

CONSTITUTION
OF
OUDE CHARDONNAY HEALTH AND
LIFESTYLE ESTATE
HOMEOWNERS' ASSOCIATION

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

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INTRODUCTION

1. ESTABLISHMENT IN TERMS OF STATUTE

Oude Chardonnay Health & Lifestyle Estate Homeowners Association is constituted as a Homeowners' Association in terms of Section 29 of the Land Use Planning Ordinance, NO. 15 of 1985, and in terms of the regulations granted by the Minister of Economic Affairs in terms of section 11 of the Housing Development Schemes for Retirement Persons Act of 1988.

2. INTERPRETATION

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

- 2.1.1 "these presents" means this Constitution and regulations and by-laws of the Association from time to time in force;
- 2.1.2 "the Association" means Oude Chardonnay Homeowners Association;
- 2.1.3 "the Office" means the registered office of the Association
- 2.1.4 "month" means calendar month;
- 2.1.5 "year" means calendar year;
- 2.1.6 "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;
- 2.1.7 "the Township Area" means the residential erven, houses and sectional title units resulting from the subdivision of Erf 33040 Paarl, including immovable property purchased by the Association from time to time, collectively known as Oude Chardonnay Health and Lifestyle Estate;
- 2.1.8 "sectional title unit" means a section together with its undivided shares in common property apportioned for that section in accordance with the quota of the section;
- 2.1.9 "Trustee Committee" means the board of trustees of the Association;
- 2.1.10 "A Trustee" means one of the Members of the Trustee Committee;
- 2.1.11 "Chairman" means the Chairman of the Trustees Committee;
- 2.1.12 "Vice-chairman" means the Vice-Chairman of the Trustee Committee;
- 2.1.13 "Auditors" means the Auditors of the Association;
- 2.1.14 "The Registered Owner" means the owner of an own title erf or sectional title unit of Oude Chardonnay Rusoord;
- 2.1.15 "Member" is a registered owner of an erf in the township area and/or residential sectional title.
- 2.1.16 "Residential unit" means a house and/or sectional title unit used for residential purposes only and shall specifically exclude garages and storerooms;
- 2.1.17 "The Council" means Drakenstein Municipality;
- 2.1.18 "Oude Chardonnay " means the group housing development and sectional title development constructed on Erf 33040 Paarl, any subdivision of the above erven and any immovable property purchased by the Association from time to time;
- 2.1.19 "Special Resolution" means a resolution passed at a special general meeting of which not less than 21 day's notice had 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.
- 2.1.20 "Ordinary Resolution" means a resolution passed at a general meeting of the Association.
- 2.1.21 "Developer" means Oude Chardonnay Rusoord (Pty) Ltd

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

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

3. PURPOSE DESCRIBING THE MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of the owners of erven or units as specified.

4. OBJECT

The sole object of the Association is to manage the collective interest common to all Members which includes expenditure applicable to common property and the collection of levies for which the Members are liable in terms of these presents, and in particular:

4.1 The Management, control, maintenance and upkeep of:

4.1.1 all buildings, and/or structures erected or to be erected on erven of which the Association is the registered owner; and

4.1.2 private open spaces (common property).

4.2 The promotion, advancement and protection of the communal and group interests of the Members in general and to utilize the powers granted in terms of regulations 7 and 8 of the Housing Development Schemes for Retired Persons Act of 1988 as amended from time to time.

5. STATUS

5.1 The Association shall

5.1.1 have legal personality separate from its Members and be capable of suing or being sued in its own name; and

5.1.2 not operate for profit but for the benefit of the Members.

5.2 No Member in his personal capacity shall have any right, title or interests to or in the funds or assets of the Association, which shall vest in and be controlled by the Trustees.

5.3 No part of the assets of the Association may be distributed to the Members, but may only be made over to another Association having similar objectives.

5.4 Upon dissolution the remaining assets must be distributed to another Association that has similar objectives which is exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act No 58 of 1962 as amended from time to time.

FINANCE

6. DEPOSIT AND INVESTMENT OF FUNDS

- 6.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account/s with a registered commercial bank in the name of the Association and subject to any directive given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payments of the expense of the Association.
- 6.2 All funds available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act No 97 of 1990, or in any listed financial instrument of a company contemplated in paragraph (a) of the definition of "listed company".
- 6.3 Interest on moneys shall be used by the Association for any lawful purposes in the interest of the Association.

7. FINANCIAL YEAR

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

8. LEVIES

- 8.1 The trustee committee shall from time to time, make levies upon the Members for the purpose of meeting all expenses which the Association has incurred, or to which the Trustee committee reasonably anticipates the Association will be put by way of payment of all expenses necessary or reasonably incurred in connection with the management of the Association's affairs in general. In calculating levies the Trustee Committee shall take into account, income, if any, earned by the Association.
- 8.2 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 a result from the preceding year, and shall make a levy upon the members', equal as nearly as is reasonably practical to such estimated amount. The Trustee Committee may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal monthly installments due in advance on the first day of each and every succeeding month of such year.
- 8.3 The trustee committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in 8.1 (which are not included in any estimate made in terms of clause 8.2), and such levies may be made in the sum or by such installments and at such time or times as the trustee committee shall think fit.
- 8.4 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 an erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf, to pay the levy attributable to that erf. No Member shall transfer his Erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.
- 8.5 The levy by a registered owner of an erf in terms of this Constitution is as follows:
- 8.5.1 Sixty five percent (65%) of all levies determined in accordance with 8.1, 8.2, 8.3 aforesaid to be borne by the owners of the own title erven;
 - 8.5.2 Thirty five percent (35%) of all levies determined in accordance with 8.1, 8.2, 8.3 aforesaid to be borne by the owners of the sectional title units
 - 8.5.3 The owners of the sectional title units shall be liable to pay his levies in accordance with their respective participation quotas

The above stipulation can only be amended by a two thirds majority vote at a special general meeting with at least 70% of all owners present by person or by proxy.

8.6 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.

8.7 The Association shall on the application of a Member or any person authorized by such member make known in writing:

8.7.1 The amount determined as the contribution of that Member;

8.7.2 The manner in which such contribution is payable;

8.7.3 The extent to which such contribution has been paid by that Member.

8.8 Notwithstanding clause 8.5 or any other provision contained in The Presents the Members may by special resolution at a General Meeting determine that levies apportioned equally to fund, or to fund the balance if the reserves are utilized, the purchasing of immovable property in terms of clause 18.11.

8.9 It is specifically recorded that the Developer will not pay any levy on any erf not sold and transferred to end purchasers.

9. SPECIAL SERVICES

9.1 The Trustees, acting on behalf of the Association, have the right to appoint any private person, company or institution to render a special service or services to the Association.

9.2 For purposes of this clause special services may mean any services with regards to or in connection with the provision of food and/or beverages (catering) or medical care.

9.3 Contributions towards these services are compulsory, irrespective of the fact that such member or residen makes use thereof or not and all Members shall contribute equally towards the costs thereof.

10. CONTRACTS AND REGULATIONS

10.1 The Trustee Committee may from time to time:

10.1.1 Make regulations governing inter alia the erection of any buildings and/or structures of any nature whatsoever, and the alteration, modification and renovation of such buildings and/or structures on Erven in the Township Area, (which regulations may be incorporated in a development manual);

10.1.2 Enter in agreement(s) with the Council on any other incidental matters.

10.2 Each Member undertakes to the Association that he shall comply

10.2.1 With the provisions of this Constitution: and

10.2.2 Any regulations made in terms of 10.1.1

10.3 Should any Member:

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

10.3.2 Commit any breach of any of the provisions of the Constitution or any regulation made there under and fails to commence remedying that breach within a period of seven (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:

- 10.3.2.1 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 there under, as the case may be; or
 - 10.3.2.2 in the case of clause 10.3.2 to remedy such breach and immediately recover the total most incurred by the Trustees or the Association in so doing from such Member.
- 10.4 Should the Trustees institute any legal proceedings against any Member pursuant to a breach by that Member of this Constitution or any regulation made there under, 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.
- 10.5 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.

11. ACCOUNTS

- 11.1 The Association may from time to time make reasonable conditions and regulations as to the time and manner for 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.
- 11.2 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, together with the proper balance sheet made up at 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. There shall be attached to the notice sent to Members convening each Annual General Meeting, as set forth in 2.1 below, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

12. 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.

MEMBERSHIP

13. MEMBERSHIP

- 13.1 Membership of the Association shall be compulsory for every registered owner of an erf in the township area and/or residential sectional title unit.
- 13.2 Such Membership shall commence simultaneously with the transfer of the erven or sectional title into the name of the Transferee.
- 13.3 Membership of the Association shall be limited to the registered owners of the erven and/or residential sectional title unit provided that:
- 13.3.1 a person who is entitled to obtain a certificate of registered title to any such erf in the

- township area shall be deemed to be the registered owner thereof;
- 13.3.2 where any such owner is more than one person, all the registered owners of that erf or sectional title unit, deemed jointly to be one Member of the Association;
- 13.3.3 where any person is the Registered Owner of more than one Erf in the Township Area, 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.
- 13.4 When a Member ceases to be the registered owner of an Erf in the township area, he shall ipso facto cease to be a Member of the Association.
- 13.5 A Member shall not be entitled to:
- 13.5.1 sell or transfer an Erf in the Township Area unless it is condition of the sale and transfer that:
- 13.5.1.1 The registration of transfer of that Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association;
- 13.5.1.2 He first obtains the written consent of the Association which consent shall be given provided the purchaser of such Erf agrees in writing to abide by the rules of the Constitution of the Association;
- 13.5.1.3 Erect any additional buildings and/or structures of any nature whatsoever, nor make any alterations, modifications or renovations to such buildings and/or structures ("the proposed work" on his Erf without the written approval of the Trustees, which approval shall only be given
- 13.5.1.3.1 After detailed plans of the proposed work has been submitted to the Trustees, or any persons 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
- 13.5.1.3.2 The Trustees or their nominee are satisfied that the proposed work is in accordance with the character an style of Oude Chardonnay;
- 13.5.1.3.3 The Member has made payment of any costs which may be incurred in obtaining this approval, including costs of the Trustees of their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature.
- 13.6 The Registered Owner of an Erf may not resign as a Member of the Association.
- 13.7 The rights and obligations of a Member shall not be transferable and every Member shall:
- 13.7.1 The best of his ability further the object and interest of the Association,
- 13.7.2 Observe all the by-laws and regulations made by the Association or the Trustee Committee;
- 13.7.3 Be jointly liable with all the Members for all expenditure incurred in connection with the Association and approved at the annual general 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 Mortgage of that Member's Erf.

14. 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.

TRUSTEES

15. TRUSTEE COMMITTEE

15.1 There shall be a Board of the Trustee of the Association which shall consist of not less than four (4) and not more than eight (8) members.

15.2 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) provided that the majority of the trustees shall be Members. Only the following persons qualify to be non-Member trustees:

15.2.1 The spouse of a Member but only if such spouse is a resident. In such a case the Member is not eligible as a Trustee.

15.2.2 One of the parents of a Member but only if such parent is a resident, and provided that the actual Member (child) is not selected as a trustee.

15.3 The chairperson, or his nominee, of the trustees of the sectional title scheme known as Oude Chardonnay Retirement Resort Body Corporate, shall be ex officio member of the trustee committee.

15.4 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.

16. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

16.1 Save as set forth in 16.2 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.

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

16.2.1 His estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

16.2.2 His making any arrangement or compromise with his creditors;

16.2.3 His conviction for any offence involving dishonesty;

16.2.4 His becoming of unsound mind;

16.2.5 His resigning from such office in writing delivered to the Chairperson;

16.2.6 His death;

16.2.7 His being removed from office by a Special Resolution of the Members of the Association.

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.

- 16.3 Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining on the Trustee Committee.

17. OFFICE OF TRUSTEES

- 17.1 The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.
- 17.2 Within fourteen (21) 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 offices at any time. The Trustee Committee shall meet to appoint one of their number as replacement in such office.
- 17.3 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 Members, provided however that invites, if any, shall not be entitled to vote at any such meetings.
- 17.4 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.
- 17.5 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.

18. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 18.1 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 in the Association in general meeting from time to time, provided that no regulation made by the Association shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 18.2 The Trustee Committee shall have the right to vary, repeal or modify any of its decisions and resolutions from time to time.
- 18.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any member or Members or non-Members as qualified in section 15.2.1 and 15.2.2, chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.
- 18.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach of these presents by any Trustee, in such reasonable manner as it shall decide from time to time.
- 18.5 The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association in general meeting:

- 18.5.1 for the furtherance and promotion of any of the objects of the Association;
 - 18.5.2 for the better management of the affairs of the Association;
 - 18.5.3 for the advancement of the interests of Members;
 - 18.5.4 for the conduct of Trustee Committee meetings and general meetings; and
 - 18.5.6 to assist it in administering and governing its activities generally.
- 18.6 The Trustee Committee shall have perpetual succession and shall be capable of suing and being sued in its corporate name in respect of:
- 18.6.1 any contract made by it;
 - 18.6.2 any damage done to the land, the common property or facilities;
 - 18.6.3 any matter in connection with the housing development scheme, the land, the common property, facilities or services for which the management association is responsible;
 - 18.6.4 any matter arising out of the exercise of its powers or the performance or non-performance of its functions under the Housing Development Act or any rules referred to in regulation 9(1) (o) of the said Act.
- 18.7 The Trustee Committee may make rules for the conduct of Members, which rules shall not be in conflict with the Act or regulation, shall be reasonable, and shall apply equally to all Members in respect of accommodation put to substantially the same use.
- 18.8 The Trustee Committee may invest any money and enter to 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.
- 18.9 The Trustee Committee may appoint employees as it may deem fit.
- 18.10 The Trustee Committee may carry out any other functions as authorized by the regulations issued under Act 65 / 1988 and shall be entitled to cancel, vary or modify any of the same from time to time.
- 18.11 Notwithstanding any provisions to the contrary contained in These Presents the Trustee Committees may, on behalf of the Association and with the prior approval of the Members by way of a special resolution at a General Meeting, purchase, otherwise acquire or take transfer of immovable property.

19. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 19.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 19.2 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.
- 19.3 The quorum necessary for the holding of any meeting of the trustee committee shall be fifty percent (50%) of the membership.
- 19.4 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 with 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 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.

- 19.5 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 next Trustee meeting. All minutes of trustee committee meetings shall after certification as aforesaid be placed in a trustee committee minute book. 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.
- 19.6 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.
- 19.7 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.
- 19.8 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.

20. OTHER PROFESSIONAL OFFICERS

- 20.1 Save as specially 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, Attorneys, 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.

MEETINGS

21. GENERAL MEETINGS OF THE ASSOCIATION

- 21.1 The Association shall each calendar year, within four (4) months after the end of the financial year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings, during that year. The Association shall specify the meeting as such in the notices, in terms of 21.1.1 and 21.1.2 below:
- 21.1.1 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.
 - 21.1.2 All general meetings other than Annual General Meetings shall be called special general meetings.
 - 21.1.3 The trustee committee, may, whenever they think fit, convene a special general meeting.

22. NOTICE OF MEETINGS OF THE ASSOCIATION

- 22.1 An annual general meeting and a meeting called for the passing of a special resolution, shall be called by 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 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:

- 22.1.1 in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

22.1.2 in the case of a Special General Meeting, all the Members present at the meeting where at least seventy five percent (75%) of all Members are present who are entitled to attend and vote thereat.

- 22.2 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.
- 22.3 Where a managing agent has been appointed by the Trustee Committee the agent must also receive notice of any meetings as contemplated in par 22.1 hereof.
- 22.4 The budget for each financial year shall be made available to all Members of housing interests at least 14 (fourteen) days prior to the date of the Annual General Meeting.

23. VENUE OF GENERAL MEETINGS

General meetings of the Association shall take place at such place(es) as shall be determined by the trustee committee from time to time.

24. QUORUM

- 24.1 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-third of the total votes of all Members of the Association entitled to vote, for the time being save that not less than three (3) Members must be personally present.
- 24.2 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.

25. AGENDA AT GENERAL MEETINGS

- 25.1 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:
- 25.1.1 The election of the Trustees Committee and determining a domicilium citandi et executandi for the Association;
 - 25.1.2 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;
 - 25.1.3 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
 - 25.1.4 the consideration of the report of the Auditors;
 - 25.1.5 the consideration of the total levy (as referred to in section 8) for the current financial year during which such annual general meeting takes place; and
 - 25.1.6 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.
 - 25.1.7 The election of a managing agent to be appointed by the Trustee Committee who has a fidelity fund certificate as prescribed by the Estate Agents Act of 1980 or the Attorneys Act of 1979.

26. PROCEDURE AT GENERAL MEETINGS

- 26.1 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 5 minutes of the time appointed for the holding of such meeting, then the members present at 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.

26.2 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, 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 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.

26.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

27. PROXIES FOR GENERAL MEETINGS

27.1 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 authorized 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.

27.2 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.

27.3 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.

28. VOTING

28.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one (1) vote for each erf registered in his name provided that if an erf is registered in more than one person's name, then they shall jointly have one vote, provided further that for purposes of this clause the reference to erf contained herein shall include, in the case of a sectional title unit, a residential unit only.

28.2 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 amount (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.

28.3 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.

28.4 Notwithstanding the provisions of clause 28.2 and 28.3 aforesaid, voting on the election of a chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote.

28.5 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.

28.6 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.

28.7 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 of 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.

29. SERVING OF NOTICES

29.1 A notice shall be in writing and shall be given or served by the Association upon any member, either by hand or by prepaid post, properly addressed to the Member at the address of the erf owned by him, or such other address chosen by such Member effective as of the date of receipt of written notice thereof by the Trustee, provided that in the case of a special resolution amendment in terms of 8.5 aforesaid, such notice shall be delivered by hand or sent by prepaid registered post.

29.2 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.

29.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted.

29.4 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.

OTHER

30. INDEMNITY

30.1 All trustee members 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 or vice-chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the court.

30.2 Every trustee member, every servant, agent and employee of the Association, 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.

30.3 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.

30.4 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.

31. 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 of 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 of 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.

32. ARBITRATION

32.1 Any dispute, question or difference arising at any time between member or between members and trustees out of or in regard to:

- 32.1.1 any matters arising out of this constitution; or
- 32.1.2 the rights and duties of any of the parties mentioned in this constitution; or
- 32.1.3 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.

32.2 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) it being intended that if possible it shall be held and concluded within twenty one (21) after it has been demanded.

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

- 32.3.1 primarily an accounting matter – an independent accountant;
- 32.3.2 primarily a legal matter – a practicing counsel or attorney of not less than 10 years standing;
- 32.3.3 any other matter – an independent and suitably qualified person appointed by the auditors;

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

32.4 If agreement cannot be reached on whether the question in dispute falls under clauses 32.3.1, 32.3.2 or 32.3.3 or upon a particular arbitrator in terms of clause 32.2.2, within 3 business days after the arbitration has been demanded, then:

32.4.1 the President for the time being of the Law Society of the Cape of Good Hope or its successor/s shall determine whether the question in dispute falls under clauses 32.3.1 - 3; or

32.4.2 the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 32.3 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 clause 32.2.

32.5 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 this Constitution.

32.6 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.

32.7 The decision of the arbitrator shall be final and binding and may be made an order of the Cape Provincial Division of the High Court of South Africa upon the application of any party to the arbitration.

32.8 Notwithstanding anything to the contrary contained in clauses 32.1 to 32.7 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.

33. AMENDMENTS TO THE CONSTITUTION

33.1 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.

33.2 Any amendments of the Constitution must be submitted to the Council for acceptance and such amendments will only become effective on receipt of Council's consent.

34. OBLIGATIONS OF THE ASSOCIATION

34.1 The Body Corporate and Home Owner's Association shall assume responsibility for all services at all times, excluding electrical services but including streetlights, 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 include this obligation and that this is brought to the attention of the buyer.

34.1.2 The DEVELOPER shall be liable to repair at his own expense any inherent faults or defects of the services 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.

34.1.3 A comprehensive operational infrastructure management plan shall be drawn up and submitted for approval by the Drakenstein Municipality's Civil Services Department. The management plan is required for the whole of the Development and must include but limited to,

- Water demand/balance plan, including potable recycled and irrigation water.
- Environmental management plan.
- Maintenance plans for roads, storm water, sewer and water infrastructure.
- Waste (solid, including manure from stables) management.

Typical maintenance procedures would be the repair of potholes in roads, cleaning of sewer and storm water blockages, potable water pipe bursts, etc. More detail of maintenance procedures will be addressed in operational infrastructure management plan.

34.1.4 Where applicable all water network components downstream of the valve immediately upstream of the bulk water meter shall be a private combined system and shall be indicated as such on all documents and plans.

34.1.5 Where applicable all sewer network components upstream of the connection to the existing system shall be a private combined system and shall be indicated as such on all documents and plans.

34.2.1 The following Maintenance and Operational requirements for water meters will apply:

34.2.2 Regulations regarding the management of individual water meters and the management of the water demand must be undertaken by the Body Corporate and Home Owner's Association.

34.2.3 The Drakenstein Municipality must have access and the right to enter a property for inspection, maintenance of water meter and taking of reading(s), should there be a dispute regarding water meters.

34.2.4 If member dispute a meter reading, a meter can be tested at a registered test rig and the testing fee and meter to be paid by the member. If meter test more that 2% or -5% then the account must be readjusted by the Body Corporate and Home Owner's Association and the fee and cost repaid. If otherwise then the member forfeited the fees paid.