



DRAKENSTEIN

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Contact number: 021 807 6233
Reference: 15/4/1 (31884)P
Date: 20 July 2021

Hein Nauschutz
1st Floor Titanium House
19 Gardner Williams Avenue,
Paardevlei
Somerset West
7130

Email: Heinn@stbb.co.za

Dear Mr. Nauschutz,

**ESTABLISHMENT OF HOMEOWNERS' ASSOCIATION FOR WILDE PAARDE COUNTRY ESTATE
(SUBDIVISION OF ERF 26190 PAARL)**

Your land use applications with reference numbers 1755703, refers.

You are hereby informed that, approval from a local government perspective, was granted in terms of Section 60(2) of the Drakenstein By Law on Municipal Land Use Planning, 2018, for the establishment of Wilde Paarde Home Owners Association, as contained its Constitution, attached as Annexure A.

Notification of the decision will be placed on the municipal website and any person, whose rights are affected by the decisions above, may appeal in writing in terms of Section 62(3) of the Municipal Systems Act, to the Appeal Authority as stipulated in terms of Section 79(2) of the Drakenstein By-law on Municipal Land Use Planning, 2018.

Regards,

DAVID DELANEY
SENIOR MANAGER: PLANNING SERVICES

CONSTITUTION

OF

WILDE PAARDE COUNTRY ESTATE

HOME OWNERS' ASSOCIATION

An Association established in accordance with the provisions of the By-Law on Municipal Land Use Planning of the Drakenstein Municipality.

DRAKENSTEIN MUNICIPALITY

Approved in terms of Section 60 of the Drakenstein Municipal Land Use Planning By-Law, 2018

Date: 20 July 2021

Ref 15/4/1 (31884) P



SENIOR MANAGER: PLANNING SERVICES

1. ESTABLISHMENT IN TERMS OF STATUTE

The Wilde Paarde Country Estate Home Owners' Association is to be established in accordance with the conditions of approval imposed in terms of the Section 29 of the Drakenstein Municipality: By-Law on Municipal Land Use Planning, 2018 (hereinafter referred to as "the Municipal By-Laws), when approving the rezoning, subdivision and regulation departures of Erf 31857 (a Portion of Erf 26190) Paarl and Remainder of Erf 26190 Paarl.

2. INTERPRETATION

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

2.1.1 "Association" means the Wilde Paarde Country Estate Homeowners' Association;

2.1.2 "Business Day" means weekdays other than Saturdays, Sundays and public holidays;

2.1.3 "Chairman" means the chairman of the trustee committee;

2.1.4 "Common Property" means the land comprising of private roads and private open spaces situated on the Remainder of Erf 26190 Paarl, in the Drakenstein Municipality, Division Paarl, Western Cape Province;

2.1.5 "Council" means the Drakenstein Municipality or its successor/s;

2.1.6 "Developer" means Yushu Garden Property Proprietary Limited, Registration Number 2018/277474/07.

2.1.7 "Development" means the Wilde Paarde County Estate to be established on the Remainder of Erf 26190 and Erf 31857 Paarl, in the Drakenstein Municipality, Division Paarl, Western Cape Province;

2.1.8 "Controlling Architect" means Dave Venter (P.S.Arch.T - ST0822) of AD Design Studio, situated at 44 Michau Street. Strand, 7140, Mobile: 083 327 5000;

2.1.9 "Infrastructure Management Plan for Civil Services" means the maintenance of the privately owned civil services relating to private civil services and solid waste removal;

2.1.10 "Member" means a member of the Association as defined in this document;



- 2.1.11 "Person" with regard to membership of the Association, shall include a company, club, partnership, trustees of a trust, or other association of persons entitled in law to hold title of immovable property;
- 2.1.12 "Property" means an erf as indicated on the approved general plan, attached hereto as Annexure B, together with the residential dwelling and such outbuildings, if applicable, and garden, situated within the boundaries for the erf;
- 2.1.13 "Services" means inter alia, the roads and road system, verges, parking bays, water supply, sewerage pipes, electricity cables, storm water, and all other municipal services within the Common Property and a Property and includes the communication systems, street lighting, boundary wall and main entrance gate;
- 2.1.14 Words importing the singular number shall include the plural number and words importing the masculine and feminine genders shall include the neuter gender and the converse shall also apply.

3. PURPOSE DESCRIBING MAIN BUSINESS

The main business of the Association is to carry on the promotion, maintenance, advancement and protection of the Common Property in the Development as well as the collective interests of the registered owners of the Properties and retain the value of the land assets. The Association will also be responsible for the maintenance of the internal private services. The Association shall exercise the duties, functions and powers assigned to it as contemplated in this Constitution, the Community Scheme Ombud Service Act (Act 9 of 2011), and without derogating from the generality thereof, the Drakenstein Municipal Planning By-Law.

4. MAIN OBJECT

The main object of the Association is:

4.1 the control over the external of:

- 4.1.1 all buildings, and/or structures and/or services erected or to be erected on a Property;
- 4.1.2 the maintenance of all buildings and/or structures erected or to be erected on a Property; and



- 4.1.3 the maintenance of all buildings, roads, services and amenities on the Common Property; and
- 4.1.4 the compliance with the Architectural Design and Landscaping Manual;
- 4.1.5 the promotion, advancement and protection of the communal and group interests of the Members generally;
- 4.1.6 to take title of the Common Property simultaneously with the first passing of transfer of a Property within the Development.

5. STATUS OF THE ASSOCIATION

- 5.1 The Association is to be established in accordance with the conditions of approval imposed in terms of the Drakenstein By-Law on Municipal Land Use Planning.
- 5.2 The Association shall have legal personality and shall be capable of suing and being sued in its own name.
- 5.3 The Association shall be not for profit, but for the benefit of its Members.
- 5.4 The Association shall come into being upon the separate registration of the first transfer of a deducted land unit in the residential component arising from the subdivision transferred to a third party. The Developer shall accordingly assume the responsibilities of the Home Owners' Association until the establishment of the Association.

6. FINANCIAL YEAR END

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

7. MEMBERSHIP OF THE ASSOCIATION AND TITLE DEED CONDITION

- 7.1 Membership of the Association shall be compulsory for every registered owner of a Property.
- 7.2 Such membership shall commence simultaneously with the transfer of the Property into the name of the transferee.
- 7.3 Membership of the Association shall be limited to the registered owners of a Property provided that:



- 7.3.1 a person who is entitled to obtain a certificate of registered title to any such Property shall be deemed to be the registered owner thereof;
- 7.3.2 where any such owner is more than one person, all the registered owners of that Property shall be deemed jointly and severally to be one member of the Association and nominate one owner to represent them and vote at meetings of the Association.
- 7.4 When a member ceases to be the registered owner of a Property, he shall *ipso facto* cease to be a member of the Association.
- 7.5 A member shall not be entitled to:
 - 7.5.1 sell or transfer a Property unless it is a condition of sale and transfer that:
 - 7.5.1.1 the transferee becomes a member of the Association and that such condition is contained in the Title Deed;
 - 7.5.1.2 the registration of transfer of that Property into the name of that transferee shall *ipso facto* constitute the transferee as a member of the Association;
 - 7.5.1.3 he first obtains the written consent of the Association which consent shall be given provided the transferor has complied with his obligations in terms of this Constitution and the transferee of such Property agrees in writing to abide by the rules of the constitution of the Association as at the date of transfer of the Property;
 - 7.5.2 without the prior written approval of the trustees to:
 - 7.5.2.1 erect any new buildings and/or structures of any nature whatsoever on his Property;
 - 7.5.2.2 make any changes or alternations to existing buildings and/or structures on his Property, including changes to the external colour scheme.



- 7.6 The approval of the trustees as contemplated in clause 7.5.2 shall always be given, provided the proposed change complies substantially with the municipal by-laws as well as with the Architectural Design and Landscaping Manual. The foregoing shall not be interpreted as detracting from the final responsibility of the Council to approve plans in terms of the applicable legislation.
- 7.7 The registered owner of a Property may not resign as a member of the Association and shall remain a member for as long as such owner is the registered owner of any Property in the Development.
- 7.8 The rights and obligations of a Member shall not be transferable and every Member shall:
- 7.8.1 to the best of his ability further the objects and interests of the Association;
- 7.8.2 observe all by-laws and regulations made by the Association or the trustee committee;
- provided that nothing contained in this constitution shall prevent a member from ceding his rights in terms of this constitution as security to the mortgagee of that member's Property.
- 7.9 No member ceasing to be a member of the Association for any reason shall, (nor shall any such member, executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association. This clause shall not detract from the Association's right to claim from such member or his estate any or other sums due from him to the Association at the time of his so ceasing to be a Member.

8. BOARD OF TRUSTEES

- 8.1 The Association shall be managed and the functions and powers thereof shall be performed and exercised, unless otherwise provided for in this Constitution, by a Board of Trustees appointed in terms of these provisions.
- 8.2 A Trustee shall hold office until the appointment of new Trustees, or until prior termination of their appointment;
- 8.2.1 The appointment of a Trustee shall be deemed to have terminated upon-
- 8.2.1.1 his death;
- 8.2.1.2 his resignation in writing;
- 8.2.1.3 him failing to attend more than two consecutive meetings of the Trustees without providing reasons: Provided that the Trustees may by majority vote condone such absence;



- 8.2.1.4 revocation of his appointment by the Board of Trustees, and the Board shall as soon as possible appoint a replacement. Should they fail to do so within 30 (Thirty) days of the termination, a Trustee may be co-opted by the Board of Trustees itself.
- 8.2.2 Any act performed by the Trustees, shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any Trustee, be as valid as if such Trustee had been duly appointed or had duly continued in office.
- 8.2.3 The Trustees may appoint another person to act as an alternate Trustee during the absence or inability of a Trustee to act.
- 8.2.4 An alternate Trustee shall have the powers and be subject to the duties of a Trustee.
- 8.2.5 An alternate Trustee shall cease to hold office if the Trustee whom he replaces, ceases to be a Trustee, or if the alternate's appointment is revoked by the Trustees.
- 8.2.6 Unless otherwise determined by an ordinary resolution of the Members, Trustees shall not be entitled to any remuneration in respect of their services as such: Provided that the Association shall reimburse to the Trustees for all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.
- 8.2.7 Every Trustee, agent or other officer or servant of the Association shall be indemnified by the Association against all costs, losses, expenses, liabilities and claims which he may incur or become liable to by reason of any act done by him in the discharge of his duties, unless such costs, losses, expenses or claims are caused by the mala fide or grossly negligent act or omission of such person.
- 8.2.8 The Trustees shall pay such indemnity out of the Funds of the Association.
- 8.3 The Trustees may give notice convening meetings, meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give notice of a meeting to any Trustee for the time being absent from the Republic, but notice of any such meeting shall be given to his alternate, if one has been appointed, and where such an alternate is in the Republic.



- 8.3.1 Notwithstanding 8.3 above, any Trustee may at any time convene a meeting of the Trustees by giving to the other Trustees not less than seven days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting: Provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.
- 8.3.2 At the commencement of the first meeting of the Trustees after an annual general meeting, the Trustees shall elect a Chairperson from among their number, who shall also serve as Chairperson at general meetings and shall hold office as such until the end of the next annual general meeting of the Association and who shall have a casting as well as a deliberative vote at Trustee meetings.
- 8.3.3 The Chairperson may be removed at a meeting of the Trustees or the Association at a general meeting, if notice of the intended removal from the office of the Chairperson has been given.
- 8.3.4 If a Chairperson vacates office, the Trustees shall elect another Chairperson who shall hold office as such for the remainder of the period of office of the first mentioned Chairperson, and who shall have the same rights of voting.
- 8.3.5 If a Chairperson vacates the chair during the course of a meeting or is not present or is unable to preside at any meeting, the Trustees present at such meeting shall elect another Chairperson for such meeting who shall have the same rights of voting as the Chairperson.
- 8.3.6 All matters at any meeting of the Trustees shall be determined by a majority of the votes of the Trustee present and voting, provided that during the Development Period, the Trustees appointed by the Developer shall each have 4 (Four) votes.
- 8.3.7 A Trustee shall be disqualified from voting in respect of any contract or proposed contract, or any litigation or proposed litigation, with the Association or a Component, by virtue of any interest he may have therein.
- 8.4 A Trustees meeting may be conducted entirely by electronic communication as long as the electronic communication used ordinarily enables all Trustees participating in that meeting to communicate concurrently with each other without an intermediary, and be able to participate reasonably effectively in the meeting.



- 8.5 Documents or instruments signed on behalf of the Association shall be valid only if it is signed by Two (2) Trustees or One (1) Trustee and the Manager.
- 8.6 A resolution in writing signed by all the Trustees shall be as valid and effective as if it had been passed at a meeting of the Representatives duly convened and held.
- 8.6.1 The Trustees may appoint an Estate Manager, which may also fulfil the duties of a managing agent.
- 8.6.2 The Estate Manager, whether as employee of the Association or as managing agent, shall be appointed in terms of a written contract: Provided that if the Estate Manager is a managing agent, he shall be appointed for an initial period of Three (3) years and thereafter on a periodic basis, with three month's written notice of termination by either party.
- 8.6.2.1 the duties of the Estate Manager shall be determined by the Trustees, be stipulated in the contract of appointment, and shall, inter alia, include the duty to;
- 8.6.2.2 control, manage and administer the Estate Property;
- 8.6.2.3 subject to directives of the Trustees, to perform all administrative tasks on behalf of the Association, including the collection and administration of all levies and Contributions;
- 8.6.2.4 keep minutes of all meetings of the Association and the Trustees;
- 8.6.2.5 keep full records of its administration and report to the Trustees on all matters which in its opinion detrimentally affect the value or amenity of any part of the Estate; and
- 8.6.2.6 enforce the provisions of this Constitution and the Rules.



9. GENERAL MEETINGS

9.1 GENERAL

- 9.1.1 General meetings of Members shall be convened in accordance with the provisions of this Constitution.
- 9.1.2 An annual general meeting shall be held within Four (4) months of the end of each financial year.
- 9.1.3 Unless otherwise resolved at a general meeting or by the Trustees, the financial year of the Association shall commence on the first day of July of each year and end on the last day of June of the following year.
- 9.1.4 All general meetings other than the annual general meeting shall be special general meetings.
- 9.1.5 The Trustees may, whenever they think fit, convene a special general meeting, and shall be obliged to do so upon receipt of a written petition signed by at least 25% (Twenty Five Percent) of the Members.
- 9.1.6 All the members of the management of a Member may attend a General Meeting, in case of a Company, the full board of directors, in case of a Trust, the full board of trustees, in case of a Home Owners' Association, the trustees of such association. Such management shall, however, appoint one person from their ranks to speak and vote on behalf of such a Member to the exclusion of the other members of the management of such Member. Only such appointed person shall be counted as a number in the quorum. The appointment shall be in writing and shall be handed to the Chairperson before the meeting.

9.2 NOTICE OF MEETINGS

- 9.2.1 At least Fourteen (14) days' notice of every general meeting, specifying the place within the magisterial district where the Estate is situated, The date and the hour of the meeting and, in the case of special business, the general nature of such business, shall be given to all Members;



9.2.2 The notice referred to in paragraph 9.2.1 above shall be deemed to have been sufficiently given and delivered if:

9.2.2.1 it was sent by pre-paid registered post addressed to the domicilium of the party as determined according to this Constitution; or

9.2.2.2 sent by telefax or e-mail to a Member to a telefax number or e-mail address supplied by the Member.

9.2.3 Inadvertent omission to give the notice to any person entitled to such notice or the non-receipt of such notice by such person shall not invalidate any proceedings at any such meeting.

9.2.4 A general meeting of the Association may be called on shorter notice than that specified in paragraph 9.2.1, provided it is so ratified by Members at the meeting.

9.2.5 The Chairman of the Trustees shall preside as Chairman at every general meeting of the Association, unless otherwise resolved by Members of the Association at such meeting.

9.3 BUSINESS AT AN ANNUAL GENERAL MEETING

The following business shall be transacted at an annual general meeting:

9.3.1 Approval with or without amendment of –

9.3.1.1 the insurances of Estate Property; and

9.3.1.2 the Budget.

9.3.2 Appointment of an Auditor.

9.3.3 Election and announcement of Representatives who shall hold office as from the closure of the meeting.

9.3.4 Any special business of which notice has been given.

9.3.5 The giving of directives or the imposing of restrictions to the Trustees.

9.3.6 Submission for consideration of a report by the Trustees on maintenance and improvements effected by them during the past financial year.



9.4 QUORUM

- 9.4.1 No business shall be transacted at any general meeting unless a quorum of Members is present in person or by proxy at the time when the meeting proceeds to business.
- 9.4.2 A quorum at a general meeting shall be the number of Members holding at least 25% (Twenty Five Percent) of the votes in number, present in person or by proxy.
- 9.4.3 If within half-an-hour from the time determined for a general meeting a quorum is not present, the meeting shall be adjourned to the same day in the following week at the same place and time, and if at the adjourned meeting a quorum is not present within half-an-hour of the time determined for the meeting, the Members present in person or by proxy and entitled to vote shall form a quorum.

9.5 VOTING AT GENERAL MEETINGS

- 9.5.1 At any general meeting any resolution put to the vote of the meeting shall be decided on a show of hands.
- 9.5.2 A declaration by the Chairman that a resolution has been carried on a show of hands, shall be conclusive evidence of that fact without proof of the number of the votes recorded in favour of or against such resolution.
- 9.5.3 Subject to paragraph 9.5.1, a Member shall have one vote for each Unit it owns in the Estate.
- 9.5.4 When two or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by one person (who may or may not be one of them) jointly appointed by them as their proxy.
- 9.5.5 Votes at a General Meeting may be cast either personally or by proxy.
- 9.5.6 A proxy shall be appointed in writing by the appointer, or his agent duly appointed in writing, and shall be handed to the Chairman prior to the commencement of the meeting: Provided that the foregoing provisions shall not apply in the case of any proxy created and contained in any registered mortgage bond, if such mortgage bond or a copy certified by a conveyancer, is produced at the meeting.



9.5.7 A proxy need not be a Member, but shall not be the Manager or any of his employees, or an employee of the Association.

9.6 MINUTES

9.6.1 The Trustees shall –

9.6.1.1 cause minutes to be kept of their proceedings;

9.6.1.2 cause their minutes and minutes of all meetings of the Association to be kept in a minute book of the Association;

9.6.1.3 include in the minute book of the Association a record of all resolutions of the Association; and

9.6.1.4 keep all minute books in perpetuity.

9.6.2 On the written application of any Member, the Trustees shall make all minutes of their proceedings and the minutes of the Association available for inspection by such member, not later than two weeks from the date of the request.

10. LEVIES PAYABLE BY THE MEMBERS

10.1 Members are jointly liable for the expenditure incurred in connection with the Association, provided such expenditure has been pre-approved by the Members in accordance with this Constitution and any applicable rules.

10.2 The trustee committee shall from time to time impose levies upon Members for the purpose of meeting all expenses which the Association has incurred, or to which the trustee committee reasonably anticipates the Association will be put by way of maintenance, repair, improvement and keeping in order and condition of the Common Property. This specifically includes landscaping, all township services, sewage treatment, security systems to be installed on the Common Property, and/or for payment of all rates and other charges payable by the Association in respect of the Common Property, and/or for the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association. The trustee committee shall take into account income, if any, earned by the Association in determining the monthly levy payable by Members.



- 10.3 The trustee committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Member's equal as nearly as is reasonably practical to such estimated amount. The trustee committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year. The estimates for the next year shall be submitted to the Members at the annual meeting preceding the next year, for consideration.
- 10.4 The trustee committee may from time to time and with a 75% majority approval by way of a voting of Members at a special meeting of the Association, make special levies levied upon the Members in respect of all such expenses as are mentioned in this clause 10 (which are not included in any estimate made in terms of clause 10.3), and such levies may be made in the sum or by such instalments and at such time or times as the trustee committee shall think fit.
- 10.5 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor in title shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Property, to pay the levy attributable to that Property.
- 10.6 The total estimated levy as contemplated in clause 10.2 and 10.4 shall be apportioned between the Members pro rata to the area of their respective Properties, subject to the provisions of clause 10.7 below.
- 10.7 Any special levies imposed by the trustees in terms of clause 10.4 may be apportioned between the Members by the trustees in a manner which the trustees may regard as reasonable, regard being had of the direct benefits which the Member(s) may derive from the proposed expenditure for which the special levies are imposed.
- 10.8 No Member shall be entitled to any of the privileges of membership, such as voting, unless and until he or she shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 10.9 The Developer shall not be obliged to pay a levy on any undeveloped erf registered in the name of the Developer.



11. ARCHITECTURAL DESIGN AND LANDSCAPING MANUAL

- 11.1 The trustees may, subject to a 75% majority vote of Members at a general meeting, amend, amplify, clarify or add to the provisions of the Architectural and Landscape Design Framework.
- 11.2 The trustees shall, by written notice, inform all Members of any amendment or addition to the Architectural Design and Landscaping Manual.
- 11.3 All buildings and other structures erected as part of any Property shall materially comply with the provisions of the Architectural Design and Landscaping Manual. In the event of there being a dispute as to compliance, the matter shall be referred to the Controlling Architect for a final and binding decision on all parties, which shall be communicated to all parties within 7 (seven) days of any submission being made to the Controlling Architect.

12. DEALING WITH THE COMMON PROPERTY

Neither the whole nor any portion of the Common Property shall be:

- 12.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 12.2 mortgaged; or
- 12.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, (save those enjoyed by the Members in terms hereof); or
- 12.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a special resolution of the Association.

13. RESPONSIBILITY FOR THE COMMON PROPERTY

- 13.1 The Association shall take title to the Common Property simultaneously with the first separate registration of a Property.
- 13.2 The Association acknowledges that the Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and proper control of the Common Property, all services therein and any structure or thing erected on or contained therein, including the private road and parking thereon. Members of the Association shall, however, be solely liable, at their own expense, for the maintenance of the sidewalk in front of a Property, that they are owners of, notwithstanding that such sidewalk is Common Property.
- 13.3 The street lighting installation will remain the responsibility of the Association.



14. INFRASTRUCTURE MANAGEMENT PLAN

14.1 Private Civil Services

- 14.1.1 The Association will be responsible for the maintenance of the privately owned civil services for this development, consisting of the 118 single title residential units, private road.
- 14.1.2 The members of properties in the development will be responsible for the required capital for the long term management and maintenance of services.

14.2 Solid Waste Removal

- 14.2.1 The general waste area and loading bay outside the main entrance gate is to be used for the collection of refuse by the Drakenstein Municipality. The Municipality will remove refuse on the days as stipulated by the said Municipality. Each property within the development will receive a waste bin from Drakenstein Municipality and each owner will be responsible for placing the bin at the refuse collection area on waste removal days.
- 14.2.2 The Municipal cost to waste removal will form part of each individual land owner's rates and taxes payable to Drakenstein Municipality. The Association will have no financial responsibility regarding waste removal, to Drakenstein Municipality.
- 14.2.3 If the Association decide to use a private company for transporting refuse from the homes to the refuse yard, it will be for the cost of the Association.

15. AMENDMENTS TO CONSTITUTION

- 15.1 This constitution, or any part thereof, shall not be repealed or substantially and materially amended, and no significant new provisions shall be made, save by a special resolution adopted at an annual general meeting or a general meeting of the Members and subject further to the prior written consent of the Council being obtained.
- 15.2 This Constitution may be amended in accordance with the provisions hereof, provided that an amendment becomes effective only when certified and approved by Council.

16. EFFECTIVE DATE

This Constitution shall come into force when the first erf is subdivided as a deducted land unit and transferred to a third party.

17. DEVELOPMENT OF ERVEN

- 17.1 All building plans shall first be submitted to the Controlling Architect for approval prior to submission to Council. Council shall not approve building plans unless such plans bear the official stamp and signature of approval from the Controlling Architect.



- 17.2 The submission of building plans by an owner for the erection of a new structure in accordance with the building plans contained in the Architectural Design and Landscaping Manual will not attract a fee for submission and approval by the Controlling Architect. All submissions for alterations, additions and new constructions where there are deviations from the aesthetically approved building plans originally submitted, shall attract a fee as determined by the Controlling Architect from time to time, which fee shall be payable to the Controlling Architect to check and approve the submission. Subsequent corrected submissions shall attract an additional review fee as determined by the Controlling Architect from time to time, which fee shall be payable to the Controlling Architect to check and approve the submission.
- 17.3 The Controlling Architect's decision shall be final and binding on all Members and the Association. In the event of a proposed purchaser of a Property requesting changes to an existing building, approved for a specific erf, prior to becoming a member, the same submissions process will apply, and such proposed purchaser will be bound by the decision of the Controlling Architect. The proposed seller of a Property shall indemnify the Association against any claims brought against the Association from a would-be purchaser and arising from such review.

18. CONDUCT RULES

- 18.1 The Association may make such conduct rules, including rules to control access and egress and building operations, as it may deem necessary for the promotion of safe and harmonious community-living in the Development and for the control, management, administration, use and enjoyment of the Common Property of the Association.
- 18.2 The conduct rules made by the Association, and any addition thereto, or substitution, amendment or repeal thereof, may not be in conflict or irreconcilable with any provision of this Constitution. In the event of any such conflict or irreconcilability, the provision of the Constitution shall prevail.

19. PENALTIES DETERMINED BY THE TRUSTEES

- 19.1 The trustees may from time to time determine the penalties to be imposed for the breach of a provision of this Constitution or the conduct rules, including the amount of an initial and subsequent fine.



19.2 Any fine imposed on, or cost of the remedying of a breach of the provisions of this Constitution or the conduct rules claimed from, a Member may, if it is not paid within 10 (ten) days after the Member has been notified of the imposition of the fine or the claim, be added to the monthly levy payable by that Member in terms of clause 8 and claimed as if it were part of such levy.

19.3 Any fine imposed on, or cost of the remedying of a breach of the provisions of this Constitution or the conduct rules claimed from a person who is not a Member, may, if it is not paid within 7 (seven) days after the offender has been notified of the imposition of the fine or the claim, be claimed through due process of law.

20. BINDING NATURE OF CONSTITUTION AND CONDUCT RULES

20.1 The provisions of this Constitution and of the conduct rules shall be binding on all Members and also on all other persons who, for whatever purpose, enter the Development.

20.2 It shall be the duty of a Member to ensure compliance with the provisions of this Constitution and the conduct rules by her or his lessee or any other occupant of her or his Property, including the employee, worker, guest and any member of the family of the member concerned or of her or his lessee or the other occupant of her or his Property.

21. DISPUTE RESOLUTION

21.1 Should any dispute, question, or difference arise between Members or between a Member or the Association, or between Components, or between any of the said parties and the Developer, out of or in respect of-

21.1.1 the interpretation of;

21.1.2 the implementation or effect of;

21.1.3 their respective rights or obligations under;

21.1.4 a breach (save for non-payment of levies) of any provision of; this Constitution, any Act, the Rules or the Manual;

21.2 such dispute shall be referred to and decided in terms of the Community Schemes Ombud Service Act, no 9 of 2011.



22. OWNERS' ASSOCIATIONS THAT CEASE TO FUNCTION

- 22.1 If an owners' association ceases to function or carry out its obligations, any affected person, including a member of the association, may apply in terms of Section 15(2)(o) of the Municipal By-Laws, to disestablish the owners' association subject to:
- 22.1.1 the amendment of the conditions of approval to remove the obligation to establish an owners' association; and
 - 22.1.2 the amendment of title conditions pertaining to the owners' association, to remove any obligation in respect of an owners' association;
 - 22.1.3 in terms of Section 15(2)(p) of the Municipal By-Laws, for appropriate action by the Municipality to rectify a failure of the owners' association to meet any of its obligations in respect of the control over or maintenance of services contemplated in Subsection 29(3)(b) of the Municipal By-Laws; or
 - 22.1.4 to the High Court to appoint an administrator who must exercise the powers of the owners' association to the exclusion of the owners' association.
- 22.2 In considering an application contemplated in Subsection 29 (1)(a) of the Municipal By-Laws, the Municipality must have regard to:
- 22.2.1 the purpose of the owners' association;
 - 22.2.2 who will take over the control over and maintenance of services for which the owners' association is responsible; and
 - 22.2.3 the impact of the disestablishment of the owners' association on the members of the owners' association and the community concerned.
- 22.3 The Municipality or the affected person may recover from the members of the owners' association the amount of any expenditure incurred by the Municipality or that affected person, as the case may be, in respect of any action taken.
- 22.4 The amount of any expenditure so recovered is, for the purposes of Section 29(7)(a) of the Municipal By-Laws, considered to be expenditure incurred in connection with the owners' association.



22.5 Further regard must be given to the strict provisions set out by the Deeds Registry, Cape Town, in particular to Registrars Conference Resolution no. 2 of 2007, that it is a requirement that a written consent must at all times be lodged with the transfer of a property, failing which, Registrars Conference Resolution no. 33 of 2013 requires that a Court Order be obtained to transfer the particular property without the necessity of filing a written consent.

