

CONSTITUTION

OF THE

**NAHOON VALLEY RIDGE SOUTH GENERAL RESIDENTIAL PROPERTY
OWNERS ASSOCIATION**

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1. **INTERPRETATION**

1.1 In this Constitution:

1.2 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

this Constitution" means this Constitution of the Association;

"local authority" means the Buffalo City Municipality;

"The Developer" means Atros Trust, Registration Number IT 164/2004;

"member" means all of the property owners (and their Successors-in -title whether a Developer, Home Owners Association, or Body Corporate in respect of a sectional title scheme) of each of the following erven:-

76525, 76528, 76529, 76530, 76531, 76532, 76533, 76534 and 76535 (2 or more of the erven may, subject to the provisions of this Constitution be consolidated);

"the properties" mean erf numbers 76525, 76528, 76529, 76530, 76531, 76532, 76533, 76534 and 76535;

"Private Development" means erf 76523 (a portion of erf 76320) and erf 76524 (a portion of erf 76320) which will be subdivided (by the registration of General Plan Numbers 1045/2013 and 1046/2013 respectively) so as to constitute "the properties";

"common areas" means private roadway, utility area and any other open space within or adjacent to the Private Development, and shall include the following erven: 76526, 76527 and 76536 (and any other private open space which the Developer may wish to include);

"common services" means roads, pipes, cables, drains, and installations in connection with electricity, water, sewerage, drainage and shall also include any walls or security measures on the common property in respect of which neither Members individually nor the Local Authority are responsible;

"Association" means NAHOON VALLEY RIDGE SOUTH GENERAL RESIDENTIAL PROPERTY OWNERS ASSOCIATION;

"Office" Means the administrative office of the Association;

"Member" means a Member of the Association;

"Trustees" means the Trustees of the Association from time to time;

"Chairman" means the Chairman of the Trustees;

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

"Auditors" means the Auditors, or Accounting Officer, as the case may be, appointed by the Association from time to time;

"Resolution" means a Resolution other than a Special Resolution passed at an Annual General Meeting or a Special General Meeting by an ordinary majority of the Members;

"Special Resolution" means a Resolution:
passed by 75% (seventy five per centum) of all Members;

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

"month" means calendar month;

"year" means calendar year;

- 1.3 Unless the context otherwise requires, any words importing the singular number only shall include the plural number, and vice versa and words importing any one gender only shall include the other genders.

2. **MEMBERS OF THE ASSOCIATION**

- 2.1 The Association which is hereby constituted is comprised of a single Member, namely, the Developer.

- 2.2 Upon transfer of each of the properties, the owner of the (each) property (as defined) and the Owner's Successors –in title (including Home Owner's Associations, or Bodies Corporate as contemplated under the Sectional Titles Act, as the case may be, as the Successors-in-title of the owner) shall be deemed to be a member, and subject to the terms contained herein.

3. **MAIN OBJECTS**

The main objects of the Association shall be: -

- 3.1 The maintenance and control of the common areas (private open spaces) and, common services (including the private roadway and any other services if applicable) and the protection of the communal interests of the Members.
- 3.2 To control, regulate, maintain, repair, develop and keep in good order all common areas and common services including but not limited to water usage, security guards and gate control, maintenance and repairs and replacement of any of and all infrastructure including water pipes, electrical cables and mini sub station, street lighting, sewers, roadway, garden service, access control, refuse, electrical consumption for street lighting and access or any other service provided for by the Association from time to time, and in general to promote the common interest of the members.
- 3.3 To enforce and amend from time to time the architectural guidelines for architectural design of all buildings, outbuildings and structures including additions and alterations to any such building, outbuildings or structures, erected or to be erected on any of the properties.
- 3.4 To enforce standards and guidelines for the design of all site development on the properties, site works, service infrastructure, buildings etc, including the appointment, monitoring and control of committees or sub-committees established for this purpose.
- 3.5 To enforce and amend from time to time the Conduct Rules, and to enforce a system of fines or other penalties, or any other remedy considered appropriate from time to time (against property owners or their Successors-in –title). The amounts of such fines may be reviewed, amended and /or confirmed from time to time by the Trustees at their discretion.
- 3.6 To do all things that may at the discretion of the Trustees be necessary to give effect to the provisions of this Constitution.

4. **MAIN BUSINESS**

- 4.1 The main business of the Association shall be the general management and administration of the Private development: "NAHOON VALLEY RIDGE SOUTH GENERAL RESIDENTIAL PROPERTY OWNERS ASSOCIATION".
- 4.2 Such business shall include the main objects referred to under 3.1 to 3.6 above;
- 4.3 Interpretation and Enforcement of the Architectural Guidelines as set forth in "Annexure A" , the interpretation and enforcement of the Conduct Rules as set out in "Annexure B" , and the interpretation and enforcement of all other provisions of this Constitution.

5. **THE COMMON AREA**

Neither the whole nor any portion of the common areas shall be sold, let, alienated or otherwise disposed of, subdivided or transferred without the sanction of a Special Resolution of the Association, and the written approval of the Developer for so long as the Developer is a member.

6. **CONDITIONS OF MEMBERSHIP**

6.1 Membership of the Association shall be limited to the Developer, their Successors –in -title as owners of the properties (and their Successors In title being Home Owners Associations or Bodies Corporate as contemplated in terms of Sectional Titles Act, as the case may be).

6.2 A member may not resign.

6.3 The rights and obligations of a member shall not be transferable and every Member shall:

6.3.1 to the best of its ability further the objects and business interests of the Association;

6.3.2 observe all by-laws (Local Authority) and Provincial and National legislation, and furthermore the provisions of this Constitution.

7. **LEVIES**

7.1 The Trustees shall establish and maintain a levy fund, to which end they shall from time to time make levies upon the members in such amounts as are in their opinion sufficient for the control, management and administration for the repair, upkeep and maintenance of the common areas, and services, for the payment of rates and taxes and any other local authority charges, if any, and charges for the supply of services required by the Association and for the discharge of any other obligation of the Association. As far as possible all expenses shall be charged to each of the members in accordance with actual metered services, or consistently as far as possible with actual consumption, or where appropriate pro –rated in accordance with the size of each of the relevant properties, so as to allocate on a fair, reasonable and equitable basis, all charges and expenses to all of the members. Any expenses which cannot be allocated on a fair and reasonable or equitable basis of consumption, or proportionately to the size of the properties, shall be shared equally by members.

7.2 The Trustees shall estimate the amount annually in advance which may be required by the Association to meet the aforesaid expenses during each operational year or any portion thereof. The Trustees may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such expenses to be incurred for such purpose as may be deemed necessary by the Trustees from time to time in carrying out their duties or as decided upon by a special meeting of Members.

7.3 The Trustees, may from time to time, make special (additional) levies upon the Members in respect of additional or unanticipated expenses, and such levies may be imposed and be payable in one sum or by such instalments and at such time or times as the Trustees consider appropriate.

7.4 Any amount due by a Member by way of a levy shall be a debt due to the Association.

7.5 All Members shall have equal voting rights,

7.6 The provisions of this clause 7 (levies) may not be amended except by unanimous resolution by all members.

8. **MEMBER'S OBLIGATIONS**

(a) The Trustees may from time to time:

8.1 make regulations governing inter alia:

8.1.1 the Member's rights of use, and enjoyment of the common area or common services;

- 8.1.2 the external appearance of and the maintenance of the common areas and the buildings or other improvements erected thereon;
- 8.2 enter into agreement(s) with third parties on behalf of the Association, inter alia, the Local Authority, governing the matters set out herein and any other matters incidental thereto.
- (b) Each Member undertakes to the Association to comply (and enforce compliance as the case may be) with:
- the provisions of this Constitution;
 - any regulations made in terms hereof;
 - any agreements referred to herein insofar as those agreements may directly or indirectly impose obligations on him.

Including the Conduct Rules and Architectural Guidelines in accordance with the annexures hereto.

9 **RIGHTS AND OBLIGATIONS OF THE NAHOON VALLEY RIDGE SOUTH GENERAL RESIDENTIAL PROPERTY OWNERS ASSOCIATION**

- 9.1 It shall be the duty of the ASSOCIATION at its own expense:
- 9.2 to maintain in good order and repair common areas or common services.
- 9.3 to effect insurances (where appropriate) over common areas and common services.
- 9.4 The ASSOCIATION shall not be responsible for any loss, damage or injury which the Member's visitors, may sustain on the properties or in or about the ASSOCIATION common areas or common services by reason of any act whatsoever, or neglect on the part of the ASSOCIATION . The Association shall not be responsible for any loss, damage or injury of any description which the Member or such other person may sustain by reason of the common areas or common services at any time falling into a defective state, or by reason of any repairs, renovations and/or maintenance or work to the rest of the common areas or common services which are effected by the ASSOCIATION. Nor shall the Association be responsible for loss, damage or injury by reason of such repairs, renovations and maintenance work not being effected timeously or at all. A Member shall not be entitled for any of the reasons aforesaid or for any other reason whatsoever to withhold any payment due to the ASSOCIATION .
- 9.5 No liability shall result upon the ASSOCIATION for any interruption or failure of the electrical and/or other services to the common areas or common services, irrespective of the cause thereof, nor for any consequential damage the Member may occur by reason of such failure or interruption.

10. **BREACH**

- 10.1 Any Member who fails to make payment to the Association on due date of any levies or other amounts payable by such Member, or who otherwise breaches or fails in the observance of any of the provisions of this Constitution, may, if so determined by the Trustees:
- 10.1.1 be fined where appropriate in accordance with the provisions of paragraph 39 hereunder or any other scale of fines determined by the Trustees from time to time;
- 10.1.2 be liable for and pay all legal costs including costs as between attorney and client, collection commission, expenses and charges incurred by the Association in securing the recovery of arrear levies, fines or any other arrear amounts due and owing by such Member to the Association.

- 10.2 The Trustees shall be entitled to charge interest on arrear levies, fines or other amounts at such rate as they may from time to time determine.

11. CESSATION OF MEMBERSHIP

As each member represents a collective of individual owners of erven, no member may cease to be a member of the Association, without the prior written consent of every other member, which consent shall however not unreasonably be withheld.

12. TRUSTEES

- 12.1 There shall be a Board of Trustees of the Association which shall consist of so many Trustees as may be appointed from time to time by the Developer or, (upon the Developer ceasing to be a member, as contemplated hereunder), a Trustee, duly appointed by each member.

- 12.2 Subject to the provisions of 13.1 below, a Trustee shall be an individual, duly appointed by each member. A Trustee, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of this Constitution.

13. APPOINTMENT AND ELECTION OF TRUSTEES

- 13.1 All the initial Trustees shall be appointed by the Developer. The Trustees shall continue to be appointed by the Developer until all of the properties have been transferred by the Developer to third parties, or such earlier date as may be determined by the Developer.

- 13.2 Upon termination of the Developer's right to appoint the Trustees, as referred to above, the Trustees shall be appointed to office by the Members, provided that the Developer shall be entitled to appoint one Trustee in respect of each property (as defined) held by it.

14. REMOVAL AND ROTATION OF TRUSTEES

- 14.1 Save as set forth herein, each Trustee shall continue to hold office until another Trustee is nominated and appointed in his stead by the member concerned.

- 14.2 A Trustee shall be deemed to have vacated his office as such upon:

- 14.3 his estate being sequestrated, whether provisionally or finally;

- 14.4 his conviction for any offence involving dishonesty;

- 14.5 his becoming of unsound mind or being found lunatic;

- 14.6 his resigning from such office in writing delivered to the Secretary;

- 14.7 his death;

- 14.8 his being removed from office by a member.

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

- 14.9 Should the office of a Trustee fall vacant, the vacancy in question shall be filled by a person nominated by the Member represented by him.

15. OFFICE OF TRUSTEES

- 15.1 The Trustees shall appoint from amongst themselves a Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the Office of the Chairman or Vice-Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.

- 15.2 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by Members.
- 15.3 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time assigned to him by the Chairman or the Trustees.
- 15.4 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Trustees and/or Chairman, Vice-Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.

16. **FUNCTIONS AND POWERS OF TRUSTEES**

- 16.1 Subject to the express provisions of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and save as may be expressly provided in this Constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association.

- 16.2 The Trustees shall have the right to vary, cancel or modify any of their decisions and Resolutions from time to time.

- 16.3 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution, in such reasonable manner as they shall decide from time to time.

- 16.4 The Trustees may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed by the Association in General Meeting :

- 16.4.1 as to disputes generally;
- 16.4.2 for the furtherance and promotion of any of the objects of the Association;
- 16.4.3 for the better management of the affairs of the Association;
- 16.4.4 for the advancement of the interests of Members;
- 16.4.5 for the conduct of Trustees at meetings of Trustees and Meetings of the Association;
- 16.4.6 to levy and collect contributions from the Members in terms of this Constitution;
- 16.4.7 to assist it in administering and governing its activities generally.

and shall be entitled to cancel, vary or modify any of the same from time to time.

The Trustees shall furthermore be entitled to do all things necessary to give effect to the provisions of this Constitution including but not limited to the Institution of Legal Proceedings against a member to further the objects and provisions of this Constitution.

17. **PROCEEDINGS OF MEETINGS OF TRUSTEES**

- 17.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Constitution.

- 17.2 Meetings of the Trustees shall be held at least once every six months.

- 17.3 The Chairman (or in his absence the Vice Chairman) or a simple majority of Trustees may at any time convene a meeting of Trustees.

- 17.4 The quorum necessary for the holding of any meeting of Trustees shall be a simple majority of Trustees.
- 17.5 The Chairman shall preside as such at all meetings of Trustees. Provided that should at any meeting of Trustees, The Chairman not be present within 5 (five) minutes after the time appointed for such meeting, the Vice-Chairman shall exercise all the powers and duties of the Chairman in relation to such meeting.
- 17.6 A Trustee may be represented at a Meeting of Trustees by an alternative Trustee nominated in writing by the Member concerned, from time to time.
- 17.7 The Trustees shall:
- 17.7.1 ensure that minutes are recorded of every meeting of Trustees, which minutes shall be reduced to writing without undue delay after the meeting;
- 17.7.2 cause such minutes to be kept of all meetings of the Trustees in a Minute Book.
- 17.8 On the written application of any Member, the Trustees shall make all Minutes of their proceedings available for inspection by such Member.
- 17.9 The competent Resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force and effect as therein recorded, with 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 the powers of the Trustees.
- 17.10 Save as otherwise provided in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 17.11 A Resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of Trustees duly convened.
18. **OTHER PROFESSIONAL OFFICERS**
Save as specifically provided otherwise in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association, the services of Managing Agents, Accountants, Accounting Officer (or Auditors as the case may be), Attorneys, Advocates, Architects, Engineers, any other person, or firm, professional or otherwise, and/or any other employee/s whatsoever, for any reasons thought necessary by the Trustees and on such terms as the Trustees shall decide, subject to any of the provisions of this Constitution.
19. **GENERAL MEETINGS OF THE ASSOCIATION**
- 19.1 The Association shall in each calendar year, hold an Annual General Meeting, in addition to any other Meetings.
- 19.2 Such Annual General Meeting shall be held at such time and place, as the Trustees shall decide from time to time.
20. **NOTICE OF MEETINGS**
- 20.1 Meetings shall be called on no less than 21 (twenty-one) days' notice in writing except where urgent (at the discretion of the Chairman). The notice shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, the terms and effect of that business. Provided that a General Meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is so agreed, by an ordinary majority of votes by all members.
- 20.2 The accidental omission to give notice of a meeting or of any Resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution,

or in terms of the Act, or the non- receipt of any such notice, notification or document by any member or other person entitled to receive same shall not invalidate the proceedings at, or any Resolution passed at, any meeting.

21. SERVICE OF NOTICES OF MEETINGS

21.1 A notice of a meeting shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter properly addressed to the Member at the chosen domicilium citandi et executandi of the member.

21.2 Trustees may agree to forward notices electronically to members on written request.

21.3 Any notice of a meeting sent by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted (or sent electronically at the request of a Member, as the case may be).

21.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

22. VENUE OF MEETINGS

General Meetings of the Association shall take place at such place/s as shall be determined by the Chairman of the Trustees from time to time.

23. QUORUM

23.1 No business shall be transacted at any Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any Meeting shall be a simple majority of the total votes of all Members of the Association.

23.2 If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present, the Members present shall be a quorum.

24. AGENDA AT MEETINGS

24.1 In addition, to any other matters required by this Constitution to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting :

24.1.1 the consideration of the Chairman's report to the Trustees;

24.1.2 appointment of the Auditors or Accounting Officer;

24.1.3 the consideration of any other matters raised at the meeting including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions;

24.1.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting.

24.1.5 the consideration of the report of the Accounting Officer (or Auditor as the case may be);

24.1.6 the consideration of the total levy for the calendar year during which such Annual General Meeting takes place; and

24.1.7 the consideration and fixing of the remuneration of the Accounting Officer (or Auditors as the case may be) for the financial year of the Association preceding the Annual General Meeting.

25. **VOTING**

- 25.1 A member, including the Developer, shall be entitled to one vote in respect of each property (as defined) held by the Member. The weighting of each vote shall be in accordance with the area of the property held by the member (or Developer as the case may be) in relation to the aggregate of the area of all of the properties, as defined. Where two or more properties are consolidated, a Member shall have one vote in respect of the consolidated property, but the vote shall be proportionate in accordance with the foregoing.
- 25.2 At any Meeting a Resolution put to the vote of the meeting shall be decided on an ordinary majority (their weighting shall be in accordance with area as provided under paragraph 25.1 above) of votes represented by Members entitled to attend and vote thereat.
- 25.3 Voting on the election of a Chairman of a Meeting (if necessary) or on any question of adjournment, shall be decided on an ordinary majority of votes (with weighting in accordance with area of each property held by the member as provided under paragraph 25.1 above) represented by Members entitled to attend and vote thereat.
- 25.4 Every Resolution and every amendment of a Resolution proposed for adoption by a Meeting shall be seconded at the meeting, and if not seconded, shall be deemed not to have been proposed.
- 25.5 A resolution or the amendment of a Resolution, shall be carried on a simple majority of all the votes (with weighting in accordance with area of each property held by the member as provided under paragraph 25.1), cast thereon, and an abstention shall not be counted as a vote for or against the Resolution in question. In the case of an equality of votes (with weighting in accordance with area of each property held by the member as provided under paragraph 25.1), the Chairman of the meeting shall be entitled to a casting vote in addition to his ordinary vote.
- 25.6 Unless any Member present at a Meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

26. **FINANCIAL YEAR END**

The financial year end of the Association shall be determined from time to time by the Trustees.

27. **ACCOUNTS**

- 27.1 The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association, in accordance with generally accepted accounting practice.
- 27.2 On the application of any Member the Trustees shall make all or any of the books of account and records available for inspection by such Member.
- 27.3 The Trustees shall cause all books of account and records to be retained for a period of six years after completion of the transactions, acts or operations to which they relate.
- 27.4 At each General Meeting the Trustees shall in accordance with generally accepted accounting practice, lay before the Association an income and expenditure account for the immediately preceding financial year of the Association, together with a balance sheet made up as at the last financial year end of the Association.

28. DEPOSIT AND INVESTMENT OF FUNDS

- 28.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a Meeting of the Association.
- 28.2 Any funds not immediately required for disbursements may be invested by the Trustees from time to time.

29. ACCOUNTING OFFICER

Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Accounting Officer (or Auditors as the case may be), in accordance with generally accepted accounting practice .

30. ARBITRATION

- 30.1 Any dispute, question or difference arising at any time between Members or between Members and Trustees out of or in regard to :

- 30.1.1 any matters arising out of this Constitution; or
- 30.1.2 the rights and duties of any of the parties mentioned in this Constitution; or
- 30.1.3 the interpretation of this Constitution;

shall be submitted to and decided by arbitration on notice given by and party to the other parties who are interested in the matter in question.

- 30.2 Arbitration shall be held informally and otherwise in terms of the provisions of the Arbitration Act No. 42 of 1965 (as amended or replaced from time to time) it being intended that if possible it shall be held and concluded within 21 (twenty-one) business days after it has been demanded.

- 30.3 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is :

- 30.3.1 primarily an accounting matter - and independent accountant;
- 30.3.2 primarily a legal matter - a practising counsel or attorney of not less than 10 (ten) years standing;
- 30.3.3 any other matter - an independent and suitably qualified person appointed by the Accounting Officer ;

as may be agreed upon between the parties to the dispute.

- 30.4 If agreement cannot be reached on whether the question in dispute falls under Accounting , legal or other, within 3 (three) business days after the arbitration has been demanded, or in the event that the parties are unable to agree upon an arbitrator, then :

the President for the time being of the Law Society having jurisdiction in the Eastern Cape shall nominate the arbitrator within 7 (seven) business days after the parties have failed to agree so that arbitration can be held and concluded as soon as possible.

- 30.5 The arbitrator shall make his award within 7 (seven) days after completion of the arbitration and shall in giving his award, have regard to the principles laid down in terms of this Constitution. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

- 30.6 The decision of the arbitrator shall be final and binding and may be made an Order of the Eastern Cape Provincial Division of the Supreme Court of South Africa upon the application of any party to the arbitration.
- 30.7 Notwithstanding anything to the contrary contained herein, the Trustees shall be entitled to institute legal proceedings on behalf for the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of these provisions.
31. **DOMICILIUM CITANDI ET EXECUTANDI**
- 31.1 The Trustees shall from time to time determine the address constituting the domicilium citandi et executandi of the Association, subject to the following:
- 31.1.1 Such address shall be situated in the Magisterial District of East London and shall be the address of the Chairman or other resident Trustee duly appointed at a General Meeting, or the administrative office of the Association;
- 31.1.2 The Trustees shall give notice to all Members of any change of such address.
- 31.2 The domicilium citandi et executandi of each Member shall be the street address of the Erf registered in his name; provided that he shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be in the Republic, and that the change shall only be effective on receipt of written notice thereof by the Association at its domicilium.
32. **BUILDING PLANS**
- All building plans (in respect of dwellings on residential erven) shall be submitted to the Home Owners Association Committee (the Home Owners Association being a member of this Nahoon Valley Ridge South Property Owners Association) for scrutiny, and approval, so as to ensure compliance with the Nahoon Valley Ridge South General Residential Property Owners Association building guidelines (building and architectural guidelines) a copy of which are annexed hereto marked Annexure A.
33. **SITE DEVELOPMENT PLANS**
- 33.1 All site development plans are to be submitted to the Nahoon Valley Ridge South General Residential Property Owners' Association Committee for scrutiny, prior to submission to the relevant Local Authority, and any amendments which may be required by the Nahoon Valley Ridge South General Residential Property Owners Association Committee shall be stipulated in writing to the applicant, within a reasonable period (which should not exceed 30 days).
- 33.2 After the site development plans have been approved by the Nahoon Valley Ridge South General Residential Property Owners Association Committee tasked with this responsibility, the approved site development plans may be submitted by the member for approval by the Local Authority, and shall be subject to compliance with the building regulations of the relevant Authority, and any other requirements stipulated by the Nahoon Valley Ridge South General Residential Property Owners Association.
34. **MINIMUM CONDITIONS APPLICABLE TO ALL HOME OWNERS ASSOCIATION CONSTITUTIONS**
- Every member shall impose (a Constitution and/or rules applicable to each property whether incorporated into a Home Owners Constitution, or Body Corporate (where a sectional title scheme is created), as the case may be includes, as a minimum standard, the terms and conditions of the Architectural Code, and the Conduct Rules attached hereto marked Annexures A and B respectively. No relaxation of these provisions shall be permitted without the prior written consent of the Developer (as defined).

35. **AMENDMENT OF CONSTITUTION**

The provisions of this Constitution (save as provided to the contrary herein and except for the provisions imposed in favour of the Developer which may not be amended without the Developer's prior written consent) may be amended by a simple majority of members at a duly convened meeting provided that:

- 35.1 at least 70% (seventy percent) of the members are in attendance;
- 35.2 All members have been notified at least 14 (fourteen) days prior to the date of the meeting, in writing, of the proposed changes to the Constitution.
- 35.3 For so long as the Developer is a member of the Association (being the registered owner of one of the properties) no amendment may be made to this Constitution without the prior written consent of the Trustee appointed by the Developer from time to time.

36. **CONSOLIDATION / SUBDIVISION OF PROPERTIES**

With the prior written consent of the Developer, any of the properties may be consolidated, or further subdivided, in which event the owner of the consolidated property, shall be deemed to be a member of this Association.

37. **FINES AND PENALTIES**

- 37.1. Any member who contravenes or fails to comply with the provisions of this Association, or the Conduct Rules (or in respect of members who fail to enforce the Architectural Code or Conduct Rules as specified in Annexures A and B hereto), or any conditions imposed by the Trustees shall be deemed to have breached the provisions of this Constitution and shall be subject to the penalties imposed by the Association which may include the imposition of fines, or any other remedy considered appropriate.
- 37.2. In the event of a continuing offence, the member shall be deemed (on the expiry of reasonable written notice by the Trustees in writing) to be guilty of a separate offence for every 24 hours or part thereof during which such offence continues (unless the member has taken reasonable steps to ensure compliance) and shall be liable in respect of each such separate offence.
- 37.3. Any fine imposed, in terms of 37.1., shall be a debt due and payable to the Association by the Member within 30 days (payment may at the discretion of the Trustees be suspended during an appeal).
- 37.4. Set out below under 38 is a guideline (substantial compliance by the Trustees with the procedure shall suffice) as to the process to be taken by the Trustees to remedy a breach of the Constitution of the Association or the Conduct Rules. Notwithstanding this guideline, the Trustees shall be entitled, due to urgency or such other consideration as they may deem appropriate, to abandon the procedure for a more expedient one or, as the case may be, to seek urgent relief of an interim nature from a court of competent jurisdiction.
- 37.5. Should a Member fail or refuse to comply with a directive of the Trustees, or with any of the provisions of this Constitution of the Association, the Trustees of the Association may take whatever action may be necessary and appropriate in the circumstances and recover from the Member any costs incurred in taking such action without prejudice to its rights to recover any fines or other penalties imposed.

38. **GUIDELINES TO TRUSTEES ON PROCEDURE AND IMPOSITION OF FINES**

38.1. Remedies against breach

The Trustees shall be entitled to:

- 38.1.1 Issue a written warning.
Insist on rectification of the breach at the expense of the defaulting party.
Impose a fine on the defaulting party in an amount considered at their discretion, appropriate.
- 38.1.2 Fines

All fines imposed shall be settled within 30 days. No member whose fine remains outstanding (and which has not been appealed) shall be entitled to vote at any meeting of the Association.

38.1.3 Appeal

An appeal (of a fine or other punishment) imposed by the Trustees shall be subject to appeal. An appeal shall be submitted in writing, within 7 days of the imposition of the fine or punishment, to the Trustees of the Association who shall be entitled to consider the appeal ,or to refer the matter to arbitration .

39. **SCHEDULE OF FINES****(GUIDELINES TO TRUSTEES)**

	FIRST OFFENCE	Fine
1	Minor offences including behavioral offences	R500 to R2000
2	Failure to comply with architectural guidelines	R2 500 – R10 000
3	Major infringements of the Constitution including matters pertaining to site development	R10 000 – R25 000

- This schedule has been prepared during the month of April 2014 and the amounts referred to therein shall be adjusted so as to offset the effects of inflation, by the Trustees, at the time of imposing the fine.

40. **INTERNAL SERVICES****ELECTRICAL SERVICES**

The internal electricity reticulation will be designed by the developer to the standards of the NRS 034-1:1992 and the installation will comply with the Occupational Health and Safety Act [Act 85 of 1993]

The bulk electricity reticulation will comprise of a single 630 KVA, 11000/400/242 volt miniature substation positioned on public open space and 11000 volt underground cable, which will be located within the developments roadway reserve. The 400/242 volt low voltage bulk supply cables from the miniature substation to the boundary of the properties will need to be installed at a later stage by each member when the time arises, in order to service the residential erven (or sectional title units, as the case may be) planned by the member on his property. The association will receive a 11000 volt bulk electricity supply from the local authority positioned on the southern boundary entrance to the development within the Buffalo City Metropolitan Municipality (hereinafter referred to as BCMM) road reserve.

Each member's property and the common areas (or services) must be metered by a prepayment tariff meter, complying with the appropriate BCMM standards. The low voltage network will use a design diversity factor of 3 KVA ADMD per consumer and each household will be restricted to a 40 Ampere single phase prepayment electricity connection. Every consumer (members of the homeowners associations, or members of bodies corporate, as the case may be on the properties) will be required to utilize a gas hob for cooking and gas heating appliances, solar water heating (as specified by the developer, or the trustees of the association from time to time) with load control and all lighting will be compact fluorescent (CFL) or light emitting diode (LED) type technology.

In accordance with the recommendations of BCMM Energy Efficiency Requirements, all residential units will make adequate provision for the accommodation of a ripple relay unit to permit demand side management of the defined internal electricity loads by the agents of the electricity supply Authority.

SIGNED at _____ on the _____ day of _____ 20____

AS WITNESSES:

1. _____

TREVOR JOHN ROSSOUW -
TRUSTEE

2. _____

SIGNED at _____ on the ____ day of _____ 20.

AS WITNESSES:

1. _____

GARY KEITH ATKINSON -TRUSTEE

2. _____

NAHOON VALLEY RIDGE SOUTH GENERAL RESIDENTIAL DEVELOPMENT
Phase 2 and 3

ARCHITECTURAL CODE**Building**

The dwellings shall be constructed from brick or block and shall be plastered and painted.

Roof and Rainwater Goods

The roof pitch shall be between 10 deg and 30 deg, in grey/charcoal colour.

Facias and barge boards shall be in uPVC or fibre cement.. Gutters and downpipes shall be uPVC or aluminium and of a uniform colour within any one of the 9 properties or consolidations thereof.

External Windows and Doors

Windows shall be aluminium or uPVC and of a uniform colour.

External doors and garage doors shall be of a uniform colour within any one of the 9 properties or consolidations thereof.

Boundary Walls

Boundary walls adjacent to the main private access road shall be constructed of prefabricated concrete panels to match existing walls. Other boundary walls shall be constructed of brick, plastered and painted or may be prefabricated concrete panels or clearview steel panelled security fencing.

Paint Finish

The dwelling, garages as well as plastered boundary walls shall be painted in a colour from the following DULUX (or other manufacturers equivalent) paint colours:

- Spanish Dream
- Berkeley Stone
- Beach Bum
- Friendly Fellows
- Vincent's Choice
- Chinese Lamp
- Country Fare
- Chasm
- Spanish Loot
- Summer Light
- Morning Tea
- Desert Treasure
- White

Carports

Carports to be constructed from galvanised steel with charcoal shade cloth to roof and prior approval by HOA.

Rain Water Tanks

Rain water tanks shall be of a colour to match the house paint colour.

Security

Whatever visible security measures (e.g. burglar bars) are installed must be uniform in colour and design (to doors or windows).

Any Building work done after the development is complete is subject to the following rules. Builders and their personnel shall enter and leave the estate in vehicle specifically marked and authorised for that purpose by the Home Owners Association.

They shall travel in the vehicles directly to and from their site(s) and shall not wander nor loiter elsewhere on the estate.

The following working hours will be adhered to without exception.

- A. Weekdays 07h00 – 17h00
- B. Saturdays 07h00 – 13h00
- C. No work will be permitted on Sundays and Public Holidays

Building work of any kind by the owner builder or contractors is prohibited during Christmas shutdown holidays. ie. 14 December - 03 January .

Emergency maintenance and repairs may be carried out if and when required.

No builders or any personnel may trespass beyond the building site. They shall not walk, or congregate neither on adjoining nor in the roadway fronting their sites.

A competent foreman shall at all times supervise the construction of the dwellings.

No littering or tipping shall be allowed and the builders shall minimise unnecessary noise.

The road is to be cleaned daily of any sand, stone or run off of cement.

Building Deposit

A building deposit is to be determined by the Home Owners Association from time to time, and payable on approval of plans. This deposit will be refunded without interest upon completion certificate being issued by the building inspector, and once the adjacent erf or erven has been cleared to the satisfaction of the Home Owners Association and the house is signed off by the Home Owners Association.

Chimneys

Chimneys must be finished as per the main dwelling (brick, mortar and plastered). A standard rotating cowl must be fitted to all chimneys.

CONDUCT RULES FOR NAHOON VALLEY RIDGE SOUTH GENERAL RESIDENTIAL DEVELOPMENT

The following conduct rules shall be binding upon the Owner and/or Home Owners Association and/or Body Corporate of each of the Properties that form part of the Private Development.

It is a specific requirement that these conduct rules are carried forward as a minimum requirement to the conduct rules of the individual Home Owners Association and/or Body Corporate to be formed for any further sub-division or sectional title scheme.

Management of conduct and penalties of individual homeowners shall firstly be dealt with by the Home Owners Association and/or Body Corporate management committees. If not adequately and/or timorously addressed then further action may be taken against the Home Owners Association and/or Body Corporate by the Management Committee/Trustees of the POA.

REFUSE DISPOSAL

1. An owner or occupier of a property shall –
 - (a) maintain in an hygienic and dry condition, a receptacle for refuse within his property or on such part of the common property as may be authorised by the management committee in writing;
 - (b) ensure that before refuse is placed in such receptacle, it is securely wrapped, or in the case of tins or other containers, completely drained;
 - (c) for the purpose of having the refuse collected, place such receptacle within the area and at the times designated by the management committee;
 - (d) when the refuse has been collected, promptly return such receptacle to his erf or other area referred to in paragraph (a).

VEHICLES

2.
 - (a) No owner or occupier shall park or allow any vehicle to be parked upon the common property other than in a designated parking area for that owner's unit (if any), without the consent of the management committee in writing.
 - (b) The management committee may cause to be removed or towed away, at the risk and expense of the owner of the vehicle, any vehicle parked, standing or abandoned on the common property other than in a designated parking area for that owner's unit without the consent of the management committee.
 - (c) Owners and occupiers shall ensure that their vehicles, and the vehicles of their visitors and guests, do not drip oil or brake fluid on to the common property or in any other way deface the common property.
 - (d) No owner or occupier shall be permitted to dismantle or effect major repairs to any vehicle within the development.

APPEARANCE FROM OUTSIDE

3.
 - (a) The owner or occupier of an erf shall not place or do anything on any part of the common property or on his/her erf, including balconies, patios and gardens, which, in the discretion of the management committee, is aesthetically displeasing or undesirable.
 - (b) The owner or occupier may not change in any way the outside of the dwelling unit or attach anything thereto, including a solar heating system, security gates and burglar bars, or erect any structures, including a carport, without the prior written consent of, and without the design having been approved, by the Management Committee.

- (c) Gardens, lawns and hedges are to be kept neat and tidy and driveways and foot paths to be kept free from weeds and grass. Failing this, the committee has the right to have this done at the owners cost as well as impose a fine.
- (d) Appearance of units need to be kept neat and tidy, and fascia boards, gutters and garage doors need to be maintained at all times.
- (e) No tree or shrub within the common area may be trimmed or removed without the knowledge of the Management Committee.
- (f) Repainting of a unit shall be in accordance with guidelines laid down by the Management Committee from time to time.

SIGNS AND NOTICES

- 4. No owner or occupier of an erf shall place any sign, notice, billboard or advertisement of any kind whatsoever on any part of the common property or on his/her erf / unit, so as to be visible from outside the erf, without the written consent of the management committee first having been obtained.

LITTERING

- 5. An owner or occupier of a section shall not deposit, throw, or permit or allow to be deposited or thrown, on the common property any rubbish, including dirt, cigarette butts, food scraps or any other litter whatsoever.

PETS

- 6. (a) Owners or their tenants may not keep any pets / reptiles / birds without the prior written consent of the Management Committee. In exercising its discretion, due regard shall be given by the Management Committee to the type of animal, its suitability to be contained in a restricted area, the potential risk posed to other residents and the risk that such animal may become a nuisance to other residents.
- (b) Subject to consent being granted in terms of 6(a):
 - (i) No dog may be allowed outside the owner's property unless it is controlled by a leash.
 - (ii) Any littering caused by the pet within the owner's property or outside, shall be removed immediately and suitably disposed of.
 - (iii) Barking, yapping and whining to be controlled at all times so that the peace of other owners and occupiers is not disturbed.
 - (iv) Visitors are not permitted to bring their dog, cat or any other animal into the Complex.
 - (v) No resident is permitted to board/look after a dog or cat on behalf of family or friends.

ERADICATION OF PESTS

- 7. 7.1 An owner shall keep his property free of white ants, borer and other wood destroying insects, as well as of rats and other rodents.
- 7.2 The Management Committee or its agent shall be entitled at any reasonable time to inspect the premises and to take such action, at the cost of the owner, as may be required in the event of the owner not fulfilling his obligations in this regard.

NUISANCE

8. (a) No owner or occupier shall do anything on his property or allow anything to be done on his property which in the opinion of the management committee unreasonably interferes with the enjoyment by the other owners/occupiers of their properties or creates a nuisance. Without detracting from the generality of the foregoing, this includes unacceptable behaviour by pets, unacceptable noise levels of whatever nature, late night parties causing a disturbance to other owners/occupiers, and the like. Without detracting from the foregoing, no loud music or revelry shall be permitted after 21h00 from Monday to Thursday, after 23h00 on Fridays and Saturdays or at any time on Sundays.
- (b) Each owner/occupier shall keep his property in a neat and tidy state, both as far as the garden area and improvements are concerned.
- (c) Any complaints as regards the above shall be referred to the management committee whose decision shall be final. Where applicable, written notice to cease any activity which in the opinion of the management committee constitutes unacceptable behaviour, will be served on the transgressor. Failure to comply with such notice, shall entitle the management committee to seek legal advice and to take such legal action or impose such fine as may be required.

LAUNDRY

9. An owner or occupier may not hang any washing or laundry on the dwelling unit in such a manner so as to be visible from outside the premises.

PAYMENT OF LEVIES AND SERVICE CHARGES

10. (a) Accounts for levies and service charges will be rendered monthly.
- (b) Levies and service charges shall be paid by the 7th of the month for which the account is rendered. Any part of the account still not settled by the 7th of the month shall be subject to a fine and/or such legal action as the Management Committee may deem prudent.

ACCESS TO COMPLEX

11. (a) Owners and occupiers are to ensure that the access gate (if applicable) is closed before proceeding into or from the Complex. Failing to do so will render the culprit liable to a fine.
- (b) Visitors are to be informed accordingly when receiving their calls from the main gate.
- (c) Only persons known to you should be allowed to enter the Complex. On no account should unknown persons be allowed access, no matter what their intended business is.
- (d) Speed limit of 30 kph to be adhered to at all times.

TELEVISION AERIALS / SATELLITE DISHES

12. The erections of DSTV dishes or TV aerials are to be sited and fitted in consultation with the Chairperson of the Homeowners Association or his nominee, whose consent has to be obtained. The installation must be executed by a professional technician.

POST BOXES

13. The post boxes are to be cleared on a regular basis, preferably daily. Post boxes not cleared on a regular basis shall be closed. Locks to be serviced at all times.

OCCUPATION OF UNITS

14. (a) All tenants of units and other persons granted rights of occupancy by any owner of the relevant units, are obliged to comply with these conduct rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy. An owner has to provide the Committee beforehand with documentary proof that an intending tenant has agreed to abide to the Constitution and Conduct Rules, and the owner has to accept responsibility in writing for the conduct of the tenant, under said Constitution and Conduct Rules.
- (b) The maximum number of occupants living in the various sized units allowed to occupy various buildings erected on Erven are as follows:
- Two bedroomed units may only be occupied by a maximum of no more than four persons.
- Three bedroomed units may only be occupied by a maximum of no more than six persons.
- (c) Garages may not be used for Residential purposes.
- (d) No tenant may sub-let.
- (e) Nahoon Valley Ridge is a Residential Complex and no trading nor running of a business from any unit is allowed.

STORAGE OF FLAMMABLE MATERIAL

15. An owner or occupier shall not store any material or do, permit or allow to be done, any dangerous act within the Complex that will cause damage to his/her property or those of others.

GARDEN SERVICE STAFF

16. Owners and occupiers may not interfere by giving orders to garden staff or garden service staff. Any requests / complaints must be taken up with the Estate Manager or Managing Agent or Committee.

SKATEBOARDS / SCOOTERS / TRICYCLES, ETC.

17. Skateboards / scooters, tricycles, bicycles, may only be used by children in the common areas under adult supervision. Strict control by owners / occupiers is essential. The driving of quad bikes in the complex is prohibited. Playing of outdoor games is allowed but in respect of children under the age of 7 years, only where direct adult supervision is present: This means that such adult, who can be the owner, tenant or visitor, (including a parent or grandparent), must be physically present when and where such activity is undertaken. Irrespective of the age of the children, parents / owners / occupiers must ensure that rules pertaining to issues such as disturbance, noise, damage to property and gardens, be strictly adhered to. Any damage or injury caused, whether supervision is present or not, will be for the account of the relevant owner.

SLAUGHTERING

- 18.
- 18.1 The slaughtering of animals for cultural or religious purposes cannot be prohibited in terms of the Constitution of the Republic of South Africa.
- 18.2 The following conditions shall apply to the slaughtering of animals, and all of the relevant information applicable to the slaughtering of the animals shall be supplied to the trustees as follows:-
- 18.2.1 At least two (2) weeks written notice of the intended religious or cultural event requiring such ritual slaughter shall be given to the trustees for approval;
- 18.2.2 The date and time of the proposed slaughtering;
- 18.2.3 The type of animal to be slaughtered;

- 18.2.4 For special circumstances such as funerals, 24 hours' notice is to be provided to residents. For all other functions, the current notice period will remain in place.
- 18.2.5 A certificate from the Society for the Prevention of Cruelty towards Animals (SPCA) must accompany the above notice confirming that an official from the SPCA will be present at the proposed event to ensure that the animal to be slaughtered will not endure unnecessary pain and suffering during such slaughter;
- 18.2.6 Notice must be given to all adjacent units of the date and time of the proposed slaughter and proof of the receipt of such notice by the owner/tenant responsible for the unit must be timeously submitted to the trustees;
- 18.2.7 Failure to comply with the requirements set out above will entitle the Body Corporate to prevent the act of ritual or cultural slaughtering from taking place on the premises or penalising the owner with a fine.

GENERAL

19. (a) The Managing Committee may add to or delete from these conduct rules from time to time after giving notice of its intention to do so.
- (b) Please remember: Managing Committee member's main duty is to manage the Complex according to the Constitution.

PENALTIES

20. Any breach of the above Rules of Conduct will render the offender or owner liable to a fine / penalty or both.

As a general rule, a first offence shall be dealt with by way of a written warning, though the Management Committee may in its discretion impose a fine when justified by the severity of the offence.

Subject to the above, the Management Committee may impose fines in accordance with the following guidelines:

Minor offences including behavioural offences:	R500 – R2 000
Failure to comply with architectural guidelines:	R2 500- R10 000
Major infringements of the Constitution including matters pertaining to site development:	R10 000 – R25 000

Thereafter, the fine will be in the sole discretion of the Management Committee

The fines shall be added to the monthly levy of the unit in question.

Where the Owner and/or Home Owners Association and/or Body Corporate fail to take adequate and timorous action against an offender or where there are repeated and blatant contraventions of the conduct rules, then the POA may impose penalties on the Owner and/or Home Owners Association and/or Body Corporate.