



STADSIG

private country estate

HOMEOWNERS ASSOCIATION

CONSTITUTION

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1. INTERPRETATION

In these presents:

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

1.1.1. "a Trustee" means one of the Trustee Committee;

1.1.2. "Auditors" mean the Auditors of the Association;

1.1.3. "Business Day" means weekdays other than Saturdays, Sundays and Public Holidays;

1.1.4. "Chairman" means the Chairman of the Trustee Committee;

1.1.5. "commencement of building project" means the digging of trenches.

1.1.6. "completion of the scheme" means the date of handover of the last building site in the scheme to the relevant title holder thereof

1.1.7. "erf" means one of the unit erven;

1.1.8. "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;

1.1.9. "in writing" means written, printed, e-mailed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

1.1.10. "maintenance" means the upkeep and or repair of the services, property and amenities which shall be the responsibility of the Association entirely and for which the Local Authority shall not be accountable;

1.1.11. "member" means a member of the Association"

1.1.12. "Member" means a member of the association;

1.1.13. "month" means calendar month;

1.1.14. "office" means the registered office of the Association;

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

1.1.16. "private open space and/or common areas and/or Private Roads" Erven 15307, 15344. 15334. 15351 and 15352 Wellington;

1.1.17. "Registered Owner" means an owner of an erf;

1.1.18. "scheme" means all works relating to the development in terms of the various agreements between the developer, the relevant authorities and future and/or current members of the Association;

- 1.1.19. "services" means roads, verges, parking bays, water supply, sewerage pipes, electricity cables and all other private services within the private area or unit erven;
 - 1.1.20. "special resolution" means a resolution passed at a special general meeting in accordance with the provisions of clause 30 below
 - 1.1.21. "STADSIG ESTATE" means the development on Erf 14749 and 14750 Wellington, or any subdivision thereof;
 - 1.1.22. "the Association" means STADSIG ESTATE HOMEOWNERS ASSOCIATION;
 - 1.1.23. "The Council" means the Drakenstein Municipality or its successors in title;
 - 1.1.24. "the developer" means BOMMELSTEIN DEVELOPMENT (PTY) LTD;
 - 1.1.25. "the Trustee Committee" means the Board of Trustees of the Association;
 - 1.1.26. "these presents" means this Constitution and regulations and by-laws of the Association from time to time in force;
 - 1.1.27. "unit erven" means the individual erven on which houses are to be erected and which are to be sold to purchasers;
 - 1.1.28. "Vice-Chairman" means the Vice-Chairman of the Trustee Committee;
 - 1.1.29. "year" means calendar year;
- 1.2. unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other two genders.

2. ASSOCIATION CONSTITUTED

The STADSIG ESTATE HOMEOWNERS ASSOCIATION is constituted as a Home Owners Association in terms of Section 29 of the Land Use Planning Ordinance No. 15 of 1985 in accordance with the conditions imposed by the Local Authority when approving the development.

3. PURPOSE DESCRIBING THE MAIN BUSINESS

The main business of the Association is to carry on the promotion, advancement and protection of the members.

4. MAIN OBJECT

- 4.1. The main object of the Association shall be to manage the collective interests common to its members, which includes expenditure applicable to the common property and the collection of levies for which the members are responsible
- 4.2. Without limiting the generality of the above, the Association shall have as its objects the matters referred to in Section 29(2)(b) and (c) of LUPO, and without detracting from the generality thereof, to ensure compliance with the conditions of sub-division imposed by the Council when approving the development, and more specifically:

- 4.2.1. to oversee, maintain and control the development.
- 4.2.2. to ensure the general high standard of the development.
- 4.2.3. generally to promote, advance and protect the development and the interests of the Association.
- 4.2.4. the regulation and control of harmonious development of the development.
- 4.2.5. the promotion of a high standard of improvement on the development.
- 4.2.6. to administer and enforce the estate rules from time to time made in terms hereof.
- 4.2.7. to ensure the maintenance, upkeep and upgrading where required, of services and amenities serving the development, such as, but not limited to, the sewage, water, electricity and storm water systems, refuse collection, security fences, private open spaces and lamp posts.
- 4.2.8. to take transfer of, and to maintain and insure where necessary, the common property and improvements thereon in the development, and to control the usage thereof and/or the services belonging to the Association or falling under its control.
- 4.2.9. to enforce compliance by the members with the conditions of the design manual and architectural guidelines as applicable.
- 4.2.10. to take action, including the imposition of fines or the institution of proceedings in a court of law, as may be deemed fit by the trustees, in relation to the non-compliance by any member of any of the requirements of this constitution; and the Association shall have the power to do all such acts as are necessary to carry out the foregoing objects including, but not restricted to, the powers specifically contained in this constitution.
- 4.2.11. to take transfer of the private open spaces, common areas and private roads.
- 4.2.12. to insure the Association against public liability.
- 4.2.13. If necessary, to enter into services agreements with the Local Authority or any other Authority or Supplier of Services.
- 4.2.14. Administrate, inspect and maintain all individual metered connections
- 4.2.15. Ensure compliance with all applicable municipal by-laws and including any water restrictions imposed on the HOA by the Local Authority from time to time.

5. FINANCIAL YEAR END

The financial year-end of the Association shall be 12 (twelve) calendar months after registration of transfer of the first property in the STADSIG ESTATE development.

6. MEMBERSHIP OF THE ASSOCIATION

6.1. Membership of the Association shall be compulsory for every registered owner of an erf.

- 6.2. Such membership shall commence simultaneously with the transfer of the erf into the name of the transferee.
- 6.3. Membership of the Association shall be limited to the registered owners of the erven provided that:
 - 6.3.1. a person who is entitled to obtain a certificate of registered title to any such 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 and severally to be one member of the Association and nominate one owner to represent them and vote at meetings of the Association.
- 6.4. When a member ceases to be the registered owner of an 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 an erf unless
 - 6.5.1.1. it is a condition of the sale and transfer that: the transferee becomes a member of the Association;
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;
 - 6.5.1.2. 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 and provided further that such member has paid all levies and any other amounts owing by him to the Association as at the date of transfer of the erf;
 - 6.5.2. without the prior written approval of the trustees and Council:
 - 6.5.2.1. erect any new buildings and/or structures of any nature whatsoever on his erf;
 - 6.5.2.2. make any changes or alterations to existing buildings and/or structures on his erf, including changes to the external colour scheme.
- 6.6. Use, alter or change its erf or the building[s] and/or structures erected thereon if such use, alteration or changes are in contravention of the existing Zoning conditions, the National building Regulations and the National Health Regulations.
- 6.7. No single storey building within the Stadsig development shall be extended by adding a second story to the structure – no single storey building shall be extended by the addition of a loft style development or a ‘room in the roof’ type development.
- 6.8. No wendy houses will be allowed on any of the premises or the communal area within Stadsig.
- 6.9. The approval of the trustees as contemplated in clause 6.5.2 shall only be given

- 6.9.1.1. after detailed plans of the proposed work has been submitted to the trustees, or any person nominated by the trustees (who may be an architect, registered with the South African Council of Architects or the Institute of South African Architects); and
 - 6.9.1.2. the trustees or their nominee are satisfied that the proposed work is in accordance with the design manual for the purposes of which the trustees or their nominee shall be the sole arbiter and their decision shall be final and binding on the member; and
 - 6.9.1.3. 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;
 - 6.9.1.4. the member has paid to the trustees a deposit in such amount as the trustees may from time to time determine as a building deposit which amount shall be held in trust by the trustees subject to the provisions of clause 13.3 below; provided the foregoing shall not be interpreted as detracting from the sole and final responsibility of the Council to approve or reject building plans.
- 6.10. The registered owner of an erf may not resign as a member of the Association and shall remain a member for as long as such owner is the registered owner of any erf in the development.
 - 6.11. 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.
 - 6.12. The rights and obligations of a member shall not be transferable and every member shall to the best of his ability
 - 6.12.1. further the objects and interests of the Association;
 - 6.12.2. observe all by-laws and regulations made by the Association or the trustee committee,
 - 6.12.3. provided that nothing contained in this constitution shall prevent a member from ceding his rights in terms of this constitution as security to the mortgagee of that member's erf.

7. LEVIES

- 7.1. The Trustee Committee shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Trustee Committee reasonably anticipates the Association will be put by way of the maintenance, repair, improvement and keeping in order and condition of the Private Area and/or for payment of all rates and other charges payable by the Association in respect of the Private Area and/or for the services rendered to it and/or the payment of all expenses necessary or reasonably incurred in connection with the management of the Association, and the Association's affairs in general. In calculating levies the Trustee Committee shall take into account, income, if any, earned by the Association.

- 7.2. The Trustee Committee shall estimate the amount which shall be required by the Association to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the 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 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.
- 7.3. The Trustee Committee, may from time to time, make special levies upon the members in respect of all such expenses as are mentioned in clause 7.1 (which are not included in any estimate made in terms of clause 7.2), 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.
- 7.4. Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a member. A Member's successor in title to an 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 erf until the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.
- 7.5. The total levy payable by Members shall be born in equal shares by each Member, provided that the Trustee Committee may differentiate between levies payable by members falling inside or outside the security area to the extent that certain costs may not be applicable to certain members.
- 7.6. Members of the Association shall be entitled to elect to pay levies by means of any of the following methods:-
- 7.6.1. the issue of a stoporder against his banking account;
 - 7.6.2. an advance payment of all levies due for the full year; or
 - 7.6.3. the issue of twelve postdated cheques in respect of levies due for each month of the ensuing year.
 - 7.6.4. Electronic bank transfers
- 7.7. Any special levies imposed by the trustees in terms of clause 7.3 may be apportioned between the members by the trustees in an apportionment, which the trustees may regard as reasonable, regard being had of the direct benefits, which the member(s) may derive from the proposed expenditure for which the special levies are imposed.
- 7.8. 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. LEVY ENHANCEMENT FUND

- 8.1. Each owner will be obliged to make a contribution to the levy fund of the Home Owners' Association upon the sale of a property by the owner.
- 8.2. Such contribution will be equal to 0,75% (zero comma seven five percent) of the gross selling price of the property and shall be due and payable against signature of an Agreement of Sale. The Home Owners' Association may however in its sole discretion, defer such payment until registration of transfer of the property.
- 8.3. Such contribution will furthermore be payable in the event of a property being bequeathed in terms of a will or donated by virtue of an Act of Donation. In such an event the contribution will be based upon the average market value as may be determined by three independent estate agencies operational in the Wellington area.
- 8.4. The Home Owners' Association will be entitled to withhold its written consent to the transfer of a property until the contribution has been paid or secured.

9. DEALING WITH THE COMMON AREA

Neither the whole nor any portion of the common area shall be:

- 9.1. sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 9.2. mortgaged; or
- 9.3. subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude, (save those enjoyed by the members in terms hereof and the servitudes in favour of the Council as required by the conditions of subdivision referred to in clause 0 above); without the specific prior written consent of the Council and the sanction of a special resolution of the Association (and no member shall be entitled to unreasonably vote against any such special resolution which may be proposed); or
- 9.4. built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, without the sanction of a special resolution of the Association.

10. RESPONSIBILITY FOR THE COMMON AREA

- 10.1. The Association shall take title to the common area
- 10.2. The Association acknowledges that the Council shall not be responsible for, and the Association shall be solely responsible for the care, repair, maintenance, cleaning, upkeep, improvement and property control of the common area, all services therein and any structure or thing erected on or contained therein, including the private road and parking thereon.

11. ESTATE RULES

- 11.1. Subject to the provisions of this constitution and to any directions given by the Association in general meeting and to any conditions imposed by the Council or the developer or any other statutory body, the trustees may make rules, codes of conduct and may vary or modify the same, in connection with:

- 11.1.1. the nature, architectural design and position of buildings, structures, installations and equipment relating to any erf ensuring at all times that these rules comply to the conditions of the design manual;
 - 11.1.2. the nature, content and design of the gardens relating to any erf including the establishment and maintenance of landscaping in these areas ensuring at all times that these rules comply to the conditions of the design manual;
 - 11.1.3. the nature of the common areas adjacent to any erf including the establishment and maintenance of landscaping in these areas by the member concerned;
 - 11.1.4. the installation, operation and maintenance of irrigation in the common areas adjacent to any erf by the member concerned;
 - 11.1.5. the determination or control of security measures;
 - 11.1.6. the control of the building operations and the conduct of builders and contractors;
 - 11.1.7. the control of the number of residents permitted on any one erf;
 - 11.1.8. the control and conduct of persons for the prevention of nuisance of any nature to any resident;
 - 11.1.9. the control and conduct of persons using the common areas;
 - 11.1.10. the keeping of animals including the right to prohibit, limit, restrict and control the keeping of animals;
 - 11.1.11. the use of roads, infrastructure, services amenities and facilities in the common areas including the right to charge a reasonable fee for the use of the amenities and facilities;
 - 11.1.12. the furtherance and promotion of any of the objects of the Association and for the better management of the affairs of the Association and for the advancement and protection of the interests of the members and residents;
 - 11.1.13. the use of the property.
- 11.2. For the enforcement of any rules or any of the provisions of this constitution generally the trustees or the manager may:
- 11.2.1. give notice to the member concerned to remedy any breach within such period as they may determine;
 - 11.2.2. take or cause to be taken such action as they deem fit to remedy the breach of which the member concerned may be guilty and debit the cost thereof, which shall be a debt due to the Association, to his levy account, and which shall be payable as part of his levy on the first day of the following month; and
 - 11.2.3. impose a fine on the member concerned which amount shall be a debt due to the Association, shall be debited to his levy account and shall be payable as part of his levy on the first day of the following month.

- 11.3. Should the trustees or manager institute legal proceedings against any member or resident for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 11.4. In the event of any breach of the rules or of any of the provisions of this constitution by any person residing on a member's erf or his guests, employees, contractors, or agents, such breach shall be deemed to have been committed by the member himself; but without prejudice to the foregoing, the trustees or manager may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, in addition to any action which might be taken against the member concerned.
- 11.5. Without prejudice to any of the rights the Trustees or the Association may be 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.

12. BUILDING, ARCHITECTURAL AND DESIGN REQUIREMENTS

- 12.1. The Association shall be entitled to:
 - 12.1.1. Frame, implement and enforce conditions on members in order to harmonize the architectural styles and design criteria of and the materials and colours to be used in all buildings erected within the scheme including any refurbishment, alterations or additions thereto.
 - 12.1.2. Do such acts as are necessary to accomplish the purposes expressed or implied herein which acts shall include, inter alia, the examination and endorsement of the relevant building plans as necessary for any construction, renovation and / or alterations within the scheme.
 - 12.1.3. Appoint such advisors as are necessary to scrutinize the relevant plans referred to herein. Impose a scrutiny fee on members for the services as mentioned herein.
- 12.2. The provisions of this clause shall be applicable in relation to any of the works to be undertaken by the Developer prior to the completion of the scheme.
- 12.3 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.
- 12.4 All private combined systems (including but not limited to water, sewer, stormwater, roads, irrigation, etc) shall be the joint and several responsibility (including but not limited to the administration of the joint account and operation and maintenance of the system) of the members of the Home Owners Association.

13. BUILDING DEPOSIT

- 13.1. Each member shall, when submitting to the trustees for approval the details plans for the Construction of any building and/or improvements, or alterations or additions to existing improvements on its erf in terms of clause 6, pay to the trustees a building deposit in an amount to be determined from time to time by the trustees which amount shall be retained by the trustees in trust until completion by the member and/or its contractors of such work.
- 13.2. Upon completion of all building and other activities on the erf, the trustees shall if they are satisfied that no damage has been effected by the member or any of its contractors to the common area and/or landscaped areas within the development and that the work has been constructed in accordance with duly approved plans, release the building deposit to the member.
- 13.3. In the event of any landscaped area and/or common area having damage due to such work, the member shall within 15 days of having been requested to do so in writing by the trustees, rectify the damage to the satisfaction of the trustees, failing which the trustees shall be entitled to appoint an independent contractor to repair the damage and the amount paid to the trustees as a building deposit shall be utilized to defray the expenses of the independent contractor. If, however, the damage caused is not sufficient to cover the cost of such repairs, the trustees shall be entitled to recover the shortfall from the member.
- 13.4. The Developer shall not be required to pay any deposit required in terms of the provisions of this clause prior to the completion of the scheme.

14. CESSATION OF MEMBERSHIP

No Member ceasing to be a Member of the Association for any reason shall, (nor 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.

15. BREACH

- 15.1. Should any member:
 - 15.1.1. 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
 - 15.1.2. commit any breach of any of the provisions of this constitution or any regulation made there under 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,

- 15.1.3. the trustees shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the trustees of the Association or any other member may have in law, including the right to claim damages, and or, the trustees impose fines to such owners as determined from time to time
- 15.1.3.1. to institute legal proceedings on behalf of the Association against such member 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
- 15.1.3.2. to suspend all or any services to the erf owned by that member; and/or
- 15.2. 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 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.
- 15.3. Without prejudice to all or 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.

16. TRUSTEE COMMITTEE

- 16.1. There shall be a Board of the Trustees of the Association which shall consist of not less than three (3) and not more than six (6) Members.
- 16.2. Every Trustee must be a Member of the Association.

17. REMOVAL AND ROTATION OF TRUSTEE MEMBERS

- 17.1. Save as set forth below, each Trustee shall continue to hold office until the Annual General Meeting next 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.
- 17.2. A Trustee shall be deemed to have vacated his office as such upon:
- 17.2.1. his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 17.2.2. his making any arrangement or compromise with his creditors;
- 17.2.3. his conviction for any offence involving dishonesty;
- 17.2.4. his becoming of unsound mind or being found lunatic;
- 17.2.5. his resigning from such office in writing delivered to the Secretary;

- 17.2.6. his death;
- 17.2.7. his being removed from office by a Special Resolution of the Members
- 17.3. 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.
- 17.4. 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 for the time being of the Trustee Committee.

18. OFFICE OF TRUSTEES

- 18.1. The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.
- 18.2. The first Chairman, and Vice-Chairman, shall be appointed jointly by the registered owners and the Developer, but subject to the provisions of clause 19 below 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 ceasing to be a Trustee for any reason..
- 18.3. Within seven (7) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as replacement in such office.
- 18.4. 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, and allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 18.5. 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.
- 18.6. 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.

19. STATUS OF DEVELOPER

- 19.1. Completion of the scheme means the transfer of the last available plot from the Developer/ Seller to the purchaser. Until such time as to 90% completion of the scheme, the following provisions shall apply in addition to the conditions in these presents:

The developer shall be entitled:

- 19.1.1. to remain the sole trustee/ chairman of the Homeowners' Association until 90% completion of the scheme, but reserve the right to also nominate and appoint a pro rata proportion of the trustees of the board of trustees, such proportion being the same proportion as exists between the total number of all the erven and the total number of all the erven of which the developer is the registered owner at the relevant time subject to the provision that until completion of the scheme has been achieved, the developer shall always be entitled to appoint at least one trustee to the board of trustees;
- 19.1.2. to a number of votes equal to the number of unsold erven at any time at any meeting of members or the trustee committee;
- 19.1.3. to require that the trustee committee enforces the rights granted to it in terms of these presents against any member who in the opinion of the developer is not complying with his obligations as a member, and in particular, within restricting the generality of the foregoing, has failed to maintain all buildings and other improvements on its erf by giving such member written notice in which his failure to comply with the particular provisions of these presents is detailed and calling upon him to remedy such failure within a prescribed period of not more than 30 days failing which, the developer shall be entitled at the sole cost of that member to carry out all such work as may be required to maintain such building and other improvements on its erf;
- 19.1.4. to erect such signage, flagpoles, messages and/or other forms of notices or advertising on the development including the common areas, the private road area and/or the exterior walls (if any) of the development, subject to the regulations and by-laws of the Council appertaining to signage from time to time;
- 19.1.5. to scrutinize, approve and submit all building plans to the relevant authority to obtain the relevant approvals until the completion of the scheme.
- 19.2. Neither the trustee committee nor any member of the Association shall prevent or hinder in any way the developer from:
- 19.2.1. gaining access to and egress from the development;
- 19.2.2. continuing any building operations at the development; and/or
- 19.2.3. marketing and selling any of its unsold erven, including the advertisement of the sale of such erven on the common areas and/or at the development;
- 19.3. the Developer shall not be required to obtain the consents referred to in clause 6 prior to completion of the scheme;

- 19.4. upon the completion of the scheme, the rights of the developer in terms of the provisions of this clause shall immediately terminate *ipso facto* and no longer be of any force and effect.
- 19.5. In the event of a dispute as to whether or not the scheme has been completed as envisaged herein, the decision of the architect appointed by the Developer for the scheme shall be final and binding.

20. FUNCTIONS AND POWERS OF THE TRUSTEE COMMITTEE

- 20.1. 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, and as are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 20.2. The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 20.3. 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.
- 20.4. The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee of these presents, in such reasonable manner as it shall decide from time to time.
- 20.5. The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed in the Association in general meeting:
 - 20.5.1. as to disputes generally;
 - 20.5.2. for the furtherance and promotion of any of the objects of the Association;
 - 20.5.3. for the better management of the affairs of the Association;
 - 20.5.4. for the advancement of the interests of Members;
 - 20.5.5. for the conduct of Trustee Committee meetings and general meetings;and
 - 20.5.6. to assist it in administering and governing its activities generally;
 - 20.5.7. and shall be entitled to cancel, vary or modify any of the same from time to time.

21. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 21.1. 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.
- 21.2. 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.
- 21.3. The quorum necessary for the holding of any meeting of the Trustee Committee shall be two (2) Trustees.
- 21.4. The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five (5) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 21.5. A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law in relation to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute Book shall be open for inspection at all reasonable times by a Trustee, the Auditors, the Association Members and Local Authority.
- 21.6. 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.
- 21.7. 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.
- 21.8. 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.

22. GENERAL MEETINGS OF THE ASSOCIATION

- 22.1. The Association shall within 4 (four) months of the financial year end, 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 clause 23 below calling it:

- 22.2. 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.
- 22.3. All general meetings other than Annual General Meetings shall be called special general meetings, due notice having been given.
- 22.4. The Trustee Committee, may, whenever they think fit, convene a special general meeting.

23. NOTICE OF MEETINGS

- 23.1. An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by thirty (30) 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 twenty one (21) 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:
 - 23.1.1. in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and
 - 23.1.2. in the case of a special general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than seventy-five percent (75%) of the total voting rights of all Members.
- 23.2. The accidental omission to give notice of a meeting or of any resolution to any Member, or to give any other notification, or present any document required to be given or sent in terms of these presents to any such Member, 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.

24. 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.

25. QUORUM

- 25.1. 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 of such of the Members entitled to vote, as together for the time being, represent one half of the total votes of all Members of the Association

entitled to vote, for the time being save that not less than three (3) members must be personally present.

- 25.2. 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.

26. AGENDA AT MEETINGS

- 26.1. 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:
 - 26.1.1. the consideration of the Chairman's report to the Trustee's Committee;
 - 26.1.2. the election of the Trustee Committee;
 - 26.1.3. the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
 - 26.1.4. the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
 - 26.1.5. the consideration of the report of the Auditors;
 - 26.1.6. the consideration of the total levy (as referred to in 7) for the calendar year during which such Annual General Meeting takes place; and
 - 26.1.7. the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the Annual General Meeting.

27. PROCEDURE AT GENERAL MEETINGS

- 27.1. The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present 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.
- 27.2. 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 from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.

- 27.3. Whenever a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 27.4. Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

28. PROXIES

- 28.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, and where an association of persons, by the secretary thereof.
- 28.2. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be handed to the Chairman or to the Chairman appointed for the meeting, or adjourned meeting, at which the person named in the instruments 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.
- 28.3. 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.
- 28.4. Should a Member be absent from the recorded domicilium address which the Trustees have for each member for a continuous period in excess of three (3) weeks, a proxy must be appointed by such member prior to his absence in accordance with clauses 28.1 and 28.2, failing which a Member shall not be entitled to vote at any special general meeting called during such Member's absence.

29. VOTING

- 29.1. At every general meeting, every Member in person or by proxy and entitled to vote shall have one 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.
- 29.2. 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.
- 29.3. 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 secret ballot is demanded by any person entitled to vote at such meeting.

- 29.4. Notwithstanding the provisions of clause 29.4 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, unless a poll is, before or on the declaration of the result of the show of hands, demanded by the Chairman or any of the Members in terms of clause 29.5 below.
- 29.5. When a poll is demanded, regard shall be had, in computing the majority of the poll, to the number of votes cast for and against the resolution.
- 29.6. 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.
- 29.7. 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 secret ballot, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote.
- 29.8. 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 secret ballot, or to the propriety or 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.

30. SPECIAL RESOLUTION

- 30.1. A resolution by the Association shall be a special resolution if at a general meeting of which not less than 30 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 at which members holding in aggregate not less than one-fourth of the total votes of all the members entitled to vote thereat, are present in person or by proxy, the resolution has been passed, on a show of hands, by not less than three-fourths of the number of members of the Association entitled to vote on a show of hands at the meeting who are present in person or by proxy or, where a poll has been demanded, by not less than three-fourths of the total votes to which the members present in person or by proxy are entitled.
- 30.2. If less than one-fourth of the total votes of all the members entitled to attend the meeting and to vote thereat are present or represented at a meeting called for the purpose of passing a special resolution, the meeting shall stand adjourned to a date

not earlier than 14 days and not later than 30 days after the date of the meeting and the provisions of clause 27.3 shall apply in respect of such adjournment.

- 30.3. At the adjourned meeting, the members who are present in person or by proxy and are entitled to vote may deal with the business for which the original meeting was convened and a resolution passed by not less than three-fourths of such members shall be deemed to be a special resolution even if less than one-fourth of the total votes are represented at such adjourned meeting.

31. OTHER PROFESSIONAL OFFICERS

Save as specifically provided in this Constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, 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, provided that any expenditure incurred in respect of the above, shall not exceed 5% (five percent) of the total annual levy for the year in question unless authorised by a Special Resolution.

32. MANAGING AGENT

- 32.1. The Trustees shall be entitled to appoint a managing agent from time to time to control, manage and administer the common property and to exercise such power and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor.
- 32.2. However, the Developer has the right to appoint the first Managing Agent for the first 3 years calculated from the date of establishment of the Association in consideration for which the Association shall pay a market related fee to be mutually agreed from time to time and, failing such agreement, to be determined by an arbitration in terms of clause 38 hereof.

33. ACCOUNTS

- 33.1. The Association in general meeting of the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable time during normal business hours.
- 33.2. At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with an audited 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 68 above, copies of such accounts, balance sheet and reports and of any other documents required by law to accompany the same.

34. 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, should the Trustees or the majority of the Members so require.

35. SERVICE OF NOTICES

- 35.1. A notice shall be in writing and shall be given or served by the Association upon a member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the erf owned by him.
- 35.2. No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address other than the address of the erf owned by him within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.
- 35.3. 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.
- 35.4. 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 the meeting.

36. INDEMNITY

- 36.1. 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, Vice-Chairman, whether defending or prosecuting any proceedings, civil, criminal or otherwise in which relief is sought against or granted to any such person/s by the Court.
- 36.2. 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. 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.
- 36.3. A Trustee member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Trustee members, whether in their capacities as Trustee members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the

Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortuous act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust..

37. PRIVILEGE IN RESPECT OF DEFAMATION

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

38. ARBITRATION

- 38.1. Any dispute, question or difference arising at any time between a Member or between Members and Trustees out of or in regard to:
 - 38.1.1. any matters arising out of this Constitution; or
 - 38.1.2. the rights and duties of any of the parties mentioned in this Constitution; or
 - 38.1.3. 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
- 38.2. 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) Business Days after it has been demanded.
- 38.3. Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is:
 - 38.3.1. primarily an accounting matter - an independent accountant;
 - 38.3.2. primarily a legal matter - a practising counsel or attorney of not less than ten (10) years standing;

- 38.3.3. any other matter - an independent and suitably qualified person appointed by the Auditors as may be agreed upon between the parties to the dispute.
- 38.4. If agreement cannot be reached on whether the question in dispute falls under clauses 38.3.1, 38.3.2, or 38.3.3 or upon a particular arbitrator, within three (3) Business Days after the arbitration has been demanded, then:
- 38.4.1. 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 clauses 38.3.1, 38.3.2, or 38.3.3; or
- 38.4.2. the President for the time being of the Law Society of the Cape of Good Hope shall nominate the arbitrator in terms of clause 38.3.3 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 38.2.

The arbitrator shall make his award within seven (7) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of the Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

- 38.5. 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.
- 38.6. Notwithstanding anything to the contrary contained in clauses 38.3 to 38.5 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.

39. EFFECTIVE DATE

The provisions hereof shall come into force simultaneously with the first passing of transfer of the unit erven.

40. AMENDMENTS TO THE CONSTITUTION

- 40.1. 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 General Meeting of the Members.
- 40.2. The provisions of Clause 3, 4, 6, 9, 10 and 40 shall not be added to amended or repealed without the prior consent in writing by the Drakenstein Municipality.