

CONSTITUTION

OF THE

EMFULENI ESTATE
HOMEOWNERS' ASSOCIATION

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1 DEFINITIONS

- 1.1 In this Constitution, unless the context otherwise indicates :-
- 1.1.1 **“the Act”** means the Companies Act, 1973 (as amended);
- 1.1.2 **“Architect”** means Geldenhuys & Jooste Architects; ref. Humphries Jooste, or such other firm of architects to be appointed by the Developer from time to time and after the development period, to be appointed by the Association;
- 1.1.3 **“the Association”** means THE EMFULENI ESTATE HOMEOWNERS’ ASSOCIATION;
- 1.1.4 **“the Auditors”** means the auditors of the Association;
- 1.1.5 **“club”** means the EMFULENI GOLF AND COUNTRY CLUB which is a separate legal entity;
- 1.1.6 **“conditions of establishment”** - means the conditions applicable to the development and the township;
- 1.1.7 **“the developer”** means EMFULENI GOLF ESTATE (PTY) LTD;
- 1.1.8 **“development”** means the development of a township known as Vanderbijlpark South West 5 Extension 6, Township;
- 1.1.9 **“development period”** means the date from which the Association is established as contemplated in clause 3 below, until the developer is no longer a member of the Association;
- 1.1.10 **“erf”** means an erf in the development, which in terms of the conditions of establishment, has residential rights;
- 1.1.11 **“erven”** means all the erven in the development collectively and includes the erven on which the Golf Course, Clubhouse and the units are situated;
- 1.1.12 **“guidelines”** means the architectural guidelines prepared by the Architect and applicable to the development.
- 1.1.13 **“golf course”** means the EMFULENI GOLF COURSE which is part of the development as a separate erf zoned “private open space” and to be utilized for the purposes of a golf course and where applicable, any reference to golf in this Constitution shall include the sport, tennis and bowls, unless the context indicates otherwise;
- 1.1.14 **“improvements”** means any structure of whatever nature constructed or erected or to be constructed or erected on an erf or erven;
- 1.1.15 **“local authority”** means the EMFULENI LOCAL MUNICIPALITY or its successors;

- 1.1.16 “**member**” means a member of the Association which includes every registered owner of an erf/erven as well as any registered owner of a unit in a sectional title scheme and in the event of a subdivision of an erf, any registered owner of every erf comprising such subdivided erf. If a member consists of more than one person, such person shall be jointly and severally liable in solidum for all the obligations in terms of this Constitution. For the avoidance of doubt, it is recorded that the owners of units in the sectional title schemes are not members of the Association;
- 1.1.17 “**owner**” means the registered owner of an erf or erven and/or unit;
- 1.1.18 “**sectional title schemes**” means Emfuleni Apartments, Kaldins Villas, Nkitas View and Villa Emfuleni;
- 1.1.19 “**township**” – means Vanderbijl Park South West 5 Extension 6 township;
- 1.1.20 “**trustee**” means the trustees of the Association;
- 1.1.21 “**Unit**” means a section (as defined in the Sectional Title’s Act, 95 of 1986) in any sectional title scheme in a development together with an undivided share in the common property of the sectional title scheme.

1.2 The headings to the respective clauses are for reference purposes only and shall not be taken into account in the interpretation of this Constitution.

1.3 The singular shall include the plural and vice versa.

1.4 The male gender shall include the female and natural genders and vice versa.

1.5 In the event of any clause in this agreement being unenforceable for any reason whatsoever, such clause shall be deemed to be separate and severable.

2 INTRODUCTION

2.1 In terms of the Agreement of Sale entered into between the developer and an owner, the owner of each erf and/or erven and/or a unit comprising the development and all successors in title shall be members of the Emfuleni Estate Homeowners’ Association constituted in terms of this Constitution;

2.2 The developer is desirous of regulating and controlling the harmonious development of the development.

3 LEGAL STATUS, COMMENCEMENT DATE AND LIMITED LIABILITY

The Association is a common law corporate body and will come into existence simultaneously with the first registration of transfer of an erf or a unit from the developer to an owner and as such :

- 3.1 its assets, liabilities, rights and obligations vest in it, independently of its members;
- 3.2 it may not distribute any of its profits and gains to any person and will use its funds solely for the objects for which it has been established and for investment;
- 3.3 it will have perpetual succession;
- 3.4 it may sue or be sued in its own name.
- 3.5 no member in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the trustees;
- 3.6 a member will not by reason of his membership be liable for the liabilities and obligations of the Association.

4 **OBJECTS**

The objects of the Association are to control the appearance of the development and buildings, the safety of persons and property, the promotion of communal and recreational interests of members, and incidental matters, including and more specifically:

- 4.1 to oversee, maintain and control the development;
- 4.2 to ensure that erven and units are developed according to uniform standards and that those standards are maintained thereafter;
- 4.3 to take transfer of the roads and maintain and insure where necessary;
- 4.4 to maintain the entrance to the township area and the perimeter fence;
- 4.5 to institute control and security measures;
- 4.6 to promote, advance and protect the development and the interests of the Association;
- 4.7 to administer and enforce the guidelines to ensure the maintenance and upgrading of the development

5 **POWERS**

The Association has plenary powers (including all those normally enjoyed by a registered company) to enable it to achieve its objectives, except only for the powers expressly or impliedly excluded by this Constitution, or by the Association's legal status as a common law corporate body.

6 MEMBERSHIP

- 6.1 Membership of the Association shall be limited to the developer in his capacity as such, for as long as the developer remains an owner of any portion of the development (including any erf/erven or unit) the Club and every owner from date of registration of transfer of an erf /erven and/or unit into his name;
- 6.2 Where any erf/erven or unit is owned by more than one person, all the registered owners shall together be deemed to be one member of the Association and have the rights and obligations of one member of the Association;
- 6.3 When a member becomes the registered owner of an erf/erven or a unit, he shall, ipso facto, become a member of the Association and when he ceases to be the owner, he shall, ipso facto, cease to be a member of the Association.
- 6.4 No member shall let or otherwise part with occupation of his erf/erven or unit whether temporarily or otherwise, unless he has agreed with the proposed occupier of such unit as a stipulato alteri in favour of the Association, that such occupier shall be bound by all the terms and conditions of this Constitution.
- 6.5 A registered owner of an erf/erven or unit may not resign as a member of the Association;
- 6.6 The rights and obligations of a member shall not be transferable and every member shall:-
- 6.6.1 to the best of his ability further the objects and interests of the Association;
 - 6.6.2 observe all rules made by the Association or the trustees;
 - 6.6.3 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 any access erf or any other erf in the township, including the provision of security facilities;
 - 6.6.4 not to consolidate an erf with one or more erven without the written consent of a developer for as long as the developer is a member and thereafter the trustees;

7 PHASED DEVELOPMENT

- 7.1 The developer intends to develop and market the development in phases and for as long as the developer is a member of the Association, the developer shall enjoy unrestricted rights with regard to the marketing of the development and in particular the right to erect signage within the development.
- 7.2 The developer shall in its absolute discretion be entitled to subdivide any erf which forms part of the development (in order to accommodate the planned phasing of the development) and insofar as the consent of the members are required for such subdivision, the developer, represented by anyone of it's directors, is irrevocably granted power of attorney to apply for such division (if required) on behalf of the members of the Association.

8 OWNERS AND THE CLUB

- 8.1 It is recorded that the Golf Course is registered in the name of the developer.
- 8.2 It is further recorded that the Club is a member of the Association and subject to this Constitution, provided that the Club shall not be liable for levies, due to the fact that the Club membership fees and playing fees are being utilized for the maintenance and upkeep of the Golf course.
- 8.3 The Club shall be represented at the meetings of the Association by the trustees appointed by it in accordance with the provisions of clause 16.1 below;
- 8.4 The Club and the trustees elected by the members shall designate an equal number of representatives to serve on a management sub-committee which is hereby formed and entrusted with the matters of the Association as it affects the Club.
- 8.5 It is recorded that the Club shall remain autonomous and that the Association shall have no direct representation on the management committee or controlling body of the Club.
- 8.6 Except in respect of provisions relating to conduct and access to the Golf course, the use of Club facilities and the like, the Club shall have no authority over the Association, and the Club shall have no votes in the matters of the Association.
- 8.7 It is the intention that it shall be an ongoing flow of information between the Club and the Association to promote good co-operation and a constructive working relationship to the mutual benefit of the Club and the Association.
- 8.8 Members of the Association and owners of units in the sectional title schemes shall have no automatic right to become members of the Club, but will have to join the Club on the terms and conditions prevalent at the time.

9 CONDUCT AND ACCESS TO THE GOLF COURSE

- 9.1 Members shall exercise the utmost caution when accessing the Golf Course and ensure that the right of way /preference is given to Golf players at all times;
- 9.2 No pets are allowed on the Golf course;
- 9.3 Members shall not obstruct any movement of players on the Golf course and shall not damage the Golf course in any way;
- 9.4 Greens will be out of bound to members who are non golf playing members of the Club;
- 9.5 No social play will be allowed on the Golf course whatsoever;
- 9.6 The trustees and the members will be bound by the provisions of a Development Agreement between the Developer and the Club in terms of which the Developer, in co-operation with the Club, undertakes to draw further rules of conduct (which will form an integral part of this Constitution) in order to regulate, inter alia :
- 9.6.1 the control of motor vehicles, motor cycles and cycles on the Golf course, including the right to impose a speed limit;

- 9.6.2 walking and jogging by owners and other residents of the township on the Golf course;
 - 9.6.3 interference by residents with golf play;
 - 9.6.4 interference by golfers with property owners and the violation of privacy;
 - 9.6.5 limitations on property owners to keep animals and pets and to control stray animals on the Golf course; and
 - 9.6.6 similar aspects in order to ensure, in general the peaceful co-existence between the Club, the other sport facilities, the owners and the Developer.
- 9.7 The addition of any further rules of conduct as contemplated in clause 9.6 above, will not be regarded as an amendment of the Constitution and any resolution to amend the conduct and access rules will be subject to a right of veto by the Club.

10 MAINTENANCE OF GOLF COURSE

- 10.1 The developer, or its successor in title, shall be responsible to maintain the Golf course, (the Association will contribute towards the maintenance of the Golf course and facilities as stipulated in clause 15.1 below, by allocating a portion of the levies for such purpose) on condition that the developer may subcontract the maintenance of the Golf course to a third party.
- 10.2 The Golf course shall be maintained in strict compliance with the guidelines to be supplied by the Golf course designer, which shall be in accordance with general accepted standards for a Golf course of this nature.
- 10.3 Any dispute in regard to the quality of the maintenance of the Golf course, shall be dealt with in accordance with the dispute resolution mechanism set out in clause 36 below.

11 GUIDELINES

- 11.1 The guidelines constitute an integral part of this Constitution and for as long as the developer is a member the guidelines may be amended, substituted, added to or repealed only at the instance of the developer and, thereafter, by the trustees.
- 11.2 All landscaping, plants and all improvements shall be of approved design and of sound construction and shall comply with the provisions of the guidelines.
- 11.3 No construction or erection of improvements or alterations thereto on any erf may be commenced with prior to the approval of the building plans as set out in the guidelines.

12 MEMBERS' RESPONSIBILITIES

Each member shall:

- 12.1 maintain his erf/erven and or unit in accordance with the guidelines and the body corporate rules respectively;

- 12.2 maintain in a neat and tidy condition and in a state of good repair all improvements on his erf/erven or unit;
- 12.3 establish and maintain a garden according to a standard acceptable to the trustees, as well as maintaining the road verge bordering his erf/erven or unit;
- 12.4 be responsible for the maintenance of external and boundary walling, inclusive of regular painting thereof;
- 12.5 not park any commercial type vehicle, boat, caravan, trailer, or any vehicle not in good working order, on any roadway in the development and such vehicle, boat, caravan, trailer shall be parked on the members erf so as not to be visible from the street forming a boundary of such erf.
- 12.6 not do or suffer to be done on any erf or in any unit anything which in the opinion of the trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any member, tenant or occupier of any erf or unit in the development.
- 12.7 not, during construction/erection of improvements, permit the erection of more than 1 (one) advertising board on an erf and such permitted board shall not have a surface area exceeding 1 (one) square meter and shall be removed immediately upon conclusion of the building contract for the improvements;
- 12.8 not erect or permit the erection of any advertising boards on any erf or near any unit without the written approval of the developer for as long as the developer is a member and, thereafter, of the trustees;
- 12.9 adequately insure the improvements on his erf/erven and/or unit and, if requested by the trustees, furnish proof of such insurance to them and, in the event of total/partial destruction, he shall, within a reasonable time period, make good such damage or reconstruction in accordance with the original approved plans or, in the event of total destruction in accordance with the guidelines;
- 12.10 where the erection of structures to house animals or birds or the construction/erection of garden/tool shed(s) is permitted, such structures shall be screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to members or their tenants or occupiers and the trustees shall, in their absolute discretion, be entitled to require the permanent removal from the development of any animals or birds which, in the opinion of the trustees, constitute a disturbance or nuisance;
- 12.11 comply with all security procedures implemented from time to time;
- 12.12 generally ensure that gardening and landscaping of his erf/erven or unit is undertaken so as to be compatible with the gardening and landscaping of adjoining erven;
- 12.13 ensure that his dog is kept on a leash in all open areas within the development and is controlled to ensure that other dogs are not interfered with and, in particular, that no nuisance is caused by such dog to the Club and that the dog does not cause uncleared fouling of sidewalks within the development or on the Golf course or on open spaces within the development;
- 12.14 adhere strictly to the terms of servitudes granting access to erven and units.

- 12.15 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of the development and that planting on his erf does not interfere with pedestrian traffic or obscure the vision of motorists;
- 12.16 tolerate access to irrigation pipe lines by owners of these lines;
- 12.17 not erect any structure over the sewerage system;
- 12.18 shall pay a deposit of R2,500.00 (TWO THOUSAND FIVE HUNDRED RAND) in respect of any damage that may be caused to the property to the Association by such member, his family, employees, contractors, visitors, agents or any other person whatsoever, before the commencement of an building operations. The said deposit plus interest thereon at 6% per annum shall be refunded to the member upon completion of building operations to the satisfaction of the Association, on condition that all his obligations towards the Association have been discharged;

13 RESTRICTIONS

- 13.1 No member shall apply for the rezoning of his erf/erven or unit with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his erf/erven or unit for any purpose other than the permitted use applicable upon establishment of the development. In particular, no member shall be allowed to use his erf/erven/ or unit for the supply of temporary accommodation for consideration and/or letting out on a short term basis, i.e. for periods shorter than one month;
- 13.2 No member shall conduct any business on an erf for purposes other than residential purposes unless the trustees have, subject to clause 13.1 above, in writing, approved the use to which the erf is to be put; and the Local Authority has, to the extent that it may be necessary, granted approval authorizing such use in terms of applicable laws and regulations and there has been compliance with the following:
 - 13.2.1 any member wishing to conduct a business on his erf/erven or unit or who wishes to use his erf/erven or unit for purposes other than residential, shall apply in writing to the trustees for permission to do so. The trustees shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the trustees deem necessary;
 - 13.2.2 an application in terms of the foregoing shall contain a full description of the proposed business or usage, including but not limited to:
 - 13.2.2.1 the type of business;
 - 13.2.2.2 the number of full time and/or part time staff;
 - 13.2.2.3 the times and duration of the business operation, including the number of days per week;
 - 13.2.2.4 the projected growth of the business operation;

- 13.2.2.5 whether any alteration to the existing improvements is proposed;
 - 13.2.2.6 in which portion of the improvements the business activity is to be located;
 - 13.2.2.7 the number and type of vehicles which will be regularly involved in the business operation;
 - 13.2.2.8 the estimated number of visitors per week from the business operation;
 - 13.2.2.9 the estimated number of deliveries necessitated by the business operation;
 - 13.2.2.10 what provision is to be made for parking;
 - 13.2.2.11 the likely impact of the business operation on neighbouring properties and the neighbourhood in general.
- 13.2.3 The trustees shall not approve any such application unless they are satisfied that the application complies with the following:
- 13.2.3.1 the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of neighbours;
 - 13.2.3.2 the number of employees involved in the running of the business operation will not exceed 2(two);
 - 13.2.3.3 the member will reside permanently on the erf in respect whereof the application is made;
 - 13.2.3.4 members who are affected by the application are in agreement therewith;
 - 13.2.3.5 adequate provision has been made for parking within the erf and the landscaping of the erf will be suitable for the type of business contemplated and that no parking of vehicles off the erf within the development will result from the business operation;
 - 13.2.3.6 the granting of the application will not have any significant effect on the density of traffic in the development;
 - 13.2.3.7 non-residents will not be afforded uncontrolled access into the development;
 - 13.2.3.8 no signage will be erected;
 - 13.2.3.9 the hours of the business operation will be confined between 08h00 and 18h00 on weekdays and no business will be conducted on Saturdays, Sundays and proclaimed public holidays.

13.2.4 Should any member to whom permission has been granted for the conduct of a business change any aspect of such business then such member shall submit a fresh application in accordance with the provisions hereof to continue such business;

13.2.5 No member to whom approval has been granted shall be entitled to erect any sign or advertisement on his erf or on any of the common areas in the development in connection with such business save with the approval of the Association;

13.2.6 The trustees shall not at any time or under any circumstances be entitled to approve the use of an erf for the supply of temporary accommodation for consideration;

It is recorded that the above consent is necessary in addition to any process to be followed in terms of any relevant legislation and/or the provisions of the applicable town planning scheme.

13.3 No member shall permit the number of occupants of his erf to exceed 2 (two) persons per bedroom, unless such persons are direct family of the owner residing permanently on the erf. The word "occupants" shall include but shall not be limited to any person who resides or stays on such erf on a regular or occasional basis irrespective of whether such person is related to or is financially dependant upon the owner or whether such person pays rental or gives any other form of consideration in respect of such erf or any portion thereof.

14 **ACCESS ROADS**

The developer shall be obliged, free of consideration, to transfer the access roads (as indicated on the layout plan) to the Association and the risk will pass to the Association on the formation of the Association in respect of the maintenance and upkeep of the roads as well as the responsibility of the Association to pay rates and taxes and all other charges levied by any competent authority in respect thereof.

15 **LEVIES**

15.1 The trustees shall establish and maintain a levy fund for the purposes of meeting all expenses of the Association for the control, management, maintenance and administration of the development, which includes, but is not limited to:

15.1.1 security;

15.1.2 maintenance of the estate, the sport and recreation facilities (including the Golf Course, tennis and bowls facilities ("the sport facilities") on the basis that at least 20% of the annual levies shall be allocated for the sport facilities on condition that the Club shall be entitled to veto any decision by the Association not to contribute towards the maintenance of the sport facilities;

15.1.3 the Clubhouse and other buildings, structures and improvement on the property;

15.1.4 the supply and maintenance of equipment and machinery necessary to maintain the development, including the Golf course.

15.1.5 the maintenance of roads and public places;

15.1.6 the cost of water and electricity consumption;

15.1.7 payment of rates and taxes and other services.

15.1.8 payment of insurance premiums

- 15.2 Although the owners of units in the sectional title schemes are not members of the Association, the Developer has agreed with the developers of the sectional title schemes that 20% of the sectional title schemes' levies shall be paid to the Association for purposes of the maintenance as set out in clauses 5.1.1 to 5.1.8 above.
- 15.3 The trustees shall not less than 30 (thirty) days prior to the end of each financial year, or so soon thereafter as it is reasonably possible, prepare and serve 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;
- 15.4 Each notice to each member shall specify the contribution payable by that member to such expenses and reserve funds.
- 15.5 Every such annual levy shall be payable in equal monthly installments, due in advance on the first day of each and every month of each financial year.
- 15.6 In the event of the trustee for any reason whatsoever failing to prepare and serve the estimate referred to in clause 15.2 timeously, every member shall until service of such estimate as aforesaid continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice referred to in clause 15.2;
- 15.7 The trustees may from time to time impose special levies upon the members(excluding the Club) in respect of all such expenses as are mentioned in clauses 15.1 and 15.2, which are not included in any estimate made in terms of clause 15.2 and may in imposing such levies determine the terms of payment thereof;
- 15.8 The trustees shall be empowered in addition to such other rights as the Association may have in law as against its members to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed the rate laid down in terms of the Usury Act No. 73 of 1968, as amended;
- 15.9 Any amount due by a member by way of levy and interest shall be a debt due by him to the Association. Notwithstanding that a member ceases to be such, the Association shall have the right to recover arrear levies and interest from him. No levies or interest paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a such shall have no claims whatsoever on any other monies held by the Association whether obtained by way of a sale of Association assets or otherwise. A member's successor in title to a unit shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf/erven or unit, to pay the levy and interest thereon attributable to that erf/erven or unit.
- 15.10 In calculating the levy payable by any member, the trustees shall as far as reasonably practical:
- 15.10.1 assign those costs arising directly out of the erf/erven or unit itself to the member owning such erf/erven or unit;

15.10.2 pro rata in the case of a sectional title development to the participation quota of the member concerned;

15.10.3 assign those costs relating to the township area generally to the owners of all erf/erven or units;

15.10.4 the costs assigned to members in terms of clause 15.9 shall be done so equally provided, however, that the trustees may in any case where they consider it equitable to do so, assign to any members any greater or lesser share of the costs as may be reasonable in the circumstances.

16 TRUSTEES

16.1 There shall be a Board of Trustees comprising of 7 (seven) trustees of which (1) one shall be appointed by the Developer for the development period, 1 (one) appointed by the Club, 1 (one) to be appointed jointly by the sectional title schemes and 4 (four) elected by the members, on condition that for the financial year ending February 2009, the 2 (two) trustees elected by the members at the 2007 general meeting will continue to act as trustees.

16.2 The Board of Trustees will have the following representative structure:

16.2.1 A chairman, who will be responsible for the rules of the Homeowners' Association, discipline and communication;

16.2.2 A trustee nominated by the Developer for the development period;

16.2.3 A trustee nominated by the Golf Club;

16.2.4 A trustee jointly nominated by the sectional title schemes;

16.2.5 A trustee responsible for the environmental issues and architectural guidelines;

16.2.6 A trustee responsible for security;

16.2.7 A trustee responsible for administration, finance and legal issues.

16.3 Save for the trustee to be nominated by the Developer, all trustees must be nominated and accept his nomination prior to the annual general meeting.

17 REMOVAL AND ROTATION OF TRUSTEES

17.1 Trustees shall continue to hold office from the date of his appointment, until the next annual general meeting 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.

17.2 A trustees shall be deemed to have vacated his office upon:

17.2.1 his having become disqualified to act as a director in terms of the provisions of the Act;

17.2.2 his being removed from office as provided in Section 220 of the Act;

17.2.3 in the event of his being a member of the Association, his being disentitled to exercise a vote in terms of this constitute;

17.2.4 his estate being sequestrated whether provisional or finally or upon the surrendering of his estate;

17.2.5 his making any arrangements or composition with his creditors;

17.2.6 his resignation as trustee;

17.2.7 his being removed from office by resolution of the trustees.

18 **CHAIRPERSON AND VICE-CHAIRPERSON**

18.1 Until the first annual general meeting the chairperson and vice-chairperson shall be appointed by the developer.

18.2 Within 4 (four) days from the first annual general meeting of the members and each subsequent annual general meeting , the trustees shall appoint from the members a chairperson and vice-chairperson who shall hold their respective offices until the next general meeting; provided that the office of chairperson and vice-chairperson shall ipso facto be vacated by a trustee holding such office upon his ceasing to be a trustee for any reason.

18.3 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.

18.4 Except as otherwise provided, the chairperson shall preside at all meetings of the trustees and at all general meetings and, in the event of his not being present within 5 minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the vice-chairperson shall act in his stead or failing the vice-chairperson , a chairperson appointed by the meeting.

19 **TRUSTEE'S EXPENSES**

Trustees shall be entitled to recover all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as trustees. Save as aforesaid, trustees shall not be entitled to any remuneration for the performance of their duties in terms hereof.

20 **POWERS OF TRUSTEES**

20.1 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 and dismissal of the managing agent, 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 these presents 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 trustee from time to time.

- 20.2 Save as specifically provided in this Constitution, 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 and any other professional from or person or other employees whatsoever for any reason deemed necessary by the trustees and on such terms as the trustees shall decide.
- 20.3 The trustees shall further have power :
- 20.3.1 to require the submission for approval of such plans, drawing specifications and other information as they may deem necessary to ensure compliance by members with this Constitution and the rules made in terms hereof;
 - 20.3.2 to require that any works being constructed within the township area shall be supervised to ensure that the provisions of this Constitution, the guidelines and the rules are complied with, and that all work is performed in a proper and workmanlike manner;
 - 20.3.3 to determine the parking areas to be used by members and their employees, agents and invitees;
 - 20.3.4 to determine the access to the township area and to the erven or units in the township;
 - 20.3.5 to determine the security facilities to be installed and the operation thereof for the protection of the township;
 - 20.3.6 to make rules from time to time in regard to general standards and guidelines with preservation of environment, replacing or fixing of all ornamentation or embellishments upon the outside of buildings including the power to remove such objects;
 - 20.3.7 the conduct of any persons within the township for the prevention of nuisance of any nature to any member, the Club and/or players playing on the Golf course;
 - 20.3.8 in general to promote any of the objects of the Association and for the betterment of the affairs of the Association and/or for the advancement of the interest of the members and/or the residents of the township.
- 20.4 The Board of trustees shall have the right to co-opt into the board any person or person chosen by it. A co-opted trustee need not necessarily be member of the Association. A co-opt trustee shall hold office until the next annual general meeting after his co-option when he shall retire, but shall be eligible for election as a trustee, or in the event of his not being elected shall again be eligible for co-operation by the Board of Trustees.
- 20.5 The trustees shall be entitled to appoint committees consisting of such number of their members and such outsiders, including a managing agent, as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the trustees may from time to time deem necessary.

- 20.6 The developer (and when he ceases to be a member) the trustee shall appoint an architectural review committee which shall consist of :
- 20.6.1 not less than one trustee, and;
 - 20.6.2 such other members as the developer or trustees may determine;
 - 20.6.3 the architect;
- 20.7 Members of the architectural review committee need not be members of the Association.
- 20.8 All plans for all buildings, outbuildings, structures, walls, fences, additions, alterations, and signage shall be submitted to the architectural review committee and the trustees shall not approve any plan unless such plan shall first have been approved by the architectural review committee. The trustees may if they deem fit, delegate to the architectural review committee their functions and powers set out in clause 20.3.1.

21 PROCEEDINGS OF TRUSTEES

- 21.1 The trustees may meet from time to time for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.
- 21.2 The quorum necessary for the holding of any meetings of the trustees shall be a majority present personally; provided, however, that during the development period, the presence of the Developer's nominee shall be necessary at all meetings of trustees in order to form a quorum. Any resolution of the Board of Trustees shall be carried on a simple majority of all votes cast; provided that during the development period if the nominees of the developer vote against a resolution it shall be defeated and if they vote in favour of the resolution it shall be carried irrespective of the other votes for and against any resolution it shall be carried irrespective of the other votes for and against the resolution. In the case of an equality of votes for and against resolution, the resolution shall be deemed to have been defeated.
- 21.3 The trustees shall cause minutes to be kept of every trustees meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairperson. All minutes of trustees' meeting shall, after certification, be placed in a trustees minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meeting of directors of companies. The trustees' minute book shall be open for inspection at all reasonable times by any trustee, the auditors, the members and the managing agent.
- 21.4 Save as provided for in this Constitution, the proceedings of any trustees' meeting shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide.
- 21.5 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.

22 GENERAL MEETINGS OF THE ASSOCIATION

- 22.1 The Association shall, within 6 (six) months of the date of commencement of the Association hold a general meeting as its first annual general meeting. Thereafter, within 3 (three) months of the financial year end of the Association it shall hold second and subsequent annual general meetings.
- 22.2 Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustee shall decide from time to time.
- 22.3 The trustees may, whenever they deem fit, convene a general meeting and a general meeting shall also be convened on a requisition made by not less than 25% (twenty five per centum) of members or should the trustees fail to do so such meeting may be convened by the requisitionists themselves provided that notice thereof be given in terms of clause 23.

23 NOTICE OF MEETINGS

- 23.1 An annual general meeting shall be called by not less than 21 (twenty one) days notice and a general meeting by not less than 14 (fourteen) days notice, as provided in clause 23.3. The notice shall specify the place, the day and the hour of the meeting and, in the case of special business in addition to any other requirements contained in this Constitution, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by the trustees to such persons as are, under this Constitution, entitled to receive such notices from the Association' provided that a general meeting or an annual general meeting of the Association 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 agreed to by not less than 60% (sixty per centum) of members having a right to attend and vote at the meeting.
- 23.2 The accidental omission to give notice of any resolution, or to present any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings at or any resolution passed at any meeting.
- 23.3 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

24 QUORUM

- 24.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. During the development period, the quorum necessary for the holding of any general meeting shall be such of the members entitled to vote, as together for the time being, represent the votes of the developer, and 25% of votes in number from all other members of the Association entitled to vote for the time being. After the development period the quorum shall be such of the members entitled to vote as together for the time being, represent the votes of 25% in number of all members entitled to vote for the time being.
- 24.2 If, within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time or at such other place as the chairman of the meeting shall appoint. If, at the adjourned meeting, a quorum is

not present within half an hour appointed for holding the meeting, the members present shall be a quorum.

25 AGENDA AT MEETINGS

- 25.1 In addition to any other matters required by the Act or the provisions of this Constitution to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:
- 25.1.1 the consideration of the chairperson's report;
 - 25.1.2 the election of trustees;
 - 25.1.3 the consideration of any other matters raised at the meeting, including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
 - 25.1.4 confirmation of the appointment of the auditor;
 - 25.1.5 the consideration of the accounts of the Association for the preceding financial year;
 - 25.1.6 the consideration of the report of the auditors and the fixing of remuneration for the auditors.
- 25.2 No business shall be dealt with at any general meeting unless written notice has been given to the trustees not less than 2 days before such meeting by the person proposing to raise such business of his intention so to do; provided however, that the chairperson may on ordinary resolution of the meeting relax this condition.

26 PROCEDURE AT GENERAL MEETING

- 26.1 The Chairperson shall preside at all meetings and should he not be present within 15 minutes of the time scheduled for the meeting, the vice-chairperson shall preside.
- 26.2 The chairperson may, with the consent of any general meeting at which a quorum is present and shall if so directed by the meeting, adjourn a meeting from time to time and place to place. No business shall be transacted at any adjourned meeting other than business which could have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment or of the business to be transacted at an adjourned meeting.

27 PROXIES

- 27.1 A member may be represented at a general meeting by a proxy, who need not be a member of the Association. The instrument appointing a proxy shall be in writing signed by the member concerned or his agent, duly authorized in writing, but need not be in any particular form, provided that, where a member is more than one person, a majority of those persons shall sign the instrument appointing a proxy on such member's behalf.

- 27.2 The instrument appointing a proxy and the power of attorney or any other authority under which it is signed shall be tabled at the meeting at which the person named in the instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution.
- 27.3 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that the trustees had received no intimation in writing of the death or revocation at any time before a vote is taken in respect of which the proxy exercises such vote.

28 MINUTES

- 28.1 The trustees shall ensure that minutes are taken of every meeting of the Association and that the minutes be reduced to writing, whereafter it shall be certified correct by the Chairperson of the meeting.
- 28.2 The minutes shall be kept in a minute book of meetings of the Association kept for the purpose and the trustees shall keep all minutes books of meetings of the Association in perpetuity.
- 28.3 On a written application of any member the trustee shall make all minutes of the proceedings and/or meetings of the Association available for inspection by such member.

29 VOTING

- 29.1 At every general meeting:
- 29.1.1 every member, including the developer, in person or by proxy and entitled to vote shall have one vote for each erf/erven or unit registered in his name;
- 29.1.2 if an erf/erven or unit is registered in the name of more than one person, then all such co-owners shall jointly have one vote;
- 29.1.3 any member, including the developer, holding-undeveloped land in the township area shall have one vote for each separate piece of land registered in his name.
- 29.2 Save as expressly provided for in this Constitution, no person other than a member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Association in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present or to vote of any question, either personally or by proxy, at any general meeting.
- 29.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or members referred to in Section 198(1)(b) of the Act and, unless a poll if so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negative, and an entry to that effect in the book containing the minutes of the proceedings of the Association,

shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

- 29.4 If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- 29.5 A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 29.6 Every resolution and every amended resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not so-seconded; shall be deemed not to have been proposed.
- 29.7 A resolution or the amendment of a resolution shall be carried on a simple majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 29.8 Unless any member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the chairperson of the meeting as to result of any voting at the meeting, whether by show of hands or otherwise, or to the propriety or validity of the procedure at such meeting, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted. An entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

30 FINANCIAL YEAR-END, AUDITORS AND FINANCIAL STATEMENTS

- 30.1 The financial year-end of the Association is the last day of February of each year;
- 30.2 The trustees shall be responsible to ensure that proper books of account and records are kept in accordance with general accepted accounting practices;
- 30.3 Financial accounts of the Association shall be prepared by a Chartered Accountant to be appointed initially by the developer and thereafter by the trustees, to be confirmed on each general meeting of the Association;
- 30.4 The duties of the auditors shall be regulated in accordance with Chapter "X" of the Act.

31 BANK ACCOUNT

- 31.1 The trustees shall ensure that the Association opens an account with a registered commercial bank in the name of the Association and all funds received by the Association shall be deposited into such bank account and such monies

shall only be withdrawn for the purpose of payment of the expenses of the Association or for investment.

- 31.2 Any funds not readily required for disbursements may be invested in a savings or similar account with a financial institution or any other registered deposit receiving institution approved by the trustees from time to time.

32 SERVICE OF NOTICE

A notice may be served by the Association upon any member at the address of any unit owned by him unless the member shall have notified the Association of another for service of notices.

33 INDEMNITY

The Association indemnify every trustee, servant, agent and employee of the Association against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him, jointly or severally with the discharge of his duties.

34 GENERAL

- 34.1 Whenever they consider that the appearance of any land or building vested in a member or members is such as to be unsightly or injurious to the amenities of the surrounding area or the township area generally, the trustees may serve notice on such member or members to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the member or members failing within reasonable time, to be specified in such notice, to comply therewith, the trustees may enter upon the property concerned and take such steps as may be necessary, and recover the cost thereof from the member or members concerned, which costs shall be deemed to be a debt owing to the Association.
- 34.2 The trustees shall be obliged in giving such notice to act reasonably.
- 34.3 In the event of any member or any servant, agent or independent contractor of any member causing any damage to any landscape or other work done in the road, reserve, or to the township area, fence or security equipment facilities, such damage shall be repaired by the Association and the member concerned shall be liable for the costs thereof.
- 34.4 The member shall at all times observe all laws and by-laws, regulations, the provisions of the town planning scheme and any other provisions in force relating to the erven or unit or the use thereof. In the event of any member failing so to do, such failure shall be deemed to be a breach of the provisions of this Constitution, and the trustees shall be entitled to take such action as they may be empowered and as they may deem fit in terms hereof to remedy such breach or to prevent the continuation thereto. In the event of any town planning scheme laying down any conditions in relation to the matters dealt with herein which are more onerous than the conditions herein laid down, the provisions of such town planning scheme shall prevail.
- 34.5 Each member shall comply fully with all security measures introduced by the trustees.

34.6 No member shall transfer his unit until the Board of Trustees under the hand of one of its members has certified that the member has at the date of transfer fulfilled all his financial obligations to the Association. No erf/erven or unit or any interest thereon shall be alienated without the consent of the Association. Such consent shall not be withheld unless:

34.6.1 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;

34.6.2 the proposed transferee has agreed to become a member of the Association upon registration of transfer of the erf/erven and/or unit into his name.

provided that nothing contained in this Constitution shall prevent a member from ceding his rights in terms of this Constitution as security to the mortgagee of that member's erf/erven or unit.

34.7 It is recorded that each title deed for each property forming part of the township has the following title condition:

“Subject further to the following condition imposed by the transferor for the benefit of the Emfuleni Estate Homeowners’ Association :

the transferee, successors in title and assigns shall not be entitled to transfer the herein mentioned property or any interest therein without a clearance certificate from the Homeowners Association to the effect that the provisions of its Constitution, including provisions relating to the payment of levies have been complied with.”

34.8 The trustees in issuing the certificate referred to in clause 34.6 above shall be entitled to charge a reasonable fee therefore to be determined by the trustee from time to time subject to review by the Association in general meeting.

34.9 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.

34.10 In the event of the Association electing to provide a security service and/or other services for members in the township area, all members shall be obliged:

34.10.1 to permit the installation of any equipment on the units or in the buildings comprising the units for the purpose of such services as may be determined by the Association from time to time;

34.10.2 to make payment of the charges raised by the Association in respect of such services;

34.10.3 abide by such terms and conditions as may be laid down by the Association from time to time in respect of such equipment and services;

- 34.11 The provisions of these clauses shall be binding upon all members and, insofar as they may be applicable, to all persons occupying any erf or unit by, through or under any member, whatever the nature of such occupation. No member shall let or otherwise part with occupation of his erf or unit without the prior written consent of the Association, which consent shall only be withheld if the Association is not satisfied that the proposed occupier of the unit has complied with the provisions this Constitution.

35 ENTRANCE TO TOWNSHIP

Any person entering the township for any purpose whatsoever does so entirely at his own risk.

36 DISPUTE RESOLUTION MECHANISM

- 36.1 Should any dispute, question or difference arise between members or between a member and the trustees in regard to any aspect relating to this Constitution, there shall be a duty on the parties to negotiate in good faith in an endeavour to resolve the dispute, question or difference.
- 36.2 Should the dispute, question or difference not be resolved within 7(seven) days from the date on which it is declared, it shall be referred to arbitration, on condition that in so far as it relates to any claim arising from non-payment of levies or any other amount due by a member to the Association in terms of this Constitution, the Association shall be entitled to enjoy common law rights including the right to institute proceedings in any Court of competent jurisdiction and shall not be required to proceed to arbitration.
- 36.3 Any arbitration shall be conducted in an informal manner, shall commence as soon as possible with the view to being completed within 30 days after it has been demanded, shall be held under the provisions of the Arbitration Act, (save for the provisions of this arbitration clause) the arbitrator shall be a practicing Attorney of not less than 15 years standing, appointed by agreement between the parties within 7 days of being called upon to make such an appointment, and failing such agreement within the time period as aforesaid, appointed by the president of the Law Society of the Northern Provinces.
- 36.4 The Arbitrator shall be obliged to have regard to the principles contained in this Constitution and to take decisions on a just and equitable basis, without necessarily applying the strict rules of law in arriving at his decision.
- 36.5 The Arbitrator's decision shall be in writing within 10 (ten) days after the completion of the arbitration and he shall be obliged to furnish his reasons for the decision. The Arbitrator shall determine the cost of the arbitration to be paid by either of the disputing parties or by the Association as he in his sole discretion deems fit.
- 36.6 The decision of the Arbitrator shall be final and binding on the disputing parties, shall be given effect to immediately and shall be made an order of any Court of competent jurisdiction.
- 36.7 Notwithstanding the above provisions, the trustees shall be entitled to institute proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purpose of restraining or interdicting breaches of any of the provisions of this Constitution and the guidelines.

37 DOMICILIUM CITANDI ET EXECUTANDI AND NOTICES

- 37.1 The trustees shall from time to time determine the domicilium citandi et executandi of the Association.
- 37.2 The domicilium citandi et executandi of each member shall be the street address of the member's erf/erven or unit.

38 BREACH

- 38.1 For the enforcement of any of the rules made by the trustees in terms hereof, the trustees may:
- 38.1.1 give notice to the member concerned requiring him to remedy such breach within such reasonable period as the trustees may determine;
 - 38.1.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the Association; and/or
 - 38.1.3 impose a system of fines or other penalties. The accounts of such fines shall be reviewed and confirmed at each Annual General Meeting of the Association; and/or
 - 38.1.4 take such other action including proceedings in Court, as they may deem fit and defend any action taken by any member of any other person.
- 38.2 In the event of the trustees instituting any legal proceedings against any member or resident within the township area for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and own client.
- 38.3 In the event of any breach of the rules by the members of any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the trustees may take or cause to be taken such steps as they in their discretion may deem fit.
- 38.4 In the event of any member disputing the fact that he has committed a breach of any of the rules, a committee of three trustees appointed by the chairperson for the purpose shall adjudicate on the issue of such time and in such manner and according to such procedure (provide that natural justice shall be observed) as the chairperson may direct.
- 38.5 Any fine imposed upon any member shall be deemed to be a debt due by the member to the Association and shall be recoverable by ordinary civil process.
- 38.6 Notwithstanding anything to the contrary herein contained, the trustee 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.

39 MANAGING AGENT

- 39.1 In terms of their powers, the trustees will have the right to appoint a managing agent to control, manage and administer the development and to exercise such powers and duties as may be entrusted to the managing agent including, but not limited to the power to collect levies.
- 39.2 The managing agent shall be appointed in terms of a written agreement on a year to year basis.
- 39.3 As from the commencement date of the Association, the developer will appoint the first managing agent for a period of 12 months or until the first Annual General Meeting of the Association which ever occurs first.

40 AMENDMENT OF THIS CONSTITUTION

This Constitution may be amended by resolution of a members' meeting passed by a majority of not less than 75% of the votes cast, together with a consent thereto by the developer if the developer is still a member at the time when the amendment is passed.

41 MERGER

- 41.1 The Association may merge with any other body with similar objects, by resolution of a members' meeting.
- 41.2 In this event, the Association's net assets, after discharge of its liabilities, together with its rights and obligations under this Constitution and under the conditions of title of units in the township area will vest in the merged entity.