

CONSTITUTION

OF

THE BEDFORDVIEW FRONTIER HOMEOWNERS' ASSOCIATION



1. DEFINITIONS

In this Constitution, -

- 1.1 The following words and expressions shall have the following meanings assigned to them below and cognate expressions bear corresponding meanings-
- 1.1.1 "**Act**" means the Sectional Titles Act 95 of 1986 and the Regulations thereto, as amended from time to time or any Act promulgated in substitution thereof;
- 1.1.2 "**Auditor**" means the auditor of the Association;
- 1.1.3 "**Association**" means The Bedfordview Frontier Homeowners Association hereby constituted;
- 1.1.4 "**Body Corporate**" means a body corporate of a sectional title scheme comprising the development, the functions, duties and powers of which shall be assigned to the Association in terms of the provisions of Regulation 30(2)(b) of the Sectional Titles Act;
- 1.1.5 "**Capital Expenditure**" means extraordinary expenses of a capital nature relating to the maintenance, improvement and extension of the Association's assets, the buildings and Property and the services within the Development and specifically excludes costs incurred for day to day maintenance and expenditure;
- 1.1.6 "**Chairman**" means the Chairman of the Board of Trustees;
- 1.1.7 "**Common Property**" means upon the opening of any sectional title register, those areas in any such scheme that are defined as "common property" in the Act, and may include all roads and common facilities within the Development;
- 1.1.8 "**Constitution**" means this constitution of the Association, as amended from time to time in accordance with the provisions hereof;
- 1.1.9 "**Developer**" means Mizolux (Pty) Ltd, or its successors-in-title or assigns;
- 1.1.10 "**Development**" means the Bedfordview Frontier Sectional Title Schemes and any phases thereof to be established on one or more of the Erven 8172 Kensington Township and 8173 Kensington Extension 10 Township, Registration Division JR., The Province of Gauteng, subject to clause 34 below;
- 1.1.11 "**Development Period**" means that period from the date on which the first Sectional Title Register in the Development is opened until the date that the Developer has exhausted all of its Development Rights and transferred the last Unit owned by it in the Development, or the date that the Developer notifies the Association in writing that it has ceased to develop the Land, whichever is the later;

- 1.1.12 **"Development Rights"** means the rights granted to the Developer at any time during the Development Period by the Local Authority or any other authority, to develop any part of the Land;
- 1.1.13 **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Association by the Member;
- 1.1.14 **"Land"** means the land comprising the Development;
- 1.1.15 **"Levy/Levies"** means levies payable by Members to the Association which, where the context allows, includes special levies;
- 1.1.16 **"Local Authority"** means the local authority having jurisdiction over the Development and meaning a city or town council;
- 1.1.17 **"Managing Agent"** means any person or body appointed by the Association as an independent contractor to undertake any of the functions of the Association;
- 1.1.18 **"Member"** means a person who holds membership in this Association, as more fully set out in clause 3 of this Constitution;
- 1.1.19 **"Ordinary Resolution"** means a resolution other than a Special or Unanimous Resolution passed at any general meeting of the Association by an ordinary majority of the total votes represented at such meeting by a quorum of Members present in person or by proxy;
- 1.1.20 **"Sectional Plan"** means the sectional plan of a Sectional Title Scheme.
- 1.1.21 **"Sectional Title Scheme"** means a sectional title scheme in the Development, established in terms of the Sectional Titles Ad;
- 1.1.22 **"Services"** means the provision of water, sewerage, electricity, drainage, telecommunications, refuse removal, firefighting, libraries; transport and such other utilities and amenities as may be provided by the Association;
- 1.1.23 **"Special Resolution"** means a resolution passed by a majority of not less than three-fourths of the votes (reckoned in value) and not less than three-fourths of the votes (reckoned in number) of Members of the Association who are present or represented by proxy or by a representative recognised by law at a general meeting, or a resolution agreed to in writing by at least 75% of all the Members of the Association (reckoned in number) and at least 75% of all such Members (reckoned in value) personally or by proxy or by a representative of any such Member recognized by law;
- 1.1.24 **"Town Planning Scheme"** means the town planning scheme for the Development, as amended from time to time;
- 1.1.25 **"Trustees"** means the Trustees of the Association from time to time, as more fully described in clause 12, and **"Board" or "Board of Trustees"** shall have a corresponding meaning;

- 1.1.26 "Unit" means a sectional title unit in any Sectional Title Scheme in the Development and includes any exclusive use area allocated to that unit;
- 1.1.27 "**Unanimous Resolution**" means a resolution-
- 1.1.27.1 passed unanimously by a quorum of the Members of the Association who are present or represented by proxy or by a representative recognized by law at a general meeting of the Association and at which meeting at least 80% of all the Members of the Association (reckoned in number) and at least 80% of all the Members (reckoned in value) are present or so represented; or
- 1.1.27.2 agreed to in writing by all the Members of the Association personally or by proxy or by a representative of any such Member recognized by law;
- 1.1.28 "**Vice-Chairman**" means the Vice-Chairman of the Board of Trustees of the Association;
- 1.1.29 "Writing" includes Electronic Communication but as regards any Member entitled to vote, only to the extent that such Member has notified the Association of an Electronic Address;
- 1.2 references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.3 references to Members entitled to vote present at a meeting or acting in person shall include juristic persons represented by duly authorised representative;
- 1.4 the headings are for reference purposes only and shall not affect the interpretation of this Constitution;
- 1.5 words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.6 if any term is defined within the context of any particular clause in the Constitution, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Constitution, notwithstanding that that term has not been defined in this interpretation provision;
- 1.7 subject as aforesaid, any words or expressions defined in the Act, as amended or any statutory modifications of such Act in force at the date on which this Constitution became binding on the Association shall, if not inconsistent with the subject or context, bear the same meaning in this Constitution;
- 1.8 whenever a provision in this Constitution is in favour of the Developer, then
- 1.8.1 the Developer shall, in its sole and absolute discretion, be entitled at any time to -
- 1.8.1.1 accept the benefit thereof;

1.8.1.2 cede, delegate or assign to any third party of its choice any such provision (or any part thereof);

1.8.1.3 waive strict compliance or any compliance at all with that provision.

2. INTRODUCTION

2.1 The Bedfordview Frontier Development will, when complete, consist of two or more Sectional Title Schemes.

2.2 The Sectional Title Schemes will share common facilities such as, a clubhouse, a creche, an entrance, gatehouse, access roads, perimeter walls, gardens, common property, open areas and security.

2.3 The Members of the Association, shall enjoy traversing rights over each other's property, rendering the individual management, administration and control of the respective Sectional Title Schemes expensive and impractical.

2.4 Therefore, notwithstanding any clause contained herein and in order to:

2.4.1 save on administration costs, management fees and expenses; and

2.4.2 where necessary comply with various Acts and legislation that may be or may become applicable to the Development; and

2.4.3 overcome any practical restrictions and conflicts in the applicable legislation and in order to effectively manage, control and administrate the affairs of the members and the respective bodies corporate through a single body,

the duties, functions and powers of the respective bodies corporate shall be assigned to the Association as contemplated in regulation 30(2)(b) of the Sectional Titles Act.

3. MEMBERSHIP

3.1 Membership of the Association shall automatically vest in and be limited to the Developer or its successor in title, in its capacity as such, and to any person, including the Developer, who is reflected in the records of the Deeds Office concerned as the registered owner of a Unit in a Sectional Title Scheme comprising the Development.

3.2 Subject to the rights of the Developer, where any Unit in the Development is owned by more than one person, all the registered owners of that Unit shall together be deemed to be one Member of the Association and have the rights and obligations of one Member of the Association; *provided that* all co-owners of any Unit shall be jointly and severally liable for the due performance of any obligation to the Association.

3.3 If the Developer cedes or transfers any of its Development Rights, the cessionary or transferee shall from the date of cession or transfer acquire all of the benefits and obligations of the Developer in terms of this Constitution in respect of those Development Rights so cede

transferred; provided that if such rights are ceded in part, the cessionary shall acquire such benefits and obligations proportionally.

- 3.4 The Developer shall cease to be a Member of the Association on the date on which the Development Period terminates, or the date on which the last unit owned by it is transferred, whichever is the later.
- 3.5 When a person becomes the registered owner of any Unit in the Development, he shall *ipso facto* become a Member of the Association, and when he ceases to be the owner of any such Unit, he shall *ipso facto* cease to be a Member of the Association.
- 3.6 Any qualifying natural or juristic person shall be a Member of the Association.

4. STATUS OF THE ASSOCIATION

The Association shall be an association with separate legal personality, capable of suing and being sued in its own name of which no Member by reason of his/her membership shall be liable in his/her personal capacity for any debt.

5. MAIN BUSINESS AND OBJECTS OF THE ASSOCIATION

- 5.1 The main business of the Association includes but is not limited to:
 - 5.1.1 exercising the duties, functions and powers of the respective bodies corporate of the two Sectional Title Schemes, assigned to the Association as contemplated in Regulation 30(2)(b) of the Sectional Titles Act, and without derogating from the generality there« the functions and duties contemplated in Sections 37, 38 and 39 of the Act;
 - 5.1.2 operating, managing and maintaining the open spaces, common facilities and amenities in respect of the Common Property for the mutual use and benefit of the Members and their invitees;
 - 5.1.3 controlling the aesthetic appearance of land, buildings including Units and other improvements on the Common Property and maintaining the landscaping;
 - 5.1.4 controlling traffic and implementing security measures for and controlled access to the roads in the Development; and
 - 5.1.5 controlling and managing the expenditure applicable to the Common Property and amenities and the collection of Levies for which such Members are liable.
- 5.2 It is recorded that in the carrying on of the main business of the Association, the Association's object does not entail the acquisition of gain as contemplated in section 8.3 of the Companies Act 71 of 2008.

6. TITLE DEED CONDITIONS

- 6.1 The owner of a Unit shall become a Member of the Association automatically upon taking transfer of that Unit. This condition shall be included in the title deed of each Unit and shall be binding on the owner and his successors-in-title.
- 6.2 The following condition shall be included and carried forward into every title deed:
- “Subject to the following conditions:
1. Every owner of the Unit or any interest therein shall automatically become a Member of The Bedfordview Frontier Homeowners' Association on date of transfer, and shall be subject to the Constitution of the Association, and all rules and guidelines issued in terms thereof until such owner ceases to be an owner.
 2. The Unit shall not be transferred without the prior written consent of the Association, which consent shall be evidenced by a clearance certificate issued by the Association stating that —
 - (a) the owner of the Unit has discharged all of its financial obligations to the Association in respect of the period up to and including the date specified in such certificate and the transfer takes place prior to or on the date specified in such certificate;
 - (b) the owner of the Unit has complied with all of its obligations to the Association in terms of the Constitution of the Association and any rules and guidelines issued and resolutions passed by the Members and the trustees of the Association in terms of the Constitution of the Association; and
 - (c) the Association consents to the transfer of the Unit.”

7. ALIENATION OF UNITS

- 7.1 No Member shall transfer his Unit until the Association has certified that the Member has at date of transfer fulfilled all his financial obligations to the Association.
- 7.2 A Member may not alienate a Unit or an undivided share therein owned by him, without the written consent of the Association. Such consent shall not be withheld unless such Member is indebted to **the** Association in any way in respect of levies or other amounts which the Association may in terms of this Constitution be entitled to claim from him.
- 7.3 The Association (or, if applicable, any Managing Agent appointed by the Association whose function it is to issue such certificate) shall be entitled to charge an administration fee as determined from time to time by the Trustees, for **the** issuing of the certificate issued in the clause 7.1 above,

8. RIGHTS AND OBLIGATIONS OF MEMBERS

- 8.1 A registered owner of any Land in the Development may not resign as a Member of the Association.
- 8.2 The rights and obligations of a Member shall not be transferable.
- 8.3 Subject to the obligations of membership prescribed by this Constitution, and Section 44 of the Act, every Member shall:
- 8.3.1 further, to the best of his ability, the objects and interests of the Association;
 - 8.3.2 observe all rules made by the Association in general meeting or by the Trustees;
 - 8.3.3 pay all Levies due by the Member to the Association in terms of clauses 9 and 10 below;
 - 8.3.4 sign all documents and do all things necessary to enable whatever servitudes may be required for services to be registered whether over or in favour of the access portion(s) or any other Land relating to the Development.
- 8.4 Subject to the rights of membership prescribed by the Act and by this Constitution, membership shall confer upon each individual Member the following rights, subject to the provisions of clauses 9.15 and 22.3 below:
- 8.4.1 the right to nominate and elect the Board of Trustees of the Association;
 - 8.4.2 the right to receive copies of the annual financial statements of the Association;
 - 8.4.3 the right to receive notice of, attend, speak and vote at general meetings of the Association,
- 8.5 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 Unit in the Development.

9. LEVIES

- 9.1 The Trustees by resolution, or the Members in general meeting, shall from time to time impose Levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or which the Trustees reasonably anticipate the Association will incur, including provision for future unexpected expenses, as well as expenses incurred in the management of the freshwater systems, wetlands, alien vegetation and swales.
- 9.2 The Levies shall on the date of the first Annual General Meeting be fixed at not less than R.....(.....) per square metre.
- 9.3 The Levies payable shall increase annually by no less than any increase in the Consumer Price Index.

- 9.4 The Trustees shall, not less than thirty days prior to the end of each financial year (which financial year, unless otherwise decided at a general meeting or by the Trustees, shall run from the first day of January in any year to the last day of December in the subsequent year), or so soon thereafter as is reasonably possible, but before every annual general meeting, cause to be prepared and served upon every Member at the address chosen by him an estimate in reasonable detail of the amount which shall be required by the Association to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The Trustees may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 9.5 Unless otherwise determined by Special Resolution, the Levies payable by Members shall be in accordance with the size of their respective sections, as depicted on the Sectional Plan, in relation to the Development as a whole.
- 9.6 The Levies payable by Members shall become due and payable on the passing of a resolution to that effect, as referred to in clause 9.1, by the Members who were owners of Units at the time the resolution was passed, provided that upon a change of ownership of a Unit the successor becomes liable for the pro rata payment of such contributions from the date of change of ownership.
- 9.7 The Trustees shall, as soon as possible alter the imposition of the Levies in terms hereof, advise each Member in writing of the amount payable by him. An invoice or statement sent to a member and depicting the amount payable shall comply with this requirement. The failure of the Trustees to so advise a Member of the imposition or change in Levies shall however not affect the enforceability or validity thereof.
- 9.8 Levies and other amounts imposed shall be payable in monthly instalments (unless expressly stated to be payable otherwise) and shall be payable monthly in advance, on the first day of each month, without deduction or set-off.
- 9.9 The Trustees by resolution, or the Members in general meeting, may from time to time impose special levies upon the Members in respect of expenses which were not included in the approved estimate of income and expenditure, and such Levies may be made payable in one sum or by such instalments (with or without interest and if with interest at such rate as may be determined by the Trustees) and at such time or times as the Trustees shall think fit.
- 9.10 Interest shall be payable on arrear Levies and any other amounts due in terms hereof or the Males, at 15,5 % per annum or such rate as may from time to time be determined by the Trustees. The interest charged by the Association, at whichever rate, shall be compounded and capitalised monthly in arrears.
- 9.11 The amount of any Member's indebtedness to the Association at any time, the interest rates applicable from time to time and any other factor relating to the determination of such indebtedness as well as the due date for payment of such amount, may at the option of the Trustees be proved in any legal or arbitration proceedings and at any stage by a certificate signed by any Trustee of the Association. It shall not be necessary to prove the appointment and authority of the person signing such certificate, which certificate shall be binding on any Member/s it relates to as prima facia proof of the facts contained therein. This includes any amount/s due by a Member, by way of Levies, special Levies,

interest thereon, other payment due in terms hereof or the Rules, or costs, which shall be regarded as debt due by the Member to the Association.

- 9.12 Upon becoming a Member of the Association, or on registration of transfer of a Unit into his name, the new Member/transferee shall become liable for any debt that the transferor owes to the Association, that was not settled on transfer, and which debt shall become due and payable by the new Member/transferee on date of registration of transfer in his name and which debt shall be recoverable by the Association from the new Member/transferee in any court with competent jurisdiction as if it was a debt incurred by such new Member/transferee.
- 9.13 Any Member whose account reflects a zero balance, or a credit balance, as at the 7th of the month, shall receive a credit equivalent to a fixed percentage of the monthly Levy for that month, which percentage shall be determined at a general meeting of Members by simple majority, and shall remain in force until it is altered at a subsequent general meeting. Members who do not have a zero balance or a credit balance shall not receive the discount and no correspondence will be entered into by the Trustees in this regard. A Member who wishes to dispute any amount that has been billed to them must settle the amount in full and follow normal dispute resolution channels to correct any error that may have occurred.
- 9.14 Any Member who fails to pay their Levy on time, may at the sole discretion of the Trustees be liable to pay a deposit, the amount of which shall be determined by the Trustees but shall not exceed twenty four times the monthly Levy currently payable. The deposit shall become due and payable on the passing of a resolution by the Trustees. Deposits shall be refunded to the owner, free of interest, upon the transfer of the unit. At the sole discretion of the Trustees, the full deposit or any part thereof may be refunded to the Member, free of interest, prior to transfer. Similarly, the Trustees may at their sole discretion increase the deposit amount, provided that the deposit may never exceed twenty four times the monthly Levy currently payable.
- 9.15 No Member shall be entitled to any of the privileges of membership including voting rights and use of Common Property unless and until he shall have paid all monies which may be due and payable to the Association, from whatsoever cause arising.
- 9.16 A Member shall not be entitled to withhold payment for any reason whatsoever of any Levy or special Levy or contribution or any other amount, penalty, fine or interest due by him to the Association.

10. RULES

- 10.1 Subject to the provisions of clause 35 and any restriction imposed or direction given at a general meeting of the Association, the Trustees may from time to time make rules which may include rules in regard to:-
- 10.1.1 rules to provide for the control, management, administration, use and enjoyment of the Units and the Common Property of the Sectional Title Schemes comprising the Development as contemplated in Section 35(2) of the Sectional Titles Act, No 95 of 1986;

- 10.1.2 the use, maintenance, repair and replacement of any roadway which vests, or the rights in and to whereof vests, in the Association and of any services, connections and equipment wider or over such roadway;
 - 10.1.3 the access to and egress from any land or portion in the Development;
 - 10.1.4 the right to determine and control all security measures in the Development;
 - 10.1.5 the preservation of the natural environment, Vegetation and fauna in the Development;
 - 10.1.6 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of Members in the Development.
- 10.2 For the enforcement of any of the rules made by the Trustees in terms hereof and for the payment of any debt due to the Association, the Trustees may:
- 10.2.1 give notice to the Member concerned requiring him to remedy a breach thereof or make payment within such reasonable period as the Trustees may determine;
 - 10.2.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the Member, his guests, invitees and lessees may be guilty or recover the debt, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be debt owing by the Member concerned to the Association;
 - 10.2.3 impose a system of fines or other penalties; *provided that* the amounts of such fines shall be reviewed and confirmed annually at a meeting of the Trustees;
 - 10.2.4 take such other action, including proceedings in Court, as they may deem fit.
- 10.3 In the event of the Trustees instituting any legal proceedings against any Member within the Development for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover, on demand, all legal costs so incurred from the Member concerned, calculated as between attorney and own client.
- 10.4 In the event of any breach of the rules by the Members of any Member% household, guests, invitees or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the a foregoing, the Trustees may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 10.5 In the event of any dispute between the Association, a body corporate or a Member arising out of or in connection with this Constitution or applicable legislation or the rules, save where an interdict or other form of urgent relief is sought from a Court having jurisdiction, a committee of three Trustees appointed by the Chairman for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that the rules of natural justice shall be observed) as the Chairman may direct.

- 10.6 Any fine imposed upon any Member, his guest, his invitee or his lessee shall be deemed to be a debt by the Member to the Association and shall be recoverable by ordinary civil process.
- 10.7 Notwithstanding anything to the contrary herein contained, the Trustees may in the name of the Association enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit. The Association shall be entitled to recover all legal costs from such Member on an attorney and own client scale including the costs of counsel on the highest scale, in full, whether or not legal action is actually instituted.
- 10.8 The Association may in general meeting itself make any rules which the Trustees may make and may in general meeting vary or modify any rules made by it or by the Trustees from time to time.

11. TRUSTEES

- 11.1 The functions and powers of the Association shall, subject to the provisions of this Constitution, the rules and any restriction imposed or direction given at a general meeting of the Members, be performed and exercised by the Trustees of the Association holding office in terms of the Constitution.
- 11.2 The first Trustees of the Association shall be nominated by the Developer and shall serve until at least the minimum number of Trustees has been elected.
- 11.3 Subject to the provisions of the Act and the provisions of clause 34, the trustees from every body corporate of a Scheme in the Development shall be entitled, but not obliged, to have at least one Trustee from their number serve on the Board of Trustees; *provided that* there shall be not less than 2 (Two) and not more than 10 (Ten) Trustees at any time; *provided further that* during the Development Period the Developer shall be entitled to appoint not less than 50% of the number of Trustees of the Association, which 50% shall in any event not be less than two Trustees.
- 11.4 Any failure by the Association at any time to have the minimum number of Trustees, does not Inuit or negate the authority of the Board, or invalidate anything done by the Board or the Association in regard to the appointment of the necessary further Trustees.
- 11.5 A Trustee need not himself be a Member of the Association. A Trustee, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of the Constitution of the Association;
- 11.6 During the Development Period, the Developer shall have the right to appoint the number of Trustees contemplated in clause 11.3. On the expiry of the Development Period the Trustee(s) so appointed by the Developer shall be Trustee(s) as if elected at an annual general meeting and shall be subject to the provisions of clause 12. Any other Trustee to be appointed to office shall be elected by the Members in general meeting.

12. REMOVAL AND ROTATION OF TRUSTEES

- 12.1 Save as set out in clause 12.3, and subject to clause 11.3, each Trustee shall continue to hold office from the date of his appointment until the annual general meeting next following his appointment, at which meeting each Trustee shall be deemed to have retired from office but will be eligible for re-election to the Board of Trustees at such meeting.
- 12.2 A Trustee shall be deemed to have vacated his office upon:
- 12.2.1 his having become disqualified to act as a Trustee in terms of the provisions of the Act;
- 12.2.2 in the event of him being a member of the Association, him being disentitled to exercise a vote in terms of clause 21.3 below.
- 12.3 Upon any vacancy occurring in the Board of Trustees prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by the remaining Trustees for the time being in office.

13. CHAIRMAN AND VICE CHAIRMAN

- 13.1 Subject to clause 13.3 hereunder, the Trustees shall within 14 (fourteen) days after each annual general meeting appoint from their number a Chairman and vice chairman; *provided that* the office of Chairman or vice-chairman shall *ipso facto* be vacated by a Trustee holding such office upon Ins ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time, the Board of Trustees shall immediately appoint one of their number as a replacement in such office.
- 13.2 Except as otherwise herein provided, the Chairman shall preside at all meetings of the Board of Trustees and, in the event of his not being present within ten minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the vice-chairman shall act in his stead, or failing the vice-chairman, a Chairman appointed by the meeting.
- 13.3 During the Development Period, the Chairman shall be appointed by the Developer.

14. TRUSTEES' EXPENSES

The 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. Save as aforesaid, the Trustees shall not be entitled to any remuneration for the performance of their duties in terms hereof.

15. POWERS OF TRUSTEES

- 15.1 The Trustees shall perform the powers, functions and duties of the trustees of the bodies corporate of the two Sectional Title Schemes comprising the Development, as contemplated in Regulation 30(2) of the Sectional Titles Act and which powers, functions and duties shall include, but not be limited to, the functions and duties contemplated in Sections 36 to 40 of the Sectional Titles

with the necessary amendments, and the functions, powers and duties more fully described in the management Rules of the respective bodies corporate.

- 15.2 Subject to the provisions hereof, and particularly the provisions of clause 34, the Trustees 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 including the right of appointment of the Managing Agent, Auditor, insurers and other service providers and employees, 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 the Act or by the Constitution of the Association required to be exercised or done by the Association in general meeting, subject however to such rules as may have been made by the Association in general meeting or as may be made by the Trustees from time to time.
- 15.3 Save as specifically provided herein, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, Auditors, attorneys, advocates, architects, engineers, a Managing Agent or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Trustees and on such terms as the Trustees shall decide, and the Trustees may delegate any or all of their powers to the said Managing Agent as they may determine, subject to any restriction imposed or direction given at any general meeting of the Association; *provided that* during the Development Period and one year thereafter the Auditor and the Managing Agent shall be appointed by the Developer.
- 15.4 The Trustees shall further have power to require that any works being constructed within the Development shall be supervised to ensure that the provisions of the Constitution of the Association and the rules are complied with and that all work is performed in a proper and workmanlike manner.
- 15.5 The Trustees shall have the right to co-opt onto the Board any person or persons, which persons need not be Members of the Association.
- 15.6 Subject to clause 15.3 above, the Board of Trustees shall be entitled to appoint committees consisting of such number of Trustees and such outsiders, including the Managing Agent, as the Board may deem fit and to delegate to such committees such of their functions, powers and duties as the Board may deem fit, together with the further power to vary or revoke such appointments and delegations as the Trustees may from time to time deem necessary.

16. PROCEEDINGS OF TRUSTEES

- 16.1 The Trustees may, subject to the provisions of this Constitution, meet together to attend to their business, adjourn and otherwise regulate their meetings as they think fit.
- 16.2 Subject to the provisions of the Act, the quorum for the holding of any meeting of the Trustees shall be one-half of the total number of Trustees then in office (reduced, if the total number of Trustees then in office is an uneven number, to the nearest whole number) plus one Trustee; *provided that* during the Development Period, not less than 51% (fifty one percent) of the quorum shall comprise of the Developer or its nominees. Any resolution passed by the Board of Trustees shall be carried on a simple majority of all votes cast. Should there be an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.

- 16.3 The Trustees shall cause the minutes of each meeting to be kept in accordance with the Act, which minutes shall be reduced to writing and certified as correct by the Chairman as soon as is reasonably possible after such meeting. All minutes of meetings of the board of Trustees shall, after certification, be placed in a Minute Book which shall be kept in accordance with the applicable provisions of the Act. The Trustees' Minute Book shall be open for inspection at all reasonable times by any Trustee, the Auditors, the Members and the Managing Agents.
- 16.4 Subject to the provisions of this Constitution, the proceedings of any meeting of the Board of Trustees shall be conducted in such reasonable manner and form, as the Chairman of the meeting shall direct.
- 16.5 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 Board of Trustees duly called and constituted.

17, GENERAL MEETINGS

- 17.1 The Association shall hold its first annual general meeting within 24 (twenty four) months after the date the Association is constituted and shall thereafter hold an annual general meeting not later than 6 (six) months after the end of each financial year of the Association.
- 17.2 The Trustees may, whenever they think fit, convene a general meeting and the secretary shall convene a general meeting if a general meeting is requisitioned in terms of the Act. If at any time there are, within the Republic, insufficient Trustees capable of acting to form a quorum, any Trustee or Member of the Association may convene a general meeting in the same manner, as nearly as possible, as that in which meetings may be convened by the Trustees.
- 17.3 Subject to the provisions of the Act, general meetings shall be held at such time and place as the Trustees shall determine.
- 17.4 Pursuant to the provisions of clause 34, the general meetings of the Association shall serve as the general meeting of the bodies corporate of the Sectional Title Schemes in the Development.

18. NOTICE OF GENERAL MEETING

- 18.1 Subject to the provisions of the Act, an annual general meeting and a meeting called for the passing of a special resolution shall be called on not less than 21 (Twenty One) days' notice in writing and any other general meeting shall be called on not less than 14 (Fourteen) days' notice in writing. Notice in terms of this clause shall be exclusive of the date on which it is served or deemed to be served and exclusive of the date for which it is given.
- 18.2 The notice of a meeting of the Association shall specify -
- 18.2.1 the place;
- 18.2.2 the date and the hour of the meeting; and
- 18.2.3 in the case of special business, the general nature of such business;

and shall be given in the manner hereinafter provided or in such other manner as may be prescribed by the Association in general meeting and to such persons as are, under this Constitution, entitled to receive such notices from the Association.

- 18.3 Notwithstanding the provisions of this Constitution, but subject always to the Act:-
- 18.3.1 a general meeting shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed by a majority in number of the Members having a right to attend and vote at the meeting, who hold not less than ninety five per centum of the total voting rights of all the Members;
- 18.3.2 a general meeting shall be entitled to deal with special business, the general nature of which has not been notified, if it is so agreed by a majority in number of the Members having a right to attend and vote at the meeting, who between them hold not less than fifty per centum of the total voting rights of the Members.

19. PROCEEDINGS AT GENERAL MEETINGS

- 19.1 In addition to any other matters required by the AC or in terms of this Constitution to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- 19.1.1 the consideration of the Chairman's report;
- 19.1.2 the election of Trustees and election of trustees of the bodies corporate to be appointed as Trustees;
- 19.1.3 the consideration of the accounts of the Association for the preceding financial year;
- 19.1.4 the consideration of the report of the Auditors and the fixing of remuneration for the Auditors;
- 19.1.5 the approval with or without amendment of-
- (i) the schedules of replacement values of Units in a Sectional Title Scheme for the purpose of insuring the buildings and Common Property pertaining to such Scheme as provided for in the Sectional Titles Act; and
 - (ii) the estimate of income and expenditure for the ensuing year for the purpose of determining the Levies payable by Members as contemplated in clause 9;
- 19.1.6 any other business laid before it and of which notice has been duly given in terms of this Constitution or in respect of which notice has been waived in terms of clause 18.3.2 above.
- 19.1.7 the consideration of any other matters raised at the meeting, including any resolutions proposed for adoption by such meeting and the voting upon any such resolutions;
- 19.2 Where a company or other legal person is a Member of the Association it may, in the appropriate manner, nominate any person it deems fit to act as its authorised representative at any general meeting and such authorised representative shall be entitled to exercise the same rights

powers which that company would have had at that meeting if it were a natural person and present in person or by proxy.

19.3 Business may be transacted at a general meeting only while a quorum of Members is present.

20. QUORUM

20.1 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 a General Meeting shall be:

20.1.1 during the Development Period, all the votes of the Developer plus 10% (ten per centum) of the total number of votes of the other Members of the Association entitled to vote for the time being; or

20.1.2 after the Development Period, 20% (twenty per centum) of the total number of votes of all Members of the Association entitled to vote for the time being;

provided that at no stage shall a quorum of less than 3 (Three) Members be personally present.

20.2 If within half an hour after the time appointed for the general meeting a quorum is not present, the general meeting, if convened upon requisition of the Members, shall be dissolved. In any other case the general meeting shall stand adjourned to the same day in the next week at the same time and place, or if that day is not a business day to the next succeeding business day, and if at such adjourned general meeting a quorum is not present within half an hour after the time appointed for the meeting, the Members present in person or represented by proxy shall constitute a quorum.

20.3 The Chairman of the Board of Trustees shall preside at all general meetings of the Association and, in the event of his not being present within 15 (Fifteen) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice-chairman shall act in his stead or, failing the Vice-chairman, a Chairman appointed by the Members present at the meeting.

20.4 The Chairman of a general meeting at which a quorum is present may (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting at which the adjournment took place. Subject to the Act, when a meeting is adjourned it shall not be necessary to give notice thereof.

20.5 No resolution at a general meeting will require a seconder.

21. VOTING

21.1 Notwithstanding anything to the contrary herein contained, at any general meeting, on a show of hands, each Member who is present in person, by authorised representative or by proxy shall, have 1 (One) vote per Unit owned by him, save that during the Development Period the Developer shall have:

- 21.1.1 1 (One) vote for every Unit in the Development; and
- 21.1.2 an additional 100 (One Hundred) votes.
- 21.2 If a Unit or a portion of a Unit in the Development is registered in the name of more than one person, then all such co-owners shall jointly have 1 (One) vote.
- 21.3 Subject to the provisions of this Constitution, no person other than a duly registered Member who has paid every Levy and other sum, if any, which is 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 vote on any question, either personally or by proxy, at any general meeting.
- 21.4 At any general meeting a resolution put to the vote shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by any person entitled to vote at the meeting. No poll shall, however, be demanded on the election of the Chairman of the meeting or on any question of adjournment. Unless a poll is demanded, a declaration by the Chairman of the meeting that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority, or defeated, an entry to that effect in the minute book contemplated in clause 23.1 below shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- 21.5 If a poll is demanded:
- 21.5.1 the poll shall be taken in such manner and at such time as the Chairman of the meeting shall direct;
- 21.5.2 the Chairman of the meeting shall be entitled to appoint scrutineers;
- 21.5.3 no notice of a poll other than an announcement at the meeting at which it is demanded shall be required;
- 21.5.4 the demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question on which the poll has been demanded;
- 21.5.5 a demand for a poll may be withdrawn;
- 21.5.6 the result of a poll shall be deemed to be the resolution of the meeting on any question on which the poll is taken.
- 21.6 In the case of an equality of votes, whether on a show of hands or a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is taken shall not be entitled to a second or casting vote.
- 21.7 Any objection to the admissibility of a vote on a show of hands or on a poll shall be raised at the general meeting at which that show of hands or poll is to take place or takes place. That objection shall be determined by the Chairman of that general meeting and his decision thereon shall be final and binding. Accordingly, any vote not disallowed at that meeting shall be valid for all purposes.

- 21.8 A resolution shall not be invalid because a vote which should not have been included has been taken into account unless, in the opinion of the Chairman of that meeting (whose decisions thereon shall be final and binding), the exclusion of that vote would have altered the result of the voting on that resolution. Conversely a resolution shall not be invalid because a vote which should have been included has not been taken into account unless, in the opinion of the Chairman of that meeting (whose decisions thereon shall be final and binding), in the inclusion of that vote would have altered the result of the voting on that resolution.

22. RESOLUTION IN WRITING BY MEMBERS

Subject to the provisions of the Act, a resolution in writing signed by all the Members entitled to receive notice and attend and vote at the general meeting and inserted in the minute book kept in terms of clause 23.1 shall be as valid and effective as if it had been passed at a general meeting duly called and constituted. A resolution in terms of this clause may consist of several documents of the same form, each of which is signed by one or more Members in terms of this clause, and shall be deemed to have been passed on the date of signature thereof by the last Member entitled to sign the same.

23. MINUTES AND INSPECTION

- 23.1 The Trustees shall cause a record to be made of all resolutions of the Association in general meeting in a book provided for that purpose.
- 23.2 The minutes kept in terms of clause 23.1 (or any extract therefrom) which purport to be signed by the Chairman of the board of Trustees or by any Trustee or the secretary shall be *prima fade* evidence of the matters therein stated.
- 23.3 The minute book shall be open for inspection as provided in the Act.

24. PROXIES

- 24.1 A Member entitled to vote at a general meeting shall be entitled to appoint one person or more than one person in the alternative to each other as his proxy to attend, speak and vote at a general meeting on his behalf.
- 24.2 A proxy need not be a Member of the Association.
- 24.3 The instrument appointing a proxy shall be in writing under the hand of the appointor or his agent duly authorised in writing or, if the appointor is a body corporate, under the hand of the authorised representative. A proxy need not be witnessed. Whether he is himself a Member or not, the holder of a general or special power of attorney given by a Member shall, if duly authorised under that power to attend and take part in meetings and proceedings of the Association, be entitled to attend general meetings and to vote thereat.
- 24.4 A form of proxy may be issued at the Association% expense only if it is sent to all Members who are entitled to attend and vote at the general meeting to which the proxy form relates.

- 24.5 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 of such power or authority) shall be deposited at the office not less than forty-eight hours (or at such other place and such lesser period as the Trustees may determine in relation to any particular meeting) before the time for the holding of the meeting which the person named in the instrument proposes to speak and vote. A form of power of attorney or proxy shall be invalid if this clause is not complied with.
- 24.6 Except insofar as the form appointing a proxy indicates otherwise, the appointment of a proxy shall be deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specially directed to vote for or against or to abstain from voting on any proposal or resolution), the power generally to act for the Member giving that proxy at the general meeting in question as the proxy may think fit. Unless the contrary is stated thereon, the form appointing a proxy shall be valid for each adjournment of the general meeting to which it relates.
- 24.7 No instrument appointing a proxy shall be valid after the expiration of 6 (Six) months from the date on which it was signed unless specifically stated to the contrary in the instrument of proxy
- 24.8 The instrument appointing a proxy may be in any usual or common form approved by the Trustees but shall be so worded that the holder thereof may vote for or against or abstain from voting on any one or more of the resolutions proposed at the general meeting at which the proxy is to be used.

25. ACCOUNTING RECORDS

- 25.1 The Trustees shall cause to be kept such accounting records as are prescribed by the Act and in particular such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 25.2 The Association's records shall be kept at the office or such other place or places as the Trustees think fit and shall at all reasonable times be Open to inspection by the Trustees and by past Trustees but, in the case of the latter, only in respect of the period during which they held office as Trustees.
- 25.3 The Trustees shall from time to time determine whether, to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them may be open for inspection by Members not being Trustees and no Member (not being a Trustee) shall have any right to inspect any accounting record or document of the Association except as conferred by the Act or authorised by the Trustees or by the Association in general meeting.

26. AUDITOR AND AUDITED FINANCIAL STATEMENTS

- 26.1 Subject to clause 34, an auditor shall be appointed in accordance with the provisions of the Act.

- 26.2 The Trustees shall from time to time and in accordance with the provisions of the Act, cause the annual financial statements to be prepared and laid before the Members in general meeting.
- 26.3 A copy of any annual financial statements which are to be laid before the Members at the annual general meeting shall not less than 21 (Twenty One) days before the date of that meeting, be sent to every Member of the Association and, where required by the Act, also to the Registrar. The provisions of this clause shall not require a copy of those documents to be sent to any person who has not furnished an address to the Association.

27. DISPUTES

- 27.1 Any disputes arising out of or in connection with the Constitution of the Association, or the Management Rules or the Conduct Rules of a Sectional Title Scheme must be determined in accordance with clause 10.5 above read with this clause 27, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 27.2 On a dispute arising (except for money or a debt owing to the Association), the parties who wish to have the dispute determined must notify the other party thereof in writing. Unless the dispute is resolved amongst the parties within 14 (Fourteen) days after such notice, either of the parties to the dispute may refer the same for determination to the Chairman of the Association, who shall appoint a committee consisting of three Trustees as contemplated in clause 10.5 within 7 (Seven) days of receipt of notification of the dispute in writing. The committee so appointed shall determine the dispute within 14 (Fourteen) days of its constitution in accordance with the rules of natural justice and on consideration of such evidence adduced to it, or received by it on its request, in such form and manner acceptable in its discretion.
- 27.3 Notwithstanding the provisions of clause 27.4, the committee shall be entitled to refer the dispute for determination to an independent party agreed to between the committee and the disputing Members, in which event such dispute shall be referred to the following who shall in each case have a minimum of ten years' experience in their field:
- 27.3.1 if the dispute is primarily an accounting or financial matter, a practicing chartered accountant;
- 27.3.2 if the dispute is primarily a legal matter or a matter relating to the behaviour and/or conduct of a member, a practicing attorney or advocate;
- 27.3.3 if the dispute primarily relates to the nature of buildings, structures, installations or equipment, a practicing architect;
- 27.3.4 if the dispute primarily relates to the size or form of the land or the position, height or size of buildings, structures, installations or equipment, a practicing land surveyor,
- 27.4 If the parties are unable to agree on the appointee as provided for in clause 27.3 within three days of being requested to do so, then the person shall be nominated by the President for the time being of the Law Society of the Northern Provinces.
- 27.5 The person appointed as provided for in clause 28.3 shall in all respects act as an expert and not as an arbitrator.

- 27.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of natural justice.
- 27.7 The parties shall use their best endeavors to procure that the decision of the expert shall be given within 21 (Twenty One) days or so soon thereafter as possible.
- 27.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 27.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether it shall be taxed as between "party and party" or as between "attorney and client".
- 27.10 The provisions of this clause 27 shall be deemed to be severable from the remainder of the Constitution of the Association and of the Management Rules and Conduct Rules of a Sectional Title Scheme and shall remain binding and effective as between the parties notwithstanding that it may otherwise be cancelled, amended or declared of no force and effect for any reason.
- 27.11 Notwithstanding anything to the contrary contained in this Constitution, the Trustees shall be entitled to institute legal proceedings of whatsoever nature on behalf of the Association by way of application, action or otherwise in any court having jurisdiction for any purpose whatsoever relating to any matter in respect of any of the provisions of the Constitution or the Management Rules and Conduct Rules of a Sectional Title Scheme, including any amendments or additions thereto.

28. NOTICES

- 28.1 A notice may be given by the Association to any Member, in the manner set out in clause 28.2 below, at the address if any within the Republic furnished by him to the Association for such purpose.
- 28.2 Notice of every general meeting shall be given in writing and shall be delivered either by hand, or sent by post, or sent by facsimile, or sent by email -
- 28.2.1 to every Member except those persons who have not supplied an address contemplated in clause 28.1 above;
- 28.2.2 to the Auditor for the time being of the Association;
- 28.2.3 to every Trustee of the Association, whether a Member or not, and no other person shall be entitled to receive notice of any general meetings.
- 28.3 A notice served by post shall irrefutably be deemed to have been received and brought to the notice of the addressee at the time when 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.

- 28.4 Any notice by the Association shall be signed by a Trustee or by someone authorised by the Trustee.
- 28.5 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 28.6 The Association shall not be responsible for the loss in transmission of documents sent through the post to the address furnished by any Member to the Association for the giving of notices to him, whether or not it was so sent at his request.

29. DOMICILIUM

- 29.1 The *domicilium citandi et executandi* of each Member or Trustee shall be the address of the Unit registered in his name within the Development: *provided that* such owner shall be entitled from time to time to change the said domicile but that any new domicile selected shall be a physical address situated in the Republic (which shall not be a PO Box or Postnet Suite address) and that the change shall only be effective on receipt of written notice thereof by the Association at its domicile.
- 29.2 The *dotnicilturn citandi et executandi* of the Association shall be the address of its office, appointed from time to time.
- 29.3 It is accepted therefore that the domicile address provided will be the address 2 which the owner or Association, as the case may be, agrees to accept service of all court processes for the purpose of matters arising between the Association and the Member.

30. GENERAL

- 30.1 The Trustees may serve notice on any Member to the effect that the Trustees consider the conduct of the Member in contravention of the Constitution or Rules of the Association. Should the Member or Members fail to comply therewith, within a reasonable time as specified in such notice, the Trustees may take such steps as they deem necessary to rectify the Member% conduct and recover the cost thereof from the Member or Members concerned, which cost shall be deemed to be a debt due and owing to the Association.
- 30.2 The Association may require any Member to maintain a sidewalk adjacent to his land in the Development and in the event of such Member failing to maintain such sidewalk to the satisfaction of the Association, the Association shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to charge such Member concerned.
- 30.3 The Association may enter into agreements with Members for the provision of amenities and services to the Members and to levy a reasonable charge in respect of the provision thereof.
- 30.4 Should the Association provide security services and/or other services for Members in the Development, all Members shall be obliged to:

- 30.4.1 permit the installation of any such equipment for the purposes of such services as may be determined by the Association from time to time;
- 30.4.2 make payment of charges raised by the Association in respect of such services;
- 30.4.3 abide by such terms and conditions of the provisions of such services as may be laid down by the Association from time to time; and
- 30.4.4 not interfere in any way with the working or maintenance of such services or equipment.

31. INDEMNITY

Every Trustee, manager, and officer of the Association and every other person (whether an officer of the Association or not) employed by the Association, and the auditor, except the managing agent, shall be indemnified out of the funds of the Association against all costs, losses, expenses and claims which he may incur or become liable to pay by reason of an act done by him in the discharge of his duties, in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, unless such costs, losses, expenses or claims are caused by the *mala fide* or grossly negligent act or omission of such person.

32. AMENDMENTS TO THE CONSTITUTION

- 32.1 Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation) *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the Constitution, which the Board is empowered to do, all other amendments of the Constitution shall be effected if —
 - 32.1.1 a special resolution to amend it is proposed by:
 - 32.1.1.1 the Board of Trustees; or
 - 32.1.1.2 Members of the Association entitled to exercise at least 10% (Ten Percentum) of the voting rights that may be exercised on such a resolution

and is adopted at a general meeting.

33. EXCLUSION DURING THE DEVELOPMENT PERIOD

Notwithstanding anything to the contrary contained in this Constitution, during the Development Period those portions of the Development where the Developer has not yet exercised in full its Development Right, shall be excluded from the Operation of this Constitution until such time as the Development Right in respect of such portions have been exhausted.

34. MANAGEMENT OF THE DEVELOPMENT

- 34.1 The Development shall comprise two or more Sectional Title Schemes, together with the communal facilities.
- 34.2 The duties, functions and powers of the respective bodies corporate shall be assigned to the Association as contemplated in regulation 30(2)(b) of the Sectional Titles Act.
- 34.2.1 The trustees shall nominate and appoint from their number, at least 1 (One) Trustee to serve on the Board of Trustees as contemplated in clause 11.3 above.
- 34.2.2 To the extent that the minimum required number of trustees cannot be appointed in respect of any particular Sectional Title Scheme, additional trustees may in that event be nominated and elected, at any general meeting, from the ranks of the Members of any of the other Sectional Title Schemes.
- 34.3 The Board of Trustees shall exercise such duties and rights as are required of them by the Sectional Titles Act and the Management Rules of the respective Sectional Title Schemes, as well as any other applicable legislation, and in doing so shall *inter alia*:
- 34.3.1 manage, control and administer the Sectional Title Schemes in the Development, as well as the communal facilities, as one scheme;
- 34.3.2 be entitled to appoint such committees or sub-committees from their ranks and to delegate certain tasks to such committees or sub-committees as they deem fit and appropriate;
- 34.3.3 prepare one budget and to apply as far as possible the participation quotas, applicable to every member with regard to any contributions or special Levies due by Members in respect of the Development as a whole or a particular Sectional Title Scheme, with regard to the budgeted expenses as contemplated in clause 9.4 above;
- 34.3.4 regard the common property of the individual Schemes, and any property owned by the Association, for purposes of the management of the Development, as Common Property of a single Sectional Title Scheme;
- 34.3.5 appoint one Managing Agent for the Development; *provided that* during the Development Period and one year thereafter, the Managing Agent shall be appointed by the Developer;
- 34.3.6 appoint one Auditor; *provided that* during the Development Period and one year thereafter, the auditor shall be appointed by the Developer;
- 34.3.7 appoint such employees for the Association and the bodies corporate (where applicable) as they deem fit and appropriate and allow the Managing Agent to appoint such employees and service providers as the Managing Agent may deem necessary in the proper execution of its duties;
- 34.3.8 operate one bank account, as far as possible;
- 34.3.9 insure all buildings, common property and communal facilities, as required by the Sectional Title Act and Regulations, under one Insurance Policy; *provided that* any exclusions applicable to a specific Sectional Title Scheme or communal facilities or any claims not covered adequately or at all in terms of the insurance Policy in respect of a specific Sectional Title Scheme or Communal Facilities, shall be the liability of the Members or owner of that specific scheme or facility only.

- 34.3.10 convene a single annual general meeting in respect of the Members of the respective bodies corporate and the Association (excluding a general meeting contemplated in section 36(7)(a) of the Sectional Titles Act), which general meeting shall be held in accordance with the provisions of the Constitution of Association;
- 34.3.11 the rights derived from and the obligations conferred upon any Sectional Title Scheme in terms hereof shall entitle such Scheme irrevocably to sue or to be sued or to take any action for the enforcement of the provisions of the Sectional Titles Act and the rules pertaining to such Scheme in its own name, without reference or formal cession from the Association or any of the other Schemes; *provided that* the Board of Trustees approves and oversees the institution or defense of such action and subject to any directions that may be given by the Association in general meeting.
- 34.3.12 Insofar as any administrative, procedural and management aspects may require amendment in order to attain the objects of this clause 34, the Board of Trustees may constitute a Rules Committee to supplement and/or amend and/or repeal any of the Management and Conduct Rules applicable to any Sectional Title Scheme as they deem appropriate and in a manner they deem fit and proper; *provided that* these rights do not confer upon the Trustees the right to impose any restrictive conditions on the proprietary rights of any of the Members without their knowledge or consent thereto.
- 34.3.13 For purposes of any quorum requirement and for approval of a special or unanimous resolution, the Members of all the Sectional Title Schemes shall participate jointly and shall be reckoned for purposes of each resolution, as one scheme comprising of all the Units of the individual Schemes, subject to the rights of the Developer; *provided that* where any resolution or amendment of any of the rules affects a particular Sectional Title Scheme only, the Members of that specific Scheme may resolve to adopt the required resolution or amendment; *provided further that* such resolution or amendment shall stipulate clearly that it is applicable to and enforceable by the Members of that particular scheme only.
- 34.3.14 No amendment to the rules as contemplated for the purpose of this clause 34 shall be adopted unless the corresponding rule/s of all the other Sectional Title Schemes in the Development and the corresponding provisions the Constitution of the Association are similarly amended and *vice versa*.
- 34.3.15 In attaining the objectives of this clause 34, the Trustees shall not do, or cause do be done, anything, whether expressly, tacitly or implied, in contravention of the Act, the Sectional Titles Act or the principles of good corporate governance and shall at all times exercise their functions in the utmost good faith.
- 34.3.16 In the event of any contradicting provisions in this Constitution of Association and the Management and Conduct Rules of any Sectional Title Scheme, the provisions of this Constitution shall prevail.

35. EFFECTIVE DATE

This Association shall be duly constituted with effect from the date that this Constitution is executed by the signatories set out below.

Signed at on this day of
