

CONSTITUTION

OF

HONEYDEW COUNTRY ESTATE

HOME OWNERS ASSOCIATION

**A statutory Home Owners Association established
in terms of Section 29 of the Land Use
Planning Ordinance, 15 of 1985**

1. ESTABLISHMENT IN TERMS OF STATUTE

The Honeydew Home Owners Association is constituted, as a body corporate, in terms of Section 29 of the Land Use Planning Ordinance, No. 15 of 1985, in accordance with the conditions imposed by the Paarl Municipality when approving in terms of Section 25(1) and 42 of the said Ordinance of the subdivision of Erven 484, 585 & 592 Paarl and includes any sectional title unit created on a sub-divided portion of the erven.

2. INTERPRETATION

In these presents:

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

"Auditors" means the Auditors of the Association

"a Trustee" means one of the Trustees of the Trustee Committee

"Business Day" means weekdays other than Saturdays, Sunday and Public Holidays

"Chairman" means the Chairman of the Trustee Committee

"erf" – the same as the Unit Erf definition.

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

"month" means calendar month

"Ordinary Resolution" means a resolution passed at a general meeting of the Association

"Special Resolution" means a resolution passed at a special general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it, and passed, on a show of hands, by not less than three-fourths of the total number of members present at that meeting who, at a minimum, form a quorum for a general meeting

"Special use Erven" mean Erven or sectionalized portions of erven not utilized as residential erven including parks and roads who shall not make any levy payments to the Home Owners Association.

"the Association" means Honeydew Home Owners Association

"the Council" means Drakenstein Municipality

"the Developer" means the registered owner of the ground upon which homes (houses or flats) are to be erected

"the Development" means any development by the developer or his nominee within the Estate regarding construction (or infrastructure).

"the Estate" means the sum of all the unit erven known as Honeydew Country Estate

"the Office" means the registered office of the Association

"these present" means this Constitution and regulations and by-laws of the Association from time to time in force

"the Registered Owner" means the Member(s) for the Time Being of the Association

"the Trustee Committee" means the Board of Trustees of the Association

"the Unit Erven" means the residential erven resulting from the subdivision of Erven 29114 Paarl, being the consolidated Erf of 484, 585 & 592 Paarl and includes any sectional title units created on a subdivided portion of the erven and to be used for residential purposes.

"unit" – the same as the unit erf definition.

"Vice-Chairman" means the Vice-Chairman of the Trustee Committee

"year" means calendar year

2.2 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other two genders

2.3 Any reference to an erf or unit erf shall include a sectional title unit as defined in the Sectional Titles Act, Act 95 of 1986 unless stated otherwise.

3. PURPOSE DESCRIBING THE MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of this Home Owners Association. The Home Owners Association becomes liable for all management, service and maintenance costs of the estate from the date that the first unit erven is registered in an owner's name.

4. MAIN OBJECT

The main object of the Association is:

- 4.1 the control over -
 - 4.1.1 all buildings, and/or structures erected or be erected on erven of which the association is the registered owner as well as the maintenance thereof; and
 - 4.1.2 the care, maintenance, upkeep of the Private Open Spaces;
 - 4.1.3 take care of the privately-owned services which includes but is not limited to roads, storm water, electricity, water reticulation, sewerage, optical fibre technology, parks, fencing and walling of the properties that are privately owned by the Home Owners Association
- 4.2 the promotion, advancement and protection of the communal and group interests of the Members in general.
- 4.3 Regulate the aesthetic appearance, colour scheme, design and maintenance of the houses erected on an erf and to request an owner to comply where applicable (such as painting their property or mowing their lawns).
- 4.4 Regulate the behaviour patterns of the occupants of the estate by way of House Rules.
- 4.5 Should there be a Body Corporate established in terms of the Sectional Titles Act Section 25 of the Sectional Title Act 95 of 1986 or a Home Owners Association in terms of Act 65 of 1988 and there is a conflict between their Constitution and this Constitution, the premises in this Constitution shall receive preference over the other Constitution unless such other provision is sanctioned by law.
- 4.6 Common property as defined in the Sectional Title Act stays the responsibility of the body corporate under whose jurisdiction it falls excluding where applicable, roads running over common property over which there is a servitude right of way in favour of the Home Owners Association.
- 4.7 Where a servitude right of way is registered or otherwise granted over common property of a sectional title development in favour or another sectional title development granting the participants (members) of that body corporate the right to utilize such right of way, the maintenance of that road is to be shared by both body corporates on a pro rata basis by adding the sum of the body corporates participation quotas together and expressing a members contribution for such maintenance as a participation percentage on the combined participation quotas.
- 4.8 The owners of an erf abutting onto a private open space may under certain circumstances encroach for gardening purposes, 2.5 meters onto such private open space. No permanent structures may be constructed on the encroached area, except for palisade fencing.

5. FINANCIAL YEAR END

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

6. MEMBERSHIP

- 6.1 Membership of the Association shall be compulsory for every registered owner of a Unit Erf.
- 6.2 Such membership shall commence simultaneously with the transfer of the unit erf into the name of the Transferee;
- 6.3 Membership of the Association shall be limited to the registered owners of the unit erven provided that:
 - 6.3.1 a person who is entitled to obtain a certificate of registered title to any such unit erf shall be deemed to be the registered owner thereof;
 - 6.3.2 where any such owner is more than one person, all the registered owners of that erf shall be deemed jointly to be one Member of the Association;

- 6.3.3 where any person is the Registered Owner of more than one Unit or Erf, such person shall be regarded to be a Member and shall have the rights and obligations of a Member in respect of each of the Erven registered in the person's name, it being recorded that the provisions of this clause shall also be applicable to the Developer whilst it is the registered owner of an erf or erven subject to para 31 hereof;
- 6.4 When a member ceases to be the registered owner of a unit erf, he shall ipso facto cease to be a member of the Association;
- 6.5 A Member shall not be entitled to:
- 6.5.1 sell or transfer a Unit Erf unless it is a condition of the sale and transfer that:
- 6.5.1.1 the transferee becomes a Member of the Association.
- 6.5.1.2 the registration of transfer of that Unit Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association.
- 6.5.1.3 he first obtains the written consent of the Association which consent shall be given provided the purchaser of such Unit Erf agrees in writing to abide by the rules of the Constitution of the Association.
- 6.5.1.4 Where the developer gives transfer written consent of the Association is not necessary;
- 6.5.1.5 erect any additional buildings and/or structures of any nature whatsoever, nor to make any alterations, modifications or renovations to such buildings and/or structures ("the proposed work") on his Unit Erf without the written approval of the Trustees, which approval shall only be given -
- a) after detailed plans of the proposed work has been submitted to the Trustees, or any person nominated by the Trustees (who may be an Architect, registered with the South African Council of Architects or the Institute of South African Architects); and
- b) the Trustees or their nominee are satisfied that the proposed work is in accordance with the character and style of the Estate and provided that part of the garden that lies in front of the front door of the home may not be enclosed with any form of walling, fencing or any other method to enclose the property (excluding corner erven) and no part of the building, garages excluded, may be closer than 4.5 meters from the boundary bordering onto the street from which the property receiving its main access.
- c) the Member has made payment of any costs which may be incurred in obtaining this approval, including the costs of the Trustees or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature.
- d) Motor vehicles may not be parked on the garden area in front of the property. Motor vehicles are restricted to the driveways in front of the garages or the street reserve. The Trustees may grant permission for the extension of driveways provided that the proposed extension on the applicants' property and its neighbour does not constitute a violation of the fire regulations as laid down by the Drakenstein Municipality and more specific regarding screen walls to garages built on the boundary. If an extension shall have the effect of building a screen wall on the boundary in front of the garage, then such application shall not be granted.
- 6.6 The Registered Owner of a Unit Erf may not resign as a member of the Association.
- 6.7 The Trustee Committee may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.
- 6.8 The rights and obligations of a Member shall not be transferable and every Member shall:

- 6.8.1 to the best of his ability further the object and interests of the Association.
- 6.8.2 observe all by-laws and regulations made by the Association or the Trustee Committee.
- 6.8.3 be jointly liable with all the Members for all expenditure incurred in connection with the Association and approved at the annual meeting in accordance with this constitution. This condition can only be altered by a special general meeting;

provided that nothing contained in this Constitution shall prevent a Member from ceding his rights in terms of this Constitution as security to the Mortgagee of that Member's Erf.

7. LEVIES

- 7.1 The Trustee Committee shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or which the Trustee Committee reasonably anticipates the Association will be put by way of payment of all expenses necessary or reasonably incurred in connection with the management of the Association, and the Association's affairs in general as set out in Par 4 hereof. In calculating levies, the Trustee Committee shall take into account, income, if any, earned by the Association.
- 7.2 The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Member's, equal as close as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.
- 7.3 The Trustee Committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in 7.1 (which are not included in any estimate made in terms of 7.2), and such levies may be made in the sum or by such instalments and at such time or times as the Trustee Committee shall think fit. Subject to para 7.5.
- 7.4 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member. A Member's successor in title to a Unit Erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of the erf, to pay the levy attributable to that erf. No Member shall transfer his Unit Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.
- 7.5 Notwithstanding the aforementioned, the aggregate levy imposed in any year shall not exceed 15% of the previous years' levy without the sanction of a Special Resolution of the Association (and no members shall be entitled to unreasonably vote against a Resolution proposing an increase) provided that the aforesaid limit shall not apply if it shall have the effect of the Association being unable to fulfil its objects in respect of expenditure for:
 - 7.5.1 rates and taxes; and/or
 - 7.5.2 any other obligation assumed by it in terms of an agreement with the local authority,
 - 7.5.3 for the upkeep of all the property transferred to itself or to be transferred to itself as well as the upkeep and maintenance of the Estates gardens, security internal private services such as roads, stormwater, electrical, sewerage and water, reticulation optical fibre technology should any of the aforementioned be applicable or any other services the Home Owners engaged into in terms of decisions taken at a special general homeowners meeting.
- 7.6 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every subscription and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 7.7 The management association shall on the application of a member or any person authorised by such member certify in writing -
 - (a) the amount determined as the contribution of that member;
 - (b) the manner in which such contribution is payable;

- (c) the extent to which such contribution has been paid by that member; and
- (d) the amount of any rate paid by the management association and not recovered by it;

7.8 Each owner of a unit / erf will make a contribution calculated as follows:

$$\frac{\text{The total amount of the expenses}}{\text{Total amount of unit / erven registered at any given time}}$$

This formula can only be changed in terms of a special general resolution by the members of the Homeowners Association as defined hereunder in para 7.10.

7.9 The Homeowners Association shall collect as a special levy from each owner when a unit erven is transferred from one person to another 1% of the selling price or the fair value of the erven transferred (calculated on the higher value). This Seller or their attorney shall furnish the Homeowners Association with an acceptable guarantee or undertaking for this special levy payable on transfer of the property to the transferee before the Homeowners Association shall issue their consent to such transfer.

This condition is not applicable to transfers between spouses married according to the Laws of the Republic of South Africa.

This special levy may only be increased/decreased by a special general resolution of the members of the Homeowners Association as defined in para 7.10.

7.10 The special general resolutions referred to in para 7.8 and 7.9 shall be as reflected under the definition of special resolution. The quorum for such meeting will however be as stipulated in para 18.3.

8. CONTRACTS AND REGULATIONS

8.1 The Trustee Committee may from time to time:

8.1.1 make regulations governing inter alia

the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation to such buildings and/or structures on Unit Erven, (which regulations may be incorporated in a development manual)

8.1.2 matters mentioned in para 7.5.4; and

8.1.3 matters mentioned in para 4 being the main object of the Association

8.2 enter into agreement(s) with the Council on any other incidental matters.

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

8.3.1 the provisions of this Constitution.

8.3.2 any regulations made in terms of 8.1.

8.4 Should any Member:

8.4.1 fail to pay on due date any amount due by that Member in terms of this constitution or any regulation made thereunder and remain in default for more than 7 days after being notified in writing to do so by the Trustees; or

8.4.2 commit any breach of any of the provisions of this Constitution or any regulation made thereunder and fail to commence remedying that breach within a period of 7 days after the receipt of written notice to that effect by the Trustees and complete the remedying of such breach within a reasonable time.

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

- 8.4.3 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Constitution or any regulation made thereunder, as the case may be; or
- 8.4.4 in the case of clause 8.3.2 to remedy such breach and immediately recover the total cost incurred by the Trustees or the Association in so doing from such Member.
- 8.4.5 should the Trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation made thereunder, then without prejudice to any other rights which the Trustees or the Association or any other rights which the Trustees or the Association or any other member may have in law, the Trustees shall be entitled to recover from such Member all legal costs incurred by the Trustees or the Association, including attorney/client charges, tracing fees and collection commission.
- 8.4.6 without prejudice to allow any of the rights the Trustees or the Association granted under this Constitution, should any member fail to pay any amount due by that Member on due date, then such member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's bankers from time to time calculated from the due date for payment until the actual date of payment of such amount.

9. CESSATION OF MEMBERSHIP

No member ceasing to be a Member of the Association for any reason shall, (nor shall any such member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such member or his estate any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Member.

10. TRUSTEE COMMITTEE

- 10.1 There shall be a Board of the Trustees of the Association which shall consist of not less than three (3) and not more than six (6) chosen Members. The Chairman of a Body Corporate becomes a member of the Trustee Committee of the Association, ex officio.
- 10.2 A Trustee shall be a natural person. The Trustee committee may consist of trustees that are Members and trustees that are not Members (non Member Trustees). Only the following persons qualify to be non Member Trustees:
 - 10.2.1 The spouse of a Member but only if such spouse is a resident and in such a case the Member is not eligible as a Trustee;
 - 10.2.2 The representative of a Trust, Company, Close Corporation that are a member and where that representative is a resident of the development.
- 10.3 The chairperson of the trustees of a sectional title scheme within the Honeydew Country Estate, shall ex officio become a member of the trustee committee. Where there are more than one body corporate, sectional title developments on the said Honeydew Country Estate, the chairpersons between them, shall elect 2 (two) persons to become members of the trustee committee.
- 10.4 The trustee committee shall have the right to appoint a managing agent and assign or cede any of its rights and duties in terms of this constitution. The managing agent will preferably also be the managing agent for the body corporates to be elected.

The Developer shall have the right to appoint one Trustee to the Committee who shall have voting power as set out in Par 31.2.

11. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 11.1 Save as set forth in 25 below, each Trustee shall continue to hold office until the next annual General Meeting following his said appointment, at which meeting each trustee shall be deemed to have retired from office as such, but shall be eligible for re-election to the Trustee Committee at such meeting.
- 11.2 A Trustee shall be deemed to have vacated his office as such upon:
 - 11.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate.

- 11.2.2 him making any arrangement or compromise with his creditors.
- 11.2.3 his conviction for any offence involving dishonesty.
- 11.2.4 him becoming of unsound mind or being found lunatic.
- 11.2.5 him resigning from such office in writing delivered to the Secretary.
- 11.2.6 his death.
- 11.2.7 him being removed from office by a Special Resolution of the members.
- 11.2.8 his levies being in arrears for more than 30 (thirty) days and him failing to bring it up to date after having been given 7 (seven) days written notice to do so by the Trustee Committee.

provided that anything done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

- 11.3 Upon any vacancy occurring on the Trustee Committee prior the next Annual General, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee.

12. OFFICE OF TRUSTEES

- 12.1 The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.
- 12.2 The first Chairman, and Vice-Chairman, shall be appointed by the Registered Owner, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.
- 12.3 Within seven (7) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid office at any time, the Trustee Committee shall immediately meet to appoint one of their number as replacement in such office.
- 12.4 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or of Members, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 12.5 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Trustee Committee.
- 12.6 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties, unless approved on a Special General Meeting.

13. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 13.1 Subject to the express provisions of these presents, the Trustee Committee 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 and, save as may be expressly provided in these presents, 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 in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.

- 13.2 The Trustee Committee shall have the right to vary, conceal or modify any of its decisions and resolutions from time to time but not decisions adopted by its members at a general or special general meeting.
- 13.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any Member or Members chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 13.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member of Trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 13.5 The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed in the Association in general meeting:
- 13.5.1 for the furtherance and promotion of any of the objects of the Association
- 13.5.2 for the better management of the affairs of the Association.
- 13.5.3 for the advancement of the interests of Members
- 13.5.4 for the conduct of Trustee Committee meetings and general meetings; and
- 13.5.5 to assist it in administering and governing its activities generally.
- 13.5.6 the Trustee Committee shall have perpetual succession and shall be capable of suing and being sued in its corporate name in respect of -
- (i) any contract made by it;
 - (ii) any damage done to the land, the common property or facilities;
 - (iii) any matter in connection with the housing development scheme, the land, the common property, facilities or services for which the management association is responsible; and
 - (iv) any matter arising out of the exercise of its powers or the performance or non-performance of its functions under the Housing Development Act, Act 65 of 1988 or any rules referred to in regulation 9 (1) (o) of the said Act;
 - (v) to make rules for the conduct of members, which rules shall not be in conflict with the Act or a regulation, shall be reasonable, and shall apply equally to all members in respect of accommodation put to substantially the same use and to be approved at a special general meeting;
 - (vi) to invest any money with one of the following banks, ABSA Bank Ltd, Standard Bank, Nedbank Ltd, or FNB and to enter any agreement with the local authority or any person or body for the supply to any building and the land of electric, current, gas, water, fuel and sanitary and other services;
 - (vii) to appoint/dismiss employees as it may deem fit; or any other functions authorised by the regulations issued under The Housing Development Act, Act 65/1988; and shall be entitled to cancel, vary or modify any of the same from time to time.

14. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 14.1 The Trustee Committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 14.2 Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Trustee Committee need be held for that quarter.

- 14.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be three (3) Trustees.
- 14.4 The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five (5) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 14.5 A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relation to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and Local Authority.
- 14.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 14.7 Save as otherwise provided in these presents, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 14.8 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

15. GENERAL MEETINGS OF THE ASSOCIATION

- 15.1 The Association shall within 6 (six) months after its financial year end in each calendar year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings, during that year, and shall specify the meeting as such in the notices, in terms of 15.1.3 below calling it:
- 15.1.1 such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 15.1.2 All general meetings other than Annual General Meetings shall be called special general meetings.
- 15.1.3 The Trustee Committee, may, whenever they think fit, convene a special general meeting.

16. NOTICE OF MEETINGS

- 16.1 An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by twenty-one (21) days' notice in writing at the least, and a special general meeting other than one called for the passing of a special resolution, shall be called by fourteen (14) days' notice in writing at the least. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed :
- 16.1.1 in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and
- 16.1.2 in the case of special general meeting, by a majority in number of the Members having a right to attend and vote at the meeting being a majority together holding not less than seventy-five percent (75%) of the total voting rights of all Members.

- 16.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at any meeting.
- 16.3 If the development has not been completed by the developer and or where a managing agent have been appointed by the Trustee Committee these parties must also receive notice of any meetings as contemplated in para 16.1 and 16.2 hereof;
- 16.4 The budget for each fiscal year shall be made available to all members of housing interests at least 14 (fourteen) days prior to the date of the trustee committee's annual general meeting;

17. VENUE OF MEETINGS

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

18. QUORUM

18.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent one half of the total votes of all Members of the Association entitled to vote, for the time being save that not less than 10% must be personally present.

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

18.3 The quorum for a special general resolution referred to in para 7.8 and 7.9 and 7.10 shall be 65% of all the members once the developer has completed construction on the estate and sold or let all the unit erven as approved by Drakenstein Municipality.

At least 30% of the members must be personally present. Should there not be a quorum within ½ hour from the time appointed for the holding of the special general meeting, the meeting if cancelled due to a quorum not being present shall stand over as per 18.2. Should there, however, not be a quorum at the adjourned meeting a new notice is to be given for a special General Meeting within the guidelines of this constitution.

19. AGENDA AT MEETINGS

19.1 In addition to any other matters required by these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

19.2 the election of the Trustee Committee and determining a domicilium citandi et executandi for the management association;

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

19.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting

19.5 the consideration of the report of the Auditors

19.6 the consideration of the total levy (as referred to in 8) for the calendar year during which such Annual General Meeting takes place; and

19.7 the consideration and fixing of the enumeration of the Auditors for the financial year of the Association preceding the Annual General Meeting

19.8 the election of a managing agent to be appointed by the trustee committee who has a fidelity fund as prescribed by the Estate Agents Act or the Attorneys Act

20. PROCEDURE AT GENERAL MEETINGS

- 20.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present as such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 20.2 The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time and place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 20.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

21. PROXIES

- 21.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where an association of persons, by the secretary thereof.
- 21.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date of its execution. The limitation of 1 (one) year is not applicable where a person is appointed as the representative of a property owner who is a Trust or other judicial person such as a Company, Close Corporation or other statutory body.
- 21.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

22. VOTING

- 22.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Unit Erf registered in his name provided that if a Unit Erf is registered in more than one person's name, then they shall jointly have one vote.
- 22.2 Save as expressly provided for in these presents, no person other than a member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 22.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 22.4 Notwithstanding the provisions of 22.2 and 22.3 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, may be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote.
- 22.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 22.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or

against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.

22.7 Unless any member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity for the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

23. OTHER PROFESSIONAL OFFICERS

Save as specifically provided in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorney's, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide, subject to any of the provisions of these presents, provided that any expenditure incurred in respect of the above, shall in total not exceed 5% (five percent) of the total annual levy for the year in question unless authorised by a Special Resolution.

24. ACCOUNTS

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

24.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with the proper balance sheet made up as the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Trustee Committee and the Auditors, and there shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in 16 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

25. AUDIT

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

26. SERVICE OF NOTICES

26.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter or email properly addressed to the Member at the address of the Erf owned by him or such other address chosen by such member in writing as its domicilium address.

26.2 No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.

26.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted and where by email on the date that the email delivery confirmation is received.

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

27. INDEMNITY

27.1 All Trustee members and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.

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

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

28. PRIVILEGE IN RESPECT OF DEFAMATION

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

29. ARBITRATION

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

29.1.1 any matters arising out of this Constitution; or

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

29.1.3 the interpretation of this Constitution.

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

29.2 Arbitration shall be held in Cape Town informally and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time) is being intended that if possible it shall be held and concluded within twenty-one (21) Business Days after it has been demanded.

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

29.3.1 primarily an accounting matter - an independent accountant.

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

29.3.3 any other matter - an independent and suitably qualified person appointed by the Auditors.

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

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

29.4.1 the President for the time being of the Law Society of the Cape of Good Hope shall determine

whether the question in dispute falls under 29.3.1, 29.3.2 or 29.3.3; or

- 29.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of 29.3 within seven (7) business days after the parties have failed to agree so that the arbitration can be held and concluded as soon as possible within the 21 Business Days referred to in 28.
- 29.5 The arbitrator shall make his award within seven (7) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of the Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.
- 29.6 The decision of the arbitrator shall be final and binding and may be made an Order of the Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.
- 29.7 Notwithstanding anything to the contrary contained in 29 to 29.6 inclusive, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.

30. EFFECTIVE DATE

The provisions hereof shall come into force simultaneously with the first passing of transfer of the Unit Erven.

31. STATUS AND RIGHTS OF DEVELOPER

Notwithstanding any contrary condition or stipulation in the Constitution of the Home Owners Association the developer may develop a portion of the estate as a retirement village as defined in Act 65 of 1988. Notwithstanding that Act 65/1988 may be applicable to a portion of the Estate such section will still be bound to the provisions of this Constitution. Should the developer develop a portion of the Estate in terms of Act 65 of 1988 that portion may constitute a Home Owners Association as provided for in the Act.

Notwithstanding any of the provisions hereof, the Developer shall, until such time as the number of Unit Erven sold and transferred by the Registered Owner equals 90% of the total number of Unit Erven in the Estate, be entitled at any General Meeting to:

- 31.1 a number of votes equal to the total number of votes of all the other Members of the Association plus one.
- 31.2 appoint Trustees who will have a vote equal to the votes of all the other members of the Trustee Committee plus one to ensure that the Developer has the majority vote of such Trustees at all times.
- 31.3 a developer shall convene a meeting of the members of the Trustee Committee, not later than 60 (sixty) days after the establishment of the management association, at which meeting he shall furnish the members with a certificate from the local authority within whose jurisdiction the land is situated, to the effect that all rates and taxes due in respect of the land up to the date of the establishment of the management association have been paid; (all land owned by the Association)
- 31.4 as from the date of establishment of the Trustee Committee the rights and obligations of the developer arising from the management agreement shall be deemed to have been assigned to the management association who is bound to whatever agreement was concluded with a management agent;
- 31.5 the developer shall on the basis set out in paragraph 7.5 as the case may be, pay levies from the date of establishment of the trustee committee on all completed housing interests which are owned by the developer and have not yet been alienated by him and is occupied by tenants or other people residing there with his permission;
- 31.6 For clarity reasons it is hereby confirmed that until an erf is developed as per para 31.5 the developer does not pay any levies on an erf. Rates & Taxes on the remainder of the property until transferred to a purchaser is for the account of the developer.
- 31.7 Until the last erf being developed by the developer, the developer shall have a veto right at any general or special general meeting or a Trustee Committee for a period of 6 (six) months after completion of the construction on the second last erf.
- 31.8 The private parks and the buildings thereon shall stay the property of the developer and he may reduce the park area to not less than 1 ha and he may apply for rezoning / subdivision and developing of the areas that exceed the 1 ha. and the Home Owners Association shall not have the right to oppose such applications and shall consent thereto as each member of this Home Owners Association agreed to the developers right individually as long as the rights are in accordance with the

provision of this Constitution and the Deed of Sale between the Developer and the member.

After finalisation of any rezoning of the park areas the balance of the park property which shall be 1 ha or more of the total estate shall be transferred to the Home Owners Association to become the property of the Home Owners Association

- 31.9 Until completion of the development as approved by the Council, the developer by choice has the right to act as the Managing Agent and shall be entitled to the remuneration that is normally charged by Managing Agents.
- 31.10 On the first transfer from a unit owner to a transferee as contemplated in Par 7.9, the developer shall receive 50% (fifty percent) of the Special Levy as a contribution to the developer's expenses for subsidising the Associations operating cost of the infrastructure and services.
- 31.11 Until completion of the development as approved by the Council, the developer may utilize a house on the Estate as an Office for Marketing and Administration.
- 31.12 Section 6.5.1.5 shall not be applicable on the developer and were the developers' architect designs a property that sits closer to the boundary and it is built by the developer as a unit type provided such unit type shall adhere to all Municipal Building and Fire Regulations regarding the property itself and all abutting properties.

32. LETTING OF PROPERTIES

An owner of a unit erven who wishes to rent out his/her property will make use of the letting agent appointed by the developer before completion of the estate and thereafter by the Home Owners Association. This measure is to make sure that a tenant can afford the monthly rent and levy and are informed of the rules and stipulations of the Home Owners Association. All tenants shall before taking occupation of a unit erf within the estate sign a copy of the constitution of the Home Owners Association and any rules promulgated thereunder and confirm that they shall abide by the rules of the constitution.

33. AMENDMENTS TO CONSTITUTION

This constitution, or any part thereof, as contained herein shall not be repealed or amended, and no new rules shall be made, save by a special resolution adopted at an Annual General Meeting or Special Meeting of the Members. Where any amendment or repealing affects the Councils interest, the Council needs to approve such an alteration to be effective and binding. The Council has the power to impose conditions in terms of the Municipal Bylaws regarding the functionality of the Municipal Services, Water and Electricity and the up keep and maintenance thereof.