

# **CONSTITUTION**

## **YZERFONTEIN- HEIGHTS OWNER'S ASSOCIATION**

A statutory body established  
in terms of Section 29 (1) as read with  
Section 42 of the Land Use Planning  
Ordinance 15 of 1985

## **PREFACE**

The **Yzerfontein-Heights Owners Association** ('the Association') is established as a condition of rezoning and sub-division of the Yzerfontein residential development on a Portion of the Remainder of Portion 4 of the Farm Yzerfontein 560.

The jurisdiction area of the Association is the whole of the development area, except the Open Space 3, Authority and Public Roads, as contemplated in Annexure D.

The main purpose of the Association will be:

through the elected Trustee Committee set and enforce standards for communal life within the development area, in such a way that all members may derive the maximum collective benefit therefrom;

to promote and enforce acceptable aesthetic, environmental and architectural styles and design criteria for the development in order to conserve the harmonious character thereof;

to control and maintain the common services and land, and in particular the private open spaces, the private road and its reserve area;

to control, manage and maintain all improvements upon the common area including all boundary walls and fences;

to undertake certain garden services on behalf of the members, if authorised thereto by members of the association;

to acquire the necessary finances from members to attain its set objectives by the implementation of monthly levies, and special levies when necessary;

to employ a worker or workers to attend to the removal of refuse and to attend to other tasks as may be identified by the Trustee Committee in the exercise of its authority; and

to take such steps as may be necessary to accomplish these objectives.

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### INCORPORATION

1. The Association is established according to the provisions of section 29 of LUPO, once the Local Authority agree in writing at the end hereof to these terms and conditions, in complying with the conditions imposed by it when approving the Development in terms of LUPO.

### INTERPRETATION

2. In these presents:
- 2.1 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:-

**"Architectural Design Guidelines"** means the architectural design manual attached hereto marked Annexures A1 tot A7

**"Association"** means the Yzerfontein-Heights Owners Association

**"Accountant"** shall be appointed by the Developer during the development period and after the development period by the Trustee Committee

**"business day"** means weekdays other than Saturdays, Sundays and public holidays

**"chairperson"** means the chairperson of the Trustee Committee

**"common areas"** means the private open spaces and -streets in the development area

**"day"** means a calendar day

**"DEADP"** means the Department of Environmental Affairs and Development Planning

**"Developer"** means Yzerfontein-Heights Ontwikkelings Trust, Registration Number: IT270/2011, or its successor in title as owner of the development and successors in office

**"development"** or **"development area"** or **"Yzerfontein-Heights development"** or **"land"** or **"site"** means the development on a portion of the Remainder of Portion 4 of the Farm Yzerfontein 560, in the Swartland Municipality, Division Malmesbury, Province of the Western Cape as contemplated on the diagram attached hereto marked Annexure D

**"Development Period"** means the period until the Developer notifies the Association that the Development Period is at an end or until the registration of transfer of the last saleable erf within the final phase of the development, whichever shall first occur

**"Developer Trustee"** means a Trustee who is nominated or appointed by the Developer

**"Erven"** means the residential erven emerging from the development and **"erf"** means any one of them

**"Environmental Management Plan"** or **"EMP"** means the environmental management plan attached hereto marked Annexure E

**"in writing"** means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form

**"jurisdiction area"** means the development area, excluding the Open Space 3 -, Authority area and Public Roads.

**"Local Authority"** means Swartland Municipality and its successors in title

"**LUPO**" means the Western Cape Land Use Planning Ordinance, Ordinance 15 of 1985

"**Member**" means a member of the Association

"**month**" means a calendar month

"**owner**" means registered owner of a residential property in the development

"**property**" means residential property in the development area

"**Revising Architect**" shall be appointed by the Developer during the development period and after the development period by the trustee committee and duly registered in terms of the Architectural Profession Act, Act 44 of 2000

"**ROD**" means the Record of Decision issued by the DEADP dated 8 June 2011 and by the Local Authority

"**Trustee**" means any one of the Trustee Committee

"**Trustee Committee**" means the board of trustees of the Association

"**year**" means a calendar year

- 2.2 Any reference to the singular includes the plural and *vice versa*.
- 2.3 Any reference to natural persons includes legal persons and *vice versa*.
- 2.4 Any reference to a gender includes the other gender.
- 2.5 Any reference to an enactment is to that enactment as at the date of signature hereof.
- 2.6 If any definition contains a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this constitution.
- 2.7 Save as otherwise expressly provided for in this constitution, when any number of days is prescribed, same shall be reckoned inclusively of the first and exclusively of the last day.
- 2.8 No provision of this constitution or any related document shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured or drafted such provision.
- 2.9 The clause headings in this constitution have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.10 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.11 In the event of any clause in this constitution being unenforceable for any reason whatsoever, such clause shall be deemed to the separate and severable.

## MEMBERSHIP

### **3. MEMBERSHIP OF THE ASSOCIATION**

- 3.1 Membership of the Association shall be limited to the Developer in his capacity as such, limited for the duration of the Development Period and every owner of residential property in the jurisdiction area of the Association.
- 3.2 The Developer will therefore be a member of the Association, either in his capacity as Developer and/or in his capacity as owner of property in the jurisdiction area of the Association.
- 3.3 Every owner shall *ipso facto* be and become a member of the Association upon registration of transfer of property into his name, which condition must be registered against the title deed of every property and every owner shall remain a member of the Association and be bound by this constitution until he ceases to be an owner when his membership shall *ipso facto* cease.
- 3.4 Where a property is owned by more than one natural person or legal person or trust, all the registered owners or shareholders, members or beneficiaries shall together be deemed to be one member of the Association and shall have the rights and obligations of a single member of the Association and the provisions of clause 18.1 shall apply as to voting by such persons, legal persons or trusts.
- 3.5 Upon the termination of the Development Period the Developer shall cease to be a member in his capacity as such, but shall remain a member of the Association in his capacity as owner, for as long he is the owner of property in the jurisdiction area of the Association.
- 3.6 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 or levies or other sums due from him to the Association at the time of his so ceasing to be a member.

### **4. ALIENATION, SUB-DIVISION, ETC**

- 4.1 A member of the Association shall not make any application for the rezoning, consolidation or sub-division of a property without the prior written consent of the Trustee Committee, which consent shall not be unreasonably withheld. The Local Authority will not be in a position to consider any such application without a recommendation by the Trustee Committee.
- 4.2 The transfer of a property or any interest therein or any sub-division or consolidation thereof shall not take place without having first obtained the written consent of the Trustee Committee. Such consent shall not be unreasonably withheld after compliance by the owner with the following requirements:
- 4.2.1 having submitted the agreement of alienation to the Trustee Committee for inspection;
- 4.2.2 having satisfied the Trustee Committee that:
- 4.2.2.1 all outstanding obligations towards the Association in terms of this constitution have been met;
- 4.4.2.2 the identity and contact details of the transferee have been provided to the Trustee Committee; and
- 4.4.2.3 there is no unsettled disputes between the applicant the Association; and
- 4.2.3 having submitted to the Trustee Committee a written acknowledgement by the proposed transferee that he has read the constitution and rules of the Association, that he understands it and that he is bound thereby.

- 4.3 The provisions of this clause 4 shall *mutatis mutandis* apply to any alienation of an undivided share in a property.
- 4.4 This constitution shall also bind all persons occupying a property and no member of the Association shall let or otherwise part with the occupation or possession of his property whether temporarily or otherwise unless the proposed occupier has agreed in writing to be bound by this constitution in all respects. A member shall however always remain bound by this constitution and be required to ensure due and proper compliance therewith by an occupier.
- 4.5 Restrictions will be registered against the title deed of each property in order to give effect to the terms of this clause. A member of the Association shall be bound by this constitution, whether or not such restrictions are registered against the property.

### **OBJECTIVES**

5. The main objectives of the Association are as follows:

#### **5.1 Waste Management and Water**

- 5.1.1 The Association has to develop and implement an integrated waste management approach, based on waste minimisation and must incorporate reduction, recycling and re-use where appropriate. Any waste that cannot be recycled or re-used shall be collected by the Local Authority or by a private contractor; and
- 5.1.2 the relevant requirements of the National Water Act, Act 36 of 1998, the Water Services Act, Act 108 of 1997 and the Department of Water Affairs must be complied with at all times

as more fully addressed in the ROD issued by DEADP.

#### **5.2 EMP**

The Association shall, where necessary, adhere to the EMP.

#### **5.3 Common Areas**

- 5.3.1 The Association shall take title of the common areas and the Developer will transfer it to the Association free of any charge.
- 5.3.2 Neither the whole nor any portion of the common areas may be:
- 5.3.2.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 5.3.2.2 mortgaged; or
- 5.3.2.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude other than servitudes in favour of the Local Authority for services

without the sanction of a special resolution of the Association and the prior written consent of the Local Authority and the Developer during the Development Period.

#### **5.4 Architectural Design Guidelines**

- 5.4.1 A member, who is an owner of an erf shall be obliged within 48 (forty eight) months after the date of registration of transfer of that erf from the Developer to him, to commence with the erection of a dwelling house and to complete such dwelling house within 12 (twelve) months thereafter, with a value of not less than R400 000.00 (four hundred thousand rand). The value of the said residential dwelling shall be determined by the Local Authority in accordance with the Municipal Property Rates Act, Act 6 of 2004. Should the said residential dwelling not be erected as aforesaid, the owner of the relevant erf shall be liable to pay liquidated damages to the Local Authority equivalent to the annual rates and taxes leviable on R400 000.00 (four hundred thousand rand) at the relevant tariff, over and above the rates and taxes which will be

levied on the valuation of the property. The said liquidated damages shall be payable until a residential dwelling has been erected and completed with a value of not less than R400 000.00 (four hundred thousand rand).

- 5.4.2 Notwithstanding the provisions of clause 5.4.1 hereof, the Developer shall not be obliged at any stage to develop or construct a dwelling on any erf registered in its name and it shall not be liable for any sanctions or penalties as a result thereof.
- 5.4.3 All building work within the area of jurisdiction of the Association is subject to and must be done in accordance with the Architectural Design Guidelines of the Association and in accordance with the EMP.
- 5.4.4 All members, excluding the Developer, shall be obliged to submit all building plans in respect of a property to the Revising Architect and the latter must consider whether such building plans comply with the Architectural Design Guidelines of the Association. If such building plans comply with the provisions of the Architectural Design Guidelines and are acceptable to the Revising Architect, he shall make a written recommendation to the Local Authority, after which the member may submit the building plans together with the recommendation of the Revising Architect to the Local Authority for its consideration and approval. The Local Authority will not be in a position to consider any building plans without a recommendation by the Revising Architect. The approval by the Revising Architect shall only be valid for a period of 12 (twelve) months, reckoned from the first day of the month following the approval.
- 5.4.5 During the Development Period, the Developer will be exempted from the prior approval by the Revising Architect and may submit its building plans directly to the Local Authority.
- 5.4.6 During the Development Period, the Developer shall have the sole exclusive right to appoint the Revising Architect. After the Development Period the Trustee Committee shall have the right to appoint the Revising Architect.
- 5.4.7 The Architectural Design Guidelines of the Association may not be modified or amended without the sanction of a special resolution of the Association and the prior written consent of the Local Authority and the Developer during the Development Period.
- 5.4.8 A member of the Association shall be obliged to accept the authority of the Revising Architect:
- 5.4.8.1 to be appointed by the Developer, during the Development Period; and
- 5.4.8.2 to be appointed by the Trustee Committee after the Development Period
- as final regarding any problem whatsoever with a building being erected on a property and shall execute immediately any order by the said architect to solve such problem.
- 5.4.9 Members of the Association shall be obliged to repair to the satisfaction of the Trustee Committee any damage that he or his agents or contractors may cause to the common areas in the course of construction.
- 5.4.10 A member of the Association shall have the right to select a building contractor of his own choice to erect any improvements on a property, provided that the contractor qualifies in terms of the Architectural Design & Guidelines (if applicable) and further provided that the contractor undertakes in writing that he will be subject to all the provisions of the Architectural Design & Guidelines and the EMP and the relevant member shall ensure that the building contractor so complies with the Architectural Design Guidelines and the EMP.
- 5.4.11 No signage shall be erected on the property or on the development, apart from those provided for in the Architectural Design Guidelines.

**5.5 ROD by DEADP (clause G15)**

Members shall not be allowed to keep cats and the members as registered owners of the three erven adjacent to the ecological corridors (erven numbered 73, 76 and 91 on Annexure D) shall not be permitted to keep dogs unless their properties are completely fenced off from the ecological corridors.

## **LEVIES, COSTS AND SERVICES**

### **6. LEVIES**

- 6.1 The Trustee Committee may from time to time impose levies upon every member, excluding the Developer during the Development Period, for the purpose of meeting all the expenses in relation to the provision of services and the general maintenance, rehabilitation, security and upkeep of the common areas, the amenities and for the payment of all expenses necessarily or reasonably incurred in connection with the management and operations of the Association and its affairs.
- 6.2 The Trustee Committee may from time to time also impose special levies upon a member in respect of all such expenses as are mentioned in clause 6.1 and the amount of such levies and the manner of payment thereof by members shall be determined by the Trustee Committee. The provisions of clauses 6.3, 6.4 and 6.5 shall *mutatis mutandis* apply to special levies.
- 6.3 Any amount due by a member by way of levies shall be a debt due to the Association.
- 6.4 In calculating the levies payable by each member, the Trustee Committee shall, so far as reasonably practical, apportion the costs equally, provided, however, that the Trustee Committee may in any case where it considers it equitable to do so, assign to any member a greater or lesser share of the costs as the Trustee Committee may consider reasonable in the circumstances.
- 6.5 The Trustee Committee's decision in calculating the levies shall be final and binding on every member.

### **7. MUNICIPAL SERVICES**

- 7.1 Every member shall provide and maintain a refuse bin and conservancy tank, as directed by the Trustee Committee and/or required by the Local Authority.
- 7.2 The Trustee Committee and/or the Local Authority may classify refuse and prescribe in which way refuse must be separated before removal.
- 7.3 Every member shall, if at any time requested by the Association or the Local Authority to do so, measure his water consumption by means of a pre-paid or conventional water meter, pre-approved by the Local Authority.
- 7.4 Each erf shall be provided with a 60A single phase 230 V 50 Hz electricity supply on the side boundary thereof. Should a member require a larger single phase supply or a three phase supply, then all costs to upgrade the supply shall be for such member's account and his electrician shall liaise with the electricity supply authority regarding the accommodation requirements for the conventional and pre-payment electricity meters and load control relays.

### **8. FINANCIAL YEAR END**

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

### **9. AMENITIES**

Amenities that are designated exclusively for the benefit of the members shall be owned and maintained by the Association.

## 10. COSTS

A member shall be liable for and pay all costs, including legal costs as between attorney and own client, collection commission, expenses and all other charges incurred by the Association in recovering any arrear levies or other amounts due and owing by such member to the Association including interest thereon at a rate to be determined by the Trustee Committee from time to time. This includes costs relating to enforcing compliance with any rules issued by the Trustee Committee from time to time.

## MEMBERS MEETINGS

### 11. MEETINGS OF MEMBERS

- 11.1 The Association shall hold a general meeting as its annual general meeting, in addition to any other general meetings during that year, as soon as possible after the end of each financial year, it being the intention that each annual general meeting shall take place not later than 6 (six) months after each financial year. Notwithstanding the foregoing, the first annual general meeting of the Association is only required to take place by no later than the end of the financial year following which the Association comes into existence. The Association shall specify the meeting as such in the notices, in terms of Clause 12.1 below calling it.
- 11.2 Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 11.3 All general meetings other than annual general meetings shall be called special general meetings.
- 11.4 The Trustee Committee, may, whenever they think fit, convene a special general meeting.

### 12. NOTICE OF MEETINGS

- 12.1 An annual general meeting and a meeting called for the passing of a special resolution, shall be called by 21 (twenty one) days' notice in writing at the least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by 14 (fourteen) days' notice in writing at the least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:
- 12.1.1 in the case of a meeting called as the annual general meeting, by all the members attending and entitled to vote thereat; and
- 12.1.2 in the case of a special general meeting, by a majority in number of the members having a right to attend and vote at the meeting and by the Developer for the duration of the Development Period.
- 12.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

### 13. VENUE OF MEETINGS

General meetings of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time.

**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 such of the members entitled to vote, as together for the time being, represent at least 10% (ten percent) of the total votes of all members of the Association entitled to vote, for the time being save that not less than three (3) members must be personally present, and provided further that, for the duration of the Development Period, the Developer is present in person 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, 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 chairperson of the meeting shall appoint, 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, provided that, for the duration of the Development Period, the Developer is present in person or by proxy.

**15. AGENDA AT MEETINGS**

In addition to any other matters required by these presents to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 15.1 the annual address by the chairperson;
- 15.2 the election of the Trustee Committee;
- 15.3 levies and contributions to the Association; and
- 15.4 the consideration and fixing of the remuneration of the auditors for the financial year of the Association preceding the annual general meeting.

**16. PROCEDURE AT GENERAL MEETINGS**

- 16.1 The chairperson shall preside as such at all general meetings, provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the vice-chairperson, shall act as chairperson at such meeting, provided further that should the vice-chairperson also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall vote to appoint a chairperson for the meeting, who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting, provided that, for the duration of the Development Period, the chairperson shall be a trustee who is appointed by the Developer.
- 16.2 The chairperson may, with the consent of any general meeting at which a quorum is present (and 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.
- 16.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

## 17. PROXIES

A member may be represented at a general meeting by a proxy, who need to be a member of the Association, in which event he will have 2 (two) votes. The proxy shall be entitled to vote at a general meeting on behalf of that member. The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a member is more than 1 (one) person, any 1 (one) of those persons may sign the instrument appointing a proxy on such member's behalf, where a member is a company, the same may be signed by the chairperson of the board of directors of the company or by its secretary, and where an association of person, by the secretary thereof.

## 18. VOTING

- 18.1 Subject to the provisions of clause 18.2 below, at every general meeting, every member in person or by proxy and entitled to vote shall have the number of votes for each property registered in his name, as set out below, provided that if a property is registered in more than one person's name, then they shall jointly have one vote.
- 18.2 Save as expressly provided for in these presents, no person other than a member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 18.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands.
- 18.4 Voting on the election of a chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, subject however to the Developer's rights in clauses 14.1 and 18.6.
- 18.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 18.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon as provided for in clause 18.1 above, provided however, that for the duration of the Development Period, no vote shall be carried unless the Developer or its proxy votes in favour of the resolution. An abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the chairperson of the general meeting shall be entitled to a casting vote in addition to its deliberative vote.
- 18.7 Unless any member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairperson of the meeting as to the result of any voting at the meeting.
- 18.8 A written resolution signed by all the members shall have the same legal force as a valid resolution adopted at a properly constituted general meeting. Such resolution may be contained in more than one document signed by all the members.

## TRUSTEE COMMITTEE

### 19. TRUSTEE COMMITTEE

- 19.1 There shall be a Committee of the Trustees which shall consist of not less than 3 (three) and not more than 5 (five) members.
- 19.2 A Trustee need not be a member.

### 20 APPOINTMENT, REMOVAL AND ROTATION OF TRUSTEES

- 20.1 The Developer shall appoint the first Trustees of the Association and any other Trustees appointed from time to time during the Development Period, which appointments are not limited to members and the stipulation of clauses 20.2.7 and 20.2.8 shall also not apply to the said appointments. Save as set forth in clause 20.2 below, each Trustee shall continue to hold office until the annual general meeting next following his appointment or election, at which meeting each trustee shall be deemed to have resigned from office as such, and shall be eligible for re-election to the Trustee Committee at such meeting, subject however to the Developer's rights as set out in the previous sentence of this clause 20.1.
- 20.2 A Trustee shall be deemed to have vacated his office as such upon:-
- 20.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 20.2.2 his making any arrangement or compromise with his creditors;
- 20.2.3 his conviction for any offence involving dishonesty;
- 20.2.4 his becoming of unsound mind or being found lunatic;
- 20.2.5 his resignation from such office in writing delivered to the secretary;
- 20.2.6 his death;
- 20.2.7 his being removed from office by a special resolution of the members; and
- 20.2.8 his alienating his registered property in the event that he was a registered owner, provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the minute book of the Trustee Committee.
- 20.3 Upon any vacancy occurring on the Trustee Committee prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee, subject however to the rights of the Developer as set out in the second sentence of clause 20.1 above which shall apply to this clause 20.3.

### 21. OFFICE OF TRUSTEES

- 21.1 Subject to clause 21.2, the Trustees shall appoint from amongst themselves, a chairperson, vice-chairperson and a treasurer, who shall also act as the secretary.
- 21.2 The chairperson, vice-chairperson and treasurer, shall, for the duration of the Development Period, be appointed by the Developer. The chairperson, vice-chairperson and treasurer shall hold their respective offices until the first annual general meeting following the date of their appointment, provided that any such office shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.

- 21.3 Subject to the rights of the Developer as set out in clause 21.2 above, within 7 (seven) days of the holding of such annual general meeting, the Trustee Committee shall meet and shall elect from its own number the chairperson and vice-chairperson, who shall hold their respective offices until the end of the annual general meeting following their said appointment, provided that the office of the chairperson or vice-chairperson shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement in such office, subject however to the rights of the Developer as set out in clause 21.2 above.
- 21.4 Save as otherwise provided in these presents, the chairperson shall preside at all meetings of the Trustee Committee, and all general meetings, and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the Trustee Committee or of members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 21.5 The vice-chairperson shall assume the powers and duties of the chairperson in the absence of the chairperson, or his inability or refusal to act as chairperson, and shall perform such other duties as may from time to time be assigned to him by the chairperson or the Trustee Committee.
- 21.6 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Trustees and/or chairperson, vice-chairperson and treasurer as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

## **22. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE**

- 22.1 Subject to the express provisions of this constitution, including but not limited to clause 25, the Trustee Committee (in strict consultation with the Developer during the Development Period and the managing agent (if one is appointed)) shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs (subject always to the Developer's approval) and, save as may be expressly provided in these presents, may exercise all such powers of the Association, and as are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulation as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 22.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 22.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any member or members chosen by it, provided that, for the duration of the Development Period, all Trustees shall be appointed by the Developer. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 22.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any member or Trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 22.5 The Trustee Committee may make regulations and by-laws, not inconsistent with this constitution, any condition of approval in terms of both the ROD's in respect of the land, or any regulations or by-laws prescribed in the Association in general meeting:
- 22.5.1 as to disputes generally;
- 22.5.2 for the furtherance and promotion of any of the objects of the Association;
- 22.5.3 for the better management of the affairs of the Association;

- 22.5.4 for the advancement of the interests of members;
- 22.5.5 for the conduct of Trustee Committee meetings and general meetings;
- 22.5.6 to assist it in administering and governing the Association's activities generally; and shall be entitled to cancel, vary or modify any of the same from time to time.
- 22.6 The Trustee Committee may determine a tariff to cover the fees of the Revising Architects to consider building plans, which fees shall not be regarded as levies and be payable by the relevant applicant.

### **23. PROCEEDINGS OF THE TRUSTEE COMMITTEE**

- 23.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 23.2 Meetings of the Trustee Committee shall be held at least twice a year, provided that if all the Trustees shall in writing have waived the said requirement in respect of a particular meeting, then no such meeting need to be held.
- 23.3 The *quorum* necessary for the holding of any meeting of the Trustee Committee shall be two (2) Trustees.
- 23.4 The chairperson shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the chairperson not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the vice-chairperson shall act as chairperson at such meeting, provided further that should the vice-chairperson also not be present within 15 (fifteen) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a chairperson for the meeting provided that, for the duration of the Development Period, such chairperson shall be appointed from the Trustees appointed by the Developer, and that chairperson so appointed shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.
- 23.5 A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the chairperson of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid, be placed in a Trustee Committee minute book to be kept in accordance *mutatis mutandis*, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee minute book shall be open for inspection at all reasonable times by a Trustee, the auditors, the Association members and Local Authority.
- 23.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 23.7 Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide.
- 23.8 A resolution by the Trustee Committee shall be carried on a simple majority. An abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the chairperson shall be entitled to a casting vote in addition to its deliberative vote.
- 23.9 A written resolution signed by all the Trustees shall have the same legal force as a valid resolution adopted at a properly constituted Trustee Committee meeting. Such resolution may be contained in more than one document signed by all the Trustees.

## **24. CONTRACTS AND REGULATIONS**

- 24.1 The Trustee Committee may from time to time:-
- 24.1.1 make regulations governing, inter alia:-
- 24.1.1.1 the members' rights of use, occupation and enjoyment of the common areas;
- 24.1.1.2 the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on properties, subject always to the Architectural Design Guidelines, the EMP and the requirements of both the ROD's;
- 24.1.1.3 the conduct of members generally;
- 24.1.2 enter into agreement(s) with the local authorities governing the matters set out in sub-clause 24.1 and any other incidental matters;
- 24.1.3 enter into agreement(s) with the Local Authority for the provision of services on the development; and
- 24.1.4 impose penalties which it considers appropriate in its sole discretion against members who are in default of any of their obligations in terms of this constitution, including the terms of payment of such penalties.
- 24.2 The Developer and the Association shall ensure compliance with both the ROD's by doing the following:
- 24.2.1 the Association shall undertake responsibility for the monitoring and enforcement of the EMP during the construction of dwellings on the properties; and
- 24.2.2 the Association shall ensure that, prior to the construction of dwellings on the properties, a suitably qualified independent environmentalist is appointed as an Environment Control Officer to ensure compliance by the members and the builders with the EMP.
- 24.3 Each member undertakes to the Association that he shall comply with:
- 24.3.1 the provisions of this constitution;
- 24.3.2 any regulations made in terms of sub-clause 24.1.1; and
- 24.3.3 any agreements referred to in sub-clause 24.1.2 insofar as those agreements either directly or indirectly impose obligations on him.

### **MANAGING AGENT**

## **25. MANAGING AGENT**

- 25.1 During the Development Period, the Developer shall be entitled, but not obliged, to appoint a managing agent to manage the affairs of the Association. It shall be within the absolute discretion of the Developer to determine the terms and conditions of the appointment of such a managing agent, including the fees and/or remuneration payable.
- 25.2 Any fees and /or remuneration payable to the managing agent shall be paid by the Association and not the Developer.

- 25.3 The appointment of the managing agent may extend beyond the Development Period, provided that the Developer shall endeavour to procure, when making such appointment, that the appointment may, if so required by the Association at a general meeting, and subject to the requirements of the law, be terminated on reasonable notice after the end of the Development Period.
- 25.4 After the Development Period, the Association shall be responsible for the appointment of any successive managers, it being contemplated that the affairs of the Association shall at all times be entrusted to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.
- 25.5 Subject to this constitution and the terms of his appointment, the managing agent shall have the full power to manage and control the business and affairs of the Association, and may exercise all such powers of the Association and do all acts on behalf of the Association as may be exercised by the Association itself, so long as it meets and abides by the provisions as set out in this constitution.

### **BREACH**

#### **26. BREACH**

26.1 Should any member:–

- 26.1.1 fail to pay on due date any amount due by that member in terms of this constitution or any regulation made thereunder and remain in default for more than 7 (seven) days after being notified in writing to do so by the Trustees; or
- 26.1.2 commit any other breach of the provisions of this constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 (seven) days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time, then and in either such event,

the Trustee Committee shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Trustees or the Association or any other member may have in law, including the right to claim damages:–

- 26.1.3 to institute legal proceedings on behalf of the Association against such member for payment of such overdue amount or for performance of his obligations in terms of this constitution or any regulation made thereunder, as the case may be; or
- 26.1.4 in the case of clause 26.1.2, to remedy such breach and immediately recover the total costs incurred by the Trustee Committee or the Association in so doing from such member.
- 26.2 Should the Trustee Committee institute any legal proceedings against any member pursuant to a breach by that member of this constitution or any regulation made thereunder, then without prejudice to any other rights which the Trustee Committee or the Association or any other member may have in law, the Trustee Committee shall be entitled to recover from such member all legal costs incurred by the Trustee Committee or the Association, including attorney/client charges reckoned on the non-litigious tariff recommended by the Law Society of the Cape of Good Hope (or its successors), tracing fees and collection commission.
- 26.3 Without prejudice to all or any of the rights granted to the Trustee Committee of the Association under this constitution, should any member fail to pay any amount due by that member on due date, then such member shall pay interest thereon at 2% (two percent) above the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date of payment until the actual date of payment of such amount.

**27. OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in this constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, property managers, architects, engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide.

**28. ACCOUNTS**

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

28.2 At each annual general meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the auditors, and there shall be attached to the notice sent to members convening each annual general meeting, as set forth in clause 12 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

**29. AUDIT**

At an annual general meeting it may be considered that the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the auditors to be appointed at such.

**30. SERVICE OF NOTICES**

30.1 A notice shall be in writing and shall be given or served by the Association upon any member, either personally or by post in a prepaid registered letter, properly addressed to the member at the address supplied by him.

30.2 No member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.

30.3 Any notice given by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

30.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice, shall not invalidate the proceedings of that meeting.

**31. INDEMNITY**

31.1 All Trustees and the auditors shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a Trustee, in his capacity as chairperson, vice-chairperson and/or treasurer, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.

31.2 Every Trustee, every servant, agent and employee of the Association, and the auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Trustee, his duties as chairperson or vice-chairperson or treasurer. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

31.3 A Trustee shall not be liable for the acts, receipts, neglects or defaults of the auditors or of any of the other Trustees, whether in their capacities as Trustees or as chairperson or vice-chairperson or treasurer, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of *bona fides* or breach of duty or breach of trust.

## **32. ARBITRATION**

32.1 Any dispute, question or difference arising at any time between a member or between members and/or Trustees out of or in regard to:-

32.1.1 any matters arising out of this constitution; or

32.1.2 the rights and duties of any of the parties mentioned in this constitution; or

32.1.3 the interpretation of this constitution;

shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

32.2 Notwithstanding clause 32.1 a party declaring a dispute in respect of payment of levies, subject to clause 6, is not obliged to refer the dispute to arbitration and may institute court proceedings.

32.3 Arbitration shall be held in Cape Town informally and otherwise in terms of the provisions of the Arbitration Act 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty one) business days after it has been demanded.

32.4 Save as otherwise specifically provided herein, the arbitrator shall be, if the question in dispute is:

32.4.1 primarily an accounting matter - an independent accountant;

32.4.2 primarily a legal matter - a practising counsel or attorney of not less than ten (10) years' standing;  
or

32.4.3 any other matter - an independent and suitably qualified person appointed by the auditors

as may be agreed upon between the parties to the dispute.

32.5 If agreement cannot be reached on whether the question in dispute falls under sub-clauses 32.4.1, 32.4.2, 32.4.3, or upon a particular arbitrator in terms of sub-clause 32.4.3, within 3 (three) business days after the arbitration has been demanded, then:

- 32.5.1 the President for the time being of the Law Society of the Cape of Good Hope (or its successors) shall determine whether the question in dispute falls under sub-clauses 32.4.1, 32.4.2, 32.4.3; or
- 32.5.2 the President for the time being of the Law Society of the Cape of Good Hope (or its successors) shall nominate the arbitrator in terms of Clause 32.5 within 7 (seven) business days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) business days referred to in Clause 32.2
- 32.6 The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 32.7 The decision of the arbitrator shall be final and binding and may be made an order of the Cape of Good Hope Provincial Division of the High Court of South Africa (or its successors) upon the application of any party to the arbitration.
- 32.8 Notwithstanding anything to the contrary contained in clauses 32.1 to 32.7 inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions.

### **33. AMENDMENTS TO CONSTITUTION**

This constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new clauses shall be made, save by a special resolution adopted at an annual general meeting or general meeting of the members and the written consent of the Local Authority.

SIGNED BY SWARTLAND MUNICIPALITY AND THE DEVELOPER

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On behalf of Swartland Municipality  
Date:  
Place: Malmesbury

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On behalf of the Developer  
Date:  
Place: Malmesbury