

Owners' Association of
Caves Retirement Village

CONSTITUTION

27 July 2007

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ANNEXURES

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1. DEFINITIONS AND INTERPRETATION

- (1) The words and expressions used herein shall, for the purposes of this Constitution, have the meanings assigned to them as follows:

Act	The Sectional Titles Act, No 95 of 1986, as amended and as may be amended from time to time.
Attorney	Messrs Coetzee & van der Bergh, 41 Baron van Reede Street, Oudtshoorn, 6620, or after termination of the development period, an attorney appointed in terms of clause 10(2)(e).
Budget	An itemized financial estimate of income and expenditure of the Association and/or of the schemes for the ensuing Financial Year.
Common items	Financial obligations and expense items related to matters common to all schemes.
Common property	Common property of a specific sectional title scheme as defined in the Act.
Completion date	Date of transfer of last unit in the Village, or such earlier date as the Developer may determine by written notice to the Association.
Developer	8 Mile Investments 301 Limited, No 2005/017061/06, or its successors in title.
Development period	The period from the date of registration of transfer of the first unit to an owner, until the completion date.
Dwelling	A building or place of residence constructed in accordance with the Building Guidelines.
Exclusive use area	As defined in the Act.
Extension land	Such additional adjoining land as the Developer may add to the Village within a period of five years from establishment of the Association.
Fund	A common fund for performing all functions of the Association and including separation of Fund accounts for individual schemes, to defray all expenses and other financial obligations incurred as contemplated in clause 6(1).
LUPO	Land Use Planning Ordinance (Cape), No 15 of 1985.
LUPO scheme	A housing scheme not being a sectional title scheme, established in terms of LUPO.
Member	A member of the Association, being an owner.
Occupation date	The date upon which an owner or occupier has taken occupation of a dwelling
Occupier	The lessee or other occupant of a dwelling
Owner	The registered owner of a unit, having obtained transfer from the Developer, or a successor in title of such person.
Qualified Occupier	An occupier or owner (who did not ceded his or her frail care rights)
Registered mortgagee	As described in the Act.
Scheme	A development scheme, whether sectional title or otherwise, developed as a component scheme within the boundaries of the Village.
Section	A section in a scheme, being a sectional title scheme, as defined in the Act.
Special items	Expense items which are assigned to a particular scheme exclusively.
Trustees	The Trustees appointed in terms of clause 9 and, during the development period, the Provisional Trustees.

Unit	In respect of a scheme being a sectional title scheme, a unit as defined in the Act, and in respect of a scheme being a LUPO scheme, an erf therein, including any building which may have been erected thereon.
Village	The entire development scheme known as Caves Retirement Village comprising of a scheme or as many schemes as may have been established at any time on the land described as: (1) Erf 6 Oudtshoorn, situate in the Municipality and Division of Oudtshoorn, measuring 6,7352 ha.; and (2) The extension land.
Village property	Common areas, facilities and services which are identified on the Master Layout Plan as being common to all schemes.

- (2) The following rules shall apply in respect of the interpretation of this Constitution:
- (a) The clause headings are for convenience and shall be disregarded in construing this Constitution.
 - (b) Unless the context clearly indicates a contrary intention:
 - (i) the singular shall include the plural and vice versa; and
 - (ii) a reference to any one gender shall include the other genders; and
 - (iii) a reference to natural persons includes legal persons and vice versa.
 - (c) Words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
 - (d) When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
 - (e) Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
 - (f) If any provision of this Constitution is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.

- (g) If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the members or the Association, then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision of this Constitution.
- (h) Annexures to this Constitution are deemed to be incorporated in, and form part of, this Constitution.
- (i) If any provision in an Annexure to this Constitution, or in the Constitution or Rules of a scheme should be in conflict with any provision of this Constitution, the provision of this Constitution shall prevail.

2. ESTABLISHMENT, STATUS AND DOMICILIUM

- (1) This is the Constitution of Caves Retirement Village Owners' Association, herein referred to as the Association, a juristic person being a Master Association for the development schemes known or to be known as:
 - (a) Caves, a sectional title scheme to be established;
 - (b) A further sectional title scheme to be established on the extension land; and/or
 - (c) A group housing scheme to be established on the extension land in terms of section 29 of LUPO;

hereinafter referred to as the schemes or the Village.
- (2) The Constitution and all Annexures thereto bind all owners and occupiers.
- (3) The Association shall be deemed to be established on the date of registration of transfer of the first unit from the developer to an owner, and this Constitution, as may be amended from time to time, shall then become and remain binding upon the Developer and all owners.
- (4) The Association has the capacity to acquire and own movable and immovable property, to deal therewith, dispose thereof and to acquire, grant and dispose of real rights in its own name. It may enter into contracts, acquire rights and obligations, and sue or be sued in its own name.
- (5) The *domicilium citandi et executandi* of the Association shall be a physical address within the magisterial area in which the Village is situated, as may be determined by the Trustees from time to time.

- (6) The Association may not pay out any of its Funds to members, except to rectify errors or in terms of a court order, or in settlement of a claim for damages, or upon destruction of the Village.

3. PURPOSES AND OBJECTIVES

- (1) The purposes and objectives of the Association are:
 - (a) To serve as a master association for the Village, including the schemes;
 - (b) To accept the delegation of powers of each scheme regarding the management and administration of the schemes as determined herein, subject to such limitations as may be imposed herein;
 - (c) To perform such duties and exercise such powers as are stipulated herein to the exclusion of the schemes.
 - (d) Generally, to protect and promote the interests of members as owners of units.
- (2) It is recorded that the Village is to be a retirement scheme as contemplated in the Housing Development Schemes for Retired Persons Act, No 65 of 1988.
- (3) The principle business of the Association is to manage the shared interests of members, including the financial affairs of the Association and the contributions levied upon members, maintenance and insurance of Village property, and the enforcement of all provisions which apply to members in terms of this Constitution and relevant legislation.

4. MEMBERSHIP AND BINDING EFFECT

- (1) All owners shall be members of the Association and shall be bound by the provisions of this Constitution and its Annexures as may be amended from time to time, and shall furthermore be bound by any Rules, regulations, resolutions and authorized Directives issued in accordance with such provisions, and by the provisions of the Act and other relevant legislation.
- (2) If a unit is registered in the names of more than one owner, such owners shall be jointly liable for members' obligations arising in terms hereof, and shall exercise their rights, including voting rights, jointly.
- (3) The Developer shall be deemed to be a member of the Association until the completion date and shall be represented by one or more persons appointed by it as its representatives in writing from time to time.

- (4) A person other than the Developer shall automatically become a member upon registration of transfer of a unit in a scheme in his or her name and shall automatically cease to be a member upon registration of transfer of his or her unit (or last unit, if applicable) to another.
- (5) No member may cede or waive his membership or resign as member.
- (6) Excluding the Developer, no entity other than a natural person, not younger than 21 years, may acquire a unit and become a member.
- (7) Upon the death of a member the rights of membership may be exercised by, and the obligations of membership (including obligations in respect of all forms of levies) shall devolve upon, the executor of the deceased estate until the unit is transferred to another.
- (8) Upon the sequestration of, or the appointment of a *curator bonis* for a member, the rights of membership may be exercised by, and the obligations of membership (including obligations in respect of all forms of levies) shall devolve upon, the Trustee or *curator bonis* until the unit is transferred to another.

5. ACCEPTANCE OF DELEGATED POWERS AND FUNCTIONS

- (1) In terms of the provisions of Regulation 30 (2) of the Act, shall this constitution serve as Conduct Rules, as meant in article 35(2)(b) of the Act, in respect of any Scheme that is a sectional title scheme and as constitution of any LUPO Scheme.
- (2) The functions and duties of each Scheme are herewith transferred to the Association.
- (3) The Association hereby accepts the delegation of all powers and functions of the schemes, which shall, in terms of the provisions of this Constitution be exercised and performed subject to the provisions of the Act and all other applicable legislation.

6. FINANCIAL FRAMEWORK

(1) Establishment of Fund

- (a) It shall be obligatory upon the Association, its members and Trustees to establish and maintain a Fund in order to meet all financial obligations of the Association, including a reasonably estimated annual contribution to provide for-
 - (i) contingencies; and
 - (ii) maintenance expenses expected at a time in the future, other than the current financial year.

- (b) Within the Fund, separate accounts, including separate banking accounts, shall be maintained in respect of each scheme, and further separate accounts and a banking account for common items; provided that a single banking account be operated while the Village consist of only one Scheme.

(2) Budgets and Participation Quotas

- (a) Before every annual general meeting, the Trustees shall prepare, or cause to be prepared, an itemized Budget of anticipated income and expenditure of the Association and of the schemes for the ensuing financial year, consisting of-
 - (i) a Common Budget in respect of all common items, divided into-
 - (aa) items listed in Annexure B which are to be assigned according to the Special Participation Quotas contained therein; and
 - (bb) items listed in Annexure C which are to be assigned to all units equally.
 - (ii) A Special Budget for each scheme in respect of Special Items;

provided that until the establishment of a further scheme or schemes, if any, one Budget only shall be prepared for Caves sectional title scheme in respect of all costs relating to it.
- (b) The abovementioned Budgets shall be certified by the Auditor to the effect that provision has been made therein for-
 - (i) the reasonably estimated liabilities and expenses, including maintenance expenses, of the Association for the ensuing year;
 - (ii) the payment of all debts of the Association carried forward from a previous year;
 - (iii) a reasonable amount for contingencies; and
 - (iv) a reasonable amount to a reserve fund for future maintenance.
- (c) The abovementioned Budgets, duly certified, shall be presented to the members at each annual general meeting for consideration and approval, with or without amendments.
- (d) The Trustees shall ensure that copies of the certified Budgets are delivered to each member and every mortgagee which has advised the Association of its interest, together with notice of the annual general meeting.

- (e) No annual general meeting shall be concluded without approval of the Budgets, but the chairperson may adjourn the meeting, to be resumed at a specified date, time and venue, for the conclusion of business.

(3) Determination of Ordinary Levies

- (a) For the purposes of the Fund it is the duty of the Trustees to raise and collect ordinary levies from members in accordance with the provisions hereof.
- (b) Ordinary levies shall be raised, assigned and collected from individual members as follows:
 - (i) In respect of the General Budget:
 - (aa) Items listed in Annexure B, in accordance with the Special Participation Quota Schedule contained therein, by applying the Special Participation Quota of each unit to the net aggregate of the Budget, which is to be Funded from levies.
 - (bb) Items listed in Annexure C, by assigning levies equally to all units.
 - (ii) In respect of special items relating to a LUPO scheme, according to the Special Participation Quota Schedule contained in Annexure A.
 - (iii) In respect of special items relating to a sectional title scheme, according to the participation quota schedule applicable to such scheme in terms of section 32(1) of the Act, as per the Schedule attached to the sectional plan of the relevant scheme.
- (c) Until the establishment of a further scheme or schemes, if any, all ordinary levies in respect the Caves sectional title scheme shall be raised and assigned according to the Participation Quota Schedule applicable thereto in terms of section 32(1) of the Act, as per the schedule attached to the sectional plan for the Caves sectional title scheme.
- (d) A soon as practically possible after approval of the Budgets in terms of clause 6(2), the Trustees must meet to determine ordinary levies for individual units, to be presented in an Annual Levy Schedule. The ordinary levies reflected in the Annual Levy Schedule must then be ratified by a Trustees' resolution.
- (e) Ordinary levies determined in terms of clause 6(3)(b), (c) or (g) shall become due and payable at the time of the said Trustees' resolution, provided that –
 - (i) ordinary levies, other than Special Levies, shall be payable in equal monthly instalments;

- (ii) each installment must be paid in the manner stipulated by the Trustees, to be received not later than the on the fifth day of the each month, whereafter it shall be deemed that unpaid ordinary levies to be in arrear and subject to accrual of interest.
- (iii) members' liability to pay any ordinary levy or levy instalments determined in terms of these provisions shall continue until superseded by a new levy determination after the following annual general meeting, irrespective of whether the financial year-end has passed. Payments accrued and paid after a financial year-end, shall be credited towards levy payments in respect of the new financial year.
- (iv) The Trustees may implement a provisional increase in ordinary levies during any financial year, but not earlier than three months before the end of that financial year, and all owners shall be liable for payment of such increased levy instalments at the rate so determined, until new ordinary levies are determined in terms of clause 6(3)(d). Increased instalments so accrued and paid after a financial year-end, shall be credited towards levy payments in respect of the new financial year.
- (f) Within fourteen days after each annual general meeting, the Trustees shall advise each owner in writing of the amount payable by him or her and the instalments to be paid as reflected in the Annual Levy Schedule. Failure to notify shall not affect an owners liability to pay levies.
- (g) The Trustees may from time to time, when necessary, determine Special Levies, payable by the owners in respect of all such expenses and financial obligations which were not included in any Budgets made in terms of clause 6(2) above, and such levies may be made payable in one sum or in such instalments and at such time or times as the Trustees shall determine.
- (h) An owner shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, administrative costs, expenses and charges incurred by the Association in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such owner to the Association, or in enforcing compliance with these provisions, or any Rules, regulations, or Directives made in terms of these provisions, the Act, or any other statutory provisions, or regulations.
- (i) The Trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine, in absence of which determination it shall be the prime lending rate applied by the Bank of the Association from time to time, plus one per cent.

(4) Accounting and Records

- (a) The Trustees shall ensure that proper books of account and records are kept so as to record and explain all transactions of the Association accurately, and to disclose its financial position at any time.
- (b) Such books of account and records shall be kept according to generally accepted accounting practice and standards and shall, without detracting from the generality of the latter requirement, in particular, include:
 - (i) a record of the assets and liabilities of the Association and of each scheme;
 - (ii) a record of all monies received and disbursed by the Association, indicating the scheme or schemes affected and the matter to which such receipt or expenditure relates;
 - (iii) a register of all owners;
 - (iv) a register of all mortgagees in respect of units insofar as they have notified the Trustees of their interest;
 - (v) a register of all holders of real rights over any property within the Village;
 - (vi) a ledger account in respect of each owner.
- (c) Upon application by an owner or mortgagee the Trustees shall make all or any of the books of account and records available for inspection by such person or his or her representative, authorized thereto in writing.
- (d) The Trustees shall ensure that all books of account and records be retained for at least ten years after conclusion of the financial year to which they relate, provided that all minutes are to be retained indefinitely.

(5) Financial Statements, Audit and Annual Report

- (a) Before each annual general meeting the Trustees shall ensure that financial statements are prepared in accordance with generally accepted accounting practice and standards, which financial statements shall fairly disclose the financial state of affairs and transactions of the Association as at the end of the financial year concerned.
- (b) The financial statements must-
 - (i) include all information and explanatory notes pertaining to the proper management and administration of the Association;

- (ii) include particulars and age analysis of all levies, special levies and other amounts due by members to the Association;
 - (iii) disclose expiry dates of all insurance policies; and
 - (iv) be signed by the Association's auditor.
- (c) In addition, the Trustees shall ensure that an annual report, reviewing the affairs of the Association during the preceding year is prepared and signed by the chairperson.
 - (d) The Trustees shall ensure that copies of the audited financial statements and annual report are delivered to each member and every mortgagee which has advised the Association of its interest, together with the notice of the annual general meeting.
 - (e) The audited financial statements and annual report shall be presented to the members at each annual general meeting for consideration.
 - (f) At the first general meeting, and thereafter at every ensuing annual general meeting, the members shall appoint an Auditor for the Association to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

(6) Deposit and Investment of Funds

- (a) The Trustees shall open a current account or accounts with a registered commercial bank in the name of the Association and separate accounts in the name of each scheme.
- (b) The Trustees shall cause all monies received by the Association to be deposited to the credit of the appropriate accounts. Subject to any Directives given or Restrictions imposed at a general meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses and responsibilities of the Association or of the relevant scheme, or for the purposes of investment in terms of these provisions.
- (c) The Trustees may authorize a Manager to administer and operate the accounts, but the funds of the Association may not be deposited in any banking account other than as described herein.
- (d) Any funds of the Association not immediately required for disbursement, may be invested in a savings, fixed deposit, or similar account with any registered bank approved by the Trustees from time to time.
- (e) Interest on monies invested may be used by the Association for any lawful purpose for the benefit of the Association.

(7) No Refunds or Distribution of Profits or Assets

- (a) The owners shall not be entitled to a refund of contributions lawfully levied upon them and duly paid by them.
- (b) No portion of the income or profits of the Association shall be distributed to the owners or any other person except-
 - (i) in rectification of an error affecting the determination or calculation of any levies or other amounts paid in terms of this Constitution; or
 - (ii) upon destruction or deemed destruction of the building, or where such profit is of a capital nature.

(8) Frail Care Levy

- (a) As from the occupation date, a Frail Care Levy shall be payable to the Association in respect of each unit by its owner, being an amount of R 200,00 per month in respect of each Qualified Occupier occupying such unit at any time. The amount of the Frail Care Levy shall be revised annually and approved by the members at each annual general meeting.
- (b) For the purposes of (a), a unit shall be deemed to be occupied irrespective of whether the occupants are physically present or not.

(9) Frail Care Admission Fee

- (a) Every owner of a Unit will be responsible for the payment of a Frail Care Admission Fee of R2 500,00 per Frail Care Right owned by him or her, which amount is payable on the Occupation Date and will be deposited into the Fund for the need of the Association for any rightful purpose. A maximum of two Frail Care Rights are allocated per Unit and in the case of two owners of a Unit, will such owners be responsible for the payment of two admission fees.
- (b) Such Admission Fess will also be applicable in respect of cessionaries of Frail Care Rights and subsequent buyers of Units, subject to the provisions of clause 12(6) and 12(7) and will be payable with the issue of a certificate of Frail Care Rights.
- (c) The amount of the Frail Care Admission Fee will be revised yearly and will be ratified by the members by every Annual General Meeting.

7. TRANSFER OF UNITS AND ENDOWMENT LEVY

- (1) No unit may be alienated in any manner, or transferred to a person or entity other than:
 - (a) a natural person
 - (b) of 21 years or older
 - (c) with full legal competency
 - (d) who according to the provisions of this Constitution qualified for Frail Care Rights
- (2) No unit in the Village may be transferred by an owner or his or her executor, curator, or trustee, to another person without the written consent of the Trustees.
- (3) No unit may be sold or otherwise be alienated except in terms of an act of alienation in a format prescribed by the Developer or the Trustees.
- (4) The Trustees' written consent may not be withheld if the following requirements are met:
 - (a) A copy of the deed of alienation in the prescribed format, certified as a true copy by a conveyancer, must be furnished to the Trustees.
 - (b) All ordinary levy payments, Endowment Levy, Operational Contribution, Frail Care Levy, and all other amounts due to the Association in respect of the unit must be paid, or secured to the satisfaction of the Trustees.
 - (c) The Trustees may require payment, or security for payment in advance in respect of all monies due for the remainder of the financial year in respect of the unit to be transferred.
 - (d) The transaction must comply with clause 7(1).
 - (e) A Disclosure Agreement and Undertaking, in the form of Annexure D to this Constitution, must be signed by all parties to the alienation, the conveyancer attending to the transfer of the unit, and by the Trustees.
- (5) Upon registration of transfer, an Endowment Levy is payable to the Association by the transferor of a unit in an amount equal to 10% of the then current purchase (resale) price thereof. If no purchase price is applicable or if the resale price is out of proportion low, the Endowment Levy shall be calculated upon a valuation acceptable to the Trustees.
- (6) The Endowment Levy so collected shall be deposited to the Fund and be used as a reserve Fund towards expenses and financial obligations of the Association, in order to

stabilize levy increases. The funds so received, may nevertheless be used for any rightful purpose for the need of the Association.

- (7) The transfer of a unit to the surviving spouse of a deceased owner in terms of an inheritance, or the transfer of a share in a Unit from a deceased owner to a co-owner, shall be exempt from payment of an Endowment Levy and Operational Contribution.
- (8) All transfers of units at any time shall be conducted by the Attorney, to ensure that the prescribed conditions are met and monitored and in order to protect the interests of the Association in such transaction.

8. INSURANCE

- (1) (a) At the first meeting of the Trustees or soon thereafter as is possible, and annually thereafter, the Trustees shall take steps, in respect of each scheme within the Village, to insure the buildings and all improvements in the Village, to the full replacement value thereof, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the Trustees are most beneficial to the owners, against -
 - (i) fire, lightning and explosion;
 - (ii) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organizations;
 - (iii) storm, hurricane and flood;
 - (iv) earthquake;
 - (v) collisions by aircraft and other aerial devices or articles dropped therefrom;
 - (vi) bursting or overflowing of water tanks, apparatus or pipes;
 - (vii) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
 - (viii) housebreaking or any attempt thereat;
 - (ix) loss of occupation or loss of rent in respect of any of the above risks;
 - (x) such other perils or dangers as the Trustees or any holder of first mortgage bonds over not less than 25% in number of the units in the scheme may deem appropriate.
- (b) The Trustees shall at all times ensure that in the policy of insurance referred to in paragraph (a) above-

- (i) there is specified the replacement value of each unit (excluding the owner's interest in the land):
 - (aa) initially [but subject to the provisions of subparagraph (cc)] in accordance with the Trustees' estimate of such value;
 - (bb) after the first annual general meeting [but subject to the provisions of subparagraph (cc)] in accordance with the schedule of values as approved in terms of paragraph (c); or
 - (cc) as required at any time by any owner in terms of paragraph (d);
 - (ii) any "average" clause is restricted in its effect to individual units and does not apply to the buildings as a whole;
 - (iii) there is included a clause in terms of which the policy is valid and enforceable by any mortgagee against the insurer notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured unless and until the insurer on not less than 30 days' notice to the mortgagee shall have terminated such insurance.
- (c) Before every annual general meeting, the Trustees shall cause to be prepared schedules reflecting their estimate of: -
- (i) the replacement value of the buildings and all improvements to the common property; and
 - (ii) the replacement value of each unit (excluding the owner's interest in the land), the aggregate of such values of all units being equal to the value referred to in subparagraph (i) above,
- and such schedules shall be laid before the annual general meeting for consideration and approval in terms of rule 56.
- (d) Any owner may at any time increase the replacement value as specified in the insurance policy in respect of his unit: Provided that such owner shall be liable for payment of the additional insurance premium.
 - (e) The Trustees shall, on the written request of a mortgagee and satisfactory proof thereof, record the cession by any owner to such mortgagee of the owner's interest in the application of the proceeds of the policies of insurance effected in terms of clause 8(1)(a).
- (2) At the first meeting of the Trustees or as soon thereafter as is possible, the Trustees shall take all reasonable steps: -

- (a) to insure the owners and the Trustees and to keep them insured against liability in respect of-
- (i) death, bodily injury or illness; and
 - (ii) loss of, or damage to, property,
- occurring in connection with the common property, for a sum of liability of not less than one hundred thousand Rand, which sum may be increased from time to time as directed by the owners in general meeting; and
- (b) to procure to the extent, if any, as determined by the members of the Association in a general meeting, a fidelity guarantee in terms of which shall be refunded any loss of monies belonging to the Association or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the service of the Association and all Trustees and persons acting in the capacity of Managers of the Association.
- (3) The owners may by Ordinary Resolution direct the Trustees to insure against such other risks as the owners may determine.

9. TRUSTEES, THEIR APPOINTMENT, FUNCTIONS, DUTIES, AND POWERS

(1) The Role of Trustees

Subject to the provisions contained in clause 21, the functions and powers of the Association, including the functions and powers of, and in respect of each scheme, shall be performed and exercised by the Trustees, subject, as far as may be applicable, to-

- (a) the provisions of the Act in respect of all matters relating to schemes established in terms of the Act;
- (b) the provisions of this Constitution and its Annexures; and
- (c) any Directives given or Restrictions imposed by members at a general meeting.

(2) Number of Trustees

The number of Trustees shall be determined annually by the members of the Association in general meeting; provided that there shall not be less than three Trustees in respect of each established scheme.

(3) Qualifications

- (a) A Trustee or alternate Trustee shall not be required to be an owner in order to qualify for trusteeship.
- (b) A Trustee shall be disqualified for appointment as such if he or she-
 - (i) fails to accept his or her nomination;
 - (ii) is an unrehabilitated insolvent;
 - (iii) has been convicted of an offence which involves dishonesty;
 - (iv) is disqualified in terms of section 218 or 219 of the Companies Act, 1973, from being appointed or acting as a director of a company;
 - (v) is in arrear with his or her levy payments.

(4) Election of Trustees

- (a) Trustees shall be elected each annual general meeting, and shall hold office until the next succeeding annual general meeting, but they shall be eligible for re-election, if so nominated.
- (b) Nominations by owners for the election of Trustees at any annual general meeting shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the *domicilium* of the Association not later than 48 hours before the meeting: Provided that Trustees are also capable of being elected by way of verbal nominations with the consent of the nominee given at the meeting itself should insufficient written nominations be received to comply with clause 9(2).
- (c) The Trustees may fill any vacancy in their number. Any Trustee so appointed shall hold office until the next annual general meeting when he or she shall retire and be eligible for re-election as though he or she had been elected at the previous annual general meeting.
- (d) The Trustees may appoint another person to act as an alternate Trustee during the absence or inability to act of a Trustee.
- (e) An alternate Trustee shall have the powers and be subject to the duties of Trustee.

- (f) An alternate Trustee shall cease to hold office if the Trustee whom he replaces, ceases to be a Trustee, or if the alternate's appointment is revoked by the Trustees.
- (g) Any act performed by the Trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any Trustee, be as valid as if such Trustee had been duly appointed or had duly continued in office.

(5) Trustees' Remuneration

- (a) Unless otherwise determined by an Ordinary Resolution of the owners, Trustees who are owners shall not be entitled to any remuneration in respect of their services as such: Provided that the Association shall reimburse to the Trustees all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.
- (b) The Association may remunerate Trustees who are not owners at such amount rate as may be agreed upon between the Trustees and such non-owner Trustees, and such Trustees shall further be entitled to have refunded to them any disbursements and expenses incurred by them in the circumstances envisaged in the proviso to clause 9(5)(a), provided always that an alternative Trustee appointed by the Trustees, who is not an owner, shall claim his or her remuneration, if any, from the Trustee whom he or she replaced and not from the Association, unless the Association has been instructed in writing by such Trustee to pay any portion of his remuneration to such alternate Trustee.

(6) Disqualification of Trustees

A Trustee shall cease to hold office as such if-

- (a) by notice in writing to the Association he or she resigns his office;
- (b) he or she is or becomes of unsound mind;
- (c) he or she surrenders his or her estate as insolvent, or if his or her estate is sequestrated;
- (d) he or she is convicted of an offence which involves dishonesty;
- (e) by resolution of a general meeting of the Association, he or she is removed from his office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
- (f) he or she is or becomes disqualified in terms of section 218 or 219 of the Companies Act, 1973, from being appointed or acting as a director of a company.

(7) Replacement

The Association may at a general meeting appoint another Trustee in place of any Trustee who has ceased to hold office, for the unexpired part of the term of office of the Trustee so replaced.

(8) Meeting of Trustees, Quorum, chairperson, and Voting

- (a) Subject to the provisions of sub-clauses (b) and (c) hereof, the Trustees may give notice convening meetings, meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give notice of a meeting of Trustees to any Trustee for the time being absent from the Republic, but notice of any such meeting shall be given to his alternate, if one was appointed by the Trustees, where such an alternate is in the Republic.
- (b) A Trustee may at any time convene a meeting of the Trustees by giving to the other Trustees and all mortgagees in the circumstances referred to in sub-clause (c) hereof, not less than seven days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting: Provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.
- (c) Any mortgagee holding first mortgage bonds over units shall, if he so requires of the Trustees in writing, be entitled to receive reasonable notice of all meetings of the Trustees.
- (d) The nominee of any such first mortgagee shall be entitled to attend and speak at all meetings of the Trustees but shall not, in his capacity as such, be entitled to vote thereat.
- (e) An owner shall be entitled to attend and speak at any meetings of the Trustees, but shall not in his or her capacity as such, be entitled to vote thereat.

(9) Quorum

- (a) At a meeting of the Trustees, 50 percent of the number of Trustees but not less than three, shall form a quorum.
- (b) If the number of serving Trustees falls below the number necessary to form a quorum, the remaining Trustee or Trustees may continue to act, but only for the purpose of appointing or co-opting additional Trustees to make up a quorum, or for the purpose of convening a general meeting of owners.
- (c) If at any meeting of Trustees a quorum is not present within thirty minutes of the appointed time of the meeting, such meeting shall stand adjourned to the next business day at the same time, and the Trustees then present, who shall not be less than two, shall form a quorum.

(10) Chairperson

- (a) At the commencement of the first meeting of Trustees after an annual general meeting, at which Trustees have been elected, the Trustees shall elect a chairperson from among their number, who shall hold office as such until the end of the next annual general meeting and who shall have a casting as well as a deliberative vote, except where there are only two Trustees.
- (b) The Trustees at a trustees' meeting or the Association at a special general meeting, in respect of which notice of the intended removal from office of the chairperson has been given, may remove the chairperson from his or her office.
- (c) If any chairperson elected in terms of clause 9(10)(a) vacates his or her office as chairperson or has been removed from office, the Trustees shall elect another chairperson who shall hold office as such for the remainder of the period of office of the first-mentioned chairperson, and who shall have the same rights of voting.
- (d) If any chairperson vacates the chair during the course of a trustees' meeting or is not present or is for any other reason unable to preside at any meeting, the Trustees present at such meeting shall choose another chairperson for such meeting who shall have the same rights of voting as the chairperson.

(11) Voting

- (a) All matters at any meeting of the Trustees shall be determined by a majority of the votes of the Trustees present and voting.
- (b) A Trustee shall be disqualified from voting in respect of any litigation or proposed litigation with the Association by virtue of any interest he or she may have therein.
- (c) A Trustee, except a Trustee appointed by the Developer, shall be disqualified from voting in respect of any contract or proposed contract with the Association by virtue of any interest he or she may have therein.
- (d) A resolution in writing signed by all the Trustees for the time being present in the Republic and being not less than are sufficient to form a quorum, shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held.

(12) Improvements

- (a) The Trustees may, if the members by Special Resolution so decide, effect improvements on the Village property or the Common property of a scheme.

- (b) Should the Trustees be of the opinion that a proposed improvement is of a minor nature, they shall first give written notice of such intention to all owners affected by it. Such notice shall -
 - (i) Indicate the intention of the Trustees to proceed with the improvement upon the expiry of a period of not less than thirty days reckoned from the date of posting such notice; and
 - (ii) Provide details of the improvement as to the costs thereof, the manner in which it is to be financed, the effect upon levies paid by the owners, and the need, desirability and effect thereof.
- (c) The Trustees shall at the written request of any affected owner, convene a special general meeting in order to discuss the proposed improvement at which meeting the affected owners may approve such proposals, with or without amendments, by way of Special Resolution of the affected owners only.
- (d) In the event of such a special general meeting being called, the Trustees shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any Special Resolution ensuing there from.
- (e) Above stipulations about improvements are only applicable in respect of completed Units and not in respect of improvements in the Development Period by die Developer to uncompleted buildings.

(13) Minutes

- (a) The Trustees shall-
 - (i) Keep minutes of their proceedings;
 - (ii) Cause minutes to be kept of all meetings of the Association in a minute file of the Association kept for the purpose;
 - (iii) Include in the minute file of the Association a record of every Unanimous Resolution, Special Resolution and any other resolution of the Association.
- (b) The Trustees shall keep all minutes in perpetuity.
- (c) On the written application of any owner or registered mortgagee, the Trustees shall make all minutes of their proceedings and the minutes of the Association available for inspection by such owner or mortgagee.

(14) Record of Constitution and Rules and availability

- (a) The Trustees shall keep a complete record of this Constitution and all Rules in force from time to time and shall ensure that any amendment, substitution, addition or repeal of a provision of the Constitution or such Rules (as contemplated in section 35(5) of the Act) is submitted forthwith to the Registrar of Deeds for filing as contemplated in section 35(5)(c) of the Act.
- (b) The Trustees shall on the application of-
 - (i) an owner of a unit;
 - (ii) an occupier of a unit;
 - (iii) a prospective purchaser of a unit;
 - (iv) the holder of any registered sectional mortgage bond in respect of a unit;
 - (v) the Manager; and
 - (vi) the Auditor of the Association;

supply to such person a copy of the Constitution and/or all Rules in force, and may require them to pay a reasonable charge therefor.

(15) General Functions, Powers and Duties of Trustees

- (a) The functions, duties and powers of the Association shall, subject to the provisions of the Act and this Constitution, including its Annexures, and to any restriction imposed or directive given at a general meeting, be performed or exercised by the Trustees of the Association holding office in terms of this Constitution.
- (b) Subject to any restriction imposed or directive given at a general meeting, the powers of the Trustees shall include the following-
 - (i) To appoint for and on behalf of the Association such agents and employees as they deem fit in connection with the control, management and administration of the Village property and/or the exercise and performance of any or all of the functions, powers and duties of the Association.
 - (ii) To delegate to one or more of the Trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation.

- (iii) To supplement any provisions of the Constitution or the Rules, issue Trustee guidelines from time to time and Owners and Occupiers shall be bounded by such trustee guidelines, provided that no such guidelines will be binding if it is in essence meant to be a substantive provision of the Constitution or the Rules.
- (c) The Trustees may not make loans on behalf of the Association to owners or to themselves.
- (d) No instrument signed on behalf of the Association, shall be valid and binding unless it is signed by a Trustee and the Manager referred to in clause 9(16), or by two Trustees or, in the case of a certificate issued in terms of section 15B(3)(a)(i)(aa) of the Act, by two Trustees or the Manager.
- (e) Without detracting from the scope of the additional duties specified elsewhere in this Constitution, and subject to the provisions of such rules, the Trustees shall perform the functions entrusted to them by sections 37 and 39 of the Act.
- (f) The Trustees shall do all things reasonably necessary for the control, management and administration of the Association, the Village, and the individual schemes, as are mentioned in section 38 of the Act.
- (g) The Trustees shall do all things reasonably necessary for the enforcement of this Constitution and the Rules.

(16) Appointment of a Manager

- (a) The trustees may from time to time, and shall if required by the members of the Association in a general meeting, appoint in terms of a written contract a Manager, who may be an employee or a contractor, to control, manage and administer the administration of the Association, including its obligations to any public or local authority and to exercise such powers and duties as may be entrusted to the Manager, upon such further terms of employment or appointment as the Trustees may determine.
- (b) No appointment shall be valid or enforceable unless made in terms of a written contract as contemplated in sub-clause (a).
- (c) The Trustees shall instruct the Attorney to prepare a contract referred to in sub-clause (a), before concluding such contract with a Manager.

10. GENERAL MEETINGS

(1) General, Notice

- (a) The following provisions shall, until termination of the development period, be subject to the overriding provisions of clause 21.

- (b) An annual general meeting shall be held within three months of the end of each financial year.
- (c) Unless otherwise decided at a general meeting or by the trustees, the financial year of the body corporate shall run from the first day of July in each year to the last day of June of the following year.
- (d) All general meetings other than the annual general meeting shall be called special general meetings.
- (e) The trustees may whenever they think fit and shall upon a request in writing made either by owners entitled to 25 per cent of the total of the quotas of all sections or by any mortgagee holding mortgage bonds over not less than 25 per cent in number of the units, convene a special general meeting. If the trustees fail to call a meeting so requested within fourteen days of the request, the owners or mortgagee concerned shall be entitled themselves to call the meeting.
- (f) Unless otherwise provided for in the Act, at least fourteen days' notice of every general meeting specifying the place, within the magisterial district where the scheme is situated, or such other place determined by Special Resolution of owners, the date and the hour of the meeting and, in the case of special business, the general nature of such business. Such notice shall be given in writing-
 - (i) to all owners;
 - (ii) to all holders of registered mortgage bonds over units who have advised the body corporate of their interest.
- (g) Representatives of registered mortgagees shall have the right to attend meetings referred to and to speak at such meetings, but shall not, in such capacities, be entitled to vote thereat.
- (h) The notice referred to in sub-clause (f) shall be deemed to have been sufficiently given and copies of all prescribed documents duly delivered, if the documents referred to are-
 - (i) sent by prepaid post addressed to an owner at his *domicilium* referred to in clause 12(1), and to any mortgagee as aforesaid at the address of such mortgagee as reflected in the records of the body corporate; or
 - (ii) in respect of an owner, if such owner has signed receipt thereof.
- (i) Except in the case of a special general meeting, the notice referred to in sub-rule (f) shall be accompanied by copies of the insurance schedules, certified Budgets, audited financial statements and annual report.

- (j) Inadvertent omission to give the notice referred to in sub-clause (f) to any person entitled to such notice or the non-receipt of such notice by such person shall not invalidate any proceedings at any such meeting.
- (k) A general meeting for the purposes of passing a unanimous or Special Resolution may be convened for a date thirty days after notice has been given to all the members of the body corporate: Provided that shorter notice may be given if, in the opinion of the trustees, it is necessary due to the urgency of a matter or due to the specific nature of a matter to convene the meeting with such shorter period of notice.

(2) Agenda

The following business shall be transacted at an annual general meeting:

- (a) Consideration of the financial statement and annual report.
- (b) Approval with or without amendment of the Budgets.
- (c) Approval with or without amendment of the Insurance Schedules of replacement values.
- (d) Appointment of an Auditor for the Association for the ensuing year.
- (e) Appointment of the Attorney for the Association for the ensuing year.
- (f) Determination of the number of Trustees for the ensuing year.
- (g) Election of Trustees for the ensuing year.
- (h) Any special business of which due notice has been given.
- (i) The giving of Directions or imposing of Restrictions referred to in clause 9(1)(c).
- (j) Confirmation by the Auditor that any amendment, substitution, addition or repeal of the Constitution and/or Rules (as contemplated in section 35(5) of the Act) have been submitted to the Registrar of Deeds for filing as contemplated in section 35(5)(c) of the Act.

(3) Quorum

- (a) No business shall be transacted at any general meeting unless a quorum of owners is present in person or by proxy at the time when the meeting proceeds to business.

- (b) For the purposes of a Special- or Ordinary Resolution, a quorum at a general meeting shall be at least 30 per cent in number of the owners who must be present in person or by proxy.
- (c) For the purposes of a Unanimous Resolution, a quorum shall be at least 80 per cent in number of the owners present in person or by proxy.
- (d) If within thirty minutes from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within thirty minutes of the time appointed for the meeting, the owners present in person or by proxy and entitled to vote shall form a quorum for the purposes of an Ordinary, Special or Unanimous Resolution.

(4) Chairperson

- (a) The chairperson of the trustees shall preside as chairperson at every general meeting of the Association, unless otherwise resolved by the owners at such meeting.
- (b) If there is no such chairperson or if, at any meeting, or the chairperson is not present within fifteen minutes after the time appointed for the holding of the meeting, or if he or she is unwilling or unable to act as chairperson, the owners present shall elect chairperson from the persons present at the meeting.

(5) Voting Procedures

- (a) At any general meeting an Ordinary Resolution put to the vote of the meeting shall be decided on an ordinary majority of owners present or represented, on a show of hands
- (b) Each owner shall have one vote in respect of any Ordinary Resolution, including the election of Trustees, provided that-
 - (i) in the event of joint owners of a unit, such owners shall jointly have one vote which must be exercised by one person by means of a joint proxy;
 - (ii) in the event of one person holding more than one unit, he or she shall exercise one vote for every unit.
- (c) A Special or Unanimous Resolution shall be conducted by ballot.
- (d) To make a Unanimous Resolution, once quorum requirements have been satisfied, a motion must be carried unanimously by all owners present in person or by proxy.

- (e) To make a Special Resolution, once quorum requirements have been satisfied, a motion must be carried by at least 75% of owners present in person or by proxy.
- (f) For the purpose of a Special Resolution the value of the vote of the owner or owners of a unit shall be reckoned in accordance with the Special Participation Quotas as contained in Annexure B.
- (g) An owner shall not be entitled to vote at any general meeting, if -
 - (i) any levy payable by him or her have not been duly paid; or
 - (ii) he or she persisted in breach of any of the Conduct Rules or provisions of this Constitution or of the Act, notwithstanding written warning by the trustees or Manager to refrain from breaching such provision;

provided that any mortgagee shall be entitled to vote as such owner's proxy at any general meeting;

provided further that upon such disqualification, the vote of the member concerned shall not be considered to exist for the purposes of a Special- or Unanimous Resolution.

(6) Proxies

- (a) Votes at a general meeting may be cast either personally or by proxy, whether by ballot or on a show of hands.
- (b) A proxy shall be appointed in writing under the hand of the appointer, or his agent duly appointed in writing, and shall be handed to the chairperson at least two days prior to the commencement of the meeting.
- (c) A proxy need not be an owner, but shall not be the Manager or any of his or her employees, or an employee of the Association.
- (d) In respect of an owner which, according to information available to the Trustees, is absent from the Republic without leaving a proxy, the Chairman shall exercise an automatic proxy.
- (e) In respect of a deceased owner, only a proxy made by a duly appointed executor shall be valid, in absence of which the chairman shall exercise an automatic proxy.

11. TRUSTEES' DIRECTIVES AND BUILDING GUIDELINES**(1) Directives**

- (a) Trustees shall have the power to issue Trustees' Directives from time to time to augment and clarify the provisions of any Rules or guidelines made in terms of this Constitution.
- (b) No Trustees' Directive which has the effect of amending the substance of an existing Rule or Guideline, or a provision of this Constitution, shall have any force or effect.
- (c) Whenever a Trustees' Directive is issued, all members shall be notified in writing and the directive shall be recorded in a Register of Trustees' Directives.
- (d) A Trustees' Directive becomes effective upon dispatch of the notices stated in sub-clause (c) and recordal in the Register of Trustees' Directives.

(2) Building Guidelines

- (a) During the development period, the Building Guidelines made by the Developer, as contained in Annexure G, shall be enforceable upon all owners and occupiers.
- (b) After termination of the development period, it shall be the duty of the Trustees to develop, and where necessary amend, the Building Guidelines. The Building Guidelines shall remain enforceable upon all owners and occupiers, and shall deal with the following aspects of interior or exterior alterations to any dwelling:
 - (i) Any alteration which may be regarded as an extension of a section as contemplated in section 24 of the Act. In respect of such alterations, the provisions of section 24 of the Act shall apply in addition to any stipulations of the Building Guidelines.
 - (ii) Any interior or exterior structural change or erection or placement of a structure or object which does not amount to the extension of a section.
 - (iii) Installation of air conditioners, TV or radio reception equipment
 - (iv) Submission of an acceptable sketch plan for consideration.
 - (v) Building plans and municipal approval, where applicable.
 - (vi) Payment of a building deposit and stipulation of penalties.

- (vii) Stipulation of commencement and completion dates and days and hours during which building operations may be conducted.
 - (viii) Rehabilitation of building sites.
 - (ix) Damages.
 - (x) Costs, including administrative costs and professional fees incurred by the Association.
 - (xi) Any other item approved by members by Special Resolution.
- (c) All provisions relating to the above shall be recorded in the Building Guideline Manual and shall be enforceable in terms of this Constitution.

12. MEMBERS' OBLIGATIONS AND RESTRICTIONS UPON USAGE, OCCUPANCY AND DEALINGS WITH UNITS, FRAIL CARE RIGHTS

- (1) The *domicilium citandi et executandi* of each owner shall be the address of the unit registered in his name: Provided that such owner shall be entitled from time to time to change the said *domicilium* but that any new *domicilium* selected shall be situate in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its *domicilium*.
- (2) No dwelling may be occupied by a person less than 50 years of age, except that a married person of less than 50 years of age may so occupy, if his or her spouse is 50 years or more of age.
- (3) The provisions of section 44(1)(a) to (f) of the Act shall apply to all units.
- (4) An owner:
 - (a) Shall not use his or her dwelling or any part of the common property or the Village property, or permit it to be used, in such a manner or for such purpose as shall be injurious to the reputation of the Village.
 - (b) Shall not contravene, or permit the contravention, of any law, municipal regulation, ordinance, proclamation or statutory regulation, or the conditions of any licence, relating to the use of a building or the common property or the Village property, or any conditions of title applicable to his or her unit.
 - (c) Shall not make alterations which are likely to impair the stability of any building or the use and enjoyment of any dwelling, the common property or the Village property.
 - (d) Shall not do anything to his dwelling which is likely to prejudice the harmonious appearance of the Village.

- (e) Shall not use, nor permit such dwelling to be used, for any purpose other than as a residence, and any exclusive use area may only be used for the intended purposes related to such residential usage.
 - (f) Shall not construct or place any structure or building improvement on his exclusive use area or unbuilt area of an erf, without the prior written consent of the Trustees.
 - (g) Shall maintain the hot water installation which serves his or her unit, or, where such installations serves more than one section, the owners concerned shall maintain such installations pro-rata, notwithstanding that such appliance is situated in part of the common property and is insured in terms of the policy taken out by the body corporate.
- (5) If an owner -
- (a) fails to repair or maintain his or her dwelling in a state of good repair as required by section 44(1)(c) of the Act; or
 - (b) fails to maintain adequately any unbuilt area on his or her erf, or exclusive use area,

and any such failure persists for a period of thirty days after the giving of written notice to repair, rehabilitate, or maintain given by the Trustees or the Manager on their behalf, the Trustees shall be entitled to remedy the owner's failure and to recover the reasonable cost of doing so from such owner.

Frail Care Rights

- (6) Every buyer or buyers of a Unit must comply with the qualification requirements in sub clause (7) below and shall after such qualification be compelled to take up his or her Frail Care Rights in respect of each unit purchased, and he or she may take up further Frail Care Rights, subject to a maximum of two per Unit.
- (7) Subject to the Provisions hereunder, Frail Care Rights as stipulated from time to time by the Association shall fall to every Qualified Occupier and is the Owner compelled to pay the Frail Care Levies and a Frail Care Admission fee as stipulated in clause 6(8) and (9) in respect of each Qualified Occupier of his or her Unit.
 - (a) Before an Occupier can qualify and accepted for Frail Care Rights, he or she must before occupation or not later than 30 days thereafter, supply the Trustees with:
 - (i) an application for Frail Care Rights in a format prescribed by the Trustees
 - (ii) a medical report or reports according to the requirements of the trustees

- (iii) such other information that the Trustees may fairly request to enable them to duly evaluate the case to enable them to make a final ruling.
- (b) The Trustees must consider the application and rule if the Occupier qualifies for Frail Care Rights or not and not later than 30 days after receipt of the report or reports, inform in writing of their ruling, confirmed by a Certificate of Frail Care Rights issued by the Trustees, if the application was successful.
- (c) The ruling of the Trustees is final and not subject to any appeal, arbitration or revision.
- (d) The Trustees must from time to time establish criteria on which applications will be evaluated and design and implement the necessary forms that are mentioned herein.
- (e) An Owner may exercise his or her Frail Care Rights also if her or she is not an occupier or may cede his or her Frail Care Rights to a qualified occupier on condition that:
 - (i) such cession takes place in a way and format prescribed by the Trustees;
 - (ii) at most two Frail Care Rights per Unit be granted at any one time;
 - (iii) any Occupier to whom Frail Care Rights are ceded, must qualify in terms of the provisions above; and
 - (iv) the Frail Care Rights of any Occupier who is not an owner, stop at the ending of his or her occupying the concerned unit, and the rights then fall back to the owner, provided that occupying the unit will not be ended by the admission of the Qualified Occupier to the Frail Care Centre.
 - (v) the Frail Care Rights of an owner at cession thereof go across to the cessioner thereof and the owner again only be entitled thereupon by the cancellation of said cession in a way and format prescribed by the Trustees.
- (8) (a) If an owner in terms of an Rental Agreement or any other agreement want to give an Occupier the right to occupy, the owner must:
 - (i) ensure that the agreement whereby rights to occupy are given, contain the provisions as prescribed by the Developer or the Trustees
 - (ii) before the start of occupying, supply the Trustees a copy of the agreement whereby rights to occupy are given, together with a copy of the prospective Occupier(s) identity document

- (b) If an owner fail to adhere to provisions of sub-clause(a), such owner will be liable for the payment of a penalty determined by the provisions of the Conduct Rules.
- (c) While the provisions of this Constitution also bind all Occupiers, it remains the responsibility of the Owner of the concerned unit to inform the Occupiers of all relevant management decisions and such owner stays responsible in respect of any neglect or transgression of such Occupiers.
- (d) Subject to the provisions of this Constitution, any Annexure thereto, Trustee guidelines issued by the Trustees from time to time, a Occupier may utilise and enjoy all facilities of the Village.

13. CONDUCT RULES

- (1) The Conduct Rules as contained in Annexure F to this Constitution shall apply to all owners and occupiers of dwellings as from the date of establishment of the Association.
- (2) After termination of the development period, the Conduct Rules may be amended by addition of further rules, repeal of existing rules, or amendment of existing rules according to the procedures described in section 35(2)(b) of the Act, and the provisions of section 35(3), (4), (5) and (6) shall apply *mutatis mutandis*.

14. BREACH

Any breach of the provisions of this Constitution, any of its Annexures, or Trustees' Directives, shall be dealt with according to the provisions of the Conduct Rules, without detracting from the right of the Trustees to address any matter by means of action in an appropriate court of law.

15. PENALTIES

The Trustees shall have the power to impose penalties upon members to the extent and according to procedures complying with the requirements of a fair administrative hearing, to be stipulated in the Conduct Rules, and members shall be liable for payment of such penalties and all costs related to the imposition and recovery thereof.

16. DISPUTES

- (1) (a) Any dispute between the Association and an owner or between owners arising out of or in connection with or related to this Constitution or any of its Annexures, or the Act, save where an interdict or any other form of urgent relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these provisions.

- (b) If such a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing and copies of such notification shall be served on the Trustees and the Manager and should the dispute or complaint not be resolved within 14 days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration: Provided that, if an owner declares a dispute with the Association, it shall be sufficient notice if notification is served on the Trustees and Manager and such owner will not be required to serve notice on each of the other owners.
- (c) Notwithstanding that the Arbitration Act 42 of 1965, makes no provision for joinder of parties to an arbitration without their consent thereto, should a dispute arise between the body corporate and more than one owner or between a number of owners arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be automatically joined in the arbitration by written notice to that effect by any party.
- (d) The Attorney shall act as arbitrator in any dispute or complaint referred to arbitration in terms of these provisions.
- (e) If the Attorney does not accept the appointment, the Attorney shall appoint an arbitrator within seven days so that the arbitration can be held and concluded without delay.
- (f) Arbitration shall be held informally or otherwise as the arbitrator may determine.
- (g) The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not proceed with.
- (h) Where possible, the arbitration shall be concluded within thirty days after appointment of an arbitrator, provided that arbitration shall not proceed unless security for costs, if demanded, has been furnished.
- (i) The arbitrator shall make his or her award within seven days from the date of the completion of the arbitration and shall, in making his or her award, have regard to the principles laid down in terms of these provisions. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he or she may determine, and as he or she, in his or her discretion, may deem appropriate having regard to the outcome of the arbitration.
- (j) The decision of the arbitrator shall be final and binding and may be made an order of the High Court upon application of any party to or affected by the arbitration.

- (2) If an Ombudsman is appointed by the State to adjudicate all or some of the matters contemplated in sub-clause (1), the resolution of such disputes shall be subject to such adjudication, provided that the provisions of sub-clause (1) shall remain operative in respect of any matters not included in the functions of an Ombudsman.

17. INDEMNITY

- (1) (a) Subject to the provisions of clause 17(2), every Trustee, the Manager, an agent or other officer or servant of the Association shall be indemnified by the Association against all costs, losses, expenses and claims which he or she may incur or become liable to by reason of any act done by him or her in the discharge of his or her duties, unless such costs, losses, expenses or claims are caused by the *mala fide* or grossly negligent act or omission of such person.
- (b) The Trustees shall pay such indemnity out of the Funds of the Association.
- (2) The indemnity referred to in sub-rule (1) shall only apply in favour of any Manager if the Manager is an employee of the Association.

18. DEFAMATION PRIVILEGE

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

19. RISK

- (1) Any person using any of the services, land, buildings, structures or facilities of the Association does so entirely at his own risk.
- (2) Every Occupier shall be responsible for the conduct and safety of his or her visitors.
- (3) Without detracting from the general provisions of sub-clauses (1) and (2), the Trustees shall identify areas within the Village where specific risks may be present, and erect appropriate warning signage.

20. AMENDMENTS

(1) Amendments to the Constitution

After termination of the development period, this Constitution may only be amended by means of a Unanimous Resolution.

(2) Amendments to Annexures

After termination of the development period, the Annexures to this Constitution may be amended as follows:

Annexure A: Special Resolution.

Annexure B: Special Resolution.

Annexure C: Special Resolution.

Annexure D: Trustees' Resolution.

Annexure E: Ordinary members' Resolution.

Annexure F: Special Resolution.

Annexure G: Trustees' Resolution.

21. ARRANGEMENTS DURING THE DEVELOPMENT PERIOD

(1) The development period

(a) The development period shall commence at the time of registration of transfer of the first unit to a person other than the Developer and shall terminate at the date of transfer of the last unit in the completed Village to a person other than the Developer, or at such earlier date which the Developer may determine by written notification to the Trustees.

(b) Should the Developer wish to add additional land to the land upon which the Village is first established, the Developer shall within 90 days of transfer of the last unit in the firsts scheme within the Village, notify the Trustees of such intention and details of the land to be included and the development envisaged, in absence of which the Developer shall forfeit its right to extend the Village by the inclusion of additional land.

(c) During the Development period no owner may do, or neglect to do, anything which may hinder or obstruct the Developer in his development tasks.

(2) The Provisional Trustees

- (a) At establishment of the scheme, the Developer shall appoint five Provisional Trustees, two of whom shall represent the owners and three shall serve as representatives of the Developer.
- (b) At the first general meeting the two Developer-appointed Provisional Trustees representing the owners shall retire and be replaced by two Provisional Trustees elected by the owners. Such owner-appointed Provisional Trustees shall serve until the next annual general meeting, when they shall be retire, but be eligible for re-election. At every subsequent annual general meeting, until termination of the development period the owners shall elect two Provisional Trustees.
- (c) The Developer may replace any Provisional Trustees appointed by it at any time during the development period with a written notice to the Trustees.
- (d) The chairperson of the Provisional Trustees shall be appointed by the Developer being one of the number of the Provisional Trustees, who shall hold office until conclusion of the first general meeting after termination of the development period.
- (e) The Provisional Trustees shall, *mutatis mutandis*, during the development period, perform the functions and duties and have the powers as described in clause 9.

(3) General meetings during the development period

- (a) The first meeting of owners shall be held as within 120 (one hundred and twenty) days of the establishment of the scheme, at least seven days' notice of which shall be given in writing, and which notice shall be accompanied by a copy of the agenda of such meeting and details of the items referred to in sub-clause (b).
- (b) The agenda for the meeting convened under sub-clause (a), shall comprise at least the following:
 - (i) The consideration, confirmation or variation of the insurances effected by the Developer or the body corporate;
 - (ii) The consideration, confirmation or variation of an itemised estimate of the anticipated income and expenses of the body corporate for the ensuing financial year;
 - (iii) The consideration and approval, with or without amendment, of the financial statements relating to the management, control and administration of the building from date of establishment of the body corporate to the date of notice of the meeting.

- (iv) Subject to section 47(2) of the Act, the ratification of such contracts relating to the management, control and administration of the building as may have been entered into by the Developer for the continual management, control and administration of the building and the common property and in respect of which the Developer shall be obliged to submit such contracts to the meeting;
- (v) The election of Provisional Trustees representing the owners;
- (vi) Announcement of the Provisional Trustees representing the Developer, and of the chairperson.

(4) Voting at general meetings during the development period

- (a) Until conclusion of the first general meeting the Developer shall hold all members, votes for the purposes of any resolution made in terms of this Constitution.
- (b) From immediately after the first general meeting until termination of the development period votes, for the purposes of an Ordinary or Special Resolution, shall be distributed and exercised as follows:
 - (i) members: 25%
 - (ii) Developer: 50%
 - (iii) The Attorney: 25%
- (c) From immediately after the first general meeting until termination of the development period votes, for the purposes of a Unanimous Resolution, shall be distributed and exercised as follows:
 - (i) Developer: 50%
 - (ii) The Attorney: 50%
- (d) For the purposes of exercising their 25% of the total votes as contemplated in sub-clause (b), the consolidated vote of the members must include not less than 75% of the total votes of all members present in person or by proxy.

(5) Amendments to the Constitution, Rules and other Annexures

- (a) During the development period the Developer may amend the Constitution from time to time by Unanimous Resolution, according to voting arrangements stipulated herein provided that the substance of clause 3 may not be amended.

- (b) During the development period the Developer may amend the Annexures to the Constitution from time to time as follows:

Annexure A: Trustees Resolution.

Annexure B: Trustees Resolution.

Annexure C: Trustees Resolution.

Annexure D: Trustees' Resolution.

Annexure E: Decision by the Developer.

Annexure F: Special Resolution subject to the special voting arrangements described in sub-clause (3)(b).

Annexure G: Trustees' Resolution.

(6) Appointment of the Attorney, Auditor and Manager

During the development period the Developer may appoint, and from time to time replace, the Attorney, Auditor and Manager, each of which appointments shall terminate at the conclusion of the first annual general meeting subsequent to termination of the development period.

22. MASTER LAYOUT PLAN

The Master Layout Plan, Annexure G to this Constitution, as compiled by the Developer and as may be amended from time to time according to the provisions of this Constitution, shall be binding upon all parties and shall contain or depict the following information:

- (1) The constituent erven included in the Village at any time.
- (2) The legal nature of the schemes included in the Village.
- (3) The position and description or purpose of all buildings.
- (4) Unit numbers of all LUPO units.
- (5) The location of all Village property, including all facilities, streets and services.
- (6) All servitudes burdening the land.
- (7) Such further information and areas as the Trustees may determine from time to time.
