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Reference: 15/4/1 (35495)P
Date: 20 August 2021

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Dear Me Hopkins

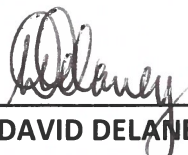
ESTABLISHMENT OF HOMEOWNERS' ASSOCIATION FOR KLEINE PARYS ESTATE II (SUBDIVISION OF ERF 34729 PAARL)

Your land use application with reference number 1601192, refers.

Approval, from a local government perspective, was granted in terms of Section 60(2) of the Drakenstein Bylaw on Municipal Land Use Planning, 2018, for the establishment of Kleine Parys Estate II Home Owners' Association, as contained its constitution, attached as Annexure A.

Notification of the decision will be placed on the municipal website and any person, whose rights are affected by the decisions above, may appeal in writing in terms of Section 62(3) of the Municipal Systems Act, Act No 32 of 2000 to the Appeal Authority as stipulated in terms of Section 79(2) of the Drakenstein Bylaw on Municipal Land Use Planning, 2018.

Yours sincerely



DAVID DELANEY
SENIOR MANAGER: PLANNING SERVICES



CONSTITUTION OF THE KLEINE PARYS ESTATE 2 HOME OWNER'S ASSOCIATION
Made in terms of Drakenstein Municipal Zoning Scheme By-Law

DRAKENSTEIN MUNICIPALITY

Approved in terms of Section 60 of the Drakenstein
Municipal Land Use Planning By-Law, 2018
Date: 18 August 2021
Ref 15/4/1 (35495) P



SENIOR MANAGER: PLANNING SERVICES

INTRODUCTION

1. Definitions

In the interpretation of this Constitution, unless the context otherwise indicates –

- 1.1 “Alienate” shall mean alienate any erf or portion thereof, or any section in a Scheme, and includes alienation by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency, or liquidation, irrespective of whether such alienation is subject to a condition precedent and Alienation shall have a corresponding meaning;
- 1.2 “Architectural Design Guidelines” means the architectural design guidelines, in relation to additions, alterations and extensions to existing dwellings, attached as Annexure B;
- 1.3 “Association” shall mean the Kleine Parys Estate II Homeowners’ Association as established in terms of Clause 3;
- 1.4 “Auditors” shall mean the auditors of the Association;
- 1.5 “Body Corporate” shall mean a body corporate established in terms of the Sectional Titles Act;
- 1.6 “CEMP” means the Construction Environmental Management plan attached as Annexure C;
- 1.7 “Common Property” shall mean the private open spaces in the Estate, including –
 - 1.7.1 the retention dams;
 - 1.7.2 the gateways, entrance buildings, security fences, boundary walls, roadways, walkways and common parking areas;
 - 1.7.3 the park areas, landscaping and water features;
 - 1.7.4 the other improvements from time to time erected on the private open spaces in the Estate; but excluding any residential Erven, Sections and any commercial enterprise on the Estate;
 - 1.7.5 the roadways and landscaping in and around the Scheme but excluding all other common property in the Scheme; and
 - 1.7.6 all private combined services (water, sewer, storm water and roads).
- 1.8 “Code of Conduct for Builders” means the Code of Conduct for Builders attached as Annexure E;
- 1.9 “Constitution” shall mean this document with the annexures thereto;
- 1.10 “Conduct Rules” shall mean all rules and regulations made and issued in terms of clause 7.2 and / or Clause 59 of this Constitution, and shall include Provisions for penalties for the contravention thereof and of the provisions of this Constitution, as from time to time determined by the Board of Trustees in terms of Clause 60;
- 1.11 “Days” shall mean all calendar days;
- 1.12 “Design Review Committee” means the Design Review Committee appointed by the Association from time to time;



- 1.13 "Developer" shall mean **KLEIN PARYS LEISURE PTY LTD** (Registration Number 2004/014715/07) a duly registered South African Company;
- 1.14 "Developer Trustee" shall mean a Trustee appointed by the Developer;
- 1.15 "Development Period" shall mean the period from inception until all the Erven and Sections in the Development has been transferred from the Developer; alternatively, the date on which the Developer notifies the Association in writing that he terminates the Development period;
- 1.15 "domicilium" shall mean the domicilium citandi et executandi of the Association or of a member, as the case may be, as contemplated in Clause 76;
- 1.16 "Dwelling Unit" means:
- 1.16.1 a Unit capable of being occupied by a separate family unit,
- 1.16.2 a Unit which contains a kitchen separate from other Units on a Residential Erf;
- 1.16.3 excludes a Section in a Sectional Title Scheme, staff quarters and a granny flat which for purposes of this document shall mean a Unit occupied by no more than one person that forms part of a family unit occupying another Unit on the same Residential Erf;
- 1.17 "EMP's" means the CEMP and/or the OEMP, collectively or separately;
- 1.18 "Erf" or "Erven" shall mean a portion or portions of land privately owned by a Member within the Estate, which shall have been allocated a cadastral number by the Surveyor General (upon the approval of the General Plans), Including single residential sites;
- 1.19 "Estate" shall mean certain immovable property being **ERF 34726 & 34727 PAARL** as demarcated on the site development plan attached hereto, as well as the Sections comprised in a Scheme, if included in the Estate;
- 1.20 "Estate Agent" shall mean an estate agent contracted by a Member for the letting or reselling of his/her Erven or Section(s), approved and listed by the Developer for as long as the Developer remains a member and, thereafter, by the Association;
- 1.21 "General Plan" means the General Plans relating to the Land as approved by the Surveyor General;
- 1.22 "Group Site" means those sites demarcated as Group Sites on the General Plan and as may be subdivided or otherwise developed into sectional title schemes;
- 1.23 "Improvements" shall mean any structure of whatever nature constructed or erected or to be constructed or erected on an Erf, and shall include any alterations, additions or extensions to such improvements;
- 1.24 "Levy" shall mean the monthly levy determined under Clause 40, the interim monthly levy determined under Clause 41 or the special levy contemplated in Clause 42, as the case may be;
- 1.25.1 "Local Authority" or "Drakenstein" shall mean Drakenstein Municipality, having jurisdiction over the Estate.

- 1.26 "Managing Agent" shall mean any person or body appointed by the Association as an independent contractor to undertake any of the functions of the Association;
- 1.27 "Member" shall mean a Member of the Association as defined in Clause 5. If a Member consists of more than one person, such person shall be jointly and severally liable for all obligations due in terms of this Constitution;
- 1.28 "Member Trustee" shall mean a trustee appointed by the Members;
- 1.29 "Occupant or Occupier" means any person lawfully occupying an Erf and/or a Section by virtue of an agreement concluded with a Member;
- 1.29 "OEMP" means the Operational Environmental Management Plan attached as Annexure D;
- 1.30 "person" with regard to Membership of the Association, shall include a company, partnership, trustees of trust, or other association of persons entitled in law to hold title to immovable property;
- 1.31 "Sectional Titles Act" shall mean the Sectional Titles Act No 95 of 1986 as amended or any substitution thereof including the Sectional Title Schemes Management Act 8 of 2011;
- 1.32 "Section" shall mean a section as defined in the Sectional Titles Act;
- 1.33 "Scheme" shall mean the sectional title scheme to be established on any appropriately zoned site within the Estate, as extended or otherwise, in terms of the Sectional Titles Act;
- 1.34 "Spouse" shall mean a person legally married to another person, including customary marriages, partners in long-term monogamous relationships and cohabiting partners of the same gender;
- 1.35 "Board of Trustees" and "trustees" shall mean the Board of Trustees of the Association contemplated in Clause 8, comprising the Developer Trustees and the Member Trustees, and includes alternate and co-opted Trustees;
- 1.36 "Unit" of "units" in relation to a Scheme shall mean a Section together with its undivided share in the Common Property apportioned to that Section in accordance with the participation quota of such Section;
- 1.37 words and expressions to which a meaning has been assigned in this Constitutions shall bear the meaning so assigned to them; and
- 1.38 words importing –
- 1.38.1 the singular number shall include the plural number, and the converse shall also apply; and
- 1.38.2 the masculine and feminine genders shall include the neuter gender, and the converse shall also apply;
- 1.39 If any provision if this 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 this Constitution.

2. Headings

The headings to the respective Clause are provided for convenience of reference only and shall not be taken into account in the interpretation of the provisions of this Constitution.



HOMEOWNERS' ASSOCIATION

3. Establishment of Association

- 3.1 There shall be only one overall Association for the Estate, which Association shall be governed by this Constitution, and shall be known as the **KLEINE PARYS ESTATE 2 HOME OWNERS' ASSOCIATION**.
- 3.2 The Association shall come into being upon the transfer of the first Erf and be structured as a common law association not for profit and without capital.

4. Objective of Association

The objective of the Association is to promote the collective interests of all its Members by performing the functions entrusted to it by or under this Constitution, which functions shall include, but not be limited to the functions –

- 4.1 to determine and maintain standards for community-living in the Estate in such a way that its Members may derive the maximum collective benefit therefrom;
- 4.2 subject to clause 73.8 below, to determine and preserve the basic aesthetic standards, including the basic architectural style, in the Estate;
- 4.3 to control the transfer of Erven and Units in the Estate and the conditions imposed by the Local Authority and to enforce conditions by the Developer in the Agreement of Sale between the Developer and the first owner of an Erf or Unit;
- 4.4 ensure the control, maintenance, upkeep, upgrading and installation, where required, of common services serving the Estate, such as, but not limited to, the sewerage and drinking water reticulation and storm water systems, security fences and private roads, and which obligation shall include, without limitation, control of bulk service infrastructure serving the Estate pursuant to pipeline and other servitudes registered in its favour over adjacent properties;
- 4.5 to take transfer of, maintain and insure, where necessary, the roads, the gatehouse, private open space and improvements thereupon in the Estate and to control the usage thereof and of the facilities belonging to the Association of falling under its control;
- 4.6 to maintain and control the Common property in the Estate for the mutual benefit of its Members, including the landscaping and the preservation of the natural vegetation;
- 4.7 to introduce traffic calming measures;
- 4.8 to monitor and enforce compliance with the provisions of this Constitution, the conduct Rules, and the EMPs,
- 4.9 to impose fines and other penalties that may be payable by and enforced against Members of the Association,
- 4.10 to ensure that all Municipal By laws are complied with, including any water restriction conditions imposed from time to time;
- 4.11. To make sure that the subdivision conditions imposed by Drakenstein when approving the Estate are at all times complied with;

- 4.12 in order to give to the abovementioned objects, to make rule to accomplish these objectives; and
- 4.13 to regulate Dwelling Units and Sections contained in Sectional Title Schemes on Residential Erven by requiring that the Owners of such Sections become Members of the Association when a Certificate of Registered Sectional Title is issued to such owner.

5. Membership of Association

- 5.1 Upon registration of ownership of an Erf or unit in the Estate, the owner of such Erf or Unit shall automatically become a Member of the Association and shall be obliged to comply with the provisions of this Constitution, the Conduct Rules, and the EMPs. Where an owner comprises more than one person, such person shall be deemed jointly to be one Member of the Association and shall be responsible jointly and severally for the obligations of such membership.
- 5.2 Ownership of an Erf or Unit, and thus Membership of the Association, shall be evidence by registered ownership in the Deeds Registry in Cape Town of one or more Erven or Units in the Estate.
- 5.3 No Person shall cease to be a Member while remaining the registered owner of an Erf or Unit in the Estate.
- 5.4 Membership shall, subject to the provisions of Clause 67, be transferred by registration of a Deed of Transfer in the Deeds Registry at Cape Town, passing transfer of one or more Erven or Units in the Estate to a new Member.

6. Status of Association

- 6.1 The Association shall be an association as contemplated in section 29 of the *Land Use Planning Ordinance, 1985 (No 15 of 1985)*.
- 6.2 The Association shall have legal personality, perpetual succession, and be capable of suing and being sued in its own name.
- 6.3 The Association shall be not for profit, but for the benefit of its Members.
- 6.4 The provisions of the Companies Act, No 7 of 2008, as amended, shall not apply in respect of the Association.
- 6.5 None of the Members in their personal capacities shall have any right, to title or interest to or in the property, funds or assets of the Association.

7. Powers of Association

The association may exercise the power conferred upon it by or under this Constitution, and such powers shall include, but not be limited to, the powers –

- 7.1 to establish for administrative expenses a fund sufficient in the opinion of Members for the repair, upkeep, control, management and administration of the Common Property (including provision for maintenance of all roads, security and services infrastructure), for the repayment of rates and taxes and other charges by any competent authority and of any premiums of insurance, and for the discharge of any duty or the fulfilment of any other obligation of the Association;



- 7.2 to make and enforce such Conduct Rules, including rules to regulate access and egress control and building operation, and to issue and enforce such Architectural Design Guidelines, EMP' and code of conduct for builders as it may from time to time deem necessary to achieve its objects and to perform its functions;
- 7.3 to engage an estate manager and such agents, employees, and other persons, professionals and service providers as it may deem necessary to assist the Association to achieve its objectives and to perform its functions;
- 7.4 to acquire movable property required to facilitate its functions;
- 7.5 when essential for the proper fulfilment of its functions, and subject to approval by the Members in general meeting, to acquire, sell, or mortgage immovable property;
- 7.6 to borrow money required to the proper performance of its functions;
- 7.7 to secure repayment of moneys borrowed and interest by hypothecation of Levies or by mortgaging property held by it;
- 7.8 to invest funds held by it with any registered financial service provider, in the discretion of the trustees;
- 7.9 to enter into an agreement with any owner for the provision of amenities or services;
- 7.10 to ensure compliance with any law relating to the Common Property;
- 7.11 to do all things reasonably necessary for –
 - 7.11.1 the control, management and administration of the affairs of the Association, including the maintenance of the Common Property and security and services infrastructure; and
 - 7.11.2 the implementation and enforcement of the provisions of the Constitution, the EMPs, and the Conduct Rules made thereunder;
- 7.12 to incur reasonable expenses in the discharge of any duty or fulfilment of any other obligation of the Association, from time to time to determine the amounts required to defray such expenses, and to raise these amounts by collection Levies from Member;
- 7.13 to construct, control, repair, replace and maintain all services, including infrastructure on servitude areas registered in its favour over adjacent properties;
- 7.14 to maintain the retention dams on the Estate; and
- 7.15 To Pay the bulk water account, maintain and manage the individual property meters. Be responsible for the upkeep of the individual water meters, replacement thereof if required and testing of water meters if required by the individual consumers, in compliance with the Metrology Act stipulation and limits.

8. Phases

- 8.1 The Developer intends to develop and market the Estate in phases as the Developer deems fit and, during and after the Development Period, the Developer shall enjoy unrestricted rights with regards to the marketing of the Estate generally and erven or units in the Estate specifically and, in particular, the right to erect signage within and outside the Estate.



8.2 The Developer shall, in its absolute discretion, be entitled to apply for and subject to approval by the Local Authority, expand the Estate to include additional land or to vary the layout and/or zoning and/or size and/or boundaries of the Estate or Erven and/or the extent and position of streets comprising the Estate and Members shall be bound thereby and shall have no claim of whatever nature against the Developer arising there from: Provided that the Developer shall not be entitled to change an Erf which has been sold by the Developer in any other way than that provided for in the Deed of Sale in respect of such Erf. Insofar as the consent of a Member is required for any of the afore going, the developer (represented by any one of its Directors) is irrevocably granted a power of attorney to grant any/all such consents on behalf of Members, as may be required.

9. **Members' Obligations**

9.1 Every Member is obliged to comply with;

9.1.1 the provisions of the Constitution and all rules or regulations passed by the Association or the trustees;

9.1.2 the provisions of the Conduct Rules annexed hereto;

9.1.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member;

9.1.4 any directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution.

9.2 The rights and obligations of a Member are not transferable and every Member shall:

9.2.1 to the best of his ability, further the objectives and interests of the Association;

9.2.2 observe all directives made or given by the Association and/or the Trustees.

9.3 The Members shall be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein.

9.4 A Member shall not be entitled to alienate or transfer an Erf or Unit without the written consent of the Developer for as long as the Developer is a Member and, thereafter, by the Trustees which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this Constitution.

9.5 A Member shall not consolidate an Erf with one or more Erven without the written consent of the Developer for as long as the Developer is a Member and, thereafter, of the Association.

9.6 When granting a request for consolidation of Erven, the Association reserves the right to impose conditions regarding the building parameters of the property and levies payable so as to ensure that the levy base of the Association is not unduly compromised.

9.7 This will however not limit the rights of the Developer to consolidate Erven that have not been transferred.

9.8 Member shall not alienate or transfer an Erf or Unit unless:



- 9.8.1 the proposed transferee has irrevocably bound himself to become a member of the Association and to observe the Constitution for the duration of his ownership of the Erf or Unit;
- 9.8.2 the Association has issued a clearance that 1% of the Selling Price of a residential Erf and any improvements thereon has been paid to the Association or provision has been made for same to be paid on transfer. The Association shall establish a levy stabilisation fund (the "fund") for carrying out its main objectives and the provisions of this Constitution. It shall be a condition of membership of the Association that each Registered Owner shall be liable for a contribution to the fund as set out in this paragraphs 9.8.2:
- 9.8.2.1 The fund shall be financed in the discretion of the Association if supplementation is required by a contribution in the form of a levy imposed upon a Registered Owner when alienating or otherwise disposing of a Residential Erf or Sectional Title Section.
- 9.8.2.2 In the case of deemed alienations of Residential Erven of Sectional Title Sections by juristic persons by means of the transfer of shares, member's interest or interest in a trust that attracts transfer duty, a further contribution to the levy stabilisation fund shall, upon such alienation, become due by the juristic person in the discretion of the Association if supplementation is required, notwithstanding that the juristic person remains the Owner of the Residential Erf or Sectional Title Section. The object, in this regard, shall be to ensure that where there is a material change in the beneficial ownership or controlling interest of the juristic person [for example, by the members of a close corporation selling their interests to one or more other persons, or by the beneficiaries of a trust transferring their interest to one or more other persons], the juristic person shall become liable for a further contribution to the levy stabilisation fund on the same basis that would have applied if the said juristic person had become a "new Owner" of the Unit. Notwithstanding the above, a material change in beneficial ownership or in the controlling interest which results from alienation by way of succession, whether testate or intestate, shall not give rise to an obligation on the part of the juristic person or its new representative Member to pay a contribution to the levy stabilisation fund.
- 9.8.2.3 The contribution shall be equivalent to a maximum of 1 percent of the selling price of the Residential Erf, or Sectional Title Section including any improvements thereon or the selling price of any interest in a juristic person that owns such Residential Erf or Sectional Title Section and any improvements thereon, which sale effectively constitutes a transfer of the property. Such levy on the sale of an interest in a juristic person shall be paid to the Association by the Registered Owner on date of registration of such interest at the Registrar of Companies or the Master's Office and once paid the now ex-owner of such interest shall not be entitled to a refund of the levy stabilisation fund contribution paid by him.
- 9.8.2.4 The fund shall be used to meet any extraordinary expenditure and expenditure of a capital nature to be incurred by the Association for unexpected and long-term planned maintenance and improvements.
- 9.8.2.5 The fund shall be used exclusively for common immovable property owned and governed by the Association.
- 9.8.2.6 The fund shall be accounted for and managed as a fund separate from monthly levies.



- 9.8.2.7 The fund shall be placed in a competitive and separate investment account to maximise interest thereon.
- 9.8.2.8 Funds as and when they are required from the fund may only be transferred from the investment account after obtaining a written resolution from the Trustees which resolution shall record the specific application of such funds.
- 9.8.3 the Association has issued a clearance that all amounts owing to the Association by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution;
- 9.8.4 the proposed transferee acknowledges that upon the registration of the Erf of Unit into his name, he shall ipso facto become a Member of the Association.
- 9.9 A Member shall be liable to pay building penalties to the Association if the dwelling on the property is not completed within 3 (three) years from date of transfer of the property from the Developer which penalty shall be equal to twice the normal monthly levy and furthermore if the dwelling on the property is not completed within 5 (five) years equal to thrice the normal monthly levy on the following basis:
- 9.9.1 construction of the dwelling is not commenced within 3 (three) or 5 (five) years (as the case may be) from date of transfer of the property into the name of the Purchaser, and
- 9.9.2 completed within 1 (one) year from date of commencement of such construction process, which shall be undertaken on a continuous basis; and
- 9.9.3 In addition to the above, the Developer shall have the right at any time to purchase the property from the Purchaser or his successors in title for an amount equal to the price for which the Purchaser purchased the property from the Developer in the event that building work has not commenced within 5 (five) years from date of transfer of the property into the name of the Purchaser.
- 9.10 No Member shall let or otherwise part with the occupation of his Erf of Unit whether temporarily or otherwise unless the proposed occupier has agree to be bound by this Constitution. The Member shall, nonetheless, remain bound by this Constitution and is required to ensure compliance therewith by such occupier.
- 9.12 No Member shall apply for the rezoning of his Erf or Unit with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf or Unit for any purpose other than the permitted use applicable upon establishment of the Estate. In particular, no Member shall be allowed to use his Erf or Unit for the supply of temporary accommodation for consideration and/or letting out on a short term basis, i.e for periods shorter that one month, other that the uses envisaged here-in.
- 9.13 No Member shall conduct any business on an Erf or in a Unit other that the uses envisaged here-in for purposes other than residential purposes unless the Trustees have, subject to Clause 9.10, in writing, approved the use to which the Erf is to be put and the Local Authority has, to the extent that it may be necessary, granted approval authorizing such use in terms of applicable laws and regulations and there has been compliance with the following:



- 9.13.1 any Member wishing to conduct a business on this Erf or in his Unit or who wishes to use his Erf of Unit for purposes other than residential, shall apply in writing to the Board of Trustees for permission to do so. The Trustees shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the Trustees deem necessary;
- 9.13.2 an application in terms of the afore going shall contain in full description of the proposed business or usage, including but not limited to:
- 9.13.2.1 the type of business;
 - 9.13.2.2 the number of full time and/or part time staff;
 - 9.13.2.3 the times and duration of the business operation, including the number of days per week;
 - 9.13.2.4 the projected growth of the business operation;
 - 9.13.2.5 Whether any alteration to the existing Improvements is proposed;
 - 9.13.2.6 in which portion of the Improvements the business activity is to be located;
 - 9.13.2.7 the number and type of vehicles which will be regularly involved in the business operation;
 - 9.13.2.8 the estimated number of visitors per week resulting from the business operation;
 - 9.13.2.9 the estimated number of deliveries necessitated by the business operation;
 - 9.13.2.10 what provision is to be made for parking;
 - 9.13.2.11 the likely impact of the business operation on neighbouring properties and the neighbourhood in general;
- 9.13.3 The Trustees shall not approve any such application unless they are satisfied that the application complies with the following:
- 9.13.3.1 the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of neighbours;
 - 9.13.3.2 the number of employees involved in the running of the business operation will not exceed 2 (two);
 - 9.13.3.3 the Member will reside permanently on the Erf or in the Unit in respect whereof the application is made;
 - 9.13.3.4 Members who are affected by the application are in agreement therewith;
 - 9.13.3.5 adequate provision has been made for parking within the Erf or at the Scheme and the landscaping of the Erf will be suitable for the type of business contemplated and that no parking of vehicles off the Erf within the Estate will result from the business operation;

- 9.13.3.6 the granting of the application will not have any significant effect on the density of traffic in the Estate;
 - 9.13.3.7 non-residents will not be afforded uncontrolled access into the Estate;
 - 9.13.3.8 no signage will be erected;
 - 9.13.3.9 the hours of the business operation will be confined between 08h00 and 18h00 on weekdays and no business will be conducted on Saturdays, Sundays and proclaimed public holidays.
- 9.13.4 Should any Member to whom permission has been granted for the conduct of a business change any aspect of such business then such Member shall submit a new application in accordance with the provisions hereof to continue such business.
- 9.13.5 No Member to whom approval has been granted shall be entitled to erect any sign or advertisement on his Erf, at his Unit or on any of the common areas in the Estate in connection with such business, save with the approval of the Association.
- 9.13.6 The board of Trustees shall not at any time or under any circumstances be entitled to approve the use of an Erf of Unit for the supply of temporary accommodation for consideration.
- 9.14 No Member shall be entitled to:
- 9.14.1 At any time operate a guest house on his Erf or from his Unit;
 - 9.14.2 Lease his Erf for any period less than 30 (thirty) days without the approval of the Association;
- 9.15 Notwithstanding anything else herein contained, the Developer shall be entitled to have a commercial office at the site(s) designated in terms of Clause 10.2 below, it being expressly agreed and recorded that the Developer shall be entitled to conduct such business operations from this site as he may elect in his sole and unfettered discretion, which shall include the right to display appropriate signage of such business (including, specifically, signage of any estate agency) on or about the Estate.
- 9.16 No Member shall permit the number of occupants of his Erf or Unit to exceed 2 (two) persons per bedroom, The word "occupants" shall include but shall not be limited to any person who resides or stays on such Erf or in such Unit on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the owner or whether such person pays rental or give any other form of consideration in respect of such Erf or Unit or any portion thereof.
- 9.17 No Member or anyone under his control shall cause any damage to any infrastructure or common property, and if so shall be liable to the Association for the cost of repair of such damage caused.
- 9.18 A Member may not resign from the Association.
- 10 Status and rights of the Developer and Previous Land Owner**
- 10.1 No person or any Member of the Association shall prevent or hinder any way the Developer from:
- 10.1.1 gaining access to and egress from the Estate;



- 10.1.2 continuing its building and/or construction operations at the Estate;
 - 10.1.3 marketing and selling any Erven or Units;
 - 10.1.4 generally carrying on its business operations, provided that the provisions of clause 10.1.1 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless 48 hours prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants property or improvements thereon to the satisfaction of the Member. No Member shall be entitled to refuse the Developer immediate access if the required notice has been given.
 - 10.1.5 the Developer shall have the sole right of appointment and dismissal of any Managing Agent during the Development period.
- 10.2 The Developer has reserved the right and shall be entitled to build and establish on the Estate a sales centre with adjacent parking, as well as any other amenities and facilities as it deems fit in its sole discretion. The Developer has furthermore reserved the right to subdivide from the Estate the site of such aforesaid amenities and facilities as a separate Erf or Erven, or to enter into a 99 (ninety nine) year long term lease in respect of such sites in the event that subdivision of the site is not approved by the Local Authority, and shall be entitled to dispose of and/or operate the aforementioned amenities and facilities for its own benefit, separate and independent from the remainder of the Estate.
- 10.3 The Developer has reserved the right in its sole discretion, to establish and locate the amenities and facilities referred to in 10.2 on any portion of the Estate, save such Erven that have already been sold to owners other than the Developer, with the approval of the Local Authority.
- 10.4 The common property and other recreational facilities not forming part of the facilities set out in 10.2 above shall be transferred to the Association by the Developer at the discretion of the Developer, but before completion of the Estate.
- 10.5 The Association will not be entitled to change, amend or impact on the rights of the Developer or his successors in title in respect of the amenities and facilities referred to in 10.2 above, without obtaining the written consent of the Developer or his successors in title beforehand.
- 10.6 It is recorded that **ERF 34726 & 34727 PAARL** was sold to the Developer without any water rights which was retained by the previous registered owner in terms of the Deed of Alienation.

11. Access to the Estate and Servitudes

- 11.1 There shall be sufficient permanent entrances to the Estate, one each to each of the phases.
- 11.2 It is recorded that officials, employees and contractors employed by the Association, Local Authority and/or any public service company shall, at all times, have reasonable access to the Erven, Scheme and Private Spaces for purposes of inspecting and/or maintaining all services.
- 11.3 In as much as the Sales Centre and other facilities and amenities referred to in 10.2 above fall within the Estate and access thereto will be necessitated via Common Property, the Association shall be obliged and is hereby irrevocably authorized and empowered on behalf of the Members to give access over Common Property to and in favour of the Sales Centre and other facilities and amenities aforesaid.

- 11.4 The Developer shall ensure that suitable servitudes will be given to Members along the internal perimeter of the Estate as to provide them with access to footpaths, bike and running trails and access to the dams and other recreational areas.
- 11.5 It is recorded that the entrance at the existing workers houses will not be for the use of Members in the Estate, but only for the use of Klein Parys Vineyards (Pty) Ltd or its successors in title as the owner of the remainder of the farm. An arrangement for access of the Members of the Estate to the facilities offered by the remainder of the Farm may be agreed.
- 11.6 It is recorded that a sewerage line runs across Erven 39751 – 39783 PAARL. It is further recorded that the Association shall require access to the properties referred to herein for the purposes of maintaining such sewerage line from time to time. Furthermore, it is recorded that the Association is entitled to record certain building restrictions as well as restrictions on the planting of certain kinds of vegetation as a result of the presence of such line in the Code of Conduct from time to time.

BOARD OF TRUSTEES

TRUSTEES

12. Appointment and functions of Board of Trustees
- 12.1 The board of Trustees of the Association shall comprise 4 (four) Developer Trustees until the first annual general meeting of the Association whereupon the number of Trustees shall be 6 (six) comprising 4 (four) Developer Trustees and 2 (two) Member Trustees for as long as the Developer is a Member and upon the Developer ceasing to be a Member the 6 (six) Trustees shall be Member Trustees, save that the Association shall in general meeting held after the Developer has ceased to be a Member be entitled to increase or decrease the number of Trustees.
- 12.2 Subject to any restrictions imposed or directives given by Members in general meeting, the control, management and administration of the affairs of the Association shall vest in the Board of Trustees, who may, on behalf of the Association, exercise all such powers of the Association and do all such acts in the discharge of their duties or the fulfilment of their obligations as may be exercised and done by the Association itself and as are not by this Constitution required to be done by the Association in general meeting.
- 12.3 A Trustee shall be an individual but need not be a Member if he is a Developer Trustee, provided that all Member Trustees shall be Members.
- 12.4 A Trustee shall by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of the Constitution.
- 12.5 A person may not be elected or appointed as a Trustee if she or he is indebted to the Association in any way in respect of Levies or other amounts which the Association may in terms of this Constitution or the Conduct Rules be entitled to levy on, or claim from, her or him and for the payment of which provision has not been made to the satisfaction of the Board of Trustees.
- 12.6 The Developer shall appoint the first Developer Trustees upon formation of the Association.

- 12.7 Subject to the provisions of clause 12.8, each Member Trustee shall continue to hold office until the annual general meeting of the Association following his appointment, at which meeting each Member Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The Developer shall, by written notice to the Trustees, be entitled to remove any Developer Trustee appointed by the Developer and upon such removal or upon any Developer Trustee ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.
- 12.8 A Trustee shall be deemed to have vacated his office as such upon:
- 12.8.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
 - 12.8.2 his making any arrangement or composition with his creditors;
 - 12.8.3 his conviction for any offence involving dishonesty;
 - 12.8.4 his becoming of unsound mind and or being found lunatic;
 - 12.8.5 his resigning from such office in writing;
 - 12.8.6 his death;
 - 12.8.7 his being removed from office by a resolution of Trustees;
 - 12.8.8 his being disentitled to exercise a vote in terms of this Constitution provided he is a Member Trustee.
- 12.9 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 12.8, 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 Minute Book of the Trustees. Should the office of a Trustee fall vacant prior to the next annual general meeting of the Association, the vacancy in question may be filled by the Developer if the vacancy is in respect of a Developer Trustee and by the remaining Member Trustees if the vacancy is in respect of the a Member Trustee and the person so appointed shall hold office until the next annual general meeting.
- 12.10 The first Chairman shall be appointed by the Developer and shall hold office until the first annual general meeting provided that such office shall ipso facto be vacated by the Trustee who was appointed Chairman upon his ceasing to be a Trustee for any reason.
- 12.11 Within 7 (seven) days of the holding of each annual meeting of the Association the Trustees shall meet and shall elect from their own number the Chairman who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairman shall ipso facto 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 aforesaid office, the Trustee shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.

- 12.12 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees and all general meetings of the Association and shall perform all duties incidental to the office of the Chairman and such other duties as may be prescribed by the Trustees or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a Member's spouse shall be entitled to speak at any meeting.
- 12.13 If the Chairman 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 meeting shall choose another Chairman for such meeting.
- 12.14 If any Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.
- 12.15 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 him having any interest therein.
- 12.16 No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by the Chairman and one Trustee, the latter specifically appointed as authorised signatory in terms of the Resolution of Trustees whereby the Trustees bind the Association.
- 12.17 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees and/or Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 12.18 Trustees may not make loans on behalf of the Association to Members or to themselves.

13. Contracts

The Board of Trustees shall have the power to make, enter into and carry out contracts or agreements on behalf of the Association, subject to the provisions of Clause 12.14 above.

14. Legal Proceedings

- 14.1 Notwithstanding anything to the contrary contained in Clause 70, the Board of Trustees shall at its sole discretion be entitled to institute in any court (including a magistrate's court) of competent jurisdiction proceedings in the name of the Association for any relief to which it is entitled under the provisions of this Constitution and/or the Conduct Rules, to defend actions in the name of the Association and to appoint legal representative for this purpose.
- 14.2 Any legal costs incurred as a result of such proceedings shall be determined on the scale as between attorney and own client.

15 Delegation of powers, duties and obligations

The Board of Trustees may delegate to one or more of its Trustees or to any person or service provider engaged by it powers, duties and obligations as it may deem fit, and may at any time revoke such delegation.



16. Nominations

Nominations for the elections of Trustees shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the domicillium of the Association not later than 48 hours before the meeting: Provided that nominations may, with the consent of the nominee, also be accepted at the meeting itself.

17. Remuneration

Unless otherwise determined by a resolution of Members in general meeting as set out in 12.17 above, Trustees shall not be entitled to any remuneration in respect of their services as such: Provided that the Association shall reimburse to Trustees all disbursements and expenses actually and reasonably incurred by them in the exercising of their powers, the discharge of their duties or the fulfilment of their obligations.

18. Validity of acts

Any act performed by the Board of Trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the election, appointment or continuance in office of any Trustee, irrespective of whether he or she is a Developer or Member Trustee, be as valid as if such Trustee had been duly elected, appointed or had duly continued in office in terms of the provisions of this Constitution.

19. Indemnity

19.1 Subject to the provisions of Sub Clause 3, every Trustee and person or service provider engaged by it in terms of this Constitution shall be indemnified by the Association against all costs, losses, expenses and claims which she or he may incur or become liable to by reason of any act done by her or him in the exercising of her or his powers, the discharge of her or his duties or the fulfilment of her or his obligations, unless such costs, losses, expenses or claims are caused by the male fide or grossly negligent act or omission of such person.

19.2 The Board of Trustees shall pay such indemnity out of the funds of the Association.

19.3 The indemnity referred to in sub-clause 1 shall not apply in favour of any Managing Agent.

20. Powers and Duties

20.1 Subject to the express provision of the Constitution, the Board of Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any Managing Agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by this Constitution required to be exercised or done by the Association in general meeting subject however to such regulations as may have been made by the Association in general meeting shall invalidate any prior act of the Board of Trustees which would have been valid if such regulation had not been made.

20.2 Save as specifically provided in this Constitution, the Board of Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Board of Trustees on such terms as the Trustees shall decide.



- 20.3 The Board of Trustees Committee shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 20.4 The Board of Trustees shall have the right to co-opt any person or persons chosen by them. A Co-opted Trustee shall enjoy all the rights and be subject to all the obligation of the Trustees provided that such co-opted Trustee shall only serve until the next annual general meeting.
- 20.5 The Board of Trustees may, should they so decide, investigate any suspected or alleged breach of this Constitution by any Member or Trustee in such reasonable manner as they shall decide from time to time.
- 20.6 The Board of Trustees may make regulation and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting:-
- 20.6.1 as to the resolution of disputes generally;
 - 20.6.2 for the furtherance and promotion of any of the objects of the Association;
 - 20.6.3 for the better management of the affairs of the Association;
 - 20.6.4 for the advancement of the interest of Members;
 - 20.6.5 for the conduct of Trustees at meeting of Trustees and meetings of the Association;
 - 20.6.6 to levy and collected contributions from Members in accordance with this Constitution;
 - 20.6.7 to levy and recover from Members moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association;
 - 20.6.8 to assist it in administering and governing its activities generally;
 - 20.6.9 to impose fines in respect of Members not complying with this Constitution or any rules imposed by the Association;
- 20.7 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
- 20.7.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven in the Estate in strict accordance with the provisions of the Guidelines which shall be additional to the powers of the Developer for as long as the Developer is a Member. The Trustees shall be entitled to require any Member, who shall be obliged, to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;
 - 20.7.2 entering into of agreements with third parties on behalf of the Association of any purposes of the Association, as set out herein;
 - 20.7.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;

- 20.7.4 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, water supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable.

MEETINGS OF BOARD OF TRUSTEES

21. Convening of meetings

- 21.1 The Board of Trustees may after notice to its Trustees meet together for the dispatch of business, adjourn and otherwise regulate its meeting as it may deem fit.
- 21.2 A Trustee may at any time convene a meeting by giving to the other Trustees no less than ten (10) days written notice of a meeting proposed by her or him, which notice shall specify the reason for calling such a meeting Provided that in case of urgency such shorter notice as it reasonable in the circumstances may be given.
- 21.3 Its shall not be necessary to give notice of a meeting to any Trustee for the time being absent from the Republic of South Africa.

22. Quorum

- 22.1 Four (4) Trustees shall form a quorum, provided that, for as long as the Developer is a Member, three (3) Trustees so present shall be Developer Trustees.
- 22.2 If at any meeting a quorum is not present within thirty (30) minutes of the appointed time of the meeting, such meeting shall stand adjourned to the third (3rd) business day thereafter at the same time and place, and Trustees then present, who shall not be less than two (2) and one (1) of whom shall be a Developer Trustee, shall form a quorum.
- 22.3 If the member of Trustees fall below four (4), the remaining Trustees may continue to act, but only for the purpose of convening a general meeting of Members.

23. Voting

- 23.1 All matters at any Board of Trustees meeting shall be determined by a majority of those Trustees present and voting: Provided that the chairperson shall have a deliberative as well as a casting vote.
- 23.2 For the avoidance of doubt, a Trustee who has any interest in any contract or proposed contract, or any litigation or proposed litigation, which the Association, must declare such interest and shall by virtue of such interest be disqualified from voting in respect thereof.

24. Attendance of Board of Trustees meeting by other persons

The Board of Trustees may in its sole discretion allow any person to attend a Board of Trustees meeting and to address it at such meeting.

25. Resolution signed by Trustees

A resolution in writing signed by all Trustees for the time being present in the Republic of South Africa and being not less than four (4), shall be as valid and effective as if it had been passed at a meeting of the Board of Trustees duly convened and held.

26. Minutes of proceedings

26.1 The Board of Trustees shall –

26.1.1 keep minutes of its proceedings in a minute book;

26.1.2 cause minutes to be kept of all meetings of the Association in a Minute book; and

26.1.3 include in the minute book concerned a record of every resolution of the Board of Trustees or of the Association, as the case may be.

26.2 The Board of Trustees shall, on the written application of a Member, make all minutes of its proceedings and all minutes of the proceedings of meeting of the Association available for inspection by such Member at the domicilium of the Association.

26.3 The Board of Trustees shall retain all minute books for so long as the Association remains in existence.

27. Report on affairs of Association

The Board of Trustees shall annually prepare a report on the affairs of the Association, which report shall be-

27.1 laid before Members at the first annual general meeting following on the period to which the report relates; and

27.2 available for inspection at the domicilium of the Association, and such other address as may be determined by the Board of Trustees, at least seven (7) days prior to the annual general meeting concerned.

ASSISTANCE FOR BOARD OF TRUSTEES

28. Appointment and duties of Architect and Design Review Committee

28.1 The Board of Trustees may from time to time appoint in terms of a written contract a suitably qualified and experience registered architect to chair the Design Review Committee.

28.2 The Design Review Committee appointed by the Board of Trustees shall be responsible for the management and control of building activities of Improvements within the Estate.

29. Appointment of managing agent

29.1 Subject to the provision of Clause 10.1.5, the Board of Trustees may from time to time appoint in terms of a written contract a Managing Agent to discharge such duties or fulfill such obligations as may be entrusted to the Managing Agent: Provided that a Managing Agent shall be appointed for a year at a time, and unless the Association notifies the Managing Agent to the contrary, such appointment will be automatically renewed from year to year: Further provided that if the agreement has not been reduced to writing within thirty (3) days of its conclusion, it shall be voidable at the instance of either party.

- 29.2 The Board of Trustees shall ensure that there is included in the contract of appointment of a Managing Agent a provision to the effect that if she or he is in breach or any of the provision of her or his contract, or if she or he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Board of Trustees may, without notice, cancel such contract of appointment, and that the Managing Agent shall have no claim whatsoever against the Association or any of its Members as a result of such cancellation.
- 29.3 The contract shall further provide for the appointment to be revoked, and such Managing Agent shall cease to hold office, if-
- 29.3.1 where the Managing Agent is a juristic person, an order is made for its provisional or final liquidation or, where the Managing Agent is a natural person, she or he applies for the surrender of her or his estate as insolvent or her or his estate is sequestrated either provisionally or finally or, where the Managing Agent is a company, it is placed under judicial management; or
- 29.3.2 the Managing Agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the Managing Agent is a company or a close corporation, any of its directors or Members is convicted of an offence involving an element of fraud or an element of dishonesty; or
- 29.3.3 a resolution by Members is passed to that effect: Provided that in such event the Managing Agent shall not be deprived of any right she or he may have the claim compensation or damages for breach of contract.
- 29.4 The Managing Agent shall keep full records of her or his administration and shall report to the Board of Trustees on her or his activities with regard to such administration.

COMMON PROPERTY

30. Management

- 30.1 The control and management of the Association's Common Property shall vest in the Board of Trustees, who shall do all things reasonably necessary for the maintenance of such Common Property and to keep it in a state of good and serviceable repair.
- 30.2 The Developer shall be liable to repair at his own expense any inherent faults or defects of the services supplied and installed at the Developer's cost with the defects liability period after the date of practical completion. In this connection the Developer's liability is confined to defective workmanship and/or materials.
- 30.3 The Association shall control and maintain the common area, internal roads, side-walks, kerbing, channelling, storm water systems, street lighting and private open spaces and the owners of all erven will be obliged to join and be members of the Association and to contribute in the form of a levy, proportional according to the size of their portions to enable proper maintenance to be performed.
- 30.4 The Association shall ensure compliance with all Municipal By-Laws and including any water restrictions imposed on the Association by the Municipality from time to time;
- 30.5 All private combined systems (including but not limited to water, sewer, stormwater, roads and irrigation) shall be the joint and several responsibility (including but not limited to administration of the joint account and operation and maintenance of the system) of the Members of the Association.

30.6 Where applicable, all network, sewer network, stormwater network and road network components (downstream of the valve immediately upstream of the bulk water meter, upstream of the connection to the existing system or intersection point with the existing road) shall be a private combined system and shall be indicated as such on all the documents and plans.

30.7 An Operation and Maintenance plan must be submitted to the Civil Engineering Department for approval.

30.8 Water Meters

30.8.1 All properties are to be metered with an approved class C meter.

30.8.2 The water consumption on each property must be metered and managed by the HOA/Trustees or appointed person.

30.8.3 Water tariffs charged to consumers may not, at any time be higher than the municipal tariffs for water (water step tariffs).

30.8.4 A member may request that a water meter be tested. Only a certified and SANAS approved laboratory may be used to test water meters. The testing fee must be paid in advance by the member. If the meter *over register* with more than 2% over, then the meter test fee must be reimbursed to the member by the HOA at an average consumption fee, to be calculated over the previous 12 months.

30.9 Electrical Services

30.9.1 All existing electrical reticulation shall be done according to Drakenstein Municipal Standards.

30.9.2 In the event of an electrical fault, Drakenstein Municipality will indicate the fault and the developer or HOA. The Developer or HOA shall be responsible for all trenching and reinstatement work after the fault has been repaired.

30.9.3 No trees may be planted on, or next to any existing electrical bulk infrastructure.

31. Improvements

31.1 Members may by resolution passed at a general meeting by a two-thirds (2/3rds) majority of Members, a quorum of not less than forty per cent (40%) of all Members being present in person or by proxy and voting, direct the Board of Trustees to effect improvements of a luxurious nature to the Common Property.

31.2 Should the Board of Trustees wish to effect any improvements to the Common Property, other than luxurious improvements referred to in sub-clause 1, it shall first give written notice of such intention to all Members, and such notice shall-

32.2.1 indicate the Board of Trustees' intention to proceed with the improvement upon the expiry of a period of not less than 30 (thirty) days reckoned from the date of posting such notice; and

32.2.2 provide details of the improvement as to-

32.2.2.1 the costs thereof; and



32.2.2.2 the manner in which it is to be financed and the effect upon Levies payable by Members; and

32.2.2.3 the need, desirability and effect thereof.

31.3 The Board of Trustees shall upon the written requires of not less than 20 (twenty) Members convene a special general meeting in order to discuss and to deliberate upon the proposals contained in the notice referred to in sub – clause 2, at which meeting the owners may veto, amend or approve such proposal.

31.4 in the event of such a special general meeting being called, the Board of Trustees shall not proceed with its proposal until the holding of such meeting, whereupon it shall be bound by any resolution passed at the meeting by a two-thirds (2/3rds) majority of the Members present in person or by proxy and voting.

32. Traffic control measures

32.1 The Board of Trustees may in its discretion from time to time effect, implement or carry out such traffic control measures, including, but not limited to, the erection of traffic signs and speed humps, the implementation of speed limited and measures regarding the parking of vehicles, and the carrying out of speed checks, as it may deem necessary.

32.2 Where feasible, the Board of Trustees shall prior to effecting, implementing or carrying out an intended measure, consult with the Members in the immediate vicinity of the area where such measure will be affected, implemented or carried out.

33. Alienation of Common Property

33.1 Save as provided for in Clause 10.2 above in respect of the Developer’s right to retain certain sites in the Estate for his own benefit and exclusive use, neither the whole nor any portion of the Common Property may be sold, alienated, subdivided, transferred or mortgaged, provide that Members may by resolution passed at a general meeting by a two-thirds (2/3rds) majority of Members, a quorum of not less than forty per cent (40%) of all Members being present in person or by proxy and voting direct the Board of Trustees on their behalf to alienate the Common Property of the Association or any part thereof, and thereupon the Board of Trustees shall, subject to compliance with any law relating to the subdivision of land or to the re-zoning of land, have power to deal with such Common Property or such part thereof in accordance with such directive, and to execute any deed required for that purpose.

33.2 The Board of Trustees shall keep a register of all alienated Common Property, which shall be available for inspection at the domicilium of the Association.

34. Letting of Common Property

34.1 The Board of Trustees may on behalf of the Association let Common Property or any part thereof under a written lease on the terms and conditions it may deem appropriate. To this end, and in furtherance of the provisions of Clause 10.2 above, the Board of Trustees shall be obliged to enter into a 99 (ninety nine) year long term lease in respect of the site(s) that the Developer wishes to retain for his own benefit and exclusive use at no consideration payable by the Developer, should the Developer be unable to procure the requisite approval to subdivide such sites from the rest of the Estate.

34.2 The Board of Trustees shall keep a register of all Common Property so let, which shall be available for inspection at the domicilium of the Association.



35. Insurance of Common Property

- 35.1 The Board of Trustees shall cause to be prepared, and shall lay before every annual general meeting for the consideration of Members, schedules reflecting its estimate of the replacement values of the Common Property.
- 35.2 The Board of Trustees shall annually take steps to insure the Common Property to the extent and against such risks, perils or dangers as may be directed by Members at the meeting concerned.
- 35.3 The Board of Trustees may procure suitable insurance cover against non-payment of Levies.

FINANCIAL MATTERS

36. Financial Year

The financial year of the Association ends on the last day of December of each year.

37. Financial statements, books and account and records

- 37.1 The Board of Trustees shall cause to be prepared, and shall lay before every annual general meeting for the consideration of Members-

- 37.1.1 financial statements in conformity with generally accepted accounting practice, which statements shall fairly present the state of affairs of the Association and its finances and transaction as at the end of the financial year concerned, including a report thereon prepared by an auditor qualified to act as such under the Public Accountants' and Auditors' Act, 1951 (No 51 of 1951);

- 37.1.2 a record of the assets and liabilities of the Association;

- 37.1.3 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occurred; and

- 37.1.4 a register of Members.

- 37.2 The Board of Trustees shall keep such books of account and records at the domicilium of the association and shall cause them to be retained for a period of six (6) years after completion of the transaction, acts or operations to which they relate.

- 37.3 The Board of Trustees shall, on the written application of a Member, make all or any of the Association's book of account and records available for inspection by such Member at the domicilium of the Association.

38. Annual estimate of anticipated income and expenditure

- 38.1 The Board of Trustees shall cause to be prepared, and shall lay before every annual general meeting for the consideration of Members, an itemized estimate of the anticipated income and expenditure of the Association during the next financial year.

- 38.2 Such estimate shall include a reasonable provision for contingencies.



38.3 The Board of Trustees shall annually in consultation with the Board of Trustees of the Scheme determine the contribution to be made toward the maintenance of the road, gatehouses and landscaping within the Scheme.

39. Deposit and investment of funds

39.1 The Board of Trustees shall cause all money received by the Association to be deposited to the credit of an account or accounts at a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed by Members at a general meeting, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association: Provide that Board of Trustees may-

39.1.1 Invest and re-invest such moneys not immediately required in the manner it may from time to time determine, subject to Clause 39.3;

39.1.2 use interest earned on such moneys for any purpose of the Association.

39.2 The moneys of the Association may be deposited, invested or re-invested only with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (No 28 of 2001).

LEVIES PAYABLE MY MEMBERS

40. Levies

40.1 The Board of Trustees, on behalf of the Association, shall be entitled to collect contributions from Members in the form of Levies to defray all the expenses which the Association has incurred, or which the Board of Trustees anticipated the Association will incur, in the attainment of its object or the exercising of its powers, the discharge of its duties or the fulfilment of its obligations, and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Such Levies may be collected in advance.

40.2 Every Member shall pay Levies in respect of each Erf or Unit registered in her or his name.

40.3 A Member shall not be entitled to a refund of Levies lawfully levied upon her or him and duly paid by her or him on ceasing to be a Member.

41. Determination of annual Levy

41.1 The amount of the annual levy shall be determined annually by Members at an annual general meeting by using the approved estimate of anticipated income and expenditure of the Association for the year to which it relates and the total number of Erven and Units in the Estate as basis for such calculation.

41.2 Any amount due by a Member by way of a levy shall be a debit due by him to the Association payable within such time as determined by the Board of Trustees. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member.

41.3 A Member's successor in title to an Erf or Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of such Erf or Unit to pay the levies attributable to that Erf of Unit. No Member shall be entitled to transfer his Erf or Unit until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association.

- 41.4 The total contribution shall be the same for each Erf of Unit.
- 41.5 In calculating levies, the Board of Trustees shall take into account income, if any, earned by the Association.
- 41.6 The decision of the Board of Trustees in calculating the levies shall be final and binding on all Members.
- 41.7 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 41.8 All levies are due and payable monthly in advance on the first day of each and every month from the first of the month following the approval of this sub-clause by the General Meeting.
- 41.9 Members shall be liable for payment of interest on outstanding amounts at a rate determined by the Board of Trustees from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.
- 41.10 The Developer shall not be obliged to pay levies in respect of any portion of the Estate, and, without detracting from the generality of the afore going, specifically including any Erf, for as long as he remains the owner thereof. This provision applies similarly in respect of the sites referred to in Clause 10.2 above, irrespective of whether such sites will be held by the Developer pursuant to the subdivision and transfer thereof to him, or by virtue of the provision of a long term lease.

42. Interim monthly Levies

The Board of Trustees may, in anticipation of the determination of the annual Levy for a financial year by Members in general meeting as contemplated in Clause 41, determine interim monthly Levies for that financial year base on its estimate of the anticipated income and expenditure of the Association for that financial year, and may collect such interim monthly Levies with effect from the first day of that financial year, until such time as the annual Levy for that year are determined as contemplated in Clause 41.

43. Special Levies

The Board of Trustees may, after having obtained approval at a special general meeting convened for the purpose, impose Special Levies upon Members in respect of all expenses expected to be incurred or actually incurred by it in the exercising of its powers, the discharge of its duties or the fulfilment of its obligations and which are not included in any estimates of anticipated income and expenditure prepared in terms of Clause 41, or to satisfy a judgment debt against the Association.

44. Other Charges

- 44.1 Any amount payable by a Member for the provision of utilities or other services as may be determined by the Board of Trustees shall be due on the first day of each calendar month.
- 44.2 The Board of Trustees may authorize the estate manager to terminate or limit the provision of utilities or any other services while a Member is in arrears with the payment thereof.



45. Payment of Levies

- 45.1** A Member shall be liable to pay levies using the method prescribed by the Managing Agent appointed by the Association, with effect from the date upon which he becomes a Member, pro-rated where applicable or on the date that Drakenstein Municipality issues an occupation certificate for the occupation of a further dwelling Unit.
- 45.2** Any Levies or other amounts that may be collected in terms of this Constitution and / or the credit policy of the Association may be recovered from the persons who were owners of Erven or Units at the time when such Levies were imposed.
- 45.3** Monthly or interim monthly Levies shall be due on the first day of each calendar month.
- 45.4** Special Levies shall be made payable in one sum or by such instalments and at such time or times as the Board of Trustees may deem fit.
- 45.5** If any Levies payable in terms of this Constitution are not paid within seven (7) day of the due date thereof, same shall bear interest compounded monthly in arrears, duly authorised by the estate manager, from the date of delinquency at a percentage as determined by the Board of Trustees from time to time.
- 45.6** A Member who is in arrears with the payment of Levies or any other amounts due by such Member, shall be liable for all costs and expenses incurred by the Board of Trustees in the recovery of such Levies and the interest thereon, which expense shall be added to the Levies payable by that Member and claimed as if it were part of such Levies.
- 45.7** Legal costs recoverable from a delinquent Member in terms of the foregoing provision shall be determined on an attorney and own client scale.
- 45.8** The Board of Trustees may institute legal proceedings as contemplated in this Constitution against a Member for the recovery of arrear Levies, the interest thereon and the legal costs incurred by the Association in the recovery thereof.
- 45.9** In the event of a Levy or other amount being in arrears for a period of 3 (three) months the balance of the annual levy may be recovered from the Member
- 45.10** An invoice for a Levy and any interest thereon is not an account tendered for goods or service provided and thus does not fall within the ambit of the National Credit Act.
- 45.11** Where there is more than one Dwelling Unit on a Residential Erf and such Residential Erf has not been sectionalised, the Member shall be liable for an additional levy for each additional Dwelling Unit;

GENERAL MEETINGS OF MEMBERS

CALLING OF GENERAL MEETINGS

46. Annual general meetings

- 46.1** Annual general meetings shall be held once in every year at such a time and place as may be determined by the Board of Trustees, provided that it shall be held within 3 (three) months of the end of each financial year.



46.2 Non-compliance with the above shall entitle a Member substantially prejudiced thereby to apply to the High Court to have the meeting set aside, but shall not ipso facto invalidate the meeting or the business conducted thereat.

46.3 An Annual General Meeting may be held electronically.

47. Business transacted at annual general meeting

The business that shall be transacted at any annual general meeting shall include-

47.1 consideration of the report referred to in Clause 27;

47.2 consideration of the financial statements referred to in Clause 37;

47.3 approval with or without amendment of the schedules of replacement values referred to in Clause 35; and

47.4 election of Member Trustees for the next year as contemplated in Clause 12;

47.5 consideration of any draft Resolution concerning the affairs of the Association of which due notice has been given; and

47.6 any other business of which notice has been received at the domicilium of the Association at least 14 (fourteen) days prior to the date set for the meeting.

48. Special general meetings

48.1 All general meetings other than the annual general meetings referred to in Clause 46 shall be called special general meetings.

48.2 The Board of Trustees may convene a special general meeting whenever it thinks fit and shall convene such a meeting upon the written request of not less than 20 (twenty) Members, directed to the chairperson of the Board of Trustees.

48.3 A special general meeting may be held electronically.

49. Notice of general meetings

49.1 The Board of Trustees shall convene an annual general meeting by giving at least 21 (twenty one) days' notice thereof: Provided that the Board of Trustees shall cause copies of the documentation relating to the business to be transacted at the meeting as contemplated in Clause 47 to be delivered to each Member at least 14 (fourteen) days before the date of the meeting concerned.

49.2 A special general meeting shall be convened by giving at least 14 (fourteen) days' notice thereof: Provided that the Board of Trustees shall cause copies of the documentation relating to the business to be transacted at the meeting to be delivered to each Member together with the notice convening the meeting.

49.3 The notice convening a meeting shall be inclusive of the day on which it is given and shall be in writing and shall specify the place, the day and the hour of the meeting and the general nature of the business to be transacted at the meeting.

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



- 49.5 The Board of Trustees shall convene an annual or special general meeting by giving at least 60 days (sixty) days notice thereof to the municipality for response, should any of the proposed amendment to the constitution, relate to or affect the conditions of approval of the development, zoning of properties, municipal engineering standards or services. If no response from the municipality is received by the date of the annual general meeting, it will be assumed that the municipality has no objection to such amendments.

PROCEEDINGS AT GENERAL MEETINGS

50. Quorum

- 50.1 No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business.
- 50.2 For all purposes, the quorum shall be not less than twenty per cent (20%) of all Members present in person, electronically or by proxy.
- 50.3 If at any general meeting a quorum is not present within thirty (30) minutes of the appointed time of the meeting, the meeting, if convened at the request of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within thirty (30) minutes of the appointed time for the meeting, the Members present in person, electronically or by proxy shall be quorum: Provided that all Members shall be given notice of such adjourned meeting.

51. Chairperson

- 51.1 The chairperson of the Board of Trustees shall preside at a general meeting.
- 51.2 If there is no such chairperson or if the chairperson is not present within fifteen (15) minutes after the appointed time of the meeting, or if she or he is unwilling or unable to preside, the Developer during the Development Period, or the Members thereafter, shall elect from among the Board of Trustees one of their number present in person or electronically to be chairperson of the meeting.

52. Voting procedure

- 51.1 At every annual general meeting or general meeting every Member in person, electronically or by proxy and entitled to vote shall be allocated voting rights as follows:
- 51.1.1 the registered owner of an Erf or Unit: 1 (one) vote per Erf or Unit registered in his name, provided that if an Erf or Unit is registered in more than one person's name, then they shall jointly have 1 (one) vote;
- 52.1.2 during the Development Period, the Developer shall have 210 (two hundred and ten) votes in addition to his votes in respect of unsold Erven or Units.
- 52.2 At any general meeting a resolution put to the vote shall be decided on a show of hands or other electronic indication, unless the chairperson, in her or his discretion, directs that a ballot be taken, or, either prior to or on the declaration by the chairperson of the result of the show of hands or other electronic indication, a ballot is demanded by any person entitled to vote.
- 52.3 A declaration by the chairperson that a resolution has on the show of hands been carried shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

- 52.4 A directive or demand for a ballot may be withdrawn by the person concerned.
- 52.5 A poll shall be taken in such manner as the chairperson may deem fit and the result of the poll shall be deemed to be a resolution of the meeting at which such poll was taken.
- 52.6 Unless any Member present in person, electronically or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or other electronic indication or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote to recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

53. Majority required

All resolutions shall be simple majority, or by the other majority specifically required in a particular case by this Constitution, of those Members who are entitled to vote and are present in person, electronically or by proxy and voting.

54. Vote entitlement

- 54.1 Subject to sub Clauses 2 and 3, each Member shall be entitled to one (1) vote for each Erf or Unit in the Estate registered in her or his name, provide that ownership or an Erf in undivided shares shall constitute only one Membership, as set out above.
- 54.2 When two or more persons are joint registered owners of an Erf of Unit, the vote to which they are entitled shall be exercised only by a person (who may or may not be one of them) jointly appointed by them as their proxy: Provided that any one of them may demand a vote.
- 54.3 If an Erf of Unit is jointly owned by a natural person and a company, the vote to which they are entitled shall be exercised only by a person (who may or may not be such natural person or a director of the company) jointly appointed by such natural person and the directors of the company as their proxy: Provide that such natural person and any one of the directors may demand a vote.

55. Right to vote

Each Member entitled to vote shall have the right, either in person, electronically or by proxy, to exercise a vote in respect of any matter to be voted on by Members in general meeting: Provided that a Member may not exercise a vote to which he or she would otherwise be entitled-

- 55.1.1 if any Levies or other amounts payable by him or her in terms of this Constitution, together with any interest and costs in connection therewith, have not been duly paid after written notice required him or her to remedy such non-payment or provision has not been made to the satisfaction of the Board of Trustees for the payment thereof; or
- 55.2 he or she persisted in breach of any provision of this Constitution or any Conduct Rule after written notice requiring her or him to remedy such breach, and provisions has been made to the satisfaction of the Board of Trustees of the remedying thereof; or



55.3 in respect of any contract or proposed contract, or any litigation or proposed litigation with the Association, in which he or she has any interest.

56. Proxy

56.1 The Instrument appointing a proxy shall be in writing in the common form, or any form approved by the Board of Trustees, under hand of the appointer or by means of an advanced electronic signature, or of his or her attorney or agent, duly authorised, or if such appointer is a company, under the hand or by means of an advanced electronic signature of an officer thereof duly authorised in writing as such.

56.2 The person named as proxy shall be entitled to vote in respect thereof only if the instrument appointing a proxy, together with the power of attorney (if any) under which it is signed or a notarial certified copy thereof, is deposited at the domicile of the Association at least 24 (twenty four) hours before the time appointed for the meeting, or adjourned meeting, at which the person named in such instrument proposes to vote, or is handed or e-mailed to the chairperson prior to the commencement of the meeting,

56.3 A proxy need not be a Member, but shall not be a person or service provider engaged by the Association in terms of Clause 7.3 or a Managing Agent (or any of his or her employees) appointed in terms of Clause 29.

57. Companies / Trusts

57.1 Any company which is a Member may, by resolution of its directors or other governing body, authorise such person as it deems fit to act as its representative at any meeting of the Association and the person so authorised shall be entitled to exercise the same powers on behalf of the company which she or he represents as that company could exercise if it were an individual Member.

57.2 The provisions of sub-clause 1 shall also apply in the case of a trust.

58. Incapacity

Should any Member be declared incapable of managing his or her own affairs, or a prodigal or insolvent, or in the case of a company, placed under judicial management or into liquidation, such Member shall be represented by his or her curator bonis, trustee, judicial manager or liquidator, as the case may be, who shall be entitled to vote on his or her behalf either personally, electronically or by proxy.

CONSTITUTION AND CONDUCT RULES

59. Conduct rules

59.1 The Association may make such Conduct Rules, including rules to control access and egress and building operations, as it may deem necessary for the promotion of safe and harmonious community-living in the Estate and for the control, management, administration, use and enjoyment of the Common Property of the Association.



59.2 The Association may as part of the Conduct Rules issue such Architectural guidelines as it may deem necessary and prescribe the architectural style and the material to be used in respect of any renovations, alterations or additions to carried out to existing buildings and in particular to control the exterior design of such buildings and renovations, alterations or additions and the material and colours used, so as to ensure an aesthetically pleasing character to the buildings in the Estate: Provided that such guidelines shall also apply to other site works on a Member's property, including, but not limited to, fences pergolas, boundary walls, landscaping and paving.

59.3 The Conduct Rules made by the Association, and any addition thereto, or substitution, amendment or repeal thereof, may not be in conflict or irreconcilable with any provision of this Constitution. In the event of any such conflict or irreconcilability, the provision of the Constitution shall prevail.

60. Penalties determined by Board of Trustees

60.1 If the conduct of a Member or an occupier of an Erf or a Unit, or the family members, guests, visitors, employees or contractors of a Member or occupier constitute a nuisance in the opinion of the Trustees, or a contravention of a provision of this Constitution, the Conduct Rules or an EMP, the Board of Trustees may by written notice:-

60.1.1 inform the Members of the nuisance or contravention and warn the Member that if he or she or the occupier of this or her Erf or Unit fails to remedy the contravention or persist in such conduct or contravention, a penalty will be imposed on him or her;

60.1.2 if the Member or occupier of the Erf or Unit or his or her family members, guests, visitors, employees or contractors repeats or persists in the conduct, nuisance or contravention despite the written warning or fails to remedy the contravention, the Board of Trustees may by written notice impose a penalty on the Member, which written notice shall state the reasons for the imposition of the penalty, or

60.3 The Board of Trustees may from time to time determine the categories of contraventions and the amounts of the penalties in respect of first and subsequent contraventions, subject to any directives given or restrictions imposed by the Members at a general meeting.

60.4 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 in respect of each such separate contravention.

60.5 A Member may within 30 (thirty) days of the date of written notice referred to in sub-rue 60.1.2, lodge an objection against the penalty imposed with the Board of Trustees. Upon receipt of such objection, the Board of Trustees may:-

60.5.1 withdraw or reduce the penalty; or

60.5.2 schedule a meeting of the Board of Trustees for the purpose of considering the objection and invite the Member to attend.

60.6 At the meeting referred to in sub-rule 60.5.2, the Member shall have the right to:

60.6.1 present his or her case;

60.6.2 present any evidence, including the calling of witnesses, to substantiate his or her case;



- 60.6.3 cross-examine any person called as witness in support of the charge;
- 60.6.4 have access to documents produce in evidence; or
- 60.6.5 produce mitigating factors or evidence
- 60.7 The failure of the Member charged to attend the meeting referred to sub-rule 605.2 shall not render the proceedings at the meeting void. Should the Member not attend the meeting without providing a reasonable request for postponement, the Board of Trustees may, in their sole discretion, continue with the meeting consider the objection in the absence of the Member.
- 60.8 Upon the conclusion of the meeting, the Board of Trustees shall deliberate the evidence and if so resolved, they may:
 - 60.8.1 uphold the penalty; or
 - 60.8.2 withdraw or reduce the penalty.
- 60.9 Any notice to a Member in terms of these rules will be regarded as having been properly given if such notice is:
 - 60.9.1 delivered to the Member by hand, in which even it shall be regarded as having been received on delivery;
 - 60.9.2 delivered by registered post to the Member to his or her domicilium citandi et executandi or know postal address, in which event it shall be regarded as having been received on the 4th (fourth) day after the date of postage.
 - 60.9.3 delivered to the Member by fax or e-mail to the fax number or e-mail address of such Member, in which event it shall be regarded as having been received on the date of transmission.
- 60.10 Notice in terms of this rule may in the discretion of the Board of Trustees also be delivered to the occupier of the Erf or Unit.

61. Amendment of Constitution and Conduct Rules

- 61.1 Any Member may propose an addition to, or substitution, amendment or repeal of, a provision of the Constitution or the Conduct Rules by submitting a written motivated proposal to that effect to the Board of Trustees.
- 61.2 If the Board of Trustees is of the view that the matter should be proceeded with, it shall submit the proposal to Members for consideration at the next general meeting.
- 61.3 If the Board of Trustees is of the view that the matter should not be proceeded with, it shall inform the Member accordingly in writing: Provided that the Board of Trustees shall upon the written request of not less than twenty (20) members place the matter on the agenda of the next general meeting.
- 61.4 Any proposed addition to, or substitution, amendment or repeal of, a provision of the Constitution or of the Conduct Rules may be effected only by a resolution passed at a meeting by two-third (2/3rds) majority of members, a quorum of not less than forty per cent (40%) of all Members being present in person or by proxy and voting, provided that due notice has been given to Members of the proposed substitution, amendment or repeal.

61.5 Neither the Board of Trustees, nor the Association of the Members, will be entitled to change, amend or impact on the right of the Developer or his successor in title as contained in this Constitution.

61.6 Should any amendment impact on Section 29(3) of the Drakenstein Municipal By-Law (2015), such amendment may only be effected upon the specific consent of Drakenstein.

62. Local Authority Provisions

The following provisions have been inserted in this Constitution specifically for and by the Local Authority, for the benefit of the Members:-

62.1 The sole object of the Association must be to manage the collective interest to all its Members, which includes expenditure applicable to the Common Property of such Members and the collection of persons.

62.2 The Association is not permitted to distribute its funds to any person other than a similar association of persons.

62.3 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.

62.4 Any amendments of Constitution must be submitted to the Commissioner for the South African Revenue Services and to the extent necessary and applicable, to the relevant local authority professing jurisdiction in respect of this Constitution, for its approval.

62.5 Funds available for investment may be invested or re-invested with registered financial institutions as defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (No 28 of 2001).

62.6 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 of 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.

62.7 Annual return for income tax together with financial statements shall be submitted to the Tax Exemption Unit.

63 Notification of Interested parties

The Board of Trustees shall, within 21 (twenty-one) days of its approval in writing inform all Members, the Commissioner for the South African Revenue Service and the Local Authority of any addition to, or substitution, amendment or repeal of, a provision of the of the Conduct Rules and of any penalty determined under clause 60.

64 Record of Constitution and Conduct Rules

The Board of Trustees shall keep a complete record of Constitution and all Conduct Rules and penalties in force from time to time, which shall be available for inspection at the *domicillium* of the Association.



65 Binding nature of Constitution and Conduct Rules

- 65.1 The provisions of this Constitution Rules shall be binding on all members and also on all other persons who for whatever purpose enter the Estate.
- 65.2 It shall be the duty of a Member to ensure compliance with the provisions of this Constitution and the Conduct Rules by his or her lessee or any other occupant of his or her or dwelling, including the employee, worker, contractor, guest and any member of the family of the Member concerned, or her lessee or the other occupant of his or her dwelling.

MISCELLANEOUS PROVISIONS

66 Signing of Instruments

No document signed on behalf of Association shall be Valid and binding unless it is signed by 2 (two) Board of Trustees Members, or by a Board of Trustees Member and the estate manager or, in the case of a certificate issued in terms of Clause 67, by a Board of Trustees Member or by the estate manager. Signature can be done in by means of an advanced electronic signature.

67 Restriction on alienation

- 67.1 No Member shall transfer his or her Erf or Unit until the Board of Trustees has issued a certificate consenting to such transfer. Such certificate shall not be withheld unless-
- 67.1.1 such Member is indebted to the Association in any way in respect of the Levies or other amounts which the Association may in terms of this Constitution or the Conduct Rules be entitled to claim from him or her and provision has not been made to the satisfaction of the Board of Trustees for the payment hereof;
- 67.1.2 the proposed transferee has not agreed to become a Member.
- 67.1.3 such Member remains in breach of any of the provisions of the Constitution or the Conduct Rules after written notice requiring him or her to remedy such breach and provision has not been made to the satisfaction of the Board of Trustees for the remedying thereof.
- 67.2 The Board of Trustees shall be entitled to charge a reasonable fee for issuing the certificate, which fee may be determined by Board of Trustees from time to time.
- 67.3 The Board of Trustees may formally delegate one or more of the Trustees or the estate manager, on its behalf, to implement the provision of this clause.

68. Loans

Trustees may not make loans to themselves on behalf of the Association.

69. Failure to complete dwelling

Should a Member fail to complete the addition, renovation or alteration of a dwelling on his or her Erf within 6 (six) months of having commenced such work, then such Member shall pay the Association a monthly penalty equal to his or her monthly levy, in addition to his or her normal monthly levy, until the date of completion of the dwelling.

70. Disputes and Arbitration

- 70.1 Should any dispute whatsoever arise at any time between the Association and a Member or Members in respect of the interpretation or application of this Constitution, the conduct Rule or the EMPs, or the effect as the rights, duties, obligations and/or liabilities of the parties in terms thereof, or as to any other matter in any way connected with the Constitution, the Conduct Rules or the EMPs, then a party may declare a dispute by delivering a notice containing the details of the dispute to the other parties.
- 70.2 Should any dispute which has arisen at any time between the parties not be resolved within 7 (seven) Calendar Days of receipt of the notice of dispute, any party may refer the matter to mediation, failing which arbitration under the auspices of the Arbitration foundation of South Africa, subject to the following conditions.
- 70.2.1 the choice of mediator and arbitration will be mutually agreed between the parties;
- 70.2.2 the appointed mediator and arbitrator should be an admitted attorney or advocate with the required experience agreed to by the parties within 7 (seven) Calendar Days and failing agreement appointed by the President for the time being of the Cape Law Society or its successor-in-title; and
- 70.2.3 the parties will enter into a mediation or arbitration agreement, as the case may be, to regulate all other aspects of the mediation or arbitration; and
- 70.2.4 unless the parties agree otherwise, the costs of the arbitration will be shared equally between the parties; and
- 70.3 Save for either party's right to have the decision of the arbitrator reviewed by a court of law the decision of the arbitration will be final and binding on the parties.
- 70.4 The above remedies subsist without prejudice to a right of any party to institute an action or launch an application in a court of competent jurisdiction.
- 70.5 In addition, in the event of a dispute a member and/or the association has the right to refer the matter to Community Scheme Ombud Service whom has jurisdiction to adjudicate disputes as set out in section 39 of the Community Schemes Ombud Service Act 9 of 2011 and regulations.

71. Winding up

- 71.1 The Association may be wound up by a resolution of Members provided that-
- 71.1.1 two thirds (2/3rds) of the Members, a quorum of not less than forty per cent (40%) of all Members being present in person or by proxy and voting vote in favour thereof; and
- 71.1.2 The Local Authority consents thereto; or
- 71.1.3 upon an order of the High Court.



71.2 In the event of such winding up, it shall be the duty of the Board of Trustees, or a suitably qualified person appointed by it, to convert the Association's assets into cash, pay all the liabilities of the Association and thereafter distribute the rest to a similar association of persons succeeding the Association and which is also exempt from income tax in terms of section 10(1)(e)(iii) of the *Tax Act, 1962 (no 58 of 1962)*. If the Association is not succeeded by such an association, the remaining money shall then be paid to such fund as may be required by law.

72. Zoning conditions

72.1 The conditions pertaining to the municipal zoning scheme regulations applicable to the development of the Estate shall at all times be observed by the owner or owners of an Erf or Unit.

72.2 Any application to the Local Authority for permission to deviate from the zoning scheme regulations pertaining to an Erf or Unit shall be accompanied by the written consent of the Board of Trustees, and the Local Authority shall not approve such application if the Board of Trustees opposes it.

72.3 No Member shall be entitled to subtitle or subdivide or rezone her or his Erf other than as prescribed by the Local Authority in terms of the approved zoning scheme.

72.4 No more than one Dwelling, together with such outbuildings as are ordinarily required shall be erected on any Erf subject to the conditions prescribed in terms of the approved zoning scheme.

72.5 To the extent a Member consolidates 2 (two) Erven or Units, on the basis and subject to the provisions set out in the Constitution, such Member shall be responsible to pay twice the contribution and/or other charged levies by the Association.

73. Architectural Design Guidelines

73.1 The Architectural Design Guideline (the "Guideline") constitutes an integral part of this Constitution and for as long as the Developer is a Member the Guidelines may be amended, substituted, added to or repealed only at the instance of the Developer and, thereafter by the Association.

73.2 All landscaping, plants and all improvements shall be of approved design and of sound construction and shall comply with the provisions of the Guidelines.

73.3 No construction or erection of improvements on an Erf may commence prior to the approval of plans for such Improvements and, in this regard:

73.3.1 a full set of proposed building plans which indicate both construction and design details, prepared by a registered architect or architectural draftsman, whether such plan is for new constructions or for renovations, alterations or additions affecting the exterior appearance of an existing structure, shall be submitted to the association for approval by the Design Review Committee, which committee shall include the Architect;

73.3.2 thereafter, the approved plans shall be submitted to the Local Authority for approval;

73.3.3 having obtained the approval of the Local Authority, the member shall comply with all conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Guidelines read with the plans.

73.3.4 the scrutiny fee payable to the Architect will be paid by the Member, such scrutiny fee to be determined by the Board of Trustees, from time to time.

- 73.4 Approval of building plans will not be granted by the Local Authority without the prior written approval of the Design Review committee thereto which approval shall be evidenced by an endorsement by the Architect.
- 73.5 Should the Design Review committee not approve of a plan submitted in terms of Clause 73.3.1, it shall refer the matter to the Board of Trustees for final adjudication. The board of Trustees, if it concurs with the Design Review committee, shall furnish the Member concerned with its reasons in writing and any disputes arising shall be dealt with in terms of the dispute resolution procedure provided for in Clause 70.
- 73.5 No Improvements may be effected by a Member other than by a Contractor. The Developer or the Association shall designate a list of contractors who will be allowed to do building work of whatever nature in the Estate.
- 73.6 In order to ensure that prospective purchasers or tenants are correctly advised of their rights and obligations relative to the Estate, Members who wish to re-sell or let their properties, are obliged to appoint an Estate Agent who is accredited by the Developer for as long as the Developer is a Member and, thereafter, by the Association.
- 73.7 A member will have no claim for damages or loss against the Developer or the Association, arising from whatever cause as a result of any acts or omissions of a Contractor and hereby indemnifies the Developer and Association against any claim from any third party arising from the construction of such improvements.
- 73.8 It is recorded that the existing worker's houses will not be required to comply with the provisions of the Architectural Design Guideline until such time as it has been transferred from the Developer to a third party and such third party after demolishing same requires alterations to the specific property.

74. Further Obligations of Members

Each Member shall:

- 74.1 maintain his Erf and/or unit in accordance with the Guidelines and the Associations rules respectively;
- 74.2 maintain in a neat and tidy condition and in a state of good repair all improvements on his Erf;
- 74.3 establish and maintain a garden according to a standard acceptable to the Association, as well as maintaining the road verge bordering his Erf, in terms of the guide;
- 74.4 be responsible for the maintenance of external and boundary walling inclusive of regular painting thereof;
- 74.5 not park any commercial type vehicle, boat, caravan, trailer, or any vehicle not in good working order, on any roadway in the Estate and such vehicle, boat, caravan or trailer shall be parked on the Member's Erf so as not to be visible from the street forming a boundary of such Erf;
- 74.6 not do or suffer to be done on any Erf or in any Unit anything which, in the opinion of the Board of Trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any Member, tenant or occupier of any Erf or Unit in the Estate;
- 74.7 conform to the prescription of the Guidelines in connection with the erection of a builders' board in respect of any construction to effect improvements;



- 74.8 adequately insure the improvements on his Erf and/or his Unit and, if requested by the Board of Trustees, furnish proof of such insurance to them and, in the event of total/partial destruction, he shall, within a reasonable time period, make good such damage or reconstruction in accordance with the original approved plans or, in the event of total destruction in accordance with the guidelines;
- 74.9 where the erection of structures to house animals or birds or the construction/erection of garden/tool shed(s) is permitted, such structures shall be screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to Members or their tenants or occupiers and the Trustees shall, in their absolute discretion, be entitled to require the permanent removal from the Estate of any animals or birds which, in the opinion of the Board of Trustees, constitute a disturbance or nuisance;
- 74.10 comply with all security procedures implemented from time to time;
- 74.11 generally ensure that gardening and landscaping of his Erf is undertaken so as to be compatible with the gardening and landscaping of adjoining Erven;
- 74.12 ensure that his dog is kept on a leash in all open areas within the Estate and is controlled to ensure that other dogs are not interfered with and, in particular, that no nuisance is caused by such dog to other Members and that the dog does not cause fouling of sidewalks within the Estate or on the lawns of other Members or on open spaces within the Estate;
- 74.13 adhere strictly to the terms of servitudes granting access to Erven, Common Property or walkways;
- 74.14 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of the Estate and that planting on his Erf does not interfere with pedestrians traffic or obscure the vision of motorists;
- 74.15 tolerate access to irrigation pipe lines by owners of these lines, their employees and/or contractors;
- 74.16 not erect any structure over the sewerage system;
- 74.17 pay fees as set out in the Guidelines, before the commencement of any building operations on his Erf. These fees can be amended by the Association from time to time.
- 7.4.18 in the event that the Member intends to open a Sectional Title Register on the Residential Erf, the following requirements must have been met:
- 7.4.18.1 Such Members agrees to incorporate the conduct rules of the Association in the conduct rules of the Sectional Title Scheme as well as a clause that same cannot be amended without the consent of the Association;
- 7.4.18.2 Such Member agrees to include a condition in the Certificate of Registered Sectional Title that the Section may not be transferred without the consent of the Association, which consent may not be unreasonably withheld;
- 7.4.18.3 Such Member agreeing that each recipient of a Certificate of Registered Sectional Title will abide by the terms of this Constitution, and any amendments thereto, and to include a clause to that effect in any deed of alienation of such Section or shares in the entity that owns such Section.

75. Body Corporate of the Scheme and Clauses relating to Sectional Title Schemes in the Estate

- 75.1 All decisions taken by the Body Corporate of the Scheme shall apply solely for and to the Members of such scheme.
- 75.2 The Administration of the body Corporate of the scheme shall be conducted according to its own rules.
- 75.3 Notwithstanding any other provision, to the extent there is a conflict between the provisions of the Body Corporate founding and/or governing document or rules and this Constitution, the Board of Trustees of the Body Corporate of the Scheme and the Board of Trustees of the Association shall be required to first resolve that conflict in the best interests of all Members before resorting to arbitration.
- 75.4 The Body Corporate of any Sectional Title Scheme in the Estate shall have the functions and powers as set out in the Sectional Titles Schemes Management Act 8 of 2011.
- 75.5 Each Body Corporate shall establish and maintain its own administrative fund to cover the estimated annual operating costs for (inter alia) the repair, maintenance, management and administration of the common property in the scheme, payment of rates and taxes and other local municipality charges, for the payment of insurance premiums relating to the buildings or the land and for the discharge of any duty or fulfilment of any other obligation of the body corporate.
- 75.6 Each Body Corporate shall establish and maintain its own reserve fund in such amounts as are reasonably sufficient to cover the costs of future maintenance and repair of common property in the scheme.
- 75.7 Each Body Corporate must prepare its own applicable maintenance, repair and replacement plan for the buildings and common property.
- 75.8 Subject to clause 75.7 above, each Body Corporate must be managed by Management Rules and Conduct Rules as required by the Sectional Titles Schemes Management Act, which rules shall be approved by the HOA.
- 75.9 Should there be less than 4 sections in the scheme, all owners/members will be trustees of the body corporate. If there are more than 4 sections, the owners must from time to time elect no less than 3 trustees.
- 75.10 Each Body Corporate in the Estate shall be obliged to appoint a Management Agent Accredited by the Association, to perform the functions and exercise the powers that would otherwise be performed and exercised by the trustees, as are provided for in section 28 of the Prescribed Management Rules in Annexure A to the Regulations issued in terms of the Sectional Titles Schemes Management Act.
- 75.11 It is the duty of the Management Agent to ensure that each Body Corporate complies with its duties and perform the functions assigned to it in terms of the Sectional Titles Schemes Management Act.
- 75.12 The Management Agent is entitled to a Management fee in respect of the management of each and every separate Body Corporate.



- 75.13 Each Body Corporate shall enter into a separate Management Agreement with the Management Agent chosen by the Association.
- 75.14 It is envisaged that the Association appoints a designated Trustee of the Association to coordinate and oversee the compliance with the sectional title legislation by the body corporates in the scheme.

DOMICILIUM AND NOTICES

76. Domicilium citandi et executandi

76.1 For all purposes arising out of this Constitution, including the serving of notices and the serving of any process, the Association and each of its Members choose domicilium citandi et executandi as follows:

76.1.1 the Association, the administrative office of the Association; and

76.1.2 each Member, at the Erf or Section registered in her or his name; Provided that if such Erf is vacant land the domicilium citandi et executandi of a Member shall be the known physical address of such Member: Provided further that the Association may at any time by notice change its, or a Member may at any time by notice change his or her, domicilium to some other address, which new address shall be in the Republic of South Africa and may not be a Post Office box or poste restante.

76.2 Such change of address-

76.2.1 by the Association shall be communicated to all Members by written notice;

76.2.2 by a Member shall be communicated to the Board of Trustees by written notice;

76.2.3 shall become effective only fourteen (14) days after receipt of the notice by the party concerned.

77. Delivery notice and documentation

Unless determined otherwise herein any written notice may be required to be given, and any documentation or communication which may be required to be submitted, forwarded or delivered, in terms of this Constitution, may be delivered by hand or may be given by the despatch thereof in written by pre-paid post address to the addressee at her or his *domicillium*, in which event such notice or documentation shall be deemed to have been received five (5) days after the posting thereof from any Post Office within the Republic of South Africa.

78. Electronic communications

Notwithstanding the provisions of Clause 77:

78.1 The Board of Trustees may for any purpose arising out of the Constitution, except the serving of legal process, agree to receive and acknowledge receipt of communication in electronic format at the e-mail address of the estate manager; and

78.2 a Member may in writing in the form approved by the Board of Trustees or any purpose arising out of the Constitution, except the serving of legal process, agree to receive and acknowledge receipt of communications in electronic format at the e-mail address indicated in the form.

79. Association that ceases to function

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

79.1.1 in terms of Section 15(2)(o) of the Municipal By-Laws, to disestablish the Association subject to the amendment of the conditions of approval to remove the obligation to establish and Owner's Association and the amendment of title conditions pertaining to the Association, to remove any obligation in respect of an Owners' Association.

19.1.2 in terms of Section 15(2)(p) of the Municipal By-Laws, for appropriate action by the Municipality to rectify a failure of the Association to meet any of its obligations in respect of the control over or maintenance of services contemplated in Subsection 29(3)(b) of the Municipal By-Laws; or

79.1.3 to the High Court to appoint an administrator who must exercise the powers of the Association to the exclusion of the Association;

79.2 In considering an application contemplated in Subsection 29 (1)(a) of the Municipal By-Laws, the Municipality must have regard to:

79.2.1 the purpose of the Association;

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

79.2.3 the impact of the disestablishment of the Association on the Member of the Association and the community concerned.

79.3 The Municipality or the affected person may recover from the Members of the Association the amount of any expenditure incurred by the Municipality or that affected person as the case may be, in respect of any action taken.

79.4 The amount of any expenditure so recovered is, for the purposes of Section 29(7)(a) of the Municipal By-Laws, considered to be expenditure incurred in connection with the Association.

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

