

DRAKENSTEIN MUNICIPALITY

Approved in terms of Section 60(1) of the Drakenstein By-law on Municipal Land Use Planning, 2018. The approval may be subject to certain conditions as set out in the letter of approval.

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MANAGER: LAND DEVELOPMENT MANAGEMENT

BERGVLIET MANOR

HOME OWNERS' ASSOCIATION CONSTITUTION



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PART 1: DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In the Constitution and unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them:

- 1.1 **'Alienate'** shall mean to transfer or divest of ownership of an Erf, or part thereof, or share therein, by way of a sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency, liquidation, prescription, expropriation or otherwise and **'Alienation'** shall have a corresponding meaning and the alienation by a shareholder of his shares, or portion thereof, in a company owning an Erf, or by a Member of his member's interest, or portion thereof, in a close corporation owning an Erf; or by a beneficiary of his interest, or portion thereof, in a trust owning an Erf, shall be deemed to be the Alienation of the Erf.
- 1.2 **'Annexures'** shall mean the annexures to the Constitution, as may be prepared and amended from time to time, including:
 - 1.2.1 The General Plan to be contained in Annexure A hereto;
 - 1.2.2 The Design Guidelines to be contained in Annexure B hereto; and
 - 1.2.3 The Estate Rules to be contained in Annexure C hereto.
- 1.3 **'Architect/s'** shall mean the architect/s of the Association from time to time, provided that for the duration of the Development Period the Developer may appoint the architect/s.
- 1.4 **'Association'** shall mean **Bergvliet Manor Home Owners' Association**.
- 1.5 **'Auditors'** shall mean the auditors of the Association from time to time, provided that for the duration of the Development Period the Developer may appoint the auditors.
- 1.6 **'Budget'** shall mean the estimate of income and expenditure of the Association in respect of a financial year.
- 1.7 **'Business Day'** shall mean a weekday other than a Saturday, Sunday or a Public Holiday officially recognised in the Republic of South Africa.
- 1.8 **'Chairperson'** shall mean the chairperson of the Association and of the Trustees from time to time, provided that for the duration of the Development Period the chairperson shall be a Developer Trustee decided upon by the Developer.
- 1.9 **'Common Areas'** shall mean the erven within the Estate comprising of private roads and private open spaces to be transferred to the Association, including the retention ponds and any improvements as may be constructed on such erven as well as security entrance to the Estate and the perimeter boundary (wall or fence) of the Estate.
- 1.10 **'Community Schemes Ombud Service'** means the service established in terms of the Community Schemes Ombud Service Act.
- 1.11 **'Community Schemes Ombud Service Act'** shall mean Community Schemes Ombud Service Act, 2011 (Act 9 of 2011), as amended from time to time, and any regulations made and in force thereunder.

- 1.12 **'Conditions of Approval'** shall mean the conditions of approval imposed from time to time by Drakenstein Municipality in terms of the Drakenstein Planning By-Law.
- 1.13 **'Constitution'** shall mean this Constitution of the Association, including the Annexures thereto, as may be amended from time to time.
- 1.14 **'Deeds Registry'** means a deeds registry, defined in the Deeds Registries Act No. 37 of 1947, with jurisdiction to register deeds and documents against the title deeds of the Management Area and/or subdivided portions thereof in accordance with the provisions of that Act.
- 1.15 **'Design Guidelines'** shall mean the architectural and landscaping guidelines of the Association referred to in clause 35 of the Constitution and to be contained in Annexure F hereto, and as may be amended from time to time.
- 1.16 **'Developer'** shall mean Anrophase (Proprietary) Limited, Registration Number 2019/092318/07.
- 1.17 **'Developer Trustees'** shall mean those of the Trustees appointed by the Developer during the Development Period.
- 1.18 **'Development Management Scheme'** shall mean the development management scheme as contemplated in the Drakenstein Planning By-law from time to time.
- 1.19 **'Development Period'** shall mean the period from the date of registration of the first Erf in the Management Area until the date of Alienation by the Developer to another person of all the Erven in the Estate owned by the Developer, or until the Developer notifies the Association in writing of the termination of the Development Period, whichever shall first occur.
- 1.20 **'Drakenstein Municipality'** shall mean the Municipality of the Drakenstein as defined in the Drakenstein Planning By-law and its successors in title.
- 1.21 **'Drakenstein Planning By-law'** shall mean Drakenstein By-law on Municipal Land Use Planning, 2018 as may be amended from time to time.
- 1.22 **'Electronic Communication'** shall have the meaning set out in section 1 of the Electronic Communications and Transactions Act.
- 1.23 **'Electronic Communications and Transactions Act'** shall mean the Electronic Communications and Transactions Act, No. 25 of 2002.
- 1.24 **'Erf'** shall mean an erf within the Estate, but excluding any erf comprising Common Areas and **'Erven'** shall have a corresponding meaning.
- 1.25 **'Estate'** shall mean the development known as Bergvliet Manor resulting from the subdivisions of the Management Area as reflected in the general plan and in accordance with the Conditions of Approval, including and all/any extension(s), amendments and/or subdivisions of the Management Area approved by the Developer and Drakenstein Municipality from time to time and "Development" shall have a corresponding meaning.
- 1.26 **'Estate Rules'** shall mean the estate rules of the Association referred to in clause 39 of the Constitution and to be contained in Annexure E hereto, and as may be amended from time to time.

- 1.27 **'Exit Levy'** means the contribution or levy payable by a seller or transferor of an Erf upon the Alienation of an Erf, provided that an exit levy shall only be payable in respect of an arm's length transactions where the transferor and transferee are not connected persons and provided further that the first purchasers who purchased their Erven from the Developer shall be exempt from paying the Exit Levy.
- 1.28 **'Fair Market Value'**, in respect of an Erf, is the amount at which a willing seller would sell and a willing buyer would buy it, which amount shall be determined by the Trustees, and in determining the amount the Trustees may in their sole discretion accept the purchase price (if any) as the fair market value or rely upon the valuation/s of a third party or parties, whether such party/ies is/are a sworn appraiser/s or not: Provided that if the Member or transferor objects to the amount determined, the Trustees shall appoint a sworn appraiser to determine the fair market value, which determination shall be binding upon the Member or transferor and the Association.
- 1.29 **'Financial Institution'** shall mean a registered financial institution as defined in section 1 of the Financial Institutions (Protection of Funds) Act.
- 1.30 **'Financial Institutions (Protection of Funds) Act'** shall mean the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.
- 1.31 **'Financial Institutions (Protection of Funds) Act'** shall mean the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.
- 1.32 **'General Plan'** shall mean General Plan NO. 316/2017 of subdivisions of the Management Area contained in Annexure A to this Constitution.
- 1.33 **'House'** shall mean the dwelling or house to be constructed on an Erf in compliance with the Design Guidelines.
- 1.34 **'Improvements'** shall mean any buildings or structures constructed or to be constructed on an Erf, including any alterations, additions or attachments to any existing buildings and/or structures, and changes to external finishes, material and/or the colour scheme: provided that the foregoing shall not give rise to any right or expectation to erect any building or structure that is not in accordance with the requirements of the approvals and/or Conditions of Approval and/or the Design Guidelines and/or that is not in accordance with plans that have been duly approved in accordance with the requirements of the Constitution.
- 1.35 **'Income Tax Act'**, shall mean the Income Tax Act, No. 58 of 1962 as amended from time to time and any regulations made and in force thereunder and includes any substituted legislation.
- 1.36 **'Internal Engineering Services'** shall mean a system for the provision of water, electricity, gas, roads or storm water drainage, or collection and removal of solid waste or sewerage, within the Estate for which the Association is responsible, but excluding the public services of the Municipality and the internal engineering services relating to an Erf for which a Member is responsible.
- 1.37 **'Invitees'** shall mean the employees, servants, workers, contractors, agents, service providers, visitors, guests, or other invitees of Owners or Occupiers.
- 1.38 **'in writing'** shall mean written, printed or lithographed or partly one and partly the other, and other modes of representing or producing words in visible form, including Electronic Communication.

- 1.39 **'juristic person'** shall mean a company, close corporation, trust or other legal or juristic person.
- 1.40 **'Levies'** shall mean the contributions payable by the Members to the Association in terms of clause 27 of the Constitution, including Annual Levies (Ordinary Levies), Special Levies and the Exit Levy and where applicable service charges for water, sewerage and electricity.
- 1.41 **'Management Area'** shall mean Erf 39579 Paarl.
- 1.42 **'Managing Agent'** shall mean the person or juristic person as may from time to time be contracted by the Association as its managing agent, provided that for the duration of the Development Period the Developer may appoint the managing agent.
- 1.43 **'Member'** shall mean a member of the Association as described in clause 8 of the Constitution and **'membership'** shall be construed accordingly.
- 1.44 **'Occupier'** shall mean a person occupying a House, and irrespective whether the person is the Owner, or the Occupier, or a family member of the Owner or Occupier.
- 1.45 **'Ordinary Resolution'** shall mean a resolution passed at a general meeting of the Association, whether on a show of hands or on a poll, by an ordinary majority of the votes of the Members present in person or by a proxy or by an authorised representative at the general meeting.
- 1.46 **'Owner'** shall mean the registered owner of an Erf in the Estate.
- 1.47 **'Prime Rate'** shall mean the prime bank overdraft rate of interest charged by the Association's bank from time to time and more commonly known as its prime rate (in the case of a dispute, the rate may be certified by any manager or assistant manager of any branch of the said bank whose certificate shall be final and binding on the Members).
- 1.48 **'Services'** shall mean the Internal Engineering Services, the street lighting, retention facilities, telecommunications, information technology, security infrastructure, refuse removal, firefighting and other services in respect of the Estate which is the responsibility of the Association, but excluding any services which is the responsibility of a Member or of the Municipality.
- 1.46 **'Trustees'** shall mean the trustees of the Association collectively from time to time and **'Trustee'** shall mean one of them.

2. INTERPRETATION

- 2.1 In the interpretation of the Constitution, unless the context otherwise indicates:
- 2.1.1 the clause headings are for convenience of reference and shall be disregarded in construing the Constitution;
- 2.1.2 words importing the singular number shall include the plural and the converse shall also apply;
- 2.1.3 a reference to any one gender shall include the other genders;
- 2.1.4 a reference to natural persons shall include juristic persons and the converse shall also apply; and
- 2.1.5 a reference to 'person' shall include 'juristic person';

- 2.1.6 words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part of, and in subsequent clauses, bear the meaning assigned to such words and expressions in such sub-clause;
- 2.1.7 when any number of days is prescribed in the Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.1.8 the Annexures to the Constitution shall be deemed to be incorporated in and form part of the Constitution.
- 2.2 If any provision of the Constitution is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of the Constitution.
- 2.3 If any provision in a definition in the Constitution is a substantive provision conferring rights or imposing obligations on any of the Members then, notwithstanding that it is only in the definition clause of the Constitution, effect shall be given to it as if it were a substantive provision in the body of the Constitution.
- 2.4 If any provision in the Design Guidelines or the Estate Rules is in conflict with any provision of the Constitution, the relevant provision of the Constitution shall prevail.
- 2.5 The *contra proferentem* rule shall not be applied in the interpretation of this Constitution.

PART 2: ESTABLISHMENT, STATUS AND DOMICILIUM OF ASSOCIATION

3. ESTABLISHMENT OF THE ASSOCIATION

- 3.1 The Bergvliet Manor Home Owners' Association shall be constituted as an owners' association for the subdivision of the Management Area in terms of section 29(1) of the Drakenstein Planning By-Law in accordance with the conditions imposed by Drakenstein Municipality when approving the application for the subdivision of the Management Area. The Association shall be automatically established upon the registration of transfer of the first Erf arising from the subdivision to a person other than the Developer.
- 3.2 The Constitution of the Association as approved by the Drakenstein Municipality takes effect upon the registration of the transfer of ownership of the first Erf to a person other than the Developer.
- 3.3 The Association shall have as its Members all the owners of Erven arising from the subdivision, who shall be jointly liable for the expenditure incurred in connection with the Association.
- 3.4 The provisions of the Companies Act, 2008 (Act No. 71 of 2008), shall not apply in relation to the Association.

4. STATUS OF THE ASSOCIATION

- 4.1 The Association is a juristic person, has perpetual succession and is capable of suing and being sued.

- 4.2 The Association is established as a non-profit making institution for the purposes and objects set out in the Constitution. The Association shall not be for profit, but for the collective benefit and interest of its Members.
- 4.3 No part of the income of the Association may be paid or refunded to any Member, except to settle any debt to such Member that the Association may have. No Member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees on behalf of the Members according to the objects of the Association.
- 4.4 The Association has the right to acquire, hold, lease and alienate property, both movable and immovable.
- 4.5 The sole object of the Association is to manage the collective interests common to all its Members, which includes expenditure applicable to the Common Areas and the collection of Levies for which such Members are liable.
- 4.6 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 4.7 On dissolution the remaining assets must be distributed to a similar association of persons, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act.
- 4.8 Funds available for investment may only be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001.
- 4.9 The Association is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.
- 4.10 The Association shall submit annual returns of income tax together with financial statements to the South African Revenue Services or similar relevant government departments as required.
- 4.11 Any amendments to clause 4 of the Constitution must be submitted to the Commissioner for the South African Revenue Services.

5. SERVICE ADDRESS OF THE ASSOCIATION

- 5.1 The service address for the delivery of legal process (*domicilium citandi et executandi*) of the Association shall for the duration of the Development Period be the *domicilium* address of the Developer referred to in clause 43.1 of the Constitution. Upon termination of the Development Period, the Trustees shall from time to time determine the address constituting the service address of the Association, subject to the following:
- 5.1.1 such address shall be the office address of the manager, or the Managing Agent, or shall be the address of the Chairperson, or the address of a Trustee nominated by the Trustees;
- 5.1.2 the Trustees shall give notice to all Members of any change of such address.

- 5.2 In addition the Trustees may give notice to all Members of the e-mail address of the Association for the receipt of notices and documentation from Members in terms of the Constitution.

PART 3: OBJECTS, FUNCTIONS AND POWERS OF ASSOCIATION

6. OBJECTS OF THE ASSOCIATION

The objects of the Association are:

- 6.1 to formally represent the collective mutual interests of the Management Area and Members as set out in the Constitution in accordance with the conditions of approval;
- 6.2 the control over and maintenance of buildings, services or amenities arising from the subdivision;
- 6.3 to control, administer and manage the Common Areas, Services and amenities in respect of the Estate and the buildings on land under the Association's control for the benefit of all the Members;
- 6.4 to take ownership of the Common Areas and Internal Engineering Services as may be required by Drakenstein Municipality;
- 6.5 to monitor and enforce compliance with the Conditions of Approval or management plans listed in the Conditions of Approval in respect of the Estate;
- 6.6 to control, administer and manage Design Guidelines for Improvements and landscaping within the Estate;
- 6.7 to control and co-ordinate development and construction of Improvements within the Estate and in the Schemes and in this regard to:
 - 6.7.1 uphold aesthetic standards that will enhance the attractiveness of the Estate as a whole;
 - 6.7.2 regulate the aesthetic appearance generally of all Improvements; and
 - 6.7.3 regulate the environment and landscaping within the Estate;
- 6.8 the implementation of the provisions of the Constitution and to enforce compliance with the provisions of the Constitution;
- 6.9 to establish a fund for expenses of the Association, including provision for future expenses and contingencies, and to determine and collect Levies for the purpose of the said fund from the Members;
- 6.10 to control the Alienation, transfer, letting and use of Properties within the Estate;
- 6.11 to administer and enforce Estate Rules to ensure a good standard of conduct for persons within the Estate and to regulate the conduct of persons within the estate to prevent a nuisance to any person within the Estate;
- 6.12 to provide for any further development which must form part of the Association and the procedures for incorporating the development;
- 6.13 to regulate the annual general meetings of the Members;

- 6.14 during the Development Period, to co-operate with the Developer in all its dealings with Drakenstein Municipality and all other appropriate authorities and thereafter to co-operate with Drakenstein Municipality and all other appropriate authorities for the benefit of the Association and the Members;
- 6.15 to conclude service agreements with Drakenstein Municipality and other service providers for the benefit of the Members as may be necessary or required;
- 6.16 to comply with the provisions of the Community Schemes Ombud Service Act;
- 6.17 to take action as deemed necessary by the Trustees in relation to the non-compliance by any Member or Occupier with any provisions of the Constitution and to impose penalties upon Members in respect of contraventions;
- 6.18 to make provision for a procedure to obtain the consent of the Members of the Association to transfer the Common Areas or an Erf in the event that the Association ceases to function;
- 6.19 to promote, advance and protect the interest of Members generally in regard to the Estate and to represent the interest of Members and to provide a united voice by which such interests may be expressed;

and to generally do all such things as may be necessary or requisite to give effect to and implement and enforce the objects of the Association and to do all such things ancillary or incidental to the objects, and the Association, through the Trustees, shall have all the powers that are necessary to accomplish the fulfilment of the foregoing objects.

7. FUNCTIONS AND POWERS OF THE ASSOCIATION

- 7.1 The Association shall exercise the powers and perform the functions as set out in the Constitution and such ancillary functions as may be necessary in pursuit of its objects.
- 7.2 The functions of the Association shall include:
 - 7.2.1 to establish a levy fund of the Association sufficient in the opinion of the Association to meet the expenditure of the Association and to perform the duties of the Association;
 - 7.2.2 to raise and determine Levies payable by the Members as contributions to the levy fund;
 - 7.2.3 to open and operate an account or accounts with registered South African commercial banks and Financial Institutions;
 - 7.2.4 to manage the finances of the Association and the payments of the expenditure of the Association;
 - 7.2.5 to manage, repair, maintain, and improve the Common Areas and amenities;
 - 7.2.6 to install, manage, repair, maintain, replace and improve the Services;
 - 7.2.7 to take up insurance for the Association as may be required including, but not limited to:

- 7.2.7.1 to insure the buildings, improvements, amenities and Services in respect of the Common Areas against such risks as the Association may determine;
- 7.2.7.2 to take up public liability insurance in respect of the Common Areas;
- 7.2.7.3 to procure fidelity insurance cover in respect of the Association; and
- 7.2.7.4 to insure the payment of Levies due by the Members to the Association (if so resolved);
- 7.2.8 to pay the premiums on any policy of insurance effected by it;
- 7.2.9 to use any insurance money received to repair damage damages and/or to rebuild a building or structure to the extent as may be possible;
- 7.2.10 to add to, amend, repeal or substitute the provisions of the Constitution and the Annexures thereto from time to time, in accordance with the provisions of the Constitution;
- 7.2.11 to implement and enforce the provisions of the Constitution and the Annexures thereto;
- 7.2.12 to repair and maintain the Common Areas and Services;
- 7.2.13 to ensure compliance with any law relating to the Common Areas and/or Services;
- 7.2.14 to comply with any notice or order by any competent authority requiring any repair to, or work in respect of, the Common Areas and/or Services; and
- 7.2.15 to comply with obligations from time to time as specified in the Community Schemes Ombud Service Act.
- 7.3 The powers of the Association shall include the power:
 - 7.3.1 to purchase or otherwise acquire, take transfer of, mortgage, sell, alienate, give transfer of, or hire or let immovable property;
 - 7.3.2 to register servitudes or rights of use in respect of immovable property;
 - 7.3.3 to make improvements to immovable property or to remove improvements;
 - 7.3.4 to purchase, hire, or otherwise acquire movable property and to insure, sell, let, or otherwise dispose of movable property;
 - 7.3.5 to control, manage, administer, maintain and improve the Common Areas and Services and to establish amenities and to register servitudes as may be necessary;
 - 7.3.6 to provide security in respect of the Management Area;
 - 7.3.7 to appoint the Trustees for the Association;
 - 7.3.8 to prevent the transfer or alienation of any Erf unless the Levies and other contributions due to the Association in respect of the Erf or Section have been paid provision has been made to the satisfaction of the Association;
 - 7.3.9 to open, operate and close bank accounts in the name of the Association;

- 7.3.10 to invest surplus moneys of the levy fund;
- 7.3.11 to apply for licenses and other rights enabling the Association to deal with its property in any lawful manner;
- 7.3.12 to borrow moneys required by it in the performance of its functions or the exercise of its powers if authorised thereto by an Ordinary Resolution of the Members;
- 7.3.13 to secure the repayment of moneys borrowed by it and the payment of interest thereon in any manner, including but not limited to the mortgaging and pledging of property or cession of levy debt, and to agree to the terms of such transactions;
- 7.3.14 to sell and cede any obligation due to the Association, including but not limited to claims for Levies, contributions, charges, penalties and fees, and to agree to the terms of such transactions;
- 7.3.15 to lend or donate moneys if authorised thereto by an Ordinary Resolution of the Members;
- 7.3.16 to make, draw, issue, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments and to enter into or issue indemnities, guarantees and suretyships and to secure payments thereunder in any way if authorised by Ordinary Resolution of the Members;
- 7.3.17 to employ, dismiss and remunerate an estate manager and other employees and to establish and contribute to pension-, provident-, medical aid and other similar funds for the benefit of its employees;
- 7.3.18 to appoint a managing agent and other agents and contractors on behalf of the Association as may be necessary;
- 7.3.19 to appoint an auditor, attorney, advocate, architect, engineer or other professional advisor as may be necessary for the Association;
- 7.3.20 to enter into agreements for the supply of services, equipment or property to the Association or to a Member or Occupier;
- 7.3.21 to enter into any agreement necessary to achieve the objects of the Association or to further the interests of the Association;
- 7.3.22 to sue and be sued in the name of the Association and to appoint attorneys, agents and advocates for the aforementioned purpose;
- 7.3.23 to recover by legal process any Levies or moneys due by Members or former Members to the Association;
- 7.3.24 to impose penalties on Members in respect of contraventions of the provisions of the Constitution and to recover such penalties from its Members or former Members by legal process;

and generally, to do all things necessary or required to attain the objects of the Association, and for the implementation and enforcement of the provisions of the Constitution.

PART 4: MEMBERSHIP OF THE ASSOCIATION AND OBLIGATIONS OF MEMBERS AND OCCUPIERS

8. MEMBERS OF THE ASSOCIATION

- 8.1 The Association shall have as its Members every registered owner of an Erf.
- 8.2 Where an Erf is registered in the name of more than one person, all the registered owners of the Erf shall be deemed jointly and severally to be one Member of the Association.
- 8.3 Where any person is the registered owner of more than one Erf, such person shall be regarded as a Member, and shall have the rights and obligations of a Member, in respect of each Erf registered in such person's name.

9. OBLIGATIONS OF MEMBERS AND OCCUPIERS

- 9.1 Every Member is obliged to comply with the provisions of the Constitution and any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on the Member.
- 9.2 The rights and obligations of a Member shall not be transferable, and every Member shall to the best of his ability further the objects and interests of the Association.
- 9.3 A Member will not be entitled to resign from the Association.
- 9.4 Members shall be jointly liable for expenditure incurred in connection with the Association according to the provisions of the Constitution. The Association shall recover expenditure incurred in connection with the Association from its Members in accordance with the provisions of the Constitution.
- 9.5 Occupation and use of a building within the Estate shall, always, be in compliance with the Development Management Scheme. No Member or Occupier shall use any building within the Estate or allow any other person to use such building for any purpose not permitted by the Development Management Scheme or occupy any building not approved of by the Trustees as being complete and compliant with the Design Guidelines and other requirements.
- 9.6 No application for any rezoning, subdivision, departure, consent use, amendment of any other Condition of Approval relating to any Erf in the Estate in terms of any law governing development rights may be submitted to the relevant competent authority without the prior written approval of the Trustees.
- 9.7 No Member shall consolidate two or more Erven into one Erf without the prior written approval of the Trustees and subject to compliance with the conditions imposed by the Trustees.
- 9.8 No Member shall subdivide an Erf into two or more Erven, without the prior written approval of the Trustees and subject to compliance with the conditions imposed by the Trustees.
- 9.9 The Constitution and the duties of a Member in relation to the use and enjoyment of his Erf and the Common Areas, services and amenities of the Association shall be binding on all Members and Occupiers. A Member must take all reasonable steps to ensure compliance with the Constitution by the Occupiers of his Erf and by the Invitees to his Erf.

- 9.10 A Member must maintain his Erf and Improvements in a state of good repair and in a clean and neat condition.
- 9.11 A Member must procure adequate insurance in respect of the Improvements to his Erf and must at least once during a financial year furnish proof of such insurance to the Trustees of the Association. In the event of the total- or partial destruction of an Improvement, the Member must, within a reasonable time period, reinstate the Improvements in accordance with the Design Guidelines and in accordance with building plans to be approved by the Trustees.
- 9.12 A Member shall not do or suffer to be done on or in any Property or the Common Areas anything which, in the opinion of the Trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any other Member or Occupier.
- 9.13 A Member shall permit access by a person authorised in writing by the Association to his Property if required for any reasonable purpose by the Association.
- 9.14 A Member shall not erect any Improvement which prevents Drakenstein Municipality, or the Association, or a service provider from access to any engineering services for which they are responsible or to a servitude area.

10. RESTRICTION ON SALE, ALIENATION AND OCCUPATION

- 10.1 A Member shall not be entitled to Alienate an Erf or apply to the Registrar of Deeds for the registration of an Erf, without the prior written consent of the Association having been obtained, which consent may, subject to the conditions contained in clause 10.2, not unreasonably be withheld.
- 10.2 The Association may refuse such consent for one or more of the following reasons:
 - 10.2.1 if the Levies and other amounts due to the Association in respect of the Erf have not been paid or payment thereof has not been secured to the satisfaction of the Trustees; and/or
 - 10.2.2 the Member is substantially in breach of the provisions of the Constitution, to an extent reasonable to justify withholding such consent; and/or
 - 10.2.3 the Member has constructed a building which is not in compliance with the Development Management Scheme; and/or
 - 10.2.4 if the format and content of the agreement of sale does not substantially comply with the format and content prescribed from time to time by the Developer and subsequent to the Development Period, by the Trustees
- 10.3 The written consent referred to in clause 10.1 above may be signed by the Chairperson or by a Trustee or by the Managing Agent duly authorised thereto. The Trustees may determine a reasonable fee to be charged for the issuing of the written consent.
- 10.4 The foregoing provisions shall not apply to an Alienation by the Developer during the Development Period, and the Developer or its nominee/s shall be entitled on behalf of the Association to sign all such consents as may be necessary to enable the Developer to give transfer of Erven sold by the Developer to the purchaser thereof.

- 10.5 A Member or other transferor of an Erf may only appoint an approved estate agent to secure a prospective purchaser or tenant for his or her Erf, unless the Member or other Transferor sells or lets his or her Erf himself or herself, without making use of the services of an estate agent. In this regard the Developer or the Trustees of the Association shall provide for an approval process for an estate agent to comply with to be an approved agent of the Association. An approved estate agent must be in possession of a fidelity fund certificate and must pay the costs as required by the Trustees in relation to the approval process and the management of approved estate agents, including but not limited to costs in relation to security access, costs for the printing of documents, costs of signage and such other costs as may be applicable.
- 10.6 All agreements of sale of Erven shall be concluded in terms of the standard written agreement of sale prepared from time to time by the Developer and upon termination of the Development Period by the Trustees on behalf of the Association.
- 10.5 The provisions of the Constitution shall be *mutatis mutandis* (with the necessary changes having been made) applicable to Occupiers. All Occupiers shall be obliged to comply with the provisions of the Constitution notwithstanding any provision to the contrary contained in, or the absence of provisions, in any lease or any grant of rights of occupancy.
- 10.6 Members shall ensure that their lease agreements incorporate a provision to the effect that an Occupier shall be obliged to comply with the provisions of the Constitution and any other further provisions required by the Trustees. Members must provide the tenants and other Occupiers with a copy of the Constitution.
- 10.7 Each Member shall be liable for the acts or omissions within the Estate by the Occupiers of his Property and by the Invitees to his Property. In the event of any breach of any provision of the Constitution an Occupier or Invitee, such breach shall be deemed to have been committed by the Member concerned. In the event of damage caused to any Common Areas or Services by an Occupier or Invitee, the Member concerned shall be liable to the Association for the costs to repair such damage, and the costs may be added to the Member's levy statement. Without prejudice to the foregoing, the Trustees shall be entitled to take or cause to be taken such steps against the person who actually caused the damage as they may in their discretion deem fit, with or without proceedings against the Member concerned.

PART 5: THE TRUSTEES OF THE ASSOCIATION

11. OFFICE OF THE TRUSTEES

- 11.1 The Trustees shall initially comprise of the Developer Trustees appointed by the Developer, who shall serve as such until the first annual general meeting of the Association.
- 11.2 From the aforesaid first annual general meeting and for the duration of the Development Period, the Trustees shall comprise of at least two (2) Developer Trustees appointed by the Developer and at least two (2) Trustees appointed by the Members of the Association.
- 11.3 After the Development Period, the Trustees shall comprise of three (3) or more Trustees appointed by the Members of the Association.
- 11.4 A Trustee shall be an individual but need not be a Member or the duly authorised representative of a juristic person that is a Member of the Association.
- 11.5 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of the Constitution.

11.6 Subject to the provisions of clause 11.7 and clause 12, each Trustee shall continue to hold office until the next annual general meeting of the Association following his appointment, at which meeting each Trustee shall be deemed to have retired from office as such but will be eligible for re-election by the Members.

11.7 The Developer Trustees shall continue to hold office for the duration of the Development Period, provided that the Developer shall at any time be entitled to remove any Developer Trustee and to appoint a new Developer Trustee.

12. REMOVAL AND ROTATION OF THE TRUSTEES

12.1 A Trustee shall be deemed to have vacated his office as such upon:

12.1.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate; or

12.1.2 he making any arrangement or compromise with his creditors; or

12.1.3 his conviction for any offence involving dishonesty; or

12.1.4 his becoming of unsound mind or being found mentally handicapped; or

12.1.5 he resigning from such office in writing; or

12.1.6 his death; or

12.1.7 he being removed from office as a Trustee by an Ordinary Resolution, but excluding a Developer Trustees; or

12.1.8 his being in arrears with his Levies or any other amounts due to the Association for two (2) months, or more, but excluding the Developer Trustees; or

12.1.9 his failure to comply with his fiduciary duties as Trustee or acting in conflict with the interest of the Association, but excluding the Developer Trustees.

12.2 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 12.1, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the minutes of a Trustees' meeting or in terms of resolution.

12.3 The Trustees may appoint, for a specified period, a person qualified to serve as a trustee as a replacement for any trustee who is absent or otherwise unable to perform the duties of that office.

13. CHAIRPERSON OF THE TRUSTEES

13.1 The first Chairperson of the Trustees shall be appointed by the Developer, who shall hold office for duration of the Development Period. If the Chairperson vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Developer Trustee present at such Trustees' meeting or the Developer Trustee present at such general meeting, as the case may be, shall choose another Chairperson for such meeting.

- 13.2 After the Development Period and within fourteen (14) days of the holding of each annual general meeting, the Trustees shall meet and shall elect from their own number the Chairperson who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairperson shall automatically be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the office of Chairperson, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 13.3 Save as otherwise provided in the Constitution, the Chairperson shall preside at all meetings of the Trustees and at all general meetings of the Association and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by a resolution of the Trustees or by an Ordinary Resolution. The Chairperson may allow or refuse to allow guests to speak at any meetings of the Trustees and general meetings of the Association.
- 13.4 If after the Development Period the Chairperson vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such Trustees' meeting or the Members, present in person or represented by a proxy or by an authorised representative, as the case may be, at such general meeting, shall choose another Chairperson for such meeting.

14. FUNCTIONS, POWERS AND DUTIES OF THE TRUSTEES

- 14.1 The functions, powers and duties of the Association shall, subject to the provisions of the Constitution and to any directions given or restrictions imposed by Ordinary Resolution at a general meeting, be performed and exercised by the Trustees.
- 14.2 Without detracting from the scope of the additional duties specified in the Constitution, the Trustees shall perform the functions referred to in clause 7.2 of the Constitution.
- 14.3 The Trustees shall do all things reasonably necessary for the control, management and administration of the Estate in terms of the powers conferred upon the Association by clause 7.3 of the Constitution.
- 14.4 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 14.5 The Trustees shall do all things reasonably necessary for the enforcement of the Constitution. The Trustees may, should they so decide, investigate any suspected or alleged breach of the Constitution by any Member or Occupier in such reasonable manner as they shall decide from time to time.
- 14.6 Without in any way limiting the powers granted, the powers of the Trustees shall include to:
- 14.6.1 appoint for and on behalf of the Association, such agents and employees as they deem fit in connection with the control, management and administration of the Estate and Common Areas and the exercise and performance of any of the powers and duties of the Association;
 - 14.6.2 enter into agreements on behalf of the Association;
 - 14.6.3 regulate relationships between Members themselves and between Members and the Association and with Occupiers;

- 14.6.4 determine what constitutes appropriate standards for Improvements and landscaping in compliance with the Design Guidelines;
- 14.6.5 require any Member, who shall be obliged, to repaint or renovate his Property if in the reasonable opinion of the Trustees such Property requires essential repairs or has become dilapidated;
- 14.6.7 delegate to one or more Trustees such of their powers and duties as they deem fit and at any time to revoke such delegation;
- 14.6.8 form committees for the performance of designated tasks on behalf of the Trustees;
- 14.6.9 institute, conduct, defend, compound or abandon any legal proceedings by or against the Association or otherwise concerning the affairs of the Association and agree to time and terms for payment or satisfaction of any debts due or of any claims or demands made by or against the Association;
- 14.6.10 impose, upon Members, penalties for contraventions by Members or their Invitees or Occupiers or the Invitees of their Occupiers of any provision contained in the Constitution and to recover, by legal action or otherwise, such penalties from its Members or former Members; and

generally, to do all acts and deeds as might be required necessary, conducive, ancillary or incidental to the attainment or furtherance of the objects and powers of the Association.

- 14.8 Each Trustee shall stand in a fiduciary relationship to the Association. A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute with the Association by virtue of any interest he may have therein, provided that the foregoing shall not apply to the Developer Trustees.
- 14.9 Trustees shall be entitled to be repaid all reasonable expenses incurred by them in or about the performance of their duties as Trustees in good faith. Unless otherwise determined by an Ordinary Resolution, Trustees shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 14.10 No agreement concluded on behalf of the Association shall be valid and binding unless it is signed by a Trustee specifically appointed as authorised signatory in terms of a resolution of the Trustees.
- 14.11 The Developer shall for the duration of the Development Period be entitled to appoint a Managing Agent in respect of the Estate. After the Development Period, the Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Estate and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect Levies due to the Association.
- 14.12 The Developer shall for the duration of the Development Period be entitled to appoint an estate manager in respect of the Estate. After the Development Period, the Trustees shall be entitled to appoint an estate manager in respect of the Estate.

15. PROCEEDINGS OF THE TRUSTEES

- 15.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of the Constitution.
- 15.2 Meetings of the Trustees shall be held at least once every four (4) months.
- 15.3 The Chairperson may at any time convene a Trustees' meeting by giving to the other Trustees not less than fourteen (14) 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.
- 15.4 A Trustee may, provided he has the support in writing of one (1) other Trustee, at any time convene a Trustees' meeting by giving to the other Trustees not less than fourteen (14) 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.
- 15.5 It is sufficient if the notice is transmitted electronically directly to the Trustees in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 15.6 The quorum necessary for the holding of any Trustees' meeting shall be fifty percent (50%) of the Trustees, provided that for the duration of the Development Period no Trustees' meeting shall proceed unless a Developer Trustee is present in person or represented by a proxy or by an authorised representative.
- 15.7 If no quorum is present within fifteen (15) minutes after the time for commencement of the Trustees' meeting then it shall stand adjourned for the same time and place on the following Business Day and, if at such adjourned Trustees' meeting, a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum, provided that for the duration of the Development Period no Trustees' meeting shall proceed unless a Developer Trustee is present in person or represented by a proxy or by an authorised representative.
- 15.8 Any resolution of the Trustees shall be carried by a simple majority of all votes cast and each Trustee shall have one (1) vote. In the case of an equality of votes for and against a resolution, the Chairperson shall have a second casting vote. For the duration of the Development Period, the Developer Trustee shall be entitled to the number of votes equal to the number of Trustees from time to time plus one (1) vote.
- 15.9 A resolution signed by all the Trustees present for the time being in the Republic of South Africa shall be valid in all respects as if it had been duly passed at a Trustees' meeting duly convened, provided that during the Development Period, no resolution of the Trustees in writing shall be of any force or effect unless a Developer Trustee agrees thereto in writing.
- 15.10 The Chairperson shall preside as such at all meetings of the Trustees provided that, should at any Trustees' meeting the Chairperson not be present within fifteen (15) minutes after the time appointed for the holding thereof, those present of the Trustees 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. For the duration of the Development Period the Chairperson shall be a Developer Trustee.

- 15.11 The Trustees must ensure that minutes are taken of every Trustees' meeting, although not necessarily word for word. The minutes must be reduced to writing within thirty (30) days' after the Trustees' meeting and the draft minutes must be delivered to the Trustees. The minutes must be approved by the Trustees and must then be certified as correct by the Chairperson of the meeting. The Trustees must keep all minutes of general meetings of the Association in perpetuity. On the written application of a Member, the Trustees must make minutes of their proceedings available for inspection by or on behalf of the applicant during reasonable hours on Business Days and/or furnish them with the copies as may be required, against payment of the required charges.
- 15.12 All resolutions recorded in the minutes of any Trustees' 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 Trustees 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 Trustees.

16. INDEMNITY OF THE TRUSTEES

- 16.1 All the Trustees shall be indemnified by the Association against any liabilities incurred by them in good faith in their capacities as such, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for, by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.
- 16.2 A Trustee shall not be liable for the acts, or omissions, of the Auditors or of any of the other Trustees or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested, or for loss or damage arising from the insolvency or wrongful act of any person with whom any moneys, securities or effects are deposited, or for any loss or damage occasioned by any error of judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto, unless occurring as a result of lack of good faith, breach of duty or breach of trust.
- 16.3 The indemnity referred to in this clause 16 shall not apply in favour of the Managing Agent.

PART 6: GENERAL MEETINGS OF THE ASSOCIATION

17. FIRST GENERAL MEETING AND ANNUAL GENERAL MEETINGS

- 17.1 The Developer or a Developer Trustee must convene the first general meeting of the Association within 6 (six) months of the transfer of 50% (fifty percent) of the Erven within the Estate.
- 17.2 Annual general meetings of the Association shall be held within 4 (four) months of each financial year end of the Association. An annual general meeting shall be held on such date and at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.

18. SPECIAL GENERAL MEETINGS

- 18.1 All general meetings other than annual general meetings shall be called special general meetings.

- 18.2 The Trustees may, whenever they deem fit, convene a special general meeting.
- 18.3 The Trustees shall convene a special general meeting on a request made by the Members representing not less than thirty percent (30%) of the votes. Should the Trustees fail to convene a special general meeting within thirty (30) days of such request, the Members may convene the general meeting themselves with at least fourteen (14) days' written notice to all Members in terms of clause 19 of the Constitution.

19. NOTICE OF GENERAL MEETINGS

- 19.1 A general meeting of the Association shall be called by not less than fourteen (14) days' written notice to all Members. The notice shall specify the place, day, hour and business of the meeting.
- 19.2 A general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in the Constitution, be deemed to have been duly called if it is agreed to at the general meeting by not less than sixty percent (60%) of the votes and subject to the approval of the Developer Trustee during the Development Period.
- 19.3 The accidental omission to give notice of any meeting or any resolution or to present any document required to be given or sent in terms of the Constitution, shall not invalidate the proceedings at, or any resolution passed at, any meeting, provided that the Developer Trustee shall have received the notice, resolution or document, as the case may be.
- 19.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings at, or any resolution passed at, any meeting, provided that the Developer Trustee shall have received the notice.

20. REPRESENTATION AT GENERAL MEETINGS

- 20.1 At every general meeting the Developer may for the duration of the Development Period be represented by a Developer Trustee, who may be present in person or represented by a proxy or by an authorised representative at the general meeting.
- 20.2 An Owner or an Erf may be present in person at the general meeting or be represented by a proxy or by an authorised representative, who need not be a Member of the Association.
- 20.3 The instrument appointing a proxy shall be in writing signed by the Member or by his appointed agent, duly authorised in writing, but need not be in any particular form.
- 20.4 A Member that is a company, close corporation, or trust may be represented by a director of the company, a member of the close corporation or a trustee of the trust, as the case may be, duly authorised thereto.
- 20.5 The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.
- 20.6 The instrument appointing a proxy and the power of attorney, authorising resolution, or other authority under which it is signed, or copies thereof, shall be deposited at the service address of the Association, either by hand, post, or by electronic mail at least twenty four (24) hours before the time appointed for the commencement of the meeting or shall be handed to the Chairperson at any time before the time appointed for the commencement of the general meeting or adjourned meeting. Notwithstanding the foregoing, the Chairperson of the meeting may agree to accept a proxy tendered at any time during the general meeting.

- 20.7 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustees at least one (1) hour before the time fixed for the holding of the meeting.

21. QUORUM AT GENERAL MEETINGS

- 21.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business and when any resolution is to be passed. The quorum necessary for the holding of any general meeting shall be the number of Members, present in person and/or by proxy and/or by authorised representative, holding at least thirty percent (30%) of the votes of the Members, provided that for the duration of the Development Period no general meeting of the Association shall proceed unless a Developer Trustee is present in person or by proxy.
- 21.2 If, within thirty (30) minutes after the time appointed for the commencement of the general meeting, a quorum is not present, the meeting, if convened on the request of the Members in terms of clause 18.3, shall be dissolved. In all other cases, the general meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members in person and/or by proxy and/or by authorised representative, shall constitute a quorum, provided that for the duration of the Development Period no general meeting of the Association shall proceed unless a Developer Trustee is present in person or by proxy or authorised representative.

22. AGENDA AT ANNUAL GENERAL MEETINGS

The following matters shall be dealt with at every annual general meeting:

- 22.1 the approval of the minutes of the previous annual general meeting of the Association;
- 22.2 the consideration of the Chairperson's report;
- 22.3 the election of Trustees and, for the duration of the Development Period, the announcement of the Developer Trustees as appointed from time to time by the Developer;
- 22.4 the consideration of the financial statements of the Association for the preceding financial year;
- 22.5 the consideration of the Budget, approved by the Trustees and the annual Levies or ordinary Levies payable, determined by the Trustees;
- 22.6 the appointment of the Auditors, after the Development Period;
- 22.7 the giving of directions to or the imposing of restrictions on the Trustees;
- 22.8 the consideration of any resolutions proposed for adoption by a Trustee or by a Member, and the voting upon any such resolutions, provided that prior notice shall be given of the resolutions in as far as may be possible; and
- 22.9 any other business pertinent to such meeting.

23. PROCEDURE AT GENERAL MEETINGS

- 23.1 The Chairperson shall preside as such at all general meetings provided that should he not be present within fifteen (15) minutes after the time appointed for the holding thereof, then the Members, present in person or represented by a proxy or by an authorised representative at such general meetings 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 Developer Trustee present at such general meeting, shall choose another Developer Trustee as the Chairperson for such general meeting.
- 23.2 The Chairperson may, with the consent of any 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 that might have been transacted at the meeting from which the adjournment took place. No notice need to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for thirty (30) days or more, in which event notice is to be given in the same manner as the original meeting.
- 23.3 Save as otherwise provided in the Constitution, the proceedings at any general meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.

24. VOTING AT GENERAL MEETINGS

- 24.1 Subject to clause 24.7 and clause 24.8 below, at every general meeting:
- 24.1.1 every Member present in person or by proxy and entitled to vote shall on a show of hands and on a poll have one (1) vote for each Erf owned, provided that if an Erf is registered in more than one person's name, then they shall jointly have one (1) vote.
- 24.1.2 for the duration of the Development Period, the Developer Trustee shall on a show of hands and on a poll be entitled to the number of votes equal to the number of Erven in the Development from time to time to time plus one (1) vote.
- 24.2 At every general meeting an Ordinary Resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Member Trustee, or for the duration of the Development Period, by a Developer Trustee. When a poll is duly demanded it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the Ordinary Resolution of the meeting at which the poll was demanded.
- 24.2 At every general meeting an Ordinary Resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Member, or for the duration of the Development Period, by a Developer Trustee.
- 24.3 Notwithstanding the provisions of clause 24.2 aforesaid, voting on any question of adjournment, shall be decided on a show of hands by an Ordinary Resolution.
- 24.4 At every general meeting an Ordinary Resolution put to the vote at the meeting shall be decided on an ordinary majority of votes in accordance with the value of votes recorded in clause 24.1 above.
- 24.5 When a poll is duly demanded it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the Ordinary Resolution of the meeting at which the poll was demanded.

- 24.3 Notwithstanding the provisions of clause 24.2 aforesaid, voting on any question of adjournment, shall be decided on a show of hands by an Ordinary Resolution.
- 24.4 At every general meeting an Ordinary Resolution put to the vote at the meeting shall be decided on an ordinary majority of votes in accordance with the value of votes recorded in clause 24.1 above.
- 24.5 No vote may be exercised in respect of an Erf where the Member is in arrears with his Levies or other amounts due to the Association for more than two (2) months and the Member concerned or the duly authorised representative of the Member who is a juristic person shall not be entitled to be appointed as a Trustee.
- 24.6 No objection shall be raised to the admissibility of any vote except at the general meeting or adjourned meeting at which the vote objected to, is cast and every vote not disallowed at such general meeting will be valid for all purposes. If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute must be determined by the Chairperson, whether or not scrutineers or observers have been appointed to count the votes, and his decision will be final and conclusive. A declaration made in good faith by the Chairperson of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed will be final and conclusive and the resolution will be deemed to have been so passed or not passed, as the case may be.
- 24.7 Despite anything to the contrary contained in the Constitution, an Ordinary resolution agreed to in writing by Members holding at least 50% plus one (1) vote of the votes of all the Members of the Association will be as valid as if it had been passed at a duly convened general meeting.
- 24.8 Notwithstanding anything to the contrary contained herein, during the Development Period, no resolution passed at a general meeting shall be of any force or effect unless the Developer Trustee present in person or represented by a proxy or an authorised representative at the meeting votes in favour thereof.

25. MINUTES OF GENERAL MEETINGS

- 25.1 The Trustees must ensure that minutes are taken of every general meeting of the Association, although not necessarily word for word. The minutes must be reduced to writing within thirty (30) days' after the general meeting and the draft minutes must be delivered to the Members. The minutes must be approved by the Members at the following general meeting of the Association and must then be certified as correct by the Chairperson of the meeting. The Trustees must keep all minutes of general meetings of the Association in perpetuity.
- 25.2 On the written application of a Member, the Trustees must make the minutes of general meetings available for inspection by or on behalf of the applicant during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of the required charges.

- 25.3 All resolutions recorded in the minutes of general meetings of the Association 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 Association 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 Association.

PART 7: FINANCIAL FRAMEWORK

26. LEVY FUND AND BUDGET OF THE ASSOCIATION

- 26.1 The Trustees shall establish and maintain a Levy fund for the purpose of meeting all expenses of the Association for the control, management and administration of the Common Areas, the Services, and the amenities and Village Facilities in respect of the Estate and for the payment of all expenses necessary or reasonably incurred in connection with the management of the Association and its affairs.
- 26.2 The Trustees shall estimate the amount which will be required by the Association to meet its expenses during each financial year, together with such estimated deficiency, if any, as shall result from the preceding financial year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 26.3 The Trustees shall at least one (1) month before the end of each financial year, prepare and finalise the Budget of the Association for the ensuing financial year.

27. DETERMINATION OF LEVIES

- 27.1 Before the end of each financial year, the Trustees shall determine the Annual Levies due by the Members for the ensuing financial year by apportioning the Budget to Members as Annual Levies equally in respect of every Erf in the Estate. The Trustees shall, by making a resolution to such effect, determine the Annual Levies due by the Members.
- 27.2 The Annual Levies determined in terms of clause 27.1 shall become effective or due from the date of passing of the resolution by the Trustees. The Annual Levies shall be paid in equal monthly instalments over a period of twelve (12) months, monthly in advance, on or before the 1st (first) day of every succeeding month of the financial year, provided that if any Member defaults in the payment of any monthly instalment, the balance of the Annual Levies due by the Member in respect of the financial year shall become payable immediately.
- 27.3 The Budget and the Annual Levies payable by the Members shall be tabled at the annual general meeting for the consideration of the Members.
- 27.4 The Trustees may, from time to time, make Special Levies upon Members in respect of all expenses which have not been included in the Budget. Special Levies shall become due from the date of passing of the resolution by the Trustees and shall be apportioned to Members in accordance with clause 27.1 above. Special Levies shall be payable in one payment or in such instalments and at such time or times as the Trustees may think fit.
- 27.5 The Trustees or the managing agent shall determine the service charges due by Members for water, sewerage and electricity in accordance with the meter readings or as may be applicable, which shall be due from the date of the determination or reading. Each Erf will be provided with a refuse bin and a recycling bin at the cost of the relevant Member and the Trustees or the managing agent shall determine the service charges due by Members for refuse removal. Members shall use the universal satellite dish provided by the Association but shall be liable for

their own DSTV subscription charges. Members may, however, not use their own satellite dishes.

- 27.6 Upon taking transfer of an Erf on date of registration in the Deeds Registry, the new Member shall become liable to the Association for the payment of the Levies and service charges due in respect of the Erf.
- 27.7 Where any Erf is owned by more than one person, all the registered owners of that Erf, shall be jointly and severally liable for the due performance of any obligation to the Association.
- 27.8 If a Member fails to pay his Levies in full to the Association on due date, the Association may institute an action for the recovery thereof in any competent court.
- 27.9 Members shall be liable for payment of interest on arrear Levies and outstanding amounts at the Prime Rate plus 2%. Interest calculated at the determined rate shall be recoverable from the date on which the amount is due and payable to the date of payment, both days inclusive.
- 27.10 A Member shall be liable for and shall pay all costs, including all legal costs on the scale as between attorney and own client together with collection commission, advocates' fees, administrative costs and all other expenses and charges incurred by the Association in obtaining recovery of arrear Levies, penalties, damage or other amounts due to the Association, or in enforcing compliance with the provisions of the Constitution. Such costs and expenses may be added to the Member's levy account and recovered in the same manner as applies to arrear Levies together with interest at the rate applicable to Levies.
- 27.11 All moneys received from a Member towards his levy account shall be apportioned firstly towards interest, then towards legal- and other administrative costs and then towards Levies and other service charges.
- 27.12 Where payment of any debt due by a Member is made by way of cheque or debit order, and such cheque is referred to drawer for any reason whatsoever, and/or if such debit order is unpaid for any reason whatsoever, the Trustees shall be entitled, in their sole discretion, to Levy an administration charge in respect of each such occurrence in an amount to be determined by the Trustees from time to time.
- 27.13 Upon the Alienation of an Erf, the seller or transferor of the Erf shall pay an Exit Levy to the Association, calculated at 0,5 (zero comma five percent) of the Fair Market Value of the Erf at the date of Alienation.
- 27.14 Clause 27.13 shall apply *mutatis mutandis* in respect of the Alienation of a share in an Erf, or the bare dominium in respect of an Erf or the reservation, registration or cancellation of a right of usus, usufruct, habitation or a long term lease in respect of an Erf.
- 27.15 The purpose of the Exit Levy is to stabilise the levy fund of the Association and the Exit Levy shall only be used in furtherance of the objects of the Association. The Exit Levy may not be distributed to the Members of the Association.

28. FINANCIAL YEAR OF THE ASSOCIATION

Unless otherwise decided at a general meeting or by the Trustees, the financial year of the Association shall run from the first day of July in each year to the last day of June of the following year.

29. BOOKS OF ACCOUNT AND FINANCIAL STATEMENTS

- 29.1 The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association.
- 29.2 At each annual general meeting the Trustees shall lay before the meeting financial statements for the immediately preceding financial year of the Association. The financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees. Copies of the financial statements and reports shall be attached to the notice convening each annual general meeting.
- 29.3 The Trustees shall cause all books of account and records to be retained for a period of seven (7) years after completion of the transactions, acts or operations to which they relate.
- 29.4 On the written application of a Member, the Trustees shall make all or any of the financial statements, books of account and records available for inspection by or on behalf of the applicant during reasonable hours on Business Days and/or furnish them with the copies as may be required against payment of the required charges.

30. DEPOSIT AND INVESTMENT OF FUNDS

- 30.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered South African commercial bank in the name of the Association.
- 30.2 Subject to any directions given or restrictions imposed by an Ordinary Resolution passed at a general meeting of the Association, such moneys shall only be withdrawn from the bank account for the purpose of payment of the expenses of the Association or for investment purposes.
- 30.3 The Trustees may authorise a Managing Agent to administer and operate the accounts referred to in clause 30.1 and 30.2 above, subject to such conditions and restrictions as they may impose.
- 30.4 Any funds not immediately required for disbursements may be invested in a savings account, money market account or similar account with any registered South African commercial bank or with a financial institution approved by the Trustees from time to time.
- 30.5 The Association shall use interest on moneys invested for any lawful purpose in the interest of the Association.

31. AUDIT

The Developer shall for the duration of the Development Period be entitled to appoint the Auditors. After the Development Period, the Auditors shall be appointed by an Ordinary Resolution, passed at the annual general meeting. Once at least in respect of every financial year, the accounts of the Association shall be examined, and the correctness of the financial statements be ascertained by the Auditors. The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards in terms of the Auditing Profession Act, No. 26 of 2005.

PART 8: COMMON AREAS, SERVICES AND INSURANCE

32. COMMON AREAS

- 32.1 The Developer must transfer the Common Areas which are registrable to the Association. The Association must take transfer of the private roads simultaneously with the registration of transfer of the first deducted land portion.
- 32.2 During the Development Period, the Developer may in its sole discretion:
- 32.2.1 register servitudes in respect of the Management Area including in respect of servitudes regarding services to the Management Area;
 - 32.2.2 conclude agreements with Drakenstein Municipality or a service provider approved by Drakenstein Municipality for the removal of refuse;
 - 32.2.3 conclude agreements with service providers, including but not limited for the installation of wireless and fibre data telecommunication services, and to receive all income in this regard for the for the duration of the Development Period.
 - 32.2.4 conclude lease agreements in respect of the Common Areas or part thereto;
 - 32.2.5 authorise the placing of signage and advertisements on the Common Areas and to receive all income in this regard;
 - 32.2.6 agree to the establishment of a cell site or cell tower or cellular telephone site where antennae and electronic communications equipment are placed and receive the rental and other income in this regard.
- 32.3 The Association must repair and maintain the Common Areas and the Services in a state of good and serviceable repair.
- 32.4 Subject to the conditions of clauses 32.2, the Trustees may, subject to the directions given or restrictions imposed by an Ordinary Resolution passed at a general meeting of the Association:
- 32.4.1 let parts of the Common Areas on terms shorter than ten (10) years;
 - 32.4.2 construct improvements on the Common Areas or remove improvements;
 - 32.4.3 repair, maintain, upgrade and provide Services in respect of the Common Areas;
 - 32.4.4 enter into agreements with service providers and/or other persons in respect of the Common Areas.
- 32.5 Neither the whole nor any portion of the Common Areas shall be sold, let on a long term lease for a period of ten (10) years or longer, Alienated or otherwise disposed of, subdivided, or mortgaged, or subjected to any other rights to be registered in the Deeds Registry, save as specified in the Conditions of Approval, and save for such further rights as are enjoyed by the Developer in terms hereof, without the sanction of a resolution passed at a general meeting by at least eighty percent (80%) of the votes. The Trustees may with the approval of the Members by Ordinary Resolution execute on behalf of the Association a servitude or restrictive agreement burdening the Common Areas or vary the terms of, or cancel, the servitude or agreement. The Trustees may with the approval of the Members by Ordinary Resolution accept on behalf of the Association a servitude or restrictive agreement benefitting the Common Areas or vary the terms of, or cancel, the servitude or agreement.

- 32.6 The Trustees shall control all Services, landscaping, irrigation and amenities in respect of the Common Areas and shall also control access to and use of the Common Areas, amenities and Services.
- 32.7 The Erven which are situated on the outer perimeter of the Estate shall be subject to the following encroachments in favour of the Association:
- 32.7.1 the erection of a perimeter boundary (wall or fence) within the boundary of the Erven;
- 32.7.2 the installation of security communication ducts on the outer perimeter wall or fence and the installation of manholes.
- 32.8 The Association shall have the right of access to the Erven referred to in clause 32.7 for the purpose of the installation, upkeep, repair and maintenance of the encroachments referred to in clause 32.7.1 and 32.7.2.
- 32.9 Members and Occupiers shall comply with the provisions of the Estate Rules relating to the use of the Common Areas and the amenities and services of the Association.

33. SERVICES

- 33.1 The Developer or their authorised representatives shall be entitled to enter upon any Erf and/or the Common Areas for the purpose of providing, establishing, maintaining and/or repairing Internal Engineering Services as may be required by Drakenstein Municipality.
- 33.2 The Association must from time to time repair, maintain, upgrade and/or install the Services in respect of the Estate subject to the conditions imposed by Drakenstein Municipality. The Trustees or their authorised representatives, shall where applicable be entitled to enter upon an Erf for the purpose of providing, establishing, maintaining and/or repairing Services, provided that such work shall be carried out with as little inconvenience to the affected party as is reasonably possible.
- 33.3 The Association may, from time to time, contract with suppliers of services to provide Services to the Estate.
- 33.4 A Member must in respect of his Erf repair and maintain the services capable of being used in connection with his or her property in a state of good repair, including the renewal thereof where reasonably necessary.

34. INSURANCE

- 34.1 The Trustees shall insure the buildings, improvements, amenities and services in respect of the Common Areas to the full replacement value of such items, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the Trustees are most beneficial to the Members, against such risks determined by the Trustees or as may be directed by an Ordinary Resolution.
- 34.2 The Trustees shall procure, at the cost of the Association, general public indemnity liability insurance in respect of the Common Areas in such amounts and on such terms as the Trustees may from time to time determine or as may be directed by an Ordinary Resolution passed at a general meeting.
- 34.3 The Trustees must procure at the cost of the Association such fidelity insurance as may be required from time to time in terms of the Community Schemes Ombud Service Act and as may be deemed necessary by the Trustees and/or as may be directed by the Members by Ordinary Resolution.

- 34.4 The Trustees may insure against the risk of the non-payment by Members of Levies due to the Association.
- 34.5 The Members present in person or represented by a proxy or by an authorised representative may by an Ordinary Resolution direct the Trustees to insure against such other risks as they may determine.

PART 10: DESIGN GUIDELINES IMPROVEMENTS AND LANDSCAPING

35. DESIGN GUIDELINES

- 35.1 The Developer shall formulate and issue Design Guidelines in respect of the Estate and may for the duration of the Development Period amend the Design Guidelines from time to time in its sole discretion. After the Development Period, the Design Guidelines may be added to, amended, substituted, or repealed from time to time by a resolution of the Trustees, subject to the directions given or restrictions imposed by an Ordinary Resolution, passed at a general meeting of the Association.
- 35.2 The Design Guidelines may introduce more restrictive development rules or land uses than provided in the Development Management Scheme. In the event of the provisions of the Design Guidelines being amended or added to and such amendment or addition materially affects any further development or construction, the Trustees shall by written notice inform all Members of the amendment to the Design Guidelines. The amended Design Guidelines shall be lodged with the Drakenstein Municipality.
- 35.3 The Design Guidelines may include provisions governing:
- 35.3.1 the architectural design and standard of Improvements, and aesthetic requirements, and the material to be used, in respect of Improvements;
 - 35.3.2 the relationship of Improvements to adjacent Erven, Common Areas, and other developments;
 - 35.3.3 the maintenance of Improvements;
 - 35.3.4 building activities within the Estate; and
 - 35.3.5 landscaping within the Estate.
- 35.4 Having regard to the contents of the Design Guidelines, the Trustees shall have the power to:
- 35.4.1 administer the Design Guidelines;
 - 35.4.2 perform such acts as are necessary to accomplish the purposes expressed or implied in the Constitution, including but not limited to:
 - 35.4.2.1 the examination and approval of building plans for the construction of Improvements; and
 - 35.4.2.2 the evaluation of landscaping proposals;
 - 35.4.3 appoint an Architect/s and such advisors or design review committee as may be necessary with such powers and duties as may be delegated by the Trustees, provided that for the duration of the Development Period the Architect/s may be appointed by the Developer in its sole discretion;

35.4.4 impose a scrutiny fee and such other further charges as may be necessary on the Members to scrutinise the building plans and to consult with professionals;

35.4.5 require a building deposit from the Members.

36. IMPROVEMENTS BY MEMBERS

36.1 No Member may commence with the construction of an Improvement on or to his Property or of any other item included in the Design Guidelines, without the written approval of the Trustees and subject to the approval of the building plans by the Trustees and Drakenstein Municipality.

36.2 The Trustees will only approve the building plans if the Trustees is satisfied that the proposed Improvements comply with the Design Guidelines for the purpose of which the Trustees shall be the sole arbitrator and their decision shall be final and binding on the Member.

36.3 To obtain the written approval of the Trustees in terms of clause 40.1 above a Member shall:

36.3.1 apply to the Trustees in writing;

36.3.2 where applicable, submit building plans, and such additional documents as may be required, to the Trustees for examination and approval; and

36.3.3 pay the scrutiny fee and any further charges imposed by the Trustees from time to time and any other costs incurred by the Trustees.

36.4 Once the Trustees have approved the building plans, the Member shall submit the building plans to Drakenstein Municipality for approval. No Member shall submit any building plans to Drakenstein Municipality without prior approval of the building plans by the Trustees.

36.5 Having obtained the approval of Drakenstein Municipality, the Member shall comply with all terms, conditions and changes required by the Trustees and the conditions and standards imposed by Drakenstein Municipality insofar as these may be additional to the requirements of the Design Guidelines read with the building plans.

36.5 The provisions of this clause shall not be binding on the Developer during the Development Period.

37. BUILDING DEPOSIT FOR DAMAGE

37.1 Each Member, but excluding the Developer, shall, when applying to the Trustees for their approval in terms of clause 36.1 above, pay a building deposit to the Association, in the amount determined by the Trustees from time to time, which amount shall be retained by the Association until completion of construction to the satisfaction of the Trustees.

37.2 Upon completion of construction, the Trustees shall, if they are satisfied that no damage has been caused by the Member or his contractors to the Common Areas, and that the Improvements were constructed in accordance with the approved building plans, release the building deposit to the Member, excluding any interest thereon which will accrue to the Association.

37.3 In the event of Improvements not complying with the building plans and/or damages having been caused to the Common Areas, the Trustees shall by written

notice inform the Member that the building deposit shall be retained until the Improvements have been rectified and/or the damages have been repaired to their satisfaction and/or that the building deposit will be utilised by the Association to repair the damages.

38. LANDSCAPING

- 38.1 Any landscaping to be undertaken by a Member in respect of an Erf shall be undertaken in accordance with a landscape plan approved by the Trustees.
- 38.2 No Member shall commence landscaping of any Erf until such time as such landscape plan has been approved in writing by the Trustees.
- 38.3 The provisions of this clause shall not be binding on the Developer during the Development Period.

PART 11: ESTATE RULES

39. ESTATE RULES

- 39.1 The Developer may formulate and issue Estate Rules for the Association and may for the duration of the Development Period in its sole discretion amend the Estate Rules from time to time. After the Development Period, the Trustees may formulate and issue and amend the Estate Rules from time to time, subject to the directions given or restrictions imposed by the Members at general meetings of the Association.
- 39.2 The Estate Rules may include provisions governing:
 - 39.2.1 the keeping of pets and where applicable prohibiting the keeping of pets in relating to specific Properties;
 - 39.2.2 the use and enjoyment of Properties, and restrictions on the use and enjoyment thereof;
 - 39.2.3 the use and enjoyment of the Common Areas and amenities of the Estate, and restrictions on the use and enjoyment thereof;
 - 39.2.4 the appearance of Improvements and landscaping;
 - 39.2.5 the Alienation and letting of Properties;
 - 39.2.6 the security measures applicable to the Estate;
 - 39.2.7 the parking and movement of vehicles within the Estate and issues relating thereto and vehicular access and egress to Properties;
 - 39.2.8 refuse disposal and prohibition of littering;and generally, any other provisions in furtherance and promotion of the objects of the Association or which would be to the benefit of the Association and the Members.
- 39.3 Members and Occupiers must comply with the provisions of the Estate Rules relating to use and occupation of their Properties and use of the Common Areas and amenities of the Association.

PART 12: SERVICE ADDRESSES AND NOTICES

40. SERVICE ADDRESSES OF THE MEMBERS AND OCCUPIERS

- 40.1 The service address for the delivery of legal process of the Developer shall for the duration of the Development Period be the following address: 11 Du Toit Street, Paarl, 7646. The Developer may by written notice to the Association alter its service address, provided that such new address may not be a post office box or post restante and provided that such address shall be situated within the Republic of South Africa and shall not be effective until fourteen (14) days after receipt of such notice by the Association.
- 40.2 The service address for any legal process or delivery of any other document to a member shall be the street address of the Member's Erf.
- 40.3 An Owner may by written notice to the Association alter his or its' service address, provided that such new address may not be a post office box or post restante and provided that such address shall be situated within the Republic of South Africa and shall not be effective until fourteen (14) days after receipt of such notice by the Association.
- 40.4 The service address for any legal process or delivery of any other document to an Occupier or other Occupier shall be the street address of the Erf leased by the Occupier or otherwise occupied by the Occupier.

41. DELIVERY OF NOTICES

- 41.1 A notice by the Association to any Member in terms of the Constitution shall be in writing and shall be delivered to the Member, either by hand or by prepaid post properly addressed to the Member at his service address. It shall be competent to transmit the notice to a Member by electronic communication (e-mail) where the e-mail address of the Member is recorded in the records of the Association.
- 41.2 Any notice to a Member:
- 41.2.1 if delivered by prepaid post in a correctly addressed envelope to his service address, shall be deemed to have been received on the 5th day after the date when the notice was posted; or
 - 41.2.2 if delivered by hand to the Member, or to a responsible person at the service address of the Member, shall be deemed to have been received on the day of delivery; or
 - 41.2.3 sent by e-mail to the recorded e-mail address of the Member, shall be deemed to have been received on the 1st day after the date of transmission.
- 41.3 Notwithstanding anything to the contrary herein contained, a written notice actually received by a Member shall be adequate written notice to such Member notwithstanding that it was not delivered in accordance with clause 41.1 above.
- 41.4 A notice by a Member to the Association shall be in writing and shall be delivered to the Association either by hand or by prepaid post properly addressed to the Association at its Service address referred to in clause 5.1 above. It shall be competent to transmit a notice to the Association by electronic communication (e-mail) in terms of clause 5.2 above.

PART 13: ENFORCEMENT OF THE CONSTITUTION AND ANNEXURES

42. BREACH OF THE CONSTITUTION

- 42.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings against Members who are in breach of any of the provisions of the Constitution in accordance with the provisions of this clause.
- 42.2 If a Member commits a breach of any provision of the Constitution by failing to pay on due date any Levies, penalties or any other amounts payable by him to the Association in terms of the Constitution and a Member remains in default for more than thirty (30) days, the Trustees may, on behalf of the Association, institute legal proceedings against such Member in any court of competent jurisdiction for payment of such overdue Levies, penalties and/or other amounts.
- 42.3 Save for clause 42.2 above, if a Member commits any other breach of any provision of the Constitution and fails to commence to remedy that breach within a period of seven (7) days after the receipt of written notice to that effect by the Trustees, and to complete the remedying of such breach within a reasonable time or as may be specified in the notice, then the Trustees 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 terms of the Constitution, or in law, including the right to claim damages, to:
- 42.3.1 enter upon the Property and to take such action as may be reasonably required to remedy the breach and the Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand, and/or
- 42.3.2 institute legal proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary, and/or
- 42.3.3 in the event of a dispute, demand dispute resolution in terms of clause 46; and/or
- 42.3.4 apply to the competent Ombud in terms of the Community Schemes Ombud Service Act for such relief as the Trustees may consider necessary.
- 42.4 In the event that the Trustees institute proceedings against a Member in terms of the foregoing provisions, the Trustees shall be entitled to recover from such Member all legal costs incurred by the them, including attorney and own client charges, advocate's fees, tracing fees and collection commission and all other expenses and charges incurred by the Association in obtaining recovery of the arrear amounts due to the Association or in enforcing compliance with the provisions of the Constitution.
- 42.5 Aforesaid provisions may, where applicable, also be applied *mutatis mutandis* (with the necessary changes having been made) to Occupiers and Invitees.
- 42.6 Nothing in this clause shall be construed as prohibiting or preventing the Trustees, if considered necessary by them, from applying to court for an interdict or other urgent relief against any Member in breach of the Constitution, or in the event of a threatened or impending or ongoing breach by such Member of the Constitution.

43. DISPUTE RESOLUTION

- 43.1 Should any deadlock or dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise or a deadlock exist in relation to any matter which requires consensus between Members and/or between a Member and an Occupier and/or between a Member and/or Occupier and the Trustees or the Association (the parties) in the widest sense (hereinafter collectively referred to as a "dispute") in connection with–

- 43.1.1 the interpretation of;
- 43.1.2 the effect of;
- 43.1.3 their respective rights or obligations under;
- 43.1.4 a breach of (save for non-payment of Levies or any other amount due by a Member in terms of the Constitution),

the Constitution, such dispute may be referred to and be resolved by application to the Community Schemes Ombud Service in terms of the Community Schemes Ombud Service Act or may be referred for mediation and/or arbitration in terms of the further provisions of this clause 43.

- 43.2 In the event of any dispute arising, a party to the dispute must notify the other parties (to the dispute) by written notice of the dispute and the parties must attempt to resolve the dispute. The parties to the dispute must first engage each other, and where applicable, the Trustees, in good faith with a view to resolving the dispute within a period seven (7) Business Days after the date on which a party has first notified the other parties of the dispute. The parties may as an internal dispute resolution mechanism engage with each other telephonically and/or in writing and/or schedule a joint meeting and/or refer the dispute to the Trustees for consideration at a Trustees' meeting, which meeting/s must be recorded in writing.
- 43.3 If the dispute is not resolved as provided for in clause 43.2 above, a party to the dispute may, without prejudice of any other rights or remedies:
 - 43.3.1 apply to the Community Schemes Ombud Service in terms of the Community Schemes Ombud Service Act for an appropriate order; or
 - 43.3.2 refer the dispute to a mediator and/or arbitrator as contemplated in the further provisions of clause 43.
- 43.4 Prior to any dispute as aforesaid being determined by arbitration, immediately upon any person (to the dispute) requesting such arbitration, the dispute will be referred forthwith to a mediator for attempted resolution by such mediator, on the following basis:
 - 43.4.1 the mediation will be conducted by a mediator selected by agreement between the persons (to the dispute) and failing such agreement within seven (7) Business Days after a written request by the aggrieved person (to the dispute) to the others for such mediation, nominated on the application of either person by the chairperson for the time being of the Western Cape Provincial Council (Legal Practice Council), or its lawful successor;
 - 43.4.2 the persons (to the dispute) will not be entitled to be represented at any hearing before or at any meeting or in any discussion with the mediator except personally if an individual Member, or by a director of the company or member of a close corporation or trustee of a trust, who is the Member, or by a Trustee in the instance of the Association provided that, during the Development Period, such Trustee shall be a Developer Trustee;
 - 43.4.3 the mediator will, as he deems fit, follow formal and/or informal proceedings and receive evidence on submission, orally or in writing, sworn or unsworn, at joint meetings, with the persons (to the dispute) or separately as from any person whom he considers can assist in the formulation of his opinion, provided that:

- 43.4.3.1 each person (to the dispute) will be given reasonable opportunity of presenting evidence and submissions and of responding to evidence and submissions of any other person (to the dispute); and
- 43.4.3.2 each person (to the dispute) will be given full details of any evidence on submission received by the mediator from any other person (to the dispute) or any other person otherwise than at a meeting where all the persons (to the dispute) are present;
- 43.4.4 the mediator will have the power to propose to the persons (to the dispute) compromise settlements or agreements for the whole or portion of the dispute;
- 43.4.5 the mediator will as soon as is reasonably practicable give to each of the persons (to the dispute) his written opinion on the dispute, recording the details of any agreement reached between the persons (to the dispute) during the mediation;
- 43.4.6 the mediator's opinion will become binding on the persons (to the dispute) only to the extent correctly recorded as being agreed by the persons in the mediator's written opinion or otherwise as recorded in writing by the persons (to the dispute) subsequent to the receipt of the mediator's opinion;
- 43.5 the disputes on any matter still unresolved after the application of the foregoing provisions will be resolved by arbitration as set out below:
 - 43.5.1 save for reference to any portion of the mediator's opinion which has become binding in terms of clause 43.4.6 no reference will be made by or on behalf of any person (to the dispute) in any proceedings subsequent to mediation, to the mediator's opinion, or to the fact that any particular evidence was given, and to any submission statement or admission made in the course of the mediation; and/or
 - 43.5.2 in respect of the nature of the mediator's opinion, each of the persons will pay his own costs arising from this mediation and the persons (to the dispute) will pay in equal shares the fees and disbursements of the mediation based upon a scale of fees as agreed between the mediator and the persons (to the dispute) before the commencement of the mediation, and failing which agreement as determined by a nominee of the chairperson for the time being of the Western Cape Provincial Council (Legal Practice Council), or its lawful successor, as being fair and reasonable regard being had to the work done by the mediator.
- 43.6 Any person subject to the provisions of this Constitution may demand that a dispute be determined by arbitration by written notice given to any other person subject to this Constitution.
- 43.7 This clause 43 will not preclude any party (subject to the provisions of this Constitution) from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 43.8 The arbitration will be held –
 - 43.8.1 at a mutually acceptable place or venue in Paarl or in Cape Town;
 - 43.8.2 with the parties to the dispute and their authorised representatives and legal representatives present thereat;

43.8.3 *mutatis mutandis* (with the necessary changes having been made) in accordance with the provisions of the High Court Act, as amended, the rules promulgated in terms of that Act and the practice of the Western Cape High Court otherwise in terms of the Arbitration Act, 1965 (Act No. 42 of 1965), as amended;

it being the intention that the arbitration will be held and completed within twenty-one (21) business days after it was demanded.

43.9 The arbitrator, who will be a single arbitrator, will be, if the matter in dispute is principally-

43.9.1 a legal matter, a practising advocate or attorney of at least ten (10) years' standing;

43.9.2 an accounting matter, a practising chartered accountant and registered auditor of at least ten (10) years' standing;

43.9.3 any other matter, any independent person;

agreed upon between the persons to the dispute.

43.10 Should the persons to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within seven (7) Business Days after the arbitration was demanded, the matter will be deemed to be a legal matter.

43.11 Should the persons to the dispute fail to agree on an arbitrator within seven (7) Business Days after the expiry of the period referred to in clause 43.10, the arbitrator will be appointed at the request of any person to the dispute by a director of the Western Cape Provincial Council (Legal Practice Council) or its lawful successor.

43.12 The decision of the arbitrator will be final and binding on the persons to the dispute and may be made an order of the High Court of South Africa, Western Cape Division at the instance of any of the persons to the dispute.

43.13 The persons to the dispute are deemed to have consented to the jurisdiction of the High Court of South Africa, Western Cape Division in respect of any proceedings referred to in clause 43.12 of the Constitution.

43.14 The persons to the dispute must and will keep the arbitration, including the subject matter of the arbitration and the evidence heard during the arbitration, confidential and not disclose it to anyone except for purposes of an order to be made in terms of clause 43.12.

43.15 The provisions of this clause 43-

43.15.1 constitute an irrevocable consent by the persons to any proceedings in terms of this Constitution and no person (subject to this Constitution) will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and

43.15.2 are severable from the rest of this Constitution and will remain in effect despite the termination of or invalidity for any reason of this Constitution.

- 43.16 The above remedies subsist without prejudice to the right of any party to institute an action or launch an application in a court of competent jurisdiction. The above remedies subsist without prejudice to the right of any part to apply to the Community Schemes Ombud Service in terms of the Community Schemes Ombud Service Act for appropriate relief, upon the failure of the internal dispute resolution mechanism referred to in clause 43.2 above.
- 43.17 In respect of any claim arising from the non-payment of Levies or other amounts due by a Member to the Association under the Constitution, the Association and the Trustees will retain the common law remedies and the Association shall not be obliged to proceed with dispute resolution proceedings, and the Association shall not be precluded from instituting proceedings in a competent court with jurisdiction.

44. IMPOSITION OF PENALTIES

- 44.1 If the conduct of a Member, Occupier or Invitee constitutes a nuisance in the opinion of the Trustees or a contravention of a provision of the Constitution, the Trustees must by written notice inform the Member of the nuisance or contravention and warn the Member that if he or the Occupier fails to remedy the contravention, or persists in, or repeats such conduct or contravention, a penalty will be imposed on the Member concerned.
- 44.2 If, notwithstanding the written notice in terms of clause 44.1 above, the Member or Occupier fails to remedy the contravention or persist in or repeats such conduct or contravention, the Trustees may, by written notice impose a penalty on the Member. A written notice must be addressed to the Member specifying the penalty imposed, the reasons for imposing the penalty and informing the Member that if he disputes the decision of the Trustees, he must submit a signed and motivated complaint to the Trustees within 30 (thirty) days of the date of the written notice.
- 44.3 The penalty imposed under clause 44.2 above, shall become due on the date of the written notice and must be paid within thirty (30) days of the date of the written notice. Should the penalty remain unpaid, it shall be added to the Member's levy statement and shall be recovered from the Member in the same manner as applies to arrear Levies, together with interest at the rate applicable to arrear Levies.
- 44.4 The Trustees shall, from time to time, determine the amounts of penalties in respect of the various contraventions and in respect of first and successive contraventions, subject to the directions given or restrictions imposed by the Members on the Trustees by Ordinary Resolution passed at general meetings of the Association.
- 44.5 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the Member shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable for a penalty in respect of each such separate contravention.
- 44.6 A Member may at every step of the process as defined in this clause submit a signed and motivated complaint to the Trustees. If a Member disputes the decision of the Trustees to impose a penalty or the amount of the penalty imposed, the Member must within thirty (30) days of the date of the written notice in terms of clause 47.2 submit a signed and motivated complaint to the Trustees.
- 44.7 Upon receipt of the complaint, the Trustees may:
- 44.7.1 withdraw or reduce the penalty; or

- 44.7.2 schedule a Trustees' meeting for the purpose of considering the objection and invite the Member to attend the meeting and/or to be represented at the meeting.
- 44.8 At the said Trustees' meeting referred to in clause 47.7.2 above, the Member shall have the right to:
- 44.8.1 present his case;
- 44.8.2 present any evidence, including the calling of witnesses to substantiate his case;
- 44.8.3 cross-examine any person called as a witness in support of the charge;
- 44.8.4 have access to documents produced in evidence; and
- 44.8.5 produce mitigating factors.
- 44.9 The failure of the Member charged to attend the Trustees' meeting referred to in clause 44.7.2 shall not render the proceedings at the meeting void. Should the Member or his representative not attend the Trustees' meeting without providing a reasonable request for postponement, the Trustees may in their sole discretion continue with the Trustees' meeting and consider the objection in the absence of the Member.
- 44.10 Upon the conclusion of the Trustees' meeting, the Trustees shall deliberate the evidence, and if so resolved, they may:
- 44.10.1 uphold the penalty; or
- 44.10.2 withdraw or reduce the penalty.
- 44.11 If the Member does not agree with the resolution of the Trustees in terms of this clause, the Member may without prejudice to the other rights or remedies that may be available:
- 44.11.1 request the Trustees to refer the matter to a general meeting of the Members for their instructions; and/or
- 44.11.2 apply to the competent Ombud in terms of the Community Schemes Ombud Service Act for an appropriate order; and/or
- 44.11.3 institute proceedings in a court or tribunal for the judicial review of the resolutions of the Trustees.
- 44.12 The aforementioned provisions may, where appropriate, also be applied *mutatis mutandis* (with the necessary changes having been made) to Occupiers and Invitees.
- 44.13 For the duration of the Development Period the Developer shall be exempt from the payment of penalties to the Association.

PART 14: GENERAL

45. COMMUNITY SCHEMES OMBUD SERVICE ACT

- 45.1 The Trustees must ensure compliance with the obligations of the Association from time to time under the Community Schemes Ombud Service Act and must:

- 45.1.1 register the Association with the Community Schemes Ombud Service and amend the details from time to time;
 - 45.1.2 file with the Community Schemes Ombud Service such documents as may be required from time to time; and
 - 45.1.3 comply with the additional fiduciary duties as set out in the Community Schemes Ombud Service Act from time to time.
- 45.2 The Trustees must pay the levies due to the Community Schemes Ombud Service in terms of the Community Schemes Ombud Service Act. For the purpose of paying the levies due to the Community Schemes Ombud Service, the Trustees recover the levies from the Members, as far as possible in accordance with the apportionment as may be prescribed from time to time in terms of the Community Schemes Ombud Service Act.

46. DEFAMATION PRIVILEGE

Every Member of the Association and every Trustee shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee, to have waived as against every other Member, the Chairperson, every other Trustee, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the Association, or the Trustees, or any sub-committee, all claims and rights of action which such Member or Trustee might otherwise have had in law arising as a result of any statement, report, complaint, or notice of or concerning such Member or Trustee, or any reference to such Member or Trustee, made at any meeting of Trustees, or at a general meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false, unless made in bad faith or in gross negligence.

47. EXCLUSION OF LIABILITY

- 47.1 A Member, Occupier or Invitee or any other person present on the Common Areas or using the facilities or services of the Association does so entirely at their own risk and none of them shall have any claim against the Association or the Trustees of whatsoever nature arising from such use.
- 47.2 No Member, Occupier or Invitee or other person shall have a claim against the Association, the Trustees, the managing agent or any of the agents, employees or contractors of the Association of whatsoever nature arising from the use of the Common Areas, or the facilities or services of the Association nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise. No Member, Occupier or Invitee or other person shall have any claim against the Association as a result of fire or any substance, liquid or gas, escaping from any Property or the Common Areas and causing damage to any person or property of any person.
- 47.3 The Association, the Trustees, the managing agent and the agents, employees or contractors of the Association shall not be liable for any injury to any person (including loss of life) or loss or damage of any property, which a person may suffer or sustain whether directly or indirectly in or about the Common Areas, regardless of the cause thereof. The Association shall not be responsible for any theft of property occurring within the Estate.

47.4 Any claims shall be limited to the amount actually recovered by the Association from the receipt of proceeds of the public liability insurance of the Association, if any. If and to the extent that the Association does not have any such public indemnity liability insurance, no such person shall have any claim against the Association.

47.5 The Association shall not be liable for any damage suffered by a Member or Occupier or any other person present in the Estate by reason of power surges.

48. FAILURE OF ASSOCIATION TO MEET ITS OBLIGATIONS OR WINDING UP OF THE ASSOCIATION

48.1 If the Association ceases to function or carry out its obligations, Drakenstein Municipality or any affected person, including a Member, may apply:

48.1.1 in terms of section 15(2)(q) of the Drakenstein Planning By-law to disestablish the Association subject to:

48.1.1.1 the amendment of the conditions of approval to remove the obligation to establish an owners' association; and

48.1.1.2 the amendment of title conditions pertaining to the owners' association, to remove any obligation in respect of an owners' association; or

48.1.2 in terms of section 15(2)(r) of Drakenstein Planning By-law for appropriate action by Drakenstein Municipality to rectify a failure of the Association to meet any of its obligations in respect of the control over or maintenance of the Services arising from the subdivision; or

48.1.3 to the High Court of South Africa, Western Cape Division to appoint an administrator who must exercise the powers of the Association to the exclusion of the Association.

48.2 In considering an application contemplated in clause 48.1.1, Drakenstein Municipality must have regard to:

48.2.1 the purpose of the Association;

48.2.2 who will take over the control over and maintenance of services for which the Association is responsible; and

48.2.3 the impact of the disestablishment of the Association on the Members of the Association and the community concerned.

48.3 Drakenstein Municipality or the affected person may recover from the Members of the Association the amount of any expenditure incurred by Drakenstein Municipality or that affected person, as the case may be, in respect of any action taken in terms of clause 51.1 above. The amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association.

49. WINDING UP OF THE ASSOCIATION

49.1 The Association may be wound up by an order of the High Court of South Africa, Western Cape Division or by a resolution passed at a general meeting by the Members together holding not less than eighty percent (80%) of the votes of the Members and provided that:

- 49.3.1 the aforesaid resolution shall include arrangements for the transfer of Common Areas, in the event that the Association ceases to function; and
- 49.3.2 Drakenstein Municipality consents thereto in writing.
- 49.2 In the event of such winding up, it shall be the duty of the Trustees to comply with the conditions imposed in terms of the resolution, and/or by Drakenstein Municipality and/or the Western Cape High Court, as the case may be.
- 49.3 If the Association is dissolved, the Members must jointly pay the costs of:
 - 49.3.1 the transfer to Drakenstein Municipality of the Common Areas;
 - 49.3.2 the upgrading of the services to the standards required by Drakenstein Municipality.

PART 16: AMENDMENT OF THE CONSTITUTION AND ANNEXURES

50. AMENDMENT OF THE CONSTITUTION

- 50.1 The provisions of the Constitution may be added to, amended, substituted, or repealed from time to time by an Ordinary Resolution passed at a general meeting of the Association. The notice of the meeting shall specify the proposed addition, amendment, or substitution or the provision to be repealed.
- 50.2 The Constitution and any amendment thereof must be lodged with Drakenstein Municipality and the latest copy duly lodged with Drakenstein Municipality, shall be presumed to contain the operative provisions of the Constitution, provided that if an amendment of the Constitution affects Drakenstein Municipality or a provision referred to in section 29(3) of the Drakenstein Planning By-law, the amendment must also be approved by Drakenstein Municipality.
- 50.3 The Developer may for the duration of the Development Period in its sole discretion from time to time add to, amend, substitute or repeal any provisions of the Constitution and submit the amended Constitution to Drakenstein Municipality for approval. The Developer must notify the Members in writing of the proposed addition, amendment, or substitution of a provision of the Constitution or the provision of the Constitution to be repealed. The Members shall be granted a period of thirty (30) days from the date of the written notice to provide their comments to the Developer.
- 50.4 After the expiry of the thirty (30) day-period referred to in clause 53.3 above, the Developer shall be entitled to proceed with the proposed addition, amendment, substitution or repeal of a provision of the Constitution in its original form or in an amended form, provided that the Developer shall notify the Members of its decision.

51. AMENDMENT OF ANNEXURES TO CONSTITUTION

- 51.1 The General Plan may be compiled and amended from time to time by the Developer in its sole discretion for the duration of the Development Period.
- 51.2 The Design Guidelines may be compiled, added to, amended, substituted or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a resolution of the Trustees, subject to the provisions of clause 37 hereof. Any amendments to the Design Guidelines shall be lodged with Drakenstein Municipality.

- 51.3 The Estate Rules may be compiled, added to, amended, substituted or repealed from time to time by the Developer in its sole discretion for the duration of the Development Period and thereafter by a resolution of the Trustees.

PART 17: RIGHTS, POWERS, DUTIES AND EXEMPTIONS OF

52. RIGHTS IN RESPECT OF DEVELOPMENT

- 52.1 The Developer has a continuing and permanent interest in ensuring that certain provisions are entrenched for purpose of ensuring the success of the Estate. Accordingly, notwithstanding anything to the contrary herein contained, no provision of the Constitution may be deleted, amended or varied in any way during the Development Period without the prior written consent of the Developer.
- 52.2 The Developer shall, in its sole discretion, apply for and, subject to approval by Drakenstein Municipality, develop the Estate, initiate development projects, subdivide and/or consolidate Erven obtain approval of subdivisional plans, amend the Management Area, or amend the layout and/or zoning and/or size and/or boundaries of erven, and/or, subdivide or consolidate erven. The Developer may in its sole discretion, incorporate further areas into the Management Area. The Members shall be bound by the decision of the Developer in terms of the foregoing shall have no claim of whatever nature against the Developer arising therefrom. Insofar as the consent of Members may be required for any of the foregoing, the Developer is irrevocably granted a power of attorney to grant any/all such consents on behalf of the Members as may be required. Should Erf 8424 Paarl, which is situated within the boundaries of the Estate, be developed, the development may in the sole discretion of the Developer, or its successors in title and/or the owner of Erf 8424 Paarl be developed and incorporated into the Estate. Insofar as the consent of the Members may be required for any of the foregoing, the Developer, or its successors in title and/or the owner of Erf 8424 Paarl is irrevocably granted a power of attorney to grant any/all such consents on behalf of the Members as may be required. Erf 35932 Paarl will be subject to a servitude of right of way and access as a road to all pedestrians and/or vehicles authorised thereto by the owner of Erf 8424 Paarl. In the event of the incorporation of Erf 8424 into the Estate, the Trustees of the Association are irrevocably authorised to enter into a notarial deed of the cancellation for the cancellation of the foregoing servitude of right of way and access.
- 52.3 The Developer intends to develop and market the Estate in phases as the Developer deems fit in its sole discretion. Members and Occupiers may accordingly be exposed to such associated activities which may result in an amount of inconvenience and Members shall not interfere with or obstruct the Developer from proceeding with the Development in phases or to lodge an objection with any competent authority in respect of any such phased development.
- 52.4 The Developer shall be entitled to register servitudes in respect of the Management Area, including such servitudes as may be reflected on the Site Development Plan as may be necessary for the purposes of the installation and maintenance of all engineering services, including, inter alia, roads, gas, electricity, telephone, television, sewerage, storm water drainage, solid waste removal and water supply.
- 52.5 The Developer may cause the transfer of the Common Areas and cause the registration of servitudes within the Management Area as may be required to comply with Conditions of Approval or where required for reasonable purposes.
- 52.6 The Developer shall for the duration of the Development Period enjoy unrestricted rights to gain access and egress from the Management Area and access to and from the Common Areas and to continue with building operations.

- 52.7 The Developer shall for the duration of the Development Period enjoy unrestricted rights with regard to the marketing of the Development and, in particular, the right to erect signage within the Management Area. The Developer shall be entitled to utilise any one or more of its unsold buildings in the estate as a sales office and/or a show house.
- 52.8 In the event of a conflict between the provisions contained in this clause of the Constitution and any other provisions of the Constitution, the provisions of this clause shall prevail. Upon the expiry of the Development Period, the rights of the Developer in terms of this clause shall immediately automatically and no longer be of any force and effect.

53. RIGHTS IN RESPECT OF THE ASSOCIATION

- 53.1 The Developer shall, as from the date that the Constitution comes into force until the first annual general meeting of the Association, be empowered to perform and have all the powers, functions and duties of the Association and the Trustees in terms of the Constitution.
- 53.2 The Developer is hereby authorised to open a banking account with a registered financial institution of the Developer's choice in the name of the Association.
- 53.3 The Developer is empowered to amend the Constitution from time to time and to formulate and amend the Annexures to the Constitution from time to time.
- 53.4 The Developer must transfer the Common Areas to the Association. Upon registration of such transfer the risk in and of the Common Areas shall pass to the Association and the Association shall become responsible for the maintenance and upkeep thereof as well as for the rates and taxes and all charges attaching thereto.
- 53.5 The Developer shall appoint the Developer Trustees without delay.
- 53.6 The Developer Trustee shall preside at the first annual general meeting of the Association until such time as a chairperson has been elected to perform such function. The Developer Trustees shall represent the Developer's interests during the Development Period on the Trustees and at general meetings of the Association. No decision of the Trustees or resolution of the Members shall be of any force or effect unless the Developer Trustees vote in favour thereof.
- 53.7 For the duration of the Development Period no Trustees' meeting shall proceed unless a Developer Trustee is present in person or represented by a proxy or by an authorised representative. For the duration of the Development Period, the Developer Trustee shall be entitled to the number of votes equal to the number of Trustees from time to time plus one (1) vote.
- 53.8 For the duration of the Development Period no general meeting of the Association shall proceed unless a Developer Trustee is present in person or represented by a proxy or by an authorised representative.
- 53.9 During the Development Period, no Ordinary Resolution at a general meeting shall be of any force or effect unless the Developer Trustee votes in favour thereof.
- 53.10 For duration of the Development Period, the Developer shall not be obliged to pay Levies to the Association in respect of unimproved and/or unoccupied Erven owned by it until occupation certificates have been issued by the Drakenstein Municipality.

- 53.11 In the event of a conflict between the provisions contained in this clause of the Constitution and any other provisions of the Constitution, the provisions of this clause shall prevail. Upon the expiry of the Development Period, the rights of the Developer in terms of this clause shall immediately automatically and no longer be of any force and effect.

54. RESTRICTIONS ON DEVELOPMENT BY MEMBERS

- 54.1 For the duration of the Development Period, a Member shall obtain the prior written consent of the Developer to:

54.1.1 construct an Improvement on any Erf within the Management Area;

54.1.2 submit an application for any rezoning, subdivision, departure, consent use, or amendment of any other condition of approval relating to any Property in terms of any law governing development rights to the relevant competent authority;

54.1.3 consolidate two or more Erven into one Erf; and

54.1.4 subdivide an Erf into two or more Erven.

- 54.2 In the event of a conflict between the provisions contained in this clause of the Constitution and any other provisions of the Constitution, the provisions of this clause shall prevail. Upon the expiry of the Development Period, the rights of the Developer in terms of this clause shall immediately automatically and no longer be of any force and effect.

55. SPECIAL ARRANGEMENTS WITH REGARD TO ERF 8424 PAARL

- 55.1 The Association shall be obliged to provide certain services to and perform certain functions for the owner of Erf 8424 Paarl ("Erf 8424") free of charge (unless stated otherwise) on the terms set out herein. In this regard, and on condition that the owner of Erf 8424 complies with all of the Estate Rules, the Association shall:

55.1.1 Trim and maintain the outside part of the hedge (facing the Erven) on the boundary of Erf 8424;

55.1.2 Allow the owner of Erf 8424 to install green shade-netting on the inside part of the all-view fence erected on the boundary of Erf 8424;

55.1.3 If requested to do so by the owner of Erf 8424, install a post-box, designated to the owner of Erf 8424, in the same manner, form and location as that of the post boxes of the members of the Association;

55.1.4 Collect a single refuse bin (240 litre wheelie bin) from the entrance leading to Erf 8424, on the days and at the frequency as refuse bins are collected from the members of the Association;

55.1.5 Maintain the sewer system to the boundary point of connection on Erf 8424, without taking any responsibility for any sewer installations on Erf 8424;

55.1.6 Receive storm water run-off from Erf 8424 into the storm water system and/or the detention ponds on erven 35888 and 35926 Paarl;

55.1.7 Allow the owner of Erf 8424 and visitors to Erf 8424 to use the access control system, which shall include the following:

- a) The owner of Erf 8424, and a maximum of 4 (four) of its nominated guests shall be enrolled on the access control database.
- b) Access will be controlled by a biometric access control system as used by the Association,
- c) Access of visitors will be controlled by "at gate screening" and VoIP calls to the owner of Erf 8424;

55.1.8 Allow the owner of Erf 8424 free movement (including the right to walk dogs on a leash) over Erf 35932 Paarl (internal road) to be exercised in accordance with the Estate Rules;

55.2 The Owner of Erf 8424 shall not be allowed to use private facilities reserved for members of the Association, such as gardens, parks, gym equipment and the private erven that belong to the Members.

55.3 The members of the Association and their visitors shall not be allowed to access Erf 8424 unless it is consented to by the owner of Erf 8424.

55.4 Communication between the owner of Erf 8424 and the Association shall be done via the management agent appointed by the Association from time to time.

Annexure A
The General Plan

Annexure B
The Design Guidelines

Annexure C
The Estate Rules