

# CONSTITUTION

## of the

### DE LA ROCHE MASTER OWNERS' ASSOCIATION

(1) **INTERPRETATION**

In this document the following words shall have the meanings hereinafter assigned to them unless a different interpretation is required from the context

“The Association”	means the DE LA ROCHE MASTER OWNERS' ASSOCIATION
“Member”	means a member of the association
“Management committee”	means the management committee of the Association created in terms of paragraph 5 hereof
“Management member”	means a member of the management committee
“Chairman”	means the chairman of the management committee
“Vice Chairman”	the Vice Chairman of the management committee
“The Council”	means the Drakenstein Municipality
“Development plan”	means the approved development plan for the Township as may be amended from time to time.
“Registered owner”	means the registered owner of a land unit and as such a member of a Sub-association or a Body Corporate, as the case may be

“Township” means the development on Erf 8724 and a Portion of Erf 8709 Paarl as approved by the Drakenstein Municipality under their reference 15/4/1(8724)P dated 10 May 2016

(2) **OBJECTIVES OF THE ASSOCIATION**

The objectives of the Association are:

- 2.1 To comply with paragraph 10.6.12 of Drakenstein Municipality’s letter 15/4/1(8724)P dated 10 May 2016 and Section 29(1) of the Drakenstein Municipal Land Use Planning Bylaw 2015;
- 2.2 To hence act as a Master Owners’ Association for all phases of the Township by:
  - 2.2.1 Formulating, promoting and enforcing standards in such a way that the members may derive the maximum collective benefit therefrom;
  - 2.2.2 Formulating, promoting and enforcing acceptable esthetic, environmental criteria for the development;
  - 2.2.3 Controlling and maintaining common walls between the phases;
  - 2.2.4 Establishing a levy fund to meet expenses incurred and discharge obligations of the association;
  - 2.2.5 In general providing a high quality lifestyle to residents and eliminating undesirable situations;
  - 2.2.6 By promoting and guarding the interests of members and the association; and

3. **POWERS OF THE ASSOCIATION**

3.1 The Association shall have the powers to execute and accomplish the objects as set out in paragraph 2, to create the necessary infrastructure, draw regulations (which shall not be in conflict with Municipal and other statutory regulations or by-laws) and attend to the management of the association with regard to all its executive, financial, administrative and decision-making requirements.

3.2 The Association may establish Sub Owners' Associations for individual phases of the Township and delegate functions and powers to such Sub Owners' Associations, provided that responsibility for compliance with the Association's duties and functions as set out in paragraph 2 shall remain with the Association.

3.3. The Association may establish different regulation, standards and levies for individual phases of the Township and may entrust Sub Owners' Associations with the enforcement, implementation and management of the rules and standards and the collection of the levies, provided that compliance with the Association's duties and functions as set out in paragraph 2 shall remain with the Association.

4. **MEMBERSHIP**

4.1 Membership of the Association shall be compulsory for the developers of each phase and each and every sub-association and body corporate within the larger development as depicted on the development plan.

5. **MANAGEMENT COMMITTEE**

- 5.1 There shall be a management committee, which will consist of one member from each sub-association and/or body corporate within the total Township development;
- 5.2 An executive member need not be a member of the Association, but by accepting his appointment to office as such, shall be deemed bound by all the provisions of this Constitution;
- 5.3 The Management Committee shall consist of no less than one (1) representatives of each of the sub-associations and/or body corporate.

6. **APPOINTMENT OF EXECUTIVE MEMBERS**

The registered owner shall appoint all initial Executive Members of the Management committee.

7. **REMOVAL & ROTATION OF EXECUTIVE MEMBERS**

- 7.1 An Executive Member shall continue to hold office for a period of two (2) years, whereafter the indivisual home owner's associations and/or body corporate owner shall appoint three (3) Executive Members to hold office with two (2) elected members for a further period of two (2) years whereafter office will be held by duly elected members for periods of two (2) years
- 7.2 An Executive Member shall be deemed to have vacated his office and cease to be an Executive member upon:
  - 7.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;

- 7.2.2 his making any arrangement or composition with his creditors;
- 7.2.3 his conviction for any offence involving dishonesty;
- 7.2.4 his becoming of unsound mind;
- 7.2.5 his resigning from such office in writing delivered to the Secretary;
- 7.2.6 his death;
- 7.2.7 his being removed from office for whatever reason provided that anything done in the capacity of an Executive Member in good faith, by a person who ceases to be an Executive Member, shall be valid until the fact that he is no longer an Executive Member has been recorded by the Executive Management Committee;
- 7.2.8 Upon any vacancy occurring on the Management 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 Executive Committee and subject to paragraph 5.3

## **8. OFFICE OF EXECUTIVE MEMBERS**

- 8.1 The Executive Members shall appoint from amongst themselves, a Chairman and Vice-Chairman;
- 8.2 The First Chairman, and Vice Chairman, shall be appointed by the registered owner, and such office bearers shall hold their respective offices for a period of two (2) years, provided that any such office shall ipso facto be vacated by the Executive

Members holding such office upon his ceasing to be an Executive Member for any reason;

- 8.3 Within seven (7) days after the first period of two (2) years, the Management Committee shall meet and elect a Chairman and Vice-Chairman, who shall hold their respective offices until the end of the second two (2) year period whereafter office bearers will be elected by the Management Committee members every two (2) years, provided that the office of Chairman or Vice-Chairman shall ipso facto be vacated by the Executive Member holding such office upon his ceasing to be an Executive Member for any reason. No member shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Executive Committee shall immediately meet to appoint a replacement in such office in accordance with paragraph 7.2.8;
- 8.4 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Executive 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 Management Committee or of Members, and to 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;
- 8.5 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 Management Committee;
- 8.6 Executive Members shall be entitled to be repaid all reasonable and bona fide expenses incurred by any of them personally in connection with the performance of their duties as Executive Members and/or Chairman or Vice –Chairman, as the case may

be, subjected to the submission of proof of expense but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

9. **FUNCTIONS & POWERS OF THE MANAGEMENT COMMITTEE**

- 9.1 Subject to the express provisions of these presents, the Management 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 any regulations as may be prescribed from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Management Committee which would have been valid if such regulation had not been made;
- 9.2 The Management Committee shall have the right to cancel or modify any of its decisions and resolutions from time to time;
- 9.3 The Management Committee shall have the right to nominate a person as envisaged in paragraph 7.2.8 and to co-opt onto the Management Committee any person or persons chosen by it. A co-opted Executive Member shall enjoy all the rights and be subjected to all the obligations of the Executive Member;
- 9.4 The Management Committee may, should it so decide, investigate any suspected or alleged breach by any member or Executive Member of this constitution, in such reasonable manner as it shall decide from time to time;

9.5 The Management Committee may make rules, not inconsistent with this Constitution or any regulations or by-laws of the Drakenstein Municipality at a general meeting:

9.5.1 as to disputes generally;

9.5.2 for the furtherance and promotion of any of the objects of the Association;

9.5.3 for the better management of the affairs of the Association;

9.5.4 for the advancement of the interest of Members;

9.5.5 for the conduct of Management Committee meetings and general meetings;

9.5.6 to assist in administering and governing its activities generally;

and be entitled to cancel or modify such rules.

9.6 The Management Committee shall create a levy fund to meet expenses and obligations of the Association and shall determine a levy payable by each registered Home Owner's Association and/or Body Corporate.

10. **PROCEEDINGS OF THE MANAGEMENT COMMITTEE**

10.1 The Management Committee may meet, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of these presents;

10.2 Meetings of the Membership Committee shall be held at least once every quarter, provided that if all the Executive Members shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Management Committee need be held for that quarter;

- 10.3 The quorum necessary for the holding of any meeting of the Management Committee shall be two (2) Executive Members.
- 10.4 The Chairman shall preside at such at all meetings of the Executive Committee, provided that should at any meeting of the Executive 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 Executive Members 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;
- 10.5 An Executive Member 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 closed and shall then be certified correct by the Chairman of the meeting. All minutes of Management Committee meetings shall after certification as aforesaid be placed in a Management Committee Minute Book. The Management Committee Minute Book shall be open for inspection at all reasonable times by an Executive Member, the Auditors, the Association Members and Local Authority;
- 10.6 All competent resolutions recorded in the minutes of any Management 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 Management Committee, shall be of any force or effect, or shall be binding upon the Members or any of the Executive Members unless such resolution is competent within the powers of the Management Committee;

10.7 Save as otherwise provided in these presents, the proceedings at any Executive Management meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide;

10.8 A resolution signed by all the Executive Members shall be valid in all respects as if it had been duly passed at a meeting of the Management Committee duly convened.

11. **GENERAL MEETINGS OF THE ASSOCIATION**

11.1 The Association shall before 15 March of every calendar year, hold a general meeting as its Annual General Meeting, in addition to any other general meetings, during that year;

11.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Management Committee shall decide from time to time;

11.3 The Management Committee may, in its discretion, convene a special general meeting, and a special general meeting shall also be convened on a requisition made by at least forty (40) members in writing.

12. **NOTICE OF MEETINGS OF MEMBERS**

12.1 An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called on twenty one (21) days' notice at least, and meetings in respect of general resolutions, shall be called on fourteen (14) days' notice 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 as well as the terms and effect of any proposed special resolution and the reasons for it;

- 12.2 Notice shall be given to members by displaying notices at prominent places on the development property as determined by the Membership Committee.

**13. VENUE OF MEETINGS**

General Meetings of the Association shall take place at such venue as shall be determined by the Management Committee from time to time.

**14. QUORUM**

- 14.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent one-half of the total votes of all Members of the Association entitled to vote, for the time being save that not less than two (2) members must be personally present;

- 14.2 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.

15. **AGENDA AT MEETINGS**

The Chairman of the Executive Committee will determine the Agenda at any meeting.

16. **PROCEDURE AT GENERAL MEETINGS**

16.1 The Chairman of the Management Committee shall preside as such as at all general meetings, provided that should he 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 presented within five (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;

16.2 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 business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten 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.

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

## 17. **VOTING**

- 17.1 At every General Meeting, every Member in person or by proxy entitled to vote, shall have one vote for each sub-association and/or Body Corporate;
- 17.2 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands;
- 17.3 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;
- 17.3.1 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, the Chairman of the general meeting shall be entitled to a casting vote in addition to his deliberative vote;
- 17.3.2 A special resolution is a resolution amending the constitution and shall be carried only with a 75% vote in favour of such resolution given in accordance with paragraph 17.
- 17.4 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, 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 if such entry confirms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

17.5 Until such time as all the stands depicted on the development plan has been sold and transferred, the registered owner will have the right to veto any decision taken at a general meeting and will not pay any levies and will still have full voting rights.

18. **OTHER PROFESSIONAL OFFICERS**

Save as specifically provided otherwise in this Constitution, the Management Committee shall at all relevant times have the rights to engage on behalf of the Association, the services of a Management Agent, the services of, Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, or any professional person or firm and/or any other employee(s) whatsoever, for any reasons thought necessary by the Management Committee and on such terms as the Management Committee shall decide, subject to any of the provisions of these presents.

19. **ACCOUNTS**

19.1 The Management Committee, may from time to time make regulations and stipulate conditions 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 times during normal business hours.

19.2 At each Annual General Meeting the Management Committee

shall lay before the Association audited financial statements for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the founding of the Association.

20. **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.

21. **SERVICE OF NOTICES**

- 21.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address supplied by or of the stand owned by such member;
- 21.2 No Member shall be entitled to have a notice served on him at an address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices;
- 21.3 Any notice by post shall be deemed to have been served seven (7) days after the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 21.4 The accidental omission to give notice of a meeting or the non-receipt of notice of a meeting, by any person entitled to receive notice, shall not invalidate the proceedings of that meeting.

22. **INDEMNITY**

- 22.1 All Executive Members shall be indemnified out of the funds of the Association against liabilities bona fide incurred by them in their respective said capacities, and in the case of a Executive Member, in his capacity as Chairman or Vice-Chairman, when defending or prosecuting any proceedings, civil, criminal or otherwise.
- 22.2 Every Executive 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 his/their respective duties, including in the case of a Executive 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 bone fide act, deed or letter written by him, jointly or severally in connection with the discharge of his duties, provided that any such letter, act or deed has been done or written in good faith;
- 22.3 An Executive Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Executive Members, whether in their capacity as Executive Member 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 Management 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 tortious 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 judgement or oversight on his part, or for any other loss, damage or whatever misfortune that may 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.

23. **PRIVILEGE IN RESPECT OF DEFAMATION**

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

24. **ARBITRATION**

- 24.1 Any dispute, question or difference arising at any time between Members or between Members and Executive member or

between Executive members or any of the aforementioned and the Association out of or in regard to or in connection with;

- 24.1.1 any matters arising out of or in connection with his Constitution; or
- 24.1.2 the rights and duties of any of the parties mentioned in this Constitution; or
- 24.1.3 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.

24.2 The Arbitration shall be held at a venue to be decided by the Arbitrator;

24.3 The arbitration shall be held and concluded within twenty one (21) Business Days after it has been demanded;

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

24.4.1 primarily an accounting matter – an independent accountant;

24.4.2 primarily a legal or any other matter – a practicing counsel of not less than ten (10) years standing.

24.5 If agreement can not be reached on whether the question in dispute falls under 24.4.1 or 24.4.2 within three (3) Business Days after the arbitration has been demanded, then the President for the time being of the Law Society of the Cape of Good Hope shall summarily determine whether the question in dispute falls under 24.4.1 or 24.4.2 and shall nominate the arbitrator in terms of 24.4 within five (5) Business Days after the parties have failed to agree.

- 24.6 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. The Arbitrator may determine that the cost of the arbitration may be paid either by one or the other of the disputing parties or by the Association as he in his sole discretion may deem fit;
- 24.7 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;
- 24.8 Notwithstanding anything to the contrary contained in this Constitution, the Association shall be entitled to institute legal proceedings 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.

25. **ESTHETIC AND ENVIRONMENTAL REQUIREMENTS**

- 25.1 The Management Committee shall in addition to any other powers, have the power to;

25.1.1 do such acts and to frame and enforce conditions on members as are necessary to accomplish the purposes expressed or implied herein, which acts shall include inter alia, the approval or refusal of building plans relating to external renovations, alterations or additions envisaged on any stand prior to submission for local authority approval;

25.1.2 compel members to comply with its requirements, and failing compliance therewith, to take steps to remedy such non-compliance at the cost of such member;

25.1.3 ensure that all members maintain their properties in a clean and tidy condition (including the pavement bordering his property).

25.2 Every member shall observe all and not breach any laws, ordinances, by-laws and regulations or rules imposed by the statutory or other authority and, without detracting from the generality of the foregoing, shall observe and comply with the provisions of the Cape Provincial Road Traffic Ordinance as amended (or ordinance or act substituted therefor) with regard to any road in the township.

## **26. AMENDMENTS TO THE CONSTITUTION**

This Constitution can only be altered or amended in any way by a resolution taken by a three quarter majority of members present at an annual general meeting of the association, and subject to approval in terms of the Drakenstein Municipal Land Use Planning By Law of 2015.

## **27. STATUS OF THE ASSOCIATION**

The Association shall be an Association:

- 27.1 with legal personality, capable of suing and being sued in its own name; and
- 27.2 none of whose members in their personal capacities shall have any right, title or interest to or in the property, funds or assets of the Association, which shall vest in and be controlled by the Management Committee in terms hereof; and
- 27.3 not for profit, but for the benefit of the owners and occupants of immovable property situated in the township area; and
- 27.4 with the right to acquire, build, lease and alienate property, both moveable and immovable.

**28. PERSONAL LIABILITY OF MEMBERS**

28.1 No member of the Association shall incur any personal liability in respect of acts done or liabilities incurred by, or on behalf of, the Association if properly authorised thereto.

28.2 Notwithstanding any stipulation to the contrary, all members of the Association shall be jointly liable for expenditure incurred in connection with the Association in accordance with Section 29(7) of the Drakenstein Municipal Land Use Planning By Law of 2015.

**29. EFFECTIVE DATE**

The provisions hereof shall come into force simultaneously with the passing of transfer of the first stand on the development.