



# CONSTITUTION

ANNEXURE B

## WESKUS VILLAS OWNERS ASSOCIATION

A property owners association established in terms of Section 39 of the Bay-Law on Municipal land use planning of the Swartland Municipality.

## 1. ESTABLISHMENT

The Weskus Villas Owners Association is constituted, as a property owners association, in terms of Sections 39 of the Bay-Law on Land Use Planning of the Swartland Municipality.

## 2. INTERPRETATION

2.1 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

"the Owners Association"	means the Weskus Villas Owners Association;
"the Office"	means the registered office, from time to time, of the Owners Association;
"month"	means calendar month;
"year"	means calendar year;
"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;
"the Erven"	means all the erven arising from the subdivision of Erf 2126 Yzerfontein as well as all future subdivisions of the remainder of Erf 2126 Yzerfontein representing further phases of the same development;
"Member"	means a member of the Owners Association qualifying as such in terms of the provisions of clause 6 hereunder;
"the Trustee Committee"	means the Board of Trustees of the Owners Association;
"a Trustee"	means one of the Trustee Committee;
"Chairman"	means the Chairman of the Trustee Committee;
"Vice-Chairman"	means the Vice-Chairman of the Trustee Committee;
"Auditors"	means the Auditors of the Owners Association;
"the Developer"	means Automated Irrigation Technology CC;
"the Development Period"	means the period commencing on the creation of the Owners Association and terminating on the date that 100% of the residential erven within the development

have been transferred from the developer to third parties or such earlier date as the developer in its sole discretion notifies the Owners Association in writing that the development period has ceased, whichever shall occur first;

"the Council"	means Swartland Municipal Council or its successor(s) in title succeeding to its present statutory responsibilities;
"Business Day"	means weekdays other than Saturdays, Sundays and Public Holidays;
"Special Resolution"	means a resolution passed at a special general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than three-fourths of total number of members present at that meeting who, at minimum, form a quorum for a general meeting;
"Weskus Villas Owners Association"	means the residential Housing Development on Erf 2126 Yzerfontein as well as future phases of the same development to be established on the remainder of Erf 2126 Yzerfontein

### **3. PURPOSE DESCRIBING THE MAIN BUSINESS**

The main business of the Owners Association is to carry on the promotion, advancement and protection of the Members as well as the management of the Housing Development on Erf 2126 Yzerfontein.

### **4. MAIN OBJECT**

The main object of the Owners Association is:

- 4.1 the control over -
  - 4.1.1 all buildings, and/or structures erected on the Erven; and
  - 4.1.2 the landscaping and maintenance of pavements and public open spaces within the development as well as the maintenance of all private infrastructure within the development including roads, stormwater, electrical networks, water distribution networks etc.
- 4.2 the promotion, advancement and protection of the communal and group interests of the members generally.

## **5. FINANCIAL YEAR END**

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

## **6. MEMBERSHIP**

6.1 Membership of the Owners Association shall be compulsory for every registered owner of an Erf.

6.2 Such membership shall commence simultaneously with the transfer of the Erf into the name of the transferee thereof.

6.3 Membership of the Owners 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 Erven 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 Owners Association.

6.4 When a Member ceases to be the registered owner of an Erf, he shall ipso facto (by the fact itself) cease to be a Member of the Owners Association.

6.5 A Member shall not be entitled to:

6.5.1 sell or transfer an Erf unless:

6.5.1.1 it is a condition of the Deed of Sale that the transferee becomes a Member of the Owners Association, and undertakes to abide by the rules of the Constitution of the Owners Association.

6.5.1.2 he obtains written approval from the Owners Association in the prescribed form which approval shall only be given.

6.5.1.2.1 if all the rules, regulations and guidelines of the Owners Association and stipulations of this Constitution have been complied with

6.5.1.2.2 if all levies have been payed

6.5.2 erect any buildings and/or structures of any nature whatsoever, nor to make any alterations, modifications or renovations to such buildings and/or structures or change the colour of the exterior paint of the buildings and/or structures ("the proposed work") on his Erf without the written approval of the Trustees, which approval must conform with the architectural guidelines

attached hereto marked Annexure "C" and which approval shall only be given -

6.5.2.1 if the proposed work does not in any way change the nature, appearance or design including the aesthetical design and appearance of the existing buildings and/or structures of the development, provided that the Member shall utilise the same materials or materials of a similar nature and quality than those used to erect the initial buildings and/or structures, when carrying out the proposed work;

6.5.2.2 after detailed plans of the proposed work has been submitted to the Trustees, or any person nominated by Trustees (who may be an Architect, registered with the South African Council of Architects or the Institute of South African Architects); and

6.5.2.3 the Trustees or the nominee are satisfied that the proposed work is in accordance with the aesthetics and architectural guidelines of the development and municipal approved site development plan for the purposes of which, the Trustees or their nominee shall be the sole arbiter and their decision shall be final and binding on the Member; and

provided that the foregoing shall not be interpreted as detracting from the obligation of the Member to submit to the Council the building plans in respect of the proposed work for final approval nor from responsibility of the Council to ensure that the member builds in accordance with his approved plans.

6.6 A member shall at all times maintain his Erf and the buildings and/or structures thereon and in particular maintain his garden and lawn up to the kerb. If the member in the discretion of the trustees fail to do so, the trustees may, on expiry of written notice to the member to perform the maintenance, employ contractors to perform the maintenance and recover the cost from the member.

6.7 The registered owner of an erf may not resign as a member of the Owners Association.

6.8 The rights and obligations of a Member shall not be transferable and every member shall:

6.8.1 to the best of his ability further the objects and interest of the Owners Association;

## **7. LEVIES**

7.1 The Trustee Committee may from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Owners Association has incurred, or to which the Trustee Committee reasonably anticipates the Owners Association will be put by way of maintenance, repair improvement and keeping in order and

condition of any security fence enclosing the development, as well as other security controls or structures as may be erected by the Owners Association and/or for maintenance of public open spaces and other facilities and/or for general maintenance or other services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Owners Association, and the Owners Association's affairs. In calculating levies the Trustee Committee shall take into account, income, if any, earned by the Owners Association.

- 7.2 The Trustee Committee shall estimate the amount which shall be required by the Owners 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 an equal levy upon the Members. 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 annual instalments due in advance on the first day of each and every succeeding year.
- 7.3 The Trustee Committee, may from time to time, make special levies upon the Members in respect of all such expenses as are mentioned in 7.1 (which are not included in any estimate made in terms of 7.2), 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.
- 7.4 Any amount due by a Member by way of a levy shall be a debt due by him to the Owners Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Owners Association, without prejudice to the Owners Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Owners 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.
- 7.5 All levies (including special levies) imposed by the Trustees shall be equally apportioned between the Members by the Trustees.
- 7.6 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 Owners Association in respect of his membership thereof.

## **8. CONTRACTS AND REGULATIONS**

- 8.1 The Trustee Committee may from time to time:
- 8.1.1 make regulations governing inter alia (among other things) :
    - 8.1.1.1 security control measures for the development
    - 8.1.1.2 the landscaping and maintenance of side walks and open space areas within the development

8.1.1.3 any operation within the development or conduct of members they deem necessary in order to enhance the good order and lifestyle of all stakeholders

8.1.2 enter into agreement(s) with the Council governing the matters set out in 8.1.1 and any other incidental matters.

8.2 Each Member undertakes to the Owners Association that he shall comply with:

8.2.1 the provisions of this Constitution;

8.2.2 any regulations made in terms of 8.1.1;

8.2.3 any agreements referred to in 8.1.2 in so far as those agreements may directly or indirectly impose obligations on him.

## **9. BREACH**

9.1 Should any Member:

9.1.1 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

9.1.2 commit any other breach of any 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 in either such event, the Trustees shall be entitled on behalf of the Owners Association, without prejudice to any other rights or remedies which the Trustees or the Owners Association or any other Member may have in law, including the right to claim damages:

9.1.2.1 to institute legal proceedings on behalf of the Owners Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulating made thereunder, as the case may be; or

9.1.2.2 in the case of clause 9.1.2, to remedy such breach and immediately recover the total cost incurred by the Trustees or the Owners Association in so doing from such Member.

9.2 Should the Trustees 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 Trustees or the Owners Association or any other Member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Owners

Association, including attorney and own client charges, tracing fees and collection commission.

- 9.3 Without prejudice to all or any of the rights the Trustees or the Owners Association granted 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 the publicity quoted prime rate of interest charged by the Owners Association's bankers from time to time calculated from the due date for payment until the actual date of payment of such amount.

## **10. CESSATION OF MEMBERSHIP**

No Member ceasing to be a Member of the Owners 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 Owners Association, but this clause shall be without prejudice to the rights of the Owners Association to claim from such member or his estate any arrears of subscriptions or other sums due from him to the Owners Association at the time of his so ceasing to be a member.

## **11. TRUSTEE COMMITTEE**

- 11.1 There shall be a Board of Trustees of Owners Association which shall consist of not less than 3 (three) and not more than 5 (five) Members.
- 11.2 Every Trustee must be a Member of the Owners Association except for the Developer or its successors in title who may appoint any representative to act as trustee on its behalf.
- 11.3 The Developer or its successors in title may appoint a minimum of 3 (three) trustees for the duration of the development period.
- 11.4 The developer trustees will continue to hold office until such time as the developer ends their appointment in writing and /or appoint new trustees in their place and/or on termination of the development period, whichever occurs first. The developer trustees will therefore not automatically step down at the next annual general meeting as stipulated in 12 below.

## **12. REMOVAL AND ROTATION OF TRUSTEE MEMBERS**

- 12.1 Save as set forth in 12.2 below and save for any developer trustee as set out in 11 above, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, but shall be eligible for re-election to the Trustee Committee at such meeting.
- 12.2 A Trustee shall be deemed to have vacated his office as such upon:
- 12.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;



- 12.2.2 his making any arrangement or compromise with his creditors;
  - 12.2.3 his conviction for any office involving dishonesty;
  - 12.2.4 his becoming of unsound mind or being found lunatic;
  - 12.2.5 his resigning from such office in writing delivered to the Secretary;
  - 12.2.6 his death;
  - 12.2.7 his being removed from by a Special Resolution of the members.
- 12.3 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.

### **13. OFFICE OF TRUSTEES**

- 13.1 The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.
- 13.2 The first Chairman, and Vice-Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date for their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be trustee for any reason.
- 13.3 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 Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall ipso facto (by the fact itself) 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 office. 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.
- 13.4 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or the members.
- 13.5 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.
- 13.6 Trustees shall be entitled to be repaid all reasonable and bona fida (in good faith) expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, 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.

#### **14. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE**

- 14.1 The Trustees Committee shall manage and control the business and affairs of the Owners Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents.
- 14.2 The Trustee Committee shall have the right to vary or cancel any of its decisions and resolutions from time to time.
- 14.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 14.4 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.

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

- 15.1 The Trustee Committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 15.2 Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirements in respect of a particular quarter, then no meeting of the Trustee Committee need to be held for that quarter.
- 15.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 3 (three) Trustees of which all must be developer trustees for the duration of the development period.
- 15.4 The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should he not be present the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present the Trustees shall vote to appoint a Chairman for the meeting.
- 15.5 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 Chairman 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 (all necessary changes having been made), 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 Owners Association Members and the Council.

**16. GENERAL MEETING OF THE OWNERS ASSOCIATION**

- 16.1 The Owners Association shall before 31st May in each calendar year, hold a general meeting as its Annual General meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices, in terms of 17 below calling it.
- 16.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 16.3 All general meetings other than Annual General Meetings shall be called special general meetings.
- 16.4 The Trustee Committee, may, whenever they think fit, convene a special general meeting.

**17. NOTICE OF MEETINGS**

- 17.1 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 the proposed agenda. A General meeting of the Owners 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:
  - 17.1.1 in the case of a meeting called as the Annual General Meeting, by all the members entitled to attend and vote thereat; and
  - 17.1.2 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, being a majority together holding not less than 75% (seventy five per centum) of the total voting rights of all Members.
- 17.2 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.

**18. VENUE OF MEETINGS**

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

**19. QUORUM**

19.1 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 60% of the total votes of all Members of the Owners Association entitled to vote, for the time being save that not less than 3 (three) members must be personally present.

19.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, 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.

**20. AGENDA AT MEETINGS**

20.1 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:

20.1.1 the consideration of the Chairman's report to the Trustee's Committee;

20.1.2 the election of the Trustee Committee;

20.1.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;

20.1.4 the consideration of the balance sheet of the Owners Association for the last financial year of the Owners Association preceding the date of such meeting;

20.1.5 the consideration of the report of the Auditors;

20.1.6 the consideration of the total levy (as referred to in 12.2) for the calendar year during which such Annual General Meeting take place; and

**21. PROCEDURE AT GENERAL MEETINGS**

21.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five 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 Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

- 21.2 The Chairman 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 and adjourned meeting.
- 21.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

## **22. PROXIES**

- 22.1 A Member may be represented at a general meeting by a proxy, who need not be a member of Owners Association. 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 one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf.

## **23. VOTING**

- 23.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name provided that if a Erf is registered in more than one person's name, then they shall jointly have one vote.
- 23.2 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 23.3 Notwithstanding the provisions of 23.3 as aforesaid, voting on the election of a Chairman 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, and entitled to vote.

## **24. OTHER PROFESSIONAL OFFICES**

Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Owners Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or other employee/s whatsoever, for any reason thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to any of the provisions of these present, provided that any expenditure incurred in respect of the above, shall not exceed 50% (fifty per centum) of the total annual levy for the year in question unless authorised by a Special Resolution.

**25. ACCOUNTS**

25.1 The accounts and books of the Owners Association shall be open for inspection by Members at all reasonable times during normal business hours.

25.2 At each Annual General Meeting the Trustees Committee shall lay before the Owners Association a proper income and expenditure account for the immediately preceding financial year of the Owners Association, or in the case of the first account, for the period since the incorporation of the Owners Association, together with a proper balance sheet made up as at the last financial year end of the Owners Association.

**26. FINANCIAL REVIEW**

Once at least in every year, the accounts of the Owners Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the accountants.

**27. SERVICE OF NOTICES**

27.1 A notice shall be in writing and shall be given or served by the Owners Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of which the Member may have notified the Owners Association or failing such notification, at the address of the Erf owned by him.

27.2 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted.

27.3 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.

**28. INDEMNITY**

28.1 All Trustee members and the Owners Accountants shall be indemnified out of the funds of the Owners Association against any liabilities bona fide incurred by them in their respective said capacities.

**29. ARBITRATION**

29.1 Any dispute, question or difference arising at any time between Member or between Members and Trustees out of or in regard to:

29.1.1 any matters arising out of this Constitution; or

29.1.2 the rights and duties of any of the parties mentioned in this Constitution; or

29.1.3 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.

29.2 Arbitration shall be held in Yzerfontein informally and otherwise upon the provision of the Arbitration Act No 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.

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

29.3.1 primarily an accounting matter - an independent accountant;

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

29.3.3 any other matter - an independent and suitably qualified person appointed by the Accountants;

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

29.4 If agreement cannot be reached on whether the question in dispute falls under 29.3.1 or 29.3.2 or 29.3.3 or upon a particular arbitrator in terms of 29.3, within 3 (three) Business Days after the arbitration has been demanded, then:

29.4.1 the President for the time being of the Law Society of the Cape of Good Hope (or if it be replaced by another body the president of such body) shall determine whether the question in dispute falls under 29.3.1, 29.3.2 or 29.3.3; and

29.4.2 the said President shall nominate the arbitrator to act in the matter 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 29.2.

29.5 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 Owners Association as he in his sole discretion may deem fit.

29.6 The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.

29.7 Notwithstanding anything to the contrary contained in 29.1 to 29.6 inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of the Owners Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

**30. EFFECTIVE DATE**

The provisions hereof shall come into force simultaneously with the first passing of transfer of the first Erf from the Developer to a Member.

**31. PHASED DEVELOPMENT**

The Developer intends to develop and market the Township in phases as the Developer deems fit and, for as long as the Developer is a Member of the Owners Association, the Developer shall enjoy unrestricted rights with regard to the marketing of the Township and, in particular, the right to erect signage within the Township, and to perform all activities normally associated with development and building operations.

The Developer shall, in its absolute discretion, be entitled to exclude land or include further land in the Development, increase or decrease the number of erven, and/or vary the layout and/or zoning and/or size and/or boundaries of erven and/or the extent and position of streets comprising the Township, subject to successful completion of the relevant statutory town planning processes, where applicable.

**32. DOMICILIUM OF MEMBER**

32.1 The domicilium citandi et executandi of each Member at which all documents and notices may be delivered, shall be the street address of the Member's Erf. If the property is undeveloped it will be the Member's postal address on record with the Swartland Municipality to which Municipal accounts are being send.

32.2 It shall be competent to give any notice to a Member by fax number or email address where the Member has advised the Trustees in writing of his or her fax number or email address.

32.3 Notice should be deemed to have been properly served on the date of posting or disposal thereof to the Member's domicilium address, or elected fax number or email address.

**33.1 CONDUCT BY MEMBERS**

33.1 Each Member shall:

33.1.1 maintain his Erf in accordance with the Building guidelines and the Regulations respectively;

33.1.2 maintain in a neat and tidy condition and in a state of good repair all improvements on his Erf. The member will not litter on the common property or any other properties within the development. Members shall ensure that they or any occupier of them shall not store any materials dangerous or flammable on the property or on the common property;

33.1.3 ensure that burglar bars and alarms are placed internally;



- 33.1.4 only use garbage bins and waste disposal containers as approved by the local authority and the trustees. These bins and containers must be kept in a hygienic and dry condition on the member's property and may not be visible from the estate roads. Once the bins have been emptied by the local authority, it must be returned to the member's property that same evening. A member must at his own cost, dispose of any material which the local authority will not remove for example broken furniture, carpeting, masonry, paint drums, etc;
- 33.1.5 in respect of Erven, establish and maintain a garden according to a standard acceptable to the Trustees, as well as maintain the road verge bordering his Erf;
- 33.1.6 only plant trees approved by the trustees;
- 33.1.7 generally ensure that gardening and landscaping of his Erf is undertaken so as to be compatible with the gardening and landscaping of adjoining Erven;
- 33.1.8 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of the Township and that planting on his Erf does not interfere with pedestrian traffic or obscure the vision of motorists;
- 33.1.9 in respect of Erven, be responsible for the maintenance of external and boundary walls inclusive of regular painting thereof;
- 33.1.10 not park any commercial type vehicle, boat, caravan, trailer, or a vehicle not in good working order, or any roadway, open Erf or common area within the Township and such vehicle, boat, caravan, or trailer shall be parked on the Member's Erf, where applicable. Also not to park any vehicle on any garden, verge or road. The trustees may remove or tow away, at the risk and expense of the owner any vehicle parked, standing or abandoned on the common property;
- 33.1.11 observe all road signs on the common property and ensure that they do not exceed the speed limit of 20 km per hour when driving their vehicles on any part of the common property;
- 33.1.12 not do or suffer to be done on any Erf or common property anything which, in the opinion of the Trustees, is noisome, unsightly, injurious, hazardous, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any Member, tenant or Occupier of any Erf in the Township. This includes but is not limited to the discharge of explosives, crackers, fireworks, or items of a similar nature as well as firearms(except for self-defence or related purposes);
- 33.1.13 ensure that all children playing on the common property are properly supervised and not cause a nuisance or disturbance to the occupants of the estate and / or damage the common property;

- 33.1.14 not, during construction/erection of improvements, permit the erection of more than 1 (one) advertising board on an Erf and such permitted board shall not have a surface area exceeding 1,50 (one comma five) square metres and shall be removed immediately upon conclusion of the building contract for the improvements;
- 33.1.15 not erect or permit the erection of any advertising boards on any Erf without the written approval of the Developer during the Development Period, and, thereafter, of the Trustees;
- 33.1.16 adequately insure the Improvements on his Erf and, if requested by the Trustees, furnish proof of such insurance to them and, in the event of total/partial destruction, he shall, within a reasonable time period, make good such damage or reconstruction in accordance with the original approved plans or, in the event of total destruction in accordance with the Building guidelines;
- 33.1.17 comply with all security procedures and directives implemented and issued from time to time by the Trustees;
- 33.1.18 apply to the trustees for their prior written consent to hold a pet on the property, which consent will be limited to two (2) pets. No animals or birds may unreasonably disturb any occupier of a property. Cats and dogs are to be sterilized and a veterinary certificate to this effect must be available for scrutiny by the trustees. An owner or occupier of an erf may not permit any poultry, wild animals, or livestock on the estate. The trustees may withdraw such approval in the event of any breach of any condition prescribed in terms of the Conduct Rules;
- 33.1.19 ensure that his dog is kept on a leash in all open areas within the development and is controlled to ensure that other animals are not interfered with and, in particular, that no nuisance whatsoever is caused by such dog and that the dog does not cause uncleared fouling of sidewalks within the development;
- 33.1.20 if the erection of structures to house animals or birds or the construction/erection of garden/tool shed(s) is permitted, such structures shall be screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to Members of their tenants or Occupiers and the Trustees shall, in their absolute discretion, be entitled to require the permanent removal from the Township of any animals or birds and such structures, which, in the opinion of the Trustees, are unsightly or constitute a disturbance or nuisance;
- 33.1.21 tolerate access to irrigation pipe lines;
- 33.1.22 not erect any structure over the sewage system;
- 33.1.23 ensure that all their tenants or other persons granted right of occupancy comply with these conduct rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy;

33.1.24 receive a notice issued by the trustees, if the conduct of an owner or an occupier of a house or his visitors or guests constitutes a nuisance in the opinion of the trustees, or if an owner, occupier or visitor contravenes, breaches, disobeys or disregards a Management or Conduct Rule, which notice may in discretion of the trustees be delivered by hand or by email. In the notice the particular conduct, which constitutes a nuisance, must be adequately described or the Rule that has allegedly been contravened must be clearly indicated, and the offender must be warned that if he or she persists in such conduct or contravention, a fine, or suspension in terms of these rules, will be imposed on the owner of the house.

33.2 DAMAGE ALTERATION OR ADDITION TO PROPERTY OR THE COMMON PROPERTY:

Each member shall:

33.2.1 prior to submission of building plans to the Local Authority or Council for alterations to existing buildings, submit the building plans to Architect & Planners appointed by the Owners Association for their approval and thereafter to the Swartland Municipality for their approval in terms of the National Building Regulations;

33.2.2 once building plans are approved and before the commencement of building operations on site comply with the following:

33.2.2.1.1 Waste container with a lid must be on site.

33.2.2.1.2 Owner to pay a refundable builder's deposit comprising of R10 000.00

33.2.2.1.3 All additional costs incurred for cleaning or the property site or removing rubble will be deducted from the refundable builder's deposit.

33.2.2.2 Once building operations commence on site or any internal renovation that does not require building plan approval, the owner shall comply with the following conditions:

33.2.2.2.1 Working Hours: Monday to Friday 07H00 to 18H00/ Saturdays 07H00 to 13H00/ Sunday, Christmas Day, New Year's Day, or any other Public Holiday no building operations are permitted.

33.2.2.2.2 The Property is to be kept clean and tidy of building materials and litter at all times.

33.2.2.2.3 Rubble must be maintained on the site and covered at all times.

33.2.2.2.4 Rubble exceeding 4m<sup>2</sup> on site must be removed on the same day.

33.2.2.2.5 Should on inspection the rubble exceed 4m<sup>2</sup> , a notice will be served immediately on site by the trustees or their managing agent to have the rubble removed within 8 hours, failing which the rubble will be

removed by the Owners Association and the cost incurred will be levied to the owner's account.

33.2.2.2.6 Should on inspection the waste on the property not be maintained within the waste container with a lid such waste will immediately be removed by the Owners Association and the cost incurred will be levied to the owner's account.

33.2.2.2.7 Should building materials or rubble be deposited on the common property, road verges, sidewalks, and /or in the estate roads, such spillage must be cleaned to the satisfaction of the trustees or managing agent within 24 hours of receiving written notice to such effect, failing which the trustees or managing agent will clean and reinstate such areas and the cost incurred will be for the owner's account.

33.2.2.2.8 Should any area of the common property, road verges, sidewalks, and/or the estate road be damaged the owner shall be liable to reinstate to its original status at his cost to the satisfaction of the trustees or the managing agent, failing which the trustees or the managing agent will appoint a private contractor to reinstate such areas necessary and all cost incurred will be for the owners.

#### **34. USAGE (RESTRICTIONS)**

No member shall apply for the rezoning of his Erf with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf for any purpose other than the permitted use applicable upon establishment of the Township without the prior written consent of the Developer or, subsequent to the Development Period, by the Trustees in terms of an ordinary resolution of the Owners Association.

#### **35. THE DEVELOPER**

The Developer shall not be obliged to pay levies in respect of any vacant/unimproved Erf in the Township registered in the Developer's name. An Erf will only be deemed improved once the Developer constructed a residential dwelling thereon and upon the issue of an occupation certificate for the dwelling.

#### **36. 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 of the Members and subject, to the written Consent of the Council being obtained to any such amendment or addition to the Constitution.