

CONSTITUTION OF THE

FINKENSTEIN MANOR

OWNERS ASSOCIATION

INDEX

		Page
1.	NAME	24
2.	DEFINITIONS	24
3.	INTERPRETATIONS	25
4.	JURISDICTION	25
5.	HEADQUARTERS	25
6.	ADDRESS	25
7.	LEGAL PERSONALITY	25
8.	OBJECTIVES	26
9.	POWERS	26
10.	AUTHORITY AND FUNCTION OF THE ASSOCIATION	27
11.	STRUCTURES OF THE ASSOCIATION:	27
11.1	MEMBERS OF THE ASSOCIATION	27
11.1.1	MEMBERSHIP	27
11.1.2	OBLIGATIONS	27
11.1.3	BREACH	29
11.1.4	CESSATION	30
11.2	TRUSTEES	30
11.2.1	COMPOSTION AND OFFICE	30
11.2.2	AUTHORITY AND FUNCTION	31
11.3	SUB COMMITTEES	32
12.	MEETINGS:	33
12.1	GENERAL MEETING:	33
12.1.1	NOTICE AND MEETING PROCEDURES	33
12.1.2	QUORUM	33
12.1.3	VOTING	34
12.1.4	BUSINESS	34
12.2	SPECIAL MEETING	34
12.3	TRUSTEES MEETING	35
12.3.1	QUORUM	35
12.3.2	PROCEEDINGS	35
12.4	SUB COMMITTEE MEETING	35
13.	RESIDENTS	36
14.	FINANCE	36
15.	LIABILITY	37
16.	SOLE CONSTITUTION	37
17.	REPEALS AND AMENDMENTS	38
18.	DISSOLUTION	38

1. NAME

The ASSOCIATION that is hereby constituted shall be the Finkenstein Portion 3 Owners 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 FINKENSTEIN MANOR OWNERS ASSOCIATION;

"Auditors" means the Auditors of the ASSOCIATION;

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

"Chairman" means the Chairman of the Trustees;

"Vice-Chairman" means the Vice-Chairman of the Trustees;

"Developer" means Finkenstein Portion Three Trust;

"DEVELOPMENT" means the Estate established by virtue of FINKENSTEIN MANOR being approved for Township Development as such by the relevant authorities.

"Erf" means one of the subdivided erven indicated on the general plan of the development, S.G. no. K468.

"Erven" means the erven indicated on the general plan S.G. no. K468 resulting from the subdivision of the Portion 3 of the Farm Finkenstein No. 526.

"Unit" means any sectional title unit in any sectional title scheme erected on any erf or erven.

"Local Authority" means the City of Windhoek or local authority for the time being;

"MEMBER" means every registered owner and every other person who is in terms of this Constitution a member of the ASSOCIATION;

"Month" means calendar month;

"Office" means the administrative office of the ASSOCIATION;

"Property" means an erf or erven as well as a sectional title unit.

"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 and includes owners of sectional title units.

"Services" shall mean all internal services to be constructed upon the land which services, inter alia, will relate to Civil Engineering works like streets, stormwater drainage, internal water and sewerage network electrical, and telecommunication services.

"This Constitution" means this Constitution and regulations and by-laws adopted by the ASSOCIATION in terms of this Constitution from time to time in force;

"Trustees" means the Trustees of the ASSOCIATION 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.
- 3.4 for the purpose of this constitution any reference to the word property shall also be deemed and reference to both an erf as well as a sectional title unit wherever appropriate and whenever not specifically referred to as an erf or a unit.

4. JURISDICTION

The area of jurisdiction of the ASSOCIATION shall be:

CERTAIN: Portion 3 of the farm FINKENSTEIN no. 526

SITUATED: In the Municipality of Windhoek

REGISTRATION DIVISION "K", Khomas Region

MEASURING: 43,0026 hectares

HELD BY: Virtue of Deed of Transfer no. T6066/2007

as indicated on the general plan of development SG. No. K468.

5. HEADQUARTERS

To be nominated by the ASSOCIATION

6. ADDRESS

The office of the ASSOCIATION is situated at 10 Eugene Marais Street, Windhoek.

7. LEGAL PERSONALITY

- 7.1 The ASSOCIATION 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 ASSOCIATION shall sue and be sued in the name of the ASSOCIATION and the domicilium citandi et executandi will be **10 Eugene Marais Street, Windhoek.**
- 7.3 Members of the ASSOCIATION, including all Trustees, are not personally liable for any decisions taken by the ASSOCIATION or in the name of the ASSOCIATION.
- 7.4 All assets and liabilities of the ASSOCIATION belong to the ASSOCIATION independent of its Members. Thus, no asset of the ASSOCIATION can be claimed as a private asset by any of its Members, nor can the ASSOCIATION claim any of the assets of a Member as an ASSOCIATION asset.
- 7.5 The ASSOCIATION 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 ASSOCIATION 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 represent the ASSOCIATION on Governmental and other structures that share the same objectives;
- 8.2 create and maintain such beneficial relationships and structures;
- 8.3 advance, promote and safeguard the interests of the ASSOCIATION;
- 8.4 conform to all laws, rules, requirements, regulations, standards and procedures;
- 8.5 install, maintain and repair the public services and to maintain the exterior of all buildings;
- 8.6 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 ASSOCIATION.
- 9.4 To deposit or invest the monies and assets of the ASSOCIATION 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 ASSOCIATION 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 ASSOCIATION's property or assets; and also by mortgage, pledge, charge, or lien to secure and guarantee the due performance by the ASSOCIATION 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 ASSOCIATION and to oppose any proceedings or agitation that may seem to the ASSOCIATION to be detrimental to the interest of the ASSOCIATION.
- 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 ASSOCIATION.
- 9.10 To negotiate and conclude co-operation agreements with other neighboring or nearby Owners Associations subject at all times to clause 8 above.
- 9.11 To conduct, manage and administer or to outsource (on such terms and conditions as it may deem necessary), a frail care center, and for such purpose to set such rules and regulations and to impose such levies as may be necessary and prudent in the circumstances.
- 9.12 To install, manage and replace public services and to maintain the exterior of all buildings.

10. AUTHORITY AND FUNCTION OF THE ASSOCIATION

The supreme authority of the ASSOCIATION 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 therein.
- 10.2 To amend, modify or amplify the regulations, rules and bylaws of the ASSOCIATION.
- 10.3 To determine, amend, modify or amplify the general policy of the ASSOCIATION as may be required, incidental or conducive to the attainment of the aims and objectives of the ASSOCIATION.
- 10.4 To appoint and remove Trustees to attend to the business of the ASSOCIATION under conditions and with powers contained in this Constitution.

11. STRUCTURES

The ASSOCIATION shall consist of Members, Trustees and such sub-committees as the Trustees may from time to time consider conducive to the functioning of the ASSOCIATION. 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 ASSOCIATION shall be limited to:

- i. the Developer (for as long as it shall be the owner of unsold property in the development);
- ii. Registered Owners of property in the Development, provided that where any such ownership vests in more than one person, all such registered owners of any particular property shall be deemed jointly and severally to be one member of the ASSOCIATION, as well as
- iii. the statutory Body Corporate of any Sectional Title Scheme.

11.1.1.2 All members shall have the right to participate and vote at meetings of the ASSOCIATION, 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 ASSOCIATION shall to the best of his ability further the objects and interests of the ASSOCIATION,

11.1.2.2 comply with the provisions of this constitution, by-laws, rules and regulations;

11.1.2.3 no building or erection of structures shall be commenced within 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 the design and construction plans, including material and colour of any construction.

11.1.2.4 each Registered Owner shall take care of any trees on an 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;

- 11.1.2.5 each Registered Owner may establish a garden in the courtyard on the erf registered in his name in accordance with directions by the ASSOCIATION;
- 11.1.2.6 THE association shall maintain in a neat and tidy condition the exterior, all buildings and/or structures erected on the property registered in his name;
- 11.1.2.7 The ASSOCIATION shall adequately insure all buildings and/or structures erected on the property 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 11.1.2.6.
- 11.1.2.8 no Registered Owner shall without the prior written consent of the Trustees; and subject to such conditions as it may imposed;
- i alter the previously approved external colour scheme of buildings/structures erected on the property registered in his name;
 - ii erect or construct on the property registered in his name any solar power system, outdoor radio aerial or other aerial(s) and/or similar structures;
 - iii permit any commercial type vehicle, boat, caravan, trailer, or any derelict or abandoned vehicle to be parked on or in front of the property 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;
- 11.1.2.9 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 an erf and to impose such conditions as the Trustees deem necessary;
- 11.1.2.10 dogs and other household pets (excluding cats) 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
- 11.1.2.11 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
- 11.1.2.12 the decision of the Trustees in regard to the provisions of 11.1.2.1 to 11.1.2.14 shall be final and binding on all parties
- 11.1.2.13 In respect of the sale, donation, alienation of any property in the Development, or of any interest in and to any legal person or trust who holds a property in the Development, the following shall apply:
- No property or interest shall be transferred or ceded without a written agreement duly approved by the ASSOCIATION in writing and to which agreement shall be annexed a copy of this constitution; the Rules and Regulations of the Association; and the Notarial Deed of Imposition of Conditions.
- i. the Registered Owner of the property in question or the relevant legal persona or trust has fulfilled all his financial obligations to the ASSOCIATION in terms of this constitution; and

- ii. a copy of this constitution be annexed to the Agreement of Sale concluded between the Registered Owner and Purchaser and
- iii. the Agreement of Sale in the event of the sale of a property contains the following clause:
 “The Purchaser, his heirs, executors, administrators or assigns shall, against registration of transfer of the property ipso facto become and remain a Member of the ASSOCIATION consisting of all Registered Owners of property in the Development and be subject to the constitution and rules and regulations of the ASSOCIATION.”

11.1.3 BREACH

If any Registered Owner, tenant or occupier of a property 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 Registered Owner 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 ASSOCIATION) may enter upon the property 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 ASSOCIATION 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 ASSOCIATION 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 ASSOCIATION to an amount not exceeding an amount equal to double the amount outstanding;
 - 11.1.3.3.2 be ordered to pay to the ASSOCIATION 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 ASSOCIATION in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such Member to the ASSOCIATION.
- 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 ASSOCIATION 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 ASSOCIATION on due date of any levies or other payments shall immediately forfeits his voting rights at any meeting of

the ASSOCIATION 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 ASSOCIATION.

11.1.4.2.1 When a Member ceases to be a Registered Owner of a property, he shall ipso facto cease to be a Member of the ASSOCIATION.

11.2 TRUSTEES

11.2.1 COMPOSITION AND OFFICE

11.2.1.1 There shall be a Board of Trustees of the ASSOCIATION 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 ASSOCIATION of which 3 (three) persons shall be nominated by the Developer as stipulated by and under the conditions of the attached appendix.

11.2.1.2 A Trustee shall be an individual, but need not himself be a Member of the ASSOCIATION, 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 ASSOCIATION, 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 ASSOCIATION;

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 ASSOCIATION.

- 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 have no voting rights 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 ASSOCIATION 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 ASSOCIATION.
 - 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 favoritism 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 ASSOCIATION'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 ASSOCIATION and Members' interests and any other aspect of good governance, the principals of such policies that the ASSOCIATION 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 ASSOCIATION.
 - 11.2.2.4.8 To estimate the amount which shall be required by the ASSOCIATION'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 initially on the Erf size and thereafter on the under-roof area excluding carports 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 installments and at such time as the Trustees shall deem fit.
 - 11.2.2.4.11 To raise levies on registered owner for the management administration and conduct of a frail care center.
 - 11.2.2.4.12 To raise a special levy of 5% on the selling price of any property sold and transferred, or any shares in a company or interest in a close corporation or trust that is the owner of a property, sold and transferred.
 - 11.2.2.4.13 To raise special levies for the installation, maintenance and repair or replacement of public services as well as landscaping and exterior maintenance of buildings.

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 ASSOCIATION.
- 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 ASSOCIATION shall be held annually as soon as possible after the end of the ASSOCIATION'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 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 ASSOCIATION 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 ASSOCIATION, the Trustees report, 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 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 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) percentage 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 property is registered in more than one person's name, then they shall jointly have 1 (one) vote. Where a Member is the registered Owner of more than one property, he shall have 1 (one) vote in respect of each property.
- 12.1.3.2 All resolutions put to the vote shall be decided on by a show of hands, unless a Member request 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 ASSOCIATION for the financial year preceding the date of such meeting;
- 12.1.4.3 the annual plan for the year;
- 12.1.4.4 the capital development plan;
- 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 ASSOCIATION;
- 12.1.4.6 any other business pertinent to such meeting including any Resolutions proposed for adoption, and
- 12.1.4.7 or 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 Meetings' 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 ASSOCIATION. The appointment must be in writing and a certified copy deposited at the office of the ASSOCIATION 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. RESIDENTS

- 13.1 Any property may only be permanently occupied by persons, one of which shall be 50 (fifty) years of age or older and in the event of Sectional Title Units, 60 (sixty) years of age or older.
- 13.2 Children under the age of 18 (eighteen) years may not permanently reside in any property without the written approval of the ASSOCIATION first having been obtained.
- 13.3 The ASSOCIATION shall at all times, without having to provide reasons, be entitled to withdraw such approval, in which event the child shall no longer be allowed to reside in the property.
- 13.4 Clause 13.1 shall not be applicable on the surviving spouse of an occupant of a property after the death of the qualified occupant, provided that it shall be the responsibility of such surviving spouse to provide to the ASSOCIATION the particulars of the person younger than 50 (fifty) years who shall occupy the property.
- 13.5 This clause 13 is only applicable to occupants of a property and does not prohibit a person younger than 50 (fifty) years of age to acquire ownership of a property.

14. FINANCE

- 14.1 The financial year-end of the ASSOCIATION is the end of February of each year.
- 14.2 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 ASSOCIATION, including:
- 14.2.1 a record of the assets and liabilities of the ASSOCIATION;
 - 14.2.2 a record off all sums of money received and expended by the ASSOCIATION and the matters in respect of which such receipt and expenditure occur;
 - 14.2.3 a register of Members showing in each case their addresses;
 - 14.2.4 the amounts and dates of monies due and the amounts and dates of monies paid.
- 14.3 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.
- 14.4 The Member's accounts and books shall be open for his inspection at all reasonable times during office hours.
- 14.5 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 ASSOCIATION, or any of them, and, subject to such conditions and regulations, the accounts and books of the ASSOCIATION shall be open to the inspection of Members.
- 14.6 At each General Meeting the Trustees shall present audited financial statements for the preceding financial year of the ASSOCIATION. 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.
- 14.7 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.

15. LIABILITY

- 15.1 The ASSOCIATION 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.

15.2 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 CHAIR, or VICE-CHAIRMAN, or 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, may have as a result of 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.

15.3 Indemnity

15.3.1 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

15.3.2 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.

15.3.3 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.

16. SOLE CONSTITUTION

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

17. REPEALS AND AMENDMENTS

Notices of repeals or amendments to this Constitution can be proposed by any Member of the ASSOCIATION eligible to vote. Such notice must be in writing and received at the office of the ASSOCIATION 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.

18. DISSOLUTION

The ASSOCIATION 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.

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

APPENDIX A

1. The Developer shall remain a Member of the ASSOCIATION until such time as:
 - 1.1 Service agreements with Nampower and Namwater have been negotiated and finalized.
 - 1.2 All bulk services have been completed.
 - 1.3 Possible co-operation agreements with Finkenstein Estate and Finkenstein Manor have been negotiated and finalized.
 - 1.4 All unsold properties have been sold.
 - 1.5 The Developer voluntarily resigns.
2. The Developer is exempt from paying levies on unsold property.