the time when the said decision was made. Interest will be levied on all amounts outstanding for longer than SEVEN (7) days at the prime rate of interest as charged by ABSA Bank until the date of payment thereof.

10.3 The Excom may in determining the levies not distinguish between natural and legal persons.

11. ACCOUNTING RECORD

11.1 The Excom will ensure that proper accounting records of all administration and finances of the Association are held at the domicilium of the Association or such other place/s as maybe required and it will produce annually and audited balance sheet and



income statement.

- 11.2 The Excom will be obliged to table an audited balance sheet and income statement for approval to the Association at a General Meeting.
- 11.3 The Association's financial year will be from the 1st March until the last day of February of the following year.
- 11.4 The appointment of the auditor will only take place at the Annual General Meeting.

12. DOMICILIUM

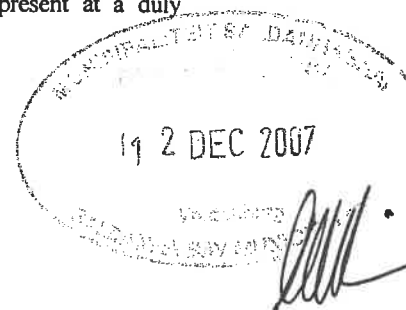
- 12.1 For the purposes of this agreement, including all notices to be given and the serving of all legal process, the Association chooses as its domicilium citandi et executandi the following:
 - 12.1.1 The office of the Association at - _____
 - 12.1.2 Each member – at the Erf registered in his name with the understanding that the Association or any member may at any time change his/her domicilium citandi et executandi to another address by written notice which new address will be within the Republic of South Africa and that may not be a postal box or poste restante with the further provision that such notice will only take effect FOURTEEN (14) days after receipt of such notice.
- 12.2 Any written notice that is given in terms this constitution may be given by delivery by hand or by the posting of such notice by prepaid registered mail in which case it will be deemed that such notice was duly received FIVE (5) days after it has been posted at any post office within the Republic of South Africa. The production of proof of the posting of registered fees will be full and ample proof of the date of the date of posting of such notice.

13. VOLUNTARY LIQUIDATION

- 13.1 The Association can be liquidated by way of the decision of the General Meeting on condition:
 - 13.1.1 90 % (NINETY PERCENT) of the members present or represented at the duly constitution of the Association voted in favour thereof; and
 - 13.1.2 the Council or its assigns has approved thereof in writing.
- 13.2 In the case of such a liquidation it will be the duty of the Excom or their duly authorised agent to liquidate the assets of the Association and to settle all obligations of the Association where after remainder must be divided amongst all members in accordance with the number of Erven registered in the name of each such member. If the Excom or its authorised agent it not capable of finding any member within a period of twelve months of such liquidation, the portion allocated to such member will be paid into the guardian's fund with the Master of the High Court.

14. AMENDMENT OF THE CONSTITUTION

- 14.1 This constitution may be amended at a special General Meeting or an Annual General Meeting of the Association. Any such amendment must be approved by more than 60% (SIXTY PERCENT) of the total number of members whether present at a duly constituted general meeting in person or by proxy.



- 14.2 Any amendment of the constitution must be lodged with the local authority as well as the commissioner of Inland Revenue and will only become valid once approved by the Council in writing.

15. INTERPRETATION/DISPUTES

- 15.1 Any dispute of whatever nature between members including a dispute regarding the interpretation of this constitution that may rise shall be subject the terms of clause 15.4, be referred for judgement to a practising senior advocate of the Cape bar of at least FIVE (5) years standing as such. In the case of a dispute concerning of clauses 7.5.9 and 7.5.10 it will be referred to an architect with at least FIVE (5) years practical experience as agreed between the parties to the dispute. Such advocate or architect will act as an expert and not as an arbitrator and will settle the matter. His judgement will be final and binding on all parties and will be capable of enforced by a court of law.
- 15.2 If the parties cannot come to an agreement as to which senior advocates must be appointed to settle the dispute he shall be nominated by the President Cape Bar Council.
- 15.3 If the parties cannot come to an agreement as to the architect that must be appointed to settle the dispute he shall be nominated by the President of the Cape Provincial Institute of Architects.
- 15.4 Despite any conditions to the contrary contain herein the Excom will be entitled in it's exclusive discretion to institute any action in a competent court of law or any legal aid where to which it may be entitled in terms of the conditions of this constitution including to recover arrears in levies.

16. LODGEMENT OF PLANS

All members will be obliged to lodge any building plan with the Excom for inspection and approval before such plan maybe lodged with a local authority for inspection or approval irrespective whether such plan is for a new construction or amendments to the existing buildings or additions thereto.

17. GENERAL

- 17.1 The registered owner shall not make any changes additions to or demolish any part of the exterior of the property including boundary walls, fences or ornament etc. and will not be allowed to paint the outside of any wall or structure or to change the colour thereof without the written approval of the Excom.
- 17.2 The registered and his successor entitled must allow excess to the property for the Excom or its duly authorised agents to allow them to undertake the cleaning maintenance renewal replacement of any wall, roof, pipe, cutter, wiring or other structure and shall do nothing to prevent that such work be undertaken.
- 17.3 If the owner or his successor entitled should sell the property the Deed of Sale thereof will subject to the approval by the Excom to ensure that the new owner binds him to the constitution of the Association and to ensure that the retiring member has paid his levy account in full.

