

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008**

**MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY WITH VOTING
MEMBERS**

**THE JETTY RETIREMENT VILLAGE
HOMEOWNERS ASSOCIATION NPC**

Registration No. 2024 / 325679 / 08

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1. DEFINITIONS

- 1.1. In this Memorandum of Incorporation the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
- 1.1.1. **"Act"** means the Companies Act No. 71 of 2008, as amended, read with the regulations promulgated in terms thereof from time to time;
- 1.1.2. **"Alienate"** means in relation to any Erf or Unit, the transfer of any rights in respect thereof and, without derogating from the generality of the foregoing, includes to alienate by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolute condition and **"Alienation"** shall have a corresponding meaning;
- 1.1.3. **"Architect"** means the architect approved and appointed by the Association in terms of this Memorandum and in terms of a criteria determined by the Association from time to time.;
- 1.1.4. **"Association"** means The Jetty Retirement Village Homeowners Association NPC being a non-profit company with voting members, incorporated in terms of the Act;
- 1.1.5. **"Association Area"** means Portion 202 of the Farm Ganse Vallei Number 444 (ERF 10532 Plettenberg Bay) situate in the Bitou Municipality, Division Knysna, in the Western Cape Province;

- 1.1.6. **"Auditors"** means the auditors of the Association from time to time;
- 1.1.7. **"Board"** means the board of directors of the Association from time to time;
- 1.1.8. **"Body Corporate"** means a body corporate of any Sectional Title Scheme falling within the Development;
- 1.1.9. **"By-Law"** means the Bitou Municipality By-Law on Municipal Land Use Planning (PN 273/2015) dated 12 August 2015 (as amended);
- 1.1.10. **"Chairperson"** means the director appointed to chair the meetings of the Board of Directors from time to time;
- 1.1.11. **"Common Property"** means: -
 - 1.1.11.1. in the case of an Erf on which a Sectional Title Scheme is developed, common property as defined in the Sectional Titles Act, which is not subject to an exclusive right of use by a member in terms of that Sectional Title Scheme;
 - 1.1.11.2. the land registered in the name of the Association, including, but not limited to, Private Spaces;
 - 1.1.11.3. any portion of the Development which is not subject to an exclusive right in favour of a Member;
- 1.1.12. **"Common Property Improvements"** means any buildings, structures, lights, landscaping, irrigation, driveways, parking areas, pathways, security installations and equipment located within the common property;
- 1.1.13. **"Common Property Services"** means any roads, sewerage, potable water, electrical infrastructure and street lighting located within the Common Property;
- 1.1.14. **"CSOS Act"** means the Community Scheme Ombud Service Act 9 of 2011;
- 1.1.15. **"Developer"** means Shelfplett 47 Proprietary Limited registration number 2006/019339/07, its successors in title or assigns in its capacity as

developer;

- 1.1.16. **“Developer Director”** means any director appointed by the Developer during the Initial Period;
- 1.1.17. **“Development”** means –
 - 1.1.17.1. certain immovable property being Portion 202 of Farm Ganse Vallei No 444 Registration Division Knysna, Western Cape; to be converted to Erf 10532 Plettenberg Bay, Bitou Municipality, Western Cape (as indicated on the recently approved General Diagram with number 2964/2024) which property will be subdivided into a township known as **“The Jetty Lifestyle Estate”** (**“The Jetty”**) in accordance with approval obtained from the Local Authority, generally in accordance with the Combined Cadastral Plan, and includes all/any amendments of such township approved by the Local Authority upon application by the Developer;
- 1.1.18. **“Director”** means any member of the Board as contemplated in section 66 of the Act including an alternate or co-opted director;
- 1.1.19. **“Electronic Communication”** shall have the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002, as amended;
- 1.1.20. **“Erf”** means every Erf that was created as a result of the subdivision of the properties comprising the Development;
- 1.1.21. **“Erven”** means the plural of Erf;
- 1.1.22. **“Estate”** means the cluster housing development, including free hold and sectional title, known as “The Jetty” to be established by the Developer in respect of the Association Area;
- 1.1.23. **“Estate Agent”** means an Estate Agent approved and listed by the Association in terms of this Memorandum in terms of a criteria determined by the Association and contracted by a Registered Owner of an Erf for the

letting and/or reselling of his Erf or Erven;

- 1.1.24. **"Estate Rules"** means the rules made by the Board from time to time in terms of this Memorandum and the rules under this name promulgated by the Association from time to time;
- 1.1.25. **"HDSRP Act"** means the Housing Development Schemes for Retired Persons Act No. 65 of 1988 (as amended);
- 1.1.26. **"IFRS"** means the International Financial Reporting Standards as adopted from time to time by the Board of International Account Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of the Act;
- 1.1.27. **"Improvements"** means any structure of whatever nature constructed or erected or to be constructed or erected on an Erf;
- 1.1.28. **"the Initial Period"** means the period from the establishment of the Association until all portions have been developed, or alternatively until the Developer notifies the Association in writing that the Initial Period has ceased, whichever is the earlier;
- 1.1.29. **"In Writing"** means legible writing in English and includes printing, type writing or any other mechanical process as well as any electronic communication in a manner and form permitted in terms of the Act;
- 1.1.30. **"Levy/Levies"** means the levy payable by a Member in terms of 9 below;
- 1.1.31. **"Local Authority"** means the Local Authority having jurisdiction over the Development which, at date of approval of the Development, is Bitou Municipality, District Knysna;
- 1.1.32. **"LUPO"** means the Land Use Planning Ordinance No 15/1985 (as amended) and includes any substituted legislation, i.e. the By-Law;
- 1.1.33. **"Managing Agent"** means any person or body appointed by the Association as an independent contractor to undertake any of the

functions of the Association;

1.1.34. **"Member"** means: -

1.1.34.1. the Developer for so long as it is the Registered Owner of an Erf or Unit in the Development;

1.1.34.2. all Registered Owners of any Erf and all Registered Owners of a subdivision of an Erf; and

1.1.34.3. in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate and the Registered Owners of any Units,

1.1.34.4. it being recorded that if a Member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations in terms of this Memorandum;

1.1.35. **"Memorandum"** means this Memorandum of Incorporation in respect of the Association, as amended from time to time;

1.1.36. **"Perimeter Security Installation"** means any walls, fences and related security equipment enclosing and securing the Estate;

1.1.37. **"Property"** means immovable property, in the Association Area/in the Estate, registered in the name of a Registered Owner whether or not such property has been developed;

1.1.38. **"Property Improvements"** means any buildings, structures, boundary walls/fences, garden walls/fences, landscaping, irrigation, driveways, parking areas, external paving, tiling, hard surfacing, lights, electricity generation equipment, air conditioners, aerials, satellite dishes and cameras situated on any Property;

1.1.39. **"Plan"** means any plans, specifications and any other technical requirements or details related to the refurbishment or replacement of any Property Improvements;

1.1.40. **"Private Spaces"** means those portions of the Development not

registered in the name of individual Registered Owners and comprising, without detracting from the generality of the foregoing, all Erven of the Development which are identified as private roads, private road verges, private open spaces, lakes waterways and pathways and other area or services for the maintenance of which the Local Authority is not responsible in terms of LUPO;

- 1.1.41. **"Register"** means the register of Members kept in terms of the Act;
- 1.1.42. **"Registered Owner"** means the registered owner of an Erf or Unit or a share thereof who is, in terms of the Deeds Registries Act No 47 of 1937, as amended, reflected in the records of the Deeds Registry concerned as a registered owner or joint owner of the Erf or Unit;
- 1.1.43. **"Representative"** means any person nominated in terms of clause 7 to represent a Member;
- 1.1.44. **"Resident"** means any person who is 50 (fifty) years of age or older and his/her partner lawfully occupying an Erf or Unit which shall include but not be limited to –
 - 1.1.44.1. a Tenant; and /or
 - 1.1.44.2. an occupant of the Retirement Village Scheme, i.e. a party who holds a Housing Interest in respect of a unit in a Retirement Village Scheme, including third parties to whom such occupant has granted the right to occupy his/her unit in the Retirement Village Scheme; and / or
 - 1.1.44.3. guests of a Registered Owner or Tenant, as the case may be, and persons who reside with a Registered Owner or Tenant, as the case may be
- 1.1.45. **"Retirement Village Scheme"** mean any retirement village scheme established on the Development in accordance with the HDSRP Act;
- 1.1.46. **"Sectional Titles Act"** means the Sectional Titles Act No. 95 of 1986, as amended, read with the regulations promulgated in terms thereof from

time to time;

- 1.1.47. **“Sectional Title Scheme”** means any scheme established in terms of the Provisions of the Sectional Titles Act;
- 1.1.48. **“Services Agreement”** means the services agreement entered into by and between the Developer and the Local Authority, which agreement is to be read as specifically incorporated into this Memorandum;
- 1.1.49. **“Tenant”** means a person who is 50 (fifty) years of age or older and his/her partner leasing an Erf or a Unit from the Registered Owner thereof;
- 1.1.50. **“Unit”** means a unit as per the term defined in the Sectional Titles Act;

2. INTERPRETATION

- 2.1. The clause headings are for convenience and shall be disregarded in construing this Memorandum.
- 2.2. Unless the context clearly indicates a contrary intention:
 - 2.2.1. the singular shall include the plural and vice versa; and
 - 2.2.2. a reference to any one gender shall include the other genders; and
 - 2.2.3. a reference to natural persons includes legal persons and vice versa.
- 2.3. Words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
- 2.4. When any number of days is prescribed in this Memorandum, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday. .5 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.

- 2.5. Any words or expressions as defined in the Act at the date on which this Memorandum becomes binding on the Association shall, if not inconsistent with the subject or context, bear the same meaning in this Memorandum.

3. JURISTIC PERSONALITY

- 3.1. The Association is incorporated as a non-profit company with members which may be juristic persons, including profit companies, all of which shall be voting members.
- 3.2. The Association has juristic personality from the date and time that such incorporation is registered as is stated in its registration certificate and as contemplated in section 19(1) of the Act.
- 3.3. The Association is incorporated in accordance with and governed by:
- 3.3.1. the unalterable provisions of the Act subject to such higher standards, greater restrictions, longer periods of time and more onerous requirements of this memorandum in relation to such unalterable provisions;
 - 3.3.2. the alterable provisions of the Act subject to the limitations, extensions, variations and substitutions of this memorandum; and
 - 3.3.3. the other provisions of this memorandum.

4. OBJECTIVES

- 4.1. The Association shall have as its objectives:
- 4.1.1. the matters referred to in section 29(3) of the By-Law and without detracting from the generality thereof to ensure compliance with the conditions for subdivision imposed by the Local Authority when approving the Development and, more specifically:
 - 4.1.1.1. to oversee, maintain and control the Development;
 - 4.1.1.2. ensure the general high standard of the Development;

- 4.1.1.3. generally to promote, advance and protect the Development and the interests of the Association;
- 4.1.2. the regulation and control of harmonious development of the Development;
- 4.1.3. to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property and the collection of Levies for which Members are liable;
- 4.1.4. to promote a high standard of Improvements on the Estate;
- 4.1.5. to institute, control and pay for measures to provide security within and to the Estate.
- 4.1.6. to administer and enforce the Estate Rules;
- 4.1.7. to acquire and grant any servitudes as may be necessary;
- 4.1.8. to take action, including the imposition of any fines or the institution of any legal proceedings, proceedings in terms of the CSOS Act or proceedings in a Court of law as may be deemed necessary by the Board in relation to any non-compliance by any Member of the provisions of this Memorandum or the Estate Rules.
- 4.1.9. to ensure the maintenance, upkeep, upgrading and installation, where required, of common services serving the Development, such as, but not limited to, the sewerage and drinking water reticulation and storm water systems, security fences and private roads, according to the approved infrastructure plans submitted to the Local Authority from time to time;
- 4.1.10. to enter into any contracts necessary to ensure the proper implementation by the Association or obligations as may have been imposed upon the Association by the Local Authority or any other statutory body or authority pursuant to the development of the Estate and to take cession and assignment from the Developer of any such obligations as may have been imposed upon the Developer prior to the establishment of the association;

- 4.1.11. the payment of the bulk water and sewerage accounts jointly with Registered Owners of Erven in the Development;
 - 4.1.12. to control the transfer of Erven and Units in the Development and the conditions imposed by the Local Authority and conditions imposed by the Developer in the Agreement of Sale between the Developer and the first Registered Owner of an Erf;
 - 4.1.13. to manage and maintain the pathways along the riverbanks and within the Development;
 - 4.1.14. to take transfer of, maintain and insure, where necessary, the roads, the private open space and improvements thereupon in the Development and control the usage thereof and of the facilities belonging to the Association or falling under its control;
 - 4.1.15. to maintain, insure and manage the assets of the Association;
 - 4.1.16. the preservation of the natural environment including vegetation and flora and fauna on the land;
 - 4.1.17. to regulate the conduct of any person and the prevention of nuisance of any nature of the Registered Owner of any property forming part of the Development;
 - 4.1.18. to introduce traffic calming measures;
 - 4.1.19. to impose fines and other penalties that may be payable by and enforced against Members or Residents of the Association; and
 - 4.1.20. in order to give effect to the abovementioned objects, to make rules to accomplish these objectives.
- 4.2. The Association shall have the power to do all such acts as are necessary to accomplish the fulfilment of the afore going objects, including, but not restricted, to powers specifically contained in this Memorandum.

5. COMMENCEMENT DATE

- 5.1. The Local Authority when approving the application for subdivision to allow the Development, imposed a condition in terms of section 29(1) of the By-Law whereby the Registered Owner of each subdivided portion of the immovable property comprising the Development and all successors in title shall be members of a homeowners association in respect of the Development.
- 5.2. The Association was incorporated as is stated in its registration certificate as contemplated in section 19(1) of the Act.

6. NON-PROFIT COMPANY PROVISIONS

- 6.1. The Association is a non-profit company and accordingly the Association:
 - 6.1.1. shall apply all of its assets and income, however derived, to advance its stated objects set out in clause 4 and it may:
 - 6.1.1.1. acquire and hold securities issued by a profit company;
 - 6.1.1.2. directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 6.2. The Association shall not, directly or indirectly, pay any portion of its income or transfer any of its assets regardless as to how such income or asset was derived to any person except:
 - 6.2.1. as reasonable remuneration for goods delivered or services rendered to the Association;
 - 6.2.2. as reasonable payment of or reimbursement for expenses incurred to advance a stated object of the Association;
 - 6.2.3. as payment for an amount due and payable by the Association in terms of the *bona fide* agreement entered into between the Association and that party;
 - 6.2.4. in respect of any legal obligation binding upon the Association.

- 6.3. No office bearer of the Association shall, solely by virtue of being an office bearer, have any rights in the Common Property or any other assets of the Association.
- 6.4. Despite any provision in any law or agreement to the contrary, upon the winding up or the dissolution of the Association:
 - 6.4.1. no past or present Member and no past or present Director shall be entitled to any part of the net value of the Association after its obligations and liabilities have been satisfied;
 - 6.4.2. the entire net value of the Association shall be distributed to:
 - 6.4.2.1. one or more registered non-profit companies, non-profit trusts and/or voluntary associations having objects similar to the Association's main object carrying on activities within the Republic of South Africa, as determined by the Board; and/or
 - 6.4.2.2. one or more registered external non-profit companies, non-profit trusts and/or voluntary associations having objects similar to the Association's main object, as determined by the Board.
 - 6.4.3. Should no such determination be made in terms of clause 6.4.2 immediately prior to the winding up or dissolution of the Association, a court of law shall make such determination.

7. MEMBERSHIP

- 7.1. The Association shall have as its Members:
 - 7.1.1. the Developer for as long as the Developer remains a Registered Owner of any portion of the Development and, without detracting from the generality of the afore going, specifically including any Erf;
 - 7.1.2. every Registered Owner upon registration of transfer of an Erf or Unit into his name provided that where a Registered Owner comprises more than one person, such persons shall be deemed jointly to be one Member of the Association and shall be responsible jointly and severally for the

obligations of such membership. A Registered Owner of an Erf or Unit shall be a Member of the Association until he ceases to be the Registered Owner of such Erf or Unit; and \ or

- 7.1.3. in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate of that Sectional Title Scheme and the individual Registered Owners of Units.
- 7.2. Where a Property is owned by more than one person, the co-owners shall appoint one such co-owner as a Member. All co-owners shall together be deemed to be one Member and have the rights and obligations of one Member, provided however that all such co-owners shall be jointly and severally liable for the due performance by that Member of any of his obligations to the Association.
- 7.3. Where a property is owned by a company, closed corporation or trust, the directors, members or trustees as the case may be, from time to time, shall appoint one of their number as the Member, provided however that all such directors, members or trustees, as the case may be, shall together be deemed to be one Member and have the rights and obligations of one Member.
- 7.4. Any co-owners referred to in clause 7.1 and any company, closed corporation or trust referred to in clause 7.3 shall advise the Association In Writing of the name of the person appointed as the Member and of any changes to such appointed Member.
- 7.5. Where a Registered Owner is a company, close corporation or trust, it shall be obliged to give prior written notice to the Association of any proposed change in its directors, shareholders, members of a closed corporation or trustees, as the case may, and every new shareholder, director, member of a close corporation or trustee shall sign and deliver to the Association, prior to his taking office in such capacity, an acknowledgment of his acceptance of the provisions of this Memorandum.
- 7.6. A Registered Owner shall be entitled to become a Member of the

Association, and when such Member ceases to be a Registered Owner, that Member shall *ipso facto* cease to be a Member of the Association. A Registered Owner may not resign as a member of the Association.

- 7.7. No Member shall transfer his Property unless that Member has agreed In Writing with the proposed transferee of such Property, as a *stipulatio alteri* in favour of the Association, that such transferee shall become a Member on taking transfer of the Property and be bound by all the provisions of this Memorandum and that such written agreement is lodged with the Association prior to the proposed transferee taking transfer of such Property.
- 7.8. No Member may let or part with occupation of his Property, whether that Property is developed or not and whether temporarily or otherwise, unless that Member has agreed In Writing with the proposed occupier of the Property, as a *stipulatio alteri* in favour of the Association, that such occupier be shall be bound by all the provisions of this Memorandum and that such written agreement is lodged with the Association prior to the proposed occupier taking occupation of the Property.
- 7.9. No Member may rezone his Property whether by way of rezoning, consent use or otherwise without the prior written consent of the Association, which consent shall be in the sole discretion of the Association, irrespective of whether any lawful authority grants permission for such rezoning or consent use.
- 7.10. Subject to 7.11 below, no Member may subdivide his Property. No Member may consolidate more than two Properties without the prior written consent of the Association, which consent shall be in the sole discretion of the Association, irrespective of whether any lawful authority grants permission for such consolidation.
- 7.11. The Developer is developing the Estate in phases. During the Initial Period, the Developer may in its sole discretion subdivide or consolidate property owned by the Developer and which forms part of the Estate. Insofar as the consent of the Members are required each Member hereby irrevocably grants consent to the approval of such subdivision or consolidation.

- 7.12. If a Member after having received notice In Writing from the Association fails to make timeous payment of any Levies or any other amounts due to the Association or is in contravention of the provisions of this Memorandum or of the Estate Rules, that Member may be suspended from the benefits of membership as follows:
- 7.12.1. the Board shall send a notice to the Member informing that Member of the suspension and giving reasons for such suspension;
 - 7.12.2. the suspension shall remain in force until such time as the Board gives notice to the contrary to that Member In Writing or the suspension is uplifted following the outcome of the process referred to in clause 13.9;
 - 7.12.3. after being so suspended, that Member shall not be entitled to the privileges of membership of the Association which include but are not limited to the right to use any recreational facilities being part of the Common Property Improvements, and the use of other services as may be made available by the Association to Members provided the Association may not refuse the Member access to the Common Property to gain access to that Member's property.
- 7.13. The rights and obligations of a Member shall not be transferable and every Member shall:
- 7.13.1. to the best of his ability further the objects and interests of the Association;
 - 7.13.2. observe the provisions of this Memorandum and the Estate Rules;
 - 7.13.3. sign all documents and do all things necessary to enable the registration by the Association or the Local Authority of any servitudes over his Property as may be required related to the provision of the perimeter security installation, other security facilities, underground pipes and/or cables.
- 7.14. Nothing contained in this Memorandum shall prevent a Member from ceding his rights in terms of this Memorandum as security to the mortgagee of his

Property.

7.15. The Association shall compile and maintain a register of Members.

7.16. A Registered Owner may not resign as a Member.

8. PHASES

8.1. The Developer intends to develop and market the Development in phases as the Developer deems fit and, for as long as the Developer is a Member of the Association, the Developer shall enjoy unrestricted rights with regard to the marketing of the Development and, in particular, the right to erect signage within and outside the Development.

8.2. The Developer shall have the right to market and develop any products including plot-and-plan products and Sectional Title Scheme developments on the Development.

8.3. The Developer shall, in its absolute discretion, be entitled to apply for and subject to approval by the Local Authority, vary the layout and/or zoning and/or size and/or boundaries of Erven and/or the extent and position of streets comprising the Development and Members shall be bound thereby and shall have no claim of whatever nature against the Developer arising there from: Provided that the Developer shall not be entitled to change an Erf which has been sold by the Developer in any other way than that provided for in the Deed of Sale in respect of such Erf. Insofar as the consent of a Member is required for any of the foregoing in relation to Erven not already sold by the Developer, the Developer (represented by any one of its Directors) is irrevocably granted a power of attorney to grant any/all such consents on behalf of Members, as may be required.

9. MEMBERS' AND RESIDENTS' OBLIGATIONS

9.1. Every Member and Resident, insofar as may be applicable, is obliged to comply with:

- 9.1.1. the provisions of this Memorandum and all rules or regulations passed by the Association or the Directors;
- 9.1.2. any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member or Resident;
- 9.1.3. any directive given by the Association and/or the Directors in enforcing the provisions of this Memorandum.
- 9.2. The rights and obligations of a Member are not transferable and every Member shall:
 - 9.2.1. to the best of his ability, further the objects and interests of the Association;
 - 9.2.2. observe all directives made or given by the Association and/or the Directors.
- 9.3. The Members shall be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein.
- 9.4. A Member shall not be entitled to alienate or transfer an Erf without the written consent of the Directors which consent shall be withheld if there has not been compliance with the provisions of this Memorandum.
- 9.5. Such consent by the Association in terms of clause 9.4 above shall be withheld when –
 - 9.5.1. the Member in question is indebted to the Association in respect of Levies or any other amounts which the Association may in terms of this Memorandum be entitled to claim from him, i.e. if the Association has not issued a clearance that all amounts owing to the Association by such Member have been paid;
 - 9.5.2. the Member as member of a Body Corporate is indebted to such Body Corporate in respect of any amounts which the Body Corporate may be entitled to claim from him, i.e. if the Body Corporate has not issued a

clearance that all amounts owing to it by such Member as a member of the Body Corporate have been paid to it;

- 9.5.3. in the case of an Erf, the proposed transferee has not agreed In Writing to become a Member of the Association and to observe the Memorandum for the duration of his ownership of the Erf;
- 9.5.4. in the case of a Unit, the proposed transferee has not agreed In Writing to become a member of the applicable Body Corporate and to observe the Memorandum for the duration of his ownership of the Unit;
- 9.5.5. the proposed transferee does not acknowledge that upon the registration of the Erf or Unit (as the case may be) into his name, he shall *ipso facto* become a Member of the Association;
- 9.5.6. the proposed transferee does not acknowledge that upon the registration of the Unit into his name, he shall *ipso facto* become a Member of the applicable Body Corporate; and
- 9.5.7. in those cases where an Erf or Unit is owned jointly and subject to an arrangement whereby the co-owners are entitled to occupy the Erf or Unit at particular times during the year, the Association is not satisfied that the transferee of an undivided share in the Erf or Unit is aware of such arrangements and has bound himself thereby.
- 9.6. A Member, other than the Developer, shall not consolidate or subdivide an Erf with one or more Erven without the written consent of the Association.
- 9.7. When granting a request for consolidation or subdivision of Erven, the Association reserves the right to impose conditions regarding the building parameters of the property and Levies payable so as to ensure that the levy base of the Association is not unduly compromised.
- 9.8. The above provisions will, however, not limit the rights of the Developer to consolidate or subdivide Erven that have not been transferred.

- 9.9. No Member shall let or otherwise part with occupation of his Erf or Unit without the consent of the Association, which consent shall only be withheld if the Association is not satisfied that the provisions of the Estate Rules, and any other by-rules or regulations made in terms of this Memorandum, have been complied with and/or is not satisfied that the Resident of the Erf or Unit has In Writing agreed to be bound by same.
- 9.10. A Member may not resign from the Association.
- 9.11. The provisions of this Memorandum shall be binding upon all Members, persons on the Development and Residents.
- 9.12. Notwithstanding that Members hold title to their Erven individually, it is recorded that the Development is of a homogenous nature and that the Association shall be vested with the overall control of all matters affecting the Development. To this end, the Members agree:
- 9.12.1. in the event of a Member being a Body Corporate, to cede and delegate its powers and duties to the Association;
- 9.12.2. in the event of any association of members being formed within the Development, specifically for owners of certain Erven or Units or for certain classes of Members, to do all in their power to procure that the powers and duties of any such associations are ceded and delegated to the Association;
- 9.12.3. the Association shall be entitled, in turn, to cede and delegate the powers and duties ceded and delegated in terms of clauses 9.12.1 and 9.12.2 above to such other person or entity

LEVIES

- 9.13. The Board may from time to time impose annual levies upon Members for the purpose of meeting all the expenses which the Association has incurred or which the Board reasonably anticipates the Association will incur in the attainment of its objects and the pursuit of its business.

- 9.14. The Board shall, not less than 30 days prior to the end of each financial year or so soon thereafter as is reasonably possible, prepare and serve upon every Member, at the address chosen by that Member, an estimate in reasonable detail of the amount which shall be required by the Association to meet its expenses during the following financial year, and shall specify separately any estimated deficiency as may result from the preceding year. The Board may include in such estimates an amount to be held in reserve to meet anticipated expenditure not of an annual nature and as may be required by any applicable legislation.
- 9.15. The annual Levy shall be payable by Members in equal monthly instalments due in advance on the first day of each and every month. The Levy shall be paid by debit order or such other electronic payment method as may be determined by the Association from time to time.
- 9.16. In the event of the Board for any reason whatsoever failing to prepare and serve the estimate referred to in clause 9.14 timeously, every Member shall, until service of such estimate, continue to pay the Levy previously imposed and shall, after such estimate is served, pay such Levy as may be specified in the notice referred to in clause 9.
- 9.17. The Board may, from time to time, impose special Levies upon the Members in respect of all expenses, which are not included in any estimate made in terms of clause 9.14, and may, in imposing such Levies, determine the terms of payment thereof.
- 9.18. The Board shall be empowered in addition to such other rights as the Association may have in law as against its Members to determine the rate of interest from time to time chargeable upon arrear Levies provided that such rate of interest shall not be in excess of the interest rate as set from time to time in terms of the Prescribed Rate of Interest Act No. 55 of 1975.
- 9.19. Any amount due by a member by way of Levy and any interest thereon shall be a debt due by that Member to the Association. Notwithstanding that a Member may cease to be such, the Association shall have the right to recover arrear Levies and interest from that Member. No Levies or interest

paid by a Member shall under any circumstances be repayable by the Association upon that Member ceasing to be a Member. Further, a Member on ceasing to be such, shall have no claims whatsoever on any other monies held by the Association whether obtained by way of a sale of association assets or otherwise.

- 9.20. A transferee of a Property shall on becoming a Member be liable to pay the Levy then attributable to that property.
- 9.21. Each Member shall pay a Levy *pro rata* to the size of that member's Unit in relation to the total size of all Units situated within the Estate from time to time, provided that the Board shall as far as reasonably practical:
 - 9.21.1. assign those costs relating directly to a Property to the Registered Owner thereof;
 - 9.21.2. assign a proportion of those costs attributable generally to a particular number of Properties to the Registered Owners thereof; and
 - 9.21.3. assign those costs relating to the Estate generally to all Registered Owners equally.
- 9.22. Should the Association consent to the consolidation of Properties, in terms of 7.10 above, such consolidated Property will be liable for the same value of levies, as if it were still separate Properties.
- 9.23. To the extent that the Developer is a Registered Owner of a Property, the Developer shall be liable for the Levy in respect of that Property on the same basis as other Members.
- 9.24. The Board's decision in terms of clause 9.20 shall be final and binding on the members.
- 9.25. A Member shall be liable for and shall pay all legal costs incurred by the Association in the enforcement against that Member of the provisions of this Memorandum and/or the Estate Rules.
- 9.26. A Member shall not be entitled to withhold payment for any reason

whatsoever of any amount payable by that Member to the Association.

10. STATUS OF DEVELOPER

10.1. No person or any Member or Resident of the Association shall prevent or hinder in any way the Developer from: -

10.1.1. gaining access to and egress from the Development;

10.1.2. continuing its building and/or construction operations at the Development;

10.1.3. marketing and selling any Erven;

10.1.4. generally carrying on its business operations, provided that the provisions of clause 10.1.1 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless 48 hours prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the Member. No Member shall be entitled to refuse the Developer immediate access if the required notice has been given.

10.2. The Developer has reserved the right and shall be entitled to build and establish on the Development any amenities and facilities as it in its sole discretion deems fit. The Developer has furthermore reserved the right to subdivide from the Development the sites for such aforesaid amenities and facilities as separate Erven and shall be entitled to dispose of and/or operate the aforementioned amenities and facilities for its own benefit.

10.3. The Developer has reserved the right in its sole discretion, to establish and locate the amenities and facilities referred to in clause 10.2 on any portion of the Development, save such Erven that have already been sold to Registered Owners other than the Developer, with the approval of the Local Authority.

- 10.4. The Association will not be entitled to change, amend or impact on the rights of the Developer or his successors in title in respect of the amenities and facilities referred to in clause 10.2 above without obtaining the written consent of the Developer or his successors in title beforehand.

11. DEVELOPER'S RIGHTS

- 11.1. If the Developer Alienates all its rights in and title to all undeveloped land still vested in it at the time of the transaction to a single transferee, then the Developer shall be entitled to cede to such transferee all its rights and powers in terms of this Memorandum without requiring the consent of the Association or any of the Members and the transferee shall be entitled to exercise all such rights and powers upon transfer of the Developer's rights in and title to all the remaining undeveloped land still vested in the Developer to the transferee.
- 11.2. The Developer may at any time after the construction of such number of dwellings or Sectional Title Schemes as it may determine, abandon in whole or in part the particular rights conferred upon it as Developer in terms of this Memorandum, provided that nothing herein contained shall be construed as depriving the Developer of any rights it may have in terms hereof as an ordinary Member.

12. RESTRICTIONS

- 12.1. Subject to the provisions set out hereunder, no Member, other than the Developer, shall apply for the rezoning of his Erf or Unit (whichever is applicable) with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf or Unit (as the case may be) for any purpose other than the permitted use applicable upon establishment of the Development or the relevant Sectional Title Scheme.
- 12.2. No Member or Resident, other than the Developer, shall conduct any business on an Erf or Unit (as the case may be) other than the uses envisaged herein or use his Erf or Unit for purposes other than residential purposes unless the Directors have approved the use to which the Erf or Unit

is to be put in writing and the Local Authority has, to the extent that it may be necessary, granted the necessary approvals authorizing such use in terms of applicable laws and regulations and there has been compliance with the following:

- 12.2.1. any such Member wishing to conduct a business on his Erf or Unit or who wishes to use his Erf or Unit for purposes other than residential apply in writing to the Board for permission to do so. The Board shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the Board deem necessary;
- 12.2.2. an application in terms of the foregoing shall contain a full description of the proposed business or usage, including but not limited to:
 - 12.2.2.1. the type of business;
 - 12.2.2.2. the number of full time and/or part time staff;
 - 12.2.2.3. the times and duration of the business operation, including the number of days per week;
 - 12.2.2.4. the projected growth of the business operation;
 - 12.2.2.5. whether any alteration to the existing Improvements is proposed;
 - 12.2.2.6. in which portion of the Improvements the business activity is to be located;
 - 12.2.2.7. the number and type of vehicles which will be regularly involved in the business operation;
 - 12.2.2.8. the estimated number of visitors per week resulting from the business operation;
 - 12.2.2.9. the estimated number of deliveries necessitated by the business operation;
 - 12.2.2.10. what provision is to be made for parking.

- 12.3. The Board shall not approve any such application unless they are satisfied that the application complies with the following:
- 12.3.1. the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of neighbours;
 - 12.3.2. the number of employees involved in the running of the business operation will not exceed 2 (two);
 - 12.3.3. the Member will reside permanently on the Erf in respect whereof the application is made;
 - 12.3.4. comment has been obtained from the Members who are affected by the application and made available for consideration by the Board;
 - 12.3.5. adequate provision has been made for parking within the Erf and the landscaping of the Erf will be suitable for the type of business contemplated and that no parking of vehicles off the Erf within the Development will result from the business operation;
 - 12.3.6. the granting of the application will not have any significant effect in the density of the traffic in the Development;
 - 12.3.7. non-residents will not be afforded uncontrolled access into the Development;
 - 12.3.8. no signage will be erected;
 - 12.3.9. the hours of the business operation will be confined between 08:30 and 17:00 on weekdays, or as stipulated by the Board, and no business will be conducted on Saturdays, Sundays and proclaimed public holidays.
- 12.4. Should any Member, other than the Developer, to whom permission has been granted for the conduct of a business change any aspect of such business then such Member shall submit a new application in accordance with the provisions hereof to continue such business.

- 12.5. No Member to whom approval has been granted shall be entitled to erect any sign or advertisement on his Erf or Unit or on any of the Common Property in connection with such business save with the approval of the Association.
- 12.6. No Member shall be entitled to:
- 12.6.1. at any time operate a guest house on his Erf or Unit, provided that this prohibition shall not apply to any guest house or any hotel operated by the Developer or his successors in title from time to time where the necessary zoning approval has been obtained in respect of such guest houses; and/or
 - 12.6.2. lease his Erf or any portion of a building on such Erf or his Unit used for residential purposes for any period less than 3 (three) months.
- 12.7. No Member shall be entitled to operate or conduct a time-sharing scheme as contemplated in the Property Time-Sharing Control Act No 71 of 1983, as amended, in respect of any dwellings or Units owned by him, unless the Association by special resolution resolves otherwise.
- 12.8. Notwithstanding anything else herein contained, the Developer shall be entitled to have commercial offices on the Development in which it can conduct its business activities and shall be entitled to do all things reasonably necessary to lawfully establish such offices on the Development.
- 12.9. No Member shall permit the number of occupants of his Erf or Unit to exceed twice the number of bedrooms on the Erf or Unit. The word “**occupants**” shall include but shall not be limited to any person who resides or stays on such Erf or in such Unit on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the Member or whether such person pays rental or gives any other form of consideration in respect of such Erf or Unit or any portion thereof.

13. RULES

- 13.1. Subject to any restriction imposed or direction given by Members at a

general meeting of the Association the Board may, from time to time, for the attainment of the objects of the Association generally and specifically make rules in regard to:

- 13.1.1. the nature, height and siting of any proposed alterations or renovations to any Property Improvements and which are visible from the extension thereof;
- 13.1.2. the process to be followed and the fees payable to the Association for the scrutiny of any plans prior to the construction of any Property Improvements;
- 13.1.3. the process to be followed and the fees and deposits payable to the Association during the construction of any such Property Improvements;
- 13.1.4. the landscaping and maintenance thereof by a member of that portion of the Common Property directly adjacent to his Property including the installation, operation and maintenance of any irrigation within such part of the Common Property;
- 13.1.5. the control and conduct of Members, Member's Residents, employees, and guests and any service providers employed by such member, within the Common Property;
- 13.1.6. the control and conduct of Members, Member's Residents, employees, and guests and any service providers employed by such member, within the Estate to prevent any nuisance of any nature to any owners or occupiers of Properties;
- 13.1.7. the implementation of measures to prevent or limit damage within the Common Property including the right to restrict the size and/or weight of any vehicles and/ or equipment permitted to enter the Estate;
- 13.1.8. the control of the number of persons permitted to occupy any Property;
- 13.1.9. the keeping of any animals within the Estate;
- 13.1.10. the placing or fixing of any external ornamentation, embellishments or

signs on any property which are visible from the Common Property including the power to remove any such ornamentation, embellishments or signs:

- 13.1.11. the nature and location of any signs within the Common Property including the power to prohibit and to remove any such signs; and
 - 13.1.12. the determination, implementation, management and control of measures for the provision of security to the Estate including the right to restrict and to determine access to and egress from the Estate.
- 13.2. For the enforcement of the provisions of this Memorandum or the Estate Rules the board may:
- 13.2.1. give notice to the Member concerned setting out the nature and extent of the breach and requiring such Member to remedy such breach and to do so within such reasonable period as the Board may determine;
 - 13.2.2. take or cause to be taken such steps as it may consider necessary to remedy such breach of which such Member may be guilty, and debit the cost of so doing to such Member, which amount shall be deemed to be a debt owing by such Member to the Association;
 - 13.2.3. impose a fine and/or other penalties on such Member;
 - 13.2.4. refer the matter to the Ombud for determination in terms of the CSOS Act;
 - 13.2.5. refer the matter for resolution in terms of clause 13.9; and/or
 - 13.2.6. take legal advice, institute legal proceedings by arbitration in terms of clause 40, and/or in a court of law or in terms of the provision of any legislation or regulation prevailing then against any person for the enforcement of the rights of the Association as set out in terms of this Memorandum or the Estate Rules and for such purpose appoint such attorneys and counsel as deemed fit.
- 13.3. the Association shall be entitled to recover all legal costs incurred in terms of clause 13.2.5 from the person concerned, calculated as between attorney

and own client including collection commission and tracing agent's fees.

- 13.4. The Board may institute any proceedings necessary to defend any action or other proceedings as may be instituted by any person, including by any Member, against the Association.
- 13.5. In the event of a Member disputing the terms of notice in clause 13.2 of a breach such dispute shall be determined as set out in clause 13.9.
- 13.6. Any fine imposed upon a Member shall be deemed to be a debt due by such Member to the association.
- 13.7. The Association may in general meeting itself make any Estate Rules which the Board may make and may in general meeting vary or modify any Estate Rules made by it or by the board from time to time, including the quantum of any fines which the Association may impose.
- 13.8. Should the Board pass any resolution to include, amend or change any Estate Rule or the quantum of any fines to be imposed pursuant to any Estate Rule, the Board shall, by Electronic Communication, furnish Members with full details of such Board resolution and such amendment or change shall only become effective on the date of such communication.
- 13.9. In the event of a Member disputing that he has committed any breach or disputing the extent of the breach as referred to in clause 13.2.1, a committee comprising of two Directors and a suitably qualified and experienced independent person, all appointed by the Chairperson for this purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure (subject always to the principles of natural justice) as the Chairperson may direct.
- 13.10. In the event of a Member, after the process in 13.9, being found to have committed the breach, the Board shall be entitled to recover from such Member the costs associated with such adjudication process.
- 13.11. Each Sectional Title Scheme within the Estate shall be subject to and incorporate this Memorandum and the Estate Rules.

- 13.12. A copy of the Estate Rules together with this Memorandum will be provided to each Member upon confirmation of membership. The amended Estate Rules will be made available to each member upon request.
- 13.13. The Services Agreement is to be read as specifically incorporated herein and a copy of the Services Agreement will be made available to all Members and interested parties upon request.

14. APPOINTMENT OF DIRECTORS

- 14.1. There shall be a Board consisting of at least three but not more than five Directors.
- 14.2. A Director (except for the Developer Directors who may or may not be Members) shall be a Member.
- 14.3. The first Directors on formation of the Association and until the first annual general meeting of the Association shall be Developer Directors.
- 14.4. From the first annual general meeting of the Association and for the duration of the Development period there shall be 5 Directors, 3 of which shall be Developer Directors and the remaining Directors shall be appointed by the Members by a majority vote of all Members present at the annual general meeting.
- 14.5. All Developer Directors shall be obliged to resign at the end of the Development Period and thereafter there shall be no Developer Directors.
- 14.6. The Developer shall from time to time advise the Association, In Writing, which persons are appointed as Developer Directors and such persons shall remain in office until such time as the Association receives written notice from the Developer of any changes to such persons acting as Developer Directors.
- 14.7. Nominations for the election of Directors, other than Developer Directors, shall be submitted to the Association by any member in good standing not less than 48 hours prior to any annual general meeting and shall be co-

signed by another Member in good standing.

- 14.8. The Directors shall within 14 days after each annual general meeting appoint a Chairperson and vice-chairperson who shall hold their respective offices until the next annual general meeting provided that the office of Chairperson or vice-chairperson shall *ipso facto* be vacated should he cease to be a Director for any reason. No one Director shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices, the Board shall immediately appoint one of their number as a replacement in such office, however, during the Initial Period the Chairperson shall be elected from one of the Developer Directors.
- 14.9. Subject to the overriding provision in 14.1, the Board shall have the right to co-opt onto the Board a maximum of 2 persons, who need not necessarily be Members of the Association, as Directors. A co-opted Director shall hold office until the next annual general meeting after his co-option when he shall retire but shall be eligible for further co-option.

15. REMOVAL AND ROTATION OF DIRECTORS

A Director (other than a Developer Director) shall hold office from the date of such appointment until the next annual general meeting following such appointment at which meeting he or she shall be deemed to have retired from office, however he or she may make himself or herself eligible for re-election before such meeting.

- 15.1. A Director shall be deemed to have vacated his office upon:
 - 15.1.1. becoming disqualified to act as a director or being removed from office in terms of the provisions of section 69 and section 71 of the Act;
 - 15.1.2. being disentitled to exercise his vote in terms of clause 27.3;
 - 15.1.3. being removed from office in terms of clause 17.6.
- 15.2. Should a vacancy occur in the Board prior to the next annual general meeting, that vacancy shall be filled by a person appointed by the remaining

Directors, or by the Developer should such a vacancy relate to a Developer Director.

- 15.3. In the event that the number of Directors should fall below 3, the remaining Directors shall, pending the appointment of further Directors, have the power to exercise all the powers of the Board for a period not exceeding 30 days.
- 15.4. A Director shall perform the functions of office in good faith, honesty and in a transparent manner and at all times act in the best interest of the Association and in such a way that the credibility and integrity of the Association are not compromised.
- 15.5. A Director shall within 60 days of his election declare In Writing to the Board any financial interest he or his immediate family or business associates may have in respect of any business arrangement with the Association.
- 15.6. A Director shall declare In Writing to the board any gifts and/or financial benefits which he or his immediate family might be offered from any party wishing to do business with the Association.
- 15.7. A Director may not, without the permission of the Board, disclose any privileged or confidential information of the Board or of the Association to any party not authorised or entitled, in law, to the receipt of such information.

16. DIRECTORS' EXPENSES

A Director shall be entitled to recover all reasonable and *bona fide* expenses incurred by him or her in or about the performance of his or her duties as Director. Save as aforesaid, a Director shall not be entitled to any remuneration for the performance of his or her duties.

17. POWERS OF DIRECTORS

- 17.1. The Board, subject to the provisions of this Memorandum, shall have the power to exercise all of the powers and perform any of the functions of the Association.
- 17.2. This Memorandum does not limit or restrict the authority of the Board to –

- 17.2.1. manage and direct the business and affairs of the Company, as set out in section 66 (1) of the Act;
- 17.2.2. consider a matter other than at a meeting, as set out in section 74 of the Act;
- 17.2.3. conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3) of the Act;
- 17.2.4. determine the manner and form of providing notice of its meetings, as set out in section 73 (4) of the Act;
- 17.2.5. proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) of the Act;
- 17.2.6. appoint committees of directors, and to delegate to any such committee any of the authority of the Board as set out in section 72 (1), or to include in any such committee persons who are not directors, as set out in section 73 (2)(a) of the Act.
- 17.3. The Board shall at all times have the right to engage on behalf of the Association the services of a Managing Agent, employees and service providers for any reasons deemed necessary by it and on such reasonable terms as it shall decide.
 - 17.3.1. Upon the Board deeming it necessary to appoint a Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect Levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Board notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.
 - 17.3.2. The Board shall ensure that there is included in the written contract of appointment of a Managing Agent a provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if

he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Board may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Board and/or the Association as a result of such cancellation.

- 17.3.3. A Director may not, except as authorised by the Board, give or purport to give any instruction to any Managing Agent, employee or service provider referred to in clause 17.3.
- 17.4. The Association may not provide a Director with a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a Director of the Association or an inter-related company, or a person related any such Director, however a loan or financial assistance is permissible in the circumstances referred to in Schedule 1 section 5(4)(a) to (d) of the Act.
- 17.5. The Board may, at any time, investigate and make a finding in respect of any alleged breach by a Director of any provision of this Memorandum and/or of the Estate Rules and may for such purpose establish a special committee to investigate and make recommendations in such regard.
- 17.6. Should the Board after, instituting the proceedings referred to above, determine that a Director is guilty of such breach, the Board may:
 - 17.6.1. issue formal written warning to such Director;
 - 17.6.2. reprimand such Director;
 - 17.6.3. request the resignation of such Director;
 - 17.6.4. take whatever steps against such Director as it deems necessary in order to remove such Director from the Board.

18. INDEMNIFICATION OF DIRECTORS

- 18.1. This Memorandum does not limit, restrict or extend the authority of the Board to-

- 18.1.1. advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in section 78 (4) of the Act;
- 18.1.2. indemnify a Director in respect of liability, as set out in section 78 (5) of the Act; or
- 18.1.3. purchase insurance to protect the Association, or a Director, as set out in section 78 (7) of the Act.

19. OFFICERS

- 19.1. The Board may appoint any officers it considers necessary to better achieve the objects of the Association.

20. PROCEEDINGS OF DIRECTORS AND DIRECTORS MEETINGS

- 20.1. The Directors may meet together to attend to the business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of this Memorandum.
- 20.2. Except as otherwise may be set out in this Memorandum, the Chairperson shall preside at all meetings of the Board and at all general meetings provided that should the Chairperson not be present within 10 (ten) minutes of the scheduled time for the start of such meeting or in the event of the Chairperson being unable or unwilling to act, the vice Chairperson shall act in the Chairperson's stead and failing the vice Chairperson, a Chairperson appointed by the relevant meeting.
- 20.3. A quorum for the holding of any Board meeting of shall be a majority of Directors present personally, provided however that during the Initial Period the presence of at least one Developer Director shall be necessary in order to form such a quorum.
- 20.4. Any resolution of the Directors shall be carried on a simple majority of all votes cast provided that during the Initial Period if a Developer Director votes against a resolution it shall be defeated and if a Developer Director votes in favour of the resolution it shall be carried irrespective of the other votes for

and against the resolution. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.

- 20.5. When a resolution of the Board is called for, the secretary of the Association shall record in writing the proposed resolution, the manner in which the vote on the proposed resolution was cast and whether or not the resolution was approved.
- 20.6. A resolution signed by all the Directors shall be valid in all respects as if it had been duly passed at a meeting of the Board.
- 20.7. Resolutions adopted by the Board shall be effective as of the date of that resolution unless otherwise so resolved.
- 20.8. The Board shall appoint a suitably qualified person to act as secretary to the Board and to the Association.
- 20.9. Should all Directors of the Association resign at once or cease to hold office as Directors the secretary of the Association shall call a special general meeting within 10 days of such resignation for the purposes of electing new Directors.
- 20.10. The procedures of any committees as may be constituted by the Board and their obligation to minute their meetings are unless otherwise specifically set out in the resolution forming and authorising that committee, the same as those of the Directors as set out in this Memorandum and shall be subject to the authority of the Board.
- 20.11. Subject to any limitation imposed by this Memorandum or the Members acting in general meeting, the management of the business and the control of the Association shall be vested in the Directors. No Director or member of any committee may act outside of his delegated powers of authority entrusted to him by the Board.

21. GENERAL MEETINGS OF THE ASSOCIATION

- 21.1. The Association shall, within 6 months after the end of each financial year,

hold a general meeting as its annual general meeting in addition to any other general meetings during that year, and shall specify such meeting either as an annual general meeting or as an extraordinary general meeting, as the case may be, in such notices calling for such general meetings.

- 21.2. Such annual general meeting shall be held at such time and place as the Board shall decide from time to time.
- 21.3. All general meetings other than annual general meetings shall be referred to as special general meetings.
- 21.4. The Board may, whenever they deem fit, convene a special general meeting. A special general meeting shall also be convened on a demand made in terms of section 61(3) of the Act provided that each such demand specifies the purpose for which such meeting is proposed and that such meeting is demanded In Writing by not less than 10% of all Members.

22. NOTICES OF MEETINGS

- 22.1. A general meeting of the Association shall be called In Writing on a notice period of at least 15 business days' (excluding the day on which such notice is given) and such notice shall specify the place, the day, the record date, the time of the meeting, and the general nature of the business to be conducted at such meeting.
- 22.2. A general meeting of the Association called on shorter notice than specified in clause 22.1, shall be deemed to have been duly called if every person entitled to vote in respect of any item on the agenda of such meeting is present at the meeting and votes to waive the required minimum notice period.
- 22.3. A material defect in the manner and form giving notice of the business of a general meeting of the Association may be voted on at such meeting if every person entitled to vote waives such material defect.
- 22.4. A non-material defect in the manner and form of giving notice of the business of a general meeting of the Association or an accidental or inadvertent failure

in the delivery of such notice does not invalidate such action taken at the meeting.

- 22.5. Any proposed resolution to be put to a general meeting of the Association shall be expressed with sufficient clarity and specificity and shall be accompanied by sufficient information or explanatory material to enable a Member who is entitled to vote on such resolution to determine whether to participate in such meeting and to seek to influence the outcome of the vote on the resolution. Such proposed resolution shall further be given in the manner prescribed in section 62 of the Act, in terms of this Memorandum or in such other manner, if any, as may be prescribed by the Board, to all persons who are entitled to receive such notices.

23. QUORUM

- 23.1. No general meeting shall be held and no business shall be transacted at any general meeting unless a quorum is present when the meeting commences and when the meeting proceeds to business.
- 23.2. During the Initial Period the quorum necessary for commencing and conducting business at any general meeting shall be one or more nominees present to represent the votes of the Developer and 25% of the votes in number of Members of the Association entitled to vote for the time being provided that such Members are present, in person or by proxy, at the commencement of and for the duration of such general meeting.
- 23.3. After the Initial Period the quorum necessary for commencing and conducting business at any general meeting shall be 25% of the votes in number of Members of the Association entitled to vote for the time being provided that such Members are present, in person or by proxy, at the commencement of and for the duration of such general meeting.
- 23.4. If a quorum is not present after half an hour from the time appointed for holding any general meeting, such meeting shall be properly adjourned to the same day in the next week at the same place and time, or at such other place as the Chairperson of the meeting shall appoint. If a quorum is not

present after half an hour from the time appointed for holding such an adjourned meeting, the Members present shall be a quorum.

24. AGENDA AT ANNUAL GENERAL MEETINGS

24.1. In addition to any other matters required by the Act or this Memorandum the following matters shall be dealt with at every annual general meeting of the Association:

- 24.1.1. the presentation and consideration of the Chairperson 's report;
- 24.1.2. the election of Directors;
- 24.1.3. the consideration of the accounts of the Association for the preceding financial year;
- 24.1.4. the consideration of the audited annual financial statements of the Association for the preceding financial year as well as the report of the Auditors;
- 24.1.5. the fixing of the Auditors fee;
- 24.1.6. the consideration of a budget of income and expenditure of the Association for the forthcoming financial year;
- 24.1.7. the consideration and voting upon any resolution circulated with the notice of such meeting and proposed for adoption by such meeting; and
- 24.1.8. confirmation of the *domicilium* of the association.

24.2. No business shall be dealt with at any general meeting unless written notice has been given to the Board not less than 2 business days before such meeting by the person proposing to raise such business of his intention so to do; provided however, that the Chairperson may on ordinary resolution of the meeting relax this condition.

25. PROCEDURE AT GENERAL MEETINGS

25.1. Before any person may attend or participate in any general meeting of the

Association such person shall present reasonably satisfactory identification as to their person and the Chairperson of the meeting must be reasonably satisfied that such person is a Member in good standing and has the right to attend and participate in such meeting.

- 25.2. At the discretion of the Board any general meeting of the Association may be conducted entirely by electronic communication or Members, or proxies for Members, may participate in such meeting, or part thereof, by Electronic Communication as long as the Electronic Communication employed ordinarily enables all persons participating in such meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in such meeting. Provided further that the notice of such meeting informs Members of the availability of such form of participation and provides any necessary information to enable such Member, or proxies for Members, to access the available medium or means of Electronic Communication used at such meeting. Access to such Electronic Communication is at the expense of such Member or proxies for Members, except to the extent determined by the Board.
- 25.3. The Chairperson may, with the consent of any general meeting at which a quorum is present, and shall, if so directed by such meeting, adjourn such meeting from time to time and place to place. No business shall be transacted at any such adjourned meeting other than business which could have been transacted at such meeting from which the adjournment took place. Whenever such meeting is adjourned for 10 days or more, notice of such adjourned meeting shall be given in the same manner as of such original meeting. Save as aforesaid, Members shall not be entitled to any notice of adjournment or of the business to be transacted at such adjourned meeting.

26. PROXIES

- 26.1. A Member may be represented at any general meeting of the Association by a duly authorised proxy.
- 26.2. The power of attorney or any other authority under which any person is

appointed as proxy to represent any Member must be signed by the Member concerned and shall be tabled at the general meeting at which the proxy, as named in the proxy instrument, proposes to vote.

- 26.3. A vote cast by a proxy at a general meeting shall be valid notwithstanding the prior death of the Member concerned or the revocation of such proxy by that Member, provided that notice, In Writing, of the death of the Member concerned or the revocation of such proxy had not been received by the Board at any time before such vote is cast.
- 26.4. No power of attorney or any other authority appointing a proxy shall be valid after the expiration of 6 months from the date of its execution.
- 26.5. The format of a proxy shall be as determined by the Board from time to time.

27. VOTING

27.1. At every general meeting of the Association during the Initial Period:

- 27.1.1. the Developer shall have 100 votes in addition to the votes conferred upon the Developer in its capacity as a Member;
- 27.1.2. subject to 27.1.1 above, every Member, including the Developer shall have 1 vote for each Property registered in that Member's name;
- 27.1.3. if a Property is registered in the name of more than one person, then all such co-owners shall jointly have 1 vote.

27.2. At every general meeting of the Association after the Initial Period:

- 27.2.1. Every Member, including the Developer, shall have 1 vote for each Property registered in that Member's name;
- 27.2.2. if a Property is registered in the name of more than one person, then all such co-owners shall jointly have 1 vote.

- 27.3. Save as expressly set out in this Memorandum no person other than a Member who shall have paid every Levy and other sum, if any, due and payable to the Association in respect of or arising out of his membership and

who is not under suspension, shall be entitled to be present at any general meeting;

- 27.4. At any general meeting of the Association a resolution put to the vote of such meeting shall be decided on a show of hands unless a poll is demanded by the Chairperson or members in terms of section 63(7) of the Act. A declaration by the Chairperson that a resolution has, on a show of hands, been carried or defeated and an entry to that effect recorded in the book containing the minutes of the proceedings of the Association shall be conclusive evidence of the result of such voting without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 27.5. If a poll is demanded in terms of clause 27.4, it shall be taken in such manner as the Chairperson directs. Based on the votes for and against as counted by scrutineers at the meeting, the Chairperson shall declare whether the resolution has been carried or defeated and such declaration shall be deemed to be the resolution of the meeting.
- 27.6. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of such meeting at which the voting took place shall be entitled to a second or casting vote.
- 27.7. Any demand for a poll may be withdrawn by the Chairperson or the Members who demanded it, as the case may be.
- 27.8. Every resolution and every amended resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 27.9. For an ordinary resolution to be approved by shareholders it must be supported by more than 50% of the voting rights exercised on the resolution
- 27.10. For a special resolution to be approved by shareholders it must be supported by more than 75% of the voting rights exercised on the resolution.
- 27.11. Unless any Member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration

made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or otherwise, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted.

27.12. A resolution that could be voted on at a general meeting may instead be submitted to Members In Writing for consideration and be voted on In Writing by Members within 20 business days after the resolution was submitted to them.

27.13. A resolution contemplated in clause 27.12:-

27.13.1. will have been adopted if it is supported by Members entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted members meeting;

27.13.2. if adopted, will have the same effect as if it had been approved by voting at a meeting;

27.13.3. Within 10 business days after adopting a resolution, or conducting an election of directors, the Association shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution as the case may be;

27.13.4. For greater certainty, any business of the Association that was required by the Act or this Memorandum to be conducted at an annual general meeting of the Association may not be conducted in the manner as set out in clauses 27.4 or 27.12.

28. ACCOUNTS

28.1. The Association elects in terms of section 34(2) of the Act to comply voluntarily with the extended accountability provisions set out in in sections 84(4)(b), 84(6) and 85 of Part A, as well as Part C, of Chapter 3 of the Act.

- 28.2. The accounts and books of the Association shall be open to inspection by any Member at all reasonable times during business hours.
- 28.3. Once in each financial year the accounts of the Association shall be examined and the correctness thereof ascertained by Auditors.
- 28.4. The duties of the Auditors shall be regulated in accordance with the Act.

29. ANNUAL FINANCIAL STATEMENTS

- 29.1. The Association shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Association to satisfy its obligations in terms of:
 - 29.1.1. the Act;
 - 29.1.2. any other law with respect to the preparation of financial statements to which the Association may be subject;
 - 29.1.3. this Memorandum.
- 29.2. The Association shall each year prepare annual financial statements within 4 (four) months of after the end of its financial year.
- 29.3. The financial year end of the Association shall run from the date of the establishment of the Association until the last day of February of the next year and thereafter from the 1st day of March each year until the last day of February in the subsequent year.
- 29.4. The Association shall appoint an Auditor upon or as soon as reasonably possible after its incorporation and thereafter each year at the first meeting of the Board following its financial year end. If the Association appoints a firm as its Auditor, any change in the composition of the Members of that firm shall not by itself create a vacancy in the office of Auditor.
- 29.5. For purposes of the affairs of the Association, with regard to and relating to the Auditor of the Association, the provisions of section 90(2)(a) and (b), 90(3), 90(6)(a)(i) to (iii), 90(6)(c), 91(1), 91(2) and 93(1) of the Act are

incorporated, *mutatis mutandis*, into this Memorandum.

- 29.6. The annual financial statements of the Association shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall:
 - 29.6.1. satisfy, as to form and content, the financial reporting standards of IFRS as applicable to small business;
 - 29.6.2. be subject to and in accordance with IFRS as applicable to small business;
 - 29.6.3. present fairly the state of affairs and business of the Association and explain the transactions and financial position of the business of the Association;
 - 29.6.4. show the Association's assets and liabilities, as well as its income and expenses;
 - 29.6.5. indicate the date on which such annual financial statements were produced and the accounting period to which they apply; and
 - 29.6.6. indicate on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared such annual financial statements.

30. INDEMNITY

- 30.1. Every Director or co-opted Director shall be indemnified by the Association against all costs, losses and expenses, including travelling expenses, which such Directors or co-opted Directors may incur or become liable for by reason of any act or deed done by such Director or co-opted Director in the proper discharge of his respective duties.

31. PROPERTY IMPROVEMENTS

- 31.1. Whenever the Board considers that the external appearance of any Property

Improvements or the use of a Property is such as to be unsightly or injurious to the amenity of the surrounding properties or to the Estate generally, the Board may serve notice on such Member or Members to take such steps as may be specified in the notice to eliminate such use or unsightly or injurious condition. In the event of the relevant Member or Members failing, within a reasonable time to be specified in such notice, to comply therewith, the Board may enter upon the Property and take such steps as may be necessary, and recover the cost thereof from the Member or Members concerned, which costs shall be deemed to be a debt owing to the Association. The Board shall in giving notice as aforesaid act reasonably.

- 31.2. No construction or erection of Improvements on any Property may commence prior to the approval of plans for such Improvements and, in this regard:
 - 31.2.1. a full set of proposed building plans which indicate both construction and design details shall be submitted to the Association for approval by the Architect;
 - 31.2.2. thereafter, the approved plans shall be submitted to the Local Authority for approval;
 - 31.2.3. having obtained the approval of the Local Authority, the Member shall comply with all conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Board read with the plans.
- 31.3. The scrutiny fee payable to the Architect will be paid by the Registered Owner, such scrutiny fee to be determined by the Board, from time to time.
- 31.4. Approval of building plans will not be granted by the Local Authority without the prior written approval of the Architect thereto on behalf of the Association, which approval shall be evidenced by an endorsement by the Architect.

32. CARE OF THE COMMON PROPERTY AND OBSERVING OF LAND USE AND RELATED MATTERS

- 32.1. In the event of any Member or any Member's Residents, visitors, employees or service providers causing any damage to *inter alia* the Common Property, any improvements thereon, the Common Property Services or the Perimeter Security Installation (without limitation of any other Property owned by the

Association), such damage shall be repaired by the Association and the Member concerned shall be liable for the costs thereof on demand by the Association.

- 32.2. Members shall at all times observe all laws and by-laws, regulations, the provisions of the town planning scheme and any other laws in force pertaining to his Property and the use thereof. In the event of any Member failing so to do, such failure shall be deemed to be a breach of this Memorandum and the Board shall be entitled to take such action as they may be empowered and as they may deem fit in terms hereof to remedy such breach or to prevent the continuation thereof. In the event that any laws and by-laws, regulations, provisions of the town planning scheme and any other laws in force are more onerous than the requirements of this Memorandum then such more onerous conditions shall apply.

33. EXTENSION OF THE ESTATE

- 33.1. The area of the Estate will be increased when the second, third and fourth phases are developed as set out in the sectional title plan (as approved by the local authority), provided the Registered Owners of any Properties so included shall become Members of the Association on the terms set out herein, pay Levies and be bound to all the provisions of this Memorandum and the Estate Rules.

34. TRANSFER OF PROPERTIES

- 34.1. The Association shall specifically authorise a Director of the Association to sign all the documents and perform all acts necessary to acquire ownership of the Erf or Erven comprising the Private Spaces, private open spaces, private roads, and land required for services provided by the Association, on behalf of the Association, by means of a special resolution.
- 34.2. The transfer of the Erf or Erven comprising the Private Spaces shall be effected by the Developer's attorneys and all costs relating to such transfer shall be borne by the Developer.
- 34.3. No Property, interest therein or portion thereof may be transferred without

the prior written consent of the Association, which consent shall not be unreasonably withheld unless:

- 34.3.1. such Member is indebted to the Association in any way in respect of Levies or other amounts which the Association may in terms of this Memorandum be entitled to claim from that Member;
 - 34.3.2. the proposed transferee has not agreed In Writing to the satisfaction of the Association to become a Member of the Association on taking transfer of the Property;
 - 34.3.3. the Member remains in breach of any of the provisions of this Memorandum or the Estate Rules after receipt of notice from the Board requiring that Member to remedy such breach.
- 34.4. Where a Member is a company, close corporation or trust, no transfer of the shares, members' interest or beneficiary's interest, as the case may be, may take place without the prior written consent of the Association. This consent will not be given unless and until the company, close corporation or trust, as the case may be, has furnished to the Association In Writing, the full details of the proposed new shareholders, members, beneficiaries respectively as well as the date on which the shareholding, membership, beneficiary will change. Further, the written consent of the Association will not be given unless and until all monies owing by the particular Member company, close corporation or trust, up to and including the effective date of that transaction, have been paid or secured to the satisfaction of the Association and the new shareholder, member or holder of the beneficial interest, as the case may be, has confirmed, In Writing, that he has received, and read a copy of this Memorandum and the Estate Rules, and agrees to be bound by the said Memorandum and the Estate Rules
- 34.5. The Association shall be entitled, in issuing any certificate necessary for transfer of a property, to charge a reasonable fee as may be determined by the Board from time to time provided such fee shall be subject to review by the Association in general meeting.

- 34.6. The Association may enter into agreements with Members for the provision of amenities and services to Members and to levy a reasonable charge in respect of the provision thereof.
- 34.7. The procedure to obtain the consent of the Members of the Association to transfer an Erf in the event that the association ceases to function shall be in accordance with 35.2 below.

35. ASSOCIATION CEASING TO FUNCTION

- 35.1. In the event that the Association ceases to function or carry out its obligations, the Local Authority or any affected person, including a Member of the Association, may apply: -
- 35.2. in terms of section 15(2)(q) of the Act to disestablish the Association subject to: -
 - 35.2.1. the amendment of the conditions of approval to remove the obligation to establish an owners' association; and
 - 35.2.2. the amendment of title conditions pertaining to the Association, to remove any obligation in respect of an association;
 - 35.2.3. in terms of section 15(2)(r) of the Act for appropriate action by the Local Authority to rectify a failure of the Association to meet any of its obligations in respect of the control over or maintenance of services contemplated in subsection 29(3)(b) of the Act; or
 - 35.2.4. to the High Court to appoint an administrator who must exercise the powers of the Association to the exclusion of the Association.
- 35.3. In considering an application contemplated in 35.2.1 above, the Local Authority must have regard to: -
 - 35.3.1. the purpose of the Association;
 - 35.3.2. who will take over the control over and maintenance of services for which the owners' Association is responsible; and

- 35.3.3. the impact of the disestablishment of the owners' Association on the Members of the owners' Association and the community concerned.
- 35.4. The Local Authority or the affected person may recover from the Members of the Association the amount of any expenditure incurred by the Local Authority or that affected person, as the case may be, in respect of any action taken in terms of 35.1 above.
- 35.5. The amount of any expenditure so recovered is, for the purposes of section 29(7)(a) of the Act, considered to be expenditure incurred in connection with the Association.

36. SECURITY AND SERVICE RELATED MATTERS

- 36.1. Members shall comply with all security measures and protocols as may be introduced by the Association from time to time and with any associated Estate Rules.
- 36.2. In the event of the Association providing or procuring a security service and/or other services for Members, all Members shall be obliged: -
 - 36.2.1. to permit the installation of any equipment on their Properties or in the buildings situated on their Properties for the purpose of such services as the Association may determine are required and necessary from time to time; and
 - 36.2.2. to abide by such provisions as may be laid down by the Association from time to time.

37. ACCESS TO PERIMETER SECURITY INSTALLATION

- 37.1. Where the boundary of a Property also constitutes a boundary related to the Perimeter Security Installation such Member shall be obliged to permit the Developer and/or the Association to construct or install such Perimeter Security Installation on such Member's Property. Such Member shall not be entitled to interfere in any manner whatsoever with any such Perimeter Security Installation and shall permit the Association and its service

providers from time to time to access such Member's Property in order to inspect such Perimeter Security Installation and to effect any such repairs or alterations as may be necessary from time to time.

38. COMMON PROPERTY SERVICES, COMMON PROPERTY IMPROVEMENTS AND PERIMETER SECURITY INSTALLATION

- 38.1. All water network, electrical network, sewer network, storm-water network and road network components shall be a private combined system owned, managed and maintained by the Association, and shall be transferred by the Developer to the Association.
- 38.2. All private combined systems (including but not limited to water, sewers, storm-water, roads, and irrigation) shall be a joint and several responsibility of the Members once at least 50% interest therein has been transferred by the Developer to the Association.
- 38.3. All internal works (including but not limited to water, sewers, storm-water, roads, and irrigation) on the Development shall be constructed in accordance with the operational infrastructure management plan approved by the Local Authority.
- 38.4. Subject to the provisions of this clause 38, the Association shall take transfer of all internal networks from the Developer, it being recorded that such transfer of ownership shall take place at no consideration and the Association shall then take over the responsibility to maintain and manage the relevant network.
- 38.5. The Developer shall install the Common Property Services, the Common Property Improvements and the Perimeter Security Installation to standards as approved by the Local Authority and on completion thereof the Members and/or the Association shall have no recourse against the Developer with regard to such Common Property Services, the Common Property Improvements and the Perimeter Security Installation, whether in respect of the on-going maintenance, upgrading, replacement or otherwise.

39. CONDITIONS IMPOSED BY THE LOCAL AUTHORITY

- 39.1. The main object or business of the association shall not be amended without the written consent of the Local Authority first having been obtained.
- 39.2. The Association shall at all times comply with all legal requirements for its continual legal existence and incorporation as a legal entity. Notwithstanding the provisions of this clause 39.2, the Association shall not be wound up without the written consent of the Local Authority first having been obtained.
- 39.3. The Common Property shall be transferred to the Association and shall not be sold or transferred by the Association to any other person or entity and shall not be mortgaged.
- 39.4. Each and every Registered Owner of a Property shall have free access over the Common Property to afford them access to a public road.
- 39.5. Each and every owner of a Property shall have free entrance to and usage of the Common Property roadways and in order to access their Property.
- 39.6. Municipal and emergency services of the Local Authority are guaranteed 24-hour access to the Common Property to maintain, where applicable, the Local Authority's installations and provide services to Residents in the Estate.
- 39.7. The Association shall have full responsibility for the functioning and proper maintenance of the Common Property and the engineering services situated within the Common Property and the attenuation system or systems on the Common Property, if applicable, all to the satisfaction of the Local Authority, failing which, such maintenance shall be done by the Local Authority at the cost of the Association.
- 39.8. The Association shall properly and clearly display the street name and street numbers allocated Properties and shall maintain such to the satisfaction of the Local Authority.
- 39.9. The Association undertakes to be bound to the Conservation Servitude and Open Space Servitude and undertakes not to amend same, save with the consent of the Local Authority.

- 39.10. The Association undertakes not to submit an application to rezone the Common Property, save with the consent of the local authority.
- 39.11. The provisions hereof shall not, save with the prior written consent of the Local Authority (or its assigns) first being had and obtained: be added to, amended, repealed or deleted. Which consent shall not be unreasonably withheld.

40. PRIVILEGE IN RESPECT OF DEFAMATION

- 40.1. Every Member of the Association and every Director shall be deemed by virtue of his membership or, as the case may be, his holding office as a Director, to have waived as against every other Member, the Chairperson, or vice-Chairperson, every other Director, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Directors, or any sub-committee, all claims and rights of action which such Member or Director, or any reference to such Member or Director, made at any meeting of the Board, 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 Director, or otherwise injurious to the dignity, reputation, business, or financial interest of such Member or Director, whether such statement be true or false.

41. DOMICILIUM

- 41.1. The Board shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
- 41.1.1. such address shall be the address of the Chairperson, or of a resident Director nominated by the Board, or the address of any duly appointed Managing Agent;
- 41.1.2. the Board shall give notice to all Members of any change of such address.
- 41.2. The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf or Unit.

- 41.3. The *domicilium citandi et executandi* of each Resident shall be the street address of the Erf or Unit which such Resident occupies.
- 41.4. It shall be competent to give notice by email where the Member's or Resident's email address is recorded with the Board.
- 41.5. A Member or Resident who has furnished an electronic address to the Association or to his Body Corporate authorises the Association to use that electronic address and to use electronic communication to give any notices, documents, records, legal process or statements or notices of availability of the foregoing which the Association is required to or wishes to serve upon the Member or Resident.
- 41.6. A Member or Resident may by notice in writing to the Board alter his *domicilium*, provided such new address may not be a post office box or post restante and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.
- 41.7. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member or Resident shall be adequate written notice or communication to such Member or Resident notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi*.
- 41.8. Any notice to a Member or a Resident:
- 41.8.1. delivered by hand to a responsible person at his *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 41.8.2. sent to him by electronic mail shall be deemed to have been received on the date and at the time recorded by the computer used by the Association, unless there is conclusive evidence that it was delivered on a different date or at a different time.

42. BREACH

- 42.1. The Board may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause 42.
- 42.2. If any Member or Resident fails in the observance of any of the provisions of this Memorandum with regard to Improvements and/or fails to comply with any rules or regulations made in terms thereof, the Board may on behalf of and in the name of the Association serve notice on such Member or Resident calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance:
- 42.2.1. enter upon the Erf to take such action as may be reasonably required to remedy the breach and the Member or Resident concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand; and/or
- 42.2.2. call upon such Member or Resident in writing to remove or alter within a specified period any portion of the Improvements or any addition erected contrary to the provisions of this Memorandum and failing which, the matter shall be referred to a special meeting of the Association convened to afford Members or Residents the opportunity to give directions to the Board. The Resolution of the Association at such meeting shall be binding upon such defaulting Member or Resident and shall be implemented by the Board.
- 42.2.3. If any Member or Resident fails to make payment on the due date of Levies or other amounts payable by such Member or Resident, the Board may give notice to such Member or Resident requiring him to remedy such breach within such period as the Board may determine and should he fail to timeously remedy his breach, the Board may, on behalf of the Association, institute legal proceedings against such Member or Resident without further notice and such Member or Resident will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in obtaining recovery. Any notice given in terms of this clause shall attract a fee as determined by the Association

and payable by such Member or Resident.

- 42.2.4. Nothing in the foregoing shall derogate from or in any way diminish the right of the Association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any Member or Resident arising from any cause of action whatsoever or for any other relief.
- 42.2.5. In the event of any breach of this Memorandum by any Member or Residents or Tenants guests or employees, such breach shall be deemed to have been committed by the Member or Resident himself but, without prejudice to the foregoing, the Board shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Member or Resident.

43. ARBITRATION

- 43.1. Should any dispute, question or difference arise between Members, Directors, Residents, the Association or either one of them as the case may be: -
 - 43.1.1. in regard to:
 - 43.1.1.1. the interpretation of;
 - 43.1.1.2. the effect of;
 - 43.1.1.3. their respective rights or obligations under;
 - 43.1.1.4. a breach of (save for non-payment of Levies or any other amount due by a Member in terms of this Memorandum),

this Memorandum and / or the Estate Rules; and/or
 - 43.1.2. in relation or incidental to the Association or the Development, or any part thereof, including disputes, questions or differences arising from statements, acts or omissions related to or incidental to the Association or the Development,

- 43.1.3. enforceability, termination or cancellation or the subject matter of this Memorandum including claims in delict (including but not limited to defamation)

such dispute shall be decided by arbitration in the manner set out in this clause 43.

- 43.2. In respect of any claim arising from non-payment of Levies or any other amount due by a Member to the Association in terms of this Memorandum, the Association and Directors shall continue to enjoy common law rights and shall not be required to proceed to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

- 43.3. The arbitrator shall be a retired judge or a practicing or retired senior counsel or a practicing or retired attorney of not less than 15 (fifteen) years standing appointed by agreement between the parties to the arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the Chairperson of the Cape Bar.

- 43.4. The arbitrator shall in giving his award have regard to the principles contained in this Memorandum and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

- 43.5. Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:

- 43.5.1. shall be final and binding on each of them; and

- 43.5.2. shall be carried into effect immediately; and

43.5.3. may be made an order of any Court to whose jurisdiction the parties are subject.

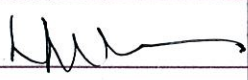
43.6. Notwithstanding anything to the contrary contained in this clause 43, the Board shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Memorandum.

44. AMENDMENT OF THIS MEMORANDUM AND DE-REGISTRATION OF THE ASSOCIATION AND RING FENCED PROVISIONS

44.1. This Memorandum may, subject to clauses 21 and 25 be amended by the Members in a general meeting provided such resolution is passed by a majority of not less than 75% of all voting rights exercised on the resolution. The Association may only be wound up in accordance with the provisions of the Act read with this Memorandum.

45. ADOPTION OF MEMORANDUM

45.1. This Memorandum was adopted in accordance with section 13(1) of the Act as evidenced by the following signatures of each of them or on their behalf.

Name of director	Identity number of director	Signature	Date
CLIVE DENNIS KERN	560907 5074 081		8 September 2025
LEATITIA MARTHA KERN	540212 0196 087		8 September 2025
NICOLA KLUE	891205 0090 081		8 September 2025