

# The Constitution

of

**The Body Corporate of the Summerley Court  
Retirement Scheme, No .....**



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## Part One: Preliminary

### 1. INTRODUCTION

The Body Corporate of the Summerley Court Retirement Scheme is an association created and established as a statutory body in terms of section 36 of the Sectional Titles Act, 1986 or section 2 of the Sectional Titles Schemes Management Act, 2011, as the case may be, and, to the extent applicable and necessary, in order to comply with Regulation 7 of the Regulations promulgated pursuant to section 11 of the Housing Development Schemes for Retired Persons Act, 1988.

### 2. DEFINITIONS AND INTERPRETATION

2.1 In this Constitution, unless the context clearly indicates a contrary intention, the following words and expressions will bear the meanings assigned to them:

2.1.1 **"the Acts"** means:

2.1.1.1 the Sectional Titles Act, 1986 (Act No. 95 of 1986) (**"the Act"**); and/or

2.1.1.2 the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011) (**"Sectional Titles Schemes Management Act"**),

2.1.2 **"Annual Levy"** means the annual Levy payable monthly by each Member;

2.1.3 **"the Association"** or **"Body Corporate"** means The Body Corporate of the Summerley Court Retirement Scheme, No ..... which is bound by the provisions or Articles of this Constitution, the Acts and the Regulations pertaining to the Acts and, where applicable, the HDSFRP Act and HDSFRP Regulations;

2.1.4 **"Building"** means every building and/or structure built and/or constructed, including to be built and/or to be constructed, on the Land, save for the area demarcated as the Service Station Area on the Right to Extend Sectional Plan for so long as the garage and filling station built thereon continues to be operated as a garage and filling station;

2.1.5 **"Common Areas"** or **"Communal Facilities"** means:

2.1.5.1 those portions of the Land and the Buildings to be held and maintained by the Body Corporate for the benefit of the Members, including but not limited to the reception, the administration office, the management office, the kitchen, the dining room, the entertainment areas, the laundry room, the medical office and consulting room, the lifts, the security office, the power supply room and the refuse room; and

2.1.5.2 all of the Common Property, including but not limited to roads, walkways, communal gardens, visitors parking areas, security gates and fencing;

2.1.6 **"the Common Property"** means the whole of the Land, the Building and all improvements thereon, including any access and egress road and/or servitudinal right of access or traversing rights, but excluding all Units and the Service Station Area for so long as the garage and filling station built thereon continues to be operated as a garage and filling station;

- 2.1.7        **"Common Services"** means all bulk services, including without limitation, water, sewerage, electricity, drainage, telecommunications, refuse removal, fire-fighting, security and all such other utilities and amenities serving the Common Areas and the Land generally;
- 2.1.8        **"Conduct Rules"** means the prescribed Conducts Rules set out in Annexure 9 of the Regulations promulgated in terms of the Act, as may be amended from time to time and/or to accommodate changes brought about by the Sectional Titles Schemes Management Act, which are intended to regulate the Members and/or Occupiers use and enjoyment of the Scheme and the manner in which the Members and/or Occupiers are to conduct themselves in the use and enjoyment of their Units, the Communal Areas, the Common Property and as between themselves;
- 2.1.9        **"the Constitution"** means the Constitution of the Association as contained in this document, incorporating the Conduct Rules and the Management Rules, and as may be amended from time to time;
- 2.1.10       **"the Developer"** means Gemini Moon Trading 325 (Proprietary) Limited, company registration number 2007/0019701/07, and includes its successors-in-title and assigns;
- 2.1.11       **"the Development"** means the development by the Developer of the Land and the establishment of the Scheme;
- 2.1.12       **"Development Approvals"** means all the approvals:
- 2.1.12.1       granted to and received by the Developer from the applicable Responsible Authority to undertake the Development and the Scheme; and/or
- 2.1.12.2       to be granted to and to be received by the Developer from the applicable Responsible Authority to undertake an extension to the Development and/or Scheme;
- 2.1.13       **"Discretion"** means, in relation to a Person, the sole, absolute and unfettered discretion of that Person, provided such discretion is exercised in a reasonable and not a capricious manner;
- 2.1.14       **"Expenses"** means those costs, charges, rates, imposts and expenses of any kind actually incurred by and/or on behalf of the Body Corporate in furthering the objects and purpose of this Constitution;
- 2.1.15       **"Extra-ordinary Special Levy"** means the Levy to be payable by a Member, a defined group of Members or Members generally, which is neither an Annual Levy nor a Special Levy;
- 2.1.16       **"HDSFRP Act"** means the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988);
- 2.1.17       **"HDSFRP Regulations"** means the Regulations promulgated from time to time under and by virtue of section 11 of the HDSFRP Act, including but not limited to the Regulations published in Government Notice E1351 in Government Gazette 11979 of 30 June 1989 as amended by GN R2091 in Government Gazette 12717 of 31 August 1990 and by GN R2092;

- 2.1.18 **"House Rules"** means those rules which may be introduced by the Body Corporate and/or the Managing Agent from time to time to provide for day to day conduct and/or a higher degree or level of respect as between Members and fellow Occupiers in exercising their rights, privileges and obligations in and with respect to their use and enjoyment of their Units, the Communal Areas, the Common Property and as between themselves, which are not sufficiently covered by and/or in the Conduct Rules;
- 2.1.19 **"Improvements"** means any structure of whatsoever nature constructed or erected or to be constructed or erected on the Land;
- 2.1.20 **"the Land"** means Erf 765425 Cape Town at Kenilworth, commonly referred to as 305 Main Road, Kenilworth, Western Cape, upon which the Development and the Scheme is to be and/or has been developed by the Developer;
- 2.1.21 **"Laws"** means the common law, Legislation and all judicial decisions and other notifications or similar directives made pursuant thereto that have the force of law, whether issued by an executive, a legislative, provincial, local, judicial or administrative entity in South Africa;
- 2.1.22 **"Legislation"** means all applicable statutes, statutory instruments, bye-laws, regulations, orders, rules, executive orders and other secondary, provincial or local legislation, treaties, directives and codes of practice having the force of law in South Africa;
- 2.1.23 **"Levies"** means, collectively or individually, as the case may be,:
- 2.1.23.1 the Annual Levy; and/or
- 2.1.23.2 the Special Levy; and/or
- 2.1.23.3 the Extra-ordinary Special Levy;
- 2.1.24 **"Local Authority"** means the metropolitan municipality established in terms of the Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998), published in Provincial Notice No. 479 of 2000 and/or the Provincial Government of the Western Cape, as the case may be;
- 2.1.25 **"Management Rules"** means the prescribed Management Rules set out in Annexure 8 of the Regulations promulgated in terms of the Act, as may be amended from time to time and/or to accommodate changes brought about by the Sectional Titles Schemes Management Act, which are intended to regulate the control, management and administration of the Scheme;
- 2.1.26 **"Managing Agent"** means, initially Golden Elder Management Services CC, registration number 2010/060028/23, or such other person and/or entity appointed by the Association as an independent contractor to undertake all or some of the functions and duties of the Association and/or the Trustee Committee, as the case may be;
- 2.1.27 **"Member"** means a Member of the Association, being a Person registered as the lawful owner of a Unit in the Register, and, may include the Developer;
- 2.1.28 **"Occupant"** or **"Occupier"** means a Person entitled to occupy or who occupies a Unit who must at all times be at least the minimum age contemplated and provided for in the HDSFRP Act and the HDSFRP Regulations;

- 2.1.29      **“Register”** means the Register of Members recording those persons who are registered owners of a Unit;
- 2.1.30      **“Responsible Authority”** means any national, provincial and/or local authority or legislature, any agency, regulatory body, local institution, department, inspectorate, minister, ministry, official or public or statutory Person (whether autonomous or not) having jurisdiction over any or all of the Persons or the subject matter of this Constitution, including but not limited to the Local Authority;
- 2.1.31      **“the Scheme”** means:
- 2.1.31.1      a sectional title scheme developed and/or to be developed on the Land by the Developer referred to as The Summerley Court Retirement Scheme, Scheme No. ...., in accordance with the Acts and the Regulations thereof, including any extension thereto; and
- 2.1.31.2      a scheme for retired persons situated upon or to be developed on the Land, as the case may be, and which is and will be conducted as a retirement village as contemplated and provided for in the HDSFRP Act and the HDSFRP Regulations – including any extension thereto;
- 2.1.32      **“Services”** means the services required to be made available by the Association to the Members as contemplated and provided for in this Constitution to give effect to the Scheme and each member’s occupation, use and enjoyment of their Life Right and/or Unit;
- 2.1.33      **“Service Station Area”** means the area of the Land upon which the garage and filling station is located;
- 2.1.34      **“South Africa”** means the Republic of South Africa;
- 2.1.35      **“Special Levy”** means the Levy to be payable by Members generally, which is neither an Annual Levy nor an Extra-ordinary Special Levy;
- 2.1.36      **“Third Party Occupant”** or **“Nominated Occupant”** means a person complying with the minimum age prescribed in the HDSFRP Act and/or the HDSFRP Regulations as being a retired person, other than the Member, to whom the Member may let or allow use and occupation of the Unit in terms of the this Constitution, the Management Rules and/or the Conduct Rules;
- 2.1.37      **“the Trustees”** means, collectively and/or individually, the individual trustees comprising appointed by the Members and/or the remaining Trustees, as the case may be, in accordance with the Articles of this Constitution to *inter alia* manage the affairs of the Body Corporate;
- 2.1.38      **“Unit”** means the apartments developed and constructed in the Building on the Land, together with and including storage areas, parking bays and/or exclusive use areas, if and to the extent applicable; and
- 2.1.39      **“VAT”** means Value Added Tax as defined and contemplated, from time to time, under and in terms of the Value Added Tax Act, 1991 (Act No. 89 of 1991), together with such Rules, Notes and Notices published under and by virtue of such Act.
- 2.1      In construing and/or interpreting this Constitution, unless otherwise specified,:

- 2.2.1 any reference to "**R**", "**Rand**", or "**rands**" or "**cents**" will be references to the lawful currency of South Africa from time to time;
- 2.2.2 any reference, express or implied, to any Legislation, enactment and/or statute, includes references to:
- 2.2.2.1 that enactment and/or statute as re-enacted, amended, extended or applied by or under any other enactment and/or statute (before and/or after the coming into being of this Constitution);
- 2.2.2.2 any enactment and/or statute which that enactment and/or statute re-enacts (with or without modification); and
- 2.2.2.3 any subordinate legislation made (before or after the coming into being of this Constitution) under any enactment and/or statute, as re-enacted, amended, extended or applied as described in Article 2.2.2.1 or under any enactment and/or statute referred to in Article 2.2.2.2;
- 2.2.3 any references to documents "**in the agreed form**" are to documents in terms agreed by the Members and initialed by or on behalf of the Members for the purposes of identification;
- 2.2.4 any reference to a provision, Part or Article will, unless clearly stipulated otherwise, be deemed to be a reference to a provision, Part or Article of this Constitution;
- 2.2.5 any reference to this Constitution means this document and all its provisions, Parts and Articles and specifically incorporating and including the Management Rules and the Conduct Rules as an integral part hereof;
- 2.2.6 all provisions, Parts and/or Articles, as well as the Management Rules and the Conduct Rules, will be deemed to form part of this Constitution, unless stipulated otherwise;
- 2.2.7 headings of the Articles in this Constitution are for the purpose of convenience and reference only and will not be used in the interpretation of nor modify nor amplify the terms of this Constitution nor any Article hereof;
- 2.2.8 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Person, notwithstanding that it is only in the definition Article, effect will be given to it as if it were a substantive provision in the body of the Constitution;
- 2.2.9 Article headings and/or head notes to any paragraph are inserted for reference purposes only and will not affect nor influence the interpretation of any of the provisions or Articles to which they relate;
- 2.2.10 any reference to a day, week, month or year will be construed as a Gregorian day, week, month or year, as the case may be;
- 2.2.11 any reference to a "**day**" will mean a period of 24 (twenty four) hours running from 1 (one) second past midnight to midnight that same day;
- 2.2.12 any reference to "**business day**" will mean a day in which banks are open for business in South Africa, but will exclude Saturdays, Sundays and public holidays, as the case may be, whereas the term "**calendar day**" means each and every day of the week;

- 2.2.13 any reference to a public holiday or the words “**public holiday**” will, unless otherwise agreed to in writing by and between the Members, be only those statutorily recognised and gazetted public holidays in South Africa from time to time;
- 2.2.14 any reference to “**Business Hours**” will mean 09h00 to 17h00 Local Time;
- 2.2.15 any references to specific times will be to the official time as applied from time to time in the province of the Western Cape (“**Local Time**”);
- 2.2.16 if any obligation or act is required to be performed on a particular day or date, it will be performed, unless otherwise stipulated, by 17h00 Local Time;
- 2.2.17 when any number of days is prescribed, same will be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in South Africa, in which case the last day will be the next succeeding day which is not a Saturday, Sunday or public holiday in South Africa;
- 2.2.18 where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail;
- 2.2.19 expressions defined in this Constitution will bear the same meanings in Schedules, Addendums or Annexures to this Constitution which do not themselves contain their own conflicting definitions;
- 2.2.20 the use of any expression covering a process available under South African law, such as a winding-up (without limitation *eiusdem generis* – meaning of the same kind) will, if any Member is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 2.2.21 the use of the words “**include**”, “**including**”, “**without limitation**” and “**in particular**” whether or not followed by a specific example will not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule will not be applied in the interpretation of such general wording or such specific example – this rule means when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified;
- 2.2.22 the words “**other**” and “**otherwise**” will not be construed *eiusdem generis* with any preceding words where a wider construction or interpretation is possible;
- 2.2.23 where any term is defined within the context of any particular Article, the term so defined, unless it is clear from the Article in question that the term so defined has limited application to the relevant Article, will bear the meaning ascribed to it for all purposes in terms of this Constitution, notwithstanding that that term has not been defined in this interpretation Article;
- 2.2.24 there will be an obligation and it will be binding on and enforceable by the estates, heirs, executors, administrators, trustees, permitted assigns or liquidators of the Members as fully and effectually as if they had signed this Constitution in the first instance and reference to any Member will be deemed, unless otherwise specifically provided for, to include such Member's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be;



- 2.2.25 the expiration or termination of this Constitution will not affect such of the provisions of this Constitution as expressly provide or contemplates that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Articles themselves do not expressly provide for this;
- 2.2.26 any Article or provision which contemplates performance or observance subsequent to any termination or expiration of this Constitution, will survive any termination or expiration of this Constitution and continue to be of full force and effect;
- 2.2.27 termination, howsoever arising, will be without prejudice to and will not affect the accrued rights, remedies, claims and/or liabilities of either or any of the Members arising hereunder prior to such termination;
- 2.2.28 the expiry or termination of this Constitution will not prejudice the rights of either or any of the Members in respect of any antecedent breach or non-performance by either or any Member of any of the provisions or Articles hereof;
- 2.2.29 should this Constitution take effect on a date that results in the use of any tenses herein being inappropriate, the Article or provision will be read in the appropriate tense;
- 2.2.30 an expression or word which signifies or refers to –
- 2.2.30.1 any gender includes, where applicable and appropriate, the other genders;
- 2.2.30.2 a "**Person**," includes, where applicable and appropriate, a natural person, company, close corporation, trust, partnership or other entity, whether or not having a separate legal personality;
- 2.2.30.3 the singular includes the plural and *vice versa*, where applicable and appropriate;
- 2.2.31 any reference to "**writing**" or words of similar meaning means legible (coherent and understandable) writing in English in handwritten or typographical manner or form;
- 2.2.32 any reference to "**notice**" or notice being required to be given will mean written notice or notice in writing;
- 2.2.33 the words "**shall**", "**will**" and/or "**must**" used in the context of any obligation or restriction will have a prescriptive and peremptory (meaning absolute) application;
- 2.2.34 a reference to a consecutive series of two or more Articles is deemed to include all the Articles including and between the first and the last mentioned Articles;
- 2.2.35 defined terms or words appearing in title case or starting with a capital letter must be given their defined meaning whilst the same terms or words appearing in lower case must be interpreted in accordance with their plain English and grammatical meaning unless it is otherwise clear from the context in which it is used;

- 2.2.36 references to “**indemnifying**” any person against any circumstance include indemnifying and keeping him harmless, on an after tax basis, from all actions, claims and proceedings from time to time made against him and all loss, damage, payments, costs or expenses suffered, made or incurred by him as a consequence of that circumstance;
- 2.2.37 no provision will, unless otherwise specifically provided for, constitute a stipulation for the benefit of any Person who is not a Member, namely it will not provide for a *stipulatio alteri* meaning that a non-Member will not be able to claim an benefit under this Constitution, save for the Developer which will be considered a Member for such purpose;
- 2.2.38 reference to any Responsible Authority or any public or professional organization or firm will include references to any of its successors or any organization or entity which takes over its functions or responsibilities; and
- 2.2.39 whenever any Person is required to act as an Independent Expert and not as an arbitrator, then –
- 2.2.39.1 the determination of the expert will (in the absence of manifest error or fraud) be final and binding;
- 2.2.39.2 subject to any express provision to the contrary, the expert will determine the liability for his charges, which will be paid accordingly;
- 2.2.39.3 the expert will be entitled to determine such methods and processes as he may, in his Discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 2.2.39.4 the expert will consult with the relevant Member or Person (provided that the extent of the expert's consultation will be in his Discretion) prior to rendering a determination; and
- 2.2.39.5 having regard to the sensitivity of any confidential information, the expert will be entitled to consult with and take advice from any Person considered by him to have expert knowledge with reference to the matter in question.

## Part Two: The Association

### 3. NAME

The name of the Association is "**The Body Corporate of the Summerley Court Retirement Scheme No. ....**".

### 4. CREATION, ESTABLISHMENT, CONSTITUTION AND COMMENCEMENT DATE

4.1 With effect from the date on which any Person other than the Developer becomes an owner of a Unit in the Scheme, the Body Corporate is and will be deemed to have been created, established and constituted by process of law in terms of the Act and/or the Sectional Titles Schemes Management Act, as the case may be, and to the extent applicable, Regulation 7(a) of the HDSFRP Regulations and Section 11 of the HDSFRP Act.

4.2 As from the date of establishment of the Body Corporate,:

4.2.1 every Person who thereafter becomes an owner of a Unit, will be and become a Member of the Body Corporate; and

4.2.2 every Member will cease to be a Member of the Body Corporate when he ceases to be an owner of a Unit; and

4.2.3 the Developer will continue to be a Member of the Body Corporate for so long as it has a share in the Common Property as contemplated in section 34(2) of the Act and/or owns a Unit; and

4.2.4 the rights and obligations of the Developer arising from the Management Agreement will, to the extent applicable, be deemed to have been assigned to the Body Corporate pursuant to and in terms of Regulation 11 of the HDSFRP Regulations (and, to the extent applicable, the Deeds of Sale by and between the Developer and each Member).

### 5. LEGAL STATUS

5.1 Pursuant to the Acts (and, where applicable, the HDSFRP Regulations) and this Constitution, the Body Corporate will:

5.1.1 be a legal entity and exist independently of its Members;

5.1.2 enjoy perpetual succession;

5.1.3 be capable (in its own name) of being sued or to sue with reference to or in respect of:

5.1.3.1 any agreement or contract made or entered into by the Body Corporate; and/or

5.1.3.2 any damage done to the Land, the Common Property or the Communal Facilities; and/or

5.1.3.3 any matter in connection with the Scheme, the Land, the Common Property, the Communal Facilities or Services for which the Body Corporate is

responsible or liable or for which the Members, as owners, may be jointly liable; and/or

- 5.1.3.4 any matter arising out of the exercise of the Association's powers or the performance or non-performance under the Acts, the HDSFRP Act, the HDSFRP Regulations, this Constitution, the Management Rules and/or the Conducts Rules, as the case may be; and/or
  - 5.1.3.5 any claim against the Developer in respect of the Scheme; and
  - 5.1.4 be responsible for the control, administration and management of the Scheme for the benefit of all the Members; and
  - 5.1.5 be responsible for the enforcement of the Management Rules and/or the Conducts Rules, as the case may be; and
  - 5.1.6 not operate for profit for the benefit of the Members.
- 5.2 No Member in his personal capacity will have any right, title and interest to or in the funds or assets of the Association, which will vest in and be controlled by the Trustees.

## **6. OBJECT AND PURPOSE**

- 6.1 The main object and purpose of the Body Corporate is to promote, advance and protect the common interests of the Members with specific respect and reference to their use and enjoyment of their individual Units, the Common Property and the Communal Facilities comprising the Development and the Scheme.
- 6.2 The Body Corporate will have the further object and responsibility of enforcing the Conduct Rules, and the control and administration and management of the Scheme, the Land, the Common Property, the Communal Facilities and Services for the benefit of all Members and Occupiers.

## **7. POWERS AND DUTIES**

- 7.1 The Management Rules and Conduct Rules are incorporated herein as if they were included in the body of this Constitution, notwithstanding that they may be separate documents in their own right.
- 7.2 The Body Corporate will have the powers and duties as set out and prescribed in the Management Rules and the Conduct Rules, as the case may be.

## **8. MEMBERSHIP**

### **Membership Automatic and Compulsory**

- 8.1 Membership of the Body Corporate will be automatic and compulsory for and limited exclusively to every Member in the Scheme.
- 8.2 In the event and to the extent a Member is more than one Person, all the Members registered as such in the Register (with respect to a specific Unit) will be deemed, jointly and severally, to be one Member of the Body Corporate and will have one vote for the purpose of any resolution that may be required at any Meeting of the

Body Corporate.

### **Commencement of Membership**

- 8.4 Membership of the Body Corporate will commence simultaneously with the transfer of a Unit into the name of a Member, and which will be so registered in the Register.

### **Termination of Membership**

- 8.5 When a Member ceases to be the lawful owner of the Unit, he will immediately *ipso facto* cease to be a Member.
- 8.6 The lawful owner of a Unit may not resign as a Member.
- 8.7 No Member ceasing to be a Member for any reason will, (nor will any such Member's executors, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Body Corporate, but this Article will be without prejudice to the rights of the Body Corporate to claim from such Member or his estate any arrears or Levies or other sums due from him to the Body Corporate at the time of him so ceasing to be a Member.

### **Observance with the Constitution and the Conduct Rules**

- 8.8 Every Member will:
- 8.8.1 to the best of his ability further the aims and objects of the Body Corporate; and
- 8.8.2 observe and be bound by this Constitution and all rules and regulations promulgated by the Body Corporate or by any committee of the Trustees from time to time, including but not limited to the Management Rules, the Conduct Rules and, if applicable, the House Rules.

### **Transfer of Rights and Obligations**

- 8.9 Membership will be personal to the Member and, as such, the rights and obligations of a Member are not transferable and/or assignable other than as provided for in this Constitution.
- 8.10 Notwithstanding any other provision of this Constitution, the cessation of membership will in no way release a Member from any obligation undertaken by him prior to the cessation of his membership pursuant to:
- 8.10.1 any provision of this Constitution; or
- 8.10.2 any further or ancillary guarantee, commitment or obligation which such Member may have undertaken.

### **Privileges and Rights**

- 8.11 No Member will be entitled to any of the privileges of membership unless and until he will have paid every Levy and any other sum (if any), which will be due and payable to the Body Corporate in respect of his membership. Save as may otherwise be provided in the Management Rules, to the extent a Member has any Levy or other amounts outstanding and owing to the Body Corporate, that Member will not have the right or be entitled to vote at any Meeting of Members, but will be entitled to attend a Meeting of Members.

- 8.12 The rights and obligations of the Members will rank *pari passu*, save as otherwise provided for in this Constitution.

### **Occupiers, Guests, Employees, Invitees, Contractors and Agents**

- 8.13 No person, other than a retired person (as defined in the HDSFRP Act) or the Spouse of a retired person, may occupy any Unit.
- 8.14 A Unit may only be utilised for permanent residential purposes.
- 8.15 A Member will not do or permit to be done anything which may cause a nuisance or annoyance to other Occupants of the Scheme.
- 8.16 The rights and obligations of a Member are personal rights to and between Members.
- 8.17 No Member will let or otherwise part with the occupation or possession of his Unit without first obtaining the written undertaking of the proposed Occupier that he and all those occupying under and with him will be bound by and will observe the provisions of this Constitution, the Management Rules, the Conduct Rules and, if applicable, the House Rules, as the case may be.
- 8.18 Each Member will be liable for the acts and/or omissions of all Persons occupying his Unit, whether lawfully or unlawfully, including but not limited to Spouses, Occupants, lessees, guests, employees, invitees, contractors and/or agents.
- 8.19 Each Member will be liable for the acts and/or omissions of all those Persons the Member invites onto the Land, the Member requests to enter onto the Land, those who visit, socialize and/or call on the Member, including guests, visitors, invitees, employees, agents, advisers, brokers, consultants and/or contractors. Each Member must and will indemnify the Body Corporate and/or other Members, as the case may be, for the acts and/or omissions of all those Persons aforementioned.

### **Membership Obligations**

- 8.20 Every Member is obliged to comply with:
- 8.20.1 the provisions of this Constitution;
- 8.20.2 all rules, regulations, directives and other prescriptive notices passed by the Body Corporate or the Trustees, as the case may be, in accordance with this Constitution;
- 8.20.3 the Management Rules, the Conduct Rules, and, if applicable, the House Rules;
- 8.20.4 any agreement concluded by the Body Corporate insofar as such agreement may, directly or indirectly, impose obligations on a Member in his capacity as a Member;
- 8.20.5 any directive given by the Body Corporate or the Trustee in enforcing the provisions of this Constitution, including but not limited to the payment of any fine charged by the Trustees for non-observance; and/or
- 8.20.6 all the Scheme and/or Development approvals.

## Part Three: Financial Matters

### 9. EXPENDITURE AND LEVIES

#### Prior Authorisation

- 9.1 No Member will have the right or be authorized to bind or incur Expenses on behalf of the Body Corporate unless such Member receives the prior written approval of the Trustee in respect thereof.

#### Each Member Jointly Liable for Expenditure

- 9.2 Each Member will be jointly liable with and to the other Members for any expenditure incurred in connection with the main object or purpose of the Body Corporate and for anything done by the Body Corporate with the intention of benefiting its Members generally.

#### Obligation to Recover Expenses

- 9.3 The Body Corporate will recover all the Expenses incurred or anticipated to be incurred on behalf of the Association, and, such Expenses will be borne by each Member, equally or proportionately, as the case may be, by the Body Corporate charging the Members Levies.

#### Procedure for Raising Levies

- 9.4 The Body Corporate is authorized, empowered and obligated to pay the Expenses incurred by the Body Corporate by raising Levies from the Members in accordance with the Acts and their respective Regulations, by means of:
- 9.4.1 an Annual Levy; and/or
- 9.4.2 a Special Levy in respect of all such Expenses which are not included in any estimate made; and/or
- 9.4.3 an Extra-ordinary Special Levy specific to a particular Member or groups of Members where an expenditure is incurred by the Body Corporate, which the Trustees, in their Discretion, consider such expenditure to benefit primarily or only such Members or groups of Members; and/or
- 9.4.4 establishing and maintaining a Levy Reserve Fund for the purposes of meeting the contingency Expenses of the Body Corporate in respect of *inter alia*:
- 9.4.4.1 the control, management and administration of the Body Corporate and the Scheme;
- 9.4.4.2 the general attainment of its objects as stipulated in this Constitution;
- 9.4.4.3 the maintenance of the Common Property and the costs of and charges in respect of the Services, including but not limited to electricity, water and sewerage consumed or used on the Common Property and any bulk supply to the Scheme;
- 9.4.4.4 the supply of any Services rendered to and/or by the Body Corporate and the Scheme;

- 9.4.4.5 expenses necessarily and reasonably incurred pursuant to the management of the Body Corporate;
- 9.4.4.6 security for the Scheme;
- 9.4.4.7 the continued landscaping of the Land;
- 9.4.4.8 rates and other taxes and imposts in respect of *inter alia* the Land that may be levied on the Body Corporate by the Local Authority or be the responsibility of the Body Corporate; and/or
- 9.4.4.9 fulfilling the obligations and/or duties of the Body Corporate.

#### **Debt Due**

- 9.5 Any amount due by a Member by way of a Levy will be a debt due by him to the Body Corporate payable on such dates and times as determined by the Trustees.

#### **VAT**

- 9.6 In the event the Body Corporate is required to register as a VAT vendor, the Body Corporate may be obliged to pay VAT calculated on the Levies levied and payable by the Members and, in such an event, the Members will be obliged to pay such VAT that may be levied by the Body Corporate.

#### **Overdue Levies**

- 9.7 A Member will be obliged to pay interest on any Levy and/or other payment not paid on the due date therefore, at the interest rate charged by the Body Corporate from time to time, which interest will accrue and compound monthly from the date when such Levy and/or payment is due to the date when payment is actually made.
- 9.8 If any Member fails, refuses and/or neglects to make payment on due date therefore of any Levy and/or any other amount payable by such Member to the Body Corporate, including, without limitation, interest, the Body Corporate may give such Member notice to remedy such failure, within such period as the Body Corporate may determine and, should the Member still fail, neglect and/or refuse to timeously make such payment, the Body Corporate will be entitled and have the unfettered right to:
  - 9.8.1 disconnect and/or discontinue any Services to that Member's Unit; and/or
  - 9.8.2 refuse that Member any access to the Communal Facilities; and/or
  - 9.8.3 institute legal proceedings against such Member without further notice,

and such Member will be liable for and will pay all costs, charges, imposts, taxes, levies and/or penalties associated therewith, including all the Body Corporate's legal costs, including collection commission and other expenses and charges incurred by the Body Corporate in recovering such amounts.

#### **Cessation of Levies**

- 9.9 No Levies paid by a Member will under any circumstances be repayable by the Association upon his ceasing to be a Member.



- 9.10 A Member will not be obliged to pay any future Levies to the extent after and as from the date he ceases to be a Member, but will remain liable for those Levies invoiced, but not yet paid and arrear Levies.

**Developer's Levies**

- 9.11 For so long as the Developer is the Registered Owner of the Land or any portion or remainder thereof, the Developer will not be required to pay Levies unless the Developer becomes a lawful owner of a Unit.

**Levy Stabilisation Fund**

- 9.12 The Body Corporate will have a right to receive from and be paid by the Purchaser, in perpetuity 15% (fifteen percent) of the difference between the price a purchaser (including successors in title and/or assigns by agreement of Law, including but not limited to heirs, beneficiaries, legatees and each of the subsequent Unit Owners) receives on the resale (or Disposal) of his unit and what such purchaser (including his successors in title and/or assigns by agreement or Law, including but not limited to heirs, beneficiaries and each of the subsequent Unit owners) paid for such unit, from time to time after taking into account any permanent structural improvements and/or agents commission. The funds so accumulated in the Levy Stabilisation Fund, are to be utilised by the Body Corporate to ensure that levy increases are minimized, to underwrite the ability of the Body Corporate to be financially stable and to ensure the sustainability of the retirement complex lifestyle

## **Part Four: Management and Control**

### **10. THE MANAGING AGENT**

- 10.1 The Developer will be entitled to appoint the Managing Agent to manage the affairs of the Body Corporate, if any, prior to its establishment. It will be within the Discretion of the Developer to determine the terms and conditions of the appointment of the Managing Agent, including the fees and/or remuneration payable.
- 10.2 All and/or any fees and /or remuneration payable to the Managing Agent will be paid by the Body Corporate and not the Developer.
- 10.3 The appointment of the Managing Agent will, subject to the requirements of the Law, endure initially for a period of 12 (twelve) calendar months from the appointment coming into effect and be terminated on reasonable notice in terms of both the Management Rules and the Management Agreement.
- 10.4 The Body Corporate will be responsible for the appointment of any successive Managing Agents, it being contemplated that the affairs of the Body Corporate will at all times be entrusted to a professional manager with appropriate executive powers so as to conform to the requirements of good corporate governance.
- 10.5 Subject to this Constitution and the terms of the appointment, the Managing Agent will:
- 10.5.1 report to and be under the direction and instruction of the Trustees; and
- 10.5.2 have full power and authority to manage the business of the Body Corporate, provided any exercise of such powers will not exceed the powers contained in this Constitution, the Acts, the Acts' Regulations, the HDSFRP Act, the HDSFRP Regulations, the Management Rules, the Conduct Rules and/or the House Rules (if applicable), as the case may be.

### **11. THE TRUSTEES**

#### **Purpose**

- 11.1 The affairs of the Body Corporate will be managed by and be under the control and direction of the Trustees as set out in the Management Rules and the Conducts Rules.

#### **Vacating of the Office of a Trustee**

- 11.2 In amplification and addition to the Management Rules, a Trustee will be deemed to have vacated his office, as such, upon:
- 11.2.1 his estate being sequestrated, whether provisionally or finally, or he surrendering his estate;
- 11.2.2 his having become disqualified to act as a director in terms of the Companies Act, 2008 (Act No. 71 of 2008);
- 11.2.3 his making any arrangement or compromise with his creditors;
- 11.2.4 his conviction for any offence involving dishonesty;

- 11.2.5 his becoming of unsound mind or being found a lunatic;
- 11.2.6 his resignation from such office in writing delivered to the Chairman;
- 11.2.7 his death;
- 11.2.8 his being removed from office by a Special Resolution of the Members; or
- 11.2.9 the majority in number of Trustees vote, at a Trustee Committee Meeting, to remove him as a Trustee; or
- 11.2.10 his alienating or disposing of his Unit,

provided that anything done in the capacity of a Trustee, in good faith, by a Person who ceases to be a Trustee, will be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustees.

## **12. MEMBERS**

### **Companies**

- 12.1 In amplification and addition to the Management Rules, any company which is a Member may, by resolution of its directors or shareholders, authorise such Person as it deems fit to act as its representative at any Meeting of the Body Corporate and the Person so authorised will be entitled to exercise the same powers on behalf of the company which he represents as that company could exercise if it were an individual Member.

### **Trusts**

- 12.2 The provisions of Article 12.1 will apply *mutatis mutandis* in the case of a trust.

### **Incapacity**

- 12.3 In amplification and addition to the Management Rules, should any Member be declared:
  - 12.3.1 incapable of managing his own affairs; or
  - 12.3.2 a prodigal; or
  - 12.3.3 insolvent; or
  - 12.3.4 in the case of a company, placed under judicial management, business rescue or into liquidation (provisionally and/or finally),

such Member will be represented by his *curator bonis*, trustee, judicial manager, business rescue practitioner or liquidator, as the case may be, who will be entitled to vote on his behalf, either personally or by proxy. In the case of a Member who has passed away, for so long as his estate is being wound-up he will be represented by the executor of his estate.

## Part Five: Special Provisions

### 13. TRANSFERS OF UNITS

#### Restriction on Transfer

- 13.1 No Member will be entitled and/or have the authority, right and/or power to deal in, sell, alienate, dispose, cede, delegate, pledge or in any other manner whatsoever, whether by way of usufruct, right of use, exchange, donation, grant of an option or pre-emptive right, testamentary disposition or as a consequence of intestate succession, transfer, alienate or dispose of his Unit and any rights in respect of any exclusive use area to another Person without first having obtained the prior written consent of the Body Corporate and such transfer, alienation and/or disposal is in compliance with the Acts, this Constitution and the Management Rules, as the case may be. This Article applies equally to the Member's spouse, beneficiary, legatees, heirs, administrators, executors and assigns.
- 13.2 The Body Corporate will be entitled, but not obliged, to withhold its consent to the transfer, alienation and/or disposal contemplated in Article 13.1 until all of the following have been complied with:
- 13.2.1 the transferee (or proposed Member) and the proposed Occupants of the Unit (if any) have acknowledged and agreed, in writing (in a manner and form acceptable to the Body Corporate), to be bound by this Constitution, the Management Rules, the Conduct Rules and/or, if applicable, the House Rules, as the case may be; and
- 13.2.2 Levies and any other amounts due to the Body Corporate by the Member (and all Occupants claiming through him) of the Unit, have been paid-up to date of transfer and/or provision has been made to the satisfaction of the Body Corporate for the payment thereof against transfer.

#### The Developer's Right to Profits on Resale

- 13.3 The Developer (and/or its successors in title and/or assigns) will and has the right, in perpetuity, to receive from and be paid by each and every Member, from time to time, 10% (ten percent) of the difference between the price a Member (including his successors in title and/or assigns by agreement or Law, including but not limited to heirs, beneficiaries, legatees and/or usufructaries) receives and/or is paid on the transfer, alienation, resale or disposal of his Unit and what such Member paid for such Unit after taking into account any permanent structural improvements and/or agents commission ("**Developer's Right to Profits on Resale**"). By way of amplification: every time a Member deals in, sells, alienates, disposes, cedes, delegates, pledges or in any other manner whatsoever, whether by way of usufruct, right of use, exchange, donation, in exercising a grant of an option or pre-emptive right, testamentary disposition or as a consequence of intestate *vis-a-vis* his Unit and any rights in respect of any exclusive use area to another Person, the Developer must be paid the Developer's Right to Profits on Resale.
- 13.4 Notwithstanding any other Article, but subject at all times to the Law, it is an express and overriding provision of this Constitution that this Article 13.4 and Article 13.3 cannot be amended, varied, changed, deleted, substituted or in any way vitiated without the prior written consent of the Developer. For the avoidance of doubt, if and to the extent the Members are desirous of and do substitute this Constitution for another Constitution, a Memorandum of Incorporation, any other founding document or no constitution or founding document at all, this Article 13.4 and Article 13.3 will be incorporated therein or stand alone, as the case may be, and likewise

bind the Members accordingly.

#### **14. DEALING WITH THE UNIT, THE COMMON PROPERTY AND THE COMMUNAL FACILITIES**

- 14.1 Save as reserved by and for the benefit of the Developer, neither the whole nor any portion of the Land (save for a Unit), including but not limited to the Service Station Area, can or will be:
- 14.1.1 sold, let, alienated, otherwise disposed of, subdivided or transferred other than by the Developer; or
  - 14.1.2 mortgaged, other than by the Developer; or
  - 14.1.3 subjected to any rights, whether registered in the Deeds Office or not, of use, occupation or servitude (save those enjoyed by the Members), other than by the Developer; or
  - 14.1.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than by the Developer or other than as contained in this Constitution and in the approved layout plan,

without the sanction of a special resolution of the Members and the prior written approval of the Developer. It being a fundamental and material term of the Scheme that the Developer has reserved the right, but not the obligation, to extend the Scheme onto and/or with the Service Station Area and/or any adjoining properties.

- 14.2 The Local Authority will not be responsible for, and the Body Corporate will be solely responsible for the construction, care, repair, maintenance, cleaning, upkeep, improvements and proper control of the Land (save for the Service Station Area for so long as it remains a garage and filling station and/or not part of the Scheme), the Common Property, the Communal Facilities, the Services, the Common Services therein (other than services provided and/or maintained by the Local Authority, if any) and all amenities and improvements located or to be located on or within the Land.
- 14.3 The Local Authority will at no time in the future assume ownership of the Common Area.

#### **15. SERVICES**

- 15.1 With effect from the date upon which the Body Corporate is created the obligation to maintain the Services and the Common Services will pass from the Developer to the Body Corporate.
- 15.2 Notwithstanding any other Article the Local Authority may, in and at its Discretion, elect to assume the obligation to repair and maintain either or all of the water, sewage and electricity services in the Development, provided that the necessary ordinances and/or bye-laws make provision therefore and/or a written agreement is concluded between the Local Authority and the Developer or the Body Corporate, as the case may be, which agreement may include the following provisions:
- 15.2.1 the Common Services will be provided to each Member on an individually metered basis;

- 15.2.2 the Body Corporate will allow the Local Authority's staff 24 (twenty-four) hour access to the Land in respect of such Common Services;
- 15.2.3 all elements of the Common Services must comply fully with the Local Authority's specifications and requirements;
- 15.2.4 the Local Authority will, after repairs to any infrastructure and/or equipment delivering the Common Services, only be obliged to reinstate roads, paths, verges, footways and the like to such reasonable standards as may be applicable in non-private townships - any further reinstatements over and above such standard will be undertaken by the Body Corporate at its cost;
- 15.2.5 a suitable indemnity against any damage to roads, walls, fences, verges and the like which may be caused by the Local Authority's vehicles or staff on the Development;
- 15.2.6 full servitude rights of way along all roads and pipeline cable routes for the purposes of inspection, maintenance and repair of the Common Services; and/or
- 15.2.7 the Common Property will be metered and the Body Corporate will be liable for the payment of all costs relating to the Common Services.

## **16. CONDUCT RULES**

- 16.1 The Conduct Rules form an integral part of this Constitution.
- 16.2 Each and every Member, including any Person occupying under him and/or any Person seeking access to the Land under him and/or under his name or instance or invitation will be obliged to abide by and obey the Conduct Rules.
- 16.3 The Conduct Rules have been included for the benefit of all Members and, as such, save for the provisions contained in Article 16.4, any amendment, deletion and/or addition thereto will require the prior approval as prescribed in the Acts.
- 16.4 The Managing Agent will be permitted to submit to the Trustees the initial House Rules and any proposed changes thereto from time to time.

## Part Six: Legal Provisions

### 17. PRIVILEGE IN RESPECT OF DEFAMATION

Every Member and every Trustee will 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 Developer, the Trustees, the Chairman or Vice-Chairman, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Body Corporate, 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, report, complaint or notice of or concerning such Member, the Developer or Trustee, or any reference to such Member, the Developer or Trustee, made at any Trustee meeting or meeting of the Body Corporate, or otherwise in the performance or exercise of any right, function, duty, power or trust, being a statement, report, complaint, notice or reference defamatory to such Member, the Developer or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member, the Developer or Trustee, whether such statement be true or false.

### 18. ENTRENCHED PROVISIONS

The Developer and the Body Corporate, as the case may be, have a continuing and permanent interest to ensure that certain provisions in this Constitution are entrenched to ensure the success of the Development and the Scheme. In addition to any other entrenched Articles or rights herein contained, none of the provisions of (and specific rights contained in) Articles 22 to 28 (both inclusive) may be deleted or varied in any way in terms of this Constitution, without the prior written consent of the Body Corporate and the Developer.

19. The Developer, the Body Corporate and/or the Local Authority, as the case may be, may register, in their Discretion and where necessary, Common Services servitudes or rights of way over the Land and/or reservation of rights to extend the Scheme, in favour of:

19.1 the Local Authority; and/or

19.2 the Developer; and/or

19.3 the Association,

as the case may be.

20. The Developer will be entitled to incorporate the Service Station Area and/or adjacent and/or adjoining immovable properties into the Scheme or the Development, as the case may be, in which event all Persons who become owners of such Units will become Members of the Scheme.

21. The Body Corporate, the Trustees and no Member will be entitled to object to the subdivision and/or development of any part of the Land provided that such subdivision and/or development is not inconsistent with the Development Plan approved by the Local Authority for that part of the Development, nor will they be entitled to object to any such new development.

22. The Developer and/or the Body Corporate will, at all times, be entitled to draw electricity for the purposes of powering security and road lamps, an irrigation system and other areas deemed appropriate by the Developer and/or the Body Corporate,

as the case may be - the cost thereof will be borne by the Body Corporate, but recovered as part of the Levies.

23. Ownership of a Unit does not confer any right, including that of access, in respect of property owned by the Developer, including any right of way or access across such property.
24. The Developer, its successor/s in title, assigns and its employees, servants, estate agents, project managers, consultants, the Managing Agent, agents or contractors will have the right:
  - 24.1 of access specifically across any portion of the Land;
  - 24.2 to traverse all parts of the Land;
  - 24.3 to develop other areas, parts or portions of and on the Land, including the Service Station Area, in the future, and also the right to share various Common Services with the Body Corporate and to connect any parts of any future development to the Common Services in the Development;
  - 24.4 to lay pipelines, make roads, erect buildings and generally to carry on all of the works associated with the completion of a development on and/or over the Land; and/or
  - 24.5 to access to all portions of the Land for the purpose of showing the Development as well as, any Buildings erected thereon to prospective purchasers or Members of the Scheme or any extension thereof, and, to the extent deemed necessary by the Developer, maintain a show office or apartment in the Building.
25. The Body Corporate, by virtue of this Constitution, and all Members, by virtue of them having signed their Deeds of Sale with the Developer, accept that there will, in all probability, be noise and/or other nuisance during the taking of occupation of any Member or Occupier and/or any further development on the Land and, as such, the Developer will not be responsible for any loss, damage or inconvenience or nuisance which may be caused thereby.
26. **BREACH**
  - 26.1 Should any Member:
    - 26.1.1 fail to pay any of his Levies when they are due and continue not to pay within seven (7) calendar days after having received notice by the Trustees; or
    - 26.1.2 fail to comply with any provision of this Constitution, including without limitation, failing to adhere to the Management Rules, the Conduct Rules and the House Rules (if applicable), as the case may be, and not make any effort to comply with that provision within a reasonable period after having been called upon to do so by the Trustees or the Managing Agent, as the case may be, to comply with the provision,

then, in addition to the right to claim damages or any other legal right, including but not limited to applying to the High Court of South Africa for a mandatory interdict to force compliance by the Member for which the Member hereby authorizes such action, the Trustees or the Managing Agent, as the case may be, may proceed with legal action against that Member for the appropriate remedy or, if Article 29.1.2 applies, rectify that Member's failure to comply and claim all the costs of doing so



from that Member immediately. It being specifically understood that whilst the arbitration provisions set out in the Management Rules are for arbitrating disputes by and between the Members *inter se* and between the Members and the Body Corporate, the Body Corporate will be free and entitled to proceed by way of arbitration or directly to a court of competent jurisdiction to (i) claim any debt or amount owing by a Member to the Body Corporate or (ii) enforce any of its rights hereunder.

- 26.2 If the Trustees or the Managing Agent, as the case may be, proceeds with legal action against any Member, that Member will pay all of the Body Corporate's legal and other costs which have been incurred in connection with the legal action.

## 27. **DISSOLUTION**

- 27.1 The Body Corporate may be dissolved, terminated and/or wound-up, as the case may be, by a resolution of its Members provided that —

27.1.1 75% (three quarters) of the Members at the Meeting, present in person or by proxy, vote in favour thereof; and

27.1.2 the Local Authority, to the extent applicable or necessary, consents thereto; and

27.1.3 the Developer consents thereto.

- 27.2 In the event of such dissolution, termination or winding up, it will be the duty of the Trustees, or a suitably qualified Person appointed by it, to convert the Body Corporate's assets into cash, pay all the liabilities of the Body Corporate and thereafter distribute the rest to a similar association of persons succeeding the Body Corporate and which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act, 1962 (No 58 of 1962). If the Body Corporate is not succeeded by such an association, the remaining money will then be paid to such fund as may be required by Law or distributed to Members, as the case may be, or in default of such a decision, as may be determined by the Directorate for Non-Profit Organisations.

## 28. **ELECTRONIC COMMUNICATIONS**

- 28.1 Notwithstanding any other provision contained in the Management Rules, the Trustees may for any purpose arising out of this Constitution, except the serving of legal process, agree to receive and acknowledge receipt of communications in electronic format at the e-mail address of the Managing Agent or the Chairman.

- 28.2 A Member may in writing, in the form approved by the Trustees from time to time, for any purpose arising out of this Constitution, except the serving of legal process, agree to receive and acknowledge receipt of communications in electronic format at the e-mail address indicated in the form.

## 29. **RIGHTS OF THE DIRECTORATE FOR NON-PROFIT ORGANISATIONS**

Notwithstanding any other provision, to the extent applicable and required in Law, any and all amendments to this Constitution must and will have to be approved by the Directorate for Non-Profit Organisations and submitted to the Commissioner of the South African Revenue Services.

30. **VARIATIONS, WAIVERS & INDULGENCES**

- 30.1 No variation of, addition to, consensual cancellation of or waiver of any right arising in terms of this Constitution (including this Article) will be of any force or effect unless it is reduced to writing and signed on behalf of or by the Trustees or its duly authorised representative.
- 30.2 No failure of any Person to exercise, and no delay by him in exercising, any right, power or remedy in connection with this Constitution (each a "**Right**") will operate as a waiver of that Right, nor will any single or partial exercise of any Right preclude any other or further exercise of that Right or the exercise of any other Right. The Rights provided in this Constitution are cumulative and not exclusive of any other Rights (whether provided by Law or otherwise). Any express waiver of any breach of this Constitution will not be deemed to be a waiver of any subsequent breach. Likewise, one or more waivers of any right, obligation or default will not be construed as a waiver of any subsequent right, obligation or default.
- 30.3 Any liability to any Person under this Constitution may, in whole or in part, be released, compounded or compromised or time or indulgence given by that Person in his Discretion as regards any Person under such liability without in any way prejudicing or affecting his rights against the other Person under the same or a like liability, whether joint and several or otherwise.

31. **CONFLICT & COMPLIANCE WITH THE LAW**

- 31.1 Insofar as any of the provisions contained in this Constitution are in conflict with any Law of South Africa for the time being in force, such provisions will be deemed to be amended only to the extent necessary to comply with the provisions of such Law.
- 31.2 For so long as the prescribed Management Rules continue to apply, if any provision contained in this Constitution is in conflict with the Management Rules, such provisions will be deemed to be amended only to the extent necessary to comply with the provisions of such Management Rules.
- 31.3 If any provision of this Constitution is held to be invalid, illegal or unenforceable by a court of competent jurisdiction or arbitrator, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby, and this Constitution will be of full force and effect. Any provision in this Constitution which is or may become illegal, invalid or unenforceable will be ineffective to the extent of such prohibition or unenforceability and will be treated as *pro non scripto* (meaning as if not written) and severed from the balance of this Constitution, without invalidating the remaining provisions of this Constitution or affecting the validity or enforceability of such provision.

32. **ENGLISH LANGUAGE**

All notices issued pursuant to and/or in terms of this Constitution, as well as all legal actions and court and/or other proceedings will be written and conducted in the English language.

33. **CHOICE OF LAW**

This Constitution and the rights and obligations of the Body Corporate and the

Members will be governed by and construed in accordance with the Laws of South Africa, save where there is a conflict between the Laws of and as applied in the province of the Western Cape and any other province, the Laws as applied in the province of the Western Cape will prevail.

34. **JURISDICTION**

The Body Corporate and the Members are deemed to irrevocably submit and consent to the exclusive jurisdiction of the Courts of South Africa and, in particular, the Western Cape High Court, Cape Town (or its successor in title), in respect of any claim (including any dispute or difference) arising out of and/or in connection with this Agreement.

35. **ENFORCEMENT**

For the purposes of enforcing any claim and/or order made:

38.1 by any arbitration award or any Independent Expert; and/or

38.2 by any competent court,

the Body Corporate and the Members, to the extent necessary and applicable to give effect to the aforementioned, irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape High Court, Cape Town, to apply for such order to be enforced or claim payment, as the case may be.

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