

CONSTITUTION
OF THE
FINKENSTEIN HOMEOWNERS
ASSOCIATION

(amended November 2013)

INDEX

	Page
1. NAME	3
2. DEFINITIONS	3
3. INTERPRETATIONS	4
4. JURISDICTION	4
5. HEADQUARTERS	4
6. ADDRESS	4
7. LEGAL PERSONALITY	4
8. OBJECTIVES	4
9. POWERS	5
10. AUTHORITY AND FUNCTION OF THE FHA	5
11. STRUCTURES OF THE FHA:	6
11.1 MEMBERS OF THE FHA	6
11.1.1 MEMBERSHIP	6
11.1.2 OBLIGATIONS	6
11.1.3 BREACH	8
11.1.4 CESSATION	9
11.2 TRUSTEES	9
11.2.1 COMPOSITION AND OFFICE	9
11.2.2 AUTHORITY AND FUNCTION	10
11.3 SUB COMMITTEES	11
12. MEETINGS:	11
12.1 GENERAL MEETING:	11
12.1.1 NOTICE AND MEETING PROCEDURES	11
12.1.2 QUORUM	12
12.1.3 VOTING	12
12.1.4 BUSINESS	12
12.2 SPECIAL MEETING	13
12.3 TRUSTEES MEETING	13
12.3.1 QUORUM	13
12.3.2 PROCEEDINGS	13
12.4 SUB COMMITTEE MEETING	14
13. FINANCE	14
14. LIABILITY	15
15. SOLE CONSTITUTION	15
16. REPEALS AND AMENDMENTS	15
17. DISSOLUTION	15

1. NAME

The Association that is hereby constituted shall be the Finkenstein Homeowners Association.

2. DEFINITIONS

In this constitution the following words shall, unless the context otherwise requires, have the meanings herein after assigned to them:

“Act” means the Local Authority Act 23/1992 and the Regional Councils Act 22/1992;

“Association” means the Finkenstein Homeowners Association;

“Auditors” means the Auditors of the ASSOCIATION;

“Business day” means weekdays other than Saturdays, Sundays and Public Holidays;

“Chairperson” means the Chairperson of the Trustees;

“Vice-Chairperson” means the Vice-Chairperson of the Trustees;

“Design Manual” means the mandatory architectural, environmental and esthetical requirements and guidelines contained in the Annexure to this Constitution, which forms an integral part of this Constitution.

“Developer” means Finkenstein Development Trust.

“Development” means the Estate established by virtue of **Portion 4 of FARM FINKENSTEIN No 526** being approved **for Township Development as** such by the relevant authorities.

“Erf” means one of the subdivided portions indicated on the general plan of the development, **S.G.No. A264/2007**;

“Erven” means the portions **indicated on the general plan, S.G. No. A264/2007** resulting from the subdivision of **Portion 4 of the Farm Finkenstein No. 526**.

“FHA” means the Finkenstein Homeowners Association.

“Local Authority” means the Khomas Regional Council or local authority from time to time;

“Member” means every registered owner and every other person who is in terms of this Constitution a Member of the FHA;

“Month” means calendar month;

“Office” means the administrative office of the ASSOCIATION;

“Resolution” means a Resolution passed at a General Meeting or Special Meeting,

“Registered Owner” means the party or parties who are owners of an erf or erven acquired from the developer **or a prior registered owner** by virtue of a deed duly registered in the Registry of Deeds.

“This Constitution” means this Constitution and regulations and by-laws adopted by the FHA in terms of this Constitution and the Design Manual from time to time in force;

“Trustees” means the Trustees of the FHA from time to time and includes alternate and co-opted Trustees;

“in writing” means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;

“Year” means financial period of twelve months ending 28 February.

3. INTERPRETATION

Unless the context otherwise requires,

- 3.1 any words importing the singular number only shall include the plural number, and vice versa
- 3.2 words importing any one gender only shall include the other genders and
- 3.3 the interpretation by the Trustees shall be final and binding on all until amended by a resolution of a General- or Special Meeting.

4. JURISDICTION

The area of jurisdiction of the FHA shall be Portion 4 of the Farm Finkenstein no 526 as indicated on the general plan of development S.G. No. A264/2007.

5. HEADQUARTERS

6. ADDRESS

The Office of the FHA is situated at Portion 69 of Portion 4 of the Farm Finkenstein No. 526.

7. LEGAL PERSONALITY

- 7.1 The FHA is a legal persona and may exercise all the powers of a corporate body including the owning of assets, contracting and the right to conduct legal proceedings in its own name.
- 7.2 The FHA shall sue and be sued in the name of the FHA and the domicilium citandi et executandi will be **Portion 4 of the Farm Finkenstein No. 526.**
- 7.3 Members of the FHA, including all Trustees, are not personally liable for any decisions taken by the FHA or in the name of the FHA.
- 7.4 All assets and liabilities of the FHA belong to the FHA independent of its Members. Thus, no asset of the FHA can be claimed as a private asset by any of its Members, nor can the FHA claim any of the assets of a Member as a FHA asset.
- 7.5 The FHA is not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for investment or the objects for which it has been established or otherwise deal with it in terms of clause 17 infra.

8. OBJECTIVES

The main object of the FHA shall be the promotion and advancement of the Development and the protection of the communal interests of the Members, including but not limited to:

- 8.1 to represent the FHA on Governmental and other structures that share the same objectives;
- 8.2 to create and maintain such beneficial relationships and structures;
- 8.3 to advance, promote and safeguard the interests of the FHA;
- 8.4 to conform to all laws, rules, requirements, regulations, standards and procedures;
- 8.5 to do all things as may be incidental or conducive to the attainment of the above objectives and to do so in an open and transparent manner, free from racial, religious, or any other form of discrimination.

9. POWERS

The Association shall have the power:

- 9.1 To employ staff, acquire assets and enter into commitments for the promotion of its aims and objectives.
- 9.2 To lease, purchase or otherwise acquire premises, equipment, vehicles, furniture and other property assets, whether movable or immovable.
- 9.3 To improve, manage, exchange, lease, mortgage, sell, dispose of, turn to account and grant options, rights and privileges in respect of, or otherwise deal with, all or any part of the property and rights of the FHA.
- 9.4 To deposit or invest the monies and assets of the FHA not immediately required, in such securities and in such a manner as may from time to time be determined, provided that cash resources and investments will only be made with financial institutions as defined in the Financial Institutions Act (Act 39 of 1984) as amended from time to time.
- 9.5 To borrow or raise money in such a manner as the FHA shall deem fit and in particular to secure the payment of money so borrowed by means of mortgage, pledge, charge of lien upon the whole or part of the FHA's property or assets; and also by mortgage, pledge, charge, or lien to secure and guarantee the due performance by the FHA of any obligation or liability it may undertake.
- 9.6 To operate banking accounts and to draw, make, accept, endorse, sign, discount, execute and issue cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable documents.
- 9.7 To make regulations, rules or bylaws and/or pass resolutions that shall not be inconsistent with the terms of this Constitution.
- 9.8 To carry on any negotiations or operations for the purpose of directly or indirectly furthering the interest of the FHA and to oppose any proceedings or agitation that may seem to the FHA to be detrimental to the interest of the FHA.
- 9.9 To perform any such tasks and to do all such other things as are required, incidental or conducive to the attainment of the objectives of the FHA.

10. AUTHORITY AND FUNCTION OF THE FHA

The supreme authority of the FHA shall be the collective membership at a duly constituted General Meeting or Special Meeting who shall be entitled:

- 10.1 To adopt repeals or amendments to this Constitution in accordance with the provisions contained herein.
- 10.2 To amend, modify or amplify the regulations, rules and bylaws of the FHA.
- 10.3 To determine, amend, modify or amplify the general policy of the FHA as may be required, incidental or conducive to the attainment of the aims and objectives of the FHA.
- 10.4 To appoint and remove Trustees to attend to the business of the FHA under conditions and with powers contained in this Constitution.

11. STRUCTURES

The FHA shall consist of Members, Trustees and such sub-committees as the Trustees may from time to time consider conducive to the functioning of the FHA. The Members shall appoint the Trustees at a General – or Special Meeting. The Trustees may appoint one or more sub-committee/s.

11.1 MEMBERS

11.1.1 MEMBERSHIP

- 11.1.1.1 Membership of the FHA shall be limited to Registered Owners of erven in the Development, provided that where any such ownership vests in more than one person, all such registered owners of any particular erf shall be deemed jointly and severally to be one Member of the Association, as well as the Developer, subject to the stipulations of the attached annexure “A” or its written resignation.
- 11.1.1.2 All members shall have the right to participate and vote at meetings off the FHA, unless this right is suspended under conditions of this constitution.
- 11.1.1.3 The rights and obligations of a Member shall not be transferable.

11.1.2 OBLIGATIONS

- 11.1.2.1 Each Member of the FHA shall to the best of his ability further the objects and interests of the FHA,
- 11.1.2.2 comply with the provisions of this constitution, by-laws, rules and regulations;
- 11.1.2.3 the Development shall be developed in accordance with a standard approved by the Trustees;
- 11.1.2.4 no building or erection of structures shall be commenced with in the Development and no additions or alterations to approved buildings shall be effected until the Trustees or anyone to whom the Trustees have delegated this particular function, have approved in writing that the design and construction plans, including material and colour specifications are in line with the Design Manual.
- 11.1.2.5 the Trustees or their nominee(s) shall be the judges as to the suitability of the design and/or construction method, material or colours and their decision shall be final;

- 11.1.2.6 each Registered Owner shall take care of any trees on the erf registered in his name, and he shall not remove or cut down, or cause to be removed or cut down any trees, without the prior written consent of the Trustees;
- 11.1.2.7 each Registered Owner shall establish and maintain a garden on the erf registered in his name in accordance with the Design Manual;
- 11.1.2.8 each registered owner shall maintain in a neat and tidy condition all buildings and/or structures erected on the erf registered in his name;
- 11.1.2.9 each Registered Owner shall adequately insure all buildings and/or structures erected on the erf registered in his name (and if requested, to furnish proof of such insurance to the Trustees) and in the event of total/partial destruction shall within a reasonable time period make good such damage or reconstruct in accordance with the original approved plans or, in the event of total reconstruction, in accordance with the Trustees' approval mutandis the provisions of clause 11.1.2.3 to 11.1.2.5.
- 11.1.2.10 no Registered Owner shall without the prior written consent of the Trustees:
- i alter the previously approved external colour scheme of buildings/structures erected on the erf registered in his name;
 - ii erect or construct on the erf registered in his name any solar power system, outdoor radio aerial or other aerial(s) and/or similar structures not in accordance with the design manual;
 - iii permit any commercial type vehicle, boat, caravan, trailer, or any derelict or abandoned vehicle to be parked on or in front of the erf registered in his name, which, in the opinion of the Trustees, is unsightly;
 - iv do or allow to be done 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 in the area;
- 11.1.2.11 in granting any approval in terms hereof the Trustees shall have the right to determine the siting of all buildings and/or structures (including garden/ boundary/link walls) to be erected on the erf and to impose such conditions as the Trustees deem necessary;
- 11.1.2.12 dogs and other household pets may be allowed at the sole discretion of the Trustees who may withdraw such concession on one(1) month written notice to that effect should such pets create a nuisance for other Members or visitors and all pets shall be kept in a proper enclosure and shall be on a leash whenever allowed outside of the said enclosure
- 11.1.2.13 where the Trustees in special circumstances permit the erection of a structure to house animals or birds or the erection of garden/tool shed(s) such structures/sheds shall be screened from public view and animals/birds shall not constitute a disturbance or nuisance to owners/tenants/occupiers of adjoining properties
- 11.1.2.14 the decision of the Trustees in regard to the provisions of 11.1.2.1 to 11.1.2.13 shall be final and binding on all parties

- 11.1.2.16 In respect of the sale, donation, alienation of any erf in the Development, or of any interest in and to any legal person or trust who holds an erf or erven in the Development, the following shall apply:

No erf or interest shall be transferred or ceded without the written consent of the FHA which consent shall not be unreasonably withheld, provided that:

- i. the Registered Owner of the erf in question or the relevant legal persona or trust has fulfilled all its financial obligations to the FHA in terms of this constitution; and
- ii. a copy of this constitution and all amendments thereto be annexed to the Agreement of Sale concluded with the transferee and
- iii. the Agreement of Sale in the event of the sale of an erf contains the following clause:
 "The Purchaser, his heirs, executors, administrators or assigns shall, against registration of transfer of the erf ipso facto become and remain a Member of the FHA and be subject to the constitution and rules and regulations of the FHA."

11.1.3 BREACH

If any Member, tenant or occupier of an erf by act or omission commits a breach of any of the conditions of this Constitution and fails to remedy such breach after the Trustees have given the Member written notice to make good such breach within a time specified in such notice then:

- 11.1.3.1 The Trustees shall be entitled, without further notice to the member, to institute proceedings against the member and without detracting from the generality of the foregoing, obtain an interdict against the Member.
- 11.1.3.2 The Trustees (or those employed by the Trustees on behalf of the FHA) may enter upon the erf to take such action as may be required (as determined in the discretion of the Trustees) to remedy the breach and the Member concerned shall be liable to the FHA for all costs so incurred which costs, including legal costs, shall be due and payable upon demand. The foregoing action shall, without detracting from the generality of the foregoing, include the obtaining of the services of a garden service company.
- 11.1.3.3 Any Member who fails to make payment to the FHA on due date of any levies or other payments or who otherwise breaches or fails in the observance of any of the provisions of this Constitution may, if so determined by a resolution of the Trustees:
 - 11.1.3.3.1 be imposed a fine by the FHA to an amount not exceeding an amount equal to double the amount outstanding;
 - 11.1.3.3.2 be ordered to pay to the FHA or any Member or other person aggrieved by the breach or failure in question, such sum as the Trustees after suitable enquiries shall deem fit;
 - 11.1.3.3.3 be liable for and pay all legal costs as between attorney and client, collection, commission, expenses and charges incurred by the FHA in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such Member to the FHA.
- 11.1.3.4 The Member concerned shall be invited to attend such meeting of the Trustees by prior notice in writing delivered to such Member not less than

21(twenty one) days before the holding thereof, and such Member shall be given the right to be heard, and to be legally represented, but not to be present at the voting or to take part in the proceedings, other than to the extent allowed by the Chairperson of the meeting.

11.1.3.5 The Trustees shall be entitled to charge interest on arrear amounts (including amounts due in terms of clause 11.1.3.3) at the maximum rate permissible in terms of the Usury Act.

11.1.3.6 Nothing in the foregoing shall derogate from or in any way prejudice the right of the FHA to institute proceedings in any court of component jurisdiction for recovery of any money due by a Member.

11.1.3.7 Any Member who fails to make payment to the FHA on due date of any levies or other payments shall immediately forfeit his voting rights at any meeting of the FHA and his presence at such meeting shall not be counted for quorum purpose, and does not require a resolution of the Trustees.

11.1.4 CESSATION

11.1.4.1 A Registered Owner may under no circumstances resign as a Member of the FHA.

11.1.4.2.1 When a Member ceases to be a Registered Owner of an erf, he shall ipso facto cease to be a Member of the FHA.

11.2 TRUSTEES

11.2.1 COMPOSITION AND OFFICE

11.2.1.1 There shall be a Board of Trustees of the FHA which shall consist of no less than 3 (three) and not more than 5 (five) persons, the exact number to be determined from time to time at a Meeting of the FHA as well as 3 (three) persons nominated by the Developer as stipulated by and under the conditions of the attached annexure "A".

11.2.1.2 A Trustee shall be an individual, but need not himself be a Member of the FHA, provided that a majority of Trustees shall be Members. A Trustee however, by accepting his appointment to office, shall have to agree to be bound by all the provisions of this Constitution.

11.2.1.3 The nomination of a new trustee shall be done by a Member on a nomination form, which must be delivered to the Office of the FHA, duly completed, at least 21 (twenty-one) days before a General Meeting or Special Meeting. The nominee must have accepted the nomination by signing the nomination form, and a further two Members must have seconded the nomination in order for it to be valid. An election to office of such duly nominated trustees shall be done by Resolution at a duly constituted General Meeting or Special Meeting.

11.2.1.4 Each Trustee shall hold office for a period of 3 (three) years, after which period the Trustee shall be deemed to have retired, but will be eligible for re-election.

11.2.1.5 A Trustee shall be deemed to have vacated his office upon:

11.2.1.5.1 his estate being sequestered, whether provisionally or finally, or his surrendering his estate;

11.2.1.5.2 his making any arrangement or composition with his creditors;

- 11.2.1.5.3 his conviction of any offence involving dishonesty;
- 11.2.1.5.4 his becoming of unsound mind;
- 11.2.1.5.5 his resigning from office in writing delivered to the registered office of the FHA;
- 11.2.1.5.6 his being in breach with this Constitution;
- 11.2.1.5.7 his being removed from office by a Resolution with a simple majority at a General Meeting or Special Meeting.

11.2.1.6 Should the office of a Trustee fall vacant prior to the next General Meeting, the vacancy shall be filled by a person nominated by the remaining Trustees for the time being, and such nominee shall hold office until the next General Meeting when he may be eligible for re-election.

11.2.2 AUTHORITY AND FUNCTIONS

- 11.2.2.1 Subject to the provisions of this Constitution, and deriving its authority from the Members in General- or Special Meeting, the Trustees shall have both the authority and responsibility for the efficient and effective management and control of the business and affairs of the FHA.
- 11.2.2.2 The trustees shall have the right to co-opt any person or persons nominated by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees, provided that such co-opted Trustee shall only serve until the next General Meeting.
- 11.2.2.3 The Trustees shall be entitled to be reimbursed all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees, and shall also be entitled to reasonable and fair remuneration, fees or salary in respect of the performance of such duties.
- 11.2.2.4 The trustees shall have the authority to perform the following functions:
 - 11.2.2.4.1 To manage the day-to day running, including the making, changing and implementing of rules, regulations and byelaws and transact the business of the FHA in such manner as it may deem fit and expedient, provided that changes or additions to the rules and regulations shall be reported on at the next General Meeting of the FHA.
 - 11.2.2.4.2 To enforce the uniform interpretation of this Constitution and performance of its regulations, rules and byelaws.
 - 11.2.2.4.3 To engage without any favouritism the services of professional officers and any other person/s, professional and otherwise, companies or concerns and upon such terms and conditions as may be deemed expedient
 - 11.2.2.4.4 To delegate any one or more of its functions and powers to any other committee.
 - 11.2.2.4.5 To prepare and make recommendations regarding repeals or amendments to the FHA's Constitution.
 - 11.2.2.4.6 To develop and implement policies in regard of, but not limited to, investment, procurement, personnel, dispute resolution, promotion and advancement of the objects of the FHA and Members' interests and any other aspect of good governance, the principals of such policies that the FHA in Meeting might decide.
 - 11.2.2.4.7 To prepare and propose the budget for the following year, annual management plan and annual capital development plan of the FHA.
 - 11.2.2.4.8 To estimate the amount which shall be required by the FHA's expenses in regard of maintenance, control, management, administration, reserves and development during each year or any portion thereof.

- 11.2.2.4.9 To raise and collect levies from registered owners based on the valuation of the original open erf and/or any other basis , which the Trustees may deem relevant and approved from time to time by a Meeting of the Members.
- 11.2.2.4.10 To raise special levies on registered owners in respect of such expenses as are mentioned in clause 11.2.2.4.8 for unforeseen and urgent circumstances, which levies may be imposed and be payable in lump sum or by such instalments and at such time as the Trustees shall deem fit.

11.3 SUB-COMMITTEES

- 11.3.1 Deriving the authority from clause 11.2.2.4.4 supra, the Trustees may appoint sub-committee/s to investigate, research and otherwise gather information to advise and make recommendations for the consideration of the Trustees.
- 11.3.2 The terms of reference, including but not limited to their task, the timeframe, reporting frequency and budget shall be clearly indicated. Should the task take longer than 2 (years) or be of a repetitive nature, the lifespan of the committee may be extended, and reconsidered biannually, by the General Meeting of the FHA.
- 11.3.3 Every sub-committee shall consist of one or more Trustee/s, who shall be the Chairperson, and, subject to clause 11.2.2.4.3, such others as is deemed necessary to efficiently complete the task.

12. MEETINGS

12.1. GENERAL MEETING

The General Meeting of the FHA shall be held annually as soon as possible after the end of the FHA's financial year, but not later than the end of November, at a time and place determined by the Trustees.

12.1.1 NOTICE AND MEETING PROCEDURES

- 12.1.1.1 At least 35 (thirty five) days written notice to all postal and/or electronic addresses of Members shall be given stating the date, time and place of a General Meeting, together with the provisional agenda and inviting Members to nominate new trustees for election in terms of 11.2.1.3 and to propose business topics to be discussed at the Meeting. Such proposed discussion topics must preferably, but not necessarily be accompanied by a motivation of or background to the topic and reach the office of the FHA within 10 (ten) days of the date of the notice.
- 12.1.1.2 The Trustees shall consider all proposals received for possible inclusion in the agenda. If a proposal is not included, the Trustees shall communicate the reasons for their decision to the Member who proposed it.
- 12.1.1.3 At least 21 (twenty one) days notice as in 12.1.1.1 supra shall be given as a reminder with the agenda and background documents to possible resolutions.
- 12.1.1.4 The duly audited statements of the financial affairs of the FHA, the Trustees' report for the past year, the management plan and the capital development plan for the following year, and the proposed budget for the next financial year shall form part of such notice.

- 12.1.1.5 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification or present any documents required to be given or sent, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution taken at any Meeting.
- 12.1.1.6 The Chairperson of the Trustees shall chair the meeting. In the absence of the Chairperson, the Vice-chairperson shall chair the meeting. Should both be absent, the Trustees shall appoint the Chairperson.
- 12.1.1.7 Minutes shall be kept of all meetings, not necessarily verbatim, reduced to writing within 21 (twenty-one) days and circulated to all Members. If no dispute is declared or if the dispute is in the opinion of the Trustees not material to the intent of the Resolution, the Resolutions of the Meeting shall be implemented. Such minutes shall be kept in perpetuity and be open for inspection by a Member.

12.1.2 QUORUM

- 12.1.2.1 The quorum for the General Meeting shall be 25 (twenty five) percent of the Members entitled to vote thereat.
- 12.1.2.2 If within half an hour from the time appointed for the holding of the General Meeting a quorum is not present, the meeting shall stand adjourned to the same day the next week, at the same place and time or at such other place as the Chairperson of the Trustees shall appoint, and if at such adjourned meeting a quorum is not present, the Members present shall be a quorum.

12.1.3 VOTING

- 12.1.3.1 Every Member present in person or by proxy (and entitled to vote) shall have 1 (one) vote. Where a single erf is registered in more than one persons name, then they shall jointly have 1 (one) vote. Where a Member is the registered Owner of more than one erf, he shall have 1 (one) vote in respect of each erf.
- 12.1.3.2 All resolutions put to the vote shall be decided on by a show of hands, unless a Member requests a ballot, which shall be taken in a manner the Chairperson directs. The Chairperson shall declare such results of the vote and the decision shall be recorded in the Minutes.
- 12.1.3.3 All business except amendments to this Constitution, shall be decided on a simple majority vote and in case of equality of votes, the Chairperson shall have a casting vote.
- 12.1.3.4 Any resolution seeking the repeal or amendment to this Constitution shall require a two-thirds majority.

12.1.4 BUSINESS

The General Meeting shall deal with and consider for acceptance, amendment, qualification or rejection of:

- 12.1.4.1 the Trustees report;
- 12.1.4.2 the financial statement of the FHA for the financial year preceding the date of such meeting;

- 12.1.4.3 the annual plan for the current year;
- 12.1.4.4 the capital development plan for the current year;
- 12.1.4.5 the budget as presented by the Trustees, specifically the confirmation of current and, if any, proposed levies, provided that amendments to the budget that can not immediately be quantified or in any way render the budget as impossible to consider at the Meeting and/or a rejection of the proposed budget, should contain either a date for a revised budget and its presentation to Members or otherwise provide for the continued functioning of the FHA;
- 12.1.4.6 any other business pertinent to such meeting including any Resolutions proposed for adoption, and
- 12.1.4.7 the election of Trustees.

12.2 SPECIAL MEETING

- 12.2.1 The Trustees may, whenever they deem fit, convene a Special Meeting for a specific purpose including to consider and effect repeals and amendments to this constitution.
- 12.2.2 On receipt of a written request, signed by 20 (twenty) Members, the Trustees shall be obliged to convene a Special Meeting. Such request shall state the reason/s and proposed resolution/s for the Meeting's consideration.
- 12.2.3 Notice for the Meeting shall be in line with clause 12.1.1.3, quorum and voting as in clauses 12.1.2 and 12.1.3 respectively and the minutes to be dealt with as in 12.1.1.7.

12.3 TRUSTEE MEETING

12.3.1 QUORUM

The quorum of a meeting shall require a majority of the trustees being present. A Trustee may be represented by a proxy by a person who need not be a Trustee of the FHA. The appointment must be in writing and a certified copy deposited at the office of the FHA before the scheduled start of a meeting of the Trustees.

12.3.2 PROCEEDINGS

- 12.3.2.1 The Trustees shall meet immediately after the adjournment of a Meeting where one or more Trustees had been elected or re-elected to elect a Chairperson and Vice-Chairperson from their number. Thereafter the Trustees shall meet as needed for the dispatch of business but at least every 6 (six) months.
- 12.3.2.2 The Chairperson shall preside as such at all meetings of Trustees provided that should at any meeting the Chairperson not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-chairperson shall act as Chairperson at such meeting. In the case of both being absent, the Trustees present shall appoint a Chairperson from one of their number.
- 12.3.2.3 Three (3) Trustees may at any time convene a meeting of Trustees by giving to the other Trustees not less than 21 (twenty one) days written notice with the reason/s for a meeting proposed by them, provided that in

case of urgency shorter notice as is reasonable in the circumstances may be given. A resolution in writing signed by a quorum of Trustees present shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.

12.3.2.4 The Trustees shall:

12.3.2.4.1 ensure that minutes are taken of every meeting, not necessarily verbatim, which minutes shall be reduced to writing within 7 (days) and circulated to all Trustees;

12.3.2.4.2 the decisions contained the minutes may be implemented after 7 (seven) days if no dispute is declared in regard to the correctness of the minutes by any Trustee who was present at the meeting.

12.3.2.4.3 discuss the minutes and it may be changed and then certified correct by the Chairperson at the next meeting of the Trustees;

12.3.2.4.4 cause such minutes to be kept of all meetings of the Trustees in a minute Book of Meeting of Trustees, which book shall be kept in all perpetuity; and such minutes shall be made available to Members on request of a Member.

12.3.2.5 All competent Resolutions recorded in the minutes of any Meeting of Trustees shall be valid and of full force and effect from the passing of such Resolutions, and until varied or rescinded, but no Resolution or purported Resolution of the Trustees shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such Resolution is competent within this Constitution and the powers of the Trustees.

12.4 SUB-COMMITTEE MEETING

12.4.1 The quorum shall be one Trustee and the majority of Members of the committee.

12.4.2 The proceedings shall be determined by the discretion of the Chairperson who shall be led by practical considerations.

13. FINANCE

13.1 The financial year-end of the FHA is the end of February of each year.

13.2 The Trustees shall cause proper books of account and records to be kept so as fairly to record the transactions and financial position of the FHA, including:

13.2.1 a record of the assets and liabilities of the FHA;

13.2.2 a record off all sums of money received and expended by the FHA and the matters in respect of which such receipt and expenditure occur;

13.2.3 a register of Members showing in each case their addresses;

13.2.4 the amounts and dates of monies due and the amounts and dates of monies paid.

13.3 The Trustees shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.

13.4 The Member's accounts and books shall be open for his inspection at all reasonable times during office hours.

- 13.5 The Trustees may from time to time make reasonable conditions and/or regulations as to the time and manner of the inspection by the Members of the accounts and books of the FHA, or any of them, and, subject to such conditions and regulations, the accounts and books of the FHA shall be open to the inspection of Members.
- 13.6 At each General Meeting the Trustees shall present audited financial statements for the preceding financial year of the FHA. Such financial statements shall have been drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees and/or as recommended by the auditors, and shall be attached to the notice sent to Members convening each General Meeting as set forth in clause 12.1.1.3 supra.
- 13.7 The budget as approved by the General Meeting shall be strictly adhered to and all deviations from the budget of more than 3 (three) percentage points must be explained by the Trustees.

14. LIABILITY

- a. The FHA does not accept any responsibility and shall not be liable for any indebtedness incurred by, or for any civil and/or criminal action caused by any of its Members, Trustees or agents.
- b. Privilege in respect of defamation
Every Member of the ASSOCIATION and every TRUSTEE shall be deemed by virtue of his membership or, as the case may be, his holding office as a TRUSTEE, to have waived as against every other Member, the CHAIRMAN, or VICE-CHAIRMAN, every other TRUSTEE, the AUDITORS and everybody else engaged to perform any function or duty on behalf or for the benefit of the ASSOCIATION, or the TRUSTEES, or any sub-committee, all claims and rights of action which such Member or TRUSTEE, or any reference to such Member or TRUSTEE, made at any meeting of TRUSTEES, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of THESE PRESENTS, being a statement, report, complaint, notice or reference defamatory to such Member or TRUSTEE, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or TRUSTEE, whether such statement be true or false.
- c. Indemnity
- i. All TRUSTEES and the AUDITORS shall be indemnified out of the funds of the ASSOCIATION against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a TRUSTEE, in his capacity as CHAIRMAN, VICE-CHAIRMAN, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.
 - ii. Every TRUSTEE, every servant, agent and employee of the ASSOCIATION, and the AUDITORS shall be indemnified by the ASSOCIATION against (and it shall be the duty of the TRUSTEES out of the funds of the ASSOCIATION to pay) all costs, losses and expenses (including traveling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a TRUSTEE, his duties as CHAIRMAN or VICE-CHAIRMAN. Without prejudice to the generality of the above, the ASSOCIATION shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties provided that any such act, deed or letter has been done or written in good faith.
 - iii. A TRUSTEE shall not be liable for the acts, receipts, neglects or defaults of the AUDITORS or of any of the other TRUSTEES, whether in their capacities as TRUSTEE or as CHAIRMAN or VICE-CHAIRMAN, or for any loss or expense

sustained or incurred by the ASSOCIATION through the insufficiency or deficiency of title to any property acquired by the TRUSTEES for or on behalf of the ASSOCIATION, or for the insufficiency of any security in or upon which any of the monies of the ASSOCIATION shall be invested, or for any loss or damage arising from the insolvency or delictual act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

15. SOLE CONSTITUTION

This Constitution is final and binding and is the sole Constitution of the FHA. It overrules all prior constitutions and amendments as well as Minutes and Resolutions should they be in conflict in any way with this Constitution.

16. REPEALS AND AMENDMENTS

Notices of repeals or amendments to this Constitution can be proposed by any Member of the FHA eligible to vote. Such notice must be in writing and received at the office of the FHA at least 21 (twenty one) days before the prescribed notice period of such Meeting, for inclusion in the Agenda of a General Meeting or Special Meeting specially convened for that purpose. The proposal shall be accepted if supported by at least two thirds of the votes at a duly constituted meeting.

17. DISSOLUTION

The FHA retains the right to dissolve itself by its own Resolution taken at a duly constituted Special Meeting, provided that the motion is adopted by two thirds of the Members present.

17.1 Upon adoption of the resolution to dissolve, steps are taken immediately to wind-up the affairs of the FHA in terms of the Companies Act (Act 61 of 1973) as amended or substituted from time to time and where applicable.

17.2 The FHA shall upon its dissolution or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other Association with objects similar to those of the FHA.

APPENDIX A

1. The Developer shall remain a Member of the FHA until such time as:
 - 1.1 Service agreements with Nampower and Namwater have been negotiated and finalised.
 - 1.2 Initial problems with sewerage roads and water pressure have been resolved.
 - 1.3 Possible complementarity with the envisaged retirement village adjacent to the Development is known.
 - 1.4 The Developer voluntarily resigns.
2. For as long as clause 1 above has not been complied with, the stipulations of clause 11.2.1.1 are augmented by including the right of the Developer to appoint 3(three) Trustees. During this interim period the Board of Trustees shall consist of 7(seven) Members, after which period it shall revert back to the 3(three) Members or 5(five) Members as the General Meeting of the FHA may decide.
3. The Developer is exempt from paying levies on unregistered erven. It is noted that the Developer is actively marketing these erven. This exemption is valid until the first day of March 2017, after which date the levies shall become payable on all unregistered erven of the Developer as well.