

CONSTITUTION OF THE WHEATFIELDS HOMEOWNERS' ASSOCIATION



1. ESTABLISHMENT IN TERMS OF STATUTE

The Wheatfields Homeowners' Association is constituted as a body corporate in terms of Section 29 of the Land Use Planning Ordinance, No. 15 of 1985, in accordance with the conditions imposed by the Local Authority, when approving in terms of Sections 25(1) and 42 of the said Ordinance the subdivision of Erf 3481 Piketberg and shall come into existence simultaneously with the registration in the Deeds Office of the first of the erven (as hereinafter defined). It is specifically recorded that the Homeowners' Association will be incorporated as an Association, and not for profit in terms of Section 21 of the Companies Act, 1973, to promote the communal interests of members of the Association. It is further recorded that the Homeowners' Association may not be terminated without the specific consent of the Local Authority. The Homeowners' Association shall be obliged to incorporate any additional property or properties abutting on Erf 3481 Piketberg which the Developer, as hereinafter defined, and the Local Authority may elect to include in the Township.

2. INTERPRETATION

In these presents:

- 2.1 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
- 2.1.1 "Association" means The Wheatfields Homeowners' Association;
 - 2.1.2 "business day" means weekdays other than Saturdays, Sundays and public holidays;
 - 2.1.3 "chairman" means the chairman of the Trustee Committee;
 - 2.1.4 "common area" means all open and public areas including roads within Erf 3481 Piketberg and within any abutting erf or erven which the Developer may elect to incorporate in the Township;
 - 2.1.5 "Council" and "Local Authority" means the Bergrivier Municipality or its successor/s;
 - 2.1.6 "design manual" means the manual to control all aspects of design and landscaping of the development and annexed hereto (marked "B");
 - 2.1.7 "developer" means Lezmin 2224 CC;
 - 2.1.8 "development period" means the period during the sale of the individual erven and shall terminate once the developer has sold and transferred all erven in the estate to purchasers;
 - 2.1.9 "effective date" means the date the Constitution comes into force, viz when the first erf in the development is registered in the Deeds Office;
 - 2.1.10 "Erf"/"erven" shall, unless the context otherwise implies, mean a subdivided portion or portions of the Development;
 - 2.1.11 "EMP" means the Environmental Management Plan;
 - 2.1.12 "Township" or "Township Development", or "Development" or "Estate", means the residential housing development of Wheatfields in the process of subdivision and development and in accordance with the

Township Development Plan and situate on Erf 3481, Piketberg, Western Province and on any property or properties abutting on Erf 3481 Piketberg which the Developer may elect to incorporate in the Township;

2.1.13 "member" means a member of the Association; and

2.1.14 "services" means the roads, verges, parking bays, water supply, sewerage pipes, electricity cables and all other municipal services within the common area.

3. PURPOSE DESCRIBING MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of the registered owners of the erven.

4. MAIN OBJECT

The main objects of the Association are:-

- 4.1 to ensure and provide for the general maintenance, running and control of the estate in order to promote, advance and protect the communal interests of the owners.
- 4.2 to control the maintenance, alteration, extension and renovation of all buildings and/or structures erected or to be erected on the erven.
- 4.3 to ensure compliance with the design manual and in particular to ensure that:
 - 4.3.1 no improvements on the Estate may occur until and unless the Association has consented to this and approved the necessary plans for which the Association is entitled to charge a scrutiny fee, prior to the Local Authority receiving the plans for consideration;
 - 4.3.2 no erven may be rezoned, consolidated or sub-divided without the consent of the Association.
- 4.4 to maintain all buildings, roads, stormwater systems and services and amenities on the common areas and to accept the responsibility for the maintenance of all services on the common areas.
- 4.5 to take transfer of all common areas on Erf 3481 Piketberg simultaneously with the registration of the first transfer of an erf or as soon as possible thereafter, depending on the directions of the Local Authority in granting its approval to the Development of the Township in phases, and to take transfer of all common areas on the abutting erf or erven as directed by the said Local Authority.
- 4.6 to comply with any conditions imposed by the council on the sub-division of Erf 3481 Piketberg and any abutting erf or erven incorporated in the Township;

and in particular:-

- 4.6.1 to adhere to and to ensure that all members, owners and occupiers adhere to the relevant requirements of the National Water Act 1998 (Act No. 36 of 1998) in regard to water use activities and restrictions, ensuring that no surface or ground water is polluted due to any activity on the properties.
- 4.6.2 to implement regular bio-monitoring of the water runoff from the private open space river corridor must be implemented to ensure that the development and associated activities do not impact on the water quality.

- 4.6.3 to install water saving devices throughout the proposed development including but not limited to dual flush toilets, water saving showerheads and low flow taps.
- 4.6.4 to impose, implement and maintain sustainable and effective erosion control measures as part of the landscaping, ensuring that:
 - 4.6.4.1 the private open space river corridor on portion 138 is fully rehabilitated, landscaped and populated with suitable indigenous vegetation.
 - 4.6.4.2 to ensure that all alien vegetation is removed from the property. (Any Eucalyptus trees needed for aesthetic value must be clearly demarcated on a full colour map which must be supplied to the Department of Environmental Affairs & Development Planning).
 - 4.6.4.3 an alien management programme forming part of the development to prevent the establishment of any further alien vegetation, is formulated.
- 4.6.5 to impose and enforce an integrated waste management approach based on waste minimization and incorporating reduction, recycling, re-using and disposal where appropriate, any solid waste being disposed of at a landfill licensed in terms of Section 20 of the Environment Conservation Act, 1989 (Act No. 73 of 1989).
- 4.6.6 to compile and submit an acceptable construction phase EMP for the installation of the services, communal areas, access roads, residential units, as well as a code of conduct for building contractors to the Directorate of the Department of Environmental Affairs & Development Planning, for their approval prior to any site preparations and construction commencing, such EMP to be submitted at least 6 weeks prior to any construction activities or construction related activities or construction related activities commencing. The EMP must be included in all contract documentation for the construction phase of the development. The Association shall further be responsible for the implementation and the auditing of the said EMP which must be approved by the Directorate before any of the Units may be occupied. The EMP must address but not be limited to the following:
 - 4.6.6.1 The protection of the natural riparian and surrounding indigenous vegetation;
 - 4.6.6.2 The protection (minimising the disturbance) of indigenous fauna within the development and surrounds;
 - 4.6.6.3 Responsible maintenance of the ecological integrity of the "stream" through strict monitoring programmes;
 - 4.6.6.4 Ongoing mitigation measures for erosion;
 - 4.6.6.5 The removal of alien invasive plants;
 - 4.6.6.6 Water saving mechanisms (e.g. low-flow shower heads);
 - 4.6.6.7 Energy saving mechanisms (e.g. solar geysers);
 - 4.6.6.8 Waste management;
 - 4.6.6.9 Minimising disturbance to indigenous fauna;

- 4.6.6.10 Fire prevention and control including a fire regime management programme designed in consultation with Cape Nature (CN) and the local Fire Authorities; and
- 4.6.6.11 Ongoing implementation of conditions of approval of the Department of Environmental Affairs & Development Planning.
- 4.7 to prepare Estate/Conduct Rules within SIX (6) months of the effective date to govern the conduct of the Members of the Association for the specific purpose of ensuring the peaceful and harmonious residence of the Members:
 - 4.7.1 day-to-day issues such as live-in servants and the control of pets will be dealt with on a case-by-case basis as and when the need arises.
- 4.8 to provide and maintain the following services, *inter alia*, the cost of which will be covered by the monthly levy payable to the Homeowners' Association, and to employ the necessary staff for that purpose:
 - security;
 - refuse removal;
 - landscaping of common area;
 - administration of the Homeowners' Association;
 - water and electricity supplied to common areas;
 - maintenance of all recreational and sports facilities;
 - insurance of buildings and structures on common areas; and
 - maintenance of sidewalks, roads, verges and other common areas.
- 4.9 to have the right to outsource any or all of its functions to the most suitable organisation or contractors.
- 4.10 to ensure the optimum use of water resources within an eco friendly estate.
- 4.11 to protect the indigenous vegetation and natural beauty of the estate.

5. FINANCIAL YEAR END

The financial year end of the Association is the end of February of each year.

6. MEMBERSHIP OF THE ASSOCIATION

- 6.1 Membership of the Association shall be compulsory for every registered owner of an erf being a portion of Erf 3481 Piketberg or a portion of an abutting erf or erven which may be incorporated in the Township.
- 6.2 Such membership shall commence simultaneously with the transfer of the erf into the name of the transferee.
- 6.3 Membership of the Association shall be limited to the registered owners of the erven provided that:
 - 6.3.1 a person who is entitled to obtain a certificate of registered title to any such erf shall be deemed to be the registered owner thereof;
 - 6.3.2 where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly and severally to be one member of the Association and nominate one owner to represent them and vote at meetings of the Association; and
 - 6.3.3 a representative of Lezmin 2224 CC, viz. the Managing Member, Architectural Design Incorporated of 23 Lakeshore Drive, The Lake, Noordhoek, Telephone (021) 785 7236 shall be a member of the Association until such time as all the erven have been sold.

- 6.4 Save for the party referred to in Section 6.3.3. above, when a member ceases to be the registered owner of an erf, he shall *ipso facto* cease to be a member of the Association.
- 6.5 A member shall not be entitled to:
- 6.5.1 sell or transfer an erf unless it is a condition of the sale and transfer that:
- 6.5.1.1 the transferee is obliged to become a member of the Association, and is bound by the terms and conditions of membership thereof;
- 6.5.1.2 the registration of transfer of that erf into the name of that transferee shall *ipso facto* constitute the transferee as a member of the Association; and
- 6.5.1.3 he first obtains the written consent of the Trustee Committee which consent shall be given provided the purchaser of such erf agrees in writing to abide by the rules of the constitution of the Association and provided further that such member has paid all levies and any other amounts owing by him to the Association as at the date of transfer of the erf.
- 6.5.2 sell, donate, grant any option of pre-emptive right in respect of, or alienate or transfer, or in any way deal with the property prior to taking transfer of the property into his own name, without the prior consent of the Association, which shall not be unreasonably withheld.
- 6.5.3 without the prior written approval of the Trustee Committee:
- 6.5.3.1 erect any new buildings and/or structures of any nature whatsoever on his erf;
- 6.5.3.2 make any changes or alterations to existing buildings and/or structures on his erf, including changes to the external colour scheme, nor make any improvement of any nature on the property and any building plans in respect of any improvement to be erected on the Erf shall be subject to the prior written approval of the Association or its nominee. Such approval will be required without limitation to all external finishes including materials and colours for all walls, doors, roofs and windows;
- 6.5.3.3 make any application for the rezoning, consolidation or subdivision of his Erf.
- 6.6 The approval of the Trustee Committee as contemplated above shall only be given on condition that all the terms of the design manual have been fulfilled provided the approval may not be unreasonably withheld and shall not be interpreted as detracting from the sole and final responsibility of the Council to approve building plans in terms of the applicable legislation.
- 6.7 The registered owner of an erf may not resign as a member of the Association and shall remain a member for as long as such owner is the registered owner of any erf in the development.
- 6.8 The rights and obligations of a member shall not be transferrable and every member shall:
- 6.8.1 to the best of his ability further the objects and interests of the Association;

6.8.2 observe all by-laws and regulations made by the Association or the Trustee Committee;

provided that nothing contained in this constitution shall prevent a member from ceding his rights in terms of this constitution as security to the mortgagee of that member's erf.

6.9 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 arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a member.

6.10 Whilst the Developer shall be entitled at any time/s to erect such signage, flagpoles, messages or any other form of notices or advertising on the common property and/or common buildings as may be legally permissible solely for the purposes of selling and/or letting sections in the Development, provided that it does not inconvenience the owners of other erven in the Development, no member shall be entitled to display any "For Sale" and/or "To Let" signs on his property or outside the Development:

6.10.1 until the Developers have completed and entirely sold all portions of the Development, without the prior written consent of the Developers; and

6.10.2 thereafter, without the prior written consent of the Homeowners' Association.

7. LEVIES PAYABLE BY THE MEMBERS

7.1 Members are jointly liable for the expenditure incurred in connection with the Association.

7.2 The Trustee Committee shall from time to time, make levies upon the members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates, the Association will be put by way of any expenditure for which the Association may be liable, for example, maintenance, repair, improvement and keeping in order and condition of the common areas including the servitude roads, refuse holding area, landscaping services, the security systems and the recreational facilities which may be installed on the common areas, and/or for payment of all rates and other charges payable by the Association in respect of the common areas, and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the common areas and the Association's affairs. In calculating levies the trustee committee shall take into account, income, if any, earned by the Association.

7.3 The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the members, equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.

7.4 The Trustee Committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in this clause 7 (which are not included in any estimate made in terms of clause 7.3), and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit.

- 7.5 Any amount due by a member by way of a levy shall be a debt due by him to the Association and shall be paid by way of Debit Orders. The obligation of a member to pay a levy shall cease upon his ceasing to be a member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member. A member's successor in title to an erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf, to pay the levy attributable to that erf.
- 7.6 The total estimated levy as contemplated in clauses 7.2 and 7.3 shall be apportioned between the members equally.
- 7.7 Any special levies imposed by the trustees in terms of clause 7.4 shall also be apportioned between the members equally.
- 7.8 No member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 7.9. In the event of a member falling in arrears with the payment of his levies, penalty interest shall accrue at 3% above the prime overdraft rate set by the Association's bankers.
- 7.10. In addition to the penalty provision set out in Sub-clause 7.9. above, should a member fall into arrears with levies equal to three times the monthly levy, then he shall become liable, on a month-to-month basis, for double the said levy.
- 7.11. Liability to pay monthly levies shall run from the first day of the month following the registration of transfer of the Members property.
- 7.12 The initial monthly levy shall be set by the Developers on transfer of the first erf in the estate to a private owner.
- 7.13 The Levies shall escalate on the 1st of July each year by the amount agreed upon at the Annual Homeowners' Meeting.

8. MANAGING AGENT

- 8.1. The Developers shall be entitled (but not obliged, and at their own discretion) to manage, or to appoint a managing agent for the scheme during the development period, which appointment shall be valid and binding on the Association during the development period.
- 8.2. The Members hereby grant the Developers the irrevocable power and authority to appoint the managing agent of the scheme during the aforesaid period.

9. DESIGN MANUAL

- 9.1 The Trustee Committee may amplify, clarify or add to the provisions of the design manual, subject to the ratification of not less than FIFTY PERCENT (50%) plus ONE (1) of the members of the Association.
- 9.2 In the event of the provisions of the design manual being amended or added to and such amendment or addition materially affecting any further development of any of the erven, the Trustee Committee shall by written notice inform all members of the amendment or addition to the design manual.
- 9.3 All buildings and other structures erected on any erf shall comply with the provisions of the design manual.

10. DEALING WITH THE COMMON AREA

Neither the whole nor any portion of the common area shall be:

- 10.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 10.2 mortgaged; or
- 10.3 subjected to any rights, (whether registered in a deeds registry or not), of use, occupation or servitude, (save those enjoyed by the members in terms hereof and the servitudes the Council required in terms of the conditions of subdivision), without the specific prior written consent of the Council and the sanction of a special resolution of the Association (and no member shall be entitled to unreasonably vote against any such special resolution which may be proposed); or
- 10.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a special resolution of the Association;
- 10.5 The Association shall take title to the common areas, simultaneously with the first separate registration of one of the other erven or as soon as possible thereafter, depending on the directions of the Local Authority in granting its approval to the development of the Township in phases.
- 10.6 The Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and proper control of the common area, all services therein and any structure or thing erected on or contained therein, including all recreational facilities, servitude roads and parking thereon.

11. FURTHER CONDITIONS AS IMPOSED BY THE COUNCIL

- 11.1 In the event that the Association decides that individual water metering is required, the following conditions apply:
 - 11.1.1 The Homeowners' Association must accept that reinstatement after system repairs of roads, walkways, verges, open spaces and the like will be undertaken only to normal standards as may be applicable as non-private townships. Any fancy brickwork, paving blocks, planting, etc. will have to be properly reinstated by the Homeowners' Association at their cost, to original specifications;
 - 11.1.2 Full servitude right of way must be granted by the Homeowners' Association to the Local Authority staff or appointed agents along all roads, paths, pipeline routes, etc, for inspection, maintenance and repair purposes;
 - 11.1.3 The Homeowners' Association would be required to indemnify the Local Authority, or duly appointed agents against responsibility or payment for repairs of any damages to roads, walls, fences, verges and the like which may be occasioned by the Local Authority, vehicles or staff within the development; and
 - 11.1.4 All non-residential areas within the development must be metered and the Homeowners' Association billed for the consumption.
- 11.2 As regards the supply of electrical services:
 - 11.2.1 The Homeowners' Association shall ensure that separate, completely independent connections are taken to each erf, and any alterations to services necessary as a consequence of the sub-division or requested by the Homeowners' Association or the owner of an individual erf, shall be carried out at the cost of the applicant, such costs to include the costs determined by the council for the extension of the electrical infrastructure to the sub-divided erven; and

11.2.2 An electrical servitude shall be registered in favour of the council, in accordance with the Conditions of Servitude for underground cables, of which conditions the Association acknowledges that it is aware.

11.3 As regards the refuse holding area:

11.3.1 The refuse bags must be placed in the holding area on collection days only;

11.3.2 Refuse bags may only be placed in the holding area from 05h30 in the morning on collection days. Non-compliance with this point and/or with point 11.3.1 above may result in a R500-00 being imposed by the Homeowners' Association on the infringing member;

11.3.3 No bins or bags must be stored on a permanent basis in the area;

11.3.4 No washing of bins must be done in the holding area;

11.3.5 Measures must be put in place to ensure that the area is cleaned on a regular basis;

11.3.6 No unbagged domestic refuse, garden waste and any other waste must be stored or placed in the holding area, only refuse contained in bags as approved by the Local Authority Health Department; and

11.3.7 The Local Authority Health Department reserves the right to request any additional requirements that may be deemed necessary if hygiene problems should arise in the refuse holding area in the future.

12. MEETINGS OF THE ASSOCIATION

The Association shall hold its first meeting within SIX (6) months of the effective date, such meeting to be called and chaired by the Representative of Lezmin 2224 CC as reflected above. The initial task at such meeting shall be the election of Trustees to serve on the Trustee Committee, to determine the quorum required at the meetings of the Trustee Committee and at the meetings of the Association; to determine the procedure at such meetings; and generally to make such rules and regulations as the Association shall consider best for the holding of future meetings of the Association and the Trustee Committee. Future meetings of the Association shall be held annually within TWELVE (12) months of the preceding meeting for the election of new Trustees and for the handling of all the business which the Trustee Committee and/or the members consider fit for discussion at such meetings. Special meetings may be convened by the Trustee Committee either at its request or at the prior written request of a member, on SEVEN (7) days' notice being given to all members of the Association by the Trustee Committee.

13. VOTING RIGHTS

Each owner of an erf shall have one voting right, save where an erf is jointly owned by more than one owner in which event one voting right only shall be allocated to such erf. The Developer or his representative as defined in Clause 6.3.3 shall, (apart from the voting rights assigned to each erf which it may own), have an additional 95 voting rights, which voting rights shall terminate SIX (6) months after the Developer has sold and transferred the last of the erven in the estate.

14. TRUSTEE COMMITTEE

The Trustee Committee shall comprise of not less than three members of the Association who shall among themselves elect a Chairman. Until such time as all the erven have been sold, a representative of Lezmin 2224 CC, referred to in sub-clause 6.3.3. shall be a member of the Trustee Committee. The duties of the Trustee Committee shall be those described in the preceding clauses of this Constitution.

15. AMENDMENTS TO CONSTITUTION

This constitution, or any part thereof, shall not be repealed or amended, and no new rules shall be made, save by a special resolution adopted at an annual general meeting or a general meeting of the members and subject further to the prior written consent of the Council being obtained for the amendment of those clauses which specifically relate to obligations in favour of the Council. In particular, this Constitution may not pass any resolution which has the effect of dissolving the Association without the specific consent of the Local Authority

16. EFFECTIVE DATE

This constitution shall come into force when the first erf in the development is registered in the Deeds Office.