



DRAKENSTEIN

MUNISIPALITEIT • MUNICIPALITY • UMASIPALA

Paarl | Wellington | Gouda | Saron | Simondium

+27 21 807 4500 +27 21 872 8054
www.drakenstein.gov.za
customer@drakenstein.gov.za
Civic Centre, Berg River Boulevard, Paarl 7646

Enquiries: Cornelia van der Bank
Contact number: 021 807 4832
Reference: 15/4/1 (29114)P & 15/4/1 (484)P
Date: 09 October 2024

Email: theo@nuplanafrica.co.za

Dear Mr Steyn,

ESTABLISHMENT OF A HOMEOWNERS' ASSOCIATION FOR HONEYDEW COUNTRY ESTATE, ERF 29114 PAARL (PREVIOUSLY ERVEN 34448, 39840, 39924 and 42939 PAARL):

1. In terms of Section 60 of the Drakenstein Municipal Land Use Planning Bylaw, 2018, approval is hereby granted for the approval of the constitution of the Honeydew Country Estate Home Owners Association attached as Annexure A.
2. The constitution was evaluated from a local government perspective and is considered to be in line with the provisions of Section 29(3) of the Drakenstein Municipal Land Use Planning Bylaw, 2018. The approval of the mentioned constitution is not expected to have a negative impact on municipal infrastructure or the delivery of municipal services to the estate or the surrounding area.

Regards,

H. G. Strijdom (Pr. Pln A/1058/1998)
Manager: Land Development Management



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**

DRAKENSTEIN MUNICIPALITY

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

Ref: 15/4/1 (29114) P

Date: 9 October 2024

A handwritten signature in black ink, appearing to be "S. [unclear]", is written over a horizontal dotted line.

MANAGER: LAND DEVELOPMENT MANAGEMENT

INDEX

	PAGE:
1. ESTABLISHMENT IN TERMS OF STATUTE	3
2. INTERPRETATION	3
3. PURPOSE DESCRIBING THE MAIN BUSINESS	4
4. MAIN OBJECTIVES	4
5. FINANCIAL YEAR END	4
6. MEMBERSHIP	4
7. LEVIES	6
8. CONTRACTS AND REGULATIONS	7
9. CESSATION OF MEMBERSHIP	8
10. TRUSTEE COMMITTEE	9
11. REMOVAL AND ROTATION OF TRUSTEE MEMBERS	9
12. OFFICE OF TRUSTEES	10
13. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE	10
14. PROCEEDINGS OF THE TRUSTEE COMMITTEE	11
15. GENERAL MEETINGS OF THE ASSOCIATION	12
16. NOTICE OF MEETINGS	12
17. VENUE OF MEETINGS	12
18. QUORUM	13
19. AGENDA AT MEETINGS	13
20. PROCEDURE AT GENERAL MEETINGS	13
21. PROXIES	14
22. VOTING	14
23. OTHER PROFESSIONAL OFFICERS	14
24. ACCOUNTS	15
25. AUDIT	15
26. SERVICE OF NOTICES	15
27. INDEMNITY	15
28. PRIVILEGE IN RESPECT OF DEFAMATION	16
29. ARBITRATION	16
30. EFFECTIVE DATE	17
31. STATUS AND RIGHTS OF DEVELOPER	17
32. LETTING OF PROPERTIES	18
33. AMENDMENTS TO CONSTITUTION	18
34. SECTIONAL TITLE	18
35. MATTERS RELATING TO THE MUNICIPALITY	18

1. ESTABLISHMENT IN TERMS OF STATUTE

The Honeydew Home Owners' Association is constituted, in terms of Section 29 of the Land Use Planning Ordinance, No. 15 of 1985, in accordance with the conditions imposed by the Drakenstein Municipality when, in terms of Section 25(1) and 42 of the said Ordinance, it approved 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, Sundays and Public Holidays "Chairman"

means the Chairman of the Trustee Committee

"Common property" means property registered or to be registered in the name of the HOA

"CSOS" refers to the Community Schemes Ombud Services (CSOS) that was established in terms of the CSOC Act, Act 9 of 2011 to regulate the conduct of parties within Community Schemes and the provision of the Act is applicable to the Home Owners' Association and its members.

"erf" – the same as the Unit Erf definition

"immovable property" - as defined by the Registrations of Deeds Act 47 of 1937

"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 no 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, by show of hands, of the majority of those present who, at a minimum, form a quorum for a general meeting and for a resolution in terms of Para 7.8, 7.9 and 7.10 passed by no less than 65% of all the Members as per Para 18.3,

"Special use Erven" means erven of sectionalized portions of erven not utilized for residential purposes, including private parks and roads of which the Home Owners' Association shall not raise any levy payments and to be transferred 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 land 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 in force from time to time "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 gender.
- 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 are registered in an owner's name.

4. MAIN OBJECTIVES

The main objectives of the Association, which is a juristic person are:

- 4.1 the control over -
- 4.1.1 all buildings, and/or structures erected or to be erected on erven of which the association is the registered owner, as well as the maintenance thereof;
- 4.1.2 the care, maintenance, upkeep of the Private Open Spaces;
- 4.1.3 care of the privately-owned services which include but are not limited to roads, storm water, electricity, water reticulation, sewerage, optical fibre technology, private parks, fencing, gate house and security equipment, retention ponds, the responsibility of refuse removal and walling of the properties that are privately owned by the Home Owners' Association; and
- 4.1.4 To manage and administrate all individual occupants water meters and accounts.
- 4.2 the promotion, advancement and protection of the communal and group interests of the Members in general.
- 4.3 to regulate the aesthetic appearance, colour scheme, design and maintenance of the house erected on an erf and to request of owners to comply where applicable (such as painting their property or mowing their lawns)
- 4.4 to regulate the behaviour of the occupants of the estate by way of House Rules and monetary fines should it be necessary.

5. FINANCIAL YEAR END

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

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 apply to the Developer whilst it is the registered owner of an erf or erven, subject to para 31 hereof;
- 6.4.1 The owners of an erf abutting onto a private open space may under certain circumstances encroach 2.5 meters onto such private open space, for gardening purposes. No permanent structures may be constructed on the encroached area, except palisade fencing.
- 6.4.2 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 (where the developer gives transfer, written consent of the Association is not necessary);

6.5.2 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 after -

a) detailed plans of the proposed work have 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 is 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 receives its main access;

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.

6.5.3 park motor vehicles 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 applicant's property and its neighbour's does not constitute a violation of the fire regulations as laid down by the Drakenstein Municipality and more specifically 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 objectives and interests of the Association.

6.8.2 observe all by-laws and regulations instituted 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 be altered only by a special general meeting;

6.8.4 adhere to Drakenstein Municipality's Water and Sanitation By-law with regards to water conservation and water restrictions when applicable;

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, impose 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 require to cover 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 impose a levy upon the Member's, equal to, or 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, impose 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 imposed 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 him ceasing to be a Member of the Association, without prejudice to the Association's right to recover levies that might be in arrears. No levies paid by a member shall under any circumstances be repayable by the Association upon him 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 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 afore-mentioned, 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 objectives 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 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 has 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, upon the application of a member or any person authorized by such member, certify in writing the -
- (a) amount determined as the contribution of that member;
 - (b) manner in which such contribution is payable;
 - (c) extent to which such contribution has been paid by that member; and
 - (d) 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:

The total amount of the expenses

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

This formula can be changed only 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 erf is transferred from one person to another, 1% of the selling price or of the fair value of the erf transferred (calculated on the higher value). The Seller or his 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 its consent to such transfer.

This condition does not apply 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 implement regulations, governing inter alia
 - 8.1.1.1 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);
 - 8.1.1.2 matters mentioned in para 7.5 and
 - 8.1.1.3 matters mentioned in para 4 being the main objective of the Association.
 - 8.1.2 enter into agreement(s) with the Council on any other incidental matters.
 - 8.1.3 Enter into Lease agreements and contracts regarding the alienation or acquisition of property whether it is moveable or immovable and should it be immovable property to be alienated a special resolution shall be required. If the Home Owners Association wish to acquire immovable property other than from the Council or the Developer such acquisition shall also require a special resolution.
- 8.2 Each Member undertakes to the Association that he shall comply with:
- 8.2.1 the provisions of this Constitution;
 - 8.2.2 any regulations made in terms of 8.1.
- 8.3 Should any Member:
- 8.3.1 fail to pay on due date any amount due by that Member in terms of this constitution or any regulation instituted thereunder and remain in default for more than 7 days after being notified in writing to do so by the Trustees; or
 - 8.3.2 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:
 - 8.3.2.1 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
 - 8.3.2.2 in the case of para 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.
 - 8.3.3 Should any member dispute any water account, the individual meter can be tested at an accredited SANAS approved testing facility and the water meter over register with more than 2%, then the meter account must be rectified. The testing fee must be paid upfront by the member including the fee for the installation of the new water meter. If the water meter is found to be over registering, the testing fee of the old water meter and cost of the new water meter must be refunded.
- 8.4 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 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.

8.5 Without prejudice to any of the rights of the Trustees or the Association, granted under this Constitution, should any member fail to pay any amount due by that Member on due date, such member shall pay interest thereon at the publicly quoted prime rate of interest charged by the Association's bankers from time to time, and calculated from the due date for payment until the actual date of payment of such amount.

8.6 The Trustees have the right to inspect, replace and take readings of any water meter.

9. CESSATION OF MEMBERSHIP

9.1 No member ceasing to be a Member of the Association for any reason shall have any claim upon or interest in the funds or other property of the Association, but this paragraph shall be without prejudice to the rights of the Association to claim from such member or his estate any subscriptions in arrears or other sums due from him to the Association at the time of him so ceasing to be a Member. This provision shall also apply to any such member's executor, curators, trustees or liquidators.

9.2 Arrangements should the HOA ceases to function:

9.2.1 If an owners' association ceases to function or carry out its obligations, any affected person, including a member of the association, may apply in terms of Section 15(2)(o) of the Municipal By-Laws, to disestablish the owners' association subject to:

- the amendment of the conditions of approval to remove the obligation to establish an owners' association; and
- the amendment of title conditions pertaining to the owners' association, to remove any obligation in respect of an owners' association;
- in terms of Section 15(2)(p) of the Municipal By-Laws, for appropriate action by the Municipality to rectify a failure of the owners' association to meet any of its obligations in respect of the control over or maintenance of services contemplated in Subsection 29(3)(b) of the Municipal By-Laws; or
- to the High Court to appoint an administrator who must exercise the powers of the owners' association to the exclusion of the owners' association.

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

- the purpose of the owners' association;
- who will take over the control over and maintenance of services for which the owners' association is responsible; and
- the impact of the disestablishment of the owner' association on the members of the owner' association and the community concerned.

9.2.3 The Municipality or the affected person may recover from the members of the owner' 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.

9.2.4 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 owner' Association.

9.2.5 Further regard must be given to the strict provision set out by the Deed Registry, Cape Town, in particularly to Registrars Conference Resolution no.2 of 2007, that 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.

9.3 Winding up

9.3.1 The Association may be wound up by a resolution of Members provided that:

- two thirds (2/3 rds) of the Members, a quorum of not less than forty percent (40%) of all Members being present in person or by proxy and voting vote in favour thereof; and

- the Local Authority consents thereto, or
- upon an order of the High Court.

9.3.2 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.

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 seven (7) elected 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 to be a Trustee;
- 10.2.2 The representative of a Trust, Company, Close Corporation that is 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 is more than one Body Corporate of 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. This provision does not exclude Members that are Owners of Sectional Title units to be elected as Trustees.
- 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 Developer shall have the right to appoint one Trustee to the Committee who shall have voting power as set out in Par 31.2.
- 10.5 For the sake of clarity, it is recorded that all Members entitled to vote are entitled to vote on all matters at General of Special general meetings including the election of Trustees.

11. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 11.1 Save as set forth in para 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 of any offence involving dishonesty;
- 11.2.4 him becoming of unsound mind or being found mentally ill;
- 11.2.5 him resigning from such office in writing, and the notification 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 those 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 members 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 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 offices at any time, and the Trustee Committee shall meet immediately to appoint one of their members as replacement to 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.
- 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 at 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 perform all such acts on behalf of the Association as may be exercised by the Association in a general meeting, subject nevertheless to such regulations as may be prescribed by the Association in a general meeting from time to time, and provided that no regulation instituted by the Association in a general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been instituted. The Homeowners Association must enforce conditions of approval or management of Drakenstein Municipality.
- 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 institute regulations and by-laws, and monetary fines provided that such regulations are 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.

- 13.6 The Trustee Committee shall have perpetual succession, and shall be capable of implementing the hereinafter sited actions and or be capable of suing and being sued in its corporate name, in respect of -
- 13.6.1 any contract made by it;
 - 13.6.2 any damage done to the land, the common property or facilities;
 - 13.6.3 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
 - 13.6.4 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;
 - 13.6.5 implementing 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 Architectural guidelines which may be more restrictive than the Municipal Rules ~~and to be approved at a special general meeting;~~
 - 13.6.6 investing any money with one of the following banks, ABSA Bank Ltd, Standard Bank, Nedbank Ltd, or FNB, and to enter into any agreement with the local authority or any person or body for the supply of electric current, gas, water, fuel, sanitary and other services to any building and the land;
 - 13.6.7 appointing/dismissing 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 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 have waived the above requirement in respect of a particular quarter in writing, 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 the Chairman not be present at any meeting of the Trustee Committee within five (5) minutes after the time appointed for the holding thereof, 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 respect of 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 has closed and shall then be certified as 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 relevant to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection by a Trustee, the Auditors, the Association Members and Local Authority, at all reasonable times.
- 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 date of passing 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 Within 6 (six) months after its financial year-end in each calendar year, the Association shall, 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 the constitution
 - 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 it thinks 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 at least twenty- one (21) days' notice in writing, and a special general meeting, other than one called for the passing of a special resolution, shall be called by at least fourteen (14) days' notice in writing. 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 or a Special general meeting, by all the Members entitled to attend and vote thereat; and
- 16.1.2 in the case of special general meeting regarding the matters set out in paragraph 7.8 to 7.10, by a majority of the Members having a right to attend and vote at the meeting, the majority being no 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 has 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 that have housing interests, at least 14 (fourteen) days prior to the date of the Trustee Committee's annual general meeting;
- 16.5 Where a Management Agency have been appointed to manage the affairs of the Home Owners' Association the Management Agency' address shall be the domicilium address of the Home Owners' Association where all notices may be given.

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 or special 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 at the time, represent one half of the total votes of all Members of the Association entitled to vote, at the time, provided that no 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 by 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 place and time, or at such other place as the Chairman of the meeting shall determine 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 At a meeting to pass a special general resolution, as referred to in para 7.8 and 7.9 and 7.10, the vote to carry such resolution shall be no less than 65% of all the members, once the developer has completed construction on the estate and sold or let all the units as approved by Drakenstein Municipality.

At least 30% of the members must be personally present. Should there not be a quorum within half an hour from the time appointed for the holding of the special general meeting, the meeting shall stand over as per 18.2. Should there, however, not be a quorum at the adjourned meeting either, 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:
- 19.1.1 the election of the Trustee Committee and determining a domicilium citandi et executandi for the Management Association;
 - 19.1.2 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;
 - 19.1.3 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
 - 19.1.4 the consideration of the report of the Auditors;
 - 19.1.5 the consideration of the total levy (as referred to in 8) for the calendar year during which such Annual General Meeting takes place; and
 - 19.1.6 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting;
 - 19.1.7 the election of a Managing Agent to be appointed by the Trustee Committee, such agent to have 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, 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, the Members present as such meeting and 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 to 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 had taken 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 for 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 practices.
- 20.4 Proper minutes of all the Special and General meetings and decisions taken must be kept and approved by the members and entered into a minute book.

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 a Member is 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 twelve (12) months does not apply 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 death of the principal or revocation of the proxy, provided that no indication in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time set 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, 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 by 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 by 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 by a show of hands or by 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 for in this Constitution, the Trustee Committee shall at all times have the right, on behalf of the Association, to engage 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 institute 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 those, 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 times 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 financial year of the Association immediately preceding such Annual General Meeting, 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 shall be ascertained by the Auditors (reviewed).

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 at the address of the Erf owned by him or such other address chosen by such member in writing as its domicilium address or an e-mail properly addressed to the Member at its chosen email address. Should a member alter his domicilium address it is the members responsibility to inform the HOA thereof in writing.
- 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 e-mail, 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 bona fide liabilities 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 whatsoever that 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, by virtue of his membership or, as the case may be, his holding office as a Trustee member, shall be deemed to have waived 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 by any other Member, the Trustee Committee, the Chairman or Vice-Chairman, any 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, 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 Members 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 have an interest in the matter in question.

- 29.2 Arbitration shall be held informally, in Cape Town, and otherwise upon the provisions of the Arbitration Act No 42 of 1965 (as

amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 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 no 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 by either 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.
- 29.8 The mandate of CSOS is to regulate, mentor and quality assure scheme governance documentation development and provide dispute resolution service, and take custody of, preserve and provide public access electronically or by other means to scheme governance documentation and has jurisdiction over any disputes set out in the afore mentioned clause of para 29 or any other matter that falls under the provisions of the CSOS Act.

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

- 31.1 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 apply 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.
- 31.2 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:
- 31.2.1 a number of votes equal to the total number of votes of all the other Members of the Association plus one.
 - 31.2.2 appoint one 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 that is bound to whatever agreement was concluded with a Management Agent;

- 31.5 On the basis set out in para 7.5 as the case may be, the developer shall 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 purposes of clarity 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 at a Trustee Committee meeting 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 remain 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. The Home Owners' Association shall not have the right to oppose such applications and shall grant consent thereto as each member of this Home Owners' Association agreed to the Developer's rights 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 Association's 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 6.5.2 and 6.5.3 shall not apply to the developer where 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 erf 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 Owner's Association. Before taking occupation of a unit erf within the estate, all tenants shall 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. Any amendment or repealing affects the Council's 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 Drakenstein Municipal for such Bylaws regarding the functionality of the Municipal Services, Water and Electricity and the upkeep and maintenance thereof.

34. SECTIONAL TITLE

- 34.1 Where a Body Corporate has been 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.
- 34.2 Common property, as defined in the Sectional Title Act, remains the responsibility of the Body Corporate under whose jurisdiction it falls.

35. MATTERS RELATING TO THE MUNICIPALITY

- 35.1 An owners' association or home owners' association that came into being by virtue of a condition imposed under the Land Use Planning Ordinance, 1985 (ordinance 15 of 1985) and that exists immediately before the commencement of Drakenstein By Law on Municipal Land use planning of 2015 shall be regarded as an owners' association that came into being by virtue of a condition imposed by the Municipality in accordance with the above mentioned Drakenstein By law in terms of Section 66(7).

- 35.2 The Home owners' Association may have other objectives as set out by the constitution, but it may not contain provision that are in conflict with any other law in terms of Section 29(4) of the By-Law.
- 35.3 The Council has the power to impose conditions in terms of the Drakenstein Municipal Bylaws regarding the functionality of the Municipal Services, Water and Electricity and the upkeep and maintenance thereof. Water levies charged by the HOA to residential erven may not exceed the approved water tariff payable by residents within the Drakenstein Municipal boundaries, as published annually by the local authority.
- 35.4 The management and maintenance of all internal services (including refuse removal) to individual portions and the common property in the development. For the sake of clarity, it is placed on record that due to the design (internal roads) and standards of the development, the management and maintenance of services in the development will be private, handled by the Association and the Municipality will have no obligation to the development for such services.
- 35.5 The Body Corporate and/or Home Owners' Association shall assume responsibility for all services from the date of Practical Completion of these services, as stated in the latest version of the General Conditions of Contract, subject only to the standard one year defect liability period as maintained by the Developer. It is noted that this shall also apply to the individual phases in the development. The Developer must ensure that the offer to purchase and deed of sale includes this obligation and that this is brought to the attention of the buyer.
- 35.6 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 within 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.
- 35.7 The Homeowner's Association and/or Body Corporate shall control and maintain the common area, internal roads, sidewalks, kerbing, channeling, storm water systems, street lighting, private open spaces, the maintenance and management of all individual water meters on all members properties and that the owners of erven/units will be obligated to join and be members of the Home Owners' Association and/or Body Corporate and to contribute in the form of a levy, proportional according to the size of their portions to enable proper maintenance to be performed.
- 35.8 The HOA shall ensure compliance with all applicable municipal by-laws and including any water restrictions imposed on the HOA by the Local Authority from the time.
- 35.9 All private combined systems (including but not limited to water, sewer, stormwater, roads, irrigation, etc) shall be the joint and severalty responsibility (including but not limited to the administration of the joint account and operation and maintenance of the system) of the members of the Homeowners' Association/Body Corporate. These conditions shall be notorially linked to each separate title deed.
- 35.10 Where applicable all water 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 documents and plans.
- 35.11 An Operation and Maintenance plan must be submitted to the Civil Engineering Department for approval.

DATED at _____ on this the _____ day of _____ 20_____

PURCHASERS:

PURCHASERS 1: NAME AND SURNAME:

SIGNATURE:

PURCHASERS 2: NAME AND SURNAME:

SIGNATURE:

DATED at _____ on this the _____ day of _____ 20____

TENANTS:

TENANT 1: NAME AND SURNAME:

SIGNATURE:

TENANT 2: NAME AND SURNAME:

SIGNATURUE